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Ethiopia's Legal Framework for Court-ordered Non-custodial Community Service

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Abstract

This article examines the normative framework for court-ordered non-custodial community service in the Ethiopian criminal justice system. Community service order applies to minor offences and requires offenders to perform certain work and services rather than imprisonment. The scheme is addressed under two provisions of the 2004 Criminal Code, and many issues are not addressed. The themes that are not addressed include the issue of matching the skill of offenders and available work, the constituents of failure to discharge community service order, the effect of committing a crime during the period of community service order, the maximum and minimum working hours per day, and more importantly, the institutional setups. Based on doctrinal and analytical legal research, this author argues that fixing the duration of community service in days/months can pose difficulty for enforcement. Furthermore, perfect equivalence between the length of imprisonment and the duration of community service does not seem practicable and logical. Automatic revocation and/or imposition of imprisonment in case of failure to discharge the order would not be a tenable response, and other preliminary measures, such as warning and imposition of a fine without revoking the order, are appropriate. Hence, the scheme requires normative reconsiderations for implementation and its effectiveness as an alternative to imprisonment.

Keywords:

Alternative to imprisonment, community service, Criminal Code, minor offences, Ethiopia

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Contents

1. Introduction

Court ordered community service is a criminal sentence that requires offenders to perform unpaid work for a specified period. It aims to hold individuals accountable for their actions while fostering a sense of responsibility and social contribution. It was introduced in the second half of the 20th century.[1] However, it does not apply to all crimes and offenders. Most criminal justice systems reserve it for minor offences and for specified categories of offenders. Alternatives to imprisonment, including community service, are introduced in response to the impropriety of imprisonment for certain crimes and offenders.[2]

In the Ethiopian criminal justice system, community service was recognized in the 1957 Penal Code and it has been maintained in the 2004 Criminal Code. Accordingly, a court can impose a community service sentence on an offender when the crime is punishable with simple imprisonment not exceeding six months, provided that they are healthy and not a danger to society. Recently, there has been a move to regulate the scheme in a robust manner with an effort to adopt a community service punishment proclamation. Various themes in this article are updated and further developed from parts of the author's LLM thesis[3] and the article analyzes the legal

[1] *See* Mary McGagh (2007), *Community Service: An Exploration of the Views of Community Service Supervisors in the Irish Probation Service* (PhD Dissertation, National University of Ireland) p.13.
[2] Lukas Muntingh (2005), "Alternative Sentencing in South Africa", in Traggy Maepa (ed.), *Beyond Retribution: Prospect of Restorative Justice in South Africa* (Institute for Security Studies) p. 106.
[3] Belayneh Berhanu (2017). *Community Service as Alternative to Imprisonment in Ethiopia: A Comparative Study* (LLM Thesis, Bahir Dar University).

frameworks of court-ordered community service in the Ethiopian criminal justice system.

2. The Concept and Origin of Court-ordered Community Service

Community service order is one of the widely used penalties imposed for minor offences, and it requires the offender to provide free service in the community for a specified time.[4] As a scheme, community service order is defined as "[a]program through which convicted offenders are placed in an unpaid position with non-profit or tax-supported agencies to serve a specified number of hours performing work or service within a given time limit as a sentencing option or condition."[5]

Community service punishment can be an independent sentence of its own, or it can also be a condition to a suspended sentence, or a direct alternative to imprisonment. Community service of the first type is called 'intermediate sentence', while the latter is a 'substitutional sentence'.[6] In South Africa[7] and Germany[8], it is a condition of a suspended sentence, while it is an independent punishment in Zimbabwe.[9]

Community service punishment is characterized as a 'two-way street'[10] since the offender provides service to the community while acquiring new

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[4] See, for instance, Dermot Walsh & Paul Sexton (1999), *An Empirical Study of Community Service Orders in Ireland*, p. 7; Anita Abdul Rahim *et al* (2013) "Community Service as Alternative Punishment: The Extent of its Application on the Categories of Crime and Offenders in Malaysia", *International Journal of Education and Research*, Vol. 1, No. 7, p. 155; McGagh (*supra* note 1) 4; Shelley Elizabeth Turner and Christopher John Trotter (2016), Best Practice Principles for the Operation of Community Service Scheme: A Systematic Review of Literatures, Monash University Criminal Justice Research Consortium, p. 16; Penal Reform International (2007), *Monitoring and Research Report on the Gacaca, Community Service: Areas of Reflection*, p. 5

[5] MK Harris (1979), "Community Service by Offenders", *American Bar*, p. 6, cited in Asmah Othman (2013), *Community Service Order in Malaysia: An Exploration of the Perceptions and Experiences of the Youthful Offenders and Supervisors* (PhD Dissertation, University of Salford, UK) p. 16.

[6] A Freiberg & S Ross (1999), *Sentencing Reform and Penal Change: the Victorian Experience*, Australian Studies, in Criminology, cited in Turner and Trotter (*supra* note 4) 14.

[7] Criminal Procedure Act 51 of 1977, S.297 (1) (a) (i) (cc).

[8] German Criminal Code, last amended 2009, S.56b (3).

[9] Criminal Procedure and Evidence Act (Chapter 9: 07), as amended (2024), S.350A.

[10] Abdul Rahim *et al*. (*supra* note 4) 155.

skills.[11] It is premised on punishing offenders in the community by requiring them to compensate the affected society through free service and work. This makes it distinct from other alternative punishments, as the offender is seen as a contributor rather than a cost to society.[12]

McGagh states that community service punishment started in 1966 in California for female traffic offenders who are not capable of paying a fine, and for whom imprisonment is inappropriate.[13] As the nature of the crimes subject to this scheme (traffic offences) indicates, it was applied to minor offences punishable with a fine.[14] However, it predates the 1960s because, the 1957 penal code of Ethiopia, for example, had incorporated this scheme in the form of compulsory labor. There were also elements of community service in Article 49(1) of the 1937 Swiss Penal Code which allowed the substitution of a fine by voluntary labor or entitlement to a prolonged time of payment of fine as a result of voluntary labor. It provided that:

> …. The proper official may permit the convicted person to pay the fine in installments whose amount and due dates he shall determine according to the circumstances of the convicted person. He may also permit him to work out the fine by voluntary labor, particularly for the State or community. In the latter case, the proper official may extend the period of payment.

Community service then became a popular sentence in Britain[15] and served as a model for various European states.[16] The pushing factors for such development in Britain were overcrowding, the cost of incarceration, the detrimental effect of imprisonment on the offenders and their families, and the lesser effect of imprisonment on reducing reoffending.[17] Accordingly, the advisory committee on penal matters, 'Wooton Committee', was set up in 1970 to devise alternatives to imprisonment. The Committee recommended community service punishment as a valuable alternative which was incorporated in the 1972 Criminal Justice Act.[18] The practice spread to

[11] See Turner and Trotter (*supra* note 4) 15.
[12] Abdul Rahim *et al* (*supra* note 4) 2.
[13] McGagh (*supra* note 1) 13; see also Josine Junger-Tas (1994), *Alternatives to Prison Sentences: Experiences and Developments*, Gugles Publication, p. 25.
[14] R Harris & TW Lo, "Community Service: Its use in Criminal Justice", cited in McGagh (*supra* note 1) 13.
[15] Junger-Tas (*supra* note 13) 27.
[16] McGagh (*supra* note 1) 13.
[17] Id., p. 14.
[18] Ibid.

jurisdictions such as Western Europe, New Zealand, Canada, and in limited cases to Asia, South America and Africa.[19]

The development of community service punishment in Western Europe was influenced by the development in Britain. Community service was introduced in West Germany in 1975, Luxembourg in 1976, Italy and the Netherlands in 1981, Belgium, Denmark and Portugal in 1982, France in 1983, Norway in 1984, Sweden in 1992, Finland in 1994, and Czech Republic in 1995.[20]

In Africa, Ethiopia pioneered in adopting community service, as the 1957 Penal Code incorporated compulsory labor as punishment for certain offences.[21] Zimbabwe introduced community service based on the 1992 Amendment to the Criminal Procedure and Evidence Act and it became operational in 1994.[22] Kenya followed the footsteps of Zimbabwe and endorsed community service in its criminal justice system by enacting the Community Service Orders Act of 1998.[23] Uganda adopted the Community Service Act in 2000.

3. Preconditions for and Benefits of Community Service Order

Court ordered community service applies only to offences that are considered as minor[24] or for first-time offenders.[25] It does not apply for serious crimes.[26]

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[19] R Harris & and TW Lo, Community Service: Its Use in Criminal Justice, cited in Turner and Trotter (*supra* note 4) 14.

[20] Robert Harris (1995), "Probation Round the World: Origins and Development", in Koichi Hamai *et al* (eds.), *Probation Round the World: A Comparative Study, Routledge*; see also Junger-Tas (*supra* note 13) 25-27

[21] Berhanu (*supra* note 3) 22.

[22] Penal Reform International and Zimbabwe National Committee on Community Service (1997), Community Service in Practice, p. 1.

[23] Penal Reform International (2012), Alternatives in East Africa: Trends and Challenges, p. 9, available at https://www.penalreform.org/resource/alternatives-imprisonment-east-africa-trends-challenges/, last accessed on 19 March 2025.

[24] See Miranda Boone (2010), 'Only for Minor Offences: Community Service in the Netherlands', *European Journal of Probation*, Vol.2, No.1; Penal Reform International (2016), Global Prison Trends 2016, p. 36; McGagh (*supra* note 1) 19; Junger-Tas, *supra* note 13, pp. 25-27; Walsh and Sexton (*supra* note 4) 7, 89.

[25] Boone, Id., p. 22.

[26] Junger-Tas (*supra* note 13) 25; Penal Reform International (2012), Making Community Service Work: A Resource Pack from East Africa(undated), p. 7, available at https://www.penalreform.org/resource/making-community-service-work-resource-pack-east-africa/, last accessed 19 March 2025; Jeffy Handmaker (1994), Legal and

Hence, the nature of the offence and the personal characteristics or circumstances of the offender are decisive factors in determining eligibility for community service punishment.

In the UK, for example, the existence of these factors is determined by the social inquiry report prepared by a probation officer,[27] and the offenders suitable for community service are: (i) those who have little opportunity to contribute to society; (ii) those who function below their potential and may be helped by working in a group environment; (iii) isolated persons; and (iv) those with stable background.[28] On the contrary, the following offenders are not suitable for community service sentence: heavily addicted persons, mentally ill offenders, psychologically disturbed persons, those who lack self-control, those with unstable family life, or persons who would pose a danger to society.[29] Another important precondition for the imposition of community service punishment is the consent of offenders. In all jurisdictions that adopt it, the consent of the offender is a necessary condition. Thus, the court shall obtain the free consent of the offender concerned before imposing community service punishment.

Community service punishment has multidimensional benefit to the community, offenders and the court.[30] The community gets recompense by the free service of the offender. The offenders also benefit from the punishment as they are not deprived of the social tie to the family and the community, and maintain their job. To the court, community service punishment offers more sentencing options. Community service sentence

Socioeconomic Difficulties associated with the Introduction of Community Service Orders in South Africa (with special reference to Transkei), LLM Thesis, University of London, p. 26.

[27] For instance, in England the Home Office National Standard for Community Service Order requires the determination of suitability to be based on probation report: see Junger-Tas (*supra* note 13) 28. This is also a requirement in Ireland: see Walsh and Sexton (*supra* note 4) 18; Justice J Pickering recommended it to be followed by magistrates: see Handmaker (*supra* note 26) 28; in Zimbabwe, see Community Service (General) Regulations, 1997, S. 12.

[28] Handmaker (*supra* note 26) 27.

[29] See Junger-Tas (*supra* note 13) 27; Walsh and Sexton (*supra* note 4) 18; Handmaker (*supra* note 26) 24; Community Service is not available in Germany for offenders with no fixed address, see Walsh and Sexton (*supra* note 3) 93. The requirement to have permanent residence is a safeguard for the successful completion of the order, see Handmaker (*supra* note 26) 23

[30] A Dissel & M Mnyani (2007), "Sentencing options in South Africa", cited in Shanta Singh, 'Alternatives to Imprisonment in South Africa: A Historical Perspective, 1980's to Present', *New Contree*, No. 53, p. 151.

offers a valuable alternative to offenders when monetary penalties such as fines, restitution and compensation are unavailable due to limited resources.[31] Moreover, community service punishment has the advantage of reducing prison population, save budgetary expenses, skill acquisition for offenders, promoting reconciliation between the offender and the victim, ensuring community involvement in the administration of justice, fostering a sense of responsibility among offenders, and rehabilitating offenders.[32]

4. Community Service Order in Ethiopia: Scope, Types and Preconditions

As indicated earlier, Ethiopia introduced community service as an alternative to imprisonment in the 1957 Penal Code via compulsory labor both as a direct and indirect alternative to imprisonment.[33] As a direct alternative to imprisonment, compulsory labor was provided in lieu of simple imprisonment not exceeding three months[34], and as an indirect alternative, it was used under contexts of default in the payment of fine.[35] These types of compulsory labor are retained in the 2004 Criminal Code that allows the term of simple imprisonment (that does not exceed six months) to be converted to community service punishment.[36]

The Draft Criminal Procedure and Evidence Code and the Draft Community Service Punishment Proclamation also regulate this type of punishment. In the section dealing with variation of sentence, the Draft Criminal Procedure and Evidence Code deals with issues that include preconditions for the imposition of a sentence of compulsory labor, the

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[31] Singh, ibid.

[32] See Ministry of Internal Affairs (Uganda) (2016), Community Service Orders User's Handbook, 1st ed., pp. 2 and 3; LN Nelson Mutorwa (2007), Community Service as an Alternative Sentencing Offender in Namibia (LLB Thesis, University of Namibia), pp. 25-26; Government of Kenya and United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) (2011), Evaluation of Community Service Orders Programme in Kenya, pp. 4 & 5; Othman, 2016 (*supra* note 5) 39, 40; Handmaker (*supra* note 26) 19.

[33] Berhanu (s*upra* note 3) 49.

[34] The Penal Code of the Empire of Ethiopia, 1957, *Negarit Gazeta*, Gazette Extraordinary, Proclamation No.158, Arts. 102 and 106.

[35] Id., Art. 92.

[36] Criminal Code of the Federal Democratic Republic of Ethiopia (FDRE Criminal Code), Proclamation 414/2004, Arts. 103(1) and 107.

content of the judgment, and termination of the order.[37] In this Draft Code, compulsory labor applies for crimes punishable with simple imprisonment not exceeding three years with or without fine.[38] The Draft Community Service Punishment Proclamation states the same nature of crimes which can be converted to community service punishment. The Draft Community Service Punishment Proclamation also contains detail provisions that regulate the scheme including the establishment of institutions for its administration.[39]

This article uses the term 'community service punishment' (or court ordered community service) in the same sense as ‘compulsory labor’ except that the consent of the offender is not required in the latter case. The two terms generally denote the same thing, i.e., works performed by the offender *for* and *in* the community. A further note is that unless expressly indicated or the context provides otherwise, the word ‘work’ includes ‘services’.

4.1 The scope of application

As direct alternative to imprisonment, community service punishment in Ethiopia – in ordinary cases – applies to crimes punishable with simple imprisonment not exceeding six months. It can also be imposed instead of simple imprisonment not less than the general minimum of 10 days in cases where there is/are mitigating circumstance(s).[40] One issue that must be raised in connection with the nature of the crime involves the concurrence of crimes. In other words, an issue arises whether a court should stick to the maximum term of imprisonment (not exceeding six months) for both/all crimes, or whether it would consider the offender of concurrent crimes ‘dangerous to society’. Even though it is not easy to answer this question relying on the Criminal Code, this issue is addressed in the Draft Proclamation.

The ‘*a contrario’* reading of Article 3(2) of the Draft Proclamation reveals a liberal approach. It provides that the proclamation does not apply to an offender who committed concurrent offences the sum of the sentence of which exceeds three years.[41] This, in other words, means that such an offender can be sentenced to community service if the sum of the sentences does not exceed three years. However, this position may be problematic when the offender has

[37] Criminal Procedure and Evidence Code (Draft) of the Federal Democratic Republic of Ethiopia (Criminal Procedure and Evidence Code (Draft) 2021 (author’s translation), Arts. 328-331.
[38] Id., Art. 328(2)(a).
[39] See Community Service Punishment (Draft) Proclamation 2015.
[40] FDRE Criminal Code, Art. 179(f).
[41] Art. 3(2).

committed different material offences at different times. This situation casts doubt on the suitability of the sentence.

Haile argued that the length of imprisonment eligible for conversion to community service provided in the Criminal Code is extended to eight months in the Sentencing Manual.[42] His conclusion relied on the equivalence of the term of imprisonment and the length of community service provided in the annex to the Manual. The Manual categorizes a sentence of simple imprisonment from two to eight months and community service from two to six months under Scale 1. The discretion to select either punishment is left to the judge, and the judge may impose community service even if the crime would be punishable for a term exceeding six months. This, however, is against the provision of the Criminal Code, and a court (the Federal Supreme Court of Ethiopia which enacted the Manual) cannot repeal the law enacted by the parliament.[43]

The nature and term of simple imprisonment eligible for this scheme are changed in the two draft laws mentioned above.[44] With regard to the nature of simple imprisonment, these draft laws provide that it can be applicable to a person who is "found guilty of a crime punishable with simple imprisonment of not more than three years or fine or simple imprisonment of not more than three years and fine".[45] Accordingly, the length of simple imprisonment is extended to three years of imprisonment.[46] These two draft laws came up with a commendable move as they extended the scope of scheme so that it can apply to relatively more serious crimes compared to the Criminal Code.

Community service can also be an indirect alternative to imprisonment in case of fine defaults. A convict sentenced to fine and who is unable or unwilling to pay the fine will be sentenced to community service to the amount of fine levied/remained unpaid.[47]

[42] Haile Asnake (2016). *Application of Compulsory Labour as Alternative Punishment in Amhara National Regional State Criminal Justice System* (LLM Thesis, Bahir Dar University), p. 63.
[43] Berhanu (*supra* note 3) 50.
[44] Ibid.
[45] Criminal Procedure and Evidence Code (Draft), Art. 328(2)(a); *see also* Community Service Punishment (Draft) Proclamation, Art.3(1).
[46] Ibid.
[47] See generally FDRE Criminal Code, Arts.94-96; Criminal Procedure Code of Ethiopia, Proclamation No.185 of 1961 (Criminal Procedure Code), Art. 209(2).

4.2 Types of community service under the Criminal Code

The Criminal Code recognizes two types of community service punishments i.e., with restriction of liberty and without restriction. The first type is envisaged under Article 103(1), which allows the court to render its decision provided that the requirements as to the nature of the crime and the personal circumstance of the offender are met. However, it is noted that a person sentenced to community service punishment without restriction of liberty is subject to supervision.

Community service with restriction of liberty will be imposed if it is proper to keep the offender away from unfavorable surroundings or undesirable company. The restriction may require the offender to discharge the service by "remaining in a particular place of work, or with a particular employer, or in a particular establishment, or without leaving his residential area or a restricted area under the supervision of government officials".[48] The duration of such restriction shall be determined by the court according to the circumstances of the case.[49] Mentioning the duration of the restriction in the face of the duration of the punishment (community service) indicates that the duration of the two may be different. This means when the offender is sentenced to a community service for a term of two months, the duration of restriction of liberty may not be equal. The court may restrict the liberty of the offender for a lesser duration.

4.3 Preconditions

In addition to the minor nature of the crime, other conditions must be fulfilled for the imposition of community service punishment. First, the offender must be healthy.[50] Since the punishment requires the offender to provide physical work as well, s/he must be capable of discharging the task. Thus, if an offender suffers from an illness that will hinder a satisfactory performance of the work, the court will not sentence them to community service.[51] Another precondition related to the capacity of the offender is age, in that both young and old persons may not be capable of discharging community service punishment.[52] An indication for the exclusion/applicability of community service for young offenders in Ethiopia is stipulated under Articles 167(2) and 751(2) of the Criminal Code.

[48] FDRE Criminal Code, Art.104 (1) and (2).
[49] Id., Art.104 (2), para.1.
[50] FDRE Criminal Code, Art.103 (1).
[51] Berhanu (*supra* note 3) 51.
[52] Ibid.

The second precondition relates to the personal disposition of the offender i.e., the offender must not be is danger to society.[53] Accordingly, an offender who will pose danger to society shall not be sentenced to community service punishment. The sentencing court can infer this from the antecedents of the offender and other circumstances. One indication of the dangerousness of the offender may be if s/he is a recidivist or repeat offender.[54]

Health and disposition of the offender are the only preconditions that the Criminal Code provides. These are not sufficient and other conditions could have been considered before sentencing the offender on community service punishment.[55] In this regard, the draft Community Service Punishment Proclamation provides additional preconditions for the imposition of community service punishment. These are consent of the offender, the capability of the sentence to reform the offender, the availability of works and placement institutions and inquiry into the antecedent and the past life history of the offender.[56]

Another requirement that must be considered when imposing the community service punishment is the offender's lack of a permanent residence. A fixed place of residence is necessary for the order to be completed successfully since it facilitates sentence supervision.[57] On the other hand, where the offender has no fixed place of abode, it is likely for them to flee to other places in disregard of the sentence. However, this does not necessarily mean that the judge should not impose community service punishment on such offenders; instead, attention must be given to such contexts so that appropriate strategies can be designed to ensure the proper discharge of the sentence.

If an offender has no fixed place of residence, the court may impose a community service punishment with restriction of liberty, for instance, by ordering them not to leave a certain place or to remain in a certain place.[58] The other safeguard for the proper discharge of the order by offenders with no fixed place of abode is requiring the offender to furnish personal guarantees or to require a certain person or institution to host the offender. This author also contends that the personal circumstances of the offender must be considered. For instance, community service rather than imprisonment is

[53] FDRE Criminal Code, Art. 103(1).
[54] Berhanu (*supra* note 3) 51.
[55] Ibid.
[56] Community Service Punishment (Draft) Proclamation, Art.6.
[57] Berhanu (*supra* note 3) 52.
[58] Ibid.

appropriate for a jobless offender who can acquire skills that in turn helps the person to lead crime-free life.

Furthermore, the general considerations for the determination of the penalty enunciated under Article 88(2) of the Criminal Code such as the education status of the offender must be considered.[59] In relation to personal conditions of offenders as a requirement for community service punishment, it is proper to ask whether family obligation and poverty can be considered. This is because, under the Criminal Code, poverty and family obligation of the offender are grounds of suspension of the enforcement of community service sentence punishment.[60] The question, thus, is whether an offender with a family obligation or who is impoverished should not be sentenced to a community service punishment. The answer seems in the affirmative. However, the question regarding what appropriate sentence should be imposed on such offenders remains unanswered.

If all these conditions are fulfilled, the court may sentence the offender to a community service punishment for a specified time and in a specified institution. The issue of whether the offender or their counsel can apply for this sentence is not addressed in the Criminal Code and the draft Community Service Punishment Proclamation. The Draft Criminal Procedure and Evidence Code addresses this issue by empowering offenders to apply to the court for the imposition of this sentence.[61]

5. The Nature of the Work in Court-ordered Community Service

5.1 General feature of the works and supervising institutions

The Criminal Code is not clear with regard to the nature of works to be performed. It simply provides that the offender shall serve the sentence at the place where s/he normally works or is employed or in a public establishment or on public works.[62] In the draft Community Service Punishment Proclamation, however, 'Community Service Punishment' is defined as a punishment that requires the offender to undertake manual or professional work for free in placement institutions.[63] From this, we can deduce that community service is an unpaid service or work performed by the offender

[59] Ibid.
[60] FDRE Criminal Code, Art.97.
[61] Criminal Procedure and Evidence Code (draft), Art. 328(1).
[62] FDRE Criminal Code, Art. 103(2).
[63] Community Service Punishment (Draft) Proclamation, Art. 2(1).

under the supervision of placement institutions.[64] According to the Draft Proclamation, these works or services include:

- Construction and maintenance of public roads;
- Public afforestation works;
- Environmental conservation and enhancement work;
- Water and soil conservation, management, supply and distribution works;
- Works in governmental offices, public schools, health centers and other public service provider institutions;
- Works for the benefit of orphanages and centers caring for elderly persons.[65]

This list is not exhaustive and the court has the discretion to order the offender to perform other work if it believes that this benefits the community.[66] As can be inferred from the list, community services are works for the benefit of the public and do not include profit-oriented works. This illuminates the apparent ambiguity of Article 103(2) of the Criminal Code which allows the offender to discharge the sentence "at the place where he normally works or is employed". According to the quoted phrase, an offender may discharge the sentence in private institutions including those established for gain. This modality requires an offender to render free service for the employer, not for the community.

These works and services can be performed on a continuous basis for a fixed period of time (hours, days or months) or on a specific basis (for instance, cleaning a school compound) without the need to fix the duration of the work. The court may order the offender to perform specific works if it believes that the supervision of the offender would be difficult or where fixing the duration of the work in terms of hours is not effective.[67] In this case, the court should clearly state the reason(s) and the nature of the work ordered to be performed.[68]

The supervising institutions are those that carry on the above-listed activities. However, it is not clear how these institutions can be selected. In other words, and issue arises whether the placement of sentenced offenders is based on the willingness of the institution or whether it is compulsory. The draft Proclamation seems to make it a mandatory placement.[69] Nonetheless,

[64] Berhanu (*supra* note 3) 53.
[65] Community Service Punishment (Draft) Proclamation, Art. 4(1).
[66] Id., Art. 4(2).
[67] Id., Art. 10(1).
[68] Id., Art. 10(2).
[69] See id., Art.19, Chapeau, the word' ordered'.

this author argues that placement in private non-profit institutions should be based on the willingness of the institutions concerned. This is because the successful completion of community service requires the active supervision of the institutions concerned; and if placement is made against their will, they will not properly supervise the offender and this will affect the proper enforcement of the sentence.

Both the Criminal Code and the draft Proclamation are silent on how courts ascertain the availability of these placement institutions and works. Courts may not have the information on every available placement institution and the works that are available in an institution. This hinders the proper application of the scheme. Therefore, there should be a reliable and accessible source of information on which a court determines the existence and suitability of works and placement institutions. For instance, the institutions may themselves apply to the court or there should be a body/office that can assist the court by presenting a list of institutions.[70]

5.2 Issues of remuneration and skill matching

Community service is a remunerable punishment in Ethiopia.[71] This is because the Criminal Code provides a proportion of money or other benefits that accrue to the government and to the offender. Accordingly, the amount not exceeding one-third of the offender's wage or other benefit/s shall be deducted and forfeited to the state.[72] The remaining amount is payable to the offender. Had it not been the case, the provision of the Code could have included a conditional phrase "if remunerable" after the phrase "an amount not exceeding one-third of the criminal's wage".

Paying offenders for the service they render in discharging a punishment is against the very nature of community service punishment because the objective of community service sentence is to require the offender to perform unpaid work to the community in return to the harm caused by the offence. This author contends that that paying an offender amounts to an encouragement to offenders to commit crimes. That is, in the absence of such clarity regarding the duty to perform *unpaid work*, a jobless person may commit a crime and be placed into community service from which s/he receives two-thirds of the payment for work or service.[73] This is rectified

[70] Berhanu (*supra* note 3) 55.
[71] Ibid.
[72] FDRE Criminal Code, Art. 103(2), para.2. The same stipulation is made under Article 329(4) of the Draft Criminal Procedure and Evidence Code.
[73] Berhanu (*supra* note 3) 55.

under the draft Community Service Punishment Proclamation because it expressly states that a community service is an unpaid punishment.

The issue of matching skills of offenders to the tasks they are assigned to has not been explicitly addressed in both the Criminal Code and the Draft Proclamation. However, it can be inferred from the provision of the Draft Proclamation that provides for the order to be easy to implement.[74] Matching the work to the skills of the offender is essential for the effectiveness of the scheme.[75] When the offender is assigned to work based on skills, there would be interest in discharging it. This in turn helps to achieve the purpose of the scheme, i.e. rehabilitation of the offender in the community by avoiding imprisonment. This ultimately helps to secure public trust, which is the cornerstone for the successful operation of the scheme. This arrangement also enables the community to benefit most from the work. Therefore, as far as work exists that fits an offender's special skills, the offender should not be assigned to other work. For instance, when medical services in public hospitals are available, an offender who is a medical doctor should not be ordered to plant trees.

Another aspect of matching the work and skill of the offender is that an assignment to work should not be made if the task requires special skills which the offender does not have. The justification for this is similar to the above. Nonetheless, it does not mean that the offender should be fully trained in the work to which they are assigned to do. This is because one of the advantages of community service sentence relates to gains in skill acquisition during the offender's community service. Therefore, it is for tasks that require special skills that the offender should not be assigned to.[76]

5.3 Duration of community service punishment

Under the Criminal Code, the duration of community service may extend from one day to six months.[77] Accordingly, the minimum duration of community service is one day which replaces a 10-day[78] simple imprisonment. This indicates that the duration of the community service may not be equivalent to the length of imprisonment. On the contrary, the Sentencing Manual provides perfect equivalence of the term of imprisonment and the duration of community service and it provides that 'a one day simple imprisonment is

[74] Community Service Punishment (Draft) Proclamation, Art. (1).
[75] Berhanu (*supra* note 3) 56.
[76] Id., p. 57.
[77] FDRE Criminal Code, Art. 103(1), para.2.
[78] The minimum term of simple imprisonment is 10 days, see Article 106 of the FDRE Criminal Code.

equal to one day community service'. It, further, states that the duration of community service shall be equal to the final term of imprisonment decided.[79]

According to the Manual, an offender who would be sentenced to 10 days imprisonment shall be sentenced to 10 days. This is problematic when pitted against the Criminal Code provisions that set the minimum term of simple imprisonment to ten days[80] and if it applies to the logical proportion of conversion of the term of imprisonment to community service set out under Article 103(1). The Manual seems to take a different approach in Annex I as it puts simple imprisonment for the term of ten days to six months and community service of the same period under Scale 1.[81]

Perfect equivalence does not seem tenable and practicable[82] because a person who is imprisoned remains in prison throughout the whole day while a person sentenced to community service may not be required to work the whole day or throughout the week. This is because supervising institutions are governmental offices that do not operate on weekends and national holidays. As a result, this sort of equivalence seems impracticable. Second, community service punishment should not displace the offender from their normal work. In light of this, ordering the offender who would be imprisoned for one month to perform community service for an equivalent duration may not be tenable.

As it can easily be inferred from Article 103(1) of the Criminal Code, the duration is fixed in days or months, not hours. The draft proclamation does not address the duration of community service punishment. It simply mandates the court to state the duration of the sentence.[83] The duration of community service imposed in place of default in the payment of fine (that is imposed as penalty) depends on the amount of fine imposed or which remains unpaid.[84] However, the maximum duration shall not exceed two years[85] notwithstanding that the fine is huge. This is too general and would result in inconsistent practice. Hence, to avoid such scenarios, uniform guideline is necessary. The guideline may, for instance, base the calculation on what

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[79] Sentencing Manual No.3/2025, Art. 6(3)(e). The repealed Manual (No. 2/2013) also stipulated the same under the same Article.

[80] See Art. 106(1), para 2; Art. 179(e) and 180 para 2 of the FDRE Criminal Code.

[81] See Annex I, scale 2.

[82] Berhanu (*supra* note 3) 57.

[83] Community Service Punishment (Draft) Proclamation, Art. 7(2)(b).

[84] FDRE Criminal Code, Arts. 95 and 96. This, however, is not explicitly mentioned in Article 96.

[85] Id., Art. 96, para. 2.

amount would the work be worth paying per day, and the total amount can be distributed to days/months based on this formula.[86]

With regard to the duration, some issues are worth mentioning. The first issue is whether the days/months(s) include holidays and weekends. This is because the Manual maintains perfect equivalence between the length of imprisonment and the duration of community service. As indicated above, this perfect equivalence is problematic. This may not be an issue for offenders who are assigned to public institutions and hence, the working days for the employees of the institution apply to offenders. This means that the principle of perfect equivalence is not realistic in cases where offenders are placed in private non-profit institutions like orphanages working all days of the month. Such considerations are necessary even though this does not mean that the judge would not order the offender to perform community service on weekends and/or holidays.[87]

The other issue concerns the maximum and minimum working hours, i.e. how many hours the offender should work per day. The issue of maximum working hours may not be as worrisome, as the normal eight working hours apply to the offenders. The Sentencing Manual seems to take this position.[88] What is problematic is the minimum working hours. This is because the provision in the Manual may be interpreted as not allowing work for less than 8 hours per day, as it equates one day of imprisonment to eight hours of work.[89]

Failure to fix the hours of work can create gaps in implementation, as these institutions may allow the offender to work for less than an hour or the gravity of the crime may require the offender to work for long hours that can be disproportionate to the gravity of the crime. This can occur when an offender is, for example, assigned to private non-profit institutions that operate for longer hours per day.[90]

The method of calculating the days/month(s) of community service for an offender who works as an employee and at the same time discharges a community service sentence can cause difficulties. Under such context, if the duration of the community service is fixed in terms of days/month(s), and if the days are counted continuously, the offender is forced to lose their paid job. This is not in line with the principle adopted in the implementation of

[86] Berhanu (*supra* note 3) 58.
[87] Ibid.
[88] See Community Service Punishment (Draft) Proclamation, Art. 6(3)(e).
[89] Berhanu (*supra* note 3) 59.
[90] Ibid.

community service that offenders under community service must not lose their jobs as a result of the order and the work should be performed in their free time.[91]

In this regard, the draft Proclamation grants the offender the right to request assignment to the community service in a way that does not affect their normal work.[92] If this is the case, the days must be counted intermittently so that the offender maintains their job. This has its own problems. First, the time within which an order should be completed may be unduly lengthened and can interfere in the life of the offender. Second, community service punishment may lose its punitive features. Third, it will also be difficult for supervision.[93]

Under such circumstances, it would be preferable to fix the duration of community service in hours[94] so that the offender can maintain their job by performing the service outside hours of employment such as on weekends. The hours fixed in this case may state the aggregate number of hours that the work requires. This approach would be problematic and would not avoid the above challenges. Similar problems would occur if the daily mandatory minimum or maximum working hours are fixed, and when the completion period is equivalent to the duration of the community service hours/days/month(s).[95]

For instance, if the offender is sentenced to one month imprisonment which is converted to community service for 176 hours to be completed within a month, and if the daily maximum is 8 hours, the offender is left with no free hours to discharge the order. This is because, the duration, though fixed in hours, is equivalent to the length of imprisonment that would be imposed. We have 22 working days per month, and multiplying the days by 8 hours per day amounts to 176 hours. The offender cannot, thus, work over 8 hours per day to have free days within a week or in a month.

The hours of community service in the sentences of courts should thus be less than the terms of imprisonment suspended; or, the completion period should exceed the duration (fixed in terms of hours) without reference to the minimum or maximum hours per day. To this end, uniform guideline is

[91] Ibid.
[92] Art. 9(1)(a).
[93] Berhanu (*supra* note 3) 60.
[94] Though not explicit, it seems that such approach was taken in the draft Community Service Punishment Proclamation; see Art. 10(1).
[95] Berhanu (*supra* note 3) 60.

necessary to maintain consistency among courts with regard to the duration of the order for community service.[96]

6. Breach of Community Service Order and its Effects

6.1 Constituents of breach

The Criminal Code does not clearly regulate what constitutes a breach of community service order and the attendant consequences. It stipulates a general rule which provides that where the offender fails to perform the work –without good cause– the court may impose restrictions on the liberty of the offender.[97] Thus, failure to discharge the sentence imposed constitutes breach of community service order. This literally means failure to report to the placement institutions or failure to report after the initial appearance.[98] The same stipulation is made under the draft Community Service Punishment Proclamation.[99] However, how many absences would trigger revocation of the order is not clear.

There are issues that need clarity in this regard. Such issues include whether breach would merely mean absence from the place of work, or whether an offender's underperformance, late reporting to work, being quarrelsome, refusing to observe instruction of supervisor(s), and reporting to work under the influence of alcohol or drug can be considered as elements of breach.[100]

The other issue to be raised is the effect of the commission of a crime punishable by imprisonment during the period of discharging community service punishment. The question whether such act constitutes a ground of revocation of community service order and/or whether such offender can be eligible for a further community service order needs to be addressed. These issues require due attention particularly in case the crime is punishable with *imprisonment* within the range provided by the law, i.e., not exceeding six months (in the case of the Criminal Code), or not exceeding three years with or without fine (provided that other preconditions are fulfilled) in the case of the draft Proclamation. It is to be noted that the commission of crime punishable with a fine should not result in revocation of the order. Therefore,

[96] Id., p. 61.
[97] FDRE Criminal Code, Art. 104(1).
[98] Berhanu (*supra* note 3) 61.
[99] Community Service Punishment (Draft) Proclamation, Art. 11(1).
[100] Berhanu (*supra* note 3) 61.

the issue becomes pertinent in cases where the crime committed will be punishable by imprisonment.[101]

Another issue worth mentioning relates to the fate of the offender and an ongoing community service order if the crime committed (during the period of discharging an already imposed order) is punishable with a range of imprisonment exceeding six months.[102] In other words, should sentencing the offender to imprisonment for the second crime entail revocation of the community service which is being discharged? This author argues that imprisonment should not result in automatic revocation, and the offender may be ordered to perform community service in the prison center. The offender may also complete an Order to be performed outside of prisons, for instance, under the supervision of police. This may particularly be the case where the unfinished term is not long. Both the Code and the draft Proclamation are silent on these issues.

6.2 Effects

Under the Criminal Code, one of the effects of an offender's absence from work is the imposition of restriction on liberty. Such restrictions include requiring the offender not to leave residence or a particular area, or to work only with a particular employer or in a particular institution.[103] If the offender breaches one of the restrictions imposed, the court shall sentence them to imprisonment for the term equal to the unfinished term of community service.[104]

Yet, one can argue that the effect of failure to discharge the sentence of community service under the Criminal Code is the imposition of restrictions on the liberty of the offender, or it may entail imprisonment equal to the unfinished term of community service.[105] However, the draft Criminal Procedure and Evidence Code stipulates the imposition of simple imprisonment equivalent to the unfinished term of the service as the only consequence of breach of community service punishment.[106] The imposition of imprisonment for the breach may be problematic when the unfinished term of community service punishment is less than 10 days, as Ethiopia’s criminal justice system does not envisage imprisonment for a term less than 10 days.[107]

[101] Id., p. 62.
[102] Ibid.
[103] FDRE Criminal Code, Art. 104(1) with sub 2, para.2.
[104] Id., Art. 104(3).
[105] Berhanu (*supra* note 3) 65.
[106] Criminal Procedure and Evidence Code (Draft), Art.329 (3).
[107] See FDRE Criminal Code, Arts.106 and 179(f).

In other words, it is not legal and feasible to send the offender to prison for a term of less than 10 days equal to the unfinished term of revoked community service.

Under the draft Community Service Punishment Proclamation, the offender's absence from work without good cause may entail revocation of the order and may cause its replacement by imprisonment or/and fine.[108] As the word 'may' indicates, the Draft Proclamation gives courts a discretion to revoke and substitute it with imprisonment or fine. Accordingly, absence from work may not necessarily entail revocation. The court may vary the order based on options such as what is envisaged under Article 104(1) of the Criminal Code. This is because automatic revocation may not be an appropriate option when seen in light of the reasons for the introduction of alternatives to imprisonment in general and community service in particular. The revocation and imposition of imprisonment should be a measure of last resort.[109]

Therefore, measures other than imprisonment (such as warnings,[110] variation of the order, or imposition of other noncustodial punishment) have to be tried. In this regard, the imposition of restriction of liberty recognized in the Criminal Code can be appropriate before resorting to automatic imprisonment. Another option for automatic revocation of the Order and imposition of imprisonment could be considering the breach as a separate fault or crime. In this case, the punishment for this crime may not necessarily be imprisonment, and hence, the order may remain intact.[111]

Concerning the substituted punishments, the Draft Proclamation differs from the Criminal Code in two respects. The *first* difference relates to the length of the substituted imprisonment and the amount of fine that are not specified. Second, the substituted punishment may only include a penalty of fine, or it may include a fine and imprisonment.

These punishments are reflected in the types of crimes eligible for conversion to community service indicated under Article 3(1), i.e., crimes punishable with simple imprisonment not exceeding three years, a fine or both. However, it is not clear whether the substituted sentence shall be the one which was converted to community service, i.e., imprisonment for

[108] Community Service Punishment (Draft) Proclamation, Art. 11(1).
[109] Berhanu (*supra* note 3) 66.
[110] This is for instance a course in case of bread of probation, see Art. 200 of the Criminal Code.
[111] Berhanu (*supra* note 3) 66.

imprisonment, fine for a fine, and imprisonment and fine for imprisonment and fine.

7. Institutions responsible for monitoring the enforcement of Community Service

The Criminal Code does not envision the institutional setup for monitoring the enforcement of the scheme. Although the Code considers community service as a supervised sentence that could restrict the offender from certain activities and movements, it does not specify the relevant supervisory body. Similarly, the Criminal Procedure Code simply mandates the court to send the sentence of community service to the appropriate authorities for enforcement.[112] It is the draft Community Service Punishment Proclamation that envisions the establishment of enforcement institutions, which include the National Committee on Community Service, Secretariat of the National Committee, and Executive Officers. It allows regional states to establish appropriate organs for the administration of the scheme in their respective geographic boundary.[113]

7.1 The National Committee on Community Service

The National Committee is chaired by the Minister of Justice and has members to be appointed by the government.[114] The National Committee has a Secretariat organized within the Ministry of Justice.[115] The National Committee is the supreme organ[116] and has the following powers and functions:[117]

- Issue guidelines for the uniform implementation of community service punishment;
- Issue guidelines that determine the minimum duration of the sentence;
- Propose solutions for problems encountered in the implementation of the scheme, initiate policy and legal frameworks;
- Supervise the implementation of laws on community service;
- Support regional states in their implementation of the scheme; and
- Supervise and coordinate research and capacity-building activities.

[112] Criminal Procedure Code, Art.214.
[113] Community Service Punishment (Draft) Proclamation, Arts. 12(3) and 17.
[114] Id., Art. 13(1).
[115] Id., Art. 12(2).
[116] Id., Art. 14(1).
[117] Id., Art. 14(2).

Two points are worth mentioning with regard to the Committee's functions and powers. The first point is that the Committee shall be entrusted with additional powers for the effective enforcement of the sentence. For instance, it should have the power to receive complaints from the offenders in connection with the enforcement. It should also have the power to monitor the activities of the secretariat and the executive officer. The second point pertains to its power to issue guidelines to determine the minimum duration of community service. It is not clear how this could be discharged given that the minimum duration (of one day) is fixed in the Criminal Code.

7.2 The Secretariat of the National Committee

The Secretariat has the following functions:[118]

- Report implementation works to the National Committee;
- Keep records and documents of the National Committee;
- Create a conducive environment for the exchange of experience among regions;
- Keep statistical data concerning community service; and
- Other functions assigned to it by the National Committee.

7.3 Executive Officers

The federal and regional states shall establish a system for the appointment of Executive Officers who supervise the community service sentence rendered by their respective courts.[119] Executive Officers have the following powers and functions:[120]

- Produce pre-sentence report when required by the court;
- Take the offender to the placement institution to which they are placed;
- Prepare and give a work recording sheet to the supervising institution;
- When appropriate, visit placement institutions to ensure that the offender is discharging the sentence;
- Supervise placement institution to ensure that it has assigned the offender to the work/service ordered by the court;
- Order for the prompt rectification of circumstances that can pose risk to the health or life of the offender;
- Report the completion of the work to the court;
- Apply to the court to take measures in case the offender is not willing to perform the work, or stops performing;

[118] Id., Art.16.
[119] Id., Art.17.
[120] Id., Art.18.

- Conduct awareness creation campaigns; and
- Perform other functions given by courts and other enforcement organs.

As the powers listed above indicate, Executive Officers shall be appointed at the lowest level of the administration (including the court level). However, its relation with the National Committee and its Secretariat is not clearly established. Reporting its activities to the Committee or the Secretariat is not mentioned in the above list of functions. Moreover, the Draft Proclamation does not stipulate regular reports to the court on the status of implementation of the Order. It rather mandates the Officer to report to the court upon completion of the work. However, the court must follow up the proper implementation of the Order, and this can be made through regular reports by the Executive Officer. This issue evokes concern because the Officer is at discretion to visit institutions and check the proper discharge of the Order. In the absence of stipulation on regular reports regarding the status of implementation, this discretion would create room for abuse of the scheme and adversely affects the proper discharge of the Order.[121]

This leads to the second issue of whether the Officers' visits to institutions are discretionary. In order to ensure that the offender is properly discharging the Order, regular visits to placement institutions must be mandatory. Making this visit discretionary is not in harmony with the provision, which provides, in mandatory terms, the power of the Officer to visit institutions to check that the offender is assigned to a work.[122] There seems to be no difference between this power and that of the visit to ensure proper discharge of the Order by the offender.

Thirdly, the court must be assisted in the determination of the existence and suitability of works and placement institutions in the area. This function should be given to the Officers and can be presented together with the pre-sentence report. Of course, the court is empowered to order the Officers to perform functions that are not in the list. However, screening and listing out placement institutions are essential in the administration of community service schemes.

7.4 Placement institutions

The Draft Proclamation incorporates placement institutions as one category of enforcement organs and states the following obligations:[123]

[121] Berhanu (*supra* note 3) 68.
[122] Community Service Punishment (Draft) Proclamation, Art. 18(5).
[123] Id., Art. 19.

- Assign works and provide tools to the offender;
- Arrange mechanisms where the offender should perform the work without being displaced from their normal work;
- Complete the work recording sheet;
- Report to the Executive Officer when the offender is negligent or stops discharging the Order;
- Report to the Executive Officer the benefit gained by the institution from the works of the offender;
- Ensure the dignity of the offender while performing the work;
- Keep records containing supervision matters; and
- Discharge other duties given by the Executive Officer.

8. Conclusion

Ethiopia introduced non-custodial compulsory labour as an alternative to imprisonment in the 1957 Penal Code. Despite its existence for half a century, the scheme is not sufficiently regulated. This shows the gaps in the implementation of alternatives to imprisonment in general and community service in particular.

In the Ethiopian criminal justice system, community service is available (as a substitute to simple imprisonment not exceeding six months) which makes the reach of the scheme minimal. Cognizant of this, the Ethiopian government intends to expand the reach of the sentence by extending it to simple imprisonment not exceeding three years in the Draft Community Service Punishment Proclamation and in the Draft Criminal Procedure and Evidence Code. This is a commendable move.

Court-ordered community service is a direct alternative to imprisonment. It can also be an indirect alternative because community service can be imposed on a fine defaulter. In either case, the sentence could be imposed with or without restriction on the liberty of the offender.

In addition to the nature of the crime, the personal circumstances of the offenders are other considerations in determining the appropriateness of the sentence. In this regard, the Criminal Code requires the offender to be healthy and should not pose danger to society. These conditions should not be regarded as exhaustive because personal circumstances and additional circumstances must be considered for the sentence to achieve its purpose and objectives.

The works that the offender is required to perform are public in nature, and beneficial to the community at large. Under the Criminal Code, community service is paid work and the offender is entitled to get up to two-thirds of the payments which is a problematic stipulation. Cognizant of this, the draft

Community Service Punishment Proclamation makes it unpaid service. The issue of matching the skill of offenders with the available work is not addressed in the Code and the Draft Proclamation which is a major omission.

As discussed in the preceding sections, the duration is fixed in days/months and extends from one day to six months. This duration may or may not be equal to the length of imprisonment that would be imposed. The duration of community service imposed upon the offender's default to pay the penalty of a fine, in principle, depends on the amount of the fine imposed or remains unpaid. However, the maximum duration shall not exceed 2 years. Fixing the duration in days, months and years is problematic for enforcement as it will displace offenders from their normal jobs.

The issue of breach of the Community Service Order is not explicitly addressed in Ethiopia because there is no specific provision that provides for it other than the incidental reference to the issue under the Criminal Code. Although the constituent elements of breach include absence from work, the number of absences that would constitute breach needs clarity. In this connection, the Criminal Code fails to regulate the effect of the commission of a crime during the period of discharging community service.

With regard to the institutional framework, the community service schemes in Ethiopia lack the institutional setups that are responsible for monitoring its enforcement. The 2004 Criminal Code is the existing enforceable law, and it does not establish nor envisage the establishment of institutional arrangements thereby adversely affecting the implementation of court-ordered non-custodial community service. ■

Cited References

Abdul Rahim, Anita *et al* (2013). "Community Service as Alternative Punishment: The Extent of its Application on the Categories of Crime and Offenders in Malaysia". *International Journal of Education and Research*, Vol. 1, No.7.

Asnake, Haile (2016). *Application of Compulsory Labour as Alternative Punishment in Amhara National Regional State Criminal Justice System* (LLM Thesis, Bahir Dar University).

Berhanu, Belayneh (2017). *Community Service as Alternative to Imprisonment in Ethiopia: A Comparative Study* (LLM Thesis, Bahir Dar University).

Boone, Miranda (2010). "Only for Minor Offences: Community Service in the Netherlands". *European Journal of Probation*, Vol. 2, No. 1.

Handmaker, Jeffy (1994). *Legal and Socioeconomic Difficulties associated with the Introduction of Community Service Orders in South Africa (with special reference to Transkei)* (LLM Thesis, University of London).

Harris, Robert (1995). Probation Round the World: Origins and Development, in Koichi Hamai *et al*. (eds.), *Probation Round the World: A Comparative Study* (Routledge).

Junger-Tas, Josine (1994). *Alternatives to Prison Sentences: Experiences and Developments* (Gugles Publication).

McGagh, Mary (2007). *Community Service: An Exploration of the Views of Community Service Supervisors in the Irish Probation Service* (PhD Dissertation, National University of Ireland).

Muntingh, Lukas (2005). Alternative Sentencing in South Africa, in Traggy Maepa(ed.), *Beyond Retribution: Prospect of Restorative Justice in South Africa* (Institute for Security Studies).

Mutorwa, Nelson LN (2007). *Community Service as an Alternative Sentencing Offender in Namibia* (LLB Thesis, University of Namibia).

Othman, Asmah (2016). *Community Service Order in Malaysia: An Exploration of the Perceptions and Experiences of the Youthful Offenders and Supervisors* (PhD Dissertation, University of Salford, UK)

Singh, Shanta (2007). "Alternatives to Imprisonment in South Africa: A Historical Perspective, 1980's to Present". *New Contree*, No. 53.

Turner SE & Trotter CJ (2016). Best Practice Principles for the Operation of Community Service Scheme: A Systematic Review of Literatures, Monash University Criminal Justice Research Consortium.

Walsh, Dermot and Sexton, Paul (1999). *An Empirical Study of Community Service Orders in Ireland* (Dublin).

Reports and documents

Government of Kenya and United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) (2011), Evaluation of Community Service Orders Programme in Kenya.

Ministry of Internal Affairs (Uganda) (2016), *Community Service Orders User's Handbook*, 1st ed.

Penal Reform International (2007). *Monitoring and Research Report on the Gacaca, Community Servic: Areas of Reflection*.

Penal Reform International (2012), Alternatives in East Africa: Trends and Challenges.

Penal Reform International (2012), Making Community Service Work: A Resource Pack from East Africa

Penal Reform International (2016), Global Prison Trends 2016.

Penal Reform International and Zimbabwe National Committee on Community Service (1997), Community Service in Practice.

Ethiopian Private International Law of Contract and the African Principles on the Law Applicable to International Commercial Contracts

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Abstract

This article presents the primary provisions of the proposed African Principles on the Law Applicable to International Commercial Contracts as a possible option in the further development of Ethiopian private international law of contract for consideration by the Ethiopian legislator and/or the Ethiopian courts. The proposed African Principles and the informal sources of Ethiopian private international law of contract are introduced and aspects of the contractual conflict of laws in Ethiopia and under the African Principles are compared, including choice of law (in particular, freedom of choice of law; partial and multiple choice of law; choice of a non-related legal system; and tacit choice of law), the law applicable in the absence of choice of law, and the substantive and formal validity of a contract. The article employs doctrinal and analytical methodology in respect of formal and informal legal standards, international instruments and academic literature to examine the various perspectives and arguments related to the relevant themes.

Keywords:

Private international law, conflict of laws, international commercial contracts, private international law of contract, African Principles, Ethiopia

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Contents

1. Prologue

This article introduces the primary provisions of the proposed African Principles on the Law Applicable to International Commercial Contracts[1] (hereafter "the African Principles") as a possible option in the further development of Ethiopian private international law of contract for consideration by the Ethiopian legislator and/or the Ethiopian courts. After an introduction to Ethiopian private international law of contract[2] and the African Principles,[3] the following aspects of the contractual conflict of laws in Ethiopia and under the African Principles are compared: choice of law[4] (freedom of choice of law;[5] partial and multiple choice of law;[6] choice of a

[1] Jan L Neels (2023), *African Principles on the Law Applicable to International Commercial Contracts*, UJ Press, Johannesburg. See, in general, Jan L Neels (2024), 'Novel Aspects of the Proposed African Principles on the Law Applicable to International Commercial Contracts', *Tydskrif vir die Suid-Afrikaanse Reg/Journal of South African Law*, 247-257; Jan L Neels and Eesa A Fredericks (2018), 'An Introduction to the African Principles of Commercial Private International Law', (29.2) *Stellenbosch Law Review*, 347-356; and Jan L Neels and Eesa A Fredericks (2021), 'The African Principles of Commercial Private International Law and the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 239-247.
[2] Section 2.
[3] Section 3.
[4] Section 4.1.
[5] Section 4.1.1.
[6] Section 4.1.2.

non-related legal system;[7] and tacit choice of law),[8] the law applicable in the absence of choice of law,[9] and the substantive[10] and formal validity of a contract.[11]

2. Ethiopian Private International Law of Contract

The Ethiopian Civil Code of 1960,[12] which was promulgated during the reign of Emperor Haile Selassie,[13] does not contain a section on private international law, and the courts have not yet had the opportunity to provide decisions guiding the development of private international law of contract.[14] The

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[7] Section 4.1.3.

[8] Section 4.1.4.

[9] Section 4.2.

[10] Section 4.3.

[11] Section 4.4. Section 4.5 contains a short reference to provisions in the African Principles which are not further discussed in this article and Section 5 concludes the discussion.

[12] The text can be found at https://www.wipo.int/wipolex/en/legislation/details/16003 (accessed 12 July 2025). Zena Abera (2016), 'Ethiopian Sales Law in the Light of International Laws and Principles of Contract', (3: e2719) *Open Access Library Journal*, http://dx.doi.org/10.4236/oalib.1102719 and Mamenie Endale Messelu (2016), "A Critical Analysis of [the] Ethiopian Civil Code Governing Sale of Goods in the Light of International Convention[s] and Principles", (7:133) *Beijing Law Review* DOI 10.4236/blr.2016.72015 plead for a revision of the provisions on the domestic law of contract of the Ethiopian Civil Code, taking into account international instruments such as the United Nations Convention on the International Sale of Goods (1980) (hereafter "the CISG") and the UNIDROIT Principles of International Commercial Contracts (2016) (hereafter "the UPICC") and propose that Ethiopia accede to the CISG.

[13] In the preface to the Civil Code, the Emperor foresees that, "[w]ith the guidance of the Almighty, Fountain of Justice and Source of all wisdom and benefits, this Code will contribute to the progress of Our Empire and the welfare of Our beloved subjects of today and of the future".

[14] René David (1962/1963), 'A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries', (37) *Tulane Law Review*, 196-204, at196-198 and 200; Fekadu Petros Gebremeskel (2021), 'Ethiopian Perspectives on the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 308-319; Araya Kebede and Sultan Kassim (2009), *Conflict of Laws Teaching Material* www.abyssinialaw.com (22 July 2025) 23-24 and 175; Mekuria Tsegaye Setegn (2020), 'Legislative Inaction and Judicial Legislation under the Ethiopian Private International Law Regime: An Analysis of Selected Decisions of the Federal Supreme Court's Cassation Division', (16:1) *Journal of Private International Law*, 112-137, at 118-119 and 132-133.

Ethiopian courts have used two models in the past that are not binding but of persuasive authority,[15] namely the Code of the Conflict of Laws, as proposed by Robert Allen Sedler in 1965 (hereafter "Sedler's Draft"),[16] and the Draft Proclamation to Provide for Federal Rules of Private International Law (hereafter "the Draft Proclamation"), as suggested by the Federal Democratic Republic of Ethiopia Justice and Legal System Research Institute (JSLRI) in 2004.[17] "Overall," writes Fekadu Petros Gebremeskel, "these instruments can serve as the basic sources of private international law in Ethiopia".[18] Both contain sections on private international law of contract.[19]

3. African Principles on the Law Applicable to International Commercial Contracts

The formulation of the African Principles on the Law Applicable to International Commercial Contracts[20] is an academic project of the Research Centre for Private International Law in Emerging Countries in the Faculty of Law at the University of Johannesburg.[21] The proposed African Principles set forth general principles for determining the law applicable to international commercial contracts.[22] They may be used as a model for national, regional and supranational legislative instruments in Africa,[23] and by African courts, in the interpretation, supplementation and development of the rules of private international law of contract.[24] They may also be used by arbitral tribunals in the interpretation, supplementation and development of the rules of private international law of contract, whenever appropriate and whether the tribunal is seated in Africa or elsewhere.[25]

[15] Gebremeskel (*supra* note 14) 308-311.
[16] Robert Allen Sedler, 'Code of the Conflict of Laws' in Robert Allen Sedler (1965), *The Conflict of Laws in Ethiopia*, Faculty of Law, Haile Selassie I University/Oxford University Press, Addis Ababa, 166-179.
[17] Fekadu Petros Gebremeskel of Addis Ababa University made a copy available to me in October 2017. It has since formed part of the prescribed reading material for LLM students in International Commercial Law at the University of Johannesburg.
[18] Gebremeskel (*supra* note 14) 309.
[19] Sedler's Draft (*supra* note 16) 173-175 (art 18-21); Draft Proclamation art 72-80.
[20] Neels (*supra* note 1, 2023). See the sources in note 1.
[21] Neels (*supra* note 1, 2023) 1.
[22] Preamble par 1.
[23] Preamble par 2.
[24] Preamble par 3.
[25] Preamble par 4.

The African Principles are therefore intended to be used by national parliaments, including the Ethiopian legislative authority,[26] in the reform of the local version of private international law of contract.[27] They are also intended to be applied as persuasive authority by national courts, including the Ethiopian courts,[28] on all levels, especially the Federal Supreme Court of Ethiopia, and arbitral tribunals seated in Africa and even beyond – for instance, by an arbitral tribunal seated in Singapore or Switzerland, where the parties are from, for example, Ethiopia and Mauritius, and other relevant connecting factors perhaps also refer to Africa.[29]

Various models have been considered in the drafting of the African Principles, but the most influential have been the (international) Hague Principles on Choice of Law in International Commercial Contracts of 2015 (hereafter "the Hague Principles") and the (supranational) Rome I Regulation on the Law Applicable to Contractual Obligations of 2008 (hereafter "the Rome I Regulation").[30]

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[26] Mekuria Tsegaye Setegn (2019), 'The Ethiopian Federation and Private International Law: The Contours of the Federal and the State Governments' Jurisdictions', (15:2) *Journal of Private International Law* 418-443 argues that the nine regional Ethiopian states should have their own private international law rules and courts dealing with private international law matters.

[27] Gebremeskel foresees that the Hague Principles on Choice of Law in International Commercial Contracts (2015) will play an important role in a future chapter on private international law (of contract) in the Civil Code (*supra* note 14, 309). As will be indicated below, the Hague Principles form one of the primary sources of inspiration for the African Principles.

[28] Gebremeskel (*supra* note 14, 309) suggests that it would be prudent for the Ethiopian courts to refer to the Hague Principles on Choice of Law in International Commercial Contracts (2015) as persuasive authority. As indicated in the next paragraph, the Hague Principles form one of the main inspirational sources of the African Principles. Setegn (*supra* note 26) 114 and 133 argues that the courts should apply general principles of private international law, to be determined in a comparative study. The African Principles are the product of a comparative study of regional, supranational and international instruments (Neels *supra* note 1, 2023, 3-4).

[29] See art 28 of the UNCITRAL Model Law on International Commercial Arbitration (1985/2006). Art 28(1) confirms the principle of party autonomy and art 28(2) determines: "Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable."

[30] Neels (*supra* note 1, 2023) 3-4; Neels (note 1, 2024) 248. For a comparable project in Asia, see Naoshi Takasugi and Béligh Elbalti (2021), 'The Asian Principles of Private International Law and the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press,

4. Comparison of Ethiopian Private International Law of Contract and the African Principles

4.1 Choice of law

4.1.1 Freedom of choice of law

The African Principles on the Law Applicable to International Commercial Contracts recognise party autonomy by determining in article 3(1): "A contract is governed by the law chosen by the parties." The notions of overriding mandatory rules[31] and public policy[32] constitute the conventional exceptions. However, article 72(1) of the Draft Proclamation limits a choice of law to the law of nationality, the law of domicile, the law of the country where the contract was concluded, the law of the country where the subject matter is situated, the law of the country where the contract is to be performed and the law of a country "which is reasonably connected to the matter".

According to general principles of private international law, connecting factors such as domicile, the place of conclusion of the contract, the place of performance and the place of the situation of the subject matter must be interpreted in terms of the *lex fori*,[33] Ethiopian law in this context.[34] The

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Oxford, 399-413. *Cf* CEDEP/CJI/OAS (2019), *Guide on the Law Applicable to International Commercial Contracts in the Americas*, CEDEP, Asunción; and Bajuseto Hardjowahono (2005), *The Unification of Private International Law on International Commercial Contracts within the Regional Legal System of ASEAN*, Ulrik Huber Institute for Private International Law, Groningen. The wide comparative study on which the African Principles are based (see Neels (*supra* note 1, 2023) 3-4), could make them suitable as persuasive authority for courts and arbitral tribunals, as well as a model for legislators.

[31] See art 11.

[32] See art 12 and Jan L Neels and Eesa A Fredericks (2022), 'COVID-19 Regulations as Overriding Mandatory Provisions in Private International Law – A Comparison of Regional, Supranational and International Instruments with the Proposed African Principles on the Law Applicable to International Commercial Contracts' in Murdoch Watney (ed), *The Impact of COVID-19 on the Future of Law and Related Disciplines*, UJ Press, Johannesburg, 1-25.

[33] See *eg* Christopher F Forsyth (2012), *Private International Law. The Modern Roman-Dutch Law Including the Jurisdiction of the High Courts*, Juta & Co, Cape Town, 11 and 135-137; and Jan L Neels, Eesa A Fredericks and Garth J Bouwers (2025), 'The continued relevance of determining the *locus contractus* in an electronic environment – a contractual conflict of laws perspective' in Cayle Lupton and Philip Stoop (eds) (2025), *The Intersection of the Law and Technological Innovation*, Juta & Co, Cape Town, 36-53, at 39.

[34] See Sedler (*supra* note 16) 92 in respect of the place of contracting and art 74(3) of the Draft Proclamation on the distinction between movable and immovable property. *Cf* art

connecting factor of citizenship must be interpreted in terms of the law of the particular nationality.[35]

The author agrees with Kebede and Kassim[36] that the law of nationality and the law of domicile in article 72(1) must be interpreted to include the law of nationality or domicile of either (or any) party, *ie* not merely the law of *common* domicile or nationality. The law of the place of performance, it is suggested, can include the place of the characteristic performance (as delivery under a contract of sale) and the place of the monetary performance (payment), while the law of the situation of the subject matter may similarly be determined with reference to more than one *situs* (movable property items present in various countries at the time of the conclusion of the contract). The notion of a reasonable connection is discussed in Section 4.1.3.

The limitation of party autonomy in the Draft Proclamation is not supported. According to the official commentary on the Hague Principles, "[p]arty autonomy … enhances certainty and predictability within the parties' primary contractual arrangement and recognises that parties to a contract may be in the best position to determine which set of legal principles is most suitable for their transaction".[37] Sedler is indeed of the opinion that it is in the interest of Ethiopia to permit freedom of choice of law as "it will encourage international contracts and foreign investment".[38] Sedler's Draft[39] and modern

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2 of the Draft Proclamation *sv* "personal law": "the law of the place where a person is domiciled in accordance with the provisions of Ethiopian law".

[35] See *eg* Forsyth (*supra* note 33) 11 n 52 and 12.

[36] (*Supra* note 14) 205.

[37] Hague Conference on Private International Law (2015), *Principles on Choice of Law in International Commercial Contracts*, Permanent Bureau of the Hague Conference on Private International Law, The Hague, par I.3. See, in general, Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (2021), 'Global Perspectives on the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 3-128, at 13, 32-43 and 52-57; Jan L Neels (2013/2014), 'The Nature, Objective and Purposes of the Hague Principles on Choice of Law in International Contracts', (15) *Yearbook of Private International Law*, 45-56, at 48.

[38] Sedler (*supra* note 16) 91 (also see 106).

[39] Art 18 (Sedler, *supra* note 16, 73-174). The only exceptions pertain to the reasonability of the choice (which may be seen as an issue of public policy; also see Section 4.1.3), illegality under Ethiopian law (an issue of substantive validity – see Section 4.3), immovable property in Ethiopia, overriding mandatory rules, and contracts of adhesion (excluded in art 1(2)(a) of the African Principles; also see art 1(2)(d) on the exclusion of insurance contracts and *cf* Sedler, *supra* note 16, 91). On immovable property, also see Gebremeskel (*supra* note 14) 310.

Ethiopian authors as Gebremeskel,[40] Setegn[41] and Tesfay[42] are therefore supportive of party autonomy.[43] The overwhelming majority of legal systems in the world recognise party autonomy with limited exceptions,[44] namely overriding mandatory rules and public policy.[45]

4.1.2 Partial and multiple choice of law

Various conflicts instruments,[46] including the Rome I Regulation,[47] determine that the parties to a contract may select the law applicable to the whole or to a part of a contract (partial choice of law). This probably implies that the parties are allowed to choose different laws for different parts of a contract (multiple choice of law). The Hague Principles make this explicit in article 2(2): "The parties may choose (a) the law applicable to the whole contract or to only part of it; and (b) different laws for different parts of the contract."[48]

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[40] Gebremeskel (*supra* note 14).

[41] Setegn (*supra* note 26).

[42] Seyoum Yohannes Tesfay (2016), 'The Normative Basis for Decision on the Merits in Commercial Arbitration: The Extent of Party Autonomy', (10:2) *Mizan Law Review* 341-365.

[43] On party autonomy in internal Ethiopian contract law, see Melese Wondmagegnehu Belete (2019), 'The "Principle of Autonomy" in Contract under the Civil Code of [Ethiopia]: Is It an Absolute Principle?', (10) *Beijing Law Review* 795-805.

[44] Girsberger, Kadner Graziano and Neels (*supra* note 37) 33-38 and 42. The Basel Resolution of the *Institut de droit international* (1991) (hereafter "Basel Resolution") considers that party autonomy is one of the fundamental principles of private international law.

[45] Girsberger, Kadner Graziano and Neels (*supra* note 37) 101-116. For the African Principles, see art 11 and art 12.

[46] Art 3(1) of the Rome Convention on the Law Applicable to Contractual Obligations (1980); art 7 on the Mexico City Convention on the Law Applicable to International Contracts (1994); art 7(1) of the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (1986). Also see art 7 of the Basel Resolution ("the whole or … one or more parts of the contract").

[47] Art 3(1) of the Rome I Regulation.

[48] See Girsberger, Kadner Graziano and Neels (*supra* note 37) 39-42; Neels (*supra* note 37) 50-51; Jan L Neels (2018a), 'The Role of the Hague Principles on Choice of Law in International Commercial Contracts in the Revision of the Preliminary Draft Uniform Act on the Law of Obligations in the OHADA Region', (81) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg/Journal of Contemporary Roman-Dutch Law*, 464-473, at 468; Jan L Neels (2018b), 'Choice of Law in the Revision of the Mexico City Convention – Inspirations from the Hague Principles and Beyond', (81) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg/Journal of Contemporary Roman-Dutch Law*, 661-671, at 663-664; Neels (*supra* note 1, 2024) 248-249; Neels and Fredericks (*supra* note 1, 2021) 240-241.

The African Principles, in article 3(2), drawing on examples in the official commentary to article 2(2) of the Hague Principles,[49] add a reference to *aspects* of a contract, in addition to *parts* thereof: "The parties may choose (a) the law applicable to the whole contract or to one or more aspects or parts thereof; and (b) different laws for different aspects or parts of the contract." This addition makes provision for plausible examples as the following: issues of indemnity in the contract are governed by English law but there is no general choice of law provision (partial choice of law); and issues of performance to take place in Ethiopia are governed by Ethiopian law but the remainder of the contract is governed by Chinese law (multiple choice of law). Of course, the simultaneous application of more than one legal system to a certain contract may occasionally lead to problems of interpretation, and partial and multiple choice of law are not generally recommended.[50] However, the selection should be left to the parties (party autonomy) as they may have good, practical reasons for their non-regular choice of law.[51]

Indeed, Sedler argues: "If parties are permitted to choose the law of any state, so long as the choice is reasonable, there can be no objection to permitting them to choose the law of one state to govern one aspect of the contract and the law of another state to govern another aspect."[52] Sedler's Draft provides, in more general terms: "The parties may provide that the law of different states is to govern different questions arising under the contract, so long as such choice if reasonable."[53] Sedler's academic authority may therefore be invoked to corroborate multiple choice of law in respect of aspects of a contract and, according to Gebremeskel, also in respect of multiple choice of law in general.[54] Multiple choice of law, again, presupposes the possibility of a partial choice of law.

4.1.3 Choice of a non-related legal system

Based on article 2(4) of the Hague Principles, article 3(3) of the African Principles provides: "No connection is required between the law chosen and the parties or their transaction." Sedler is of the opinion that the parties are allowed to choose a legal system "that has no physical connection with the transaction".[55] They may want to choose a neutral, familiar, well-established

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[49] Hague Conference on Private International Law (*supra* note 37) illustrations 2.2-2.4.
[50] *Cf* Hague Conference on Private International Law (*supra* note 37) par 2.6.
[51] *Cf* Hague Conference on Private International Law (*supra* note 37) par 2.9.
[52] Sedler (*supra* note 16) 87.
[53] Art 18 (Sedler (*supra* note 16) 174).
[54] Gebremeskel (*supra* note 14) 311.
[55] Sedler (*supra* note 16) 86.

or commercially oriented country's legal system that perhaps has no such physical link with the parties or their transaction.[56] This is in accordance with the default position in favour of party autonomy in article 18(1) of Sedler's Draft. The reasons provided are very similar to these listed fifty years later in the official guide to the Hague Principles: the parties should be able to choose a non-related but familiar, neutral or stable legal system, one that is well-developed in the particular field, or, in general, the law they consider most appropriate for the specific contract.[57] The principle is also in accordance with the increasing "delocalisation" of international transactions.[58]

However, the Draft Proclamation limits party autonomy to the systems listed in article 72(1), as discussed in Section 4.1.1. The last-mentioned option is "the law of the place which is reasonably connected to the matter". Gebremeskel is of the opinion "that the choice of a neutral law (a law not connected with the contract) is unlikely to be effective" in the Ethiopian courts.[59] He states that article 72(1) of the Draft Proclamation "appears to disallow choice of a neutral law" but seems to leave the door open for an interpretation that "the law of the place which is reasonably connected to the matter" includes "a neutral law chosen on the ground of, for instance, its sophistication or familiarity".[60] The latter interpretation is supported here on the basis of the principle of party autonomy and practical realities of international commerce (teleological interpretation).[61] An Ethiopian company and its Indian counterpart, for example, should be allowed to choose English law as a non-connected, neutral, familiar, well-established, well-developed, stable and commercially oriented legal system to govern their contract, despite the places of performance being in, respectively, India and Ethiopia, the contract being concluded in Kuwait and the goods situated in Djibouti at the time of the conclusion of the contract. English law is indeed the legal system

[56] *Id.* 86-87.

[57] Hague Conference on Private International Law (*supra* note 37) par P.3 and par 2.14. See Neels (*supra* note 37) 51-52; Jan L Neels (2017), 'The Role of the Hague Principles on Choice of Law in International Commercial Contracts in Indian and South African Private International Law', (22:2) *Uniform Law Review/Revue de droit uniforme,* 443-451, at 445; Neels (*supra* note 48a) 468; Neels (*supra* note 48b) 664; Neels and Fredericks (*supra* note 1, 2021) 241.

[58] Hague Conference on Private International Law (*supra* note 37) par 2.14.

[59] Gebremeskel (*supra* note 14) 311.

[60] *Ibid*.

[61] The second interpretation is in harmony with Sedler's Draft's general starting point of freedom of choice "so long as such choice is reasonable" (art 18(1) of Sedler's Draft in Sedler (*supra* note 16) 173-174).

which is most often chosen in international commercial transactions,[62] irrespective of any geographical connection with England or Wales.

4.1.4 Tacit choice of law

Sedler's Draft[63] does not devote separate attention to a tacit choice of law.[64] However, article 72(2) of the Draft Proclamation provides: "The choice of law shall be explicit or clearly evident from the agreement or from the circumstances." The provision comes close to the formulation in article 4 of the Hague Principles: "A choice of law … must be made expressly or appear clearly from the provisions of the contract or the circumstances."[65] Only from the heading of article 4 does it become clear that the notion of a tacit choice of law is intended by the phrase "[a] choice of law [which] appear[s] clearly …".

Article 5(1) of the African Principles states the modalities of choice of law unequivocally from the start: "A choice of law … can be made expressly or tacitly." More importantly, article 5(2) of the African Principles contains a somewhat stricter threshold for inferring that a tacit choice of law has been made, namely that "[a] tacit choice of law must be manifestly clear from the provisions of the contract, the circumstances of the case, or both". The use of the word "manifestly" may serve to reduce the risk of uncertainty, as some discretion will always be present when a tacit choice of law is being inferred.[66] The formulation in article 5(2) also makes clear that the conclusion of the existence of a tacit choice of law may be based partially on the contract and partially on the circumstances of the case.[67]

62 See *eg* Oxera Consulting LLP/LegalUK *Economic Value of English Law* (2021) https://legaluk.org (16 Sept 2025).

63 See Sedler's Draft art 18 (Sedler (*supra* note 16) 173-174).

64 See also Sedler (*supra* note 16) 82-91.

65 Also see art 32 of the Basel Resolution.

66 Girsberger, Kadner Graziano and Neels (*supra* note 37) 60. The authors list Ethiopia together with Argentina and Russia as having a strict threshold (Girsberger, Kadner Graziano and Neels (*supra* note 37) 59; also see art 2 sentence 2 of the 1955 Hague Sales Convention).

67 On tacit choice of law, see Garth J Bouwers (2021), *Tacit Choice of Law in International Commercial Contracts – A Global Comparative Study*, Schulthess Juristische Medien AG, Zürich; Girsberger, Kadner Graziano and Neels (*supra* note 37) 55-68; Neels (*supra* note 37) 53-54; Neels (*supra* note 57) 446-447; Neels (*supra* note 48, 2018a) 469-470; Neels (*supra* note 48, 2018b) 666-668; Neels (*supra* note 1, 2024) 250-251; Jan L Neels and Eesa A Fredericks (2011), 'Tacit Choice of Law in the Hague Principles on Choice of Law in International Contracts' (44.1) *De Jure*, 101; Neels and Fredericks (*supra* note 1, 2018) 243-245.

The Draft Proclamation does not provide guidance on the relationship between tacit choice of law and choice of a court or arbitral tribunal to decide disputes under the contract. The Hague Principles[68] and the African Principles[69] are *ad idem* that "[a]n agreement between the parties to confer jurisdiction on a court or an arbitral tribunal to determine disputes under the contract is not in itself equivalent to a choice of law".[70] Indeed, there is an inherent difference in nature between a choice of forum (including an arbitral tribunal) and a choice of law agreement. The parties could choose a forum based on its convenience, experience, expertise, geographical location or neutrality, rather than the law in general applicable in the territory of the forum. In any event, the chosen forum will not necessarily apply the local law to the dispute but the legal system or other rules of law indicated by its private international law or the chosen arbitration rules.[71] The text of the Hague Principles implies that the choice of a court or a localised arbitral tribunal may be taken into account in a decision as to whether a tacit choice of law exists.[72] Of course, the same applies to article 5(3) of the African Principles, but this is made explicit in article 5(4): "An agreement between the parties to confer jurisdiction on a court or a localised arbitral tribunal may be taken into account in the determination of a tacit choice of law."

4.2 Law applicable in the absence of choice of law

The Draft Proclamation provides in article 73: "Where the parties have not clearly expressed their intention, contracts shall be governed by the law of the place with which the contract is significantly connected." The criterion of the closest connection is also employed in article 19 of Sedler's Draft: the proper law of the contract will govern in the absence of choice of law, that is "the law of the state which, in light of the governmental interests of the various states involved and the reasonable expectations of the parties, has the most substantial connection with the contract".[73]

[68] Hague Principles, art 4 (second sentence).
[69] African Principles, art 5(3).
[70] But see Kebede and Kassim (*supra* note 14) 206.
[71] Hague Conference on Private International Law (*supra* note 37) par 4.11-4.12.
[72] See Hague Conference on Private International Law (*supra* note 37) par 4.11-4.12.
[73] The last phrase of art 19 reads: "as a whole or the part of the contract that is in question". However, legal systems as a rule appoint one legal system to govern most aspects of the contract (see art 13 of the African Principles) in the absence of a choice of law.

"*Governmental* interest"[74] is a concept which, outside the notions of public policy[75] and overriding mandatory rules,[76] should not play a central role in a *private* international law dispute.[77] Interest analysis and the concept of the reasonable expectations of the parties often act as umbrella terminology for classical Savignian[78] connecting factors.[79] Using these notions thus does not provide any further guidance to courts or tribunals. The following example by Sedler may illustrate the point. A person from Ethiopia concluded a contract in Kenya with a person from Kenya, and the contract was to be performed in Kenya. The parties apparently did not choose a legal system to govern their contract.[80] "All questions relating to the contract should be determined by Kenyan law: presumably the parties were contracting with reference to Kenyan law, and Kenya has a strong governmental interest in regulating a contract made and to be performed there."[81] The cumulative effect of the traditional connecting factors of the *locus contractus*, the *locus solutionis* and the domicile or habitual residence of one of the parties reveals the governmental interest of the particular country.

Moreover, the indeterminate nature of a concept as governmental interest makes it "highly malleable", providing "enormous interpretative freedom" and rendering "outcomes badly indeterminate".[82] The resulting legal uncertainty causes a leading American legal philosopher in a recent contribution to conclude that "interest analysis chooses law in such an

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[74] Currie is the founder of governmental interest analysis. See, in general, Brainerd Currie (1963), *Selected Essays on the Conflict of Laws*, Duke University Press, Durham.

[75] See art 12 of the African Principles.

[76] See art 11 of the African Principles. For the use of interest analysis in this context within a Savignian approach, see Neels and Fredericks (*supra* note 32) 20-22. Also see Mathias W Reimann (2017), 'Interest and Policy Analysis in Private International Law' in Jürgen Basedow, Giesela Rühl, Franco Ferrari and Pedro de Miguel Asensio (eds), *Encyclopedia of Private International Law* Volume 2 *Entries I-Z*, Edward Elgar Publishing, Cheltenham, 980-988, at 988.

[77] Reimann (*supra* note 76) 984-985.

[78] F C von Savigny (1849), *System des heutigen römischen Rechts*, Volume 8, Veit und Comp, Berlin.

[79] See *eg* Currie (*supra* note 74) 82-83; and John Bernard Corr (1983), 'Interest Analysis and Choice of Law: The Dubious Dominance of Domicile', (4) *Utah Law Review* 651-677. See, in general, Reimann (*supra* note 76).

[80] Sedler (*supra* note 16) 47.

[81] *Id*. 47.

[82] Reimann (*supra* note 76) 985. Also see Linda Silberman (2017), '(American) Conflict of Laws Revolution' in Jürgen Basedow, Giesela Rühl, Franco Ferrari and Pedro de Miguel Asensio (eds), *Encyclopedia of Private International Law* Volume 1 *Entries A-H*, Edward Elgar Publishing, Cheltenham, 66-70.

arbitrary manner that it is incompatible with legitimate authority".[83] Accordingly, it may be best for Ethiopian law reform to completely avoid interest analysis terminology.

The available sources on Ethiopian private international law of contract suggest that the following may be recognised as connecting factors to indicate the law of closest connection: the domicile, habitual residence, nationality and presence of the parties at the time of conclusion of the contract; the place of the agreed place of performance; the place of the conclusion of the contract; the place of negotiations; the place where the subject matter is situated; and the seat of a chosen forum or localised arbitral tribunal.[84] The following extra connecting factors could be considered: the place of offer; the place of acceptance; the place of (principal) business of the parties and their agents; the language, form and terminology of the contract; the incorporation of a statute; the currency in which the contract is concluded; the place of registration of the subject matter; the place of dispatch; the place of destination; and the domicile, habitual residence, nationality and presence of the agents of the parties.[85]

However, a reliance on these connecting factors without further guidance will lead to substantial legal uncertainty, as is indeed the position under contemporary common-law approaches employed in, for instance, Australia and Canada (excluding Quebec).[86] It would therefore be preferable for the

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[83] Michael S Green (2024), 'Authority and Interest Analysis' in Roxana Banu, Michael S Green and Ralf Michaels (eds), *Philosophical Foundations of Private International Law*, Oxford University Press, Oxford, 139-161, at 139.

[84] Sedler (*supra* note 16) 81-106; Draft Proclamation art 2(2), art 2(5), art 5(1)-(3), art 72(1), art 74(1) and art 79(1)-(2). It is assumed that, if the parties are allowed to choose the legal systems in art 72(1), the specified connecting factors in this situation would also be relevant in the context of finding the objective proper law of the contract.

[85] Girsberger, Kadner Graziano and Neels (*supra* note 37) 123 and Jan L Neels and Eesa A Fredericks (2008), 'The Music Performance Contract in European and Southern African Private International Law' (part 2) (71) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg/Journal of Contemporary Roman-Dutch Law* 529-539, at 534-535.

[86] Girsberger, Kadner Graziano and Neels (*supra* note 37) 123-124; Brooke Marshall (2021), 'Australian Perspectives on the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 715-733, at 731-732; Stephen G A Pitel (2025), *Conflict of Laws*, University of Toronto Press, Toronto, 338-341; Geneviève Saumier (2021), 'Canadian Perspectives on the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial*

Ethiopian legislator or the courts to choose one amongst the recognised connecting factors to indicate a default position or starting point for further argumentation.

The two main paradigms in this regard on a global scale are the various *lex loci solutionis* approaches (the application of the law of the country of the characteristic performance as default position)[87] and the Hague/Rome model (where the default position entails the application of the law of the country of the habitual residence of the party that is under obligation to effect the characteristic performance of the contract).[88] In a contract of sale, this would translate into the application of the law of the country of delivery, or the law of the country of the habitual residence of the seller as default position.[89] Of course, if the contract and the parties are clearly or manifestly more closely connected to another legal system, that other legal system should apply.[90] The default application of the *lex loci solutionis* is the traditional common-law approach,[91] and the notion of the Hague/Rome model is used to indicate the methodology of the 1955 Hague Sales Convention,[92] the Rome Convention on the Law Applicable to Contractual Obligations[93] and the Rome I Regulation on the Law Applicable to Contractual Obligations.[94]

The Hague/Rome model was chosen for the purposes of the African Principles,[95] based on the following reasons.[96] *First*, some inherent uncertainties in the *lex loci solutionis* model exist:

Contracts. Global Perspectives on the Hague Principles, Oxford University Press, Oxford, 1155-1170, at 1170. *Cf* art 9-10 of the Mexico City Convention.

[87] Girsberger, Kadner Graziano and Neels (*supra* note 37) 122 and 125-126.

[88] Girsberger, Kadner Graziano and Neels (*supra* note 37) 120-123; Neels and Fredericks (*supra* note 1, 2018) 354-355; Neels and Fredericks (*supra* note 1, 2021) 246-247. Also see Kebede and Kassim (*supra* note 14) 207.

[89] Girsberger, Kadner Graziano and Neels (*supra* note 37) 126.

[90] *Cf* the formulations in ECJ *Intercontainer Interfrigo SC (ICF) v Balkenende Oosthuizen BV, MIC Operations BV* C-133/08 (6 October 2009) and art 4(3) of the Rome I Regulation.

[91] Lord Collins of Mapesbury and Jonathan Harris (gen eds) (2022), *Dicey, Morris and Collins on the Conflict of Laws*, Volume 2, Sweet & Maxwell, London, 1846-1847; J C W van Rooyen (1972), *Die Kontrak in die Suid-Afrikaanse Internasionale Privaatreg*, Juta & Co, Cape Town, 58-63.

[92] Art 3. Also see art 8(1)-(2) of the 1986 Hague Sales Convention (not in force).

[93] Art 4(2) of the Rome Convention.

[94] Art 4(1) of the Rome I Regulation.

[95] See art 6 of the African Principles.

[96] Jan L Neels (2024), 'The Southern African Development Community and the African Principles on the Law Applicable to International Commercial Contracts', in Moses

> "(a) The performances may have to take place in different countries. A solution may be to apply the law of the country of the principal or most valuable performance, but the attractiveness of the *lex loci solutionis* test is nevertheless substantially diminished in such circumstances.
>
> (b) Perhaps the parties did not agree on a place of performance. The *lex fori* would then have to determine the place of performance and that legal system perhaps does not have a sufficient link to the contract and the parties.
>
> (c) 'Place of delivery' as an example of 'place of performance' can have different meanings: for instance, the contractually determined place of delivery, the taking over of physical possession or compliance with the requirements for the transfer of ownership (which may entail a real agreement: the intention to transfer and receive ownership)."[97]

Secondly, application of the *lex loci solutionis* is not appropriate to various contracts emerging from the fourth industrial revolution, as they will often involve decentralised performance. An example could be a cloud computing service contract where delivery entails the provision by the cloud provider of access to data storage and processing facilities relating to information hosted on servers that may be located in several countries in the world, to the cloud user that may be present in, and access the digital infrastructure from, any country in the world.[98]

Thirdly, the Hague/Rome model has already been accepted in countries as varied as China, the European Union (27 countries), Japan, Niger, Norway, Russia, South Korea, Switzerland, Tunisia, Türkiye, Ukraine, the United Kingdom and Vietnam.[99] The model is also the main point of departure for proposed law reforms in various countries, including Mauritius[100] and

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Retselisitsoe Phooko, Lloyd Tonderai Chigowe and Hoolo 'Nyane (eds), *The Development and Application of SADC Community Law in Member States*, Juta & Co, Cape Town, 175–198, at 182-184.

[97] Neels (*supra* note 96) 183.

[98] Neels (*supra* note 96) 184, with reference to Lovemore Mabiza (2022), *Reconsidering the* Lex Loci Solutionis *in South African Private International Law: The Disruptive Force of the Fourth Industrial Revolution* (LLM minor dissertation, University of Johannesburg) par 3.1.3.

[99] Girsberger, Kadner Graziano and Neels (*supra* note 37) 120-123 and 126-128; Neels (*supra* note 96) 184.

[100] Robin Cupido (2021), 'Mauritian Perspectives on the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in*

seventeen OHADA countries.[101] This fact is important in light of the ideal of international harmony of decision, which is related to the battle against so-called forum shopping.[102]

Article 6 of the African Principles therefore determines that, in the absence of a choice of law, a contract for the sale of goods is governed by the law of the country of the habitual residence[103] of the seller.[104] In the absence of a choice of law, a contract for the provision of services is governed by the law of the country of the habitual residence[105] of the service provider.[106] There are also provisions for other types of contracts,[107] mixed contracts[108] and contracts not governed by the other provisions.[109] Article 6(3) determines in effect that, where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated by default, the contract is governed by the law of that other country.

4.3 Substantive validity

According to article 8(1) of the African Principles, "[t]he existence and material validity of a contract, or any provision in a contract, must be determined by the law which would govern it under this instrument [the African Principles] if the contract or provision were valid" – that is, the putative proper law of the contract.[110] Gebremeskel suggests that the chosen

International Commercial Contracts. Global Perspectives on the Hague Principles, Oxford University Press, Oxford, 320-335, at 322 and 333-334.

[101] Justin Monsenepwo (2021), 'The Organization for the Harmonization of Business Law in Africa and the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 248-262, at 251-252 and 262-263.

[102] See *eg* Forsyth (*supra* note 33) 70-73.

[103] See art 15.

[104] Art 6(1)(a).

[105] See art 15.

[106] See art 6(1)(b).

[107] Art 6(1)(c) (immovables), art 6(1)(d) (franchise contracts), art 6(1)(e) (distribution contracts) and art 6(1)(f) (sale of goods by auction).

[108] Art 6(2).

[109] Art 6(2). Also see art 6(4).

[110] See art 8(2) and art 8(3) for more specific rules for particular situations. Also see art 6(1)(a), art 6(2) and art 9(1)(e) of the Hague Principles, and art 4 of the Basel Resolution, together with Hague Conference on Private International Law (*supra* note 37) 51-52 and 57 and Girsberger, Kadner Graziano and Neels (*supra* note 37) 72-75.

law may govern the validity of a contract as a starting point.[111] However, the *lex fori* will play an important role via the notion of public policy: "In reality, the main situation where a choice of law cannot be permitted under Ethiopian law for public policy reasons would be when the contract in question is illegal under [internal] Ethiopian law. Certain contracts, such as the sale of land … to foreigners …, are unenforceable under Ethiopian law."[112]

4.4 Formal validity

Both Sedler's Draft[113] and the Draft Proclamation[114] contain provisions on the formal validity of contracts. Article 20 of Sedler's Draft strongly suggests that the law of the country where the contract was concluded (the *lex loci contractus*) and the law governing the contract in general (the proper law of the contract) simultaneously govern the formal validity of a contract.[115] If the contract complies with the formal requirements of either of these legal systems, the contract must be deemed to be formally valid. Most legal systems in the world contain a similar alternative reference rule[116] in respect of the formal validity of contracts.[117] The *lex loci contractus* and the proper law of the contract are indeed the most popular options in this regard.[118] The

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[111] With reference to art 9(1)(e) of the Hague Principles. Also see art 18(2) of Sedler's Draft (Sedler (*supra* note 16) 174 – where Ethiopian law is the objective proper law of the contract) and Sedler (*supra* note 16) 90.

[112] Gebremeskel (*supra* note 14) 318. *Cf* art 18(2) of Sedler's Draft (Sedler (*supra* note 16) 174) and Sedler (*supra* note 16) 88 and 90. Also see art 74 of the Draft Proclamation: "(1) Contracts relating to immovable property shall be, as regards their substance, governed by the law of the place where the property is situated. (2) Any provision to the contrary shall be of no effect" and Kebede and Kassim (n 14) 207-208.

[113] Art 20 of Sedler's Draft (Sedler (*supra* note 16) 174-175).

[114] Art 79(1)-(2) of the Draft Proclamation.

[115] Art 20: "Where the parties have entered into a contract at a place other than the place whose law governs the contract, the contract will be valid as to form if it satisfies the forms prescribed by the law of the place where they acted, though it does not satisfy the forms prescribed by the law of the place whose law governs the contract…" (Sedler (*supra* note 16) 174). See Sedler (*supra* note 16) 99.

[116] See Jan L Neels (2020), 'An Experiment in the Systematization of South African Conflicts Rules' in Sebastian Omlor (ed), *Weltbürgerliches Recht. Festschrift für Michael Martinek zum 70.Geburtstag*, C H Beck, München, 529-541, at 535-537; and Symeon C Symeonides (2014), *Codifying Choice of Law Around the World. An International Comparative Analysis*, Oxford University Press, Oxford, 174-176, 251 and 256-259.

[117] Girsberger, Kadner Graziano and Neels (*supra* note 37) 71; Symeonides (*supra* note 116) 256-259.

[118] Girsberger, Kadner Graziano and Neels (*supra* note 37) 71.

connecting factor of the *locus contractus* (the place where the contract was concluded) must be determined according to the *lex fori*, Ethiopian law.[119]

The Draft Proclamation lists the same duo of alternatively applicable legal systems in article 79(1) (namely, the law applicable to the contract in general and the law of the country where it was concluded) but adds the law of the country where the contract is (to be) performed. Article 79(2) provides: "If, at the time of conclusion of the contract, the parties are in different countries, it shall be sufficient for it to conform to the law of one of these countries."[120]

The African Principles contain an even more comprehensive result-oriented alternative reference rule in respect of the formal validity of a contract, based on an underlying policy favouring the validity of contracts (*favor validitatis*; *favor negotii*).[121] The principle of party autonomy indicates that, in order to facilitate international trade, international commercial transactions should as far as possible be free of any formal restrictions.[122] Indeed, most legal systems, including Ethiopian law,[123] do not prescribe any specific form for the majority of international commercial contracts.[124]

119 Sedler (*supra* note 16) 174. Article 20 proceeds: "Provided, however, that the question of whether the contract must be in writing is to be determined by the law of the state whose law governs the contract." It is unclear from the text of art 20 why the most important commonly prescribed formality would not fall under the general rule. However, from Sedler's commentary it becomes clear that the last sentence of art 20 refers to overriding mandatory rules in respect of formalities (see Sedler (*supra* note 16) 99-100).

120 Also see art 79(3): "If, for the protection of a party, the law governing the contract prescribes the fulfilment of a form, the form shall be governed by that law unless it permits the application of a different law."

121 See Symeon C Symeonides (2000), 'Private International Law at the End of the 20th Century: Progress or Regress?' in Symeon C Symeonides (ed) *Private International Law at the End of the 20th Century: Progress or Regress?* (2000) 3-79, at 38 and 50–52; and Symeonides (*supra* note 116) 136 and 252. But also see the last paragraph of this section.

122 Hague Conference on Private International Law (*supra* note 37) 48-49.

123 Art 1719 of the Civil Code of Ethiopia (*supra* note 12).

124 Girsberger, Kadner Graziano and Neels (*supra* note 37) 69-70; Ingeborg Schwenzer, Pascal Hachem and Christopher Kee (2012), *Global Sales and Contract Law*, Oxford University Press, Oxford, 265–272 (the most common exceptions apply to immovable property). See also art 11 of the CISG ("A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirements as to form") and the first sentence of art 1.2 of the UPICC: "Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form" (see also art 3.1.2 of the UPICC).

The African Principles list the *lex loci contractus* and the proper law as governing legal systems,[125] similar to Sedler's Draft[126] and the Draft Proclamation.[127] However, article 9(2)(a) of the Principles determines that the law of the country of the conclusion of the contract may be determined according to either the law of the forum or the proper law, thereby potentially extending the scope of formal validity.[128] Instead of the law of the country where the contract is (to be) performed, as in article 79(1) of the Draft Proclamation (and, interestingly, article 13 of the Mexico City Convention), article 9(2)(e) of the African Principles makes provision for the application of "the law of the country of the agreed place of any substantial performance under the contract". The phrase "agreed place of … performance" clarifies that the relevant locality is not the point where the performance in actual fact took place, but where it had to transpire in terms of the contract or applicable law (if there were to be a difference in this regard). To prevent one of the parties relying on a legal system that merely has a superficial connection to the contract and the parties, the place of a non-substantial performance is excluded as a connecting factor.

The African Principles extend the scope for formal validity by adding the following legal systems to the alternative reference rule: the law of the country of the habitual residence[129] of any of the parties under the contract[130] and the law of the country of the habitual residence[131] of the agent of any one of the parties under the contract.[132] The African Principles accept article 5 of the Hague Principles in article 9(1): "A choice of law is not subject to any requirements as to form unless otherwise agreed by the parties."[133]

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[125] Art 9(2)(a)-(b) of the African Principles.

[126] Art 20 of Sedler's Draft (Sedler (*supra* note 16) 174).

[127] Art 79(1)-(2) of the Draft Proclamation.

[128] Neels (*supra* note 1, 2024) 254; Neels, Fredericks and Bouwers (*supra* note 33), 45-47.

[129] On habitual residence, see art 15.

[130] Art 9(2)(c).

[131] On habitual residence, see art 15.

[132] Art 9(2)(d). Art 9(3) determines (without prejudice to art 9(1)) that the formal validity of a contract with the subject matter of a right *in rem* (proprietary interest) in immovable property, or of a tenancy of immovable property, must be governed by the law of the country where the immovable is situated.

[133] See Girsberger, Kadner Graziano and Neels (*supra* note 37) 68-71; Neels (*supra* note 48, 2018) 470-471; Neels (*supra* note 48, 2018b) 668-669; Jan L Neels (2014), 'Article 5 of the Hague Principles on Choice of Law in International Contracts', in Coenraad Visser, J T Pretorius and M M Koekemoer (eds), *Essays in Honour of Frans Malan,*

Article 79(2) of the Draft Proclamation, quoted above, provides for the application of the law of the country of the presence of either party. A similar arrangement may be found in the Rome I Regulation[134] and the Mexico City Convention.[135] This is one of two instances where the arrangement in the Draft Proclamation is broader than the African Principles – perhaps unjustified in the case of a non-substantial performance[136] but likely justified in the scenario envisaged in article 79(2).

4.5 Miscellaneous aspects of private international law of contract

Various primary provisions in the African Principles discussed above may be seen as innovative,[137] as compared to these pertaining to other regional, supranational and international conflicts instruments, namely partial and multiple choice of law in respect of certain aspects of a contract,[138] tacit choice of law (high threshold and more clarity on the role of a choice of forum or arbitral tribunal),[139] and formal validity (in general, a broader alternative reference rule).[140] However, the African Principles also contain novel formulations in respect of the choice of rules of law or non-State law (a limited choice allowed),[141] incorporation by reference,[142] choice of law in the battle of forms (the knock-out rule on the private international law level in all instances),[143] the role of international substantive-law considerations in the contractual conflict of laws,[144] overriding mandatory rules[145] and the assessment of damages.[146] In addition, the African Principles contain

Former Judge of the Supreme Court of Appeal, LexisNexis, Durban, 257-263; Neels (*supra* note 1, 2024) 253-255.

[134] Art 11(2).

[135] Art 13 (second sentence): "If the persons concerned are in different States at the time of its conclusion, the contract shall be valid as to form if it meets the requirements of the law governing it as to substance, or those of *the law of one of the States in which it is concluded* or with the law of the place where the contract is performed" (emphasis added).

[136] See the discussion of art 79(1) above.

[137] See, in general, Neels (*supra* note 1, 2024).

[138] Art 3(2).

[139] Art 5.

[140] Art 9.

[141] Art 4(1)-(3).

[142] Art 4(4).

[143] Art 8(3).

[144] Art 4(2)-(3) and art 7. Also see art 9(1).

[145] Art 11.

[146] Art 13(2)(a)-(c).

provisions on its scope[147] and universal application,[148] modification of choice of law,[149] severability,[150] *renvoi*,[151] public policy,[152] the scope of the applicable law,[153] set-off,[154] interpretation and uniformity of application[155] and application in time.[156]

5 Peroration

Ethiopia had a high economic growth rate of 7.3% in 2024.[157] The Federal Democratic Republic is a State Party to the African Continental Free Trade Area[158] and various important trading partners have developed systems of private international law of contract.[159] In the absence of a formal system of private international law in Ethiopia,[160] it is suggested that courts, arbitral tribunals and the legislator consider the African Principles,[161] together with the existing Ethiopian texts[162] (and beyond),[163] in the development of a private international law of contract for Ethiopia, thereby strengthening the legal infrastructure of Ethiopia, which is a *sine qua non* for investor confidence, inclusive economic growth and sustainable development.[164] ■

147 Art 13.
148 Art 2.
149 Art 3(4) and art 5(1).
150 Art 3(5).
151 Art 10.
152 Art 12.
153 Art 13.
154 Art 14.
155 Art 16.
156 Art 17.
157 https://data.worldbank.org (5 July 2025).
158 https://au-afcfta.org/state-parties (5 July 2025).
159 https://oec.world/en/profile/country/eth (5 July 2025).
160 See Section 2.
161 The reader can find the text at https://ujonlinepress.uj.ac.za/index.php/ujp/catalog/book/219 and/or request a printed copy from the author free of charge.
162 Sedler's Draft (Sedler (*supra* note 16)) and the Draft Proclamation, together with Ethiopian academic texts, including Sedler (*supra* note 16) and Gebremeskel (*supra* note 14).
163 See *eg* the regional, supranational and international instruments referred to in this article.
164 Neels (*supra* note 1, 2023) 2. See the section from the preface to the Civil Code of Ethiopia by Emperor Haile Selassie quoted in note 13.

Cited References

Abera, Zena (2016). 'Ethiopian Sales Law in the Light of International Laws and Principles of Contract', (3:e2719). *Open Access Library Journal*, https://doi.org/10.4236/oalib.1102719.

Belete, Melese Wondmagegnehu (2019). 'The "Principle of Autonomy" in Contract under the Civil Code of [Ethiopia]: Is It an Absolute Principle?'. (10) *Beijing Law Review*, 795–805.

Bouwers, Garth J (2021). *Tacit Choice of Law in International Commercial Contracts – A Global Comparative Study*, Schulthess Juristische Medien AG, Zürich.

CEDEP/CJI/OAS (2019). *Guide on the Law Applicable to International Commercial Contracts in the Americas*, CEDEP, Asunción.

Collins and Harris – Lord Collins of Mapesbury and Harris, Jonathan (gen eds) (2022). *Dicey, Morris and Collins on the Conflict of Laws*, Volume 2, Sweet & Maxwell, London.

Corr, John Bernard (1983). 'Interest Analysis and Choice of Law: The Dubious Dominance of Domicile'. (4) *Utah Law Review*, 651–677.

Cupido, Robin (2021). 'Mauritian Perspectives on the Hague Principles', in Girsberger, Daniel, Kadner Graziano, Thomas and Neels, Jan L (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 320–335.

Currie, Brainerd (1963). *Selected Essays on the Conflict of Laws*, Duke University Press, Durham.

Forsyth, Christopher F (2012). *Private International Law. The Modern Roman-Dutch Law Including the Jurisdiction of the High Courts*, Juta & Co, Cape Town.

Gebremeskel, Fekadu Petros (2021). 'Ethiopian Perspectives on the Hague Principles', in Girsberger, Daniel, Kadner Graziano, Thomas and Neels, Jan L (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 308–319.

Girsberger, Daniel, Kadner Graziano, Thomas and Neels, Jan L (2021). 'Global Perspectives on the Hague Principles', in Girsberger, Daniel, Kadner Graziano, Thomas and Neels, Jan L (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 3–128.

Girsberger, Daniel, Kadner Graziano, Thomas and Neels, Jan L (eds) (2021). *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford.

Green, Michael S (2024). 'Authority and Interest Analysis', in Banu, Roxana, Green, Michael S and Michaels, Ralf (eds), *Philosophical Foundations of Private International Law*, Oxford University Press, Oxford, 139–161.

Hague Conference on Private International Law (2015). *Principles on Choice of Law in International Commercial Contracts*, Permanent Bureau of the Hague Conference on Private International Law, The Hague.

Hardjowahono, Bajuseto (2005). *The Unification of Private International Law on International Commercial Contracts within the Regional Legal System of ASEAN*, Ulrik Huber Institute for Private International Law, Groningen.

Kebede, Araya and Kassim, Sultan (2009). *Conflict of Laws Teaching Material*, Abyssinia Law, Addis Ababa, available at www.abyssinialaw.com (accessed 22 July 2025).

Lupton, Cayle and Stoop, Philip (eds) (2025). *The Intersection of the Law and Technological Innovation,* Juta & Co, Cape Town.

Mabiza, Lovemore (2022). *Reconsidering the* Lex Loci Solutionis *in South African Private International Law: The Disruptive Force of the Fourth Industrial Revolution* (LLM minor dissertation), University of Johannesburg, Johannesburg.

Marshall, Brooke (2021). 'Australian Perspectives on the Hague Principles', in Girsberger, Daniel, Kadner Graziano, Thomas and Neels, Jan L (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 715–733.

Messelu, Mamenie Endale (2016). 'A Critical Analysis of the Ethiopian Civil Code Governing Sale of Goods in the Light of International Conventions and Principles', (7:133) *Beijing Law Review*, https://doi.org/10.4236/blr.2016.72015.

Neels, Jan L (2013/2014). 'The Nature, Objective and Purposes of the Hague Principles on Choice of Law in International Contracts', (15) *Yearbook of Private International Law*, 45–56.

Neels, Jan L (2017). 'The Role of the Hague Principles on Choice of Law in International Commercial Contracts in Indian and South African Private International Law'. (22:2) *Uniform Law Review/Revue de droit uniforme*, 443–451.

Neels, Jan L (2018a). 'The Role of the Hague Principles on Choice of Law in International Commercial Contracts in the Revision of the Preliminary Draft Uniform Act on the Law of Obligations in the OHADA Region', (81) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg/Journal of Contemporary Roman-Dutch Law*, 464–473.

Neels, Jan L (2018b). 'Choice of Law in the Revision of the Mexico City Convention – Inspirations from the Hague Principles and Beyond', (81) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg/Journal of Contemporary Roman-Dutch Law*, 661–671.

Neels, Jan L (2020). 'An Experiment in the Systematization of South African Conflicts Rules', in Omlor, Sebastian (ed), *Weltbürgerliches Recht. Festschrift für Michael Martinek zum 70. Geburtstag*, C H Beck, München, 529–541.

Neels, Jan L (2023). *African Principles on the Law Applicable to International Commercial Contracts*, UJ Press, Johannesburg.

Neels, Jan L (2024). 'The Southern African Development Community and the African Principles on the Law Applicable to International Commercial Contracts', in Phooko, Moses Retselisitsoe, Chigowe, Lloyd Tonderai and 'Nyane, Hoolo (eds), *The Development and Application of SADC Community Law in Member States*, Juta & Co, Cape Town, 175–198.

Neels, Jan L (2024). 'Novel Aspects of the Proposed African Principles on the Law Applicable to International Commercial Contracts', *Tydskrif vir die Suid-Afrikaanse Reg/Journal of South African Law*, 247–257.

Neels, Jan L and Fredericks, Eesa A (2008). 'The Music Performance Contract in European and Southern African Private International Law' (part 2), (71) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg/Journal of Contemporary Roman-Dutch Law*, 529–539.

Neels, Jan L and Fredericks, Eesa A (2011). 'Tacit Choice of Law in the Hague Principles on Choice of Law in International Contracts', (44:1) *De Jure*, 101–118.

Neels, Jan L and Fredericks, Eesa A (2018). 'An Introduction to the African Principles of Commercial Private International Law', (29:2) *Stellenbosch Law Review*, 347–356.

Neels, Jan L and Fredericks, Eesa A (2021). 'The African Principles of Commercial Private International Law and the Hague Principles', in Girsberger, Daniel, Kadner Graziano, Thomas and Neels, Jan L (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 239–247.

Neels, Jan L, Fredericks, Eesa A and Bouwers, Garth J (2025). 'The Continued Relevance of Determining the *Locus Contractus* in an Electronic Environment – A Contractual Conflict of Laws Perspective', in Lupton, Cayle and Stoop, Philip (eds), *The Intersection of the Law and Technological Innovation*, Juta & Co, Cape Town, 36-53.

Omlor, Sebastian (ed) (2020). *Weltbürgerliches Recht. Festschrift für Michael Martinek zum 70. Geburtstag*, C H Beck, München.

Oxera Consulting LLP/LegalUK (2021). *Economic Value of English Law,* available at https://legaluk.org (accessed 16 Sept 2025).

Phooko, Moses Retselisitsoe, Chigowe, Lloyd Tonderai and 'Nyane, Hoolo (eds) (2024). *The Development and Application of SADC Community Law in Member States*, Juta & Co, Cape Town.

Pitel, Stephen G A (2025). *Conflict of Laws*, University of Toronto Press, Toronto.

Reimann, Mathias W (2017). 'Interest and Policy Analysis in Private International Law', in Basedow, Jürgen, Rühl, Giesela, Ferrari, Franco and de Miguel Asensio, Pedro (eds), *Encyclopedia of Private International Law*, Volume 2, Edward Elgar Publishing, Cheltenham, 980–988.

Saumier, Geneviève Saumier (2021). 'Canadian Perspectives on the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles,* Oxford University Press, Oxford, 1155-1170.

Savigny, Friedrich Carl von (1849). *System des heutigen römischen Rechts*, Volume 8, Veit und Comp, Berlin.

Schwenzer, Ingeborg, Hachem, Pascal and Kee, Christopher (2012). *Global Sales and Contract Law*, Oxford University Press, Oxford.

Sedler, Robert Allen (1965). 'Code of the Conflict of Laws', in Sedler, Robert Allen, *The Conflict of Laws in Ethiopia*, Faculty of Law, Haile Selassie I University/Oxford University Press, Addis Ababa/Oxford, 166–179 ('Sedler's Draft').

Sedler, Robert Allen (1965). *The Conflict of Laws in Ethiopia*, Faculty of Law, Haile Selassie I University/Oxford University Press, Addis Ababa/Oxford.

Setegn, Mekuria Tsegaye (2019). 'The Ethiopian Federation and Private International Law: The Contours of the Federal and the State Governments' Jurisdictions'. (15:2) *Journal of Private International Law*, 418–443.

Setegn, Mekuria Tsegaye (2020). 'Legislative Inaction and Judicial Legislation under the Ethiopian Private International Law Regime: An Analysis of Selected Decisions of the Federal Supreme Court's Cassation Division'. (16:1) *Journal of Private International Law*, 112–137.

Silberman, Linda (2017). '(American) Conflict of Laws Revolution', in Basedow, Jürgen, Rühl, Giesela, Ferrari, Franco and de Miguel Asensio, Pedro (eds), *Encyclopedia of Private International Law*, Volume 1, Edward Elgar Publishing, Cheltenham, 66–70.

Symeonides, Symeon C (2000). 'Private International Law at the End of the 20th Century: Progress or Regress?' in Symeonides, Symeon C (ed), *Private International Law at the End of the 20th Century: Progress or Regress?*, Kluwer Law International, The Hague, 3-79.

Symeonides, Symeon C (2014). *Codifying Choice of Law Around the World. An International Comparative Analysis*, Oxford University Press, Oxford.

Takasugi, Naoshi and Elbalti, Béligh (2021). 'The Asian Principles of Private International Law and the Hague Principles' in Daniel Girsberger, Thomas Kadner Graziano and Jan L Neels (gen eds), *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles*, Oxford University Press, Oxford, 399-413.

Tesfay, Seyoum Yohannes (2016). 'The Normative Basis for Decision on the Merits in Commercial Arbitration: The Extent of Party Autonomy'. (10:2) *Mizan Law Review*, 341–365.

Van Rooyen, Jacobus C W (1972). *Die Kontrak in die Suid-Afrikaanse Internasionale Privaatreg*, Juta & Co, Cape Town.

Forgery Offences under Vietnam's Law in the Digital Era, and Some Comparative Insights

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Abstract

In the context of digital transformation, this article conducts a comparative study on the Vietnamese criminal offence of forgery and use of counterfeit seals and documents in comparison with several civil law regimes. Rooted in the underlying doctrines of protecting public trust and legal certainty, the research utilizes doctrinal analysis and comparative statutory scrutiny to disambiguate the offence's protected legal interests, constituent elements, and applicable criminal policies. It shows that while all jurisdictions recognize forgery and use of counterfeit seals and documents as acts directly infringing upon public trust, their approaches to electronic documents, digital signatures, and digital seals diverge significantly. Vietnamese criminal law has yet to be fully integrated in terms of forgery or digital forgery law, in particular with regard to the definition and evidentiary status of electronic records. Thus, there is a need to introduce the concepts of 'electronic document' and 'digital seal' in the Penal Code, explicitly criminalizing forgery and use of these objects, and providing protocols for authentication and the forensic examination of electronic evidence. These interventions would be necessary to reinforce public confidence and ensure legal certainty in the digital age.

Keywords:

Criminal law, digital era, forgery, official documents, seals, Vietnam.

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Contents

1. Introduction

The legitimacy of seals and official documents has been considered a fundamental element of both state administration and legal relations in civil life. When the process of forging and using counterfeit seals or documents is undertaken, the reliability of legal transactions is undermined, the efficiency of agencies and organizations is frustrated; and public confidence in the integrity of official instruments becomes impaired. Thus, in almost all legal systems the offence of falsification of seals and documents is deemed socially dangerous and punishable by strict criminal sanctions. The doctrine provides the fundamental theoretical framework for the criminalization of such conduct in codified legal systems, particularly those rooted in the continental European tradition. This article focuses on analyzing the provisions of Vietnamese criminal law and some countries following the Civil Law system to form a single research axis; the author intends to analyze countries in the Common Law system in subsequent studies.

Vietnamese criminal law has a long-standing provision on forged seals and documents, with a provision now incorporated in the 2015 Penal Code as amended in both 2017 and 2025. But the fast-paced advancement of digital technologies has transformed the nature of evidence and the very means of authentication. The arrival of electronic documents, digital signatures and electronic seals raise new difficulties for the existence and effectiveness of existing provisions. Whereas the law still generally covers physical seals and traditional paper forgery instruments, there are a growing number of forgeries occurring digitally. In effect, the legislation has not yet been able to clarify regulatory procedures.

In this context, comparative legal research is especially significant. The modern civil law jurisdictions in France, Germany and Japan implement legal frameworks for the wide variety of fraudulent works by adapting their laws onto an increasingly digital environment. Their experience indicates that forgery of seals and documents regulation are addressed to maintain traditional doctrinal roots and meet future technological requirements. A comparative study is thus necessary to examine the adequacy of Vietnam's current criminal law on digital offences and address the gaps through necessary reforms to ensure the authenticity and public confidence in the new digital era.

To this end, this article attempts to answer three research questions: (i) what is the current regulation and punishment of forging and the using of seals and documents by Vietnamese criminal law? (ii) how do civil law jurisdictions deal with and address both traditional forgery and electronic forgery? (iii) what are the valuable lessons that can be drawn in Vietnam to enhance its criminal law in the context of digital transformation?

The article uses a blend of traditional legal analysis and comparative law. It compares the provisions of the Vietnamese Penal Code with those in the French Penal Code (Code pénal), the German Criminal Code (Strafgesetzbuch), and the Japanese Penal Code (Keihō), scholarly commentaries and selected judicial precedents to provide complementary perspectives for evaluating the research. This enables a clear definition of common concepts, differences and disparities and gaps in Vietnam's criminal law to address forgery and counterfeit seals and documents in the digital era.

On two levels, the main contribution of the study can be reflected. On the *theoretical level*, it reconfirms the importance of the doctrines of *public trust* and *legal certainty* to govern the offenses committed by state agencies and organizations in using seals and documents in the digital era. Second, at the *policy level*, it suggests that the Penal Code needs reform so that: (i) there are clear legal definitions of the terms "electronic document" and "electronic seal"; (ii) it expressly criminalizes forging and using electronic objects; and (iii) it further clarifies procedural rules regarding forensic examination and electronic evidence.

The next section deals with general issues related to the theme. Sections 3 and 4 respectively examine Vietnam's criminal law and the comparative experience in three comparative civil law jurisdictions, followed by comparative analysis, the way forward and conclusion in the fifth, sixth and seventh sections.

2. General Issues Concerning Forging and Using Seals and Documents of Agencies and Organizations

2.1 The concept and legal characteristics of the act of "forging"

In linguistics, *"false"* stands in contrast to *"true"*, and *"forging"* is generally understood as creating or altering an object or phenomenon in such a way that others are led to believe it is genuine. "Forgery" refers to the act of making or altering a document with intent to harm the rights or interests of another.[1] It takes into account three crucial factors: (i) an act of interference with a document or writing; (ii) such interference being fraudulent; and (iii) adverse legal consequences to another party. "Forgery" inherently means fraud and prejudice. Thus, forgery is really an act of deception that leads others to misinterpret a matter or situation.

Forgery is understood as the act of creating, altering, reproducing, or using forged documents or seals for deceptive purposes. KAA Hadi and H Paino contend that forgery typically contains an *objective component* (an act of alteration or fabrication that causes a distortion of authenticity) and a *subjective component* (the intention to deceive in order to obtain an unlawful benefit or cause harm to others).[2] Atadjanov's work also points out that in the offence of document forgery, the elements are usually *actus reus* (the act of producing or using forged documents or seals), *mens rea* (fraudulent intent), and the *protected legal interest,* which is the social trust in documents, transactions, and the legal order.[3]

Forgery, from the sociology of law perspective, is closely connected with the social values it violates. As Simmel wrote in his analysis of the crime of money counterfeiting, "forgery undermines the trust which is the very foundation of social exchange".[4] According to this view, although an individual may commit forgery, its legal and social significance lies primarily in its effects rather than in the act itself. The forging of seals, papers or

[1] *Black's Law Dictionary*, 2nd Edition (1910).

[2] Khairul Anuar Abd Hadi & Halil Paino (2015). "The Legal Overview on Falsification, Fraud and Forgery". *Procedia Economics and Finance*, (31) 581-586, https://www.sciencedirect.com/science/article/pii/S2212567115012041, last accessed: 20/01/2026.

[3] Rustam B. Atadjanov (2021). *Analysis of Objective and Subjective Elements of the Crime of Document Forgery, Selling of Forged Documents, and Using Forged Documents, The American Journal of Political Science Law and Criminology,* 3(5), pp. 72–80, https://inlibrary.uz/index.php/tajpslc/article/view/77286, last accessed: 20/01/2026.

[4] George Simmel (2004). *The Philosophy of Money,* 3rd Ed. *Routledge*, p. 182.

documents undermines the credibility of institutional symbols and documentary forms to which legal and administrative relationships are anchored. This erodes trust between people and adversely affects trust between citizens and public institutions that are among the core factors in the levels of social cohesion and certainty in legal matters and governance. Although the definition of forgery varies, two main features are shared among most definitions; i.e., forgery involves *distortion*, and the purpose or effect is *to mislead others*. Jescheck has an abridged definition: "Forgery is any manipulation that distorts the authenticity of a legally relevant object".[5]

In continental Europe, particularly in Germany and France, "forgery" is viewed through the lenses of *falsum* or *faux*. In Germany, document forgery is a crime; the Criminal Code (§ 267 StGB) defines it as: (i) the complete creation of a false document (excluding copying) and (ii) the alteration of the content of a genuine document.[6] At the core of such a provision is a "distortion of perception" created in social transactions, the forged document must have the potential to convince others that the document is authentic. Jescheck and Weigend point out that the fundamental element of forgery is not merely the act of counterfeiting material, but more importantly, a document's "capacity to convince" in social relations, thereby undermining public confidence in the authenticity and legal validity of documents.[7] Faux, on the other hand, defines forgery as a fraudulent distortion of the truth, capable of causing harm, within a document or instrument, intended to attest to a right or legal fact, according to Article 441-1 of the French Criminal Code.[8] Accordingly, both legal systems treat forgery as a "distortion of truth" by documents.

The distinction does not mainly relate to the substance of the protected interest. German jurisprudence emphasizes the social persuasiveness (Die soziale Beweisfunktion) of the forged document, and its capacity to build trust in social and legal contacts. In French law, the offense is related with the notions of fraudulence and the capacity to create legal effects and it evokes the same concern for trust and reliability expressed more through the consequences perspective. In this regard, the two approaches fundamentally

[5] Hans-Heinrich Jescheck (1988). *Lehrbuch des Strafrechts*, Duncker & Humblot, p. 356.

[6] *Strafgesetzbuch* (StGB), § 267; Available at: https://www.gesetze-im-internet.de/stgb/, last accessed: 20/01/2026.

[7] Jescheck & Weigend (1996). *Lehrbuch des Strafrechts*, 5. Aufl., Duncker & Humblot, p. 611.

[8] *Code pénal*, art. 441-1; Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149854/#LEGISCTA000006149854, last accessed: 20/01/2026.

align in their basis of reasoning, despite distinct doctrinal vocabulary and analytic orientation.

In Vietnam's academic discourse forgery refers to legal authenticity and validity such as seals and documents.[9] It relates to fabricating or altering those objects illegally and thereby depriving them of their authenticity and violating the legitimate State regulatory order. In sharp contrast to ordinary forgeries (such as art counterfeiting), criminal forgery is defined according to the 'legal value' of the thing that the perpetrator has created. According to Article 341 of the 2015 Criminal Code of Vietnam (amended 2017, 2025), the fabrication and the unlawful altering of seals and documentation of agencies or organizations are criminal.[10] The protected interest goes beyond individual property and individual rights, but extends to administrative order and public confidence on the authenticity of official instruments, demonstrating forgery as a threat to the legal and administrative fabric of the State.

There are four basic legal characteristics of forgery. First, it must always be *intentional*, for the perpetrator knows that he is deceiving and still commits it in order to achieve a purpose. Second, the behaviour always *affects legally valuable things* like documents, seals, certificates, signatures, etc. which serve as means to guarantee the authenticity and legality of social relations. Third, the legal effect of forgery is the *distortion* of objective truth, thus leading to the direct or indirect harm to the State, organizations, and individuals. Fourth, the *specific legal interest* which has been violated is authenticity and public trust, which underpin state administration and the legal order.

In sum, forgery is composed of a technical dimension (the falsification of form or content) and a socio-legal dimension (the infringement of public trust and legal authenticity). It is precisely this mix that renders forgery an offence that needs rigorous statutory enforcement through criminal law.

2.2 Seals and documents as objects of criminal acts

The difference between the *legal interest* (object of protection) and the o*bject of action* needs to be unambiguously explained in criminal law theory. The relevant *legal interest* of a crime refers to the social relations that are protected by criminal law, and which are in question when the crime is committed. In contrast, the *object of action* of a crime is a part of the protected legal interest

[9] Canh, Tran Tuan (2025). "Forgery of Seals and Documents of Agencies and Organizations for the Purpose of Fraudulent Appropriation of Property". *Sch Int J Law Crime Justice*, 8(11): 261-270.

[10] *Criminal Code*, Art. 341; Available at: https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-hinh-su-2015-296661.aspx?dll=true, last accessed: 20/01/2026.

and it is the basis for diagnosing the constituent elements of a crime which criminal act must act upon some physical object to create or to undermine the social values that are being protected. An offender cannot simply 'attack' an abstract social relation as in the 'administrative management order' or 'public trust', but damages are occasioned by practical acts (e.g. producing counterfeit seals, altering documents, or affixing forged seals to documents) that act physically on things designed to break the safe legal interest. Accordingly in the construction of a criminal offence, the particular *object of the action* must first be known, since the latter is the basis for proving infringement of the protected legal interest.[11]

In many Civil law systems, this distinction is explicitly illustrated. In Vietnam, Article 341 of the 2015 *Criminal Code* (as amended in 2017 and 2025) directly describes the objective act as "forging seals and documents of agencies and organizations; using forged seals and documents." This indicates that the specific objects of conduct are seals and documents themselves, rather than the more abstract notions of administrative or social order. In Germany, the *Strafgesetzbuch* defines the offense of *Urkundenfälschung* through the acts of "*herstellen*" (manufacturing), "*verfälschen*" (altering), or "*gebrauchen*" (using) a document (*Urkunde*); the structure of the provision emphasizes physical and unambiguous manipulations of the document.[12]

In France, the *Code pénal* defines *faux* using the phrase "*altération frauduleuse de la vérité … dans un écrit ou tout autre support … ayant pour effet d'établir la preuve d'un droit ou d'un fait*," meaning that "a writing or any other medium of thought expression" constitutes the object infringed.[13] These formulations show that national legislatures directly designate documents and seals as the material objects affected by criminal conduct, through which the protected interest is harmed.

The above-mentioned functional legal attributes explain why documents and seals are the material objects of criminal conduct. According to German civil law doctrine, an Urkunde is not just a sheet of paper; it is "a medium of thought expression affixed to a carrier with evidentiary capacity and guarantee of origin". More specifically, it serves both evidentiary function and function of guaranteeing/authenticating origin.[14] These two functions are exactly what are denied or undermined when a document is forged or a seal is counterfeited.

[11] Ho Chi Minh City University of Law (2022). *Vietnamese Criminal Law Textbook – General Part*, Hong Duc Publishing House, p. 108.
[12] *Strafgesetzbuch*, §267, *supra* note 6.
[13] *Code pénal*, art. 441-1, Légifrance, *supra* note 8.
[14] Jescheck & Weigend (1996), Lehrbuch des Strafrechts (*supra* note 7) 18.

In the case of the criminal act, the abstract idea of "trust" is not directly affected but the very instruments used to secure this trust are attacked.

Thus, in consideration of its legal function, documents and seals are the tangible components that directly perform the criminal act.[15] But if the law is concerned with safeguarding public confidence in authenticity, the law can do it best if it is able to protect, in principle, the very instruments through which the machinery is realized, i.e., documents and seals. This requires recognizing them as the direct objects of criminal conduct, and is consonant with the theoretical underpinnings of criminal policy.

2.3 The Role and Legal Value of Seals and Documents in Safeguarding Authenticity and Public Trust

Seals and documents are used not only to prove and authenticate claims made in legal relations but also to represent legal authority and reliance on a written instrument. The social value of validity is maintained by the legal effect.[16] In civil law, seals guarantee the truth and reliability of information and transactions. While the common law might largely rely on testimony and judicial precedents as evidence, civil law emphasizes material instruments that have probative (and guarantee) purposes in legal and administrative life.[17] A document also fulfils the guarantee task as we observe in the German criminal law: a document is not just written documents with pieces of information but should attest the origin, time of creation, and resistance to arbitrary alteration for it to stand up against unfettered manipulation.[18]

In France, forgery *(faux)* is classified as one of the criminal offences "against public trust" *(confiance publique)* in Article 441-1 of the *French Code pénal* (discussed with regard to France by Parry du Rue du Parme). The latter provision implies that civil law regimes see documents as independent legal evidence, where forgery not only contravenes individual rights but also public confidence in the rule of law. Forged documents threaten authenticity and the authority of the issuing bodies and public confidence in the system. Likewise, the seal, as the organizational 'signature', is vital to legal reliability, as an authentication of origin, of a document's validity.

In Vietnam, Decree No. 99/2016/ND-CP on the management and use of seals, together with the 2015 Criminal Code (as amended in 2017 and 2025), recognize the seal as a legal emblem of agencies and organizations that is

[15] Wessels, J., Beulke, W., Satzger, H. (2019), *Strafrecht AT*, C.F. Müller.
[16] Roxin (2006). *Strafrecht Allgemeiner Teil*, Band I, C.H. Beck, p. 256.
[17] Wessels, Beulke và Satzger (2019). *Strafrecht Besonderer Teil I*, C.F. Müller, p. 259.
[18] Wessels, Beulke và Satzger (2019). *Strafrecht Besonderer Teil I*, C.F. Müller, p. 259.

strictly protected by law.[19] When a seal is forged or misused, such conduct directly infringes upon the authenticity of the document and indirectly disrupts the administrative order.

With electronic documents and digital seals being commonplace nowadays, they have taken on added importance in preserving legitimacy and public trust. For example, in the context of electronic certificates under Indonesia (2008 ITE Law), Zulki Zulkifli Noor discusses the red flags and the potential threat to fraud.[20] This reinforces the need for strict protection of either seals or documents, be they paper ones or electronic ones, by the law to protect public confidence.

Seals and documents are essential in maintaining authenticity and trustworthiness of the legal structure. A shared feature both in Germany and France is the consideration that documents and seals are considered things with evidentiary functions as objects. The original material of these items (documents and seals) and of such objects (documents and seals) which are subject to such fraud in themselves have immediate adverse consequences against protected legal interests. Thus, documents and seals in civil law systems have been established not simply as means of administration, rather, they provide crucial legal frameworks to promote transparency and the confidence of the legal regime as a whole. Counterfeit in such instruments causes damage that goes beyond individual interests, but also involves harm to the social trust that supports legal validity, which must fall within the protective framework of criminal law.

3. Criminal Law in Vietnam Regarding Forgery and the Use of Documents and Seals

3.1 The 2015 Criminal Code's provisions (as amended in 2017, 2025)

The Vietnamese Criminal Code of 2015 (as revised in 2017 and 2025) contains extensive rules that deal with the acts of forging and using seals and papers of an agency or organization. The Code essentially focuses on two sets of provisions: (i) the offense of *forging* or *using* agency or organization seals and documents (Article 341), which applies to all subjects; and (ii) offenses

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[19] *Decree No. 99/2016/ND-CP* on the management and use of seals, art. 3.1: "Seal is a special means which is registered, managed and used by the competent state authorities to be affixed on documents and papers of bodies and organizations or titles of the state".

[20] Zulki Zulkifli Noor (2024). "Proof of the Legal Power of Electronic Certificates against Criminal Acts of Forgery*", Journal of Law, Politic and Humanities*: 2571–2575; https://doi.org/10.38035/jlph.v4i6.846

relating to acts of *falsification* committed in the course of official duties by persons holding positions of authority (Article 359).[21]

3.1.1 Article 341 – The offense of forging seals and documents of agencies and organizations

The 2015 Criminal Code (as amended in 2017 and 2025), Article 341, establishes two offenses: the offense of *forging* seals or documents of agencies and organizations, which refers to acts of fabricating seals, documents, or other papers of agencies and organizations; and the offense of *using* forged seals or documents of agencies and organizations, which refers to acts of using such forged seals, documents, or papers to carry out unlawful conduct. The offence is divided into 4 components: the *protected interest* (object), the *objective* element, the *subjective* element, and the *subject* of the offense.

The first element under Article 341 is the administrative order, specifically the proper functioning and credibility of agencies and organizations, as well as the lawful rights and interests of agencies, organizations, citizens, and the public trust in the authenticity of documents and seals. Although fraud or forged document is not usually an assault on a person's property right (other than the act of fraudulent conduct), it impairs the evidentiary function and the guarantee of origin of certificates of official state administration and legal relations. This offense is focused on the seal, document, or other papers of the agencies and organizations in question. A seal is an instrument set, registered, and managed by a competent state authority, such as seals bearing the National Emblem, seals with symbols, seals without symbols, and which may be wet seals, embossed seals, miniature seals, or wax seals.[22] For official documents and other papers, they are issued by state agencies, social organizations, economic organizations, or socio-political organizations, such as driver's licenses, passports, birth certificates, or social insurance books.

The *second* component relates to the objective elements: (i) *Forging seals and documents* of the agencies and organizations is a crime, established only through its creation or alteration. The various examples are engraving a fictional seal, forging papers in the name of a real or imaginary body, or tampering with genuine paper. Forgery is inherently a threat to authenticity and public credibility, even without use. (ii) *Using forged seals or documents*, is a formal crime itself, constituted by presenting or exploiting a counterfeit

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[21] For further analysis of the relationship between Articles 341 and 359 of the Vietnamese Penal Code, see: Canh, Tran Tuan (2025), *supra* note 9.

[22] *Decree No. 99/2016/ND-CP* on the management and use of seals, art. 3.1, *supra* note 19.

as genuine to produce legal effects; for example, applying for a job using fake diplomas or submitting forged licenses. Irrespective of whether the user achieves their goal or not, the crime is committed upon the act of use.

Thirdly, the subjective element that refers to the *mens rea* of the offence, refers to direct intent of the perpetrator, i.e., the awareness of the forgery or the use of forged seals or documents. The purpose of gaining benefits is not required because the intentional performance of the act is sufficient for criminal liability. Motives can vary in effect, from economic considerations (fraud/asset theft) to political/administrative motives (falsification of the records for entry (employment/admission)). These purposes do not specify the crime, but impact the evaluation of social jeopardy and sentencing. With regard to negligence, a person who does not know that a document is forged does not commit a crime, although civil or administrative liability may apply.

With regard to the *fourth* component, i.e., the subject of the offence involving (forgery) or the use of seals and documents of agencies and organizations is an ordinary subject, any person who is fully capable of criminal liability and has attained the age of 16 or older is liable. This covers persons outside or within agencies or organizations as well as those functioning in state institutions.

3.1.2 Falsification in Office: Article 359 of the 2015 Criminal Code, as amended in 2017 and 2025

Article 341 of the Criminal Code governs acts of falsification and using seals and documents of agencies or organizations perpetrated by any individual, and Article 359, on the other hand, establishes a more detailed scope and criminalizes falsification conducted by persons that hold an official position or authority in the undertaking of their duties, namely the offense of falsification in office.

The protected interest of the offense:

The offense of falsification in office, as it relates to the act of producing and disseminating falsified documents, adversely affects the activities and reputation of agencies and organizations. It also causes administrative disruption. Article 341 protects public confidence and the credibility of documents, and Article 359 safeguards the integrity and transparency of official action of persons in authoritative posts. This means that the protected interest of such an offense has a 'dual' nature, covering administrative order and the integrity of official functions.

The objective element of the offense:

the objective act of falsifying by making use of official positions of office manifests itself in the abuse of authority or position used to change or falsify the content of documents or the creation or circulation of falsified documents for personal benefit or other improper motives. The main difference from Article 341 is that the falsification is essentially related to the official position or authority of the offender, making the whole conduct much more serious. Making or publishing falsified documents in office gives the false impression of legitimacy, which lends these fraudulent acts special persuasive power, thereby damaging administrative order and trust in governmental mechanisms with serious consequences.

The subjective component of the offense:

This is an offence committed with direct intent since the perpetrators know that the act is illegal and breaches the integrity of the duties provided to them. Unlike Article 341, intent is a necessary element of the subjective requirement in addition to motive. Motive may be an internal driving force for an office-holder to dishonestly enter into or issue a false document; the offense is committed only when such conduct is out of self-interest or some other personal improper motivation. This is a critical distinction from the provision under Article 341.

The subject of the offense:

The subject of falsification in office *specifically refers to* persons holding positions of authority within state or non-state agencies and organizations. This is the fundamental difference from Article 341. The requirement of a special subject reflects a stricter criminal policy, as the offender not only violates criminal law but also betrays the official duties entrusted to them. Notably, where a person without official authority participates in producing or issuing falsified documents together with an office-holder, the former may be prosecuted under Article 341, while the office-holder will be prosecuted under Article 359, thereby ensuring differentiation of criminal liability.

Article 341 of the Criminal Code relates to the acts of falsifying and using seals and documents of agencies or organizations made by any individual, whereas Article 359 provides a more focused view by prohibiting falsification committed by persons who have a formal position or authority in relation to the performance of their duties; that is, the offense of falsification in office.

3.2. Judicial practice in Vietnam: Challenges, difficulties, and trends in resolution

The practical use of Vietnamese criminal law on offenses of forgery and forged means of seals or documents creates conflicts and miscommunication in the treatment of the relevant cases. Even if the 2015 Criminal Code was amended in 2017 and 2020, Articles 341 and 359 are not revised. It is to be noted that certain cases are posing the challenges to the enforcement and administration of judicial rights. The following difficulties highlighted below (3.21 to 3.2.3) are commonly identified.

3.2.1 Cases where the offender forges but does not use documents

Article 341 identifies forgery itself as a completed offense irrespective of its subsequent use, because it directly violates the administrative management order. Yet, disputes arise as to whether forgery is still constituted when it is committed as part of the preparation for another criminal offence. Another question is whether a person who employs or persuades others to make forged documents should be responsible for both forgery and for using those documents, or if they are only liable for using them. In practice, there is significant variation in court rulings, for instance when similar practices were not subject to the same legal treatment:

In *Judgment No. 77/2025/HSST*, dated May 15, 2025, of the People's Court of Duy Tien Town, the case involved Ha Nam Province, Vietnam:[23] Luong Ngoc C, Chu Phu D and Nguyen Van T (who were employees of Company A). C sustained a traffic accident and broke his leg on November 30, 2022. Later, C planned to apply for a medical leave certificate so that he could claim social insurance benefits. C directed D to visit the ward health station on March 6, 2023, to obtain a medical leave certificate for social insurance. The certificate was issued when C signed on behalf of D as the patient. D then submitted a social insurance claim to the firm for benefits using this certificate. On March 14, 2023, C asked T to go to the ward health station and obtain a medical leave certificate in the same way previously negotiated with D so that benefits could continue to be collected. T obtained the certificate to claim social insurance benefits and signed on behalf of C in the patient's position. This was discovered, and as a result, C, D, and T were charged with the felony of utilizing falsified agency or organization documents.

3.2.2 Forgery to commit other crimes, especially fraud to appropriate property

When using fake seals or documents as an instrument of fraud a question arises whether such a person is liable under the criminal offence of the forgery of seals or documents (Article 341) or whether it is merely considered as a method of committing fraud (Article 174). Judicial practice shows inconsistent standards. The two acts have been treated as distinct crime offenses, the same as Articles 341 and 174 are applied, while other courts

[23] Supreme People's Court, *Official Electronic Portal for the Publication of Judgments and Decisions of the Courts*; available at: https://congbobanan.toaan.gov.vn/2ta1831666t1cvn/chi-tiet-ban-an, last accessed: 20/01/2026.

decided that the forgery was only a tool for the commission of fraud and the conviction only involved the criminal liability for fraud.

The recent view from the Supreme People's Court indicates the difference between the two: to the extent that the forgery is independent and capable of causing social harm on its own (for example, mass production of fake documents), Article 341 will also apply; to the extent that the forgery is for a minor purpose, only serving a particular fraud, it should be treated as a method within the fraud offense. The following case illustrates this point.

In *Judgment No. 34/025/HS-ST*, dated June 6, 2025, by the People's Court of Chau Thanh District, Dong Thap Province, Vietnam:[24] Nguyen Van T was listed as the owner on a Land Use Rights Certificate in Province D. In 2020, T transferred this land use right to S, who then used the certificate as collateral to borrow 450,000,000 VND from a bank. By 2022, S could no longer repay the bank, so he transferred the land use right back to T for 420,000,000 VND. Since S did not have enough funds to pay off the bank to release the certificate, S remained the registered owner, while T paid monthly interest to S so that S could settle the bank debt. In September 2023, knowing that H wanted to buy land to build a house, T negotiated with S to transfer the land use right to H for 480,000,000 VND.

However, T did not have enough funds to repay the bank to lift the mortgage and complete the transfer procedures. Therefore, T drafted a contract and requested H to sign and stamp it in advance. Then, T used a computer and photo-editing software to cut and paste images of fingerprints, notary office seals, and the notary's signature onto the contract. He printed the forged contract at a copy shop, forged the notary's signature, and gave the contract to H. Trusting the contract to be genuine, H transferred the full amount to T, and later discovered the fraud. The case was reported, and T was convicted of forgery of seals and documents of an organization (Article 341 of the Criminal Code) and fraud to appropriate property (Article 174 of the Criminal Code).

3.2.3 The case of both forgery and use of forged documents

In many criminal cases, the same individual both directly forges and subsequently uses forged documents. The question is whether this individual is criminally liable for two separate and independent acts (forgery and use),

[24] Supreme People's Court, *Official Electronic Portal for the Publication of Judgments and Decisions of the Courts*; available at: https://congbobanan.toaan.gov.vn/2ta1886920t1cvn/chi-tiet-ban-an, last accessed: 20/01/2026.

or whether these acts should be subsumed under a single criminal offence. Article 341 of the Vietnamese Criminal Code encompasses both forms of conduct ("forgery" and "use"), and therefore it is sufficient to determine a single offence without separating them into two distinct crimes. However, at the sentencing stage, the court may consider it an aggravating circumstance where the defendant has committed multiple acts concurrently, thereby increasing the degree of danger to society.

In *Judgment No. 61/2025/HS-ST*, March 31, 2025, made by the People's Court of Ninh Kieu District, Can Tho City, Vietnam:[25] Nguyen Huu P had a good knowledge of Spanish, but he did not meet the requirements to submit an application for an international tour guide card due to lacking a university degree. P contacted a person (who did not reveal his identity) and provided personal information as well as a copy of his ID card to have a fake set of documents made for an international tour guide card at the price of 35,000,000 VND. About two months later, P received a collection of documents in the name of Nguyen Huu P that included an original university diploma in Spanish language, a professional international tour guide certificate, and a tour guide card. After receiving these documents, P held them and never utilized them.

In 2015, the tour guide card expired and P wished to return to being a tour guide and contacted L for professional training linkage. L requested P to provide either the original or a certified copy of the university diploma to complete the file. Afraid of detection, P provided a photo of the diploma on his phone, paying L 1,000,000 VND to help with the procedures. After finishing the training course, he received a professional international tour guide certificate and a certified copy of his university diploma from L, which he used to apply for an international tour guide card, but was detected. According to Article 341 of the Criminal Code, P was convicted of two offenses: the crime of forging seals and documents of an agency or organization, and the crime of using forged seals or documents of an agency or organization.

There are more cases in the cyber world such as the forging of electronic data, digital signatures and digital certificates. Existing law (Article 341 of the Criminal Code) continues to refer to "seals and documents of agencies or organizations" but the definition of 'digital documents' and 'electronic signatures' is not defined. In reality, many cases have been documented

[25] Toà án nhân dân tối cao, *Trang thông tin điện tử công bố bản án, uyết định của Toà án,* xem toàn văn bản án: https://congbobanan.toaan.gov.vn/2ta1878104t1cvn/chi-tiet-ban-an, last accessed: 21/01/2026.

concerning the use of forged electronic certificates, QR codes, or digital data; the use of electronic applications for making fake documents for the purposes of a transaction. Therefore, there is the need to carefully examine whether such documents are 'documents' according to Article 341 or the equivalent of any other IT issues (including Articles 289 and 290 of the Criminal Code). This is even more crucial in the digital age.

Likewise, it is hard to distinguish between forgery in official duties under Article 359 and forging or using forged documents (Article 341). In reality, such a situation comes with problems, namely that a holder of institutional power has to commit the crime of forging documents and then using the means of manufacturing them in their job. The present approach is: If the act falls within the scope of an individual's official position or authority, the act should be prosecuted under Article 359 (special subject); if the act proceeds outside the scope of official duties, then it should be prosecuted under Article 341. But the nature of 'within' duties compared to 'outside' duties can be blurred, contributing to differences over what would be the offense.

The biggest challenges are defining the difference between 'forging' and 'using', dealing with forged documents that are used to commit other crimes, and resolving digital scenarios. The inconsistency that characterizes the offense and sentencing shows the need for further instruction and legal reform to achieve the uniform and effective application of Article 341.

4. Overview of Comparative Experience in Germany, France and Japan

As globalization and the speed of electronic transactions increase, the cases of forgery and forged seals or documents are becoming transnational that are not confined to national boundaries. Consequently, comparative experience is significant. Germany, France, and Japan are chosen for the comparative analysis because they are part of the civil law tradition (same as Vietnam), with which one can meaningfully compare the doctrinal basis.

Moreover, German and French criminal law have had a fundamental influence on modern theories of forgery as regards the protection of authenticity and public trust, while Japanese criminal law reflects a successful reception and adaptation of the continental models within the context of Asian legal practices. For this reason, there are well-organized and appropriate reference systems in these legal systems which give well-developed reference frameworks for considering and improving Vietnamese laws on the forgery of seals, documents, and papers.

4.1. French criminal law

Articles 441-1 through 441-8 of the French Penal Code establish a comprehensive legal framework for the offense of forgery. As mentioned above, forgery can be summarized as falsifying the truth in a document or any substance that records thought, intended to prove a fact or a legal right, and which may cause harm.[26] Forgery itself and the use of forged documents are punishable by law, with maximum prison sentences of three years and a fine of up to 45,000 Euros.

Article 441-2 provides aggravating circumstances for forgery or the use of forged administrative documents such as identity papers, passports, permits, and certificates issued by state authorities. Penalties may increase up to five years, and up to seven years if the offence is committed by a public official, if there are repeated offenses, or if the act is done to facilitate or conceal more serious crimes.[27] This shows the special protection French law grants to documents issued by public authorities closely related to personal management and administrative order.

Article 441-6 of the French Penal Code penalizes the unlawful possession or acquisition of administrative documents and fraudulent declarations in order to gain state-issued certificates or benefits.[28] In particular, this legal provision creates a specific offense concerning attestations and certificates by delineating three forms of act: (i) producing false attestations, (ii) falsifying otherwise valid attestations, and (iii) using forged attestations.[29] The initial punishment can be up to one year imprisonment and a fine of 15,000 Euros, which can extend up to three years and 45,000 Euros if such a crime is detrimental to the state treasury and for being used in exchange for residency permits or for avoiding deportation.

These legal provisions clearly include: (i) a general definition and scope (Article 441 1); (ii) differentiation based on the evidentiary value of documents (administrative papers, notarized documents, certificates, etc.); (iii) a wider scope of acts of possession, provision, use, or misappropriation; and (iv) an application to identity and immigration documents. Unlike Vietnamese law, the French Criminal Code does not impose a separate offense *per se* for forging seals. Rather, a seal is viewed as a crucial part of the "document" *(écrit)* of evidence value. Forgery is defined in Article 441-1 of the Code pénal as an act of falsifying truth in a document or in any medium

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[26] *Code pénal*, art. 441-1, Légifrance, *supra* note 8.
[27] *Code pénal*, art. 441-2, Légifrance, *supra* note 8.
[28] *Code pénal*, art. 441-6, Légifrance, *supra* note 8.
[29] *Code pénal*, art. 441-7, Légifrance, *supra* note 8.

that serves an evidentiary function, and stamped impressions, seals, and signatures in general constitute elements with legal validity and persuasive power attached to a document.

Thus, the manufacture or adoption of a forged seal for the purpose of verifying administrative documents constitutes forgery or the use of a public document *(faux en écriture publique),* and carries heavy punishment under Article 441-2. Forgery or the unauthorized use of official State seals *(sceaux officiels de l'État)* may also be prosecuted under specific provisions in the Code du patrimoine which protect the integrity of national symbols. This illustrates that (unlike Vietnamese Law), French law establishes seals as an integral part of the protection of document authenticity and public goodwill and not as an autonomous or independent entity.

4.2. German criminal law

The offense of document forgery (Urkundenfälschung) is regulated under §267 of Germany's Criminal Code (StGB). Paragraph 1 of this provision states: "Whoever, with the intent to deceive in a legal transaction, manufactures a forged document, falsifies an existing document, or uses a forged document as if it were genuine, shall be punished with imprisonment of up to five years or a fine" (26).[30] This provision demonstrates that the structure of the offense involves: (i) creating a forged document, (ii) altering the content of an existing genuine document, and (iii) using a forged document as if it were genuine. This approach indicates that German law places great emphasis on the integrity and authenticity of documents, while closely linking the act of forgery to the intent to deceive within a legal relationship.

Urkunde (document) is a key element in defining the scope of document falsification in German criminal law. Wessels, Beulke & Satzger state that the attributes of a document must be (i) the expression of human thought, (ii) attachment to a material medium, and (iii) a function of proof and authentication *(Beweis-und Garantiefunktion)*.[31] Thus, only those handwritten documents that perform an evidentiary function within legal transactions and allow clear identification of the issuing party fall within §267 StGB's ambit. Accordingly, actions which undermine a document's authenticity or evidentiary value are considered infringements upon the object of the offense.

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[30] *Urkundenfälschung,* §267.1, *supra* note 5, full text: "Wer zur Täuschung im Rechtsverkehr eine unechte Urkunde herstellt, eine echte Urkunde verfälscht oder eine unechte oder verfälschte Urkunde gebraucht, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft".

[31] Wessels, Beulke & Satzger (2019). *Strafrecht Besonderer Teil I,* C.H. Beck: 615 - 617.

The legal interest of the offense covers more than a person's rights while the transaction proceeds. In general, it aims at maintaining the public trust in the authenticity of documents, on a day-to-day basis, in social life. Falsification is inherently risky because it destabilizes the trust that is established in the authentication system in general even if the actual effects have not been felt by those specific parties. Jescheck & Weigend further state that, falsification as public concern, is not only about the "creation of a counterfeit form" but also about the "persuasive power" generated by the forged document within the legal sphere, which also allows the danger to be attributed to the willingness to accept that the forged document would be legitimate.[32] This is a strong theoretical underpinning for implementing a strict and rigorous regulation of document forgery under German law.

In the German criminal law, the traditional crime of document forgery is regulated under §267 StGB, which originally only covered "Urkunde" in the narrow sense, that is, documents related to a tangible medium. But the emergence of digital technology necessitated an extended protection to include electronic data with evidentiary functions. German lawmakers have thus enacted specific provisions, namely §269 and §270 StGB. Electronic document falsification is covered extensively under §269 StGB (Falsification of data with evidentiary value). These provisions consider electronic data that have evidentiary purpose in legal transactions, as protected in the same way as traditional paper documents.

Anyone who creates false data, modifies real data to distort its evidentiary value, or presents the false as true can face up to five years' imprisonment or a fine. Where the deception involves manipulating legal transactions (by entering erroneous or tampered information in a processing system, for example, resulting in legally significant outputs), §270 StGB (Deception in legal transactions using data processing) shall apply. This approach shows that German law considers "electronic document forgery" as a separate offense, but as an offense based on the principle of functional equivalence. All information, whether physical or digital, which performs the relevant evidentiary role is treated effectively the same as if it were an equivalent of a more traditional document. This is important, because it further guarantees German criminal law to continue adapting itself to the digital future.

[32] Jescheck & Weigend (1996), Lehrbuch des Strafrechts (*supra* note 7) 611.

4.3. Japanese criminal law

In the Japanese Penal Code *(Keihō)*, crimes concerning the forgery and use of documents and seals are embodied in Chapter XVII - Offenses Concerning the Forgery of Documents and Seals (Articles 155 - 161).[33] These provisions make a clear contrast between public and private documents and this reflects the different degree of social harm from forgery. Article 155 of the Keihō regulates forgery or alteration of official documents as well as the manipulation of forged official documents. In this respect, public documents are those texts and papers issued by state organs or officials under their jurisdiction that are capable of having official evidentiary value. Forging these documents not only violates rights, but it also damages the integrity, credibility and trustworthiness of the public structures, along with the legal system. Therefore, the penalties are very severe and result in more prison sentence than the forgery of private documents.

Article 159 of the Keihō prohibits the forgery or alteration of private documents and the use of forged private documents. Private documents (such as contract or receipt) pertain to documents or papers of individuals or private organisations which are not registered with the state but still have legal significance in transactions. The fabrication of private documents primarily infringes the interests of related individuals or businesses and indirectly affects social order. These offenses carry lesser penalties than the forgery of public documents thereby indicating the lower level of social harm. This distinction reflects a commonly adopted criminal logic in Japan: public documents are protected as public institutions and as the pillars of state administrative order and thus make forgery particularly serious. Yet, private documents are also protected because they entail criminal intervention to safeguard confidence in civil and commercial relations.

In Japan, the Penal Code *(Keihō)* had only covered the forgery of conventional paper documents and seals (Articles 155-161). However, along with the development of information technology and electronic transactions, the law further embodied Article 161-2 in order to cover electronic records with legal evidentiary value. Article 161-2 creates a systematic social response towards digitalization in Japan. Since electronic transactions are replacing classic paper-based documents, solely protecting paper and seals would lead to a "legal vacuum" thereby causing gaps in the legal protection against electronic data forgery.

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[33] *Keihō; Available at:* https://www.japaneselawtranslation.go.jp/en/laws/view/3581/en#je_pt2ch17at2, last accessed: 20/01/2026.

Thus Article 161-2 bridges this divide by providing for the equivalence of evidentiary value in electronic and paper documents to establish a homogenous landscape within criminal law. It includes not just the forgery and alteration of electronic data, but also its usage in transactions. This corresponds to the Continental European legal framework that considers ‘electromagnetic records’ as direct objects of criminal offenses. The provision preserves the distinction between public and private electronic documents: data issued by state authorities (e.g., electronic permits, digital certifications) are more strictly protected than private electronic data (e.g., electronic contracts). This continues the logic of Articles 155 and 159 of Japan’s Penal Code (Keihō) and it emphasizes the particular importance of safeguarding the credibility of public authorities.

Japan's approach here is one of the first and most sophisticated legal procedures to criminalize the forgery of electronic data. It carries intrinsic value for the legal system in Japan and serves as a comparative perspective to countries (including Vietnam) still debating whether such electronic data should be considered ‘documents’ under criminal law. This is one clear example of the progression in legislation to widen the term forgery offense from ‘paper documents’ and include ‘digital records’ according to their evidentiary purposes.

In so doing, Japanese criminal law sets up a multi-layered protection regime for public documents, private documents, and seals (both conventional and electronic), and it emphasizes the important part played by public trust in the method of authentication. This distinction is important when contrasted with French and German criminal laws, which tend to emphasize the roles of ‘proof’ and ‘guaranteeing authenticity of origin’ of documents whether public or private.

5. Discussion and Comparative Analysis

5.1. Similarities and differences between Vietnamese law and selected civil law jurisdictions

The social hazards of falsifying or using forged documents or seals result from the loss of public confidence and the legal order, which are core aspects of state governance and civil transactions. In the four legal systems highlighted above (Vietnam, Germany, France and Japan), documents and seals are not simply seen as physical evidence, but rather as mechanisms to ensure legal validity. However, there are significant distinctions between Vietnamese criminal law and the three legal regimes. Article 341 of the Vietnamese Criminal Code criminalizes the falsification and use of seals, documents, or papers of ‘agencies or organizations’. ‘Agencies or organizations’ in this context includes not only state bodies, but also political-social organizations, socio-professional associations, and economic entities (whether state-owned or private) established in accordance with the law. It reflects a broad protective scope intended to encompass all entities vested with the authority to issue or use official documents in social activities.

But Vietnamese law does not contain explicit provisions for purely private or individual documents, including handwritten contracts or personal confirmations between individuals if they are not associated with an agency or organization. By comparison, French, German, and Japanese criminal laws make explicit distinctions between public and private documents. In France, forgery and the misuse of forged documents in the French criminal law are all based on Articles 441-1 to 441-8 of the Penal Code, providing not only for the protection of public instruments but also for the protection of private documents where forgery might infringe legitimate rights or undermine public trust.

Germany follows a similar approach in §267 StGB on document forgery, which covers a wide spectrum of documents, including private instruments if they are used within social or legal relations. Japan also classifies public documents (both administrative and official) and private documents (civil and commercial) very precisely and defines its punishment for each. This approach helps to make forgery a far wider concept, making it not only the issue of whether a document originates from an 'agency or organization', but the function and role of providing protection to legal interests and social trust.

Another significant distinction is the regulation of electronic papers and digital signatures. Although France, Germany, and Japan have laid down specific provisions concerning these instruments for many years, Vietnamese criminal law has yet to make independent and exhaustive provisions in relation to them. In France, falsification of electronic data with evidentiary value is treated the same as forgery of paper-based documents. In Germany, §269 and §270 StGB govern 'forgery by technological means'. In Japan, under Article 161-2 Keihō, forgery of electronic documents is expressly made a crime. However, Vietnam still works primarily under an expansive Article 341-style interpretation in judicial practice, with no explicit statutory basis. That leaves a legal gap in the wake of radical digital transformation.

Vietnamese criminal law shares common features with France, Germany, and Japan with regard to its commitment to respect the authenticity of documents, papers, and seals. Nevertheless, Vietnam has substantial deficiencies which includes its inability to clearly differentiate between public and private documents and lack of comprehensive provisions for electronic documents. The other jurisdictions have established more elaborate and coherent systems, in contrast, and this offers important insights to Vietnam as it adapts its criminal law to the needs of a digital globalized society.

5.2. Requirements in the Context of Digital Transformation and International Integration

Fast-paced progress of the digital technology has been drastically changing the processes by which documents and seals get produced, used and authenticated. New technologies such as AI, deepfake, blockchain and others have positive effects, but also bring new risks of advanced forgery. Criminal law such as Vietnam's needs to be updated for the prevention and prosecution of forgery-related crimes, particularly considering the following four factors.

The *first* factor is the significant move from paper to electronic documents, electronic management, storage, and transactions. Although this makes for speed, cost, and integration, it also challenges criminal law which was originally built on 'paper' documents. Because electronic documents and other items of electronic information are not physical, they can be exchanged, changed, and deleted, the law ought to honour them as legal documents and put up the legal framework on how the law ought to handle forgery and illegal uses.

Secondly, the proliferation of new and contemporary digital signatures, electronic seals, and other new verification software perform functions that are similar to traditional signatures and seals, securing the intent, integrity, and origin in the digital environment. However, they are heavily dependent on technological infrastructure and certification systems and as such, they are susceptible to widespread breaches. Criminal law must therefore be open to protecting electronic devices of authentication and impose sanctions strong enough to deter and punish digital forgery.

Thirdly, Vietnam's criminal law should catch up with the risk of high-tech forgery such as AI, deepfake, and blockchain tampering. Now, with advancements in artificial intelligence (AI) and generative technologies (deepfake), falsified documents, images, voices, and videos can be produced to a degree of realism that renders them indistinguishable from genuine materials. Blockchain systems, once thought tamper-proof, are also open to tampering. The forms of high-tech forgery are also capable of sidestepping traditional protections, which can make detection and prosecution for this kind of crime more difficult. Vietnam's criminal law should accordingly be amended to make forgery through AI, deepfake or blockchain manipulation particularly dangerous and thereby consider them as serious (dangerous), and at times worse than, the fabrication of ordinary paper documents.

The *fourth* factor relates to the issue of proof and forensic examination in the digital environment. In traditional settings, document examination mostly depended upon physical methods such as handwriting analysis, ink testing, and seal authentication. In the digital space, however, the problem of establishing evidentiary methods becomes increasingly complex. They involve not only data forensics, but also need other data analysis and further require metadata verification and digital signature validation. Moreover, the system's logs must be taken into account and advanced digital forensic tools should be used. This requires increased technical capacity of prosecuting authorities, training of forensic specialists in electronic data, and mechanisms to work with digital certification authorities and technology service providers. Without these measures, proving electronic document forgery may become difficult thereby fostering consequences like impunity or false convictions.

6. Trends and the Way Forward for the Improvement of Vietnam's Criminal Law

The foregoing analysis, coupled with a study of concrete applications and selective adoption of legislative measures of France, Germany, and Japan, indicate the need to improve Vietnam's criminal legislation on forgery of seals and documents of agencies and organizations, as well as the use of such forged seals and documents. The way forward envisages the following avenues of focus.

6.1. The need to amend and supplement Article 341 of the Criminal Code

Three problems of Article 341 of the Criminal Code are identified based on the foregoing discussion and analysis: (i) it is hard to establish the limits of the offense where forgery is used for carrying out other crimes; (ii) the language used in law for 'documents' and 'seals' is restricted and does not include the digital sphere; and (iii) the elements of the offense are incomplete, lacking differentiation according to the degree of danger posed. As a result, in the context of digitalization, amendment of Article 341 is necessary for crime prevention and control. This author proposes the following amendments.

Firstly, there must be clarity of provision structure. Article 341 may be one provision for systematic coherence, but Article 341 has to be structured into two separate paragraphs: paragraph 1 can be devoted to acts of '*forgery*'; and paragraph 2 should deal with acts of '*use*'. This ensures the independent clarity of the constituent elements and avoids inconsistency in application.

Secondly, criminal liability must be separate, and there must be variation in the sentences upon conviction. *Forgery* is to be treated as a more serious issue, as it not only triggers the offense, but leads to multiple forged documents and jeopardizes the authenticity of social relations over the long term. *Use* is more context-specific (purpose, actual consequences), although it is dangerous. Therefore, the sentencing frameworks need to be flexible to ensure the principle of individualized criminal liability.

Thirdly, there needs to be more supplements on how to concur rules of offenses. The idea is that if the same person forges the same document, there is a single offense under Article 341; if the forged document is used in furtherance of another crime (for instance, fraud or money laundering), liability is assessed through the principle of multiple offenses. While this prevents overlap, it also guarantees an overall and fair punishment.

Fourthly, on the digital evolution front, Article 341 should be expanded to cover electronic seals, digital signatures, and any sort of electronic document. The law should also provide clear definitions of these terms to reflect not only paper forgery (as in the traditional practice), but it should also cover forms of technologically advanced forgery. This will enable the Criminal Code to reflect developments in practice and mitigate fraudulent conduct in cyberspace. A deeper analysis of this detail is provided in Section 6.2 (below).

6.2. Establishing clear legal definitions of "electronic document," "digital signature," and "electronic seal"

The lack of common, articulate terminology is one of the prominent challenges for Vietnamese criminal law regarding digital transformation. Although the Law on Electronic Transactions 2023,[34] the Law on Information Technology 2006,[35] and other sectoral instruments have initially given scope to terms such as 'electronic data', 'digital signature', and 'digital signature certification services', definitions and cross-references have not yet been rendered in the Criminal Code. This creates difficulties for law enforcement and judicial authorities in determining what constitutes the direct object of forgery, what qualifies merely as a tool, and what interests are being infringed. Therefore, the following are necessary to improve Vietnamese criminal law. The inclusion of and express reference to key terms in the Criminal Code or

[34] *Law Electronic Transactions,* No. 20/2023/QH15; Available at: https://thuvienphapluat.vn/van-ban/Cong-nghe-thong-tin/Luat-Giao-dich-dien-tu-2023-20-2023-QH15-513347.aspx, last accessed: 20/01/2026.

[35] *Law on Information Technology,* No. 67/2006/QH11; Available at: https://thuvienphapluat.vn/van-ban/Cong-nghe-thong-tin/Luat-cong-nghe-thong-tin-2006-67-2006-QH11-12987.aspx, last accessed: 20/01/2026.

the implementing procedures (indicated below) would create a single legal architecture so that Article 341 as well as the related provisions could be enforced transparently, consistently and productively in a digital context.

Firstly, a single legal definition of 'electronic document' under the Criminal Code is needed. Drawing on the German (Urkunde) and French (écrit) analyses, the determining factor is not the material medium but the functions of evidentiary value and assurance of origin. A kind of 'electronic document' should thus be formulated as: "Data expressed in electronic form, associated with a medium of storage or transmission, capable of reflecting intellectual content, bearing evidentiary value of facts, rights, or legal obligations, and enabling the identification of its issuer". This definition would not only be consistent with international standards (for example, the UNCITRAL Model Law on Electronic Commerce), but can enable full consideration of new forms of digital documentation.

Secondly, under the meaning of 'digital signature', it should be emphasized that it is not an 'electronic signature' in the general sense but an authentication and integrity guarantee based on PKI (public key infrastructure). Therefore, 'a digital signature' in the Criminal Code must as such, be, "a form of electronic signature made by secure cryptographic means that is uniquely associated with the signer and gives the assurance of the identification of the signer and the integrity of the electronic document." A legal definition that separates signing by hand and signing by device would directly enable forensic testing.

Thirdly, even though 'digital seal' has been recognized under the Law on Electronic Transactions 2023 and its implementing regulations in Vietnam, the Criminal Code remains silent on the subject. In practice, a digital seal serves to confirm the legal personality and the authority of an agency, organization or legal entity in the digital environment, similar to a seal on paper documents. Accordingly the expression may be formulated as: "A digital seal is a form of electronic data associated with an organization, agency or legal entity, created and authenticated through digital means, serving to certify the origin and authority of an electronic document".

7. Conclusion

This article has clarified the theoretical and legal bases for acts of forging and using seals and documents in the digital transformation phase, and provided an analysis of the constituent elements of the offence under Article 341 of the Vietnamese Criminal Code and related provisions. A comparative analysis with French, German, and Japanese law shows that although Vietnam has established a basic legal framework, it remains limited in its coverage of electronic documents, digital signatures, and digital seals. Furthermore, the consolidation of the two acts, ‘forging’ and ‘using’, into a single provision has led to considerable difficulties in judicial practice.

The discussion and analysis in this article indicate that seals and documents should be regarded as the direct objects of the offence, public trust and the order of state management should also become the protected legal interests. This will bolster the scientific basis for correctly identifying the elements of an offence. On a practical note, there is the need to reform Article 341: division of it into two separate offences (*forgery* and its *use)*, and to extend the offences in order to cover electronic documents, digital signatures and digital seals. The mechanism for digital forensic examination also marks a meaningful contribution to criminal proceedings.

Forgery and the use of forged seals, documents, and papers are progressively influenced by advanced technologies including artificial intelligence and other high-tech tools in a rapidly evolving digital environment. This has entailed more advanced and potentially automated modalities of forgery. Simultaneously, these offences are becoming visibly transnational, with criminal acts of forgery in one jurisdiction being performed while forged documents are used elsewhere. This leads to the conclusion that Vietnamese criminal law and criminal laws in various countries remain unable to effectively deal with the challenges of data forgery, digital identity fraud, and cross-border offences. Future studies should thus concentrate on specific high-tech forgery crimes, and strengthen international and transnational legal cooperation in order to work on protecting authenticity and public trust. ■

Cited References

Atadjanov RB (2021). "Analysis of Objective and Subjective Elements of the Crime of Document Forgery, Selling of Forged Documents, and Using Forged Documents". *The American Journal of Political Science Law and Criminology,* 3(5), 72-80.

Canh, Tran Tuan (2025). "Forgery of Seals and Documents of Agencies and Organizations for the Purpose of Fraudulent Appropriation of Property". *Sch Int J Law Crime Justice*, 8(11): 261-270.

Hadi KAA & Paino H (2015). "The Legal Overview on Falsification, Fraud and Forgery". *Procedia Economics and Finance,* (31), 581-586.

Ibusuki, Hiroshi (2019). *Keihō Gaisetsu*, Tokyo: Yuhikaku.

Jescheck, H.-H.; Weigend, T. (1996). *Lehrbuch des Strafrechts: Allgemeiner Teil*, Duncker & Humblot.

Jescheck, Hans-Heinrich (1988). *Lehrbuch des Strafrechts*, Duncker & Humblot.

Noor, Zulki Zulkifli (2024), "Proof of the Legal Power of Electronic Certificates against Criminal Acts of Forgery". *Journal of Law, Politic and Humanities.*

Roxin, Claus (2006). *Strafrecht Allgemeiner Teil*, Band I, C.H. Beck.

Simmel, George (2004). *The Philosophy of Money* (3rd edition, Routledge).

Wessels J *et al* (2019). *Strafrecht Besonderer Teil I*, C.F. Müller.

Laws and court decisions

Code pénal (French Penal Code).

Decree No. 99/2016/ND-CP dated July 1, 2016 of the Government on Management and Use of seals.

Keihō (Japanese Penal Code).

Law Electronic Transactions, No. 20/2023/QH15.

Law on Information Technology, No. 67/2006/QH11.

Strafgesetzbuchs (German Penal Code).

Supreme People's Court, *Official Electronic Portal for the Publication of Judgments and Decisions of the Courts*.

Vietnamese Criminal Code, No. 100/2015/QH13 dated November 27, 2015, the National Assembly, as amended and supplemented in 2017, 2024, and 2025.

Groundwater and Land Tenure Governance in a Post-conflict Setting in Ethiopia: Assessment, Regulation, and Reconstruction Frameworks

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Abstract

The interface of groundwater and land tenure governance is intricate, bundled with overlapping and contesting interests and reciprocal implications. The core issues in the interface relate to institutions, rules, actors, and the processes involved in making decisions and formulating law and policy frameworks. Research on the actors of water governance and examining the context, interactions, and implications is essential to analyse tenure governance. This article mainly explores the institutional, dimensional, content, and relational aspects of water governance in post-conflict settings within the selected case studies from Tigray Region. Besides, the structures, actors, and decision-making processes are explored with a view to indicating the policy options and strategies of reconstruction. The realities on the intersection of conflict-related factors, groundwater water and land tenure governance are explored through the qualitative research approach by triangulating the relevant data, primary and secondary sources, participants, and methods in the cases. The existing water governance, as a one-size-fits-all approach, is assessed to determine whether it promotes sustainable, efficient, equitable, and inclusive water governance during and in a post-conflict setting. The status of water allocation and utilisation, tenure security, and spheres of dispute settlement are also assessed. Policy options and helpful appraisal strategies are outlined based on the opportunities and challenges thereof. The existing opportunities, where Irrigation Water Associations (IWAs) and Water Committees can be revitalised and scaled up into similar cases and contexts, are indicated with specific suggestions on the way forward.

Keywords:

Conflict, administration, regulatory response, tenure security, dimensional interests, risks of insecurity, groundwater governance

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Contents

1. Background

Natural resource distribution, the balance in demand and supply, governance approaches, and the challenges arising from legal and policy frameworks result in disputes or conflict among the relevant actors, users and beneficiaries.[1] Land and water resources are either the cause of a conflict or the target of abuses in a post-conflict setting.[2] In most of the history or trends of conflicts in varying contexts, land and related resources are the drivers or triggers of conflicts.[3] Land and water resources are essential resources in investments and essential factors in any pre- and post-conflict analyses.[4] Groundwater resources are subject to lawful and unlawful, apparent or

Frequently used acronyms

AU	African Union
FDRE	Federal Democratic Republic of Ethiopia
IWAs	Irrigation Water Associations
TIRA	Tigray Interim Regional Administration

[1] Marie Chene (2017). *Natural resource management transparency and governance: A literature review focusing on extractive industries*, U4 Helpdesk Answer 2017:8, p.1.

[2] UN (2019). Guidance Note of the Secretary-General: The United Nations and Land and Conflict, UN-Habitat.

[3] Mathijs Van Leeuwen and Gemma Van Der Haar (2016). "Theorizing the Land–Violent Conflict Nexus". *World Development*, Volume 78, February 2016, pp, 94-104.

[4] P. Meur *et al.* (2006). *Conflict over Access to Land and Water Resources within Sub-Saharan Dry Lands: Underlying factors, conflict dynamics and settlement processe*s, GRET-FAO LEAD Final Report.

unapparent, direct or indirect grabbing and competitive utilizations in a post-conflict setting in varying contexts.[5]

Water is perceived as an economic, social, environmental, cultural good or a political tool towards other ends.[6] Research undertakings on groundwater and land tenure tend to dwell either on a few or some of the dimensions or perspectives.[7] The demand for groundwater is predicted to increase significantly over the coming decades.[8] Most water and land-related crises are caused by crises in governance approaches.[9] Conflict is another factor in the crisis of governance even though the governance dynamics can be affected by the plurality of interests, power and politics.

Governance implies management and regulation of the public good that goes beyond the centralised and monolithic nation-state.[10] Approaches in implementing the governance schemes also hold a central place on how to realize the overall objectives. The approaches can be bottom-up, top-down or the combination of the two that are manifested in the actual implementation and evaluation of governance.[11] In principle, the combination of both approaches may be advisable in water governance.[12] The existence of a governance vacuum during the conflict has aggravated the problem on top of the preexisting challenges before the conflict.

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[5] UNESCO (2021). The Role of Sound Groundwater Resources Management and Governance to Achieve Water Security, United States. Global Water Security Issues 3.

[6] Zbelo H. and Achamyeleh G. (2022). "Prioritization of Water Use Rights in Ethiopia: Exploring the Perspectives and Practices in the Governance of Awash River Basin". *Mizan Law Review* 16(1), 95-130.

[7] Stephen Hodgson (2016). "Exploring the concept of water tenure". *Land and Water Discussion Paper* 10 (Food and Agriculture Organization of the United Nations, Rome).

[8] Alberto Boretti & Lorenzo Rosa (2019). "Reassessing the projections of the World Water Development Report". *npj Clean Water* 2, 15 (2019).

[9] OECD (2011). *Water Governance in OECD Countries: A Multi-Level Approach* (OECD Studi-OECD, France).

[10] Zbelo Haileslassie (2019). "Promoting Federalism, IWRM, and Functional Approach to Water Governance under Ethiopian Water Laws". *Mizan Law Review*, Vol. 13, No. 3, pp. 384-418.

[11] See for example, Jean-Christophe Castella *et al.* (2007), "Combining top-down and bottom-up modelling approaches of land use/cover change to support public policies: Application to sustainable management of natural resources in northern Vietnam", *Land Use Policy*, Volume 24 Issue 3, pp. 531-545.

[12] OECD (2015). *OECD Principles on Water Governance*, Adopted by the OECD Regional Development Policy Committee on 11 May 2015, OECD Water Governance Programme.

Policy responses focus on assuring policy coherence, engagement of stakeholders, well-designed regulatory frameworks, the adequacy and accessibility of information, the existence of sufficient capacity, integrity and transparency.[13] In the context of emergency, the policy responses may further give due protection to the land tenure of the landholders and groundwater users. The attention to land tenure protection in all contexts is based on the legal or customary definition of rights, relationships, and it mainly promotes "…. tenure security, which refers to enforceable claims on land ..."[14]

In the context of agricultural investment, responsible governance of land tenure aims to reduce negative effects on local communities and natural resources.[15] In most cases, land tenure governance mainly falls under the responsibility of the state. While the state has the role of acting as a public trustee of water resources, land grabbing is seen as a challenge to states, especially in reconciling land demands. It is important to notice that some of the major factors that constitute incentives to investors to invest in a certain location are the availability of water on the land, its fertility and generally the green segment of the land.[16]

The land tenure governance in a post-conflict setting needs to avoid land grabbing, depletion and pollution of resources. It is expected to promote the pillars of governance, human rights to land and groundwater resources, justice and rule of law in resource allocation and utilisation. AU reconstruction policy underlines the significance of policy and legal frameworks and it states that "…. [k]ey to the realisation of Agenda 2063 is the achievement of its Aspirations" which propel the continent towards "An Africa of good governance, democracy, respect for human rights, justice and the rule of law" and "a peaceful and secure Africa".[17]

Under the 1995 FDRE Constitution, Art 40(3) of the Constitution stipulates that the ownership of land and its related resources (including water) is the common property of the State, nations, nationalities and peoples.

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[13] Zbelo Haileslassie (2023), *Water Governance and Use Rights Prioritization in Ethiopia* (PhD Dissertation, Bahir Dar University, Institute of Land Administration) DOI:10.13140/RG.2.2.24999.25763

[14] Emmanuel Kasimbazi (2017). *Land Tenure and Rights for Improved Land Management and Sustainable Development, Global Land Outlook Working Paper,* UNCCD.

[15] Darryl Vhugen (2016). *Responsible Governance of Tenure: a technical Guide for Investors, Governance of Tenure,* Technical Guide No. 7, FAO, Rome.

[16] Jennifer Franco, Lyla Mehta & Gert Jan Veldwisch (2013). "The Global Politics of Water Grabbing". *Third World Quarterly*, vol. 34(9) 1651-1675.

[17] African Union (2024), *Revised African Union (AU) Post-Conflict Reconstruction and Development Policy*. Available at: https://www.peaceau.org/

Among the specific water management-related laws, Article 5 of the FDRE Water Resources Management Proclamation 197/2000 stipulates that all water resources of the country are designated to be under 'public ownership' arrangements. In Ethiopia, there was a conflict between the Federal government and the then regional authority represented by the TPLF. The conflict had started in October 2020 and lasted until a cessation of hostilities and peace deal between the two parties in November 2023, convened in South Africa and mediated by the African Union.[18]

The spillovers of the conflict were visible and manifested in the acquisition and utilisation of land and groundwater resources in the region. In Tigray, the government structure and the previous water governance institutions have collapsed, and the issue of providing access and utilisation to safe and adequate water resources remains absent or inadequate. The problem also exists among multiple users or uses of water. Even though the water governance had defects even before the conflict, the post-conflict problems are graver and complicated. In *Mekoni*, a place where intensive agricultural investment is carried out, there were multiple institutions supporting water governance before the conflict. By now, the preliminary assessment indicates that the water forums, committees, irrigation water associations, and other actors may not remain functional.[19]

Most of the decision makers and experts unduly consider the restoration of the previous approach in addressing the problems and challenges in water allocation and utilization. However, there is the need to examine whether top-down, patrimonial, and non-equitable intervention can resolve current issues of water governance, sustainability, tenure security and dispute settlement. This article mainly endeavours to answer the following research questions: What are the conceptual and theoretical foundations of water governance in post-conflict settings to curb the consequences and problems of water governance? How is water governance, the institutions and rules set before and after the conflict? What are the institutional and organisational opportunities and challenges under the existing governance system in lieu of the assessment frameworks? What are the regulatory responses and structured dispute resolution mechanisms? What are the viable policy options of

[18] ReliefWeb (2025), Lessons Learned Report from the AU-led Peace Process for the Tigray Region of Ethiopia, available at https://reliefweb.int/report/ethiopia/lessons-learned-report-au-led-peace-process-tigray-region-ethiopia
Last accessed on February 20, 2025.

[19] They are now recovering slowly and trying to function in the governance of the land tenure and ground water sources two years after the Pretoria Peace Deal.

reconstruction[20] from the empirical evidence examined against the assessment frameworks and the theoretical foundations? This article examines policy options and strategies on post conflict water governance, assessment and reconstruction in Ethiopia-Tigray Region.

The research is mainly qualitative based on the nature of the problem, the nature of the research questions and the purpose of the research. Both descriptive and interpretive phenomenological approaches are used with a specific focus to the research questions. The study has employed 32 key informant interviews that involved community representatives and residents, water users (IWAs and water committees), investors, experts and administrators, judges, prosecutors, and direct observations were made by the researcher in collecting primary data from the three Weredas (namely Mekoni, Raya Azebo and Raya Chercher), zonal and regional administrative units.

In selecting the key informants, purposive and snow ball sampling methods are applied based on the criteria of selection aligned to the objectives of the study. Three case studies and cases of contexts (including water users) are used for data collection and analyses by triangulating the participant targeted population, sources and methods. The article is significant to redesign the interventions on land governance and development agendas and programs in a post-conflict conflict designed by governments at different levels.

The main focus of this article is primarily to investigate and explore the post-conflict water governance in comparison with what existed before the conflict. This is meant to assess the reconstruction or revitalization policies and strategies to balance dimensional interests and other dynamic needs in all water governance frameworks. The research is delimited to exploring groundwater and land tenure governance by highlighting the nexus between land and water use rights and it primarily focuses on water governance in the Tigray region.

[20] African Union, 2024 (*supra* note 17)
"Reconstruction: the (re)establishment of political order, institutions and productive capacity to create a base for sustainable development. Developmental interventions that not only seek to build or repair the damage or return to the *status quo ante*, but also address medium- and long-term needs and improvements in policies, programmes, systems and capacities to avert the recurrence of crisis and reach higher levels of employment and standards of living."

2. Conceptual, Legal and Policy Frameworks

2.1 Conceptual framework

Global comparative experience shows variation in water governance modes, approaches, functions, decision-making processes and related themes.[21] The level of achievement in integrating the functions, approaches, priorities, etc., under the umbrella of water governance in the Ethiopian setting needs due attention. There are challenges and queries in articulating the power and function of water administration, water management, water or land governance, etc. before and after the conflict in the Tigray Region. The post-conflict context has aggravated the challenges due to the collapse and destruction of the water institutions and infrastructures that have complicated the rights of individuals. The diagram indicates the conceptual framework of the discussion and analysis in this article.

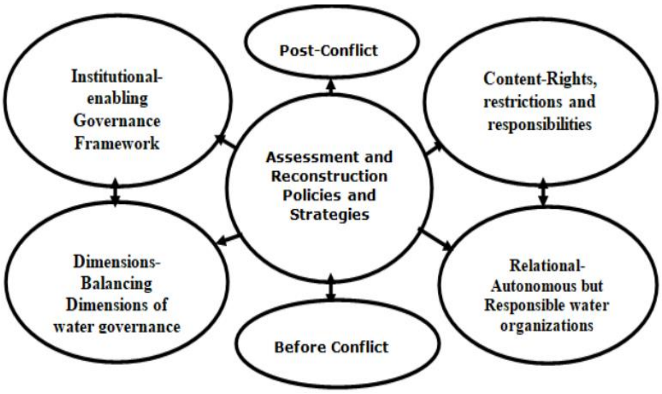

Fig. 1: Framework developed by the author

According to the Revised African Union (AU) Post-Conflict Reconstruction and Development Policy, reconstruction is defined as: "… the (re)establishment of political order, institutions and productive capacity to create a base for sustainable development." The Policy further notes that post-conflict developmental interventions "not only seek to build or repair the damage or return to the *status quo ante*, but also address medium- and long-term needs and improvements in policies, programmes, systems and capacities to avert the recurrence of crisis and reach higher levels of employment and standards of living".[22]

[21] Natalia Julio, Ricardo Figueroa & Roberto D Ponce Oliva (2021). "Water Resources and Governance Approaches: Insights for Achieving Water Security". *Water* 13(21): 3063. https://doi.org/10.3390/w13213063

[22] African Union, 2024 (*supra* note 17)

First, this article assesses the institutional framework and the status of enabling governance frameworks by addressing the rules and policy frameworks.[23] It also addresses the decision-making process and status of participation among multiple stakeholders and the public at large.[24] *Second,* it assesses the dimensional interests by addressing the economic, social, environmental and political dimensions and their balance in the post-conflict water governance framework.[25] *Third,* it assesses the substantive contents of the water rights, restrictions and responsibilities among the key actors, interested parties and decision makers. *Fourth,* it also assesses the relational exploration of the coordination, supervision, enforcement and taking compliance measures. The status, regulation and reconstruction possibilities of the themes at hand are examined in this article

2.2 Legal and policy frameworks in nutshell

Ethiopia has a federal state structure where the structures of the government are set at the Federal and regional levels. The FDRE Constitution enshrines the power of land administration to be exercised by the respective regional states in their own setting. These settings are, *inter alia,* manifested in some of the multimodal ways in approaching issues of water governance.

The most relevant international legal frameworks are the human rights instruments related to water and resources.[26] These frameworks include availability, accessibility, and affordability promoting the right to water-land, food, adequate standard of living, housing and other rights that are relevant to the right to life.[27] The international legal frameworks aspire to promote the right to life of individuals. There are also relevant instruments addressing crosscutting issues relevant to the theme at hand: gender, environmental,

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[23] Mechlem K. (2016). "Groundwater Governance: The Role of Legal Frameworks at the Local and National Level – Established Practice and Emerging Trends". *Water*. 2016; 8(8):347. https://doi.org/10.3390/w8080347

[24] African Union, 2024 (*supra* note 17). It defines human security including the human right to the right to participate fully in the process of governance; the right to equal development as well as the right to have access to resources and the basic necessities of life; the right to protection against poverty;

[25] Maria Jacobson *et al.* (2013). *User's Guide on Assessing Water Governance,* UNDP, available at https://sswm.info/sites/default/files/reference_attachments/1056-eng_user_guide_on_assessing_water_governance.pdf last accessed on July 12, 2023.

[26] Water Governance Facility (2012). *Human rights-based approaches and managing water resources: Exploring the potential for enhancing development outcomes*. WGF Report No. 1, SIWI, Stockholm

[27] Céline Dubreuil (2006). *The Right to Water: From concept to implementation*, World Water Council.

development and other dimensions supporting the full-fledged promotion, respect and protection from unnecessary abuse and violation of rights.

There are pertinent international guidelines and frameworks on land tenure governance that are directly relevant to the discussion at hand. The instruments include the 2030 Agenda for Sustainable Development (SDG), the New Urban Agenda (NUA), and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), the Framework and Guidelines on Land Policy in Africa (F&G), the Guiding Principles on Large-Scale Land-Based Investment in Africa (LSLBI Principles).[28] The guidelines and indicators need to be considered as minimum and regular frameworks applied in a non-conflict situation.

Ethiopia has specific (federal and regional) laws covering specific subject matter; i.e., water, land, forest, environmental etc. laws.[29] Land and related resources fall under the ownership of the state and the public at large.[30] The regional states have an exclusive power of administration and to collect land use and rent fees.[31] The Federal authorities have the power of supervision and management of water resources and this power is also delegated to regional states.[32] The land and water laws and administrations are dichotomized.[33] However, there is no specific water law that regulates ground water sources except the scattered provisions in the 1960 Civil Code.[34]

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[28] United Nations Human Settlements Programme (2017). *Land Governance: A Review and Analysis of Key International Frameworks* (UN-Habitat)

[29] See, for example, Eleonora Navasardova *et al.* (2018), “Codification of the Natural Resource Legislation in the Russian Empire”, *Journal of Advanced Research in Law and Economics*, ASERS Publishing, vol. 9(1), pages 183-193.

[30] The FDRE 1995 Constitution, Art 40 (2 and 3).

[31] The FDRE 1995 Constitution, Art 52(2) (D)

[32] FDRE Water Resources Administration and Management Proclamation No. 197/2000. Art

[33] Ethiopia has separate laws for land and ground water resources and different in urban and rural areas with a different application at Federal and regional levels.

[34] Article 1447 of the 1960 Ethiopian Civil Code generally considers underground water, along with waterways and lakes, as part of the public domain. Specifically, Article 1255 prohibits drilling on one's land without permission if the drilling exceeds 100 meters in depth, according to the Civil Code. The use and ownership of water are governed by provisions in Articles 1228-1256, as noted in the Civil Code. The Code also grants priority to the community, particularly for domestic use, in the usage of all water, according to Article 1237.

In terms of their application, the laws can be classified into two. *First*, the Tigray Interim Regional Administration (hereinafter TIRA) has claimed that the normal time laws shall not be applicable and after the conflict, it has promulgated specific land and groundwater-related regulations and directives.[35] One may question the status of such regulations and directives, in terms of legality, status, hierarchy, enforcement, interpretation, scope of application, possible remedies, etc. *Second*, the regular time laws are applied where there are gaps in the application of the conflict-sensitive directives. The application of the recent Federal Rural Land Administration and Utilisation Proclamation 1324/24 is hindered because of the directives.

In relation to the policy frameworks, Ethiopia does not have a harmonised land use policy. In the absence of a national land use policy, Ethiopia has a national water management policy.[36] The policy only focuses on themes of water management. The policy does not specifically address themes and issues of water governance. However, the policy indicates the necessity of participation and the decision-making process.

In relation to the water-land tenure or ownership rights, landholders and users have a holding and use right.[37] The allocation and acquisition mechanism varies in the rural and urban settings. The water allocation is also made in line with the highest social and economic benefits.[38] The balance (within the laws) between the dimensional interests and the interests of actors remains absurd and questionable. It is also highly affected by other factors such as power, corruption, perspectives of the administrators and experts, other related policies and water-land administration traditions.

The sensitivity and applicability of the laws towards conflict and conflict-related consequences is worthy of examination.[39] The TIRA has issued two directives that regulate issues of land administration in a post-conflict

[35] Regulation indicating the Starting of Land Administration and Municipal Services Regulation No. 01/2023; Directive Establishing a Task Force Ensuring Accountability for Land Grabbing and Illegal Constructions Directive No.1/2022; Leasehold and Urban Land Administration Regulation No. 06/2024; Transitional Regulation from Emergency Laws to Formal Laws 04/2024; Revised Directive for the Transfer and Administration of Land for Investment 2024; Mining Works Directive No. 08/2025.

[36] FDRE, Ethiopian Water Management Policy, 1999.

[37] The ownership of land is under the state and the Ethiopian people's concept. Individuals have only holding rights and the private property to improvements and buildings and related property rights.

[38] FDRE Water Resources Management Proclamation 197/2000.

[39] CDA (2022), Conflict Sensitivity in Land Governance: The Do No Harm Framework and Other Tools for Practitioners of Land Activities.

setting.[40] The first directive nullifies all transfers made during the conflict, and the second directive regulates the general land administration framework.[41] The tenure security of the holders and users is also limited due to the legal and factual grounds of termination of the rights and the loss of their property rights.

3. Empirical Evidence and Discussion on Assessment of the Central Themes

3.1 Status on the existence of enabling governance

Assessment on the existence of an enabling land governance in a post-conflict setting is crucial, and it serves multiple objectives.[42] The following subsections address the status of the governance indicators based on empirical evidence. The discussion on the institutional framework focuses on key actors, adequacy of the legal framework and the decision making process.

3.1.1 Key actors in water governance

The key actors in water governance are the water users and the relevant government agents. Any decision first comes from the top responsible agents, such as the Wereda, zonal or regional land or water-related offices. Comprehensive decisions about water allocation, utilisation, management, policy and strategies related issues come from the top and are communicated to the lower structures. According to previous experience, water management-related policies, tools and approaches were transferred from the regional bureaus to the lower structures.[43]

The actors vary in terms of time, scale and interests; and their interests vary before, during and after the conflict. Before the conflict, the most visible actors were the investors and the government agents. Most of the decisions about land and water acquisition were made at the top. During the conflict, the actors could be divided as visible and invisible actors, especially in terms of land and water users or those commonly labelled as investors.

[40] TIRA, Directive No. 6/2023 and 15/2024. The former nullifies all land transactions made during the conflict. The second one also addresses the land administration issues.

[41] Land Auditing and Substituting Land Holdings TIRA Provisional Directive No. 01/23 Art 8 (1-6)

[42] David Betge (2019). "Land Governance in Post-Conflict Settings: Interrogating Decision-Making by International Actors." *Land*, 8(2), 31. https://doi.org/10.3390/land8020031

[43] For example, most of the by-laws are developed as models by the regional water bureau.

The change agents are the irrigation water cooperatives, the peasants, new investors and investment demands. For instance, some of the previously acquired lands were re-acquired by the 'conflict-period investors'. In this category, some invisible actors or officials and administrators had embedded interests, in the form of a joint venture, with the visible investors. After the conflict, the categorisation of actors and interests became complex, and this has also resulted in complex land grabbing, overlapping and competing interests among multiple actors.[44] As indicated in various sources, most forms of conflicts at different levels are related with land and land-related resources.[45]

The involvement of such actors and interests, the absence of inclusion at the grassroots, and the existence of failed concessions and commitments have resulted in a strong resistance and resentment among the communities, *peasants*, and the landless youths demanding equitable allocation and utilisation of land and water. The landless youth with different experiences and interests are now the key actors in terms of demand, and they are the highly influential actors in land-water governance. They are highly influential by holding demonstrations, influencing and boycotting the government agents while new and re-acquisitions are planned and made ready for implementation. For instance, their strong activism on social media include boycotting the decisions made in closed forums and opposing the actual operation of the investors.[46] The manifestations of the resistance vary.[47]

3.1.2 Existence and adequacy of the legal framework

The most common and directly applicable legal frameworks are the Regional Land Administration Proclamation 239/2013 and Directive No. 85/2013 on land-related issues. The other legal framework which is applied by the Bureau of Water is the Federal Proclamation. The law applying to the large-scale

[44] Jampel Dell'Angelo *et al.* (2021). *Commons grabbing and agribusiness: Violence, resistance and social mobilization Contents lists,* available at Science Direct Ecological Economics journal homepage: www.elsevier.com/locate/ecolecon https://doi.org/10.1016/j.ecolecon.2021.107004

[45] John W. Bruce and Sally Holt (2011). *Land and Conflict Prevention, Initiative on Quiet Diplomacy. Land Handbook* (University of Essex, United Kingdom).

[46] The researcher could observe a live demonstration in Wereda Raya Chercher, Tabia administration known as Tsaeda-Meda on July 29, 2024.

[47] The situation has become worse. The youth from the communities were frequently holding peaceful demonstrations and some were also physically combating investors' developments.

investors is the regional directive.[48] The law governing the acquisition of the irrigation water associations and cooperatives is the circular issued by the regional Bureau of Water. The other legal framework about individual water users is the Rural Land Administration Proclamation.

The TIRA cabinet has also issued a provisional Directive No. 06/2023 on land administration and utilisation frameworks. The overall objective of the directive is to restrict and nullify all land transactions made between November 2020 and September 2023. There are also standards on drilling and the acquisition of water by the regional Water Infrastructures regulation. It states a standard on the inter-borehole distance for groundwater supply wells and requires that there must be an optimal distance between boreholes.[49] It states that the distance between boreholes with depth above 100 meters is 500 meters.[50]

Bylaws are the most impactful regulatory framework for cooperatives and associations, and they govern most of the internal decisions of the Irrigation Water Associations (IWAs). However, the independence in the framing of such bylaws by water organisations is highly criticised. Most of the provisions or the model bylaws are crafted and sent for approval by each association from the regional water bureau. The rules are imposed from the top, and the process adheres to a top-down approach.[51]

3.1.3 Decision-Making Process

The decision-making process about land and water allocation is one of the core elements of post-conflict governance.[52] Decisions are made at different

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[48] It is a draft directive issued by the Regional Bureau of Water Resources. However, the Bureau applies the directive in giving permits for ground water acquisitions both to drill and make utilizations.

[49] Ahmet Gultekin (2014). Determination of Optimal Distance between Boreholes. *Proceedings, Thirty-Ninth Workshop on Geothermal Reservoir Engineering Stanford University* (Stanford, California, February 24-26, 2014 SGP-TR-202).

[50] Tigray National Regional State A Proclamation to Determine the Utilization and Administration of Irrigation Water Infrastructures No. 258/2015, Article 32(1)(b)

[51] Neef A. (2009). “Transforming rural water governance: Towards deliberative and polycentric models?” *Water Alternatives 2(1)*: 53-60

[52] Ekta Patel *et al* (2022). *Water and Conflict: A Toolkit for Programming, United States Agency for International Development*, available at https://www.globalwaters.org/sites/default/files/usaid_water_and_conflict_toolkit_2023_508.pdf last accessed on Oct 31, 2024.

levels.[53] The key decisions are top-down, and the most strategic and policy decisions are made at the top. It can also be measured before, during and after the conflict. The degree and level of the top-down approach become more visible, abusive and disregard the direct and indirect inclusion of the key stakeholders during the conflict.[54]

It is to be noted that irrigated land, which was previously acquired by the large-scale investors, was reallocated for potential developers by the direction of the command post. The Wereda administrations had arranged the re-acquisitions through the arrangement of a tender. The power was given by a delegation. For instance, the 500 hectares of land which was acquired by MIDROC Investment Group was decided to be distributed to different developers or investors. After the Pretoria peace deal, there are complex and legitimate interests by the three actors: the previous investors, the latter developers and the communities or the peasant and landless youth. This conflict among these actors is not resolved, and there is no responsible organ acting on the issue. For instance, the *Raya Chercher* Wereda administration is trying to resolve the conflict by frequent consultations between the latter developers and the landless youth.

The decision-making process is also questionable in terms of the dimensions of water governance.[55] Most of the upper-level decisions are pro-investor and motivated to promote the economic dimension or efficiency of the water governance framework. The balance on the equity of allocations, acquisitions and utilizations of the water resources remains entangled during the decision-making process.[56]

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[53] OECD (2012). "Water Governance in Latin America and the Caribbean: A Multi-level Approach, *OECD Studies on Water,* OECD Publishing. http://dx.doi.org/10.1787/9789264174542-en ;
L Whaley (2022), Water governance research in a messy world: A review. Water Alternatives 15(2): 218-250;
FAO (2019) Land and water governance to achieve the SDGs in fragile systems. Rome.

[54] Zhaowei Ding *et al.* (2023). "Integrating Top-Down and Bottom-Up Approaches Improves Practicality and Efficiency of Large-Scale Ecological Restoration Planning: Insights from a Social–Ecological System". *Engineering* 31(1), 50-58.

[55] Assunta Di Vaio *et al.* (2021). "Water governance models for meeting Sustainable Development Goals: A structured literature review". *Utilities Policy*, Vol. 72(1) 101255.

[56] Humberto Peña (2011). *Social Equity and Integrated Water Resources Management*, Global Water Partnership Technical Committee (TEC). https://es.ircwash.org/sites/default/files/Pena-2011-Social.pdf

The participation of those who will be negatively or positively affected by the decisions is almost absent, except for the ‘tokenistic community participations’ similar to comparative experiences.[57] During the pre-conflict period, any water or land-intensive proposal of investments was first required to submit an official letter from lower-level administrators so that it could confirm that there is no conflict of interest with the communities or water users as a pre-requisite for an EIA clearance by the proponents. However, this is now absent, and the water use permit is being given without such an affirmative supportive letter. Moreover, the practice of endorsing EIA clearance through the exchange of information and request for approval to the regional Environmental Protection Agency is now absent after the conflict.

After the Pretoria Peace deal, a total of 694 groundwater drilling permits were given by the Bureau of Water. However, there is not a single request (for the preconditions indicated in the preceding paragraph) made by the Bureau of Water which renders decisions through a unilateral or independent decision-making process. The integration and coordination of the most relevant actors and government units is very low after the conflict.[58] They are sector-focused and their arbitrary decision-making practices adversely affect democratic governance in water.[59]

3.2 Relational and Dimensional Assessment

3.2.1 Land-Water Acquisitions:

The sources of land-water acquisitions vary.[60] Some of the sources are legal sources that cover multiple subjects or scopes. The legal sources also stem from land, water, investment, and other related laws. There are no comprehensive laws addressing all issues and acquisition modalities. The actual acquisition of water starts from the acquisition of land, and in case of large-scale investment, there are multilayered requirements of permits. The investor is required to bring a land use permit, a water use permit, an

[57] Shunglu, R. et al. (2022). “Barriers in Participative Water Governance: A Critical Analysis of Community Development Approaches”. *Water 2022*, 14, 762. https://doi.org/ 10.3390/w14050762

[58] See, for example, Evelyn Lukat *et al.* (2023), “Governance towards coordination for water resources management: The effect of governance modes”, *Environmental Science and Policy* 141, pp. 50-60.

[59] Annabelle Houdret (2021. “How Can Water Sector Cooperation Support Democratic Governance? Insights from Morocco”. *Middle East Law and Governance* 13 (2021) 72-97, BRILL.

[60] Anders Jägerskog & Kyungmee Kim (2016). “Land acquisition: a means to mitigate water scarcity and reduce conflict?” *Hydrological Sciences Journal*, 61:7, 1338-1345.

investment permit and EIA requirements. All these requirements and permits are submitted to the Regional Investment Commission for the final operation of the agricultural investment by drilling the groundwater. The supportive legal back-ups emanate from the Federal and regional water and land laws.

The acquisition for the operation of medium-scale investment and drilling of groundwater by the irrigation water cooperatives and associations also starts at Wereda level. The letter is sent to the regional bureau for endorsement and registration of investments and operations. The most supporting legal sources are the regional Irrigation Water Infrastructure Administration and Management Proclamation 285/2015 and related water standards. The other important legal source is the model law crafted and endorsed by the regional Bureau of Water, which is amended and redrafted by the association without making a substantial change. This also applies to the water committees established to develop and provide water to their domestic users or members. The legal framework is similarly applied in such operations. The other legal source of acquisition for the traditional sole water users or individuals is the regional Rural Land Administration and Use Proclamation.[61]

Moreover, contractual frameworks between the original entitled water users and the new users enable latter to enjoy derivative rights from the contract. This is common in the water users' associations and cooperatives. The members rent or lease their holding rights of land to other lessees, and the new capacity is given through a contractual arrangement. This is an assignment of the rights from the original holders. There are also instances where certain parcels of land are sub-leased by the government agents for a specific duration.

The acquisition process is abused at different levels and it is not enabling the promotion of win-win benefits.[62] In assessing the dimensional interests, it does not favour the balance of the dimensional interests and the sustainability of the groundwater. The acquisition process is not facilitated through transparent and accountable administrative framework thereby resulting in land grabs.[63] It is made by externalising the potential risks and abuses among the responsible organs in the water and land governance agents. The lack of

[61] Tigray National Regional State Rural Land Administration and Use Proclamation No 239/2014.
[62] Emmanuel Kasimbazi (*supra* note 14) 1
[63] Id. p, 20. It states three conditions where acquisitions become grabs if it is "….[n]ot based on a thorough assessment or are in disregard of social, economic and environmental impacts not based on transparent contracts that specify clear and binding commitments about activities, employment and benefit sharing"

evidence-based and comprehensive land administration framework has complicated the problems. There is no actual registration, recording and dissemination of the land-water rights. Under such uncertainties, the system remains fragile, and it does not consider the social and environmental costs of the acquisitions. Under such context, public interest is overridden by the private interest of the economic elite and governors.

The land acquisition process is highly corrupt and favours the investor under the pretext of economic justifications. Acquisitions are made even by the administrators through the joint venture arrangements. Acquisitions and operations of the investment are made by mortgaging the traditional land tenure of the peasants and the communities. The actual reality, results and effect of the acquisitions on the ground indicate that the investors acquire land by disregarding the standards, commitments, and the social corporate responsibility indicated in the concessions.

3.2.2 Deconstructing the Nature of Rights, Restrictions and Responsibilities

It is important to consider the water lens of land and water rights. The relational dimension is also better deconstructed in terms of the elements in the bundle of property rights framework that includes the right to access, withdrawal, management, exclusion and alienation.[64] The exclusive and constitutional right of the state to own land and related resources is at the centre of the analysis.

The sources of the rights arise from the legal frameworks, contractual stipulations, and customary practices.[65] It is also central to recognise that acquisitions result in the entitlement of a certain bundle of rights. In some instances, the relation between the acquisition of the resource and the source of the rights becomes direct and immediate.

In deconstructing the relational dimension of the water users, it is important to explore the rights, restrictions and responsibilities of the water users.[66] The relational dimension explores the broad and categorical triangular relation among the water users, governing authorities and the communities or peasants. Within each category, there are a number of complex and intricate

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[64] Lee Anne Fennell (2011). "Ostrom's Law: Property Rights in the Commons". *International Journal of the Commons*, Vol. 5(1) 9–27.

[65] Marco Ramazzotti (2008). "Customary Water Rights and Contemporary Water Legislation: Mapping out the Interface". *FAO Legal Paper,* No. 76. https://www.fao.org/fileadmin/user_upload/legal/docs/lpo76.pdf

[66] Jeff Camkin & Susana Neto (2016). "Roles, Rights, and Responsibilities in Water Governance: Reframing the Water Governance Debate". *World Affairs* 179(3) 82-112

relations. Within the water users, there are complex relations that are highly influenced by power and interest within and from outside of the categorical relations. The most notable case is the relation between the 'investors', the peasants and the cooperative water users.

In line with the bundle picture, all the investors have a better right of access, withdrawal, management and partially the right to exclude, which does not apply to the government. Yet, they have a very limited right to alienate the fruits, the water resource and the land for a similar purpose. Before and after acquisition, the investors are better positioned in exercising management, exclusivity and agenda-setting power. This is negatively affecting the interests of the public, the small-scale farming peasants, the communities and the associations. Investors exercise broader rights than the other remaining water users.

The type and degree of restrictions on investors are very limited compared with those of other water users. The restrictions and responsibilities that are set out in the concessions are also left unpracticed, and there is no follow-up and supervision by the responsible organs in taking remedial measures. Empirical evidence has shown that an investor has acquired land and drilled groundwater in less than 150 meters of distance, violating the standard on the inter-distance between two boreholes. The restriction of 'the minimum 500-meter distance radius' between two boreholes is clearly violated. This act violates the land and groundwater use rights that were acquired by the association of youth water users. As a result, the water well of the association dried up, and the association sued the investors at a Wereda court.[67] This substantiates the findings in various countries which show that many investors have failed to observe the technical, social and environmental responsibilities that arise from concessions in the contract.[68] There are also investors who try to exercise very superficial responsibilities as a pretext to cover up corrupt practices.

In the second category, the irrigation water users' associations and cooperatives are entitled and positioned to exercise the bundle of rights. There are also lessees and developers who have substituted per stripe the original and actual registered land holders and water users. Most of the rights, restrictions and responsibilities in relation to the utilisation of the water

[67] The case is active. The investor tries to be a well-known development agent by providing millhouse services. He was also a former administrator of the specific Tabia.

[68] Lorenzo Cotula (2011). "Land Deals in Africa: What is in the Contracts? *IIED*, London; Kerstin Nolte (2020). "Doomed to fail? Why some land-based investment projects fail". *Applied Geography*, Volume 122, 102268.

resources are already defined within the model by laws.[69] There are superior and junior rights defined in the internal regulations. The bylaws are customarily adopted by the members, and later joining members are obligated to be governed by such regulations.

The peasant, domestic water users and community land holders or water users also have the least and narrowest rights as compared to investors and IWA members. The immediate factor for such a limitation relates to capacity. The relation of the triangular actors is full of conflict, green grabbing, violation of legal and customary rights and entitlements.[70]

3.2.3 Governance of the bundle of rights

The bundle of rights is defined in different ways.[71] The attributes of the bundle picture are the breadth, assurance and duration.[72] These had different applications and status during and after the conflict. During the conflict, the investors were allowed to acquire the land and water of the previous water users who had a better range of rights. After the Pretoria peace deal, all investments acquired during the conflict were suspended. The interim regional administration (TIRA) is in a dilemma whether it should restore the bundled rights of the first developers, the second developers, or decide in favour of the current claimants of equity. There are cases of disputes lodged in the formal courts. Some of them involve transactions and/or mortgaging of the land and fruits related to land as security for loans without registration at lower-level administrations.

The interests could be overlapping and competing among the different water rights. First instance, the 500 hectares of land (stated in Section 3.1.1), which was initially acquired and developed by the *Midroc Investment Group*, was re-acquired by another 30 investors during the conflict. Currently, the land is contested by the landless youth. They claim for redistribution of the same land. On top of these interests, the Wereda and regional administrations

[69] See for example, Zbelo Haileslassie and Achamyeleh Gashu (2022) "Prioritization of Water Use Rights in Ethiopia: Exploring the Perspectives and Practices in the Governance of Awash River Basin", *Mizan Law Review*, Vol 16 No. 1, pp. 99-130.

[70] Zbelo Haileslassie (2023), *Water Governance and Use Rights Prioritization in Ethiopia: Risks of Grabbing in Selected Case Studies*, (PhD Dissertation submitted to Bahir Dar University Institute of Land Administration, DOI:10.13140/RG.2.2.24999.25763

[71] Zbelo Haileslassie & Achamyeleh Gashu (2023), *supra* note 69.

[72] See, for example, Frank Place and Brent Swallow (2000) Assessing the Relationships Between Property Rights and Technology Adoption in Smallholder Agriculture: A Review of Issues and Empirical Methods, *CAPRi working papers* 2, International Food Policy Research Institute (IFPRI).

respectively have an exclusive overriding interest to set an agenda and make decisions. There are thus potential challenges that arise from trade-offs of equity, efficiency, sustainability and other public interests.[73]

The governance of the bundle of rights over land and water is better exercised by the Irrigation Water Associations and Water Committees in comparison with the private investors. The direct and indirect readings of their bylaws regulate the allocation, utilisation, management, access, withdrawal, alienation and exclusion relating to water use rights. The private investors are better positioned to exercise the bundle of rights that has better breadth and assurance during and after the conflict. The same is true for hotels, urban irrigators, and real estate developers are also better positioned to drill groundwater resources.

There are common disputes among the water users and IWAs. Disputes relating to the bundle of rights over the utilisation of groundwater sources can be illustrated by competing claims of a private investor and an association of irrigation water users. The association had acquired the land prior to the private sole investor. However, the private investor drilled, violating the standard of '500 meters radius distance between two boreholes'.[74] The case is active and pending in a court of law.

3.2.4 Tenure security and risks of insecurity

Tenure security is measured by the subjective feeling of the land holders and/or water users. It depends upon the assurance of the bundle of rights,[75] and it represents the absence of insecurity. On the other hand, Challenges in tenure security may be manifested in overlapping, competing and complementing and overriding interests.[76] In the context of unsettled disputes among the water users such as the cases indicated above, there is no certainty among the private investors due to the unsettled questions and demands of the youth. As indicated by the president of one of the Wereda courts, 90% of the

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[73] Simon Dietz (2010). "The equity-efficiency trade-off in environmental policy: evidence from stated preferences". *Land Economics* 86(3) 423-443.

[74] Tigray Governance and Administration of Water irrigation and Infrastructure Art 32. The principle is to confirm the legal 500 meters radius but there can be an exceptional.

[75] Brightman Gebremichael (2017). "Heartrending or Uplifting: The Ethiopian Urban Land Tenure System Reform and Its Reflection on Tenure Security of Permit Holders". *Sage Journals*, Volume 33, issue 2, https://doi.org/10.1177/0169796X17716995

[76] FAO (2002). "Land Tenure and Rural Development" *FAO Land Tenure Studies* 3 (Rome): https://www.fao.org/4/y4307e/y4307e00.pdf

cases are disputes on land and water, and the disputes on water are registered as *'Ma'egel'*, which means stream.

The horizontal and vertical relational context of the water users is complex and multilevel. The complexity of tenure security in terms of land holding is less disputable than the water security. There are clear indications of risks of water insecurity among the water users. For instance, some boreholes of private investors, IWAs, and communal water users have either decreased the volume of extracted water or totally dried up. This has resulted in water-land grabbing. This is a clear indication of water insecurity. Land tenure security without water security is meaningless and impossible to sustain the investment on the land.

One of the indicators in assessing tenure insecurity is the subjective feeling of the landholder.[77] The subjective feeling of most of the interviewed key informants, among others, the communities and landless youth, the administrators, justice officers and judges, indicated that they do not feel secure and they confirmed that there is lack of tenure security on the ground. This is on top of the tangible disputes, and this has eroded investor confidence to undertake agricultural investments. Some of the investors are also forced to stop actual operations on the ground due to the resistance of the landless youth. This was also observed by the researcher.

4. Status and Balance of Dimensional Interests

4.1 Designated role of regulatory organs: Function and institutional representation

The government agents are development and/or regulatory organs.[78] The key organs are the Bureau of Water, the Bureau of Land Administration, the Environmental Protection Agency, the Justice Office, the Court and the investment authorities. The water associations also have framework rules on self-regulation according to the bylaws. At the grassroots level, the key organs include the Water and Land offices, EIA enforcement organs, the Justice

[77] Anni Valkonen (2021). "Examining sources of land tenure (in)security. A focus on authority relations, state politics, social dynamics and belonging". *Land Use Policy*, Volume 101, 105191;
Rohit Lahoti (2021). "A Method to Measure Perceived Tenure Security in Low-Income Settlements in India". *International Journal of Urban Sustainable Development* 14(1), 322-348.

[78] Liz Alden Wily (2003). *Governance and Land Relations: A Review of Decentralization of Land Administration and Management in Africa*, International Institute for Environment and Development, London.

office and the courts. The *Abbo May* (*fathers of water)* are also the key actors in regulating the allocation, utilisation, setting standards, settlement of disputes and other related issues. Most of the associations have a constructive engagement and function in setting rules and standards, enforcing and controlling the implementation, addressing crosscutting issues and settling disputes.

The sharing of information, synchronisation, efficiency and effectiveness is critical among the regulatory organs. The system of information sharing among the key bureaus and offices is very low. Before the conflict, there was an institutional linkage among the key offices, and it was a requirement to facilitate the permits and clearances by the proponents and applicants. The requirements for permits and licenses were the cause of creating linkages. Following this, there was a one-stop service to acquire a permit and enforce the regulation and follow up. Currently, the one-stop service is not available, and all offices are carrying out their exclusive duties or stipulated mandates. The organs provide services without maintaining horizontal and vertical linkages and communications. The Bureau of Water, and the Bureau of Land and Mining are giving drilling permits and water use permits without an official consultation and without receiving a confirmation from the regional Environmental Protection Agency. The Agency does not have the data and status of acquisitions, permits and related activities.

Courts and Justice Offices do not get all the necessary documents, recorded transactions and other relevant data which was recorded in the Wereda and Tabia administrations registries before the conflict. At present, most of the registered cases in the *Mekoni* and *Raya Azebo* courts are water-land related disputes. It is indicated that most of the disputes are transactional disputes. The lawyer respondents confirmed that the absence of organised and updated data and information on the administrative units is highly affecting the rendering of justice. In the absence of such documents, courts depend on witnesses and related evidence.

As indicated above, the regulatory units are highly fragmented, disjointed, and inefficient; and they are not coordinated and clustered in line with the connected nature of the resources. The investors, IWAs and the Water Committees have different lines of communication, acquire their permits from different organs, and they are supervised by different organs, although the land and water resources are interconnected. There are different governing rules and modes of operation that hamper coordinated and coherent interventions and functions.

4.2 Agency, empowerment and commitment

The *Kebelle* and Wereda administrations are the immediate responsible organs of the public. The water associations, as nascent water organisations, are also the agents of their members. The investors are represented by themselves. The triangular relation indicates the agency to participate, represent, set agendas and make decisions.

The empowerment of the powerless and unrepresented stakeholders is based on this preliminary assumption of justice and inclusive land tenure security.[79] The presence of agency, advocacy coalition, the level and degree of interest and influence bring empowerment.[80] Rural communities are less empowered and left excluded from most of the policy and strategic decisions.

4.3 Balance of the dimensional interests and benefits

The economic benefit of a certain land and groundwater acquisition is more emphasised than the other benefits. This was the standard practice before the conflict. Under the post-conflict context, however, the requirement of EIA clearance (as indicated earlier) is not strictly observed, and all acquisitions are made without EIA clearance and a standard environmental management and monitoring system. The responsible organ is not giving an EIA clearance during the acquisition of the drilling and utilisation permit, even after the coming of the TIRA. As a result, the standards are not well observed, and this has resulted in degradation and depletion of the natural capital, pollution, and other chemical spoilage.

In terms of the social dimension, the conflict arises first among the peasants and the investors, the youth and investors, the IWAs and investors, between or among investors, IWA members, Peasant/youth with Peasant, Peasant/youth with IWAs. The economic gap, lack of access to basic social services and infrastructures are the central problems of the communities. The conflict has also worsened the problems related to the social dimension. The vulnerable community members demand a balance of interests and benefits in the governance and acquisition of land.

[79] See Babette Wehrmann *et al* (2019), *Secure Land Rights for All: A Key Condition for Sustainable Development*, Global Project 'Responsible Land Policy' Sectoral Department Policy Brief, GIZ, Bonn.

[80] Diego Mota Vieira (2021). Gradual and Transformative Institutional Change: the influence of stakeholders and advocacy coalitions at the Belo Monte Hydroelectric power plant, University of Brasília, Organ. Soc. 28 (97).

4.4 Regulatory responses and corrective measures (actual status, monitoring and corrective measures)

The responsible organs are mandated to act and intervene before, during and after the operation of the acquisitions and investments. Yet, the task and regulation of land-water-investment administration, environmental protection is highly fragmented and competitive. The other challenge relates to the absence of an enabling organisational set-up to promote robust, timely and effective regulatory responses. There is an organisational limitation at the regional, zonal and Wereda and Tabia levels. The upper level is more structured than the Wereda and Tabia structures, and it is more coordinated at the regional level than the Tabia, Wereda and Zonal levels.

With regard to the challenge in supervising and monitoring experts at the Tabia and Wereda levels, most of the experts are structured at the regional or zonal level. While most of the acquisition and drilling decisions are made at the top, commitments and agreed standards are left unenforced and not regularly monitored at the lower level. For instance, BoW (as indicated earlier) does not have a status report of the 694 acquired drilling permits by water users.[81] Both the Wereda Water and land administration units do not have the knowledge of the acquired drilling permits and do not undertake regular follow-up. The office acts or responds where a dispute materialises and official requests are made by the court.

The other most common problem relates to high reports of corruption in land acquisition. Some parcels of land are also acquired by the clandestine joint venture agreement of the officials and investors. At face value, the investments are registered in the official names and business entities of the investors. The officials facilitate speeding up the acquisition of land, a parcel with good location and quality, size of land and avoiding the bureaucratic requirements. The TIRA's effort to establish the *Screening Task Force* was not successful in taking corrective measures.

The regulatory organs are mandated to monitor and take corrective measures. This is backed by statutory provisions and/or customary practices. However, the status of regular monitoring is absent. Most of the interventions are nominal and intended to secure paper-based reports. The court orders for the execution of its decisions are not effectively maintained. The same is also true for administrative decisions and interventions. The responsible authorities make unplanned interventions where a dispute materialises, and they are required by the courts to make interventions. Not all the water users

[81] The number includes the report after the conflict until January 2024.

are regularly monitored, and such gaps are susceptible to an inefficient, inequitable and unsustainable utilisation of water resources.[82]

Most of the respondents stated that the gaps in speedy decisions for every petitioned application, demand for the taking of administrative corrective measures, etc., are the challenges in the governance of groundwater and land tenure. The respondents underlined the need for the enforcement of legal, policy and administrative measures. *First*, the respondents claim for policy adoption and clarity on benefits and benefit sharing. The other claim refers to the need to include the landless as the primary beneficiaries of the acquisitions. The scope of the claim includes a reform of the absolute holding and ownership rights existing in the current legal frameworks.

Second, the respondents call for a reform of the legislative frameworks towards new and comprehensive laws on groundwater and land tenure administration. This includes the amendment of the previous laws that are outdated and ineffective. For instance, there is no criminal liability for any water user deviating from the standards and resulting in severe health damage to the public. According to the respondents, the laws must also be amended to provide an autonomous status of the IWAs.

Third, the respondents stated the need for administrative measures by the responsible organs such as administrative interventions arising from the laws and adhesive contracts. According to the respondents, swift administrative measures and implementations of the standards are required to curtail land-water speculations, environmental pollution, land grabbing, and the violation of private and public interests. This, *inter alia*, includes disciplinary and other legal measures against experts and officials who violate their entrusted duties and functions.

5. The Nature of Disputes and Settling Mechanisms

5.1 Factors that cause disputes

Land Disputes may be linked to the dynamism of groundwater and land resources and/or related interests.[83] The disputes arise while undertaking the allocation and utilisation of groundwater and land, in setting governing frameworks, laws and policy frameworks, and the manner and approaches of settling disputes, etc. The nature of disputes is resource-related, policy-legal

[82] See for example, Maria Jacobson *et al.* (2013), *supra* note 25.
[83] Babette Wehrmann (2008), Land Conflicts: A practical guide to dealing with land disputes, GIZ, Eschborn.

frameworks, administrative issues, and governance frameworks. There is also a dispute over the narratives.

The disputes arise among the complex and multi-level relations of the water users. The disputing parties include the water users, regulatory organisations, nearby community members holding a public interest and other third parties in the context of each case. The dispute includes among water users, water users and regulatory institutions, water users and nearby community members, and community members and regulatory institutions. There are also disputes with third parties.

With regard to the resource dispute, the central cause is groundwater-land acquisition and utilisation. *First,* most of the disputes arise in relation to the decisions of government offices regarding land acquisitions, especially by the investors. The other subject matter for a dispute relates to the fruits of the land and water resources such as the demand for a benefit-sharing arrangement[84] or other forms of land holding and ownership arrangements in land tenure and groundwater.

The *second* nature of disputes refers to policy-legal frameworks and the narratives to promote agricultural investment and acquisition of groundwater and land for such water-intensive investments. It is rationalised by a few of the respondents that such acquisitions promote efficient, equitable and sustainable utilisation of land-water. Various laws are crafted to, *inter alia*, promote such policy rationales.[85]

The *third*, feature of disputes relate to the mandate and administrative power of the responsible administrative units. There are certain demands by the communities, the peasants and the landless youth in administering the land-water resources. There is a claim that the decision on land and water acquisition and utilisation should be decided at the grassroots, by administrative entities, specifically the Wereda-Tabia administrative units.

Furthermore, the landless youth also claim for the broadening and shifting of the governance framework. There is a need to make it broad-based, inclusive and participatory to all stakeholders in relation to the agenda setting, decision-making process, framing of the policy and laws and other elements

[84] See for example, John Costenbader (2009), Legal Frameworks for REDD: Design and Implementation at the National Level, IUCN Environmental Policy and Law Paper No. 77, Bonn, Germany: IUCN, Gland, Switzerland in collaboration with the IUCN Environmental Law Centre.

[85] FDRE Water Resource Management Proclamation 197/2000. The purposes of the Proclamation indicate the highest socio-economic benefits where it mainly strives to promote economic benefits with similar justification.

of the governance dimensions and parameters. According to the AU PCRD (Post-Conflict Reconstruction and Development) policy "…political governance requires the strengthening of governance institutions, managing diversity and promoting inclusion and effective leadership and participation of women, and youth."[86] The elements and processes of governance are traditional and government-based.[87] The interest groups do not have a say on the decisions. During the conflict, almost all decisions were top-down, and there is a massive demand to make it a bottom-up process and adhere to the egalitarian approach.[88]

5.2 Customary practice/ADR arrangements

The most common approach is the customary or traditional form of settling disputes. This is attributed to the culture and tradition of the communities. In most cases, disputes over groundwater and land tenure are settled through the traditional method. The dispute settlement and the arrangement made by the IWAs and Water Committees are also similar. 'Fathers of water' are the traditionally empowered arbitrators of disputes on water and related issues for any dispute arising among the members. The settlement of disputes through an ADR mechanism was the most dominant practice during the conflict.

5.3 Administrative tribunals

The administrative units, specifically at Wereda and Tabia, have arranged complaint receiving and hearing mechanisms even after the conflict. However, this is found to be the least effective form of dispute settlement because the community members who have less bargaining power do not have trust in such arrangements. Most of the disputes are appealed to the formal courts after the review of the tribunals, and remedies are sought. One of the reasons for an increase in the number of registered cases in the formal courts is due to the lack of trust and the gaps in such modalities.

5.4 Formal courts

In the Southern Zone, particularly in the *Raya Azebo* Wereda Court, 90% of the cases are disputes on land or irrigation and water canals (registered as Ma'egel).[89] The capacity of the courts is limited due to different internal and external contributing factors. The internal factors include the limitation on the

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[86] Revised page 12.

[87] Hossein Azadi (2020). "Monitoring Land Governance: Understanding Roots and Shoots". *Land Use Policy,* Volume 94, 104530.

[88] See for example, Zhaowei Ding *et al.* (2023) *supra* note 54.

[89] A response given by the president of Raya Azebo Wereda Court during an interview held at Mekoni town in July 30, 2024.

capacity of the judges, scrutiny and examination of evidence, a limited number of judges, delayed rendering of justice and weak enforcement of decisions. Among the external factors, there is capacity limitation in the administration and water management offices.

The land administration system is weak due to the absence of a cadastral system, and there has not been any improvement made, and this gap has also resulted in complex land and water information. Even worse, due to the conflict, most of the previous records and evidence are also either burned or lost. The courts are summoning only witnesses and related information. The rendering of justice is very slow, although the number, diversity and nature of the cases have increased.

The cases are also complex because there are multiple chains of transactions that complicate the relations and interests. Thus, there are multiple cases over the same disputed land and groundwater water but with variations in the cause of action. Courts are bound to continue encountering challenges unless the land administration system addresses the gaps in land information, holistic land adjudication, registration, recording, dissemination of land information and related interventions at different levels.

6. Regulatory Response, Reconstruction Policies and Strategies

The flaws, injustices, abuse, and conflict-related consequences in the groundwater-land tenure governance require dialogue and appropriate regulatory responses.[90] It is important to bring timely, efficient and effective regulatory responses with the aim of promoting equitable and sustainable development by creating an enabling, robust, inclusive and responsible land-water governance.[91]

6.1 Regulatory responses

The current post-conflict land-water governance has caused severe socio-economic, political and environmental problems. As indicated in the preceding sections, governance and institutional effectiveness is rated below the previous status, specifically, in comparison with the realities that prevailed before the conflict. Regulatory responses have thus failed to curb all

[90] Simone A. Williams *et al.* (2023). “Diversity, Equity, Inclusion, and Justice in Water Dialogues: A Review and Conceptualization”. *Journal of Contemporary Water Research and Education*, Volume 177(1) 113-139.

[91] See Emmanuel Kasimbazi (2017), *supra* note 14.

abnormalities, problems of grabbing, negative spillovers and defects. The following paragraphs indicate the essential areas of regulatory responses.

The *first* avenue of reform relates to the need to promote an *institutional and content* response. This all-embracing desired regulatory response is, above all, to bring land-water reform which necessitates reform in laws. This includes redefining the rights and bundled rights. It includes bringing changes to the ownership systems. It should also ensure organisational reform on the basis of the institutional reform in order to maintain coordination and alignment of the relevant bureaus in Regional, Zonal and Wereda arrangements. Moreover, it requires assignment of actors and capacity building in line with the organisational framework. The last element in the first dimension of reform, is to undertake holistic adjudication and review of all acquisitions made within cadastral information and registries.This involves the registration of all acquisitions and adjudications made during and after the conflict.

Second, there is the need to undertake *relational and dimensional response* in a way that promotes tenure security of the landholders and water users. This is meant (i) to undertake sporadic adjudication based on the specific relational and disputed claims; (ii) to investigate and identify unlawful acquisitions, informal and land grabbing; (iii) to put all illegally grabbed land and water under public/state holding; (iv) to enable the responsible land administration units to carry out evidence-based standardisation of the concessions, permits, acquisitions and all utilisation manners and methods; (v) to carry out the reregistration of IWAs and water committees; (vi) to enable the land administration units to redistribute land to the landless youth and vulnerable members of the communities.

The *third* feature of the regulatory response is expected to provide an enabling dispute settlement handling response. Its objective is to promote the culture of self-regulation among the water organisations and empower and establish diversified IWAs and water Committees, and other forms of water organisations by empowering the role of the fathers of water within the IWAs, community elders and *Abbo-Gerebs* within the communities.

6.2 Reconstruction frameworks and suggested way outs

6.2.1 African Union (AU) Reconstruction Framework

The African Union (AU) Reconstruction Framework formulates policies that address social inequity targeting the vulnerable groups during the phases of transition, reconstruction and development. It mainly focuses on the promotion of socio-economic rights such as the right to "…. food…water and development, as expressed in the African Charter on Human and Peoples'

Rights, the Millennium Declaration, and the Common African Defence and Security Policy (para.6).”[92]

Second, the policy framework also indicates the need to “[r]e-establish and support agricultural production to guarantee food security, and address issues relating to ownership, access and use of such critical assets as land….”[93] This is an essential input in dealing with the nature of rights and tenure security of the landholders and the groundwater users.

Third, there must be a benchmark and/or standards on the “[m]mechanisms for registration and appropriate identification/ documentation of affected populations for themselves, their children, spouses, property, land and other possessions which might have been lost during the conflict.[94] The same is true for the gender dimension of creating legal frameworks on equitable access to, and control over resources, including land, property and inheritance, which are key, especially for widows and women. [95]

The revised policy framework also indicates the regulatory responses on the prevention and adaptation to climate security-related risks and vulnerabilities, with particular focus on food and water insecurities, which are relevant to the current discussion at hand.[96] State-centric frameworks and contexts aligned to the post-conflict population who are directly and/or indirectly affected by climate change are required.[97] The adoption of the policy framework in relevant national and regional laws is indeed indispensable, and the following rapid appraisals and options on the way forward are expected to be integrated into the governance frameworks.

6.2.2. Suggested appraisals and steps for reconstruction

Global experience indicates that rapid appraisals are made to implement post-conflict land reform. The following solutions are suggested for the conflict-related problems as a step-by-step intervention. These areas of intervention based on phases are aligned with the land governance and administration frameworks. The solutions are developed and suggested after alignment and analysis with the findings from the research, the AU frameworks and the

[92] AU (2006), Policy on Post-Conflict Reconstruction and Development, adopted in Banjul, Gambia, p. 17, available at https://www.peaceau.org/uploads/pcrd-policy-framwowork-eng.pdf last accessed in December 20, 2024.
[93] Id., p. 17
[94] Id., p. 15
[95] Id., p. 28
[96] Id.
[97] Id., p. 49

theoretical frameworks. The way outs are indicated in alignment with the areas of the regulatory responses.

Step-1 Land governance and rapid appraisal for land Reform

The rapid appraisals are first operationalised by setting up and installing land governance frameworks. There must be a consensus on the contents of the policy and legal frameworks. The interventions must secure social and institutional trust. The governance of public resources and interests shall be the pioneer principle.

Step-2 Participatory and transparent assessment

The interim administration at an appropriate level shall be committed to undertake holistic assessments on the nature, scale and magnitude of the land governance and related problems and defects. This shall be carried in a participatory and transparent manner by engaging all-inclusive and relevant stakeholders.

Step 3: Installing a reverse land administration system

The interim regional administration has made an assessment on the accuracy of the registry, and this could give an opportunity to formalise some of the illegally acquired land and groundwater resources during the conflict, as if they were acquired and registered before the conflict. The land administration system must reverse the formal land information or registry, and this shall give the opportunity to undertake holistic land adjudication through the social tenure domain models. This will enable the interim administration to find out the illegally acquired parcels and groundwater resources and build social and institutional trust.

Step 4: Designing a fit-for-purpose land administration system

Installing a fit-for-purpose land administration system is necessary to curtail the problems and injustices in land governance.[98] The other requirement shall also be designing a land administration system that supports water administration and related information.

[98] World Bank and the International Federation of Surveyors (FIG) (2014), Fit-For-Purpose Land Administration, FIG Publication No. 60 2nd Edition available at https://www.fig.net/resources/publications/figpub/pub60/figpub60.asp last accessed in Dec 27, 2025.

Step-5 Undertaking a holistic and conflict-sensitive land and groundwater-related adjudications

There must be a progressive land adjudication system and procedure supporting the social tenure model. The land adjudications should enable the implementation of equitable land allocation and groundwater utilization.

Step-6: Localisation of the Tenure Security Solutions

The interventions and solutions need to be localised to specific contexts and cases. The nature of the solutions to be localised shall be with the objective to promote the land and groundwater tenure security of the land holders and legitimate water users.

As a way out, the existence of political will and commitment to promote a robust, inclusive, efficient, equitable, and sustainable land governance in general and the promotion of tenure security, is necessary and foundational. The political will shall include reforming and adopting a conflict-sensitive approach in the land governance framework and tenure security to "…. realise increased equity, greater socio-economic development, food security as well as contribute to peace and stability."[99]

The functioning of property-rights systems related to land and groundwater must be defined. Moreover, the application of such systems should align with the land tenure security of the ownership and holding arrangements. In effect, political leaders initiating and driving comprehensive land policy reform can gain politically from the process, especially if underlying issues of tenure insecurity and inequality are addressed.[100] The political will and commitment of the interim government and the Federal government, stakeholder participation, and strategic way outs are the prerequisites to realise the reform and its application.

7. Conclusion

Various pre-conflict gaps coupled with the consequences after the conflict, have triggered challenges to groundwater and land tenure security. Before the conflict, the problem was associated with governance defects of water resources, that were mainly attributed to factors such as the absence of established institutions and principles, lack of clear and intersectional natural

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[99] Joost Van Der Zwan (2010), Practice note 7: Conflict sensitive land policy and governance in Africa, Initiative for Peace-building (IfP), available at https://mokoro.co.uk/wp-content/uploads/Van-der-Zwan-Need-for-Conflict-Sensitive-Land-Policy.pdf last accessed on January 05, 2025.

[100] Ibid.

resource policies, mandates, and organisational set-ups accompanied by lack of sustainable governance and regulatory responses.

After the conflict, the categorisation of actors and interests became complex, and this has also resulted in complex land grabbing, overlapping and competing interests among multiple users. The involvement of such actors and interests, and the absence of inclusion at the grassroots, the existence of failed concessions and commitments, have resulted in strong resistance and resentment among the communities. There are no conflict-sensitive related laws and policy frameworks that are responsive to the potential and actual consequences of the groundwater and land tenure governance in a post-conflict setting. They are not adequate to respond, sustain and balance the dimensional interests of water and land governance.

The post-conflict directives are also inconsistent and self-contradictory; they fail to formally recognise all informal transactions made during the conflict. The public interest is overridden by the private interest of the economic elite and governors. The decisions during and after the conflict are top-down, accommodate the interests of the powerful, non-inclusive, and biased to the powerful groups. The overriding power of the decision-making by the state actors has resulted in overlapping interests and public discontent at the grassroots.

Among the stakeholders, it is the investors who have broader rights owing to the minimal levels of accountability in observing and balancing restrictions and responsibilities. In general, the governance of the bundled rights becomes difficult since there are overlapping interests over the same groundwater points and land holdings. There are no specifically defined attributes of the bundled rights and tenure security of the landholders and groundwater users. The governance of the bundled rights and tenure on groundwater is also more insecure and abused. There is a high risk of insecurity.

The regulatory and monitoring units are highly fragmented and disjointed thereby adversely affecting their efficiency, and they are not coordinated and clustered in line with the connected nature of the resources. This is aggravated by the absence of an enabling organisational set-up to promote robust, timely and effective regulatory responses. The potential corrective and suspending measures are not implemented at all.

There are no structured dispute resolution mechanisms specialising in land and groundwater within the formal and informal mechanisms. The most dominant mechanism for dispute settlement is the alternative dispute resolution mechanisms embedded in custom, and courts or formal mechanisms have largely failed to settle disputes and promote tenure security. There is thus the need to appraise and reconstruct the way forward for groundwater and land governance in light of the six steps of intervention suggested in Section 6.2.2 above. The African benchmarks and policies of reconstruction in a post-conflict setting can indeed promote sustainable groundwater and land tenure security by balancing the dimensional interests. The cases and discussion addressed in this article (including the findings), may apply to similar cases or conflict-affected societies.

In general, the status of the regulations and directives in securing the tenure security of the landholders and groundwater users lacks clarity. The duration of the enforcement of such laws is not clearly indicated, thereby requiring further scrutiny of the national and regional laws enforced regularly. The power, hierarchy, legality, and enforcement of such regulations and directives are seen as standalone laws, and they are triggering the defects and spillovers that adversely affect tenure security and the protection of dimensional interests. ■

Cited References

Alden Wily, L., (2003). *Governance and Land Relations: A Review of Decentralization of Land Administration and Management in Africa*, International Institute for Environment and Development, London.

Andreas, Neef (2009). "Transforming rural water governance: Towards deliberative and polycentric models?" *Water Alternatives 2(1)*: 53-60.

Assunta Di Vaio *et al.* (2021). "Water governance models for meeting sustainable development Goals: A structured literature review". *Utilities Policy*, Volume 72:101255.

Azadi, Hossein (2020). "Monitoring Land Governance: Understanding Roots and Shoots". *Land Use Policy*, Volume 94, 104530.

Betge, David (2019). "Land Governance in Post-Conflict Settings: Interrogating Decision-Making by International Actors". *Land*, 8(2), 31. https://doi.org/10.3390/land8020031.

Boretti, Alberto and Rosa, Lorenzo (2019). "Reassessing the projections of the World Water Development Report" *npj Clean Water* 2, 15 (2019).

Bruce, John W. and Holt, Sally (2011). *Land and Conflict Prevention, Initiative on Quiet Diplomacy*. *Land Handbook*, University of Essex, United Kingdom.

Camkin, Jeff and Neto, Susana (2016). "Roles, Rights, and Responsibilities in Water Governance: Reframing the Water Governance Debate". *World Affairs* 179(3)

Castella, JC *et al.* (2007). "Combining top-down and bottom-up modelling approaches of land use/cover change to support public policies: Application to sustainable management of natural resources in northern Vietnam". *Land Use Policy* Volume 24 Issue 3, 531-545.

Chene, Marie (2017). Natural resource management transparency and governance: A literature review focusing on extractive industries, U4 Helpdesk Answer 2017:8, p.1.

Costenbader, John (2009). "Legal Frameworks for REDD: Design and Implementation at the National Level". *IUCN Environmental Policy and Law Paper* No. 77, Bonn, Germany: IUCN, Gland, Switzerland in collaboration with the IUCN Environmental Law Centre.

Cotula, Lorenzo (2011). Land Deals in Africa: What is in the Contracts? IIED, London

Dell'Angelo J *et al.* (2021). "Commons grabbing and agribusiness: Violence, resistance and social mobilization" *Science Direct Ecological Economics Journal* https://doi.org/10.1016/j.ecolecon.2021.107004

Dietz, Simon (2010). "The equity-efficiency trade-off in environmental policy: evidence from stated preferences". *Land Economics*, 86(3), 423-443.

Ding, Zhaowei *et al.* (2023). "Integrating Top-Down and Bottom-Up Approaches Improves Practicality and Efficiency of Large-Scale Ecological Restoration Planning: Insights from a Social–Ecological System". *Engineering 31(1)*, 50-58.

Dubreuil, Céline (2006). *The Right to Water: From concept to implementation*, World Water Council.

Embaye, Zbelo H. and Adam, Achamyeleh G. (2022). "Prioritization of Water Use Rights in Ethiopia: Exploring the Perspectives and Practices in the Governance of Awash River Basin" *Mizan Law Review*, Vol. 16 No. 1, 99-130.

Embaye, Zbelo Haileslassie (2019). "Promoting Federalism, IWRM, and Functional Approach to Water Governance under Ethiopian Water Laws". *Mizan Law Review*, Vol. 13, No. 3, 384-418.

Embaye, Zbelo Haileslassie (2023). *Water Governance and Use Rights Prioritization in Ethiopia: Risks of Grabbing in Selected Case Studies*, A PhD Dissertation submitted to Bahir Dar University Institute of Land Administration DOI: 10.13140/RG.2.2.24999.25763

Fennell, Lee Anne (2011). "Ostrom's Law: Property Rights in the Commons" I*nternational Journal of the Commons* Vol. 5, no 1 February 2011, 9–27.

Franco J *et al.* (2013). "*The Global Politics of Water Grabbing*." *Third World Quarterly*, vol. 34, no. 9, 2013, 1651–1675.

Gebremichael, Brightman (2017). "Heartrending or Uplifting: The Ethiopian Urban Land Tenure System Reform and Its Reflection on Tenure Security of Permit Holders", *Sage Journals*, Volume 33, issue 2, https://doi.org/10.1177/0169796X17716995

Gultekin, Ahmet (2014). *Determination of Optimal Distance Between Boreholes*, Proceedings, Thirty-Ninth Workshop on Geothermal Reservoir Engineering Stanford University, Stanford, California, February 24-26, 2014 SGP-TR-202.

Hodgson, Stephen (2016). *Exploring the concept of water tenure, Land and Water*. Discussion Paper 10, Food and Agriculture Organization of the United Nations, Rome.

Houdret, Annabelle (2021). "How Can Water Sector Cooperation Support Democratic Governance? Insights from Morocco, Middle East Law and Governance". 13 (2021) 72-97, *BRILL*.

Jägerskog, Anders & Kim, Kyungmee (2016). "Land acquisition: a means to mitigate water scarcity and reduce conflict?" *Hydrological Sciences Journal*, 61:7, 1338-1345.

Julio N *et al.* (2021). "Water Resources and Governance Approaches: Insights for Achieving Water Security". *Water*; 13(21):3063. https://doi.org/10.3390/w13213063

Kasimbazi, Emmanuel (2017). *Land Tenure and Rights for Improved Land Management and Sustainable Development*, Global Land Outlook Working Paper, UNCCD.

Lahoti, Rohit (2021). A Method to Measure Perceived Tenure Security in Low-Income Settlements in India". *International Journal of Urban Sustainable Development* 14(1), 322-348.

Leeuwen, Mathijs Van and Haar, Gemma Van Der (2016). "Theorizing the Land–Violent Conflict Nexus". World Development, Volume 78, February 2016, pp, 94-104.

Lukat, E *et al.* (2023). "Governance towards coordination for water resources management: The effect of governance modes". *Environmental Science and Policy* 141, 50-60.

Mechlem, K. (2016). "Groundwater Governance: The Role of Legal Frameworks at the Local and National Level –Established Practice and Emerging Trends". *Water*. 2016; 8(8):347. https://doi.org/10.3390/w8080347.

Navasardova E *et al.* (2018). "Codification of the Natural Resource Legislation in the Russian Empire". *Journal of Advanced Research in Law and Economics*, ASERS Publishing, vol. 9(1), 183-193.

Nolte, Kerstin (2020). "Doomed to fail? Why some land-based investment projects fail". *Applied Geography*, Volume 122, 102268.

Peña, Humberto (2011). *Social Equity and Integrated Water Resources Management*, Global Water Partnership Technical Committee (TEC), ISSN: 1652-5396, Elanders.

Place F & Swallow B (2000). *Assessing the Relationships between Property Rights and Technology Adoption in Smallholder Agriculture: A Review of Issues and Empirical*

Methods, CAPRi working papers 2, International Food Policy Research Institute (IFPRI).

Ramazzotti, Marco (2008). Customary Water Rights and Contemporary Water Legislation: Mapping out the Interface, FAO Legal Paper, No. 76. Available at https://www.fao.org/fileadmin/user_upload/legal/docs/lpo76.pdf

Shunglu, R. *et al*. (2022). "Barriers in Participative Water Governance: A Critical Analysis of Community Development Approaches." *Water 2022*, 14, 762. https://doi.org/ 10.3390/w14050762.

Valkonen, Anni (2021). "Examining sources of land tenure (in)security. A focus on authority relations, state politics, social dynamics and belonging". Land Use Policy, Volume 101,105191.

Vieira, Diego Mota (2021). *Gradual and Transformative Institutional Change: the influence of stakeholders and advocacy coalitions at the Belo Monte Hydroelectric power plant*. University of Brasília, Organ. Soc. 28 (97).

Wehrmann, Babette (2008). *Land Conflicts: A practical guide to dealing with land disputes*, GIZ, Eschborn.

Wehrmann B *et al* (2019), *Secure Land Rights for All: A Key Condition for Sustainable Development*, Global Project 'Responsible Land Policy' Sectoral Department Policy Brief, GIZ, Bonn.

Whaley, L. (2022). "Water governance research in a messy world: A review". *Water Alternatives* 15(2): 218-250

Williams SA *et al.* (2023). "Diversity, Equity, Inclusion, and Justice in Water Dialogues: A Review and Conceptualization". *Journal of Contemporary Water Research and Education*, Volume 177, Issue 1, 113-139.

Policies, Reports and Documents

African Union (AU) (2006), Policy on Post-Conflict Reconstruction and Development, adopted in Banjul, Gambia, p. 17, available at https://www.peaceau.org/uploads/pcrd-policy-framwowork-eng.pdf last accessed in December 20, 2024.

African Union (AU) (2024), *Revised African Union (AU) Post-Conflict Reconstruction and Development Policy*, available at https://www.peaceau.org/

CDA (2022), Conflict Sensitivity in Land Governance: The Do No Harm Framework and Other Tools for Practitioners of Land Activities. Available at https://www.cdacollaborative.org/wp-content/uploads/2022/03/Final_Conflict-Sensitivity-in-Land-Governance_March-30.pdf

FAO (2002), *Land Tenure and Rural Development*, *FAO Land Tenure Studies 3*, Rome Available at Https://Www.Fao.Org/4/Y4307e/Y4307e05.Htm

FAO. (2019) Land and water governance to achieve the SDGs in fragile systems. Rome.

Jacobson, Maria *et al.* (2013) *User's Guide on Assessing Water Governance*, UNDP, available at: https://sswm.info/sites/default/files/reference_attachments/1056eng_user_guide_on_assessing_water_governance.pdf last accessed on July 12, 2023.

Meur, P. *et al.* (2006). "Conflict over Access to Land and Water Resources within Sub-Saharan Dry Lands: Underlying factors, conflict dynamics and settlement processes". GRET-FAO LEAD Final Report.

OECD (2011) *Water Governance in OECD Countries: A Multi-Level Approach*; OECD Studi-OECD, France.

OECD (2012), *Water Governance in Latin America and the Caribbean: A Multi-level Approach, OECD Studies on Water,* OECD Publishing http://dx.doi.org/10.1787/9789264174542-en,

OECD (2015), OECD Principles on Water Governance, Adopted by the OECD Regional Development Policy Committee on 11 May 2015, OECD Water Governance Programme.

Patel, Ekta *et al* (2022). *Water and Conflict: A Toolkit for Programming, United States Agency for International Development*, available at https://www.globalwaters.org/sites/default/files/usaid_water_and_conflict_toolkit_2023_508.pdf last accessed on Oct 31, 2024.

UN (2019) Guidance Note of the Secretary-General: The United Nations and Land and Conflict, UN-Habitat

UNESCO (2021), The Role of Sound Groundwater Resources Management and Governance to Achieve Water Security. USA. *Global Water Security Issues* 3.

UN-Habitat (2017), Land Governance: A Review and Analysis of Key International Frameworks.

Van Der Zwan, Joost (2010). Practice note 7: Conflict sensitive land policy and governance in Africa, Initiative for Peace-building (IfP), available at https://mokoro.co.uk/wp-content/uploads/Van-der-Zwan-Need-for-Conflict-Sensitive-Land-Policy.pdf last accessed on January 05, 2025.

Vhugen, Darryl (2016), *Responsible Governance of Tenure: a technical Guide for Investors, Governance of Tenure,* Technical Guide No. 7, FAO, Rome.

Water Governance Facility (2012) *Human rights-based approaches and managing water resources: Exploring the potential for enhancing development outcomes*

WGF Report No. 1, SIWI, Stockholm.

World Bank and the International Federation of Surveyors (FIG) (2014), Fit-For-Purpose Land Administration, FIG Publication No. 60 2nd Edition available at https://www.fig.net/resources/publications/figpub/pub60/figpub60.asp last accessed in Dec 27, 2025.

The Imperative of Engaging Regional States for Enhanced Implementation of Human Rights Treaties in Ethiopia

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Abstract

In a federal state structure, internal competence over some issues –regulated by international human rights treaties– is shared between 'central' and subnational governments. However, the federation (as a nation state) enjoys international legal personality, and it enters into international human rights treaties as a party to those treaties. Engaging subnational governments in the process of treaty making and its implementation is often considered as one of the mechanisms towards addressing gaps in implementation. This article examines the extent to which the engagement of regional states (in the making and implementation of international human rights) is regulated in the Ethiopian federal system. It relies on the relevant laws, literature, insights from other federal countries and some interviews. Even though the FDRE Constitution did not leave a space for regional states to engage in international human rights treaties, recent laws (on treaty making, intergovernmental relation and investment) embody legal and institutional frameworks which can enhance the implementation of international human rights treaties. However, some of the laws have gaps in implementation, while others are yet to be implemented. Moreover, the laws limit the scope of engagement only to ratified international human rights treaties. Extending the scope of engagement to domains such as soft human rights instruments adopted by Ethiopia and the Universal Periodic Review reports can make it more holistic. This requires a broader scope of engagement with due regard to the principles of intergovernmental relations and federalism.

Keywords:

FDRE Constitution, IHR implementation, IHR conventions, treaty making and implementing, engagement of regional states

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Contents

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1. Introduction

Federal countries vary in allocating competence to the different levels of government with regard to the regulation of foreign policy in general and treaty-making in particular. In most federations, issues of foreign affairs including treaty-making are exclusive powers of the federal government.[1] This is so even when specific constitutional provisions to this effect are lacking.[2] The United States, Spain, Canada, Venezuela, Mexico, Australia and India are examples.[3] The explanation for this is "the need to present a common front and speak in a single voice to foreign environment."[4] Moreover, treaty-making power of states is self-evident under international

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[1] Getachew Assefa (2016). "The Place of International Law in the Ethiopian Legal System" in Zeray Yihdego, Melaku Geboye, Fikremarkos Merso (eds.) *Ethiopian Yearbook of International Law* (Springer, Cham), p. 89.

[2] For example, the Austrian, Canadian, and Indian federal constitutions do not specifically provide to which level of government the power belongs. Yet, the power remains with the federal government (*See* Anne Peters (2023), "Treaty-Making Power" in *Oxford Public International Law* (Oxford University Press), p.7, available at: http://opil.ouplaw.com ; accessed on 20 October 2025.

[3] Ibid.

[4] Zelalem Eshetu (2015). "De-centering the Treaty Making Power of the Federal Government under the Ethiopian Federal System: In Search of Better Safeguarding Mechanisms". 1 (I), *International Journal of Ethiopian Legal Studies*, p. 5.

law.[5] In some of these federations, the interests of the federating entities are protected through the second chamber. For example, in the US, the Senate protects state interests as the US Constitution makes the consent of the Senate mandatory to make treaties.[6] With this special power, members of the Senate usually reflect State sentiment.[7]

There are also federations which accord defined roles to subnational governments. Belgium, Switzerland, Bosnia and Herzegovina, Austria, and Germany are in this category.[8] The sub-nationals of these federations have different types of authorizations. The strength of the competence of the subnational government differs as it can be exclusive, shared with the federal government, or contingent on the assent of the federal government.[9] In Belgium, the competence of federating entities (regions and communities)[10] is guided by the principle of *in foro interno, in foro externo* which means that "entities competent to legislate internally are also competent to act externally on the same matters."[11] As per the principle, for example, while regions can enter into agreements related to economic matters or environmental policy, communities can do so for cultural or educational affairs.[12] However, all levels of government must give their consent when the subject matter of the treaty is a shared one.[13] The federal government is responsible to coordinate the process in the latter case. In Switzerland, Bosnia and Herzegovina, Austria, and Germany, subnational governments are accorded the power of

[5] Peters (*supra* note 2) 5.

[6] The USA Constitution, Art. II, Section 2. "The President shall have, by and with the advice and consent of the Senate, to make treaties provided with two-third of senators (…). In USA the Senate is composed of State Representatives. Each State is represented equally irrespective of its size and population, with (2) senators elected directly by the people. Its power and composition makes it an important organ to represent the interests of the States."

[7] Zelalem (*supra* note 4) 25.

[8] Peters (*supra* note 2) 8.

[9] Id., p. 7.

[10] As a federal state, Belgium divides competences among the federal government, the communities (Flemish, French, and German-speaking), and the regions (Flanders, Wallonia, and Brussels-Capital).

[11] Belgium's Constitution of 1831 with Amendments through 2014, Art.167(3); Xia Edouard (2025). "Belgium's foreign policy amid federalization, decentralization, and fragmentation: the strive for coherence" Cahiers ISPOLE, 3, Louvain-la-Neuve: Institut de Sciences Politiques Louvain-Europe, UCLouvain, p. 6.

[12] Belgium's Treaty-Making Process: Constitutional Framework and International Commitments; https://treatylaw. org/ belgiums-treaty-making-process-constitutional-framework-and-international-commitments/.

[13] Belgium's Constitution of 1831with Amendments through 2014, Art.167 (4).

treaty making on matters falling under their competences although they are required to provide information to the federal government before concluding the treaty.[14]

Factors such as the legal tradition and form of government of the respective country explain the variations. However, subnational government's treaty making power is not original in international law.[15] It is rather a delegation by the federal government and "international law leaves it up to the sovereign states whether or not to bring into effect that potential treaty-making power, by explicit recognition or by concluding a treaty."[16] Yet, current international law is getting interested in national as well as subnational governments.[17] One reason for this is implementation of international human rights treaties.[18] Under international law, the federation bears ultimate responsibility for breach of international obligations even when the breach is attributable to the subnational government.[19] At the same time, international law does not have adequate and effective implementation mechanisms although it generally provides that states cannot invoke the legislative procedures of their internal rules and structures to justify the non-performance of an obligation arising from a treaty.[20]

This is not without implications. The first is that it creates enforcement gap.[21] International law, including international human rights law is characterized by enforcement gaps. Its enforcement, *inter alia*, depends on domestic law in the sense that domestic law determines the manner and means

[14] The 1999 Constitution of Switzerland, Art. 56 (1); Federal Constitution of Austria, Art. 16 (3); Constitution of Bosnia and Herzegovina, Art. III (2) (d); Basic Law for the Federal Republic of Germany, Art. 32.

[15] Peters (*supra* note 2) 6.

[16] Ibid.

[17] Martin F. Polaschek (2002). "Implementation of International and Supranational Law by Sub-national Units", www. forumfed.org (published by forum of Federations), p. 300. Last accessed: 23 February 2026

[18] Id., p. 301.

[19] Polaschek (*supra* note 17) 300.

[20] The Vienna Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969 (entered into force 27 January 1980), Art. 27.

[21] Axel Marx,Nicolas Hachez, Katrien Meuwissen, Pierre Schmitt, Jakub Jaraczewski, Tamara N.Lewis, Kolja Raube, Joanna Roszak, Klaus Starl, Dolores Morondo Taramundi, Anna-kaisa Tuovinen and Amy Weatherburn (2015). "Localizing Fundamental Rights in the European Union: What is the Role of Local and Regional Authorities, and How to Strengthen It?" 0 (0) *Journal of Human Rights Practice,* p. 3.

of incorporating it into the law of the land.[22] Unless domestic laws provide conducive legislative, judicial and administrative framework, translating treaty-based guarantees into reality is not feasible.[23] This is more so in federal countries where competences are allocated between or among the different levels of government. A conflict made between the federal and the subnational governments over the implementation of international law may, for example, undermine the legitimacy of international law itself and result in a lack of support for international law by the subnational unit.[24]

In this regard, Simmons considers treaties as reflections of "the nature of governments that negotiate and sign them, the legislatures that ratify them and the groups that lobby on their behalf."[25] Particularly, she notes that "domestic institutions such as subnational units influence government's support for the treaty as even two levels of governments with similar values may appear on opposite sides of the ratification divide."[26] The other implication is that it gives each state considerable freedom as to how it fulfils its international obligation domestically.[27] Given this freedom, several states have devised their own mechanisms that facilitate the implementation of their international obligations.[28]

The question is, therefore, how countries implement their international human rights obligations within the constraints of domestic legal orders. In the context of federal countries, the questions that arise are:

- How do they implement their treaty obligations effectively and in accordance with their government principles of federalism?[29]

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[22] Takele Soboka (2009). "The Monist -Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia". 23 (1), *Journal of Ethiopian Law*, p. 138.
[23] Ibid.
[24] Polaschek (*supra* note 17) 302.
[25] Beth A. Simmons (2012). *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press), p. 12 as cited in Miaz *et al*., *infra* note 27.
[26] Ibid.
[27] Jonathan Miaz, Evelyne Schmid, Matthieu Niederhauser, Constance Kaempfer and Martino Maggetti (2024). *Engaging with Human Rights: How Subnational Actors use Human Rights Treaties in Policy Processes* (Palgrave Macmillan), p. 49.
[28] Ibid.
[29] Charlotte Ku, William H. Henning, David P. Stewart & Paul F. Diehl (2019), "Even Some International Law is Local: Implementation of Treaties through Subnational Mechanisms". 60 (1), *Virginia Journal of International Law*, p. 103.

- How do they, for example, secure the wilful cooperation of subnational units which is crucial for efficient implementation of international human rights treaties?[30]

In Ethiopia's federal system, foreign policy, including treaty-making and ratification is the exclusive power of the federal government.[31] As Getachew notes: "The federal government can enter into treaties with other states or other subjects of international law on potentially any matter, even if the matter in question falls within state's competence in terms of the vertical division of constitutional powers between the two levels of government."[32]

This scenario had practical drawbacks in the implementation of various treaties ratified by Ethiopia in areas of double tax avoidance, human rights, investment, culture, environment, etc.[33] These matters are shared competences between the federal and the regional state governments. If the process of treaty-making does not engage regional states from the very outset, it will affect the interests of regional states. For example, double income tax avoidance treaties may unnecessarily affect the potential or future tax powers of the regional states.[34] Similarly, the bilateral cooperative treaties Ethiopia signed with different countries at different times on areas of tourism, culture, health, and education can affect the interests of the regional states as these are not exclusive powers of the federal government in Ethiopia.[35]

The objective of this article is to examine to what extent Ethiopia's federal arrangement ensures the engagement of regional states in the process of making and implementing international human rights treaties. In terms of methodology, the article relies on laws, the relevant literature, and limited interviews. Following this introduction, Section 2 introduces major international human rights instruments ratified by Ethiopia. Sections 3 to 7 examine the pre-ratification and post-ratification engagement of regional state

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[30] Beat Habegger, *Participation of Sub-national Units in the Foreign Policy of the Federation: The case of Switzerland* (published by the Forum of Federations, www.forumfed.org), p. 285; available at: https://www. forumfed. org/libdocs/IntConfFed02/StG-ws-Habegger.pdf accessed on 11 August 2025.

[31] FDRE Constitution, Arts.51 (8), 55 (12), 77 (4), 77 (8).

[32] Getachew (*supra* note 1) 91.

[33] Zelalem (*supra* note 4) 10-20.

[34] Id., 12; this happens when the source of income tax which is the subject matter of treaty (i.e., double tax avoidance treaty) falls within the competence of the state governments. The state governments lose their taxing power without giving their consent because of the treaty concluded by the federal government.

[35] Zelalem (*supra* note 4) 13.

governments in the process of making and implementing international human rights treaties under Ethiopia's federal system followed by concluding remarks in the last section.

2. Major International Human Rights Treaties Ratified by Ethiopia

Ethiopia is among countries with good ratification records of international and regional human rights conventions.[36] It has ratified the core international human rights conventions adopted by the UN[37] and the African Union. The following table provides summary of these conventions together with their adoption and ratification dates.

No	Name of International/Regional Human Rights Convention	UN's/AU's Adoption Date	Ethiopia's Ratification Date
1	The Convention on the Prevention and Punishment of the Crime of Genocide	9 Dec.1948	1 July 1949
2	The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	21 Dec. 1965	23 June 1976
3	The International Covenant on Civil and Political Rights (ICCPR)	16 Dec. 1966	11 June 1993
4	The International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 Dec. 1966	11 Sept. 1993
5	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	18 Dec. 1979	10 Oct.1981
6	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10 Dec. 1984	14 Mar. 1994
7	The Convention on the Rights of the Child (CRC)	20 Nov. 1989	13 June 1991
8	Convention on the Rights of People with Disabilities (CRPD) [38]	13 Dec. 2006	7 July 2010
9	Marrakesh Visually Impaired People Treaty	27 June 2013	2 Nov. 2020
10	The African Union Convention(Kampala Convention) for the Protection and Assistance of Internally Displaced Persons in Africa	22 Oct.2009	13 Mar.2020
11	The African Charter on Human and Peoples' Rights	27 June 1981	15 June 1998

[36] Getachew Assefa (2022). *Ethiopian Constitutional Law Text Book* (2nd ed., Addis Ababa, p. 584.

[37] Eva Brems (2007). "Ethiopia before the United Nations Treaty Monitoring Bodies" 20 (1-2), *Afrika Focus,* p. 49.

[38] This convention has two optional protocols: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and Optional Protocol to the Convention on the Rights of the child on the sale of children, child prostitution and child pornography. Ethiopia ratified both in 2014.

12	The African Charter on the Rights and Welfare of the Child.	11 July 1990	27 Dec. 2002
13	The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	10 Sept.1969	15 Oct.1973
14	The OAU Convention on the Prevention and Combating of Terrorism	1 July 1999	6 Janua. 2009
15	The African Charter for the Cultural Renaissance	24 January 2006	1 July 2011

Source:
Compiled from UN Treaty Body Database and Ethiopian Human Rights Commission websites: https://ehrc.org/download/ethiopias-ratification-status-of-human-rights-treaties/

Except few conventions such as the Kampala Convention[39] and the CEDAW, Ethiopia has ratified most of these conventions without making any reservations to any substantive provisions.[40] Ethiopia also uses these conventions as the main sources to craft bill of rights provisions in its current constitution.[41] The issue of engaging regional states in international human rights treaties in Ethiopia, is directly or indirectly related to the conventions listed in the above table. This is because, once ratified, these conventions become integral part of laws of the land.[42] Ratifying an international human rights convention by a state implies that the latter has committed itself before an international community to implement the convention in good faith.[43]

Some of these conventions are supplemented by optional protocols dealing with specific concerns.[44] Optional Protocols like the 1996 Optional Protocols to the ICCPR and the 1999 Optional Protocol to the CEDAW aim to provide for individual complaint mechanisms before the United Nations committees

[39] Ethiopia has ratified the Kampala Convention with reservation on state party’s duty to compensate internally displaced persons for damage incurred as a result of displacement (Art.12 (2), (3)), and to resolve disputes through African Court of Justice and Human Rights or the Conference of States Parties (Art. 22). Similarly, Ethiopia ratified CEDAW with reservations, particularly regarding Art. 29, which concerns the settlement of disputes between states.

[40] Brems (*supra* note 37) 52.

[41] Getachew (*supra* note 1) 87.

[42] FDRE Constitution, Art. 9 (4).

[43] Ibrahim Idris (2000). “The Place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution”. 20 *Journal of Ethiopian Law*, p. 137; this is equivalent to the principle of *pacta sunt servanda*, the principle enshrined under Art. 26 of the Vienna Convention requiring the states to accord ratified international human rights conventions a high position in their respective legal systems.

[44] The Core International Human Rights Instruments and their Monitoring bodies, https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies Accessed on 22 July 2025

of independent experts.[45] Yet, successive Ethiopian governments did not accept individual complaint mechanism.[46] Other Optional Protocols include: the 1989 Optional Protocol to ICCPR concerns on abolishment of death penalty; the 2000 Optional Protocols to CRC focus on protection of children from sale, prostitution, pornography and armed conflict; and the 2002 Optional Protocol to the CAT aims to establish system of regular visits.[47]

Ethiopia has not ratified these optional protocols although they are all designed to supplement the core international human rights treaties thereby blurring genuine commitment to their implementation. Moreover, there are other core international human rights instruments that Ethiopia has not ratified. These instruments include the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the 2006 International Conventions for the Protection of All Persons from Enforced Disappearance.[48]

As discussed under the next section, federal countries design mechanisms that enable their constituent units to be involved in the process of making/acceding to and implementing treaties, including international human rights treaties. As the table above indicates, Ethiopia acceded to the majority of international human rights conventions before the adoption of the 1995 Federal Democratic Republic of Ethiopian Constitution. The involvement of subnational federal units in the accession and/or implementation process of the conventions was not normally expected before the creation of a federal arrangement.

However, there are some international and regional human rights conventions which Ethiopia ratified after the country adopted a federal arrangement. The Convention on the Rights of Persons with Disabilities (CRPD), Marrakesh VIP Treaty, African Charter on Peoples and Human Rights (ACPHR), African Charter on Children Rights (ACCR), OAU Convention on the Prevention and Combating of Terrorism, and African Charter for the Cultural Renaissance are among such conventions. As noted above, there are also several bilateral cooperative agreements which Ethiopia entered into on the areas of health, education, culture, and tourism that have relevance to the protection of human rights.

[45] Brems (*supra* note 37) 52.
[46] Ibid.
[47] Ibid.
[48] Ethiopia's Ratification Status of International, and Regional Human Rights Treaties; https://ehrc.org/ download/ ethiopias-ratification-status-of-human-rights-treaties/ accessed on 24 December 2025.

3. Engagement of Regional States in the Making and Implementation of IHR Treaties in Ethiopia: Overview

This section and the following two sections examine the available mechanisms for engaging regional state governments in international human rights (IHR) treaty making and implementation processes. Section 3.1 briefly provides the concept of engagement of the federal units. Sections 3.2 introduces the two categories of engagement (pre and post ratification engagement) followed by detailed discussion in Sections 4 and 5.

3.1 The concept of engagement of regional state governments

In the context of federalism, institutions which are geographically closer to the target beneficiaries are the main actors of implementation.[49] Mechanisms that ensure the involvement of regional states, technically known as *engagement*[50] in the process of making and implementing international human rights treaties are often recommended:

> The concept of engagement conveys the idea that political authorities (i.e. parliament and government) of a given subnational jurisdiction try to understand and deal with an international human rights treaty by working on and eventually taking, or trying to take, policy measures with a view to its (further) implementation. Engagement thus happens when actors holding institutional positions of power and influence intend to take steps towards implementing a treaty or parts thereof.[51]

The above quotation suggests four elements under the concept of engagement: (i) international human rights treaties, (ii) regional state government political authorities, (iii) the measures or the steps taken by the political authorities, and (iv) the intention of taking the measures/steps. International human rights treaties are thus, the starting point. In terms of time, the effort to understand the treaty can be considered as early engagement before its ratification (pre-ratification) or after its ratification (post-ratification).

Subnational political authorities are the actors which should not only understand the treaties but they should also take measures or steps. The measures or the steps which political authorities take are political (non-

[49] Rhian Croke & Simon Hoffman (2024). "A Response to Decentralized Governance of Human Rights: a Children's Rights Approach in Wales", *The International Journal of Human Rights*, 28 (7), p. 1189, DOI: 10.1080/13642987.2023.2236030

[50] For example, Miaz *et al*, *supra* note 27.

[51] Id., 11.

judicial) in nature. They include proposing legislative reforms and action plans; or approving budget to grant (additional) financial or human resources.[52] The intention of taking the measures/ steps is to implement international human rights treaties. In fact, engagement is a key preliminary condition for the implementation or compliance of international obligations.[53]

However, the engagement of regional state governments is not limited to implementation. It also contributes towards the justification of legislative reforms, institutionalizing a given public policy and enhancing government legitimacy.[54] This engagement is influenced by factors such as political will, financial resources, pre-existing policies and strength of bureaucracy.[55] Passing laws, allocating budget, preparing action plans, establishing implementation agencies, etc. are necessary for the implementation of human rights. If the contents of human rights treaties align with conducive and strong pre-existing policies, political authorities in regional state governments are encouraged to make engagement.[56]

3.2 Types of engagement of regional state governments

Broadly speaking, treaty making in Ethiopia involves two processes. Under the first process, Ethiopia participates in the phases of initiation, negotiation, signature and ratification.[57] The second process relates to Ethiopia's accession to a treaty that is already ratified.[58] In both cases, ratification is necessary. Regional state government engagement can be categorized as pre-ratification and post-ratification. As the following sections indicate, the practice of engaging regional state governments in pre-ratification as well as post-ratification processes existed in an unstructured manner even before the coming into effect of the recent laws.

4. Pre-ratification Engagement of Regional States

Regional state governments want to have a voice when the federal government concludes treaties and agreements.[59] It is for this reason that federations

[52] Ibid.
[53] Id., 14.
[54] Id., 2.
[55] Id., 110-112.
[56] Id., 112.
[57] Getachew (*supra* note 1) 73.
[58] Ibid.
[59] John Kincaid (2010). "Comparative Observations on the International Activities of Constituent Governments" in Ferran Requejo (ed.), *Foreign Policy of Constituents Units at the Beginning of 21st Century* (Catalan Public Library, CIP data, 1st ed.,) p. 21.

incorporate the idea of engagement in their federal constitutions or other laws. The Swiss federal constitution is explicit in providing scenarios where cantons participate with the federal government, and directly involve themselves in the process of concluding treaties.[60] In Spain, the federal constitution is silent about the participation of autonomous communities on international treaty making. But, the reformed *Estatutes* of autonomous communities such as the 1996 *Estatute* of the Canary Islands, the 2006 *Estatute* of Catalonia and the *Estatute* of Andalusia embody the rights of autonomous communities to participate in areas of their competences.[61]

In Bosnia and Herzegovina, entities are obliged to provide 'all necessary assistance' to the federal government to honor its international obligations.[62] Providing 'all necessary assistance' is wide and can be interpreted to include pre-ratification participation of entities or post-ratification lawmaking to implement the same. In Belgium, the participation of "regions and communities" has an extended scope as they even exercise veto power in the process of treaty making.

In Ethiopia, as noted under the introduction, all forms of foreign affairs including treaty-making is the exclusive power of the federal government.[63] Accordingly, the federal executive concludes the treaty; the House of Peoples Representatives ratifies the same.[64] In the process, the federal constitution does not leave any space for the regional state governments to voice their interests.[65] What is more, since the House of the Federation has very limited constitutional mandate to participate on policy formulation of the federation in Ethiopia, there is no meaningful space to engage regional state governments on issues of foreign policy.[66] Moreover, the practice of pre-ratification compatibility study, despite its relevance, is not common in Ethiopia.[67]

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[60] The 1999 Swiss Federal Constitution, Arts.55 and 56.

[61] Agustin Ruiz (2013). "Spanish Autonomous Communities and EU Policies". 5(2) *Perspectives on Federalism*, E-33 <SPANISH REGIONS-EU.pdf (unical.it) >

[62] The Constitution of Bosnia and Herzegovina, Art III.2/b.

[63] FDRE Constitution, Art. 51(8).

[64] FDRE Constitution, Art. 55 (12).

[65] Tesfaye Assefa (2014). "Federalism in Ethiopia and Foreign Relations: Regional States Diplomacy". 3 (1) *Oromia Law Journal*, p. 21.

[66] Ibid; Nigussie Afesha (2024). "Intergovernmental Relations System in the Ethiopian Federation: Normative Considerations". 10 (1), *Cogent Social Sciences*, p. 6; DOI: 10.1080/23311886.2024.2327600

[67] Pre-ratification compatibility study refers reviewing the existing internal laws and systems in light of the treaty to be ratified so as to know its implications. It can be done

However, the practices over decades show that the federal government consults the regional state governments, and the latter participate through their delegates in the negotiation and conclusion of international agreements that the federation negotiates.[68] For example, it is common practice to see the engagement of Regional States Presidents in delegations representing Ethiopia at various meetings and forums.[69] It is also common to send joint delegates of both federal and regional state governments abroad.[70] On such occasions, delegates of regional state governments make speech and promote their cultures and resources to attract tourists and investors.[71] Because of this, the political practice of engaging regional state governments with international treaty-making process is common in Ethiopia.[72] Yet, the practice is not consistent as it is limited to some of the regional state governments. Nor is it structured.[73]

Unlike the federal constitution, recently enacted International Agreements Making and Ratification Procedure Proclamation No.1024/2017 has converted the political practice into *de jure* by empowering regional state governments.[74] The Proclamation provides that "the concerned Regional State shall be consulted before the signing of an international agreement the implementation of which requires administrative support of the regional

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by the relevant national ministries jointly or Ministry of Foreign Affairs alone (see Takele (*supra* note 22) 145.

[68] Tesfaye (*supra* note 65) 27-28.

[69] Id., p. 28; Tesfaye goes on listing some of such occasions as follows: H.E Ato Tsegaye Berhe, Ex- President of Tigrai National President led Ethiopia's delegates in the 12th Ethio-Sudan joint border development meeting held on Mekelle, Tigrai Regional State; the then Southern Nations, Nationalities and Peoples Regional State President H.E Shiferaw Shigute gave the opening speech in the 26th Ethio-Kenya joint border development commission meeting held in 2010 hosted by the Regional State; H.E Ato Ayalew Gobeze, the then Amhara Regional States President led the Ethiopian delegation on the 1st Ethio-Sudan border development commissioners' committee meeting held in Gidariff, Sudan (see Tesfaye (*supra* note 65) 28.

[70] Tesfaye (*supra* note 65) 29.

[71] Ibid.

[72] Ibid.

[73] Subnational governments' participation in foreign policy making without explicit constitutional authorization of the federal constitution is not something unique to Ethiopia. For example, subnational governments of the US, Spain and Canada practically exercise treaty making power although they are not constitutionally mandated to do so. Such treaties, however, are not qualified as treaties in the sense of international law (See Peters: *supra* note 2, p. 6).

[74] International Agreements Making and Ratification Procedure Proclamation No. 1024/2017, Art. 5.

state."[75] Accordingly, the Proclamation renders the pre-ratification consultation of the concerned regional state mandatory which, in turn, supports the implementation of the international agreements.

At parliamentary level, the ratification of international agreements is considered as an aspect of enacting law.[76] In the process of enacting laws, participation of regional state governments takes two forms. One relates to the normal public hearing procedure and the second form involves sending specific invitation letter to the regional state governments if the issue on which the international agreement is made concerns them.[77]

Considering the *modus operandi* of the House of Peoples' Representatives and the fact that its members are drawn from Ethiopia's regional states based on plurality electoral system in specific electoral districts, it is plausible to argue that participation of governments of regional states in foreign policy formulation exists in Ethiopia and regional states are not altogether excluded from the process. Yet, this author argues that such arrangement is not adequate and structured. The House of Peoples' Representatives comes at ratification stage after the executive concludes the treaty[78] and this does not involve the phase during negotiations. Negotiations are often characterized by secrecy implying that the House lacks information about the negotiated information.[79] Especially, the opposition political parties in the House do not access the information.[80] This renders the engagement of regional state governments only partial and inadequate.

Unstructured involvement of regional states in the process of international human rights treaty making existed even before the enactment of the International Agreements Making and Ratification Procedure Proclamation No. 1024/2017. For example, one of the recent international human rights treaties that Ethiopia ratified was the International Convention on the Rights of Persons with Disabilities. This Convention, by its nature, is resource intensive and requires the participation of regional state governments. Many of the obligations in the convention such as those concerning education, employment, health and social protection services exclusively or at least in a

[75] Id., Art. 5(2).

[76] The other aspects of enacting law are making new law, amending or repealing the existing law, and passing a decision (see FDRE House of Peoples' Representatives Working Procedure and Code of Ethics Regulation No.6/ 2016, Art. 50 (1-4)).

[77] Interview with Efrem Wubet, Legal Centre Head, FDRE House of Peoples' Representatives, 14 August 2025.

[78] FDRE Constitution, Art. 55 (12).

[79] Polaschek (*supra* note 17) 293.

[80] Ibid.

shared manner fall within the competence of subnational governments in many federal countries.[81] The regional state governments are expected to ensure that their laws and policies promote the societal inclusion of persons with disabilities, i.e., their right to live independently and participate fully in all aspects of life.[82] In the case of Ethiopia, Kassahun, who was the President of the Federation of Ethiopian Associations of Persons with Disabilities (and actively engaged in the process), states the participation of the regional state governments in pre-ratification discussions and this shows the practice of engaging governments of regional states in the pre-ratification process despite the absence of clear law at the time:

> Several conferences and seminars were organized to create awareness to the different groups of peoples with disabilities and to sensitize the government about the benefits of ratifying the convention. The participants included a significant numbers of stakeholders at federal and state levels including members of parliaments. Regional state governments were accessed through the branch offices of the Federation of Ethiopian Associations of Persons with Disabilities existing in the different regions. The role of regional state governments in the implementation of the Convention was one of the issues of discussion, particularly at the conference held in Hawassa.[83]

One of the recent international human rights instruments which Ethiopia has ratified (in 2020) after the coming into effect of the International Agreements Making and Ratification Procedure law (Proclamation No. 1024/2017) is the Marrakesh Treaty. The treaty facilitates access to published works for persons who are blind, visually impaired and print disabled. Even though published works are protected by copyright laws, Marrakesh Treaty (as an exception to this protection) allows acts such as conversion into audio book, by scanning them into softcopy) so as to make them usable by the blind who cannot see at all, or virtually impaired who can see but cannot read print works with focus.

To facilitate the process of ratification, Ethiopian National Association of the Blind in collaboration with funding institutions organized various consultation meetings with stakeholders including members of the House of

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[81] Miaz *et al.* (*supra* note 27) 32.

[82] Id., p. 33.

[83] Interview with Kassahun Yibeltal, Former President of Federation of Ethiopian Associations of Persons with Disabilities, 16 August 2025.

People's Representatives and Ethiopian Writers Association.[84] However, unlike the case of the Convention on the Rights of Persons with Disabilities, the regional state governments did not take part in these consultations because intellectual property issues are under the exclusive power of the federal government in Ethiopia.[85] This is in tandem with the International Agreements Making and Ratification Procedure law (Proclamation No. 1024/2017) which requires participation of regional state governments when the subject matter of the treaty concerns them.

Apart from Proclamation No. 1024/2017, other laws such as investment law and intergovernmental law have provisions that promote the involvement of regional state governments into international treaty making process. Foreign direct investments and the protection of human rights are sometimes inversely related. The former can cause harms on the latter unless states act diligently to reconcile obligations arising from both- international investment treaties and international human rights conventions.[86] Although diligent action includes several aspects such as providing regulatory rules and interpreting the same[87], the engagement of regional state governments in foreign direct investment treaty making can serve as a forum for discussion.

According to the Investment Proclamation No 1180/2020, members of the Investment Council include representatives from the federal, regional states and city governments.[88] It is chaired by the Prime Minister (or the Deputy in the absence of the Prime Minister), and its members include: Presidents of all regional state governments, Mayors of Addis Ababa and Dire Dawa City administrations, Investment Commissioners of federal, regional state and city administrations, and others designated by the Prime Minister as necessary.[89] The main purpose of establishing the Council is to cooperate and coordinate investment administration between the federal government and regional state administrations.[90]

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[84] Interview with Wesen Alemu, Former President of Ethiopian National Association of the Blind, August 19, 2025

[85] Ibid.

[86] Lorand Bartels & Tibisay Morgandi (2024). International Investment Law and State Human Rights Obligations (University of Cambridge, Faculty of Law Legal Studies, Research Paper Series, Paper No.37/2024), p1 available at: file:///C:/Users/abi12/Downloads/ssrn-4967604.pdf accessed on 13 August 2025

[87] For detail on aspects of due diligent act, see Ibid.

[88] Investment Proclamation No 1180/2020, Art. 44.

[89] Id., Art. 46.

[90] Id., Art. 44.

The Council is mandated with other specific powers such as establishing an oversight system that enables evaluation of workflow between federal and regional state governments, directing and overseeing all aspects of the horizontal relationship regarding investment, putting into action systems that facilitate investment implementation, and rendering decisions or recommending solutions on fundamental grievances submitted to it by the investors regarding pre and post-investment services, including land allocation.[91] Hence, the scope of pre-ratification as well as post-ratification cooperation and coordination is wide. This is indeed essential because most foreign direct investments are implemented at regional state level as they need allocation of land which is administered by regional state governments as per the FDRE Constitution.[92]

Moreover, the Intergovernmental Relation Proclamation No.1231/2021 facilitates pre-ratification engagement of regional state governments in the course of managing functional interdependence and power overlap between and among different levels of government.[93] Ethiopia's intergovernmental law aims to integrate and combine capabilities of all the bodies at each level of government, to have cooperative relations framework that would assist governments at each level to perform the tasks, to enhance mutual consultations and cooperative agreements, to maintain the strengths noticed and to fill the gaps encountered, and to avoid duplication of expenses and wastage of time as a result of unilateral efforts.[94]

Intergovernmental relations can be *vertical* between the Federal and Regional state governments, or *horizontal* between and among regional state governments.[95] Vertical intergovernmental relations are carried out through the instrumentality of forums. It consists of four forums: (i) National Legislative Forum, (ii) National Executive Forum, (iii) National Judicial Forum, (iv) National Sector Executives Forum, and (iv) House of Federation and Regional States Relation Forum.[96] Since our concern is to examine pre-ratification engagement of regional state governments in international human rights treaty making, an act which is the mandate of executive branch,

[91] Id., Art. 45 (1-4).
[92] FDRE Constitution, Art. 52(2) (d).
[93] Nigussie (*supra* note 66) 1.
[94] The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Preamble.
[95] Id., Art. 2 (3).
[96] Nigussie (*supra* note 66) 8.

National Executive Forum and *National Sector Executives Forum* are relevant.

The *National Executives Relation Forum* comprises a Prime Minister, selected federal ministers[97], heads of government of all States, and Mayors of the Addis Ababa and Dire Dawa City Administrations as members.[98] The possibility of inviting the heads of other federal and regional state institutions to participate in the session (as members or expert, where necessary) is also envisaged.[99] The Forum has several mandates which include "carrying out consultation with regional states as well as listen to their respective views and opinions in connection with the enforcement of those Powers and Responsibilities of the Federal Government that would affect the competence of the regions",[100] Nigussie states that "the initiative was a breakthrough move to the Ethiopian federal system, known for its top-down policies, strategies, and programming".[101] The federal government can use this Forum to consult regional state governments in case the implementation of the treaty that the former is about to conclude would affect the competence of the latter.

A related issue here is to examine the extent to which the views and opinions of the regional states are taken into account in the course of engagement. With regard to the question whether regional states can, for example, veto decisions in the process, John Kincaid notes that this is unlikely to happen because it would nullify the sovereignty of the nation-state.[102] He further notes that if such (veto) power is given, they might want power over the implementation of treaties that affect them.[103] If they are given domestic powers that put them in the position of primary implementers of treaties, they are likely to wield this power during negotiation, thereby using the threat of non-implementation as a hammer over prospective treaty provisions they do not like.[104]

Kincaid's analysis is largely valid. It is also the dominant practice among federal countries such as Switzerland, Bosnia and Herzegovina, Germany, etc. However, the case of subnational governments in Belgium proves otherwise

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[97] These are the Minister of the Finance, the Minister of Peace, The National Planning Commission and Attorney General.

[98] The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Art.9 (1).

[99] Id., Art. 9 (2).

[100] Id., Art.10 (6).

[101] Nigussie (*supra* note 66) 10.

[102] Kincaid, *supra* note 59.

[103] Ibid.

[104] Ibid.

as the "regions and communities" can veto the decisions. This means, if the subject matter of the treaty is a shared one, the treaty cannot be concluded unless the representatives of all levels of governments (the federal, the regional and the communities) agree upon it.

Kincaid's view is sound based on several grounds. First, as already noted, subnational treaty making power is a delegated power under international law.[105] The ultimate responsibility for failure to perform the obligation also rests on the federal government. Extending the power to the level of veto means that the mandate of delegatee overrides the mandate of delegator which will be illogical. The practical consequence of extending subnational power to veto level in Belgium is criticized because it creates unnecessary delay in making decisions due to divergent political views and conflicting interests.[106] Some studies even doubt its future sustainability and suggest reforming it.[107]

The other vertical intergovernmental relation is the *National Sectoral Executive Relations' Forum*. The Forum is composed of federal, regional states and cities sectoral executive offices with the possibility of inviting the representatives of other bodies or institutions to participate as members or sources of information.[108] The Forum has several specific duties and responsibilities listed in the intergovernmental proclamation.[109] It deliberates on the preparation and implementation of the sector-driven federal government policies, strategies and plans that affects the powers, interests and wishes of the Regional States.[110] Moreover, it deliberates on the preparation, implementation, follow-up and evaluation of the sector-driven nation-wide plans and programs to be executed at regional (state) level.[111] It submits its performance report to the National Executive Relation Forum.[112] It is submitted that these intergovernmental relation provisions (i.e., those concerning National Executive Relation Forum and National Sectoral Executive Relations' Forum) are essential tools to engage regional states into international human rights treaty making so as to create conducive environment for latter implementation.

[105] Peters (*supra* note 2) 5.
[106] Edouard (*supra* note 11) 14.
[107] Ibid.
[108] The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Art. 13 (1-2).
[109] See Id., Art.14 (1-8).
[110] Id.., Art. 14 (2).
[111] Id., Art. 14 (5).
[112] Id., 22 (3).

Having coordinating institutions such as the Intergovernmental Relation Forums and Investment Council in a federal structure is important. For example, "Team Canada" coordinates the economic policies of the federation and the provinces in Canada.[113] Its members include the prime minister, the minister for international trade, the provincial premiers, territorial government leaders, and business representatives.[114] The team organizes missions to foreign countries to increase trade and create jobs and growth in Canada. In so doing, the team avoids unnecessary competition among Canadian provinces while trying to attract foreign businesses. The Investment Council in Ethiopia can also avoid similar unnecessary competition. The Council can contribute to the protection of human rights in the course of investments if it is specifically mandated to that effect.

Both Intergovernmental Relation Forum and Investment Council meet once every six months with the possibility of conducting additional meeting where it is deemed necessary.[115] Any federal government or regional state administration body is obliged to execute the decisions or recommended solutions of the Investment Council.[116] The intergovernmental relation law provides that the prime minister at the federal level and the heads of governments at regional state levels will take proper corrective measures on bodies which are reluctant to implement decisions passed at various levels in addition to exposing the matter through the mass media.[117] This shows that the respective laws set a normative framework with regard to the execution of decisions rendered by the Investment Council and intergovernmental relation forum.

In terms of actual effectiveness, the Investment Council has not started actual operation.[118] Similarly, most intergovernmental relation forums in Ethiopia remain "dysfunctional and many of the provisions are largely unimplemented."[119] The main reason for this is the lack of political

[113] Polaschek (*supra* note 17) 292.
[114] Ibid.
[115] Compare the System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Art. 25(1) with Investment Proclamation No.1180/2020, Art. 47(1).
[116] Investment Proclamation No.1180/2020, Art. 47(4).
[117] The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Art. 22(4).
[118] Interview with Ermias Melese, Legal Advisor, Ethiopian Investment Commission, Addis Ababa, 10 November 2025.
[119] Nigussie, *supra* note 66, p.1; Interview with Markos Debebe, Policy Researcher, Policy Study Institute, 13 November 2025.

commitment by the government to depart from the informal intergovernmental relation that relies upon the ruling party line to manage government functions.[120] For example, the 'Secretariat', the body accountable to the Prime Minister and charged with coordinating and accelerating the efforts regarding intergovernmental relations at the national level by the intergovernmental proclamation[121] is not actually in place despite its importance to mobilize the various governmental relation forums. At the time of writing this article, Policy Studies Institute is conducting a comprehensive research on why most provisions of intergovernmental relation law are practically inactive.[122] The intergovernmental relation forums and the Investment Council are not practically effective although the former are operating while the latter is not actually in place at all.

5. Post-ratification Engagement of Regional States

Upon ratification, international human rights treaties become an integral part of Ethiopian law[123] and should be properly implemented. That is, 'ideas and practices from the universal sphere of international organizations' become extracted and translated 'into ideas and practices that resonate with the values and ways of doing things in local contexts'.[124] The local context to which ideas and practices resonate extends to regional state governments in the context of federalism. This explains the need to extend the pre-ratification involvements of the regional state governments to the post-ratification stage.

Ethiopia's International Agreements Making and Ratification Procedure law is explicit in this regard as it provides that the Federal Government may authorize a senior government official of a regional state to sign an international agreement that implements a ratified international agreement.[125] Here, the law envisages the possibility where regional state governments sign implementing international agreements themselves upon authorization of the Federal Government. This creates sense of owning international obligation on the regional state governments and increases the degree of their engagement in the course of implementing international human rights. It can also be

[120] Ibid.
[121] The Intergovernmental Relation ProclamationNo.1231/2021, Art.26.
[122] Interview with Markos, *supra* note 119.
[123] FDRE Constitution, Art. 9(4).
[124] Sally Engle Merry and Peggy Levitt (2017). "The Vernacularization of Women's Human Rights", 213 as cited in Miaz *et al*. (*supra* note 27) 27-28.
[125] International Agreements Making and Ratification Procedure Proclamation No.1024/2017, Art. 5(1).

considered as an implementing law of the delegation clause recognized under the FDRE Constitution.[126]

Moreover, some of the intergovernmental relation provisions which are relevant for pre-ratification engagement can extend to post-ratification engagement. For example, the power of the National Executive Relation Forum to consult regional states and listen to their views and opinions on the enforcement of federal mandates affecting the state competences is not limited to pre-ratification engagement as it is possible to extend it to post-ratification engagement.

Likewise, the horizontal intergovernmental relation forum, known as "the Regional States Joint Relations' Forum" (in the intergovernmental relation law) resembles Swiss Inter-cantonal Relations, and it can serve as platform for post-ratification engagement of regional states in the implementation of international human rights. This Forum is composed of Speakers of all lawmaking bodies of the states, Heads of the governments of all regional states, Speakers and Mayors of the Cities with the possibility of inviting representatives of other bodies.[127]

Among its mandates, the Forum devises a joint mechanism which includes the implementation of the fundamental human rights and freedoms.[128] It also evaluates the positive and the adverse impacts in the implementation of nation-wide policies, strategies and plans, and submits amendment proposal to the Federal Government.[129] This shows that the engagement of regional state governments in the implementation of international human rights can be initiated either by the federal government or the regional state government (as the case may be) although the former is normally expected to take the lead.[130]

Engaging regional state governments in the post-ratification implementation process was practiced in the case of the Convention on the Rights of Persons with Disabilities. After the Convention's ratification in 2010, the Ministry of Labour and Social Affairs was designated as a focal point for matters concerning implementation. The Ministry designated a Committee to advise the government on the issues of monitoring and implementation. Representatives of regional state governments were

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[126] FDRE Constitution, Art. 50(9).

[127] The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Art. 18 (1-2).

[128] The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Art. 19 (3).

[129] Id., Art. 19(1).

[130] Miaz *et al*. (*supra* note 27) 11.

members in the Committee and the discussion included the performance of the regional state governments.[131]

6. Effects of Compliance and Non-compliance in the Engagement of Regional State Governments

Regional state governments' engagements into international human rights treaties foster implementation. However, they are unable to guarantee the implementation as they are merely invitees and have little power over regional state governmental policy processes.[132] In practical terms, regional state governments may comply or not comply with their international obligation even after engaging in the process. Hence, domestic human rights implementation mechanisms should take this into account.

6.1 Rewards, sanctions, awareness-raising, and coordination

A study on "a broad range of international law instruments, including both international human rights treaties and European Union law", classifies the effects of compliance and non-compliance of the regional states into four: rewards, sanctions, awareness-raising, and coordination.[133] While reward mechanisms offer a reward to the implementation actors (for e.g., through a subsidy), the sanction mechanisms punish recalcitrant actors (for e.g., through federal enforcement).[134] Awareness-raising improves implementation by disseminating information about the obligation (for example, through reports and action plans).[135] Coordinated mechanisms seek a coordinated implementation of international obligations in a certain way – through intergovernmental agreements or minimum harmonizing laws.[136] By playing coordinating role, the states can bring several actors together for enforcing international human rights.[137]

Cantonal intergovernmental conference in the Switzerland or the Uniform Law Commission in the US is a case in point. The intergovernmental relation system in Ethiopia at least implicitly recognizes these measures. As noted above, the Prime Minister at the federal level and the head of the regional state at the sub-national level are empowered to take corrective measures on bodies

[131] Kassahun, *supra* note 83; Gebre Teshome, Public Relation, Branches and Membership Affairs Head, The Ethiopian National Association of the Blind, August 7, 2025.
[132] Miaz *et al.* (*supra* note 27) 53.
[133] Ibid.
[134] Ibid.
[135] Ibid.
[136] Ibid.
[137] Axel Marx A. *et al*. (*supra* note 21) 1.

which are reluctant to implement decisions passed at various levels in addition to exposing the matter through the mass media.[138]

6.2 Federal intervention and state of emergency

Federal intervention law is a law by which the Federal Government intervenes to protect the constitutional order, peace and the security of the people and human rights in case the regional state government fails to do so.[139] It can be initiated either by the federal government itself or upon the request of the regional state administration.[140] Since constitutional provisions are general, Proclamation No 359/2003 states the grounds, procedures and effects of federal intervention.[141] Accordingly, violation of human rights is one of the grounds on the basis of which the federal government intervenes into regional states.[142]

Under the Constitution, both federal and regional state governments have the duty to enforce human rights.[143] The power to make international treaty, especially human rights instruments rests on the Federal Government which automatically lays the ground for the federal government to ensure the observance of human rights across the country.[144] Hence, if the provisions of human rights stipulated in the Constitution and the laws promulgated pursuant to the Constitution are violated and the regional state governments fail to arrest such violations through their machineries (law enforcement agencies and judiciaries) either because they are unable or unwilling as themselves involved in the violation, the federal government intervenes into the states to arrest the situation.[145] This federal intervention power is important to protect the rights of minorities at the subnational levels, especially in federations established within ethno-linguistic lines such as Ethiopia.[146]

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[138] The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, Art. 22 (4).

[139] Chimdesa Fekadu, "Human Rights, Federalism and Federal Intervention in Ethiopia", Ethiopian Human Rights Law Series, School of Law, Vol. V, p. 61.

[140] FDRE Constitution, Arts. 51(14), 55 (16) and 62(9).

[141] System for the Intervention of the Federal Government in the Regions Proclamation No. 359/2003.

[142] FDRE Constitution, Art. 51 (14), 55 (16), 62(9), and System for the Intervention of the Federal Government in the Region Proclamation No 359/2003. The other grounds are deterioration of security situation, and endangerment of the constitution in the concerned state.

[143] FDRE Constitution, Art. 13(1).

[144] FDRE Constitution, Art. 9 (4) and 55(12).

[145] Proclamation No.359/2003, Art. 7.

[146] Chimdesa (*supra* note 139) 69.

The other mechanism through which the federal government takes measure is state of emergency which is regulated under Art.93 of the FDRE Constitution. Accordingly, the Constitution recognizes external invasion, breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, occurrence of natural disaster or epidemic diseases as grounds of declaring state of emergency.[147] This state of emergency is declared either in the whole or part of the country.[148] This enables the federal government to take measures to arrest the problems that occur in regional states which, in turn, contribute to the implementation of international human rights.

In Ethiopia, there is a common ground that initiates both actions- federal intervention and state of emergency.[149] For example, breakdown of law and order that endangers the constitutional order and cannot be controlled by the regional state machineries is one of the grounds for federal intervention. It is also a ground for declaring a state of emergency. Hence, the federal government may take either of the two actions which it thinks appropriate based on the degree of seriousness of the problem that necessitates the measure. State of emergency is the case when very extreme situation that threaten the federal system occurs.[150] Federal intervention becomes an issue when the problem necessitating the intervention is not extreme enough to fit into the declaration of state of emergency but poses a serious threat to the federal system.[151]

This situation has been a problem in Ethiopia "partly because of infancy of the federalism and incapacity of some regional state governments to effectively manage their affairs thereby resulting in different casualities and human rights violations."[152] However, both federal intervention and state of emergency are last resort mechanisms. Hence, the implementation of international human rights by subnational governments is preferable thereby necessitating the effective engagement of regional state governments.

[147] FDRE Constitution, Art. 93(1) (a).

[148] FDRE Constitution, Art. 93.

[149] Despite the existence of such overlap, it is good to note that the grounds that trigger federal intervention and state of emergency are different. While security deterioration, human rights violation and constitutional disorder trigger federal intervention, external invasion, constitutional disorder, natural disaster and epidemics trigger state of emergency (see System for the Intervention of the Federal Government in the Regions Proclamation No.359/2003 and FDRE Constitution, Art. 93).

[150] Chimdesa (*supra* note 139) 65.

[151] Ibid.

[152] Ibid.

7. The Significance of Soft Laws and Universal Periodic Review (UPR)

Expanding the scope of human rights instruments that require the engagement of regional state governments deserves due attention. In addition to binding international human rights instruments, there are soft laws that are adopted. These instruments can be declarations, guidelines, directives, and codes of conduct.[153] They are very relevant in shaping state practices. Hence, extending the engagement of regional state governments to these instruments has practical relevance.

The other possibility of expansion is extending the engagement to the acceptance and rejection of Universal Periodic Review (UPR) reports. The UPR is "a unique arrangement that enables the UN Human Rights Council to periodically review all UN member states' compliance with their human rights obligations and commitments."[154] It is designed to complement the other human rights mechanisms. All UN Member States participate to answer questions on their human rights records.[155] The review is made based on three reports: (i) the state's national report (about 20 pages) (ii) a compilation of UN information on the state (about 10 pages), and (iii) a summary of other relevant stakeholders' information, including NGOs' (about 10 pages).[156] Its examination takes place during a three-and-half hour review conducted by the UPR working group- which is open to any UN Member State.[157] The States participating in the review ask questions, make comments, and recommendations to the State under review.[158]

The state under review is also given time to present its report, answer questions made by other states, and present concluding remarks.[159] The

[153] Ludovic Hennebel and Helene Tigroudja(2025). "The Place of Soft Law Standards" in *International Human Rights Law: A Treatise* (Cambridge University Press); DOI: https://doi.org/10.1017/9781108618830.014

[154] Mizanie Abate (2016). "Ethiopia and the Universal Periodic Review Mechanism: A Critical Reflection". Vol. 28 *Journal of Ethiopian Law*, p. 1.

[155] The Universal Periodic Review, Fact Sheet 1: https://upr-info.org/sites/default/files/documents/2012-02/ upr_ factsheet_1_the_upr_e.pdf accessed on 1 January 2026.

[156] Mizanie (*supra* note 154) 27.
The 10 pages compilation of UN information on the state and the 10 pages summary of the stakeholders are documents prepared by the Office of the High Commissioner for Human Rights.

[157] The Universal Periodic Review, Fact Sheet 1, *supra* note 155.

[158] Ibid.

[159] Ibid.

outcome of the interactive dialogue is a report consisting of recommendations to the state under review.[160] The state under review has to respond to the recommendations by accepting or rejecting them.[161] It has the primary responsibility to implement the accepted recommendations.[162] Engaging regional state governments in the UPR means ensuring their involvement in all these processes. This expands the scope of engagement which, in turn, enhances implementation of international human rights.

The challenges in engaging regional states at such levels, *inter alia*, relate to gaps in expertise because matters of international law are complicated. To effectively engage with international human rights treaties, one requires a blend of expertise across several disciplines, including international law, politics and international relations, and sociology or cultural studies. Practical skills are also important. However, regional state governments may not have such expertise that enables them to effectively engage with such complicated matters which can be considered as one of potential challenges.

8. Conclusions

International human rights treaties are normally part of foreign policy of a certain country. The FDRE Constitution has thus exclusively allocated this power to the federal government in Ethiopia. Practically speaking, however, the regional state governments have been making unstructured and inadequate engagement in the negotiation and conclusion of international agreements. Recently enacted laws such as the International Agreements Making and Ratification Procedure Proclamation No.1024/2017, Investment Proclamation No.1180/2020, and Intergovernmental Relation Proclamation No.1231/ 2021 have rules that ensure participation of regional state governments in the process of treaty making and implementing. Yet these engagements do not contravene the Constitution because the ultimate treaty making power (including ratification and accession) rests on the federal government.

As stipulated under the proclamations highlighted above, regional state governments have a right to be consulted by the federal government if the implementation of the agreement to be signed requires their administrative support. These laws embody various vertical as well as horizontal intergovernmental relations that ensure engagement of the regional state governments in international treaty making and implementation. This is in tandem with the trend in other federal countries- cantons in Switzerland,

[160] Mizanie (*supra* note 154) 28.
[161] Ibid.
[162] Ibid.

autonomous communities in Spain, entities in Bosnia and Herzegovina, '*länder*' in Germany, and 'regions and communities' in Belgium.

The ruling political party has been serving as intergovernmental relation for a long time and the House of Federation is entrusted with safeguarding regional states through law and policy making as the second chamber of parliament. In light of the degree of the right to self-determination of Nations, Nationalities and Peoples entrenched by the federal constitution, it is important to give effect to the right to participation of the inhabitants of regional states, i.e., the right "to full consultation and expression of views in the planning and implementation of projects that affect them directly."[163] However, the implementation of these laws has gaps. As indicated above, the Investment Council has not started actual operation. Most intergovernmental relation forums in Ethiopia also remain dysfunctional and many of the provisions are largely unimplemented. Hence, there is the need to properly implement these laws by adhering to the principles of intergovernmental relations and federalism.

Effective and holistic pre-ratification and post-ratification engagement of regional state governments with international human rights instruments can be enhanced if the scope covers soft laws adopted by Ethiopia in addition to ratified international human rights treaties. Such extension in the horizon of regional state engagement can further include human rights monitoring mechanisms such as responses to Universal Periodic Review reports. Such engagement of regional state governments requires the necessary training and capacity building in preparing expertise required in the field commensurate with the need to avert the possible challenges they may face while engaging with international human rights treaties. ■

[163] FDRE Constitution, Art.92 (3).

Cited References

Abate, Mizanie (2016). "Ethiopia and the Universal Periodic Review Mechanism: A Critical Reflection". 28 *Journal of Ethiopian Law*.

Afesha, Nigussie (2024). "Intergovernmental Relations System in the Ethiopian Federation: Normative Considerations". 10 (1), *Cogent Social Sciences* DOI: 10.1080/ 23311886. 2024.2327600

Assefa, Getachew (2016). "The Place of International Law in the Ethiopian Legal System" in Zeray Yihdego, Melaku Geboye, Fikremarkos Merso (eds.) Ethiopian Yearbook of International Law Springer, Cham.

Assefa, Getachew (2022). *Ethiopian Constitutional Law Text Book* 2nd ed., Addis Ababa.

Assefa, Tesfaye (2014). "Federalism in Ethiopia and Foreign Relations: Regional States Diplomacy". 3 (1) *Oromia Law Journal*.

Brems, Eva (2007). "Ethiopia before the United Nations Treaty Monitoring Bodies" 20 (1-2), *Afrika Focus*.

Croke R & Hoffman S (2024). "A Response to Decentralized Governance of Human Rights: a Children's Rights Approach in Wales". 28 (7) *The International Journal of Human Rights*.

Eshetu, Zelalem (2015). "De-centering the Treaty Making Power of the Federal Government under the Ethiopian Federal System: In Search of Better Safeguarding Mechanisms". 1 (I), *International Journal of Ethiopian Legal Studies.*

Hennebel L & Tigroudja H (2025). "The Place of Soft Law Standards" in *International Human Rights Law: A Treatise* Cambridge University Press DOI: https://doi.org/10.1017/9781108618830.014

Idris, Ibrahim (2000). "The Place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution". 20 *Journal of Ethiopian Law*.

Kincaid, John (2010). "Comparative Observations on the International Activities of Constituent Governments" in Ferran Requejo (ed.), *Foreign Policy of Constituents Units at the Beginning of 21st Century* Catalan Public Library, CIP data, 1st ed.

Ku, C *et al.* (2019). "Even Some International Law is Local: Implementation of Treaties through Subnational Mechanisms" 60 (1), *Virginia Journal of International Law*.

Marx, A *et al.* (2015). "Localizing Fundamental Rights in the European Union: What is the Role of Local and Regional Authorities, and How to Strengthen It?" J*ournal of Human Rights Practice*.

Miaz J *et al*. (2024). *Engaging with Human Rights: How Subnational Actors use Human Rights Treaties in Policy Processes* Palgrave Macmillan.

Peters, Anne (2023). *Treaty-Making Power*, Oxford Public International Law (Oxford University Press).

Polaschek, F.M (2002) Implementation of International and Supranational Law by Sub-national Units, www.forumfed.org (published by forum of Federations), last accessed on 23 February 2026.

Ruiz, Agustin (2013). 'Spanish Autonomous Communities and EU Policies' 5(2) *Perspectives on Federalism*.

Simmons, Beth A. (2012). *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press.

Soboka, Takele (2009). "The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia". 23(1), *Journal of Ethiopian Law*.

Xia, Edouard (2025). "Belgium's foreign policy amid federalization, decentralization, and fragmentation: The strive for coherence", Cahiers ISPOLE, 3, Louvain-la-Neuve: Institut de Sciences Politiques Louvain-Europe, UCLouvain.

Laws

Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 1 January 2021)

The 1787 Constitution of the United States (as amended)

The 1995 Federal Democratic Republic of Ethiopia Constitution, *Federal Negarit Gazeta,* 1st Year, No.1

The Main Text of the Constitution of Bosnia and Herzegovina: 14 December 1995 (as Amended on 25 March 2009)

The Spanish Constitution (Passed on October 31, 1978; Ratified on December 6, 1978; Sanctioned on December 27, 1978)

Investment Proclamation No 1180/2020, *Federal Negarit Gazeta,* 26th Year No. 28, Addis Ababa, 2nd Day of April, 2020

The System of Intergovernmental Relation in the Federal Democratic Republic of Ethiopia's Determination Proclamation No.1231/2021, *Federal Negarit Gazeta*, 27th Year No 7, Addis Ababa, 11th January 2021

International Agreements Making and Ratification Procedure Proclamation No. 1024/2017, *Federal Negarit Gazeta*, 23rd Year No.55, Addis Ababa, 7th July, 2017

FDRE House of Peoples' Representatives Working Procedure and Code of Ethics Regulation No.6/ 2016.

The Need to Harmonize Competing Interests in Land Acquisition at Ethiopia's Special Economic Zones: Insights from the Gada SEZ

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Abstract

This article examines land governance, displacement, and development in Ethiopia's Special Economic Zones (SEZs), with a specific focus on the *Gada SEZ* as an illustrative example. A qualitative doctrinal legal research approach is used in the research, primarily based on the relevant federal and regional laws that govern land expropriation, administration, and Special Economic Zone development in Ethiopia. The secondary sources in the doctrinal aspects of the research – relating to scholarly interpretations and contextual analyses – include books, journal articles and reports. Thematic data-analysis is employed to organize and interpret the primary and secondary sources of the research in line with the research objectives. The findings in this article reveal the need to carefully balance competing interests in the course of expropriation for development projects such as Special Economic Zones. This requires an integrated approach that involves the implementation of mandatory human rights due diligence and the establishment of a joint liability model between the state/SEZ authority and developers. The implementing authorities should thus ensure that expropriation is transparent, fair, and in compliance with established legal principles and procedures, adhering to constitutional and statutory requirements. To this end, procedural safeguards must be implemented, including meaningful consultation with landholders.

Keywords:

Expropriation, land acquisition, Special Economic Zone (SEZs), competing interests, procedural safeguards

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Contents

1. Introduction

The primary aim of this article is to analyze the legal and modus operandi governing land acquisition for SEZ in Ethiopia. By using the Gada SEZ as an illustrative example, the article examines the legal procedures for land expropriation and the rights conferred upon developers; it analyzes the structural relationship between the state, developers, and displaced communities, and evaluates how this structure impacts accountability. The issues that are addressed include how Ethiopia's SEZ land acquisition model redistributes accountability for displacement, how and who provides access to land for SEZ development, the rights that are obtained, their implementation, and the consequences of obtaining the land. A qualitative doctrinal research approach is employed which includes primary focus on legal documents (such as national and regional legislation concerning SEZ development), and reviewing the relevant books, journal articles and reports.

This article addresses critical gaps identified in previous research, and focuses on issues related to implementation. As the developer should not be considered as a passive beneficiary, this article focuses on tracing the legal pathway till its final actor. Likewise, it identifies and highlights the procedural insulation of the developer from the expropriation process. The next section briefly highlights preliminary issues on SEZs and land rights. Section 3 deals with Ethiopia's land tenure history and the various perspective in the land policy discourse. Section 4 addresses the nexus between land and SEZs in Ethiopia. Section 5 addresses the legal regime on the expropriation process. Sections 6 and 7 examine land access and rights for SEZ developers by focusing on the Gada SEZ, followed by concluding remarks.

2. Special Economic Zones and Access to Land

Special Economic Zones (SEZs) are increasingly gaining attention as engines of economic growth in various countries.[1] In this regard, the International Labour Organization (ILO) has noted a significant rise in the number and varieties of Special Economic Zones.[2] Consequently, many countries offer incentives to optimize the potential and operations of their SEZs by transforming them into sizable Special Economic Zone clusters and commercial hubs.[3] In spite of their substantial benefits, SEZs may also generate negative welfare effects, including economic disruptions.[4] As several studies indicate, over 140 economies currently utilize SEZs, and this includes nearly three-quarters of all developing economies and almost all transition economies. Their numbers have grown rapidly, with hundreds of zones that are planned to be established.[5] Trends in both developed and developing countries reveal that most SEZs are developed as multi-activity zones that focus on economic advancement, innovation, and they are concentrated in advanced emerging markets.[6]

Land is a vital resource, a driver of development, and a critical asset that must be effectively administered and governed.[7] However, the land governance system in Africa, particularly in sub-Saharan Africa (SSA), faces

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[1] Hassan Daud Butt, Urooj Aijaz & Riaz Ahmed (2021). "Development and Management of Integrated SEZs as Stimulus to Economic Growth". 4 *Pakistan J. Int. Aff.*

[2] Nasser Alreshaid (2022). "Special Economic Zones to Facilitate Trade and Investment Opportunities Mena Regional Applications Amidst a Global Race to the Bottom". 9 *Indones. J. Int. Comp. Law* 43.

[3] Guillem Tur Garriga (2020). "*A Comparative Analysis on the Design of the Legal Framework of Special Economic Zones of BRICS*".

[4] Soojin Park (2024). "Can Early SEZs Be Drivers of Economic Growth in Transition Economies? Comparative Analysis: China, Russia, Vietnam".

[5] Azhar Khan and Others (2024). 'The Global Perspective of SEZs, EZs and EPZs: A Critical Evaluation of Regular Frameworks and Policies in the Context of Kp'. 7 International Journal Of Social Science Archives (IJSSA) 28.

[6] Eyasu Kumera & Berhanu Woldetensae (2023). "*Special Economic Zones Location Decision and Quality of Life in Ethiopia: The Case of Bole Lemi-1 and Eastern Industry Zone*", 88 Geojournal 3985.

[7] Fraol Udessa, Dagnachew Adugna and Liku Workalemahu (2021). "Urban Land Management Legal and Institutional Framework From Governance Dimension - The Case Of Gelan And Lega Tafo Lega Dadi Towns", *IJSDR*, Volume 6 Issue 4: https://www.ijsdr.org/papers/IJSDR2104107.pdf

numerous challenges due to historical, social, political, and cultural diversity.[8] Effective land governance regimes must secure land rights and access, promote socio-economic development, encourage investment by ensuring tenure security, contribute to various development objectives, and be non-discriminatory.[9]

In Ethiopia's rural and urban areas, land serves multiple functions as a source of income and food.[10] It is also considered a fundamental tool for political and economic development.[11] In the context of Ethiopia's agriculture-based economy, land is an important asset for income, food security, employment, and export earnings.[12] Furthermore, it constitutes part of the landholder's cultural and social identity.[13] As land symbolizes an individual's history, culture, and status within the community, landholding and personal identity are closely related. Consequently, land policies are fundamentally important for economic activity, poverty reduction, sustainable management, and household well-being.[14]

Ethiopia's current land laws are embodied in the FDRE Constitution and legislation issued at federal and regional levels.[15] The Constitution, *inter alia*, deals with land ownership and delineates the governmental levels empowered to manage land matters.[16] The Federal Government enacts laws for land utilization and conservation, while regional governments administer land and natural resources in accordance with federal law. Thus, the Constitution sets

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[8] Samuel Chukwudi Agunyai and Lere Amusan (2023). 'Implications of Land Grabbing and Resource Curse for Sustainable Development Goal 2 in Africa: Can Globalization Be Blamed?'. 15 *Sustainability* (Switzerland).

[9] Windinkonté Séogo and Pam Zahonogo (2023). 'Do Land Property Rights Matter for Stimulating Agricultural Productivity? Empirical Evidence from Burkina Faso'. 125 *Land Use Policy* 106475.

[10] Eva Berger (2014). "*Access to Land in Ethiopia: The Impact of Land Laws, Industrial Development, Villagization and Land-Grab in Rural Areas*", p.1.

[11] Muradu Abdo (2014). *State Policy and Law in Relation to Land Alienation in Ethiopia'* (University Of Warwick, (Ph.D Dissertation)

[12] Id., p. 6.

[13] Solomon Dessalegn Dibaba (2020). 'Ethiopia History of Land Tenure and The Present Land Governance: The Case of Oromia Region'. 22 *International Journal of Academic Research and Development* 33.

[14] Janine M Ubink (2008). "In the Land of the Chiefs". *Cust. Law, L. Con*, p.15.

[15] Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995 (1995) 9 Federal Negarit Gazeta 1, Art. 40.

[16] Brightman Gebremichael Ganta (2022). "Federalism and Land Rights in the Context of Post-1991 Ethiopia". 38 *Journal of Developing Societies* 398.

forth guiding principles that are legislated by the federal government, and regional states are responsible for implementing them.

The Constitution authorizes regional states to administer land, and it states that land is the common property of the nations, nationalities, and peoples of Ethiopia.[17] The government is obligated to provide land to peasants and urban dwellers in accordance with the law.[18] A salient feature of this provision is that the state owns the land, while use rights can be granted to peasants and other groups.[19] Ethiopian peasants have the right to obtain land without payment,[20] and pastoralists are granted access to grazing land.[21] These groups are constitutionally protected against arbitrary eviction and have the right not to be displaced.[22] If eviction occurs for public purposes, such as SEZ or infrastructure projects, they have the right to commensurate compensation.[23]

As SEZs need land, there is the tension between fulfilling this need and harmonizing it with the rights of citizens against eviction and displacement at the discretion of administrative bodies. SEZ development fundamentally relies on land access[24] and there are pursuits of encouragement and facilitation. As Eyasu Kumera and Berhanu Woldetensae noted, SEZs have significant contribution through capital expenditure and wealth creation.[25] Since the early 2000s, the industrial policy of the Ethiopian government invokes developmentalism and an active industrial policy,[26] and it expresses a strong commitment to creating the preconditions for a market-based and

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[17] FDRE Constitution, *supra* note 15.

[18] Alelegn Wenedem Agegnehu (2023). "Protection of Local Land Use Rights in the Process of Large-Scale Agricultural Land Acquisition in Ethiopia". 21 *African Identities* 113.

[19] FDRE Constitution, *supra* note 15. Art.40.

[20] Sibuh Gebeyaw Tareke (2019). "Rural Land Rights and Limitations in Ethiopia: The Study of Amhara Region". *J. Resour. Dev. Manag.*

[21] FDRE Constitution, *supra* note 15 Arts. 40(4) and (5).

[22] Ibid.

[23] Id., Art. 40(8).

[24] Lorenzo Cotula and Liliane Mouan (2018). 'Special Economic Zones: Development Engines or Sites of Exploitation?'.

[25] Eyasu Kumera and Berhanu Woldetensae (2023). "Special Economic Zones Location Decision and Quality of Life in Ethiopia: The Case of Bole Lemi-1 and Eastern Industry Zone", 88 *Geojournal* 3985.

[26] Milkessa Jagemma and Hailu Worku (2021). "The Effectiveness of Industrial Development Strategy in Ethiopia". 27 *Journal of Contemporary Issues in Business and Government* 5280.

socially inclusive industrial transformation.[27] To this end, the effectiveness of SEZs is considered as a major factor in stimulating the industrial sector and boosting the national economy.

However, the increase in the number of SEZs has caused pressure on land, and favorable land access to investors in many countries encounters challenges when it conflicts with the livelihoods and land rights of local communities.[28] Large-scale land acquisition by investors frequently leads to the loss of land for local farmers and communities,[29] resulting in livelihood loss, displacement, and resource conflicts. Evidence indicates that land seizures for SEZs can lead to human rights violations with major economic, social, and environmental consequences.[30] This is especially true for vulnerable and marginalized communities, whose rights may be overlooked in the drive to establish SEZs.[31]

Therefore, SEZ expansion is inseparable from issues of land access and rights.[32] Its regulation requires not only investment codes but also proper land administration and management. Access to and rights over land for SEZ development are intertwined with land policy, legal frameworks, and stakeholder compliance.[33] This raises the critical question of whether Ethiopia's existing legal framework facilitates land accessibility for SEZ development in the context of concurrently addressing the concerns of inclusiveness, livelihoods and rights of local communities.

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[27] Christina T Collins (2019). 'Made in Africa: Industrial Policy in Ethiopia'. 19 *Northeast African Studies* 159.

[28] Michael Levien (2012). 'The Land Question: Special Economic Zones and the Political Economy of Dispossession in India'. 39 *Journal of Peasant Studies* 933.

[29] Habiba Yesuf (2021). 'Effects of Industrial Park Induced Displacement on Natural, Economic and Social Assets of Small-Scale Farm Holders in Peri-Urban Area of Kombolcha, Ethiopia'. 11 *Research on Humanities and Social Sciences* 9.

[30] Eyasu Kumera and Berhanu Woldetensae (2023). 'Special Economic Zones Location Decision and Quality of Life in Ethiopia: The Case of Bole Lemi-1 and Eastern Industry Zone'. 88 *Geojournal* 3985.

[31] Levious Chiukira (2020). 'Special Economic Zones in Developing Countries: Challenges and Opportunities for Zimbabwe'.

[32] Shenglan Li and Miaomiao Wang (2021). 'The Achievements of and the Prospects for the Development of the Special Economic Zones in Guangdong During the 40 Years of Reform and Opening-Up'. *Studies On China's Special Economic Zones* 4 29.

[33] Elias N Stebek (2015). 'Challenges in Access to Urban Land for Business Activities Under Ethiopian Law: Between Oligarchy and Broad-Based Private Sector'. 9 *Mizan Law Review* 37, pp. 37-82.

3. Land Tenure Changes and the Land Policy Discourse in Ethiopia

Since the twentieth century, land regimes in Ethiopia are attributable to distinct political regimes. These regimes are the feudal system of the pre-1975 period, the state ownership of land in the 1975-91, and the land regime since 1991.[34] Pre-1975, the land tenure system in the country was known for its feudalistic nature, landlord-tenant relationship, although there were many other types of tenure systems in different parts of the country.[35] Land was controlled by the ruling elites for centuries. The historical evolution of the land regimes had north/south dichotomy, where the northern part had exercised the *rist* system and the southern part lived under varied land regimes depending on the respective customs and social setting.

As stipulated under Articles 1209 and 1211 of the 1960 Civil Code of Ethiopia, the ownership of land extends to sub-soil and above it to the extent necessary for the use of the land. Hence, these provisions of the Civil Code confirm that both urban land and rural land could be held as private property until 1975. These provisions, coupled with the laws of compensation and town planning (such as Article 1535 *ff* of the 1960 Civil Code of Ethiopia), show that urban land was private property and could be transferred by sale or any other means by the owner who holds title deeds. It was not difficult to get urban land registered and certified as proof of ownership.

In 1975, the *Derg* regime intensely altered the agrarian structure and the mechanisms of access to land.[36] The *Derg* passed proclamations that nationalized all rural land (and urban land and extra houses[37], i.e. house other than one residence) thereby transferring land to state ownership. Accordingly, the *Derg* regime's land proclamations and the subsequent measures terminated private ownership of rural and urban land. In urban centers, all the extra houses or buildings under rent were nationalized. Likewise, industries, hotels, business premises, and big buildings were nationalized.

[34] Diriba, Getachew (2022). "The Evolving Question of Land in Ethiopia: Tenure Preferences, Property Rights and Land."

[35] Gebeyehu, Zemen Haddis (2022). "Access to Land and Tenure Security in Ethiopia's Ethnic-Based Administration System." *African Journal of Land Policy and Geospatial Sciences 5* (3): 521–41.

[36] Daniel Behailu Gebreamanuel (2015). "*Transfer of Land Rights in Ethiopia*". Eleven international publishing.

[37] Gebeyehu, Zemen Haddis (2022), *supra* note 35

The Ethiopian People's Revolutionary Democratic Front (EPRDF) that came into power in 1991, retained the land reform undertaken by its predecessor, and hence, the preservation of the public ownership of land has become a contentious issue.[38] In 1992, it adopted an economic policy that was in force during the transition period until the 1995 FDRE Constitution was enacted. The land lease system was introduced in 1993 while maintaining the 1975 land ownership regime which considers land as public property. The land lease system brought with it a lease price and competition for holding urban land via an auction system. The concern is that the very poor are unable to have access to land.

On the other hand, land policy, the real source of power in the imperial and contemporary Ethiopian regime, remains at the centre of a contentious policy debate.[39] The debate has largely been carried out along two polarized arguments concerning property rights to land.[40] The first is the view, which adheres to state and people`s ownership of land and individuals entitled to land use rights, and allowed to freely transfer only use rights.[41]

The Ethiopian government and those who adhere to the *status quo* continue to advocate state ownership of land, whereby only usufruct rights are bestowed upon landholders. The usufruct rights exclude the right to sell or mortgage the land. The government claims that the land regime safeguards the rural peasants from selling off their land to wealthy individuals which can make them landless and without a source of livelihood.[42] It has been argued that private ownership of rural land would lead to massive eviction or migration of the farming population, as poor farmers will be forced to sell their plots to unscrupulous urban speculators, particularly during periods of hardship.[43]

According to this view, allowing the farmer to sell land would lead either to displacing the farmers or converting them to tenants. The government

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[38] Gebreamanuel, Daniel Behailu (2015), *supra* note 36.

[39] Muradu Abdo (2023). 'Interrogating Land Policy Perspectives: Ethiopia in Focus'. 12 *Oromia LJ* 48.

[40] Wibke Crewett, Ayalneh Bogale, and Benedikt Korf. (2015). "Continuity and Change, Shifting Rulers, and the Quest for State Control. https://doi.org/10.22004/ag.econ.50890

[41] Muradu Abdo (2014), *supra* note 11.

[42] Wabelo, Temesgen Solomon (2020). "Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries." *Beijing L. Rev*. 11:64.

[43] Weldegebriel, Daniel. (2012). "*Land Rights in Ethiopia: Ownership, Equity, and Liberty in Land Use Rights.*" In FIG Working Week.

builds its argument on the premises of social and historical justice, which is based on two principles: justice understood as egalitarianism that guarantees every farmer (in need of agricultural land) equal rights of access to such land, and second, historical justice, granting tenure security to the Ethiopian farmers who had experienced land deprivation and land expropriation through different mechanisms during the imperial era.[44]

Although the government prohibits private land due to these justifications, the reality on the ground is quite different. On one hand, the government evicts farmers and pastoralists for the purpose of large-scale agricultural investments and urban expansions; on the other hand, landholders are selling their landholdings (in the guise of selling the property on the land) to speculators due to the fear of government expropriation.[45] Due to the land regime of the country, there is a threat to land tenure security under which land holders may lose their rights. Most prominent threats include displacement because of private investment and eviction on account of public purposes.[46] On the other hand, since the land laws do not avoid the possibilities of future land redistribution and expropriation, farmers cannot feel secure in their holdings. This adversely affects the commitment of rural landholders to preserve the fertility of farmland against chemical fertilizers and environmental degradation.

The privatization argument is based on the economic rationality of land tenure. According to this argument, individuals must be offered ownership over their land in the sense of three property rights (*usus*, *fructus*, *abusus*) thereby facilitating the transfer of land through the instrumentality of the market that brings about economic growth.[47] The government's position that emphasizes the social function of land is challenged by advocates of a privatization of property rights, most prominently, some political parties, donor agencies, and scholars. They argue that state ownership of land prevents the development of land markets, discourages farmers from investing in land thereby holding down land productivity and encouraging unsustainable land

[44] Ibid.

[45] Muradu Abdo, (2023b). "Role of International Institutions in Ethiopia's Rural Land Policy." *Mizan Law Review* 17 (2): 343–78.

[46] Mohammed, Abrar Juhar, and Makoto Inoue, (2014). "Land Tenure Reform and Its Implication for the Forest. Case Study from Oromia Regional State of Ethiopia." *Journal of Forest and Environmental Science* 30 (4): 393–404.

[47] Muradu Abdo (2014), *supra* note 11.

use practices.[48] In spite of such variation in the discourse on Ethiopia's land regime, there is no controversy on the need for adequate measures and regulations that guarantee tenure security, such as land certification, and just compensation in the event of expropriation.

4. Overview of the Link between Land and Special Economic Zones in Ethiopia

Land is a vital resource, a driver of development, and a critical asset that requires effective administration and governance.[49] In Africa, particularly Sub-Saharan Africa, land governance systems face a variety of challenges stemming from historical, social, political, and cultural diversity.[50] An effective land governance regime must secure land rights and access, promote socio-economic development and investment, contribute to development objectives, and be non-discriminatory.[51] However, effective land administration is often hindered by a lack of well-articulated policies and regulations, which can lead to conflict and misuse.[52] Corruption and poor enforcement of land laws further impede effective governance, particularly in sub-Saharan countries.[53]

In Ethiopia, land is among the basic tools for political and economic development[54] and it is critical in agriculture-based economy. Land remains an important asset for income, food, employment, and export earnings. In the Ethiopian context, land is not simply a means of production but a matter of cultural and social identity. In rural communities, being landless risks a loss of personal identity, as land symbolizes an individual's history, culture, and

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[48] Kanji, Nazneen. (2005). "Can Land Registration Serve Poor and Marginalised Groups?" Research Report (International Institute for Environment and Development. Natural Resources Group).

[49] Daniel Weldegebriel Ambaye (2012), *supra* note 43.

[50] Agunyai and Amusan, *supra* note 8.

[51] Krawchenko and Tomaney, *supra* note 9.

[52] Chekol Beyene (2017). 'Contending Views on Land Tenure System in Ethiopia: Historiographical Essay'. 9 *African J. Hist. Cult.* 1; Daniel Behailu & Adisu Kasa (2018). "*Land Governance in Ethiopia: Towards Evaluating Global Trends". 4 J. Soc. Sci. Res*. 35.

[53] Megan Haasbroek (2023). 'Land Acquisition and Sectoral Composition: Evidence from India', Work; J. Vernon Henderson & Vivian Liu (2023). 'Urban Land Markets and City Development: Sub-Saharan Africa', 1.

[54] Muradu Abdo (2014), *supra* note 11.

community status.[55] Thus, land policies are essential in providing direction towards efficient and effective economic activities thereby facilitating poverty reduction, sustainable management, and household well-being.

As the number of SEZs increases, greater pressure is placed on land and resources. Governments often provide foreign investors with favorable land access, resulting in conflict with local populations, and this is a problematic issue in most African countries.[56] The acquisition of land for development activities in general (including Special Economic Zones) often leads to the loss of land for smallholders and this could result in the loss of livelihoods, the displacement of people, and conflicts over resources. [57] Furthermore, many African countries often lack the capacity to effectively regulate the process, and this causes further inequity and the exploitation of local people. [58]

A country in the process of creating a Special Economic Zone by expropriating land is more likely to have land issues than a country that has long-established Special Economic Zones. The proliferation of Special Economic Zones can lead to significant land-related conflicts. [59] As SEZs are often located near transportation links and peri-urban areas in densely populated regions, their direct and indirect land effects are more acutely felt.[60] Local people are often left powerless to protect their land rights due to a lack of legal support and resources.

Consequently, the introduction of more SEZs heightens the risk of exploitation and land grabbing. Land for SEZs is often obtained through expropriation justified by 'public purpose', with minimal negotiation between parties of unequal bargaining power.[61] In most cases, public interest is the

[55] Nigatu Bekele (2021). 'The Legal Status of Communal Land Tenure System in Ethiopia and Its Congruency with the FDRE Constitution'. Vol.10 *Oromia Law J.* 54.

[56] Deborah Bräutigam & Tang Xiaoyang (2011). 'African Shenzhen: China's Special Economic Zones in Africa'. 49 *J. Mod. Afr. Stud*. 27.

[57] Michael Levien & Smriti Upadhyay (2022). 'Toward a Political Sociology of Dispossession: Explaining Opposition to Capital Projects in India'. 50 *Polit. Soc.* 279.

[58] Martyn Davies (2016). How China is Influencing Africa's Development, in China and the European Union in Africa:Partners or Competitors?', 187.

[59] Annelies Zoomers (2010). 'Globalisation and the Foreignisation of Space: Seven Processes Driving the Current Global Land Grab'. 37 *Journal Of Peasant Studies* 429.

[60] Marina Berdina (2021). 'Regional Features of the Development of Special Economic Zones. The Example of the Latin American Region's Countries'. *Latinskaia Amerika* 33.

[61] Siying Zhu *et al* (2023). 'An Empirical Study of China–Singapore International Land–Sea Trade Corridor: Analysis from Supply and Demand Sides'.135 *Transport Policy* 1.

primary tool used by governments to justify and facilitate the eviction of smallholders.[62] While expropriation is an inherent state power to facilitate development for the broader societal benefit, it should not cause immense economic and social losses for those whose property is taken.[63] These developmental activities should not become a source of tension between displaced smallholders and SEZ projects.

The acquisition of land for SEZs typically entails the eviction of smallholders;[64] and it can cause the permanent loss of their land tenure and rights. This is especially troubling when land is taken from smallholders who may lack access to information, resources, or legal recourse to challenge expropriation. As a result, land confiscation for SEZs can lead to human rights violations, displacement, and major economic, social, cultural, and environmental consequences. In Ethiopia, where land is a fundamental and long-lasting source of livelihood, development-induced displacement with insufficient compensation jeopardizes lives and exacerbates poverty and vulnerability.[65] Furthermore, unless managed properly, SEZ expansion can lead to backlashes, including air and water pollution, destruction of natural habitats, and loss of biodiversity.[66] Therefore, SEZ expansion must comply with human rights and environmental standards to mitigate adverse effects.

5. Ethiopia's Expropriation Law and the Rights of Displaced Communities

5.1 The need to assess legal safeguards

The FDRE Constitution stipulates that the government may expropriate private property for public purposes, subject to the payment, in advance, of compensation commensurate with the property's value.[67] This provision dictates that expropriation may only occur for public purposes and must be

[62] Andrew Chilombo (2021). 'Multilevel Governance of Large-Scale Land Acquisitions: a Case Study of the Institutional Politics of Scale of the Farm Block Program in Zambia'. 107 *Land Use Policy* 105518.

[63] Birhanu Kassa (2022). 'Changes in the Legal Framework of Land Expropriation Law of Ethiopia: Legal Analysis From Land Tenure Security Perspective.

[64] It can further cause permanent loss of their land tenure and rights.

[65] Abiyot Mogos Dabala (2019). 'Large-Scale Land Acquisition and Human Rights At the Crossroads: Quest for a Rights-Based Approach to Land Administration in Ethiopia'. 10 *Journal of Sustainable Development Law and Policy* 184.

[66] Lorenzo Cotula & Liliane Mouan (2021). "Labour Rights in Special Economic Zones: Between Unilateralism and Transnational Law Diffusion". 24 *J. Int. Econ. Law* 341.

[67] FDRE Constitution, *supra* note 15, Art. 40(8).

accompanied by commensurate compensation for the property and any permanent improvements. The compensation must be paid before dispossession. The constitutional provision on land ownership provides:

> "The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange."[68]

This provision excludes land itself from the scope of compensable interests, as land and natural resources are regarded as state property. What is compensated is thus the property on the land and not the land *per se*. The Constitution requires all subsidiary laws to align with these constitutional principles.[69]

Proclamation No. 1161/2019 is the primary binding legislation governing expropriation. Its core principle is that "where land is expropriated for public purpose, the procedure shall be transparent, participatory, fair and accountable."[70] The Proclamation defines public purpose as:

> "… a decision that is made by the cabinet of a Regional State, Addis Ababa, Dire Dawa, or the appropriate Federal Authority based on an approved land use plan, development plan, or structural plan under the belief that the land use will directly or indirectly bring better economic and social development to the public."[71]

The Proclamation thus empowers regional and federal cabinets to decide on public purpose without a clear, exhaustive list of what constitutes it. This allows implementing agencies extensive discretion to determine the public purpose, the type and extent of land to be used, and to exercise expropriation power with few limitations. These decisions must be based on an approved plan.[72] The Proclamation also authorizes regional cabinets to delegate the power to decide on expropriation to local administrations.[73]

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[68] Id., Art 40(3).
[69] Id., Art. 9(1).
[70] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 1161/2019, Art. 4 (4).
[71] Id., Art. 2(1).
[72] Id., Art. 5(1).
[73] Ibid.

5.2 The need for due process relating to public consultation

The mandate and authority to expropriate landholdings envisages pre-expropriation public consultation. To this end, Proclamation No. 1161/2019 and Regulation No. 472/2020 establish comprehensive procedures to be followed before and during expropriation. One key requirement is that the local administration must conduct *public consultation* at least one year before property appropriation.[74]

Constitutional principles reinforce the necessity of consultation.[75] Article 43(2) guarantees the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.[76] Articles 89(6) and 92(3) further provide that the "government shall at all times promote the participation of the People in the formulation of national development policies and programs… and people have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly."[77]

A cumulative reading of these provisions confirms that participation and consultation are essential components of the development process. The Ethiopian Constitution guarantees the right to be consulted on policies or development programs that affect the public. Stakeholder involvement is essential as it allows them to influence outcomes that affect their interests and it promotes the principles of good governance: participation, transparency, accountability, effectiveness, equity, and the rule of law.

Regulation No. 472/2020 specifies that if land is urgently required for an investment of national or regional significance, consultation must be conducted at least six months before expropriation. Landholders may be consulted on the type, benefits, and general process of the project.[78] This provision helps to realize the constitutional human rights principles, reduces

[74] Expropriation and Valuation, Compensation and Resettlement Council of Ministers Regulation No. 472/2020 2017 (Federal Negarit Gazette) 1, Art. 3 and 4; Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 1161/2019, Art.8(1).
[75] FDRE Constitution, *supra* note 15), See Art. 43(2), 89(6) And 92(3).
[76] Id., Art. 43(2).
[77] Ibid.
[78] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 1161/2019, Art.8(1(B)).

potential resentment and conflict, builds government transparency, and fosters community confidence.[79]

The Regulation requires that consultation with landholders be preceded by a written notice, with proof of receipt provided.[80] The consultation process requires the presence of three-fourths or more of the affected landholders. If this quorum is not met in the first meeting, a second meeting must be called, which can proceed with the presence of more than half of the landholders."[81] Article 4(4) further states that if half of the landholders are not present at the second meeting, a third notice shall be issued, and the consultation shall be conducted with any number of landholders present.

6. The Legal Framework for Land Acquisition by a Developer: *Navigating Legitimate Pathways*

6.1 The legal framework on land acquisition process

According to Articles 44(2), 89(6), and 92(3) of the FDRE Constitution, the government is required to promote public participation in national development programs and communities are entitled to full consultation regarding projects that affect them directly. The intention is to ensure genuine consultation and participation at every stage of the expropriation process, starting from planning, implementation, and evaluation. The community's perception, response, and knowledge about the land acquisition project strongly play a crucial role in shaping community understanding about the project. A well-informed community is more likely to participate constructively, which emphasizes the need for transparent information dissemination and participatory dialogue.

Article 29(2) of the FDRE Constitution guarantees freedom of expression and information seeking, receiving, and dissemination.[82] Moreover, the Constitution clearly states that the government may expropriate private property with advance compensation for public purposes. According to Article 9(3) of Proclamation No. 1161/2019, local administrations may not require the handover of land before compensation is paid to displaced landholders.

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[79] FDRE Constitution, *supra* note 15, Art. 93(3).

[80] Expropriation and Valuation, Compensation and Resettlement Council of Ministers Regulation No. 472/2020, Art. 4(1).

[81] Id., Art. 4(3).

[82] FDRE Constitution, *supra* note 15), Art. 29(2).

To promote economic transformation, the government has established several SEZs strategically located in regions with industrial growth potential.[83] These zones are designed to foster a conducive environment for domestic and foreign enterprises, to enhance economic activity, generate employment, and increase productivity.[84] Land availability has been both an issue of contention and an opportunity within this framework.[85] Land acquisition is shaped by a legal framework that prohibits private property ownership.[86] Thus, developers in SEZ typically acquire land through government lease agreements, which can range from short-term leases to long-term agreements lasting decades[87] in order to provide stability and predictability for the developers.

6.2 Insights from the Gada Special Economic Zone

In accordance with Proclamation No. 226/2020 and Regulation No. 228/2022, the Gada Special Economic Zone Corporation was established to serve as an administrative body.[88] In addition to providing basic infrastructure like roads, electricity, water, and wastewater treatment plants, the Corporation facilitates the Gada SEZ project from land identification to site preparation. It serves as an important pillar of the zone's attractiveness to developers as an investment destination.

According to Proclamation No. 1161/2019, the local administration has the authority to order the evacuation and takeover of land expropriated for public purposes, but only after commensurate payment is made to displaced landholders. Based on these legal processes, the local administration has the mandate to clear and transfer the land to the Gada SEZ Corporation's land bank. As a result, the Corporation prepares the land for developers through a lease system.

[83] Mamade, Gamachu Fufa (2022). 'Do Cluster Based Industrial Park Catalyse Developmental Spillovers? Evidences from Ethiopia's Experience'.

[84] Izumi Ohno & Sayoko Uesu (2020). 'A New Partnership Between Business and Development: A Case Study of Ethiopia's Industrial Development'. *Des. Integr. Ind. Policies* Vol. Ii 203.

[85] Surya Tewari (2020). 'Special Economic Zones: Location and Land Utilisation'. 221 *Inst. Stud. Ind. Dev. Work. Pap*.

[86] Mekonnen Firew Ayano (2024). 'Understanding the Local Complexities in Land Law Reforms: The Case of Land Inalienability in Ethiopia'. 1991–2018, *Law Soc. Inq*. 1

[87] Keyi Tang (2023). 'The Political Economy of Special Economic Zones: The Cases of Ethiopia and Vietnam'. 30 *Rev. Int. Polit. Econ.* 1957.

[88] Gada Special Economic Zone Development Corporation Regulation, No. 228/2022 2011 248, Art.5.

Under the federal SEZ Proclamation No. 1322/2024, 'lease' means "…a contract relating to land tenure by which a right of use of special economic zone land is acquired."[89] In line with this definition, Proclamation No. 226/2020 and Regulation No. 228/2022 define 'subleasing' as "the transfer of a leased and developed parcel to another developer or investor."[90] Based on these provisions, different companies have expressed willingness to become part of the Gada SEZ. For instance, the China Civil Engineering Construction Corporation (CCECC) recently signed a memorandum of understanding to collaborate on logistics and infrastructure development within the zone.[91] Developers secure land access via a lease contract with the Gada SEZ Corporation and receive a leasehold certificate upon signing the agreement.[92]

Accordingly, developers can secure land, as the Corporation controls the land and provides clear documentation. As a result, developers do not interact directly with smallholders but sign lease agreements with the SEZ authority.[93] This system simplifies the process and provides developers with direct-access to land from the land bank, and this streamlines the process and guarantees their rights within the zone. It also regulates construction and project milestones by requiring developers to receive their leasehold certificate within seven consecutive days of signing the agreement.[94] Developers acquire land by signing a lease agreement with the zone authority and they do not directly interact with the displaced smallholders. This evokes the question whether such procedural convenience justifies downplaying or suppressing the corresponding rights of landholders who are entitled to the right to be consulted and commensurate compensation upon expropriation.

7. Legal Rights and Obligations of SEZ Developers

7.1 Rights of key players in Special Economic Zones

Since 2000, Special Economic Zones have become a focal point of Ethiopia's economic development strategy. The government provides certain protections

[89] Special Economic Zone Proclamation No. 1322/2024 2024 (Federal Negarit Gazette) 1, Art.2(30).

[90] Gada Special Economic Zone Proclamation No. 226/2020 2013 248, Art. 2(6); Gadaa Special Economic Zone Development Corporation Regulation, No. 228/2022, Art. 2(10).

[91] Ibid.

[92] Ibid.

[93] Ibid.

[94] Special Economic Zone Proclamation No. 1322/2024, Art.46(3).

to safeguard investments[95] because the rights of SEZ developers over land is crucial for the successful implementation of these zones. Some literature confirms that developers generally enjoy guarantees against expropriation without compensation, provided that they comply with contractual agreements. Besides, they are also often granted the right to repatriate profits, dividends, and capital, which incentivizes foreign investment.[96] This legal infrastructure is designed to create a conducive business environment, underscoring the state's commitment to fostering economic growth.[97]

International trends indicate that developing and operating an SEZ involves (but is not limited to) four key players, including the developer, the manager, the operator, and the regulator, each with distinct roles.[98] A '*developer*' is defined under Federal Proclamation No. 1322/2024 as "an entity licensed to engage in the design, construction, finance, or ownership of a special economic zone."[99] According to Proclamation No. 226/2020, a 'developer' means "any profit-making entity that performs various constructing, designing, and developing works according to the contract he/she has signed with the Authority."[100] Regulation No. 228/2022 provides a similar definition. A '*sub-developer*' is an entity licensed to engage in these activities for a part of an SEZ under a sub-developer agreement."[101] A developer or sub-developer agreement is a contract between the Commission and a developer for services within an SEZ. These definitions characterize a developer as a profit-making entity that contracts with the government or corporation to design, construct, finance, or own an SEZ.

Proclamation No. 1322/2024 defines 'land' specifically as "land designated for purposes of carrying out special economic zone investment."[102] Developers acquire rights over land through lease agreements.[103] Articles 24

[95] Abreham Mengistu (2022). 'Prospects and Challenges Of Industrial Park Development In Ethiopia: The Case of Bole Lemi Industrial Park', Addis Ababa.

[96] Yuan Wang & Hong Zhang (2024). 'Individual Agency In South-South Policy Transfer: China and Ethiopia's Industrial Park Development'. *Rev. Int. Polit. Econ*. 1.

[97] Syarif Hidayat & Siwage Dharma Negara (2020). 'Special Economic Zones And The Need For Proper Governance'. 42 *Contemp. Southeast Asia* 251.

[98] *Luis Freisler (2022). 'Special Economic Zones: A Legal Framework Analysis'. 3 J. Spec. Jurisd.* 1; Neethling, *supra* note 130.

[99] Special Economic Zone Proclamation No. 1322/2024, Art.2(14).

[100] Gada Special Economic Zone Proclamation No. 226/2020, Art. 2(8).

[101] Gada Special Economic Zone Development Corporation Regulation, No. 228/2022, Art.2(11).

[102] Ibid, Art. 2(28).

[103] Gada Special Economic Zone Proclamation No. 226/2020, Art 9(2).

of Proclamation No. 1322/2024 and Article 9 of Proclamation No. 226/2020 articulate these rights, which include the right to design, construct, develop, and exploit the SEZ, and to provide related services.[104]

7.2 Insights from SEZ rights and obligations in Gada Special Economic Zone

Article 24(1(b)) of Proclamation No. 1322/2024 states that a developer may "sub-lease a developed special economic zone land to an enterprise and authorized entity."[105] Similarly, Article 9(3) of Gada Special Economic Zone Proclamation No. Proclamation No. 226/2020 grants developers the right "to transfer through a sublease contract by dividing from the land of the Zone he/she acquired by lease and developed with recognition of the Board…."[106] This allows developers to sublease developed land to authorized entities. Developers also have the right to enter into contracts with third parties for sub-development, subject to the Commission's policies. Accordingly, the Gada SEZ authority must authenticate contracts related to the transfer of rights, including subleases and mortgages.[107]

Moreover, developers are entitled to administer, preserve, and promote the land they have developed, as well as to change non-fundamental land use with permission from the Authority.[108] They are entitled to priority in renewing their lease upon its expiration.[109] They can construct and rent or sell production facilities, offices, and residences within the zone.[110] According to Proclamation No. 1322/2024, developers may obtain loans and other financial resources by participating in the financial markets both in Ethiopia and abroad.[111] Likewise, Proclamation No. 226/2020 gives developers, sub-developers, and authorized firms the right to borrow money and participate in credit-generating activities. The development of land and other assets may be mortgaged or pledged to secure loans.[112]

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[104] Special Economic Zone Proclamation No. 1322/2024, Art. 24(1(A)); Gada Special Economic Zone Proclamation No. 226/2020, Art. 9(1).

[105] Special Economic Zone Proclamation No. 1322/2024, Art. 24(1(B)).

[106] Gada Special Economic Zone Proclamation No. 226/2020, Art. 9(3).

[107] Id., Art. 31(2)

[108] Id., Art. 9(7).

[109] Id., Art. 9(8).

[110] Special Economic Zone Proclamation No. 1322/2024, Art. 24(1(D)); Gada Special Economic Zone Proclamation No. 226/2020, Art. 9(5).

[111] Special Economic Zone Proclamation No. 1322/2024, Art.24(1(G)).

[112] Id., Art.31(1).

Developers are also entitled to incentives. Article 24(1(i)) of Proclamation No. 1322/2024 states that developers may enjoy customs duty and tax exemptions[113] for the period stated in the law. Article 9(12) of Proclamation No. 226/2020 entitles developers to exemptions from tax, customs duty, and other incentives in accordance with federal and regional laws, thereby providing financial relief that encourages investment.[114]

SEZ developers are also subject to obligations. Article 10 of Proclamation No. 226/2020 requires developers to meet the criteria to work/operate in the zone and obtain a license from the Authority.[115] They must refrain from acts that damage the zone, maintain quality and standards in production, keep full records, comply with environmental protection laws, and provide information required by the Authority.[116]

8. Concluding Remarks

The preceding sections demonstrate Ethiopia's legal framework that allows transparent and participatory land expropriation for public purposes, as mandated by the FDRE Constitution and Proclamations No. 1161/2019, No. 1322/2024, Gada Special Economic Zone Proclamation No. 226/2020, and Gada Special Economic Zone Development Corporation Regulation No. 228/2022. Although the legal principles are clear in their intent to protect smallholders and ensure equitable development, the particular insight gained from examining the operational modalities of the Gada Special Economic Zone reveals a critical disconnect between the theory of participatory governance and the practice of land expropriation. It also shows that the legal system creates a distinct division between rights and responsibilities. The law clearly requires the government to consult the landholders. However, the structure of the system isolates developers from the social and political ramifications of displacement.

The specific insight is that the Gada SEZ model functions through a tripartite structure that incorporates smallholders, the state, and developers, where the most critical relationship is severed. Developers acquire ready-made land from the Gada SEZ Corporation's land bank via a lease agreement, having no legal or procedural interaction with the original landholders. This institutionalizes a system where the state, i.e., through local administrations,

[113] Special Economic Zone Proclamation No. 1322/2024, Art. 24(1(I)).
[114] Gada Special Economic Zone Proclamation No. 226/2020, Art. 9(12).
[115] Id., Art. 10(2).
[116] Id., Art. 10(4).

oversees the contentious process of expropriation and displacement that could lead to state accountability fragmentation. Likewise, the developer receives a legally secure leasehold without direct negotiation with communities. The smallholder recourse right is limited, since the displaced individuals have no contractual or procedural leverage against the ultimate end-user of their land, i.e., the developer. Hence, their grievances remain solely with the state.

It can be concluded that the Ethiopian SEZ model, as exemplified by Gada SEZ, prioritizes investment facilitation and operational efficiency for developers at the potential cost of meaningful, ongoing accountability. Despite the law's emphasis on participatory process, the operational design ensures that the developers, the primary drivers and beneficiaries of the land use changes, are legally detached from the displacement caused by their projects. According to this insight, ensuring true equity and mitigating social risks in SEZs requires not only perfecting state-led expropriation procedures, but also legally integrating developers into the chain of responsibility for the social and economic consequences of their investments. Achieving Ethiopia's ambitious development goals will depend on bridging this gap between legal principles and the operational design to forge a more sustainable and socially just path to industrialization.

Based on the analysis in this article, there is the need to bridge the accountability gap in Ethiopia's SEZ model by integrating mandatory human rights due diligence, requiring developers to continuously assess, mitigate, and report on social impacts; establishing joint liability model between the state/SEZ authority and the developer for harms from unlawful expropriation; and directly linking all fiscal and customs benefits to a developer's verified compliance with these social obligations. These interconnected avenues of reform and implementation can transform the SEZ framework from one that insulates capital to one that mandates shared responsibility and equitable development. ■

Cited References

Abdo, Muradu (2014). *State Policy and Law in Relation to Land Alienation in Ethiopia*, (PhD Dissertation. University of Warwick).

Abdo, Muradu (2023a). "Interrogating Land Policy Perspectives: Ethiopia in Focus." *Oromia LJ* 12:48.

Abdo, Muradu (2023b). "Role of International Institutions in Ethiopia's Rural Land Policy." *Mizan Law Review* 17 (2): 343–78.

Agunyai SC & Amusan L (2023). "Implications of Land Grabbing and Resource Curse for Sustainable Development Goal 2 in Africa: Can Globalisation Be Blamed?" *Sustainability* (Switzerland).

Alreshaid, Nasser (2022). "Special Economic Zones to Facilitate Trade and Investment Opportunities Mena Regional Applications Amidst a Global Race to The Bottom". 9 *Indones. J. Int. Comp. Law* 43.

Ambaye, Daniel Weldegebriel (2012). "Land Rights in Ethiopia: Ownership, Equity, and Liberty in Land Use Rights". Fig Work. Week 6.

Bekele, Nigatu (2021). "The Legal Status of Communal Land Tenure System in Ethiopia and Its Congruency with the FDRE Constitution".

Berdina, Marina (2021). "Regional Features of the Development of Special Economic Zones. The Example of the Latin American Region's Countries". *Latinskaia Amerika* 33.

Berger, Eva (2014). "Access to Land in Ethiopia: The Impact of Land Laws, Industrial Development, Villagization and Land-Grab in Rural Areas".

Beyene, Chekol (2017). "Contending Views on Land Tenure System in Ethiopia: Historiographical Essay". 9 *African J. Hist. Cult*. 1.

Bräutigam D & Tang X (2011). "African Shenzhen: China's Special Economic Zones in Africa". 49 *J. Afr. Stud.* 27.

Butt, H. D., Aijaz, U., & Ahmed, R. (2021). "Development and management of integrated SEZs as stimulus to economic growth". *Pakistan Journal of International Affairs,* 4(2).

Chiukira, Levious (2020). "Special Economic Zones in Developing Countries: Challenges and Opportunities for Zimbabwe".

Chilombo, Andrew (2021). "Multilevel Governance of Large-Scale Land Acquisitions: a Case Study of the Institutional Politics of Scale of the Farm Block Program in Zambia". 107 *Land Use Policy* 105518

Crewett W *et al* (2015). "Continuity and Change, Shifting Rulers, and the Quest for State Control."

Cotula L & Mouan L (2018). "Special Economic Zones: Development Engines or Sites of Exploitation? "

Cotula L & Mouan L (2021). "Labour Rights in Special Economic Zones: Between Unilateralism and Transnational Law Diffusion." 24 *J. Int. Econ. Law* 341.

Dabala, Abiyot Mogos (2019). "Large-Scale Land Acquisition And Human Rights At The Crossroads: Quest For A Rights-Based Approach To Land Administration In Ethiopia". 10 *Journal of Sustainable Development Law and Policy* 184.

Davies, Martyn (2016). "How China is Influencing Africa's Development, in China and the European Union in Africa: Partners or Competitors? ", 187.

Diriba, Getachew (2022). "The Evolving Question of Land in Ethiopia: Tenure Preferences, Property Rights and Land."

Freisler, Luis (2022). "Special Economic Zones: A Legal Framework Analysis" 3 *J. Spec. Jurisd.* 1.

Ganta, Brightman Gebremichael (2022). "Federalism And Land Rights In The Context Of Post-1991 Ethiopia". 38 *Journal Of Developing Societies* 398.

Garriga, Guillem Tur (2020). "A Comparative Analysis on the Design of the Legal Framework of Special Economic Zones of BRICS".

Gebeyehu, Zemen Haddis (2022). "Access to Land and Tenure Security in Ethiopia's Ethnic-Based Administration System.". *African Journal of Land Policy and Geospatial Sciences* 5 (3): 521–41.

Haasbroek, Megan (2023). "Land Acquisition and Sectoral Composition: Evidence from India", Work.

Henderson, J. Vernon & Liu, Vivian (2023)."Urban Land Markets and City Development: Sub-Saharan Africa", 1.

Hidayat S & Negara SD (2020). "Special Economic Zones and the Need for Proper Governance". 42 *Contemp. Southeast Asia* 251.

Inoue M & Mohammed AJ (2014). "Land Tenure Reform and Its Implications for the Forest. Case Study from Oromia Regional State of Ethiopia.". *Journal of Forest and Environmental Science* 30 (4): 393–404.

Jagemma M & Worku H (2021). "The Effectiveness of Industrial Development Strategy in Ethiopia". 27 *Journal of Contemporary Issues in Business and Government* 5280.

Kanji, Nazneen (2005). "Can Land Registration Serve Poor and Marginalised Groups?" Research Report (International Institute for Environment and Development, Natural Resources Group).

Kassa, Birhanu (2022). "Changes in the Legal Framework of Land Expropriation Law of Ethiopia: Legal Analysis from Land Tenure Security Perspective".

Khan A *et al* (2024). "The Global Perspective Of SEZs, EZs And EPZs: A Critical Evaluation of Regular Frameworks and Policies in the Context of KP". 7 International Journal Of Social Science Archives (Ijssa) 28.

Krawchenko T & Tomaney J (2023). "The Governance of Land Use: A Conceptual Framework". 12 *Land* 1.

Kumera E & Woldetensae B (2023). "Special Economic Zones Location Decision and Quality of Life in Ethiopia: The Case of Bole Lemi-1 and Eastern Industry Zone". 88 Geojournal 3985.

Levien, Michael (2012). "The Land Question: Special Economic Zones and the Political Economy of Dispossession in India". 39 Journal of Peasant Studies 933.

Levien M & Upadhyay S (2022). "Toward a Political Sociology of Dispossession: Explaining Opposition to Capital Projects in India" 50 *Polit. Soc.* 279.

Li S & Wang M (2021). "The Achievements of and the Prospects for the Development of the Special Economic Zones in Guangdong During the 40 Years of Reform and Opening-Up". *Studies On China's Special Economic Zones* 4 29.

Mamade, G F (2022). "Do Cluster-Based Industrial Park Catalyse Developmental Spillovers? Evidence from Ethiopia's Experience".

Mekonnen, Firew Ayano (2024). "Understanding the Local Complexities in Land Law Reforms: The Case of Land Inalienability in Ethiopia". 1991–2018, *Law Soc. Inq.* 1

Mengistu, Abreham (2022). "Prospects And Challenges Of Industrial Park Development In Ethiopia: The Case of Bole Lemi Industrial Park", Addis Ababa.

Ohno I & Uesu S (2020). "A New Partnership between Business and Development: A Case Study of Ethiopia's Industrial Development". D*es. Integr. Ind. Policies* Vol. II 203.

Park, Soojin (2024). "Can Early Sezs Be Drivers Of Economic Growth In Transition Economies? Comparative Analysis: China, Russia, Vietnam".

Séogo W & Zahonogo P (2023). "Do Land Property Rights Matter for Stimulating Agricultural Productivity? Empirical Evidence from Burkina Faso". 125 *Land Use Policy* 106475.

Stebek, Elias N (2015). "Challenges In Access To Urban Land For Business Activities Under Ethiopian Law: Between Oligarchy and Broad-Based Private Sector". 9 *Mizan Law Review* 37, 37-82.

Tang, Keyi (2023). "The Political Economy of Special Economic Zones: The Cases of Ethiopia and Vietnam". 30 *Rev. Int. Polit. Econ.* 1957.

Tareke, Sibuh Gebeyaw (2019). "Rural Land Rights and Limitations in Ethiopia: The Study of Amhara Region". *J. Resour. Dev. Manag*.

Tewari, Surya (2020). "Special Economic Zones: Location and Land Utilisation". 221 *Inst. Stud. Ind. Dev. Work. Pap*.

Udessa, Fraol, Adugna, Dagnachew and Workalemahu, Liku (2021). "Urban Land Management Legal and Institutional Framework from Governance Dimension - The Case of Gelan and Lega Tafo Lega Dadi Towns", 10 1.

Wabelo, Temesgen Solomon (2020). "Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries." *Beijing L. Rev*. 11:64.

Wang Y & Zhang H (2024). "Individual Agency In South-South Policy Transfer: China and Ethiopia's Industrial Park Development". *Rev. Int. Polit. Econ*. 1.

Wenedem Agegnehu, Alelegn (2023). "Protection of Local Land Use Rights In The Process Of Large-Scale Agricultural Land Acquisition in Ethiopia". 21 *African Identities* 113.

Yesuf, Habiba (2021). "Effects of Industrial Park Induced Displacement on Natural, Economic and Social Assets of Small-Scale Farm Holders in Peri-Urban Area of Kombolcha, Ethiopia". 11 *Research on Humanities and Social Sciences* 9.

Zhu S *et al* (2023). "An Empirical Study of China–Singapore International Land–Sea Trade Corridor: Analysis from Supply and Demand Sides". 135 *Transport Policy* 1.

Zoomers, Annelies (2010). "Globalisation and the Foreignisation of Space: Seven Processes Driving the Current Global Land Grab". 37 *Journal Of Peasant Studies* 429.

Resolving the Constitutional Silence in Ethiopia Concerning the Power to Investigate and Prosecute Crimes that violate International Human Rights

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Abstract

Ethiopia's Constitution does not specify which level of government is responsible for investigating and prosecuting crimes that violate international human rights (CVIHR) within the regional states. The need to resolve this constitutional silence had not arisen until recently, as the regional states had been carrying out these tasks despite not being expressly required to do so. Regional states were unlikely to contest this arrangement, even if they were not constitutionally obligated to undertake these tasks, given that government power at both federal and regional state levels was controlled by a single party –the Ethiopian People's Revolutionary Democratic Front (EPRDF). However, following the end of the EPRDF's one-party rule in 2018, some regional states promptly declined to investigate and prosecute CVIHR. The situation demonstrated the relevance of determining whether regional states are responsible under the Constitution for carrying out these functions. The constitutional silence, if left unresolved, has far-reaching ramifications. Among others, it creates difficulties in ensuring accountability for failures to address human rights violations. It also leads to violations of individuals' right to an effective remedy, which, in turn, engages Ethiopia's international responsibility. Based on doctrinal research to analyse primary and secondary sources, this article assesses which level of government is responsible for investigating and prosecuting CVIHR within the regional states. It also examines the rationale and mechanisms available to resolve the constitutional silence and identifies the most appropriate approach to pursue.

Keywords:

Constitutional intent, criminalise, investigate and prosecute, delegation, federal matters

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Contents

1. Introduction

Ethiopia has ratified most of the core international human rights treaties adopted under the auspices of the UN such as the ICCPR and CEDAW.[1] Besides, Ethiopia is a state party to international treaties that address specific forms of human rights violations such as genocide, torture, and human trafficking.[2] Among the key obligations that Ethiopia assumed upon ratifying

Frequently used acronyms

CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CVIHR	Crimes that violate international human rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights

[1] International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December 1966, Ethiopia ratified the ICCPR on 11 June 1993;
Convention on the Elimination of All Forms of Discrimination against Women, Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 34/180 of 18 December 1979, Ethiopia ratified the CEDAW on 10 September 1981.

[2] Convention on the Prevention and Punishment of the Crime of Genocide, Ethiopia ratified the Genocide Convention on July 1, 1949. The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (General Assembly Resolution 39/46 of 10 December 1984), Ethiopia ratified the CAT on 14 March 1994; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and

the treaties are to criminalise human rights violations and to investigate and prosecute perpetrators. These obligations are explicitly stated in some of the treaties that address specific forms of human rights violations – such as the Genocide Convention and the CAT.[3] In other universal human rights treaties, including the ICCPR, on the other hand, the obligations are derived from the elaborations of treaty bodies.[4]

The Constitution of the Federal Democratic Republic of Ethiopia (hereafter, 'the FDRE Constitution' or 'the Constitution') grants the federal government exclusive authority to legislate for the implementation of international treaties, including those requiring the enactment of criminal legislation.[5] The federal government relied on the 2004 Criminal Code to fulfill its international obligations to criminalise human rights violations, as required by treaties such as the Genocide Convention, the CAT, and the CEDAW.[6] In other cases, it enacted separate legislation to implement international treaties such as the UN Protocol for human trafficking (The UN Trafficking Protocol). Proclamation No. 1178/2020 (hereafter referred to as 'the Anti-Trafficking and Smuggling Proclamation') was enacted by the federal government to meet its international obligations under the UN Trafficking Protocol, among others.[7]

Articles 51 and 52 of the FDRE Constitution outline matters that fall under the federal and regional state jurisdictions, respectively, while Article 50(2) requires the levels of government to have legislative, executive and judicial powers. Read together, the provisions imply that the federal government and the regional states have exclusive authority to execute laws enacted by their respective legislatures within their administrative boundaries. It follows, therefore, that the responsibility to investigate and prosecute the crimes

Children, Supplementing the United Nations Convention against Transnational Organized Crime, Ethiopia ratified this instrument on 22 June 2012.

[3] Convention on the Prevention and Punishment of the Crime of Genocide (*supra* note 2) Articles III, IV,V; *The CAT* (*supra* note 2) Articles 4,7.

[4] Human Rights Committee, 'General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th Meeting)' para 8 <https://linkinghub.elsevier.com/retrieve/pii/B9780444879110500854> accessed 20 April 2024.

[5] Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995 Articles 51(8), 55(1), 55(5), and 55(12).

[6] The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004 See Preamble, para 1, and Articles 269, 424, and 620.

[7] Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178/2020.

incorporated into federal laws implementing international treaties, referred to in this article as crimes that violate international human rights (CVIHR), within federal territories, Addis Ababa and Dire Dawa, lies within the federal government.[8]

However, the Constitution does not explicitly specify which level of government is responsible for investigating and prosecuting CVIHR within the regional states. It does not contain express provisions allocating responsibility for the execution of federal laws criminalising human rights violations in general.[9] One may not easily ascertain whether (as in the constitutions of primarily dualist federations such as the USA, Canada, and Australia) the responsibility for investigating and prosecuting CVIHR (incorporated in federal laws) rests with the federal government.[10] Nor is it clear (under the FDRE Constitution) whether, the responsibility for investigating and prosecuting CVIHR established by federal laws lies in the regional states as is the case in mainly integrated federations, exemplified by Germany.[11]

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[8] In this article, CVIHR refers to crimes listed under the Criminal Code or separate federal legislation that the federal government has relied on to implement ratified international human rights treaties. CVIHR listed under the Criminal Code include *Crimes against life, person, and Health* (Articles 538-560), such as homicide and infanticide; *Crimes Committed against Life, Person and Health through Harmful Traditional Practices* (Articles 561-570), such as female circumcision; and *crimes against honest and reputation* (Articles 607-619), such as defamation and calumny. As explained by the federal government, these crimes are intended to protect substantive rights guaranteed under international human rights treaties, such as CRC, CEDAW and ICCPR) (See Committee on the Rights of the Child, Initial Reports of States Parties due in 1993, Addendum, Ethiopia, para 223, Criminal Code of Ethiopia, Preamble, para 3, Human Rights Committee, First Periodic Report of States Parties: Ethiopia, para 171, respectively). Besides, genocide (Article 269) and use of improper method (Article 424) are used by the federal government to give effect to the Genocide Convention and the CAT, respectively. CVIHR listed under separate federal legislation include human trafficking as established by the Anti-Trafficking and Smuggling Proclamation enacted to implement the UN Trafficking Protocol.

[9] Assefa Fiseha (2009), *Federalism: Teaching Material* (Prepared under the Sponsorship of the Justice and Legal System Research Institute) 352; Abdi G Amenu (2014), 'Criminal Jurisdiction of State Courts under the Constitution of the Federal Democratic Republic of Ethiopia' (LLM Thesis, Addis Ababa University) 119.

[10] Thomas O. Hueglin and Alan Fenna (2015), *Comparative Federalism: A Systematic Inquiry* (University of Toronto Press) 136; George Anderson, *Federalism: An Introduction* (Oxford University Press 2008) 21.

[11] Thomas O. Hueglin & Alan Fenna, id., 137; Anderson. Id., 22. This article uses the terms 'responsibility' and 'powers' interchangeably, as the FDRE Constitution also

This article assesses which level of government, according to the constitutional text and intent, is responsible for investigating and prosecuting CVIHR within the regional states. It also examines the rationale and the mechanisms for, filling the constitutional silence. The article employs a doctrinal research method and analyses constitutional provisions, particularly those outlining the powers of the levels of government, as well as the preparatory works of the Constitution, relevant legislation, and other scholarly literature.

The article proceeds as follows. In the next section, it explores how the responsibility for investigating and prosecuting CVIHR is allocated in practice, despite the Constitution's lack of an express provision on the issue, and considers the potential consequences of this constitutional silence. It then examines the key provisions of federal legislation that have shaped the division of power to investigate and prosecute CVIHR in practice. Next, it assesses the mode of division of power followed in practice and analyses which level of government holds responsibility for investigating and prosecuting CVIHR. Thereafter, it explores the underlying reasons and mechanisms for addressing the constitutional silence concerning responsibility for carrying out these functions. Finally, it concludes by summarising key findings and arguments.

2. Overview of the Gaps and Potential Consequences

In the absence of a clear constitutional mandate, regional states (in practice) investigate and prosecute most of the CVIHR when they occur within their administrative jurisdictions as matters of their own concern.[12] The only crimes that fall beyond their jurisdiction are crimes that are widely recognised as international crimes, such as genocide and torture (Articles 269 and 424 of the Criminal Code, respectively), as well as those regulated by separate legislation, including human trafficking.[13] The federal government investigates and prosecutes all CVIHR committed within federal territories – Addis Ababa and Dire Dawa – and addresses the serious crimes mentioned

uses them in a similar manner (See, for example, Articles 51, 52, and 94 of the FDRE Constitution).

[12] Simeneh Kiros Assefa (2009), *Criminal Procedure Law: Principles, Rules, and Practices* (Xlibris Corporation,) 285–289; Gedion T. Hessebon and Abduletif K. Idris, 'The Supreme Court of Ethiopia: Federalism's Bystander' in Nicholas Theodore Aroney and John Kincaid (eds), *Courts in Federal Countries* (University of Toronto Press, 2017) 165, 176; Amenu (*supra* note 9) 120.

[13] SK Assefa, id., 285–289; Wondwossen D Kassa (2012), *Ethiopian Criminal Procedure: A Textbook* (Addis Ababa University) 285.

above, such as genocide and torture, by delegating authority to the regional states when they occur within their jurisdictions.[14]

Until recently, the need to address the constitutional silence regarding the power to investigate and prosecute CVIHR did not arise, since regional states had never resisted addressing human rights violations. In fact, such resistance was unlikely to emerge, given that government power at both the federal and regional state levels was controlled by a single party, the EPRDF. The democratic centralism principle which the EPRDF implemented required decisions made by high-ranking federal officials to be fully implemented at the regional state level through the party's chain of command.[15] As a result, it was highly unlikely that the regional states would challenge the constitutionality of the arrangement requiring them to enforce federal laws. The strict application of this principle, and the resulting federal influence over regional states, largely explains the absence of intergovernmental constitutional disputes during the nearly three-decade-long rule of the EPRDF regime.[16]

The situation, however, significantly changed in 2018 following the wide anti-government public protest, which ultimately led to the end of EPRDF and the merger of its constituent members into the newly organised Prosperity Party (PP).[17] Soon after the post-2018 changes, there were leaderships in regional states (ruled by political parties that were members or affiliates of the EPRDF) that attempted to challenge the reform and resist the enforcement of federal laws. An example in this regard is the former president of the Regional State of Somali, who declined to investigate and prosecute the serious human rights violations that ravaged the region in August 2018, including killings,

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[14] SK Assefa (*supra* note 12) 285–289.

[15] Gedion T. Hessebon and Abduletif K. Idris (*supra* note 12) 189; Yonatan T Fessha (2022), 'A Federation Without Federal Credentials: When Politics Trumps Law' in Abadir Ibrahim and Kokebe Wolde (eds), *Proceedings of a Convening of Scholars on Ethiopia's Constitutional Future* (Northwestern Roberta Buffett Institute for Global Affairs and Northwestern University Libraries, Evanston,) 145.

[16] Zemelak Ayitenew Ayele, 'Ethiopia's "Unusual Constitutional Umpire": Revisiting the Role of the House of Federation' (*50 Shades of Federalism*, 20 July 2020) <https://50shadesoffederalism.com/case-studies/ethiopias-unusual-constitutional-umpire-revisiting-the-role-of-the-house-of-federation/> accessed 21 April 2024.

[17] 'Ethiopia: Freedom in the World 2020 Country Report' (*Freedom House*) <https://freedomhouse.org/country/ethiopia/freedom-world/2020> accessed 13 November 2024; 'Ethiopia's Ruling Coalition Parties Merge to Form "Prosperity Party" | Africanews' <https://www.africanews.com/2019/11/21/ethiopia-s-ruling-coalition-parties-merge-to-form-prosperity-party//> accessed 13 November 2024.

torture, and rape.[18] The incident finally resulted in the federal government's military intervention and the arrest of prominent officials, including Abdi Illey, who was then the president of the regional state.[19]

It is worth noting that the Prosperity Party, which replaced the EPRDF, currently controls government power at both the federal and state levels. The constitutional silence remains unresolved, and regional states have continued to investigate and prosecute CVIHR as matters of their own concern. However, the case of the Somali Regional State (in 2018) noted above lends credence to the assumption that this practice may persist only when both levels of government are controlled by a single party. Once one-party dominance ends, regional states may decline enforcing federal criminal laws on a range of grounds, including, for example, challenging the constitutionality of the arrangement. This, in turn, demonstrates the need to resolve the constitutional silence concerning the power to investigate and prosecute CVIHR.

If left unresolved, the constitutional silence has the potential to generate serious and interrelated consequences for the protection of human rights. Under such circumstances, as indicated above, regional states may fail to investigate and prosecute CVIHR when one-party dominance is no longer in place. This will foster an environment where impunity may prevail, as neither the federal government nor the regional states can be held accountable for their failure to investigate and prosecute human rights violations. Furthermore, where the Constitution does not clearly identify which level of government is responsible for investigating and prosecuting human rights violations, victims may be left without effective avenues to seek remedies for

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[18] Salem Solomon, 'Upheaval in Somali Region Tests Ethiopian PM's Ability to Unify' (*VOA*) <https://www.voanews.com/a/upheaval-in-somali-region-tests-ethiopian-prime-minister-ability-to-unify/4523343.html> accessed 10 October 2022; AfricaNews, 'President of Ethiopia's Somali Region Resigns, Federal Forces Deployed' (*Africanews,* 6 August 2018) <https://www.africanews.com/2018/08/06/ethiopia-s-somali-region-president-resigns-federal-security-deployed/> accessed 10 October 2022.

[19] Yonatan Fessha (2018). 'Secessionism, Federalism and Constitutionalism in Ethiopia'. VerfBlog, 2018/8/15 .https://intrechtdok.de/receive/mir_mods_00003952
DOI: https://doi.org/10.17176/20180815-104744-0
Salem Solomon, 'Upheaval in Somali Region Tests Ethiopian PM's Ability to Unify' <https://www.voanews.com/a/upheaval-in-somali-region-tests-ethiopian-prime-minister-ability-to-unify/4523343.html>;
AfricaNews, 'President of Ethiopia's Somali Region Resigns, Federal Forces Deployed' (*Africanews,* 6 August 2018) <https://www.africanews.com/2018/08/06/ethiopia-s-somali-region-president-resigns-federal-security-deployed/> accessed 2 October 2024.

the human rights violations they have suffered. This entails a breach of Ethiopia's international obligations to uphold the right to an effective remedy, as outlined in ratified international human rights treaties, such as the ICCPR and the CAT. [20]

Ethiopia is bound under international law to give effect to the provisions of ratified treaties at both the federal and regional state levels. This obligation is expressly affirmed in the ICCPR, which provides that its provisions apply to all parts of a federal state without any limitation or exception. As the Human Rights Committee has explained, this flows from the principle contained in Article 27 of the Vienna Convention on the Law of Treaties, according to which a state party's domestic law may not be invoked as justification for failure to perform a treaty obligation (Human Rights Committee, 'General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th Meeting)' Para 4.). Accordingly, the federal government of Ethiopia may not attribute its failure to investigate and prosecute CVIHR (at the regional state level) to the silence of the FDRE Constitution regarding which level of government is responsible for carrying out these tasks.

3. The Division of Power to Investigate and Prosecute CVIHR in Practice

Essentially, the current framework under which states assume responsibility for investigating and prosecuting most CVIHR originates from the Transitional Period (1991–1995), which followed the removal of the Derg regime from power. During this period, subject matters were allocated between the tiers of government established at the time – the Central Transitional Government and the self-governing units (National/Regional Transitional Self-Governments). Crimes such as homicide, assault, and abduction listed in the Penal Code (later amended in 2004 by the Criminal Code), which the Central Transitional Government relied on to implement international human rights treaties, [21] were investigated and prosecuted by the self-governing units. On the other hand, some grave crimes provided under the Penal Code, including treason, espionage, and hijacking, as well as international crimes such as genocide and torture, fell under the exclusive

[20] ICCPR, Art. 2(3); The CAT Art. 14(1).

[21] See, for example, Committee on the Rights of the Child, 'Initial Reports of States Parties Due in 1993, Addendum, Ethiopia' para 223.

jurisdiction of the Central Transitional Government.[22] The self-governing units could investigate and prosecute these crimes only when they were delegated to do so by the Central Transitional Government.[23]

With the end of the Transitional Period and entry into force of the FDRE Constitution in 1995, the investigation and prosecution of CVIHR (previously carried out by the self-governing units) have become the responsibilities of the regional states established under the federal system. There is no doubt that this approach was adopted based on lessons drawn from the arrangement during the Transitional Period. The preparatory works of the Constitution also indicate that the Constitutional Commission, which drafted the Constitution, highlighted that its provisions should be framed with reference to the design set out in the Transitional Charter.[24]

In fact, the number of CVIHR that regional states investigate and prosecute, either as a matter of their own concern or by federal delegation, has increased since then. This is due to (i) the enactment of the Criminal Code in 2004 – which repealed the Penal Code of 1957 and introduced new offences, including crimes committed through harmful traditional practices (Articles 561–570) – and (ii) the enactment of separate legislation criminalising human rights violations, such as the Anti-Trafficking and Smuggling Proclamation.

The key constitutional provision that shaped the current arrangement concerning the division of power to address CVIHR is Article 55(1) (which grants the federal government authority to legislate on matters within federal jurisdiction). The allocation of such power between the levels of government is based on the interpretation of laws enacted by the federal parliament in accordance with the authority conferred on it by this provision. These laws define the powers of the law enforcement institutions (the Federal Police and the Ministry of Justice) which are responsible for the investigation and prosecution of crimes outlined in federal legislation, respectively, and federal courts.[25]

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[22] A Proclamation to Provide for the Establishment of the Office of the Central Attorney General of the Transitional Government of Ethiopia, Proclamation No. 39/1993 Art.10; Read also, Marshet Tadesse Tessema (2018), *Prosecution of Politicide in Ethiopia: The Red Terror Trials*, Vol 18 (TMC Asser Press) 159.

[23] Id., Proclamation No. 39/1993, Art. 22

[24] ‘Minutes of the Constitutional Commission, Vol 2 (November 1, 1993-April 5, 1994)’ 155.

[25] The laws are, respectively, *Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011* (‘*Proclamation No. 720/2011*’); *A Proclamation to Provide for the Establishment of the Attorney General of the Federal Democratic Republic of Ethiopia, Proclamation No. 943/2016* (‘*Proclamation No. 943/2016*’); and

The laws referred to above that define the powers of federal law enforcement institutions do not specify the crimes these institutions are responsible for investigating and prosecuting. Instead, they stipulate that the institutions have the power to investigate and prosecute crimes that fall within the jurisdiction of federal courts.[26] This entails that crimes outside the jurisdiction of federal courts will fall within the jurisdiction of regional state courts and will be investigated and prosecuted by regional states when they occur within their administrative boundaries. To determine which crimes can be investigated and prosecuted by federal law enforcement institutions, one must, therefore, identify the scope of the criminal jurisdiction of federal courts.

3.1 Three grounds of federal jurisdiction under Proclamation No. 1234/2021

The legislation defining the jurisdiction of federal courts (Proclamation No. 1234/2021), hereafter 'the Proclamation'), under Article 3(1), entrusts federal courts with both civil and criminal jurisdiction over (i) cases arising under the FDRE Constitution, federal laws, and international treaties ratified by Ethiopia; (ii) parties specified in federal laws; and (iii) places specified in the Constitution or by federal law.[27] Hence, as examined below, federal jurisdiction is determined based three grounds: i.e., the identity of the parties involved, and the places where the cases originate, and the substantive laws from which cases arise.

Parties specified in federal laws

Proclamation No. 1234/2021 provides that if either the accused or the victim is a foreign national, federal courts will have jurisdiction over the case.[28] However, this cannot be considered as the only ground because federal jurisdiction will be exercised subject to international diplomatic laws and customs as well as other international agreements to which Ethiopia is a party.[29] Moreover, federal courts exercise jurisdiction over criminal cases

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Federal Courts Proclamation No. 1234/2021 ('*Proclamation No. 1234/2021*'). It is stated in the preambles of these laws that they were enacted in accordance with Article 55(1) of the FDRE Constitution.

[26] Proclamation No. 720/2011 Art.6(4); Proclamation No. 943/2016 Art.6(3).

[27] The provision does not specify whether the three grounds establishing federal jurisdiction apply to both civil and criminal matters. However, the separate listing of criminal and civil jurisdictions under Articles 4 and 5, respectively, suggests that the provision encompasses both.

[28] Proclamation No. 1234/2021, Articles 13 and 14.

[29] Id., Art. 4(6).

committed by officials or employees of the federal government in connection with their official responsibilities.[30]

Places specified in the Constitution or federal laws

The places specified in the federal laws are Addis Ababa and Dire Dawa.[31] Accordingly, federal courts will exercise jurisdiction over criminal cases arising under federal laws that are committed in these places.[32]

Cases arising under the FDRE Constitution, federal laws, and international treaties ratified by Ethiopia

According to Article 3(1)(i), federal courts have jurisdiction over cases that arise under the FDRE Constitution, federal laws, or the ratified international treaties. Cases arising under the Constitution refer to cases that involve violations of the Constitution.[33] Accordingly, if a crime violates the FDRE Constitution, it falls within the jurisdiction of federal courts.[34] However, this provision seems redundant in establishing federal jurisdiction over cases arising under the Constitution since acts that violate the Constitution are already criminalised under federal laws, including the Criminal Code.[35] Cases arising under federal laws, including the Criminal Code, as mentioned in the same provision fall within the jurisdiction of federal courts.

Exercising jurisdiction over cases arising under 'federal laws' means that federal courts have the authority to adjudicate criminal cases arising under all federal laws, including the Criminal Code and specific legislation enacted by the federal government to implement international treaties such as the UN Trafficking Protocol.[36] Hence, the provision entrusts federal courts to exercise jurisdiction over CVIHR listed under federal laws.

As indicated above, federal courts have jurisdiction over cases arising under international treaties based on Article 3(1)(i). One issue this provision raises is whether provisions relating to crimes under international human rights treaties can be applied by courts, regardless of whether they have been incorporated into domestic law. For example, the Committee against Torture,

[30] Id., Art. 4(14).
[31] Id., Articles 12(2), and 15(2).
[32] SK Assefa (*supra* note 12) 285.
[33] Ibid.
[34] Ibid.
[35] The Criminal Code has a special section that deals with "Crimes against the Constitutional Order and the Internal Security of the State (Articles 238-243), which criminalises, for example, armed rising or civil war (Article 240) and attacks on the political or territorial integrity of the state (Article 241).
[36] Proclamation No. 1234/2021 Art. 2(2).

in reviewing Ethiopia's progress in implementing the CAT, expressed concern over the definition of torture used in the Criminal Code. In the Committee's assessment, the definition of torture in Article 424 of the Criminal Code is more limited in scope than the definition of torture in Article 1 of the CAT.

Under the Criminal Code, torture applies only to acts committed by public servants who are in charge of specific tasks connected to law enforcement, such as arrest, custody, and supervision, whereas in the CAT, torture applies to acts inflicted by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.[37] The concern calls into question whether federal courts can apply the above definition of the CAT directly in criminal cases involving torture. To answer the question, it is essential to analyse the constitutional provisions regarding the incorporation and application of ratified international treaties in the domestic laws of Ethiopia.

Article 9(4) of the FDRE Constitution provides that ratified international treaties are integral parts of the laws of Ethiopia. This resembles the monist system of incorporating international law into the domestic legal system. In such systems, international treaties may take automatic effect in domestic law without the need for legislative implementation.[38] France, Germany, Switzerland, Netherlands, Brazil, and United States can be cited as examples that exhibit monist traditions.[39] The constitution of the United States provides that all treaties made, or which shall be made, are the supreme law of the land, and judges in all the States are bound by the treaties made.[40]

Monist systems are contrasted with dualist systems, in which treaties do not have direct effect within the domestic legal order unless they are incorporated through legislation. [41] In states that primarily follow the dualist

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[37] Committee against Torture, 'Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture' Para 9 <https://www.refworld.org/policy/polrec/cat/2011/en/77794>.

[38] Cheryl Saunders (2020), *Constitutions and International Law* (IDEA) 4; Brian R Opeskin (1996), 'Federal States in the International Legal Order' 43 Netherlands International Law Review 353, 353.

[39] Christopher Harland (2000), 'The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey Through UN Human Rights Committee Documents' 22 *Human Rights Quarterly* 187, 207–236.

[40] The Constitution of the United States Article VI.

[41] Saunders (*supra* note 38) 4; Opeskin (*supra* note 38) 353; Stefan Oeter, 'International Human Rights and National Sovereignty in Federal Systems: The German Experience' (2001) 47 *Wayne Law Review* 877; Aparna Chandra, 'India and International Law: Formal Dualism, Functional Monism' (2017) 57 *Indian Journal of International Law*

model, such as the United Kingdom, Australia, Canada, and India, ratified treaties have no binding force in domestic courts unless they are transformed into domestic law through an act of Parliament.[42]

However, the direct application of international treaties in the monist states typically occurs when their provisions are self-executing. As Jeffrey L Friesen elaborated, the above constitutional rule of the United States applies to self-executing treaties.[43] Likewise, a treaty will not be regarded as part of domestic law in Switzerland unless the rules it establishes are precise and directly applicable to citizens.[44] In Germany, international treaties can be invoked in court by litigants if the treaties in question are self-executing in nature.[45] When the treaty provisions are not self-executing, i.e., if the direct application of the treaties proves difficult because, for example, the provisions of the treaty have become too general or vague, these states implement the treaties through legislation.[46]

In Ethiopia, ratified international treaties are rarely applied directly in court cases.[47] The criminal provisions of international treaties, such as the CAT, are rarely cited in criminal cases decided by federal courts. The courts seem to have held the position that international treaties are not directly applicable unless their full text is published in the Federal Negarit Gazette.[48] So far, the

25, 30 <http://link.springer.com/10.1007/s40901-017-0069-0> accessed 1 October 2024.

[42] John H Jackson (1992), 'Status of Treaties in Domestic Legal Systems: A Policy Analysis' 86 *American Journal of International Law* 310, 319; Pierre-Hugues Verdier and Mila Versteeg (2017), 'Modes of Domestic Incorporation of International Law' in Wayne Sandholtz and Christopher A Whytock (eds), *Research Handbook on the Politics of International Law* (Edward Elgar Publishing) 158.

[43] Jeffrey L Friesen (1994), 'The Distribution of Treaty-Implementing Powers in Constitutional Federations: Thoughts on the American and Canadian Models', 94 *Columbia Law Review* 1415.

[44] Opeskin (*supra* note 38) 356.

[45] Harland (*supra* note 39) 220.

[46] Martin F Polaschek, 'Implementation of International and Supra-National Law by Sub-National Units (Work Sessions 3 and 15)' in Raoul Blindenbacher and Arnold Koller (eds), *Federalism in a Changing World* (McGill-Queen's University Press 2003) 300.

[47] Getachew A Woldemariam, 'The Place of International Law in the Ethiopian Legal System' in Zeray Yihdego, Melaku Geboye Desta and Fikremarkos Merso (eds), *Ethiopian Yearbook of International Law 2016* (Springer International Publishing 2017) 87; Takele Soboka Bulto (2009), 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia' 23 *Journal of Ethiopian Law* 149.

[48] Sisay Alemahu Yeshanew (2008), 'The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia', *African Human Rights Law Journal* 287.

federal government has never published the full texts of international treaties in the Federal Negarit Gazeta.[49]

This article will not analyse the constitutionality of the courts' stance in declining to apply treaties that have not been published in the Federal Negarit Gazeta, as the issue falls outside its scope. However, it can be noted that the issue has arisen mainly because the Constitution does not clearly indicate the mode of application of ratified international treaties. As it currently stands, the Constitution does not specify whether courts can apply self-executing treaties even if they have not been incorporated into domestic law. It also remains unclear whether treaties must be incorporated into Ethiopia's domestic laws or whether they should be officially published to be enforceable by the courts.

Hence, the provision in the Proclamation granting federal courts criminal jurisdiction over cases arising under international treaties appears futile, given the ongoing ambiguity surrounding the application of such treaties. Courts apply only those provisions of international treaties that have been incorporated into domestic law through legislation.[50] As explained above, the federal parliament has so far implemented international treaties requiring criminalisation by relying on the 2004 Criminal Code, and, in other instances, by enacting separate legislation that incorporates criminal provisions – one such example being the Anti-Trafficking and Smuggling Proclamation.

3.2 Uncertainty as to whether federal court jurisdiction is exclusive

Article 3 of Proclamation No. 1234/2021 does not mention whether the jurisdiction exercised by federal courts on the three grounds highlighted above is exclusive. However, in practice, all crimes arising under federal laws, including those incorporating CVIHR, and committed within federal territories fall under the exclusive jurisdiction of federal courts.[51] Federal courts also exercise exclusive jurisdiction over federal crimes committed by officials or employees of the federal government in connection with their official duties, as well as crimes involving foreign nationals. They adjudicate such cases regardless of whether the crimes are committed within federal territories or in the regional states.[52]

[49] Woldemariam (*supra* note 47) 76.

[50] To analyse the limited instances where international treaties in general were cited in court cases, see Woldemariam (*supra* note 47) 86-89.

[51] Kassa (*supra* note 13) 285; SK Assefa (*supra* note 12) 287.

[52] Kassa , Ibid; SK Assefa, Ibid.

Moreover, federal courts exercise exclusive jurisdiction over crimes specifically listed under Article 4 of Proclamation No. 1234/2021, regardless of where they are committed.[53] The provision lists some serious crimes under federal laws (mainly the Criminal Code) that fall within the jurisdiction of federal courts. It reads:

> Federal Courts shall have jurisdiction over the following criminal cases:
> 1) crimes against the national state,
> 2) crimes against foreign state,
> 3) crimes in violation of international laws,
> 4) crimes regarding the security and freedom of communication services operating in more than one region or at international level,
> 5) crimes against the safety of aviation…

The provision does not expressly state whether these crimes fall within the exclusive jurisdiction of federal courts. However, under the subsequent provisions, i.e., Articles 12 and 15 of the Proclamation, the Proclamation allocates these crimes to the federal High Court and the federal First Instance Courts, respectively. This, it was argued, indicates that the crimes are the exclusive powers of federal courts.[54] Yet, this argument may be questioned, as the provisions do not expressly indicate whether state courts are precluded from exercising jurisdiction over the crimes.

The listing of 'crimes in violation of international law' under Article 4(3) implies that federal courts have exclusive jurisdiction over certain serious CVIHR, including genocide. As defined in the Criminal Code, this category captures genocide (Article 269) and other serious violations of international law, including war crimes against the civilian population (Article 270) and crimes against humanitarian organisations (Articles 281–283).[55] Under the Criminal Code, torture is not included in the list of crimes deemed to violate international law. Instead, it is criminalised under Article 424, which, as previously noted, has been found by the CAT Committee to be inadequate in meeting the definition of torture under the CAT.

Nevertheless, in practice, the crime falls within the exclusive jurisdiction of federal courts.[56] In addition to the crimes listed under Article 4 of the Proclamation, federal courts in practice exercise exclusive jurisdiction over

[53] SK Assefa, id., 288; Kassa, Ibid.
[54] Kassa, Id., 283.
[55] The Criminal Code of Ethiopia Articles 269-283.
[56] Tessema (*supra* note 22) 6.

crimes regulated by separate legislation, including human trafficking. This is, for example, explicitly stated in the Anti-Trafficking and Smuggling Proclamation. This law grants the power to handle human trafficking cases solely to the federal First Instance Court.[57]

Matters other than the above-mentioned criminal cases, which are under the exclusive jurisdiction of federal courts, are regarded as falling within the exclusive jurisdiction of regional state courts.[58] This has resulted in regional state courts exercising jurisdiction over the vast majority of CVIHR covered under the Criminal Code, such as crimes against life (Articles 538–544), crimes against persons and health (Articles 553–560), crimes committed against life, person, and health through harmful traditional practices (Articles 561–570), and injury to sexual liberty and chastity (Articles 620–628). Regional state courts exercise jurisdiction over these crimes when committed within their administrative boundaries as a matter of their own concern.[59] However, regional states do not exercise power over crimes that are within the exclusive jurisdiction of federal courts unless they are delegated by the federal government.[60]

It is worth noting that the Proclamation, which shaped the division of judicial power between the levels of government, was enacted by the federal government pursuant to its authority under Article 55(1) of the Constitution to legislate on federal matters.[61] Regional states are likewise conferred with similar authority; they have the power to enact legislation defining the judicial powers of state courts over state matters.[62] As considered above, the Proclamation enacted by the federal government has been interpreted to confer judicial power on regional state courts over CVIHR listed under federal laws (i.e., federal criminal matters). The constitutionality of this arrangement is assessed in Section 4.

A conflict could arise between the Proclamation and a counterpart regional state law defining the jurisdiction of state courts if the latter were, for instance, to deny those courts the authority to exercise jurisdiction over CVIHR listed under federal laws. Such a scenario is conceivable, given that the Constitution does not explicitly empower regional states to adjudicate criminal cases arising under federal laws. Nevertheless, this has not occurred, as state laws

[57] The Anti-Trafficking and Smuggling Proclamation Art. 42.
[58] Kassa (*supra* note 13) 285; Fiseha (*supra* note 9) 447; Menberetshai Tadesse (2010), *Judicial Reform in Ethiopia* (PhD Dissertation, University of Birmingham) 49.
[59] Kassa, Ibid; Fiseha Ibid; Tadesse, Ibid.
[60] SK Assefa (*supra* note 12) 88; Kassa, Ibid.
[61] Proclamation No. 1234/2021, Preamble, para 7.
[62] FDRE Constitution Art. 50(5).

have thus far adhered to the allocation of judicial power established by the Proclamation. Under the laws of most regional states that define the jurisdiction of courts, it is provided that these courts have inherent jurisdiction to adjudicate crimes arising under the Criminal Code.[63] Regional state laws regard crimes falling under Article 4 of the Proclamation as matters within the exclusive jurisdiction of federal courts, allowing regional state courts to exercise jurisdiction over such crimes only when delegated by the federal government – thereby, in effect, complying with the division of powers established by the Proclamation.[64]

3.3 The jurisdiction of federal and state law enforcement authorities over CVIHR

The division of power to investigate and prosecute CVIHR between the federal government and the regional states has followed the mode of power division between federal and regional state courts noted above that has developed in practice. Accordingly, the CVIHR that occur within federal territories are regarded as the exclusive domain of the federal government and are investigated and prosecuted by federal law enforcement institutions. CVIHR that are committed outside federal territories (within regional states) lie within the exclusive jurisdiction of the federal government if they relate to any of the serious crimes covered under Article 4 of the Proclamation, or are regulated by separate legislation, such as human trafficking. Regional states will not have the power to deal with these crimes unless they are delegated by the federal government.[65] However, if the crimes committed do not fall under Article 4 of the Proclamation or are not regulated by separate legislation, they will be investigated and prosecuted by the regional states concerned as matters of their own concern.[66]

The law enforcement institutions of the federal government, the Federal Police and the Ministry of Justice, carry out the tasks of criminal investigation and prosecution, respectively, in a closely coordinated manner. When investigating crimes, the Federal Police is required to collaborate with the Ministry of Justice, which has the authority to initiate a criminal

[63] See, for example, *A Proclamation to Redefine the Structure, Powers and Functions of the Oromia Regional State Courts Proclamation No. 216/2018* Articles 30(2) & 31(3), and *The Amhara National Regional State Courts' Establishment (Re-Amendment) Proclamation* No 169/2002, Art.17.

[64] SK Assefa (*supra* note 12) 288–289.

[65] Id., 288; Nigussie Afesha (2016), 'The Practice of Informal Changes to the Ethiopian Constitution in the Course of Application', 10 *Mizan Law Review* 395–396.

[66] SK Assefa (*supra* note 12) 288.

investigation.[67] Upon completing an investigation, the Federal Police submits the investigation report to the Ministry of Justice.[68] Based on the report, the Ministry of Justice files criminal charges with the competent court.[69]

There have been cases in which the federal government investigated and prosecuted crimes falling within its exclusive authority, using its own institutions, without exercising the option to delegate the task to the regional states. The criminal charge against Abdi Illey serves as an example in this regard. In that case, the accused – Abdi Illey, former president of the Somali Regional State – was arrested for allegedly inciting ethnic-based violence that led to serious human rights violations, including the killing of several individuals in 2018.[70] He was charged with various crimes, including torture[71] – a crime that, as discussed above, falls within the exclusive jurisdiction of the federal government. The incitement of ethnic-based violence, in which he was allegedly involved, is classified under the Criminal Code as a crime against the national state (Articles 238–260) and is also listed under Article 4(1) of Proclamation No. 1234/2021. The criminal case was investigated and prosecuted by federal authorities, and the charges were filed before the Federal High Court in Addis Ababa.[72]

The federal government also did not use a delegation arrangement when pursuing the criminal case involving Demeke Zewdu, who was allegedly involved in collaborating with a terrorist group in North Gondar, in the Amhara Regional State, in 2016. The charge brought against him included terrorism, over which the federal government has exclusive authority to investigate and prosecute.[73] This case, too, was investigated and prosecuted

[67] Proclamation No. 720/2011 Art.6(2); Proclamation No. 943/2016 Art.6(3).
[68] Proclamation No. 943/2016 Art.6(3)(c).
[69] Id., Art. 6(3)(e).
[70] 'Attorney General Office Says Investigations into August Jigjiga Violence Complete, Reveals Discovery of Mass Grave' *Addis Standard* (25 January 2019) <https://addisstandard.com/news-attorney-generals-office-says-investigations-into-august-jigjiga-violence-complete-reveals-discovery-of-mass-grave/> accessed 31 October 2024.
[71] Committee against Torture, 'Second Periodic Report Submitted by Ethiopia Under Article 19 of the Convention, Due in 2014,CAT/C/ETH/2' para 64.
[72] 'Ethiopia Charges Ex-Somali Region President, 46 Others with Inciting Violence' *Addis Standard* (30 January 2019) <https://addisstandard.com/news-ethiopia-charges-ex-somali-region-president-46-others-with-inciting-violence/> accessed 25 March 2025.
[73] Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020 Articles 36 and 38.

by federal authorities and filed before the Federal High Court in Addis Ababa.[74]

The option of delegation was not pursued by the federal government in the above cases. This seems to be due to the prevailing circumstances in the regional states of Somali and Amhara at the time. In the case of the Somali Regional State, it was likely difficult to rely on the regional state's law enforcement institutions, given the fragile security and political situation following the turmoil that led to the arrest of Abdi Illey and the appointment of an interim leader after federal forces intervened.[75]

Similarly, the situation in the Amhara Regional State was not conducive to pursuing the case, as the area where the accused, Demeke Zewdu, was arrested was experiencing anti-government protests, and the regional state's security forces resisted the arrest.[76] This resistance escalated to the point where the public, with the support of the Amhara police, prevented the handover of the accused to federal authorities, resulting in the accused remaining in a regional state prison while the court hearing was conducted in Addis Ababa.[77]

4. Assessing the Practice in Light of the Constitutional Text

Under Article 51(8) of the FDRE Constitution (which outlines the 'Powers and Functions of the Federal Government') the federal government is entrusted with broad authority concerning international treaties. The provision grants the federal government the power to 'formulate and implement foreign policy' as well as to 'negotiate and ratify international agreements.' As outlined above, the federal government has exclusive authority to legislate on federal matters outlined under Article 51, including those related to international treaties as specified in Article 51(8).

A careful reading of Article 51(8) also reveals that the federal government has the authority to exercise legislative, executive, and judicial powers with respect to international treaties. The power to implement foreign policy in the above provision is defined to include the negotiation and ratification of

74 'Ethiopia: Prosecutors File Terrorism Charges against Col.Demeke, Et Al' *ESAT* (28 December 2016) <https://tesfanews.com/ethiopia-prosecutors-file-terrorism-charges-demeke-zewdu/>.

75 Yohannes Gedamu, 'What Ethiopia Needs Is a New Federal Arrangement' *Aljazeera* <https://www.aljazeera.com/opinions/2018/8/14/what-ethiopia-needs-is-a-new-federal-arrangement?utm_source=chatgpt.com.> accessed 15 March 2025.

76 'Ethiopia: Prosecutors File Terrorism Charges against Col.Demeke, Et Al', *supra* note 74.

77 Ibid.

international treaties. Since the term 'foreign policy' is widely understood as a concept encompassing matters associated with international treaties,[78] it is reasonable to conclude that the federal government's duty to implement foreign policy includes accomplishing matters necessary for carrying out the obligations of the ratified treaties.

International treaties to which Ethiopia is a party, such as the Genocide Convention, the CAT, and the UN Trafficking Protocol, obligate Ethiopia to criminalise, investigate, and prosecute human rights violations.[79] Hence, the federal government's power to implement foreign policy involves not only the legislative aspects but also its executive and judicial dimensions. This implies that the federal government, by virtue of Article 51(8), is entrusted with the exclusive power to execute federal legislation incorporating CVIHR, since its authority over matters listed under Article 51 is exclusive. In other words, Article 51(8) grants the federal government exclusive authority to investigate and prosecute CVIHR at both the federal and state levels.

It is apparent that the drafters of the Constitution derived insights from the arrangement in place during the Transitional Period when the above-noted division of powers concerning international treaties was designed.[80] Under Proclamation No. 7/1992, the self-governing units were granted legislative, executive, and judicial powers over all matters within their respective geographic areas, except those specifically reserved for the Central Transitional Government.[81] This implied that the Central Transitional Government was vested with exclusive legislative, executive, and judicial authority over the matters explicitly reserved to it. Among these matters were international treaties, indicating that the Central Transitional Government, like the federal government that succeeded it, held exclusive authority to legislate and execute laws implementing such treaties.[82]

Accordingly, the current arrangement which assigns to the regional states the responsibility to investigate and prosecute CVIHR is unconstitutional. As the above discussion has unveiled, the main source of the problem with the division of power in the current practice stems from the way the jurisdiction of federal courts has been interpreted under the provisions of the legislation

[78] Ahmad Ghouri (2021), 'Democratizing Foreign Policy: Parliamentary Oversight of Treaty Ratification in Pakistan'. 42 *Statute Law Review* 137, 138.
[79] Convention on the Prevention and Punishment of the Crime of Genocide Art. V; The CAT Art.4; The UN Trafficking Protocol Art. 5.
[80] As highlighted earlier, the drafters of the Constitution took the position that its drafting should be informed by the experiences of the Transitional Period.
[81] National/Regional Self-Governments Establishment Proclamation No.7/1992 Art. 9(1).
[82] Transitional Period Charter of Ethiopia Art. 9(h).

(Proclamation) enacted by the federal government to determine the jurisdiction of federal courts.[83] As mentioned earlier, the federal government enacted the Proclamation to elaborate on its judicial authority over federal matters. The Proclamation assumes that crimes falling outside the jurisdiction of federal courts are non-federal matters. This has led the majority of CVIHR – except those listed under Article 4 of the Proclamation and separate legislation – to be regarded as falling within this category.

However, there is no convincing ground to consider only those crimes outlined under Article 4 of the Proclamation as federal matters. Article 55(1) of the Constitution vests the federal government with the power to legislate over federal matters. This implies that issues addressed by federal laws enacted pursuant to Article 55(1) are considered federal matters. In this context, CVIHR, which are incorporated into laws enacted by the federal government in accordance with Article 55(1), are also federal matters. Thus, the federal government lacks constitutional grounds to assume responsibility for investigating and prosecuting only certain crimes established under the Criminal Code (such as genocide and torture) by treating them as federal matters while leaving the majority of CVIHR to be handled by the regional states. The provisions of the Proclamation cannot be interpreted as allocating authority over the investigation and prosecution of CVIHR in this manner.

In this regard, a question may arise as to whether the constitutional obligation assumed by the levels of government under Article 13(1) extends to the investigation and prosecution of CVIHR. This provision reads: “All Federal and State legislative, executive, and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter (Chapter 3).” The FDRE Constitution does not elaborate on the scope of the obligations that the duty to respect and enforce human rights entails. However, Article 13(2) permits reference to international human rights instruments for the purpose of determining the content of the provisions in the human rights chapter of the FDRE Constitution, including Article 13(1).[84] The contents of the duties to respect and enforce human rights, as a result, can be interpreted by referring to international human rights instruments, such as the ICCPR.

[83] As previously discussed, the jurisdiction of federal law enforcement institutions and federal courts is interconnected, as federal law enforcement institutions are authorised to investigate and prosecute crimes that fall under the jurisdiction of federal courts.

[84] Article 13(2) provides: "The fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights, and international instruments adopted by Ethiopia.”

It is established under international human rights law that *the duty to respect* requires states to refrain from interfering with the enjoyment of human rights.[85] *Enforcement*, on the other hand, encompasses measures to address violations, including investigating and prosecuting human rights violations.[86] Arguably, CVIHR incorporated under the Criminal Code are also intended to protect constitutionally guaranteed human rights.[87] Accordingly, the duty to enforce human rights, as outlined in Article 13(1) of the FDRE Constitution, encompasses the investigation and prosecution of CVIHR listed in the Criminal Code. As it has been argued above, however, the responsibility for investigating and prosecuting CVIHR is exclusively entrusted to the federal government. Hence, the duty to enforce human rights under Article 13(1) of the FDRE Constitution should not be interpreted as requiring regional states to investigate and prosecute CVIHR as matters of their own responsibility. Regional States should be obligated to carry out these tasks *only when they are delegated* to do so by the federal government.

Under the FDRE Constitution, regional states are entrusted with the power to establish and administer police forces and to maintain public order and peace within their administrative boundaries.[88] This suggests that, when regional states investigate and prosecute CVIHR under federal delegation, the power to define the administrative structures of law enforcement institutions lies with them. Basically, regional states do not carry out criminal investigations and prosecutions solely under federal delegation. They also have the authority to enforce criminal legislation enacted by the state legislature in respect of state matters.[89]

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[85] Human Rights Committee, 'General Comment No.36, Article 6: Right to Life' para 7 <https://docs.un.org/en/ccpr/c/gc/36>.

[86] 'Human Rights in the Administration of Justice' <https://hrlibrary.umn.edu/monitoring/adminchap15.html?utm_source=chatgpt.com> accessed 6 February 2026.

[87] CVIHR listed under the Criminal Code, as indicated in the preamble part of the Criminal Code, are also intended to protect constitutionally protected human rights. See, The Criminal Code of Ethiopia Preamble, para 1.

[88] FDRE Constitution Art. 52(2)(g).

[89] Under Article 55(5) of the FDRE Constitution, regional states are vested with the power to enact criminal laws on matters not specifically covered by federal criminal laws. This enables them to enact criminal laws with respect to state matters.

5. Assessing the Practice in Light of the Constitutional Intent

The preparatory works of the FDRE Constitution reveal that the issues concerning the division of power to execute federal laws in general, and federal laws incorporating CVIHR in particular, were explicitly discussed neither by the Constitutional Commission that drafted the Constitution nor by the Constituent Assembly that finally approved it. However, a critical examination of the constitutional provisions setting out the delegation of federal authority to regional states (Article 50(9) and Article 80), and other aspects of the FDRE Constitution, such as those defining the powers of the House of the Federation, along with their drafting histories, reveals the Constitution's intention to allocate the power of executing federal laws, including those incorporating CVIHR, exclusively to the federal government (as discussed in the following sub-sections).

5.1 The delegation of federal authority to regional states

The inclusion of Article 50(9) in the Constitution, which allows the federal government to delegate its authority to the regional states reinforces the earlier argument that the federal government has exclusive power to investigate and prosecute CVIHR. The constitutional provision authorises the federal government to delegate regional states to exercise the powers vested in it under Article 51 on its behalf. It reads: "The federal government may, when necessary, delegate to the states powers and functions granted to it by Article 51 of this Constitution."

Among the federal matters outlined in Article 51 that may be subject to delegation is the federal government's authority concerning international treaties provided under Article 51(8). I have argued in the earlier section that, under Article 51(8), the federal government is entrusted not only with the power to legislate for the implementation of treaties but also with the authority to exercise executive and judicial power over the laws implementing those treaties. This implies that, under Article 50(9), the federal government has the authority to delegate to the regional states the power to investigate and prosecute CVIHR arising from federal laws implementing international treaties, as well as to exercise judicial power over these crimes.

Under Article 78(2), the Constitution has specifically dealt with the delegation of federal judicial power over federal matters listed under Article 51 to the states.[90] The provision authorises the lower house of the federal

[90] Hence, one should observe that the delegation of federal judicial authority to the states concerning subject matters under Article 51 is addressed in Articles 50(9) and 78(2) of

parliament to establish the Federal High Court and Federal First Instance Courts nationwide or in some parts of the country only, as it deems necessary. It further stipulates that until decided in this manner, the jurisdictions of the Federal High Court and Federal First Instance Courts are delegated to the Regional State Supreme and High Courts, respectively. With this setup, regional state courts will exercise judicial power over cases arising under federal laws incorporating CVIHR through delegation since federal courts have jurisdiction over these cases under Article 51(8) of the Constitution.

The preparatory works of the Constitution reveal that, during the early stages of the drafting process, a proposal to establish a dual system of federal courts at both the federal and regional state levels was discussed by the Constitutional Commission.[91] When they proposed this framework, the drafters were apparently influenced by the judicial arrangement introduced by Proclamation No. 40/1993, enacted by the Transitional Government, which was established immediately after the removal of the Derg regime in 1991.[92] The law determined the jurisdictions of the three levels of courts of the Central Transitional Government: the Central Supreme Court, the Central High Court, and the Central First Instance Court.[93] To each of these levels of courts, there existed parallel courts of the self-governing units – the National/Regional Self-governments.[94]

The proposal was ultimately rejected by the drafters since most members were sceptical of the federal government's ability to implement the arrangement given its limited resources. The secretary of the Constitutional Commission, Mr. Dawit Yohannes, for example, reminded the members that the Transitional Government could not establish central courts in all parts of the country due to resource constraints, though it was required by law to do so. He argued that the federal government to be established by the Constitution may face a similar challenge unless regional states are involved in adjudicating federal matters.[95] In the end, the Commission reached a

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the Constitution. However, the latter cannot be regarded as redundant, as it provides specific details concerning the federal government's power of delegation.

[91] 'Minutes of the Constitutional Commission, Vol 2 (November 1, 1993-April 5,1994)' , (*supra* note 24) 147–155.

[92] KI Vibhute (2013), 'The Judicial System of Ethiopia: From Empire and Military Junta to Federal Democratic Republic'. 7 *Malawi Law Journal* 109.

[93] Central Government Courts Establishment Proclamation. No.40/1993.

[94] United States Institute of Peace, 'Ethiopia: Report of the Office of the Special Prosecutor' (1994) 14.

[95] 'Minutes of the Constitutional Commission, Vol 2 (November 1,1993-April 5,1994)' , (*supra* note 24) 53.

consensus on inserting Article 78(2), which provides for the delegation of federal judicial authority to regional states.[96]

In general, the drafters established a delegation arrangement under the Constitution (Articles 50(9) and 78(2)) primarily analysing the difficulties the federal government might face in setting up its own institutions nationwide to discharge its responsibilities under Article 51 – including the investigation and prosecution of CVIHR under Article 51(8), given the limited financial and human resources at its disposal.[97] The drafters' uncertainty about the federal government's capacity is understandable, especially given the far-reaching consequences the country endured during the nearly two decades of civil war prior to the EPRDF coming to power. The arrangement relieves the federal government of the substantial costs it would otherwise incur in executing its laws nationwide. This is because, in fulfilling its responsibilities under Article 51 through this arrangement, the federal government is not necessarily required to establish its own institutions across the country.

Clearly, the drafters' decision to include provisions in the Constitution allowing the delegation of federal authority to the regional states suggests that they envisioned the federal government as having exclusive power over matters outlined in Article 51, including the investigation and prosecution of CVIHR. They likely would not have devoted significant attention to providing this option to the federal government – out of concern for its capacity to establish institutions nationwide to carry out the above responsibilities – if they had viewed the regional states as responsible for discharging the above matters within their administrative boundaries.

On the other hand, Article 50(2) of the Constitution provides that the federal government and the regional states shall have legislative, executive, and judicial powers. This provision is widely understood within academic circles in Ethiopia to envisage the establishment of a dual system of institutions – legislative, executive, and judicial, at both the federal and regional state levels.[98] However, it is submitted that the provision should be read in line with Article 50(9). As indicated above, the federal government,

[96] Id., 154.

[97] Id., 153,154; 'Minutes of the Constituent Assembly of Ethiopia, Vol 4 (November 1994)' 111.

[98] See, for example, Nigussie Afesha (2016), 'The Federal-State Intergovernmental Relationship in Ethiopia: Institutional Framework and Its Implication on State Autonomy', 9 *Mizan Law Review* 341, 343; Ayana Simachew Bekele (2019), 'The Enforcement of Federal Laws in States in Ethiopian Ethnic Federalism: The Deadlock between the Federal Government and the Tigray Regional State on the New Law of Boundaries and Identity Issues', 15 *European Scientific Journal* ESJ 24.

must (according to the constitutional intent) fulfil the responsibilities concerning matters under Article 51, such as the execution of federal laws incorporating CVIHR, exclusively through its own institutions. But this would be put into effect only when the federal government establishes institutions nationwide, overcoming the resource constraints that necessitated the inclusion of the delegation arrangement in the Constitution.

In connection with delegation, a key question that arises is whether regional states can decline requests from the federal government to deal with CVIHR on its behalf. Although Article 50(9) of the FDRE Constitution, as noted earlier, allows the federal government to resort to this option when it deems it necessary, the wording of the provision does not indicate whether regional states are obligated to accept such delegation or may decline it. This did not create difficulties in ensuring the execution of federal criminal laws in regional states during the EPRDF regime, presumably because government power at both the federal and regional state levels was controlled by a single party. However, this ambiguity may pose challenges when one-party dominance no longer exists.

Considering the rationale behind including a provision that authorises the federal government to delegate its constitutional responsibilities to the regional states, Article 50(9) of the Constitution can reasonably be interpreted as requiring regional states to accept federal requests to handle CVIHR on its behalf. As shown above, the drafters of the Constitution introduced the arrangement in recognition of resource constraints that the federal government might face when discharging its responsibilities nationwide using its institutions. Hence, interpreting the above constitutional provision as allowing regional states to decline federal delegation would defeat the very purpose for which the delegation arrangement was introduced. However, regional states should not be bound to accept federal delegation if the factors that led the drafters of the Constitution to introduce the arrangement no longer exists. Stated differently, once the federal government has set up its own institutions across the country to fulfill its responsibilities, regional states should be granted the discretion to accept or decline federal delegation.

The duty of a regional state to adjudicate cases involving CVIHR through federal delegation is unambiguous. This may be inferred from the wordings of Article 78(2) of the Constitution noted above which reads "…the jurisdictions of the Federal High Court and the First-Instance Courts are hereby delegated to the State courts." This provision does not embody the discretion to reject federal delegation, and regional states are thus bound to accept such delegation and adjudicate CVIHR that fall within the jurisdiction of the Federal High Court and First-Instance Courts.

The authority of regional states to exercise judicial power on behalf of the federal government derives from Article 78(2) of the Constitution. This allows regional state courts to decide criminal cases concerning CVIHR on behalf of federal courts without establishing an agency relationship with the federal government. This differs from the exercise of delegated authority by regional states to investigate and prosecute CVIHR under Article 50(9), in which case the regional states' power derives from the agency relationship they established with the federal government. In such cases, regional states may not automatically exercise authority over CVIHR unless they receive a request from the federal government by way of delegation.

Moreover, it is implicit in Article 78(2) that the regional state courts will not be bound to exercise the jurisdiction of federal courts once such courts are established within their administrative boundaries. The same holds true for the delegation of federal power to investigate and prosecute CVIHR. As argued above, regional states have the discretion to either continue or terminate the agency relationship once federal law enforcement institutions are set up within their administrative boundaries. However, the decision to establish the institutions in such cases rests with the federal government. Unlike the case under Article 78(2) concerning the judiciary, the federal parliament is not involved in making this decision.

The FDRE Constitution has provided details regarding the delegation of the federal government's judicial power, in the sense that it has distinguished the specific jurisdictions which the regional state Supreme and High Courts can exercise through delegation.[99] This is not the case in so far as the delegation of the executive powers of the federal government is concerned. It has not, for example, specified how the federal government should delegate (to the regional states) the power to execute federal laws.

Although the FDRE Constitution has set out (in a general manner) the powers of the executive branch of the federal government, it has left details relating to the organisational structure and functions of the ministries to be determined by the laws of the federal parliament.[100] It thus appears that the mode of federal delegation to regional states for investigating and prosecuting CVIHR is left to be regulated by such laws.[101] In practice, the Ministry of

[99] As has been already noted, the State High Courts and Supreme Courts will, through delegation, exercise the jurisdictions of the federal first Instance Court, and the federal High Court respectively.

[100] The federal Parliament approves the bill presented by the Council of Ministers incorporating the organisational structure and functions of Ministries (Read Article 77(2) and 77(11)) of the FDRE Constitution.

[101] Afesha (*supra* note 65) 395.

Justice delegates its counterpart organ in the regional states to prosecute crimes on its behalf through a letter.[102] This formality was followed despite the absence of a clear provision in the legislation that established the Ministry of Justice to guide how the delegation should be made.

The drafters of the FDRE Constitution emulated the approach followed during the transitional period in choosing to make matters concerning the organisation and functions of the law enforcement institutions of the federal government a non-constitutional matter. The organisation of the public prosecution department during the transitional period was not regulated by the Transitional Charter. It was, instead, explained under Proclamation No. 39/1993 of the Central Government. The law established the Office of the Central Attorney General, which was designed to operate both at the central and constituent unit levels.[103]

At the centre, the prosecution task was to be handled by the Central Office of the Attorney General, headed by the Attorney General and the Deputy Attorney General.[104] At the constituent level, the Office was to pursue criminal cases through the Central Regional Attorney and Central Zonal Attorney.[105] Yet, as noted above, this arrangement was not fully put into practice due to the acute shortage of resources. The FDRE Constitution has moved a step forward in terms of clearly providing a provision that deals with delegation.

In this regard, it should also be noted that, as Article 50(9) clearly indicates, delegation applies only in respect of subject matters listed under Article 51. Consequently, while the federal government may delegate the regional states to exercise its legislative power listed in Article 51(21) (that refers to the possession and bearing of arms), it cannot delegate to them the exercise of its legislative power regarding issues such as labour law stated in Article 55(3). This appears to be unreasonable, as it is difficult to understand the rationale behind putting such limits on the federal government's power of delegation. The drafters of the Constitution also did not justify the purpose of such restriction.

[102] Id., 396.
[103] Proclamation No. 39/1993, Art. 4(1).
[104] Id., Art. 9.
[105] Id., Art. 13.

5.2 The powers of the House of the Federation in the law-making process

The other aspect of the Constitution that signals the drafters' intention to entrust the federal government with exclusive authority to investigate and prosecute CVIHR relates to the provisions outlining the powers of the House of the Federation, the Second Chamber of the federal parliament. As observed above, the House of the Federation does not involve in the legislative process. In many federal States where constituent units assume the obligation to execute the central legislation, the Constitutions entitle the second chambers, comprising the representatives of the constituent units, to participate in the central legislative process. In states such as Germany and South Africa, for example, the consent of the second chamber is decisive for bringing legislation with federal implications into existence.[106] Getting the input of the constituent units by involving them in the central law-making process is desirable as they are the ultimate implementers of the laws.[107]

The drafters of the FDRE Constitution did not aim to achieve this end while establishing the House of the Federation. The House's main responsibility, as it stands now, is to safeguard the interests of the nations, nationalities, and peoples that it represents. The drafters believed that the lower house may encroach on the interests of ethnic groups unless its activities are checked by an entity that represents the ethnic groups.[108] They did not, however, consider that the House of the Federation could play this role by scrutinising and revising legislation proposed by the lower house. A bill may be passed into law without getting the approval of the House of the Federation. In the opinion of the drafters, the interests of the ethnic groups could be best protected if the House of the Federation wielded powers such as acting as the ultimate arbiter of claims of the ethnic groups to self-determination, constitutional issues, and disputes between the federal government and regional states.[109]

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[106] Johanne Poirier and Cheryl Saunders, 'Conclusion: Comparative Experiences of Intergovernmental Relations in Federal Systems' in Johanne Poirier, Cheryl Saunders and John Kincaid (eds), *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics* (Oxford University Press, 2015) 440.

[107] Thomas O. Hueglin and Alan Fenna (2015), *Comparative Federalism: A Systematic Inquiry* (University of Toronto Press) 136.

[108] The drafters, in fact, did not discuss how such encroachment may occur.

[109] 'Minutes of the Constituent Assembly of Ethiopia, Vol 5 (November 1994)' 5.

6. Addressing the Constitutional Silence

As mentioned earlier, the Constitution's silence regarding the responsibility for investigating and prosecuting CVIHR presents challenges in protecting human rights. The situation makes it difficult to hold regional states accountable for failing to investigate and prosecute the human rights violations sustained by individuals. This in turn leads to a breach of the right to effective remedy guaranteed to individuals under international human rights treaties ratified by Ethiopia such as the ICCPR.

Thus, the Constitutional silence should be addressed through constitutional change. As I argued in the preceding discussions, the federal government has exclusive responsibility to investigate and prosecute CVIHR. Accordingly, constitutional change should reflect this mode of division of power. That is, the constitutional change should be undertaken to vest exclusive responsibility in the federal government to investigate and prosecute CVIHR.

There are two methods through which the Constitution may be altered: constitutional *amendment* and constitutional *interpretation*. To determine which modality can be used to address the constitutional silence, it is essential to examine the provisions of the Constitution outlining these methods. Moreover, given that the federal government has exclusive responsibility under the Constitution to give effect to international treaties, it is submitted that it should take the lead in initiating the constitutional change. This aligns with the views of the Human Rights Committee, which has held that federal authorities must take all necessary measures to ensure that the provisions of the ICCPR are fully applicable throughout their territory.[110]

Under the amendment procedures of the FDRE Constitution, a proposal for a constitutional amendment is first presented for approval to either of the two houses of the federal parliament – the House of People's Representatives or the House of the Federation, or state legislatures.[111] The Constitution does not place restrictions on who may submit proposals for constitutional amendment. This suggests that a proposal by the federal government to amend the Constitution, aimed at addressing the constitutional silence concerning the power to investigate and prosecute CVIHR, may be examined by either the federal or regional state legislatures. If such proposal is "supported by a two -thirds majority vote in the House of Peoples' Representatives, or by a two-thirds majority vote in the House of the Federation" or when one-third of the regional state legislatures, by a majority vote, support it, "it shall be submitted

[110] The Human Rights Committee, 'Fact Sheet No. 15 (Rev.1)' 9.
[111] FDRE Constitution Read, Articles 104 and 105.

for discussion and decision to the public and to those whom the amendment of the constitution concerns.”[112]

The amendment proposed by the federal government will be voted on by the two houses of the federal parliament and the state legislatures. The number of votes needed for an amendment differs if the proposed amendment relates to Chapter 3 (human rights) and other provisions. The amendment of any provision under Chapter 3 needs the approval of each House of the federal parliament with a two-thirds majority vote and by all state legislatures with a majority vote.[113] In other cases, such as those proposing changes to the constitutional division of power concerning CVIHR, an amendment can occur if the two houses of the federal parliament, in a joint session, approve the proposed amendment by a two-thirds majority vote, and two-thirds of the regional state legislatures support it with a majority vote.[114]

Unlike a constitutional amendment, which involves both houses of the federal parliament, regional state legislatures, and the public, constitutional interpretation is carried out solely by the House of the Federation. Constitutional interpretation, which is equated in the Constitution with the resolution of constitutional disputes, is concerned with the determination of the constitutionality of laws passed by the legislative branches of the federal government or regional states (which is commonly referred to as "constitutional review”).[115]

The Constitution provides that requests for constitutional interpretation may be submitted by courts or interested parties.[116] The law passed by the federal government that elaborates the powers of the FDRE Council of

[112] Id., Art.104.
This provision has left several questions unanswered. It is not clear in the provision, for example, whether the word 'public' refers to the Ethiopian people as a whole or those residing within federal territories. Besides, how does the public decide? What number of votes are needed if, for example, the public must decide on a referendum? Who determines which section of the society is affected by the constitutional amendment regarding the power to investigate and prosecute CVIHR? These and other related issues have not been clarified through practice, as the Constitution has never undergone formal amendment. It remains to be seen whether these issues will be resolved through legislation.

[113] Id., Art. 105(1).

[114] Id., Art. 105(2).

[115] Id., Art.83, Art.84(2); Tom Ginsburg and Mila Versteeg, ‘Models of Constitutional Review’ in Lee Epstein and others (eds), *The Oxford Handbook of Comparative Judicial Behaviour* (1st edn, Oxford University Press, 2024) 46.

[116] FDRE Constitution Art.84(2). As the Amharic version of Article 84(2) suggests, interested parties, at the very least, include the disputing parties in the case.

Constitutional Inquiry (CCI) has further expanded the jurisdiction of the House of the Federation. According to the said law, the House may, in addition to cases referred to it by courts or interested parties, consider non-justiciable matters that do not involve disputing parties.[117] However, the legal standing to submit such types of applications is reserved for members of the federal and regional state legislatures and executive organs.[118] Accordingly, the federal government (the federal executive) may request the House of the Federation to clarify, through constitutional interpretation, which level of government is responsible under the Constitution for investigating and prosecuting CVIHR within the states.

But a question may arise as to whether the constitutional silence regarding the issue under consideration may be resolved through constitutional interpretation. It is unclear under the Constitution whether constitutional interpretation, in addition to constitutional review, includes the determination of the meaning, content, and scope of constitutional provisions.[119] The Constitution also does not indicate whether the process involves resolving an issue not expressly regulated by the Constitution, such as the division of power to investigate and prosecute CVIHR. In practice, however, issues of the latter type are dealt with by the House of the Federation. In COVID-19-related case, for example, the House was requested to determine how government power could be exercised after the expiry of the term of office of the members of the federal and state parliaments in September 2020.[120] The question arose because the sixth national election, scheduled for August 2020, was postponed by the

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[117] Council of Constitutional Inquiry Proclamation No.798/2013 Art.3(2)(c).

[118] Ibid.

[119] Some scholars, including Yonatan Fessha, argued that within the meaning of Article 84, the House's power of constitutional interpretation comprises the power to determine the meaning, content, and scope of constitutional provisions. Read, Yonatan Tesfaye Fessha, 'Whose Power Is It Anyway: The Courts and Constitutional Interpretation in Ethiopia' 134 <http://ejol.aau.edu.et/index.php/JEL/article/view/7982>.

For further analysis of the issue, *see*, Getachew Assefa (2010), 'All about Words: Discovering the Intention of the Makers of the Ethiopian Constitution on the Scope and Meaning of Constitutional Interpretation', 24 *Journal of Ethiopian Law*.

[120] Council of Constitutional Inquiry of the FDRE, 'Recommendation on the Request of the FDRE House of Peoples' Representatives for Constitutional Interpretation Submitted to the Council of Constitutional Inquiry Regarding the Impact of the COVID-19 Pandemic on the 6th General National Election'.

National Election Board until the pandemic was controlled.[121] The House extended the term of office of the members of the parliaments despite the absence of an explicit constitutional provision that regulates the issue.[122]

The foregoing analysis generally indicates that both mechanisms of constitutional change established by the FDRE Constitution – constitutional amendment and constitutional interpretation – may be used to address the Constitution's silence regarding the division of power over CVIHR. However, the federal government should use constitutional amendment rather than constitutional interpretation, as the likelihood of achieving the intended change is greater through amendment because it enables altering the Constitution to assign to the federal government the exclusive power to investigate and prosecute CVIHR.

As observed above, the decision to approve the proposed constitutional amendment rests on the federal and regional state legislatures. The federal government's influence on the decision will be significant, as political power is held by a political party or coalition with a majority in parliament. This influence is particularly strong when a single party assumes government power at both the federal and regional state levels. During constitutional interpretation, however, the federal government's influence on the outcome is lower, as the process is handled by the House of the Federation, an institution composed, at least in theory, of representatives of ethnic groups rather than political parties.

7. Conclusion

The FDRE Constitution lacks an express provision allocating responsibility for the investigation and prosecution of CVIHR between the federal government and the regional states. This article has assessed which level of government, according to the constitutional text and intent, bears the responsibility to carry out these tasks and has explored the mechanisms under the Constitution for addressing this constitutional silence. The assessment is essential, as regional states may question whether they are required under the

[121] 'Ethiopia Postpones August Election Due to Coronavirus | Reuters' <https://www.reuters.com/article/us-ethiopia-election-idUSKBN21I2QU/> accessed 28 January 2025.

[122] 'Ethiopia Extends PM and Lawmakers' Terms after Elections Postponed' <https://news.cgtn.com/news/2020-06-11/Ethiopia-extends-PM-and-lawmakers-terms-after-elections-postponed-RewOTIWsx2/index.html> accessed 28 January 2025.

Constitution to perform these tasks under contexts where one-party dominance does not exist.

As it has been argued, the failure to resolve constitutional silence may hinder the protection of human rights, as it entails the denial of remedies for violations suffered by individuals thereby contributing to the persistence of impunity. This, in turn, places Ethiopia in breach of the right to an effective remedy guaranteed under the ratified international human rights treaties. Besides, the constitutional silence makes it challenging for individuals or other stakeholders to hold either the federal government or regional states accountable when the human rights violations committed within the regional states are not investigated and prosecuted.

It has been argued that the existing framework, which assigns regional states the responsibility to execute federal laws comprising CVIHR, is unconstitutional. The argument developed in practice asserts that only the crimes specified in Article 4 of the Proclamation, as well as those outlined in separate legislation such as the Anti-Trafficking and Smuggling Proclamation, are federal matters. The federal government exercises exclusive power to investigate and prosecute these crimes. The remaining crimes, which constitute the majority of CVIHR incorporated under the Criminal Code, are regarded as non-federal matters (regional state matters). Regional states investigate and prosecute such crimes as matters of their own concern when they occur within their jurisdiction.

This contradicts the delineation of federal matters under the Constitution. As argued above, all CVIHR incorporated under the Criminal Code and other federal legislation implementing international treaties are federal matters. Critical reading of Article 51(8) of the Constitution reveals that the federal government exercises exclusive power (to investigate and prosecute) over these matters.

The drafters' intention to assign the power to investigate and prosecute CVIHR exclusively to the federal government is reflected in the provisions of the FDRE Constitution that deal with the delegation of federal authority to regional states, as well as those that outline the powers of the House of the Federation. The issue concerning delegation was tabled for discussion during the deliberations as the drafters thought that, given its limited financial and human resources, the federal government may face difficulties in dealing with matters laid down in Article 51, which include the responsibility to execute federal laws incorporating CVIHR. Ostensibly, the concept of delegation of federal authority to regional states would not have appeared in the FDRE Constitution had the drafters assumed that regional states have the authority to execute federal laws incorporating CVIHR within their administrative boundaries.

The drafters' stance on the division of power over CVIHR was further clarified when they restricted the House of the Federation from participating in the central legislative process. In many jurisdictions where constituent units are responsible for enforcing central legislation, such as Germany and South Africa, the second chambers participates in the law-making process as they are the ultimate implementers of the laws. I have argued that the drafters of the FDRE Constitution found such participation of the House of the Federation irrelevant as they had already determined that regional states are not responsible for executing the laws of the federal government.

As indicated above, the constitutional silence may be addressed by altering the Constitution to clearly specify that the responsibility to investigate and prosecute CVIHR lies with the federal government. To achieve this, the federal government, which should take the lead, may pursue either a constitutional amendment or constitutional *interpretation*. However, it has been argued that a *constitutional amendment* is the preferable option, as the federal government is likely to exert greater influence over the process through this method than through constitutional interpretation. ■

Cited References

Afesha N (2016). 'The Practice of Informal Changes to the Ethiopian Constitution in the Course of Application'. 10 *Mizan Law Review*

Afesha N (2016). 'The Federal-State Intergovernmental Relationship in Ethiopia: Institutional Framework and Its Implication on State Autonomy'. 9 *Mizan Law Review* 341

Amenu AG (2014). 'Criminal Jurisdiction of State Courts under the Constitution of the Federal Democratic Republic of Ethiopia' (LLM Thesis, Addis Ababa University

Anderson G (2008). *Federalism: An Introduction* (Oxford University Press)

Assefa SK (2009). *Criminal Procedure Law: Principles, Rules, and Practices* (Xlibris)

Bekele AS (2019). 'The Enforcement of Federal Laws in States in Ethiopian Ethnic Federalism: The Deadlock between the Federal Government and the Tigray Regional State on the New Law of Boundaries and Identity Issues'. 15 *European Scientific Journal* (ESJ)

Bulto TS (2009). 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia'. 23 *Journal of Ethiopian Law*

Chandra A (2017). 'India and International Law: Formal Dualism, Functional Monism'. 57 *Indian Journal of International Law* 25 <http://link.springer.com/10.1007/s40901-017-0069-0> accessed 1 October 2024

Fessha Y (2018). 'Secessionism, Federalism and Constitutionalism in Ethiopia'. VerfBlog, 2018/8/15 . https://intrechtdok.de/receive/mir_mods_00003952 DOI: https://doi.org/10.17176/20180815-104744-0

Fessha YT (2022), 'A Federation Without Federal Credentials: When Politics Trumps Law' in Abadir Ibrahim and Kokebe Wolde (eds), *Proceedings of a convening of* *scholars on Ethiopia's Constitutional Future* (Northwestern Roberta Buffett Institute for Global Affairs and Northwestern University Libraries, Evanston)

Fiseha A (2009). *Federalism: Teaching Material* (Prepared under the Sponsorship of the Justice and Legal System Research Institute)

Friesen JL (1994). 'The Distribution of Treaty-Implementing Powers in Constitutional Federations: Thoughts on the American and Canadian Models'. 94 *Columbia Law Review* 1415

Ghouri A (2021). 'Democratizing Foreign Policy: Parliamentary Oversight of Treaty Ratification in Pakistan'. 42 *Statute Law Review* 137

Ginsburg T and Versteeg M (2024). 'Models of Constitutional Review' in Lee Epstein and others (eds), *The Oxford Handbook of Comparative Judicial Behaviour* (1st edn, Oxford University Press)

Harland C (2000). 'The Status of the International Covenant on Civil and Political Rights (ICCPR) in the Domestic Law of State Parties: An Initial Global Survey Through UN Human Rights Committee Documents'. 22 *Human Rights Quarterly*

Jackson JH (1992). 'Status of Treaties in Domestic Legal Systems: A Policy Analysis'. 86 *American Journal of International Law* 310

Kassa WD (2012). *Ethiopian Criminal Procedure: A Textbook* (Addis Ababa University)

Opeskin BR (1996). 'Federal States in the International Legal Order'. 43 *Netherlands International Law Review* 353

Poirier J and Saunders C, 'Conclusion: Comparative Experiences of Intergovernmental Relations in Federal Systems' in Johanne Poirier, Cheryl Saunders and John Kincaid (eds), *Intergovernmental Relations in Federal Systems : Comparative Structures and Dynamics* (Oxford University Press 2015)

Polaschek MF, 'Implementation of International and Supra-National Law by Sub-National Units (Work Sessions 3 and 15)' in Raoul Blindenbacher and Arnold Koller (eds), *Federalism in a Changing World* (McGill-Queen's Univ. Press 2003)

Saunders C (2020). *Constitutions and International Law* (IDEA)

Stefan Oeter (2001). 'International Human Rights and National Sovereignty in Federal Systems: The German Experience'. 47 *Wayne Law Review*

Tadesse M (2010). 'Judicial Reform in Ethiopia' (PhD Thesis, Univ. of Birmingham)

Tessema MT (2018). *Prosecution of Politicide in Ethiopia: The Red Terror Trials*, vol 18 (TMC Asser Press)

T. Hessebon G and K.Idris A, 'The Supreme Court of Ethiopia: Federalism's Bystander' in Nicholas Theodore Aroney and John Kincaid (eds), *Courts in Federal Countries* (University of Toronto Press 2017)

Thomas O. Hueglin and Alan Fenna (2015). *Comparative Federalism: A Systematic Inquiry* (University of Toronto Press)

Verdier P-H and Versteeg M, 'Modes of Domestic Incorporation of International Law' in Wayne Sandholtz and Christopher A Whytock (eds), *Research Handbook on the Politics of International Law* (Edward Elgar Publishing 2017)

Vibhute K (2013). 'The Judicial System of Ethiopia: From Empire and Military Junta to Federal Democratic Republic'. 7 *Malawi Law Journal*

Woldemariam GA, 'The Place of International Law in the Ethiopian Legal System' in Zeray Yihdego, Melaku Geboye Desta and Fikremarkos Merso (eds), *Ethiopian Yearbook of International Law 2016* (Springer International Publishing 2017)

Yeshanew SA (2008). 'The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia'. A*frican Human Rights Law Journal.*

Minutes

"Minutes of the Constituent Assembly of Ethiopia, Vol 4(November 1994)'

"Minutes of the Constituent Assembly of Ethiopia, Vol 5(November 1994)'

"Minutes of the Constitutional Commission, Vol 2 (November 1,1993-April 5,1994)'

Reports and Documents

Committee against Torture, 'Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture' <https://www.refworld.org/policy/polrec/cat/2011/en/77794>

Committee against Torture, 'Second Periodic Report Submitted by Ethiopia Under Article 19 of the Convention, Due in 2014,CAT/C/ETH/2'

Committee on the Rights of the Child, 'Initial Reports of States Parties Due in 1993, Addendum, Ethiopia'

Council of Constitutional Inquiry of the FDRE, 'Recommendation on the Request of the FDRE House of Peoples' Representatives for Constitutional Interpretation Submitted to the Council of Constitutional Inquiry Regarding the Impact of the COVID-19 Pandemic on the 6th General National Election'

'General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant'

Human Rights Committee, 'General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th Meeting)' <https://linkinghub.elsevier.com/retrieve/pii/B9780444879110500854> accessed 20 April 2024

Human Rights Committee,, 'General Comment No.36, Article 6: Right to Life' <https://docs.un.org/en/ccpr/c/gc/36>

'Human Rights in the Administration of Justice' <https://hrlibrary.umn.edu/monitoring/adminchap15.html?utm_source=chatgpt.com > accessed 6 February 2026

The Human Rights Committee, 'Fact Sheet No. 15 (Rev.1)'

United States Institute of Peace, 'Ethiopia: Report of the Office of the Special Prosecutor' (1994)

Internet sources

Ayele ZA, 'Ethiopia's "Unusual Constitutional Umpire": Revisiting the Role of the House of Federation' (*50 Shades of Federalism*, 20 July 2020) <https://50shadesoffederalism.com/case-studies/ethiopias-unusual-constitutional-umpire-revisiting-the-role-of-the-house-of-federation/> accessed 21 April 2024

'Ethiopia Charges Ex-Somali Region President, 46 Others with Inciting Violence' *Addis Standard* (30 January 2019) <https://addisstandard.com/news-ethiopia-charges-ex-somali-region-president-46-others-with-inciting-violence/> accessed 25 March 2025

'Ethiopia Extends PM and Lawmakers' Terms after Elections Postponed' <https://news.cgtn.com/news/2020-06-11/Ethiopia-extends-PM-and-lawmakers-terms-after-elections-postponed-RewOTIWsx2/index.html> accessed 28 January 2025

'Ethiopia: Freedom in the World 2020 Country Report' (*Freedom House*) <https://freedomhouse.org/country/ethiopia/freedom-world/2020> accessed 13 November 2024

'Ethiopia Postpones August Election Due to Coronavirus | <https://www.reuters.com/article/us-ethiopia-election-idUSKBN21I2QU/> accessed 28 January 2025

'Ethiopia: Prosecutors File Terrorism Charges against Col.Demeke, Et Al' *ESAT* (28 December 2016) <https://tesfanews.com/ethiopia-prosecutors-file-terrorism-charges-demeke-zewdu/>

'Ethiopia's Ruling Coalition Parties Merge to Form "Prosperity Party" | Africanews' <https://www.africanews.com/2019/11/21/ethiopia-s-ruling-coalition-parties-merge-to-form-prosperity-party//> accessed 13 November 2024

AfricaNews, 'President of Ethiopia's Somali Region Resigns, Federal Forces Deployed' (*Africanews*, 6 August 2018) <https://www.africanews.com/2018/08/06/ethiopia-s-somali-region-president-resigns-federal-security-deployed/> accessed 10 October 2022

AfricaNews,, 'President of Ethiopia's Somali Region Resigns, Federal Forces Deployed' (*Africanews*, 6 August 2018) <https://www.africanews.com/2018/08/06/ethiopia-s-somali-region-president-resigns-federal-security-deployed/> accessed 2 October 2024

'Attorney General Office Says Investigations into August Jigjiga Violence Complete, Reveals Discovery of Mass Grave' *Addis Standard* (25 January 2019) <https://addisstandard.com/news-attorney-generals-office-says-investigations-into-august-jigjiga-violence-complete-reveals-discovery-of-mass-grave/> accessed 31 October 2024

Gedamu Y, 'What Ethiopia Needs Is a New Federal Arrangement' *Aljazeera* <https://www.aljazeera.com/opinions/2018/8/14/what-ethiopia-needs-is-a-new-federal-arrangement?utm_source=chatgpt.com.> accessed 15 March 2025

Solomon S, 'Upheaval in Somali Region Tests Ethiopian PM's Ability to Unify' (*VOA*) <https://www.voanews.com/a/upheaval-in-somali-region-tests-ethiopian-prime-minister-ability-to-unify/4523343.html> accessed 10 October 2022

Solomon S,, 'Upheaval in Somali Region Tests Ethiopian PM's Ability to Unify' <https://www.voanews.com/a/upheaval-in-somali-region-tests-ethiopian-prime-minister-ability-to-unify/4523343.html>

Conventions

Convention on the Elimination of All Forms of Discrimination against Women, Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 34/180 of 18 December 1979

Convention on the Prevention and Punishment of the Crime of Genocide

International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December 1966

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

The Convention against Torture and Other Cruel inhuman or Degrading Treatment or Punishment (CAT) (General Assembly resolution 39/46 of 10 December 1984).

Rethinking Ethiopia's Land Policy for Climate Resilience: Analysis based on McAuslan's Land Policy Framework

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Abstract

Ethiopia does not have a comprehensive national land policy, and the constitutional provisions and land legislation serve as de facto policy instruments for land issues. A strong land tenure policy plays a significant role in building resilience to climate change. However, the extent to which Ethiopia's legal framework contributes to climate change mitigation and adaptation is an issue that needs due attention. This article examines the role and implications of land policy in climate mitigation and adaptation by using McAuslan's land policy framework. Doctrinal research method is employed, relying on primary and secondary sources. The primary sources in the research include the FDRE Constitution, Ethiopian laws (relating to land and climate change) and international and regional climate-based protocols and agreements. Secondary sources include academic literature and other published and unpublished documents. The analysis shows that Ethiopia's legal regime is not designed to clearly define land rights, efficiently regulate land allocation and use, equitably distribute land, or adequately encourage customary tenure rights. Nevertheless, by safeguarding the State and national patrimony regarding land, the current legal framework has some elements that contribute to climate resilience investments. This article calls for reforming various elements of Ethiopia's land regime and land tenure security through an efficient, equitable, clear and environment-friendly land policy that can enhance its ability to promote and support climate change resilience.

Keywords:

Land policy, land policy elements, climate change, climate resilience, Ethiopia

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Contents

1. Introduction

Land policy plays a central role in promoting climate change resilience. Climate change is a global challenge with long-term, uncertain, and irreversible effects. The persistent changes in average daily weather patterns lead to flooding, land degradation, drought, reduced agricultural productivity, food insecurity, displacement, and loss of livelihoods.[1] Climate change also affects land productivity and desirability, intensifying pressure on land and natural resources. Land policy plays a significant role in climate change mitigation and adaptation.

Land tenure security and climate resilience are strongly connected issues. The 2019 Intergovernmental Panel on Climate Change (IPCC) report provides land governance solutions, such as meeting new climate related land demands and achieving environmental objectives, to address climate change.[2] The 2022

Frequently used acronyms

FDRE	Federal Democratic Republic of Ethiopia
GHG	Greenhouse Gases
IPCC	Intergovernmental Panel on Climate Change

[1] Edwin Woerdman, M Roggenkamp & M Holwerda (2021). *Essential EU climate law,* Edward Elgar Publishing.

[2] Intergovernmental Panel on Climate Change (IPCC) (2019), *Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation,*

IPCC report also shows the importance of secure land tenure for climate adaptation.[3] Soma has also noted a strong relationship between secure land tenure and climate resilience.[4] Furthermore, as highlighted in Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests, secure access to land is important for environmental sustainability.[5] An increased investment in land tenure security is crucial for climate change mitigation and adaptation. Therefore, a strong land policy that secures tenure rights is needed to support the transition to climate-friendly development.

Land rights are bases for climate resilience. Access to secure land rights encourages investments and addresses climate crisis. It also ensures clarity on the duration and content of rights, certainty, and guarantees of enforcement against interference. Therefore, secure access to land is a fundamental component of urgent climate action.

Land policy is crucial in the broader development policy; however, designing a universally applicable and appropriate land policy is challenging.[6] There are attempts to identify and analyze the core principles that form the foundation of a sound land policy. In this context, McAuslan's contributions are particularly noteworthy.[7] McAuslan has provided principles that must be

Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems, p 41.
Available at: https://www.ipcc.ch/site/assets/uploads/2019/11/SRCCL-Full-Report-Compiled-191128.pdf (last accessed 19 January 2026).

[3] Intergovernmental Panel on Climate Change (IPCC) (2022), *Climate Change 2022: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, Cambridge & New York. Available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf (last accessed 21 August 2025)

[4] Soma Chakrabarti (2020). *The Land Tenure Security Advantage: A Catalytic Asset for Sustainable and Inclusive Rural Transformation*, International Fund for Agricultural Development Advantage Series. Available at: https://ageconsearch.umn.edu/record/304751/files/landtenure_security_advantage.pdf (last accessed 21 September 2025).

[5] Philip Seufert (2013). 'The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests', *Globalizations*, Vol. 10, p 181.

[6] Davinder Grover and Anteneh Temesgen (2006). 'Enhancing Land-use-efficiency Through Appropriate Land Policies in Ethiopia', Poster Paper presented at the International Association of Agricultural Economists (IAAE) Annual Meeting, Gold Coast, Australia, 12–18 August 2006. Available at: https://www.researchgate.net/publication/23511692 (last accessed 22 February 2026)

[7] Patrick McAuslan (1987). 'Land Policy: A Framework for Analysis and Action'. *Journal of African Law*, Vol. 31, p. 185.

considered in an effective land policy. McAuslan argues that any land policy shall recognize multidimensional aspects of land. This means the land policy is required to acknowledge economic, social, environmental, legal, and political dimensions of land. A land policy that acknowledges the interconnection between land and people is better equipped to promote climate resilience. Specifically, efficiency, equity, certainty, safeguarding of the State and national patrimony, and recognition of differences are McAuslan's principles of land policy. Therefore, these land policy principles could serve as a framework to justify climate action.

Land has a multi-dimensional aspect in Ethiopia. Secure access to land is a central element for livelihoods and the realization of human rights. The attachment of people to land is deep, given its high economic, social, cultural, environmental, legal, political, and developmental value. Agriculture is the backbone of the national economy. It serves as a primary source of income for the majority of the population, as well as GDP, foreign currency earnings, and supplies of raw materials for manufacturing.[8] Economically, land is a source of wealth, economic growth, employment, and basic survival for most Ethiopians, and the country's future development remains heavily reliant on its land resources.[9] Beyond its economic importance, land fulfills aesthetic, recreational, and environmental needs, contributing to the respect for and preservation of nature.[10] Thus, the land policy, considering all these dimensions, plays a significant role in realizing climate mitigation and adaptation.

However, the role of Ethiopia's land policy and its implications in climate mitigation and adaptation are not well studied. Therefore, the purpose of this article is to investigate the role and implications of Ethiopia's land policy in achieving climate resilience. By using McAuslan's principles of land policy as a framework, the article examines Ethiopia's land legal regime in in relation with climate change mitigation and adaptation.

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8 Solomon Wassie (2025). *Digital Finance and Agri-Food Value Chains: Case Studies from Ethiopia*, IFPRI Project Paper, International Food Policy Research Institute, Washington, DC. Available at: https://hdl.handle.net/10568/175447 (last accessed 22 February 2026).

9 Emelie Rohne Till (2022). *Agriculture for Economic Development in Africa: Evidence from Ethiopia*, Palgrave Macmillan, Cham, p 98.

10 Elias N. Stebek (2015). 'Access to Urban Land and its Role in Enhancing Business Environment: Multi-track *versus* Mono-route Land-use Markets'. *Mizan Law Review*, 9(1), p. 2

Based on doctrinal research the article examines the role and implications of land policy in climate change mitigation and adaptation. The research in this article is based on primary and secondary sources. The primary sources include international laws, the FDRE Constitution, and national rural land and climate governance laws, and the secondary sources include academic literature, reports and other documents that focus on land policy and climate resilience. Legal and content analysis techniques are used to investigate the relationship between land polices and climate action.

The next section analyzes policy and legal responses to climate change and it focuses on the role of global and national legal regimes. The third section examines the nexus between land policy and climate resilience. It identifies major land policy principles that contribute to ensure climate resilience. The fourth section investigates the role and implications of Ethiopia's land legal regime in climate mitigation and adaptation followed by concluding remarks.

2. Policy and Legal Responses to Mitigation and Adaptation in Global Climate Governance: Ethiopia's Commitments and Strategies

Mitigation and adaptation are the primary instruments to address climate change. Mitigation aims to reduce greenhouse gas (GHG) emissions and enhance carbon sinks to curb global warming.[11] Mitigation addresses the root causes of climate change by reducing emissions through tenure security, sustainable land use, forest protection, and land-based emission regulations.[12] By safeguarding land rights of local people from land use changes that lead to degradation, tenure security is a cost-effective strategy to tackle climate change.

Adaptation is based on minimizing negative impacts and adjusting society to the consequences of a changing climate. Woodward, Smith et al. (2014) define adaptation as "adjusting to actual or expected climate and its effects, as well as seeking to moderate or avoid harm or exploit beneficial opportunities."[13] Adaptation to climate change involves actions to address its effects on ecosystems, people, and infrastructure.[14] It responds to these

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[11] David Markell (2011). 'Climate Change and the Roles of Land Use and Energy Law: An Introduction'. *Journal of Land Use & Environmental Law*, Vol. 27, Issue 2, p 231.

[12] Edwin Woerdman *et al.*, *supra* note 1.

[13] Alistair Woodward *et al* (2014). 'Climate Change and Health: On the Latest IPCC Report'. *The Lancet*, Vol. 383, Issue 9924, p 1185.

[14] Margaret B. Holland, Yuta J. Masuda and Brian E. Robinson (eds) (2022). *Land Tenure Security and Sustainable Development*, Palgrave Macmillan, Cham.

impacts and mitigates the consequences of climate change through measures such as building more flood defenses.[15] Successful climate adaptation increasingly relies on secure land access, use, and governance. Secure land tenure policy sustains water management, reduces the risk of displacement, and strengthens climate adaptation efforts.

Mitigation and adaptation are the objectives of the United Nations Framework Convention on Climate Change.[16] The primary objective of the UNFCCC, as stated in Article 2, was climate change mitigation, i.e., stabilizing global GHG concentrations at safe levels. Its goal of cutting GHG emissions was the key to achieving climate stability. The Convention was providing mitigation (Article 4/2) and adaptation (Article 3/2) obligations as its primary and secondary objectives. Article 4(1) (e) of the Convention also requires cooperation for adaptation to the impacts of climate change.

The Kyoto Protocol, replaced by the Paris Agreement, imposed an obligation on developed countries to reduce and limit greenhouse gas (GHG) emissions.[17] While developing countries are not subject to binding reduction obligations, the Kyoto Protocol requires them to take "measurable, reportable, and verifiable" actions to mitigate climate change. The Protocol does not specify the instruments to be used by parties, although it introduces flexibility mechanisms such as joint implementation (Article 6), the clean development mechanism (Article 12), and international emissions trading (Article 17). As a result, the Paris Agreement came into force in 2015.[18] As clearly provided in Article 2, the Paris Agreement aims to strengthen the global response to the threat of climate change by limiting the temperature increase to 1.5 °C. Under Articles 3 and 4, it also requires the adoption of nationally determined contributions (NDCs) as targets for reducing GHG emissions, while Article 7 provides strategies to adapt to climate change impacts.

Many African countries, including Ethiopia, are committed to more ambitious carbon reduction targets to address climate change. Article 3(c) of the Convention of the African Energy Commission identifies the development and use of sustainable and environmentally sound energy as a guiding

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[15] Woerdman *et al*, *supra* note 1.

[16] United Nations Framework Convention on Climate Change (UNFCCC), adopted 9 May 1992, entered into force 21 March 1994.

[17] Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 11 December 1997, entered into force 16 February 2005.

[18] Paris Agreement under the United Nations Framework Convention on Climate Change, adopted 12 December 2015, entered into force 4 November 2016.

principle.[19] Even though Africa contributes less than 4 percent of global GHG emissions, it is disproportionately impacted by climate change.[20] In response, Africa advocates for an energy transition as part of a pathway toward carbon neutrality and a sustainable energy future.[21] To support this transition, the European Union has proposed universal access to clean and modern energy as a key component of the Green Deal's cooperation with Africa.[22] In alignment with these efforts, the African Union has adopted a climate strategy that seeks to enhance inclusion, alignment, cooperation, and ownership of climate strategies, policies, programs, and plans across all levels of government and stakeholder groups.[23]

To address climate change and achieve carbon neutrality, Ethiopia is working towards net-zero carbon emissions by 2050.[24] The country has adopted the Long-Term Low Emission and Climate Resilient Development (LT-LED) Strategy to achieve net-zero emissions targets by 2050.[25] The primary objectives of the LT-LED strategy are achieving net-zero GHG emissions and ensuring climate resilient and sustainable economic growth. In addition to promoting economic and environmental sustainability, the strategy significantly benefits vulnerable groups in society. The LT-LED strategy focuses on deep decarbonization across priority sectors, strengthening climate resilience and adaptation, and supporting development as its key areas.

Climate resilience policy helps the country in addressing the adverse effects of climate change while contributing to GHG emissions mitigation

[19] African Union (2004). *Strategic Plan 2004–2007*, African Union, Addis Ababa.

[20] African Union Commission (2022). *African Union Climate Change and Resilient Development Strategy and Action Plan (2022–2032)*, African Union Commission, Addis Ababa.

[21] United Nations Economic Commission for Africa (2022). *Africa's Energy Transition Calls for Pragmatic Measures to Keep the Continent Competitive*, UNECA, Addis Ababa.

[22] Anteneh Dagnachew and Andries Hof (2022). *An African Vision for the Continent's Energy Transition*, PBL Netherlands Environmental Assessment Agency, The Hague.

[23] African Union Commission, *supra* note 20.

[24] Xufeng Zhu and Xin Shang (2023). 'Positioning as Discursive Struggle for Equity: A Critical Discourse Analysis of the Nationally Determined Contributions (NDCs) of African Countries'. *Critical Discourse Studies*, Vol. 21, Issue 2, p 218.

[25] FDRE Ministry of Planning and Development (2020). *Ethiopia's Long Term Low Emission and Climate Resilient Development Strategy 2020–2050*, submitted to the UNFCCC.

between 2011 and 2030.[26] The strategy identifies and prioritizes renewable energy sources as its main pillars.[27] This pillar seeks to ensure the development of renewable energy power plants while phasing out fossil fuel-based power generation. Moreover, Ethiopia's national development plan (2021–2030) emphasizes climate change action over the next decade.[28] The plan aims to increase the country's capacity to reduce GHG emissions from 92.7 million metric tons of CO2 to 162.3 million metric tons of CO2 equivalent. Ethiopia adopted the Paris Agreement Ratification Proclamation to enforce its targets and strengthen the global response to climate change.[29] Article 3 of the Proclamation has mandated the Ministry of Planning and Development (MoPD) to implement it.

3. Land Policy, Tenure Security, and Climate Resilience: A Conceptual Framework based on McAuslan's Principles

Land is central to development and sustainability. It is a durable asset and a primary input in agricultural production, urban housing, and commercial development.[30] Access to and control over land empowers people to make climate-smart decisions and invest in sustainable land management practices. As a result, a land policy that acknowledges multidimensional aspects of people to land relations is essential. Therefore, a land policy that prevents land degradation, promotes effective land use, and provides efficient and equitable methods of land allocation is crucial. A defective land governance system leads to climate change-induced displacement, conflict, food insecurity, and biodiversity loss. This discourages long-term investments, leads to the overexploitation of land and natural resources, and impedes resilient climate action.

[26] Nikos Tsafos & Lachlan Carey (2020). *Ethiopia's Low-carbon Development Pathway*, A Report of the CSIS Energy Security and Climate Change Program, Center for Strategic & International Studies, Washington, DC.

[27] Christopher J. Paul & Erika Weinthal (2019). 'The Development of Ethiopia's Climate Resilient Green Economy 2011–2014: Implications for Rural Adaptation'. *Climate and Development*, Vol. 11, Issue 3, p 193

[28] Melkamu Tadesse Wazza (2022). *Ten Years Development Plan of Ethiopia (2021–2030): A Critical Review*. Available at: https://doi.org/10.13140/RG.2.2.13412.86407.

[29] Paris Agreement Ratification Proclamation No. 993/2017'

[30] Daron Acemoglu, David A. Ansell and William F. Hulten (2018). *Return of the Strivers: Cycles of Inequality and Political Change*, NBER Working Paper No. 24645.

The IPCC special report on climate change and land provides that "insecure land tenure affects the ability of people to make changes to land that can advance adaptation and mitigation".[31] Land tenure insecurity exacerbates the climate crisis, deters adaptation, and affects investments in land. Land tenure security ensures sustainability, promotes investment in climate-smart water and land management systems, and boosts agricultural productivity. Insecure or unregistered land tenure undermines land users ability and interest to invest in climate resilience. Strong land governance helps capture and store CO_2 emissions and adapt to climate change through agroforestry and water harvesting, prevents and reduces land degradation, and maintains land productivity.[32]

A land policy that acknowledges the multidimensional values of land and its relationship with people is essential for climate action. A climate-resilient land acquisition policy is required to address social justice, economic efficiency, and environmental sustainability. In this regard, McAuslan's work is pivotal in discussing the role of land policy for climate action. He identifies several principles that justify interventions in land relations through land policy.[33] According to McAuslan, the components of national interest in land include efficiency, equity, and certainty, safeguarding the state and national patrimony, and recognizing the legitimacy of difference. These components directly influence the economic, social, administrative/legal, environmental, and political values of land.

McAuslan emphasizes that *certainty*, as a principle of land policy, defines the rights and duties of landholders. Certainty also includes the availability and accessibility of mechanisms for addressing land disputes. Under this principle, land policies must clearly define rights, their holders, and the scope of those rights. Effective land policy ensures mechanisms of certainty, clarifying who has what land claims and the extent of those claims. Thus, clearly defining rights, restrictions, and responsibilities regarding land promotes both climate change mitigation and adaptation.

McAuslan's land policy framework identifies *efficiency* as another key principle in land allocation and use. This principle recognizes land as a scarce resource requiring a system for proper allocation and utilization. McAuslan refrains from asserting whether market mechanisms or public regulation is the

[31] IPCC, *supra* note 2.

[32] William Critchley *et al* (2023). 'Sustainable Land Management and Climate Change Adaptation for Small Scale Land Users in Sub-Saharan Africa'. *Land,* Vol. 12, Issue 6, p 1206.

[33] Patrick McAuslan, *supra* note 7.

more suitable means of achieving efficient land use. While efficiency is central to economics and often associated with market mechanisms, public regulation intervenes when market failures occur, ensuring land is allocated and used effectively.

Moreover, McAuslan identified *equity* as a fundamental goal for any land policy. McAuslan defines it as "a fair and reasonable proportion of land, availability to all members of society, and taking steps to ensure its availability." Equity as a principle requires fair distribution and affordable land, especially for individuals with limited incomes. The principle of equity also acknowledges public participation in the process of decision-making. Equitable access to land not only promotes social justice but also plays a critical role in reducing carbon emissions.

Safeguarding of the state and national patrimony is another core principle under McAuslan's land policy framework. This principle implies that land policy should uphold the principle of permanent sovereignty over natural resources. Land protection and state sovereignty are historically inseparable. Sovereignty reflects the right of nations to exercise control over natural resources for national development and the well-being of their people.[34] It also addresses issues such as preventing land grabbing and restoring or reclaiming lands that have been transferred. By controlling land grabs and mitigating the unintended environmental consequences of investments, land policy protects national patrimony and environmental sustainability.[35]

McAuslan further highlights the recognition of the *legitimacy of customary tenure systems* as a major land policy principle. This principle acknowledges good land use practices, respects the customary land use system, and regulates unofficial and official land markets. It requires a land policy that equally recognizes customary and modern tenure systems and appreciates the relationship of people to land. This includes acknowledging customary land practices and their respective regulations, as well as unofficial land markets regulated by custom, alongside statutory codes that govern official land markets.[36] Therefore, an effective land policy ensures equal consideration for customary and statutory land tenure rights.

[34] Pierre Marie Dupuy and Jorge E. Viñuales (2018). *International Environmental Law,* Cambridge University Press.
[35] John Markakis (2011). *Ethiopia: The Last Two Frontiers,* Boydell & Brewer.
[36] Patrick McAuslan, *supra* note 7.

4. Ethiopia's Land Policy and Climate Resilience in Light of McAuslan's Framework

Ethiopia lacks a single and uniformly applicable land policy to address tenure issues.[37] In the absence of a comprehensive national land policy in the country, land related matters are found scattered under the FDRE Constitution and various subsidiary land laws. The constitutional provisions and land legislation serve as de facto policy instruments for land issues. Accordingly, this section critically examines the role of Ethiopia's land policy in fostering climate mitigation and adaptation, drawing on McAuslan's land policy framework.

4.1 Certainty

The principle of certainty in land policy requires exhaustively defining land rights and their scope. Well-defined land rights are essential to encourage investments in climate action. Land laws establish the rights and obligations of landholders and play a significant role in broadening the rights and removing restrictions. The right to access land is recognized for peasants, pastoralists and investors under the FDRE Constitution. It specifically guarantees peasants the right to obtain land and protects them from eviction. It also grants pastoralists the right to access land and safeguards them against displacement. In addition, the Constitution stipulates the land use rights of private investors upon payment arrangements. Expropriation is also recognized as a basic limitation on property rights, as outlined in Sub-Articles 4, 5 and 8 of Article 40 of the Constitution.

Subsidiary land laws further define rural land rights following the principles of the FDRE Constitution. The FDRE Rural Land Administration and Use Proclamation No. 1324/2024 contains several provisions on the lease, donation, inheritance, exchange, and mortgage of land use rights. For example, Article 4 of the Proclamation recognizes, in principle, free access to rural land for any person "engaged or who prefers to engage in agricultural activities for a living." Article 5 establishes mechanisms for non-governmental organizations (NGOs), social institutions, and private investors to access rural land. Article 8 of the Proclamation recognizes holding rights, including the right to use, lease, sharecrop, mortgage, jointly develop, donate, inherit, sell and consolidate properties fixed to it. Similarly, this Proclamation

[37] World Bank (2017). *Ethiopia's Move to a National Integrated Land Use Policy and Land Use Plan*. Available at: https://tenuresecurity.org/research-publication/world-bank-2017-paper (last accessed 27 January 2026).

in Article 9 entitles landholders to lease part or the entire holding for a specified period and donate their holdings. Article 12 of the Proclamation allows the transfer of rural land through succession, as outlined in the Ethiopian Civil Code. The Proclamation also embodies provisions on sharecropping (Article 13), joint development (Article 14), exercising land use rights as collateral (Article 15), and the exchange of holdings (Article 16).

There are regional rural land laws that expand on land rights. For instance, the Amhara Rural Land Administration and Use Proclamation No. 252/2017, revised in 2025[38], allows landholders to mortgage their land use rights to financial institutions (Article 19). The Oromia Rural Land Administration and Utilization Proclamation No. 248/ 2023 and Gambella Rural Land Administration and Use Proclamation No. 201/2021 also allow landholders to mortgage land use rights. Therefore, the detailed rights and obligations incorporated into both federal and regional rural land laws positively contribute to the principle of certainty.

On the other hand, the transferability of landholdings is restricted by the legal frameworks. The 1995 constitution and its subsidiary land legislation specifically prohibit the sale and other means of exchange of land. Scholars argue that restrictions on private land ownership may discourage landholders from investing in climate action.[39] The current land laws do not encourage landholders to invest in climate mitigation and adaptation.[40]

However, certain provisions of land laws expressly refer to investment in climate change mitigation and adaptation. The national rural land law (Proclamation No. 1324/2024) in its preamble requires a modern land information system to promote improvements in natural resource use, strengthen tenure security, and reduce land disputes. In addition, it focuses on the importance of sustainable land use and natural resource conservation to ensure their availability for future generations. This includes preparing and implementing sustainable rural land use plans based on agro-ecological zone. A cumulative reading of Articles 28 and 29 suggests that a master land use

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[38] የተሻሻለው የአማራ ክልል የገጠር መሬት አስተዳደርና አጠቃቀም አዋጅ (2018 ዓ.ም.), not yet published in Amhara National Regional State Zikre Hig Gazette.

[39] David Mitchell, Stig Enemark and Paul van der Molen (2015). 'Climate Resilient Urban Development: Why Responsible Land Governance is Important'. *Land Use Policy*, Vol. 48, p 190.

[40] Dessalegn Rahmato (2006). 'From Heterogeneity to Homogeneity: Agrarian Class Structure in Ethiopia since the 1950s', in Dessalegn Rahmato and Taye Assefa (eds), *Land and the Challenge of Sustainable Development in Ethiopia*, Forum for Social Studies, p. 9.

plan should be developed through a participatory approach to achieve sustainable land utilization.

Moreover, Article 31 of this Proclamation requires rural landholders to use land in a manner consistent with designated land use plans. If landholders fail to conserve their land, they may face penalties, including the loss of land rights. In Article 32, it imposes specific restrictions on land use. These restrictions include the requirement of water harvesting strategies in dry areas and the restrictions in the use of land with slopes greater than 30 percent. Lands with slopes between 31–60 percent may only be used for annual crops if proper conservation technologies are in place. The Proclamation also requires landholders to adopt improved traditional and scientific land management practices to ensure the productivity of agricultural and grazing lands. It also requires local communities to preserve and sustainably utilize wetlands with guidance from experts. These provisions show how a regulatory framework can contribute to climate change mitigation and adaptation.

Regional rural land laws also contain climate action provisions. The Amhara Rural Land Administration and Use Proclamation No. 252/2017, Article 21/1/e, imposes environmental protection obligations, including revoking land use rights if landholders cause serious damage on the land through maltreatment. Article 5(5) of the Proclamation in requires the implementation of land use plan that prioritizes environmental protection. The Proclamation (in Article 27(1)(a), (4) & (12)) also requires landholders to care for their land, select appropriate crops, conserve soil, and protect water sources from drying out due to improper plowing methods. These obligations imposed on landholders create opportunities to address environmental challenges and enhance climate resilience.

Moreover, conservation and use of wetlands, management of sloped and gully lands, water harvesting, protection of forests, and conservation of mother trees are the major activities required under Articles 36-42 of the Oromia region rural land law.[41] These measures strengthen environmental conservation and climate resilience. The measures also encourage the local community to rehabilitate degraded lands through physical and biological interventions and restrict farming in gully areas and on land adjacent to rivers and lakes. Equally important is the effectiveness of land administration and environmental institutions mandated to implement infrastructure and settlement programs to mitigate environmental impacts. These cumulative

[41] Rural Land Administration and Utilization Proclamation No. 248/2023

efforts contribute significantly to addressing climate change challenges and building a resilient rural economy.

4.2 Efficiency

As land is a vital and scarce communal resource, efficiency in land administration system is crucial to address the crisis of climate change. However, scholars argue that Ethiopian land laws prioritize equity over efficiency, posing challenges to an optimal land administration system.[42] Therefore, designing effective legal frameworks for land tenure security, valuation, and land use planning, and information management is essential for creating a well-functioning land administration system.

Land tenure refers to the rights and institutional structures governing land access, tenure security, and land use conditions.[43] Certainty in land rights, clarity of duration and accessible dispute resolution mechanisms are vital to ensure tenure security. However, there are various arguments which contend that Ethiopia's current land laws impose limitations that undermine tenure security and discourage investments in climate resilience.

On the other hand, the new Proclamation No. 1324/2024, in Article 7, recognizes the indefinite landholding rights of peasants and pastoralists. Article 39 of the Proclamation establishes negotiation, mediation and adjudication in regular courts as mechanisms for dispute resolution. If the government requires landholding rights for public purposes, the expropriation, compensation, and resettlement processes are regulated by Proclamation No. 1161/2019.[44] In Articles 2(8) and 7, this law requires the use of certified private valuation professionals to apply approved methods. If professionals are absent, it requires a valuation to be made by government bodies or committees. However, the lack of standardized valuation principles hinders efficient property valuation,[45] which is crucial for fostering climate resilience and ensuring fair compensation for landholders.

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[42] Brightman Gebremichael Ganta (2019). 'Access to Rural Land Rights in the Post-1991 Ethiopia: Unconstitutional Policy Shift'. *Journal of Land and Rural Studies*, Vol. 7, Issue 1, p. 1.

[43] USAID (2007). *Land Tenure and Property Rights: Volume 3 – Assessment Tools*. Available at: https://landwise-production.s3.amazonaws.com/2022/03/USAID_Land-Tenure-and-Property-Rights-Vol_3-Assessment-Tools_2007-85.pdf (last accessed 6 February 2026).

[44] Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019

[45] Embial Asmamaw Aschale and Habtamu Bishaw Asres (2024). 'Valuation, Compensation and Rehabilitation for Expropriation and Its Impact on the

Land use planning is important to ensure economic, environmental and community benefits. Although Ethiopia lacks a national rural land use policy, existing fragmented laws (as stated above) attempt to regulate land use issues. To conserve natural resources, Proclamation No. 1324/2024 in Articles 2(5), 2(6) requires the development of a sustainable rural land use plan. In addition, Article 28 states that a national master land use plan should be prepared consistent with land suitability and regional plans. Articles 31 and 32 of this Proclamation restrict land use to prevent soil degradation and promote sustainable management practices. This implies that unregulated land use contributes to resource depletion and biodiversity loss, underscoring the need for robust planning and management systems.

Land information system is another element of tenure security. Proclamation No. 1324/2024, in its preamble, Articles 2(2) and 50, underlines the establishment of a modern land administration system that provides reliable data to users. This system is required to bring significant change in natural resource use and conservation practices through strengthening tenure security of landholders and reducing land related disputes. It also provides the role of land registration, records and organizes data on rural landholding and use rights, facilitating informed decision-making and better governance. The law requires the Ministry of Agriculture to develop and manage a national rural land information system that harmonizes regional systems.

Therefore, addressing challenges in tenure security, valuation, land use plan and land information system enhances the national land administration system. Specifically, this helps to promote sustainable practices, protect the environment, and facilitate investment in climate action.

4.3 Equity

Equity is a cornerstone of a sound land acquisition system. It ensures access to land and secure tenure, and in effect, this is vital to achieve social and environmental objectives. Equity is crucial to preserving the livelihoods and cultural practices of vulnerable groups, such as women and youth. The land policy of Ethiopia provides land to the rural community, claiming social equity as its goal. The FDRE Constitution states egalitarian social equity as its essential principle for access to rural land.[46] It recognizes the rights of rural farmers and pastoralists to free access to land under Articles 40(4) and 40(5). The Constitution promotes public ownership of land in Article 40(3) to ensure

Expropriated Households in Ethiopia: Evidence from Debre Markos City'. *Property Management*, Vol. 42, Issue 3, p. 363.

[46] Brightman Gebremichael Ganta, *supra* note 42.

equity in access to land. Scholars argue that the equity principle remains integral to Ethiopia's land laws, and meanwhile raise concerns regarding the challenges of in the infringement of these rights.[47]

Consequently, equity as a land acquisition modality principle is crucial in climate mitigation and adaptation. Because, it helps vulnerable groups to obtain secure access to land, supports sustainable agriculture, and encourages environmental sustainability. Fair access to land is vital to address climate change. Therefore, establishing an equitable system that gives rural residents an opportunity helps to maintain their livelihoods, lowers their risk from climate shocks, and supports environmental stability where the equity dimension is concurrently accompanied by the other dimensions including certainty in tenure security and efficiency.

4.4 Safeguarding the state and national patrimony

Article 40(3) of the FDRE Constitution vests land ownership in the State and the People of Ethiopia. It declares land to be the common property of nations, nationalities, and peoples of Ethiopia. Under Article 40(6), the Constitution recognizes land use right to investors. Unlike peasants and pastoralists, investors are entitled to land use rights upon payment and the landholding rights have specified periods. Furthermore, Article 89(5) of the Constitution requires the government to hold land and natural resources on behalf of the People and deploy them for their collective benefit and development.

As indicated under Article 390 of the Ethiopian Civil Code, foreigners were prohibited and restricted from owning immovable properties in the country. However, the recently adopted Proclamation No. 1388/2025 allows foreign nationals to own residential houses in Ethiopia.[48] The Proclamation provides restrictions with respect to the number of residential houses that may be owned. The law requires houses to be built on land acquired through the lease system since land is not subject to individual ownership either by nationals or foreigners. The rationales behind this prohibition include safeguarding national security, preserving the nation's social fabric, prevent economic exploitation and land speculation, and limit economic dominance

[47] Daniel Behailu Gebreamanuel and Getiso Detamo Mekebo (2018). 'Res Nullius vs. Res Communis in Matters of Communal Lands of Smallholder Farmers in Ethiopia'. *Mizan Law Review*, Vol. 12, Issue 1, p. 99.

[48] Foreign Nationals' Ownership Right of Residential House Proclamation No.1388/2025

by foreign entities.[49] Allowing foreigners to own land in a developing economy like Ethiopia could lead to monopolies.

Although land ownership is limited to the State and the People, investors can access land through lease arrangements. Following the 2008 global economic crisis, several reforms were introduced to mitigate future crises.[50] Cross-border cooperation was identified as a key strategy to reduce the unintended consequences of the crisis.[51] To make Sub-Saharan Africa an attractive destination and address their financial crisis, developed countries started investing in countries with abundant raw materials, cheap labor, and favorable investment conditions.[52]

The Ethiopian government is promoting and attracting foreign investment. It has identified huge tracts of land with high investment potential. To facilitate this, various institutions, including an Agricultural Investment Support Agency, were established at the federal level.[53] Leasing large areas of farmland to foreign investors became a strategy, even though individual holdings in many regions of Ethiopia remain small, leading to dissatisfaction. According to Dessalegn Rahmato, the potential benefits of large-scale investments in agriculture are producing export crops and agro-industrial inputs, creating employment opportunities, benefiting local communities through infrastructure and social services, enabling technology transfer, and promoting energy security.[54]

With regard to whether corporate farms have benefited the country as expected, Dessalegn observes that "the damage done at present by the projects outweighs the benefits gained." The policy has resulted in forced evictions, environmental degradation, and minimal benefits to the host country.[55] Often,

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[49] Jara Samuel Tura (2022). 'Comparative Analysis on Ownership of Immovable Property by Foreigners and Its Implication on FDI: The Case of Ethiopia and Kenya's Land Policy'. *Hawassa University Journal of Law*, Vol. 6

[50] Sher Verick and Iyanatul Islam (2010). *The Great Recession of 2008–2009: Causes, Consequences and Policy Responses*, International Labour Organization Working Paper, p. 55.

[51] International Monetary Fund (2010). *The Great Recession: Lessons for Developing Countries*, IMF Working Paper WP/10/265, p 29.

[52] Francisco A. F. dos Santos (2014). 'Tenure Rights and Social Equity: Beyond Poverty and Efficiency', *Land Use Policy & Development Review*, Vol. 2, Issue 1, p 1.

[53] John Markakis (*supra* note 35) 260.

[54] Dessalegn Rahmato (2011). *Land to Investors: Large Scale Land Transfers in Ethiopia*, Forum for Social Studies, Addis Ababa, p 12.

[55] Nyikaw Ochalla (2013). 'Ethiopia's Land Grabs: Stories from the Displaced', https://icmagazine.org/ethiopias-land-grabs-interviews-displaced/

corporations utilize only a small fraction of the land they acquire, even in land-scarce communities.[56] In some cases, investments are not initiated despite significant environmental damage caused by clearing natural vegetation. For instance, reports from Gambella National Regional State indicate that less than 10% of corporate farms have been operational.[57] Moreover, the livelihoods of disadvantaged groups are frequently jeopardized. As a result, corporate farming investments are often criticized as "land grabs" or "the second scramble for Africa."[58]

In lowland areas, the agricultural investment process has led to large-scale deforestation and overuse of water resources. Foreign companies have disproportionately benefited under the guise of investment. For instance, Karuturi, an Indian-based company, received approximately 300,000 hectares of land at a lease rate of only US$1.16 per hectare in 2011 through agreements with regional offices.[59] Therefore, the transfer of large tracts of land at lower lease prices is challenging the pursuit of safeguarding state and national patrimony and undermines land policy contributions to climate mitigation and adaptation.

The land policy framework also empowers the government to determine the rights of vulnerable groups to access land. Given their disadvantaged position in society, mechanisms should be established to ensure these groups' land rights. Furthermore, the contribution of land policies to safeguarding state and national patrimony must align with resource conservation and environmental protection. Governments are advised to prevent "race-to-the-bottom" competition, in which local governments lower environmental standards to attract foreign investment.[60]

As a principle, the expansion of investment projects affects environmental protection. Without responsible investment governance, investments may cause deforestation and promote the use of chemicals, thereby threatening

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[56] Azeb W. Degife (2017). 'The Intricacies of Large Scale Agricultural Investment in Gambella Region, Ethiopia', paper presented at the World Bank Conference on Land and Poverty, Washington DC, p 13

[57] Ibid.

[58] John Markakis (*supra* note 35) 27

[59] Elias N. Stebek (2011). 'Between "Land Grabs" and Agricultural Investment: Land Rent Contracts with Foreign Investors and Ethiopia's Normative Setting in Focus'. *Mizan Law Review*, Vol. 5, Issue 2, p. 175.

[60] Richard B. Stewart and P. Spector (1977). 'The Development of Administrative and Quasi-Constitutional Law in Judicial Review of Environmental Decision-making', in *Decision Making in the Environmental Protection Agency: Selected Working Papers*, Vol. IIb, National Academy of Sciences.

sustainable conservation and use of natural resources. The federal government enacts national rural and urban land laws, while states administer them in accordance with federal standards.[61] Local policies need to be consistent with national standards to ensure environmental and land use protection. Therefore, formulating a standard framework helps to mitigate irregular practices and enhance the resilience of land policies in addressing climate change.

4.5 Recognizing the legitimacy of customary systems

Access to secure land right is regulated either through statutory or customary systems. Effective land policies recognize and protect legitimate tenure rights, which promote investment in climate action.[62] Proponents of modernization theory argue for transitioning from customary to private tenure systems. Consistency with modern laws determines the existence of customary laws in Ethiopia. The FDRE Constitution acknowledges the customary tenure system unless it contradicts constitutional principles. Therefore, the existence of customary tenure in Ethiopia depends on its consistency with the constitutional principles and provisions. In the Afar and Somali regions, land tenure is mainly regulated by customary law. However, tenure system is valid only if it is consistent with the statutory tenure system.

The previous rural land law, Proclamation No. 456/2005, encouraged the conversion of communal landholding into a private investment at the expense of customary tenure rights. This creates legal uncertainties, and undermines the legitimacy and security of customary land rights, particularly in expropriation cases where compensation rights may not apply.[63] The failure to recognize customary land tenure system discourages due attention to environmental sustainability.[64] The Ethiopian land policy favors the statutory or modern land tenure system over customary land tenure. However, the statutory land tenure system overlooks traditional practices and community rights. Therefore, the Ethiopian land policy is required to integrate and safeguard customary tenure rights with statutory systems.

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[61] Constitution of the Federal Democratic Republic of Ethiopia, Arts 51(5) and 52(2)(e).

[62] Food and Agriculture Organization (2022). *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, FAO, Rome.

[63] Temesgen Solomon Wabelo (2020). 'Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries'. *Beijing Law Review*, Vol. 11, p 64

[64] Patrick McAuslan, *supra* note 7.

4.6 Synthesis of land policy implications for climate resilience

As examined above, the progress in various Ethiopian land laws towards their positive contribution to climate mitigation and adaptation is encouraging although the country has no a single and coherent land policy. Various federal and regional rural land administration and use laws which state the land rights and obligations of landholder embody provisions that are in tandem with the certainty principle of a land policy. Clarity in rural land rights fosters tenure security, which encourages farmers, pastoralists, and investors to adopt long-term investment in climate action. The FDRE Constitution's sanction for free access to land for peasants, pastoralists and semi-pastoralists also shows the emphasis for equity considerations in land allocations. Egalitarian land allocation basically allows vulnerable groups to access land and engages in sustainable agriculture and natural resource conservation. The fact that the laws obligate landholders to strictly observe environmental standards reinforces the policy's potential to promote adaptation and mitigation. One can thus argue that the land governance framework is in the process of establishing a legal and institutional foundation to promote climate change mitigation and adaptation.

However, this legal framework has also entailed weaknesses that limit its effectiveness in fully supporting climate resilience. A major constraint in this regard is the restriction on the transferability of land rights. This is fundamentally linked to the prohibition of private land ownership and the *de jure* prohibition in the sale of land. Various research findings indicate that such a prohibition discourages landholders from making long-term investments to conserve the land, as their holding rights can be insecure in practice.

Moreover, rigid statutory provisions may not effectively respond to changing land management needs, mainly in the event of growing climate variability. Failure to adequately recognize customary tenure systems has also been a source of legal uncertainty, mainly in pastoral and communal areas where customary systems of resource conservation initiatives will likely be overlooked. Therefore, greater recognition and integration of customary tenure systems could strengthen climate resilience. Effective harmonization of statutory and customary systems needs to be targeted to promote participatory land governance, encourage sustainable land use, and harness local adaptive capacity to conserve the land resource.

With regard to large-scale agricultural investments, particularly by foreign companies there is the need for caveats against forced displacement, deforestation, and overuse of water resources. These dynamics threaten both the environmental integrity and the equity objectives of the land policy framework. Unless carefully managed, all these challenges may undermine tenure security, which determines investment in climate mitigation and adaptation.

5. Concluding Remarks

This article examined the role of Ethiopia's land legal regime in climate change mitigation and adaptation based on doctrinal legal research methods. The analysis is based on the elements of land policy identified and framed by McAuslan: certainty, efficiency, equity, safeguarding of the State and national patrimony, and recognition of customary systems. The core argument in this article is that responsibly designed land policy has significant role in climate change mitigation and adaptation. The review of the FDRE Constitution, subsidiary rural land administration and use laws, and the literature reveals that Ethiopian land administration system has limitations in encouraging investment in climate resilience. This is mainly true if it is examined from the perspective of certainty, efficiency, and equity principles of a land policy.

Ethiopia's legal regime maintains the ownership of land and natural resources in the hands of the State and the peoples of Ethiopia. It considers land as the common property of nations, nationalities, and peoples, and it allows the government to manage and deploy land and other natural resources on behalf of the people. One can consider this as fundamental in maintaining the sovereignty and legitimacy of the state and the people over the most valuable natural resource, land. Moreover, the preceding sections indicate various laws that state the duty of landholders with regard to the prevention of soil erosion, safeguarding of water sources, and promotion of planting vegetation to address climate change.

On the contrary, the prohibition of private land ownership does not encourage landholders to undertake long-term investments over the land and protect the interest of the future generation. This is because when landholders are devoid of the strongest right over property, i.e. ownership, the motivation to manage their land sustainably remains limited. Likewise, unless the intended benefits from the resources can be secured, the landholders will have little motivation to utilize and conserve the resource sustainably. Landholders may emphasize obtaining short-term economic benefits rather than working for the resources' sustainable and long-term conservation. This weakens the effectiveness and outcomes of the framework in its contribution to climate change mitigation actions. Moreover, the rural land laws leave little room to customary land tenure rights, which, in the long run, adversely affect climate change mitigation and adaptation investments.

Increased investment in climate resilience requires a broader definition of land rights and the reduction of restrictions on such rights. More liberal and broader land rights are likely to pay the nation by investing in climate change resilience and adaptation investments. It is also important to regulate land allocation and distribution in an efficient, fair, and affordable manner to the people. Moreover, climate resilience requires recognizing and protecting legitimate land tenure rights. Appropriate land policy promotes investments in climate resilience by addressing the impacts of climate change over time. Therefore, designing an appropriate land policy positively contributes to land-based mitigation and adaptation of climate change and it facilitates the pursuit of climate-friendly development pathways. In effect, there is the need for legal reform in the context of a coherent land policy framework so that climate change resilience actions constitute the core and integral parts of sustainable land use. ■

Cited references

Acemoglu D *et al*. (2018). *Return of the Strivers: Cycles of Inequality and Political Change*, NBER Working Paper No. 24645.

Aschale EA & and Asres HB (2024).'Valuation, Compensation and Rehabilitation for Expropriation and Its Impact on the Expropriated Households in Ethiopia', *Property Management*, Vol. 42(3).

Chakrabarti, Soma (2020). *The Land Tenure Security Advantage*, IFAD Advantage Series.

Critchley W *et al*. (2023). 'Sustainable Land Management and Climate Change Adaptation', *Land*, Vol. 12(6).

Dagnachew A & Hof A (2022). *An African Vision for the Continent's Energy Transition*, PBL Netherlands Environmental Assessment Agency.

Degife, Azeb W. (2017). 'The Intricacies of Large Scale Agricultural Investment in Gambella Region, Ethiopia', paper presented at the World Bank Conference on Land and Poverty, Washington DC

Dupuy PM & Viñuales JE (2018). *International Environmental Law*, Cambridge University Press.

Gebreamanuel DB & Mekebo GD (2018). 'Res Nullius vs. Res Communis', *Mizan Law Review*, Vol. 12(1).

Grover D & Temesgen (2006). 'Enhancing Land-use-efficiency Through Appropriate Land Policies in Ethiopia'.

Holland MB *et al*. (eds) (2022). *Land Tenure Security and Sustainable Development*, Palgrave Macmillan.

Ganta, Brightman Gebremichael (2019). 'Access to Rural Land Rights in the Post-1991 Ethiopia: Unconstitutional Policy Shift'. *Journal of Land and Rural Studies*, Vol. 7(1)

Markakis, John (2011). *Ethiopia: The Last Two Frontiers*, Boydell & Brewer.

Markell, David (2011). 'Climate Change and the Roles of Land Use and Energy Law', *Journal of Land Use & Environmental Law*, Vol. 27(2).

McAuslan, Patrick (1987). 'Land Policy: A Framework for Analysis and Action', *Journal of African Law*, Vol. 31.

Mitchell D *et al* (2015). "Climate resilient urban development: Why responsible land governance is important", *Land Use Policy*, Vol. 48, 190–198.

Paul CJ & Weinthal E (2019). "The development of Ethiopia's Climate Resilient Green Economy 2011–2014: Implications for rural adaptation", *Climate and Development*, Vol. 11, No. 3.

Rahmato, Dessalegn (2011). *Land to Investors: Large Scale Land Transfers in Ethiopia*, Forum for Social Studies.

Rahmato, Dessalegn (2006). 'From heterogeneity to homogeneity: Agrarian class structure in Ethiopia since the 1950s', in Rahmato D & Assefa T (eds.), *Land and the challenge of sustainable development in Ethiopia*: Forum for Social Studies.

Seufert, Philip (2013). 'The FAO Voluntary Guidelines on the Responsible Governance of Tenure', *Globalizations*, Vol. 10.

Stebek, Elias N (2011). 'Between "Land Grabs" and Agricultural Investment: Land Rent Contracts with Foreign Investors and Ethiopia's Normative Setting in Focus'. *Mizan Law Review*, Vol. 5(2)

Stebek, Elias N. (2015). 'Access to Urban Land and its Role in Enhancing Business Environment', *Mizan Law Review*, Vol. 9(1).

Stewart RB & Spector P (1977). 'The Development of Administrative and Quasi-Constitutional Law in Judicial Review of Environmental Decision-making', in *Decision Making in the Environmental Protection Agency: Selected Working Papers*, Vol. IIb, National Academy of Sciences.

Tsafos N & Carey L (2020). *Ethiopia's Low-carbon Development Pathway,* A Report of the CSIS Energy Security and Climate Change Program, Center for Strategic & International Studies, Washington, DC

Till, Emelie Rohne (2022). *Agriculture for Economic Development in Africa: Evidence from Ethiopia*, Palgrave Macmillan.

Tura, Jara Samuel (2022). 'Comparative Analysis on Ownership of Immovable Property by Foreigners and Its Implication on FDI: The Case of Ethiopia and Kenya's Land Policy'. *Hawassa University Journal of Law*, Vol. 6

Verick S & Islam I (2010). *The Great Recession of 2008–2009: Causes, Consequences and Policy Responses*, International Labour Organization Working Paper.

Wabelo, Temesgen Solomon (2020). 'Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries'. *Beijing Law Review*, Vol. 11.

Wassie, Solomon (2025). *Digital Finance and Agri-Food Value Chains: Case Studies from Ethiopia*, IFPRI Project Paper, International Food Policy Research Institute

Wazza, Melkamu Tadesse (2022). *Ten Years Development Plan of Ethiopia (2021–2030): A Critical Review*.

Woodward A *et al.* (2014). 'Climate Change and Health: On the Latest IPCC Report'. *The Lancet*, Vol. 383, Issue 9924.

Woerdman E *et al*. (2021). *Essential EU climate law*, Edward Elgar Publishing.

Zhu X & Shang X (2023). 'Positioning as Discursive Struggle for Equity', *Critical Discourse Studies*, Vol. 21(2).

Reports and Documents

African Union (2004), *Strategic Plan 2004–2007*, Addis Ababa: African Union.

African Union Commission (2022), *African Union Climate Change and Resilient Development Strategy and Action Plan (2022–2032)*, Addis Ababa: AU Commission.

Food and Agriculture Organization (2022). *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, FAO, Rome.

Intergovernmental Panel on Climate Change (2019), *Climate Change and Land*.

Intergovernmental Panel on Climate Change (2022), *Climate Change 2022: Impacts, Adaptation and Vulnerability*.

Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 11 December 1997, entered into force 16 February 2005.

Paris Agreement under the United Nations Framework Convention on Climate Change, adopted 12 December 2015, entered into force 4 November 2016.

Traditional Medicines in Ethiopia: Challenges in Protection and Risks of Possible Loss

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Abstract

Traditional medicine has been widely practiced in Ethiopia. However, the extent of use and the number of medicinal products have been steadily declining due to gaps in legal and institutional protection. In the absence of an effective regulatory and institutional framework, traditional medicinal practitioners have been applying self-policing through secrecy in the sources of the medicinal products and their processes. These secretive methods are unreliable and hamper the transfer of the practices, processes and wisdom to future generations thereby causing steady regression and loss of traditional medicinal wisdom. This article examines possible legal solutions that could possibly elicit undisclosed traditional medicinal knowledge and products to enrich the public domain. The research method is doctrinal with some empirical data to support doctrinal findings.

Keywords:

Traditional medicine, patent, utility, model, certification, indigenous wisdom

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Contents

1. Background

Underdevelopment is a cumulative effect of diverse socio-economic, political and historic factors which include the failure to preserve 'known wisdom,' or recognize and reward creative talents. In the Ethiopian context, these factors have significantly contributed to the disruption of continuity in progress.[1]

Operational Definitions:

Traditional Medicine (TM): Variety of products that are known and practiced by traditional medicinal practitioners. The products or processes have therapeutic effect to human or animals.

Traditional (indigenous) knowledge: Knowledge of local people that is passed from generation to generation. It includes traditional medicines and formula of crafting traditional medicines.

Hakim: Traditional medicinal practitioners who make and offer traditional medicinal products.

Regulatory Authority/Agency: Depending on the context, it can be Ethiopian Food and Drug Authority or Ethiopian Intellectual Property Office

'Secretly Held' Traditional Medicines: It refers undisclosed medicinal products and/or 'processes' that are not under public domain. Medicinal products may be offered for sale, or in use by the beneficiaries, but the chemical elements, the herbs or other sources from which the medicine was crafted, and the processes and procedures of making the product or therapeutic procedures are unknown to the public. Secret holding is a self-policing strategy that is meant to protect the property interest of the practitioner or holder.

[1] The effect of unending fight for political power and foreign invasions were the causes for the destruction of kingdoms, cities and disruption of the continuity of skilled labor. Moreover, negative reward to creative men had discouraging effect that did not attract further innovation. Development and intellectual property have direct relationship. Most developed nations have devised a highest level of intellectual property protection system. On the contrary, developing nations offer little protection. See Carlos A. Primo

Ethiopia's early 'civilization'[2] and its current state plausibly denote discontinuity of knowhow. A weak (or non-existent) regulatory framework cannot shield fruits of one's creative wisdom, and innovative knowhow 'dies' with the inventor as a result of which the public knowledge domain remains weak.

In the context of traditional medicinal knowledge, possessors of the wisdom keep the invention (product) or the processes of making the medicine secret. This possibly causes 'death' of the invention with the inventor, which has led pre-existing knowledge not to sustainably enrich the public memory and serve as a ladder for further creativity and innovation.[3] Frequent 'new beginning, not only makes the invention very expensive, but also causes the progress of innovative acumen to remain at the very basic level thereby adversely affecting the nation's pace in the development threshold.

Braga *et el* (2000), "Intellectual Property Rights and Economic Development," *World Bank Discussion* Paper No. 412, Available at: https://documents1.worldbank.org/curated/en/724371467980542334/pdf/multi-page.pdf

[2] We have live testimony regarding the early Ethiopia's civilization. The engineering intellect of the crafters of Obelisks of Axum, the architecture of Lalibela and the Emperor Fasilides Castle, among others, confirm Ethiopia's past technological and cultural progress.

[3] The three cases that this author had experienced illustrate this point There was a popular traditional medicinal practitioner in the village called Dangara, located in the current Sothern Ethiopia, Wolaytta Zone, Boloso Sore Woreda, 10 Kms to the south east of the district town - Areka. Dangara was popularly known by the local people because of Kute's service. Kute, had curing medicine for almost all kinds of intestinal issues. Kute's medicines are termed as "*qachchaa Xalle*" (ቃቻ ጣሌ). In Dangara no one knew how to make "*qachchaa Xalle"* other than Kute. As a traditional medicine provider, she served her people with curable herbal medicines but suddenly died. Today, there is no service, as no one is able to make and practice the medicine. No one knows how Kute prepared the medicine nor the herbs she used to collect or the formula she used to process variety of herbs or parts of herbs. With a view to collect the current empirical data this author has visited the location that Kute used to live and interviewed her kin and neighbors. A similar case happened in Ade Duguna, located in Sothern Ethiopia Regional State, Wolaytta Zone, Bixxanaa Woreda – some 7 Kms from the zonal city – Soddo. A traditional *hakim* had good curing medicine for asthma. The lady never disclosed the herb and the formula for mingling various herbs. She also knew the processes and products for contraceptives but died without the wisdom transferred to the public domain. Similarly, there was a traditional medicine provider called Dargasso, who used to reside in Legama Kebele which is located in Southern Ethiopia, Wolaytta Zone, Boloso Sore Woreda for curing domestic animals from deadly diseases like anthrax. He is survived by no one and did not disclose the medicinal products and processes of making it.

Although it is gradually diminishing and largely unrecognized by law, substantial number of people in Ethiopia depend on indigenous wisdom that is still dominant in traditional medicine.[4] Reliance on traditional medicinal practices is typical in developing nations. Asian nations, especially China and South Korea, have been integrating traditional medicines with conventional ones. In these nations, traditional medicines are significant in primary health care. In India, researchers have been working in modernization of traditional medicinal knowledge. Depending upon the availability of medicinal wisdom in the public domain, Asian nations (in compliance with the rules of Trade-Related Aspects of Intellectual Property Rights /TRIPS) offer legal protection to knowledge holders.[5]

Africa is blessed with traditional medicinal wisdom and traditional medical practitioners who claim to have curative remedies for various health care

[4] About 80% of Ethiopians and 90% livestock in Ethiopia still depend on traditional medicines. *See*:

Negero Gemeda *et al* (ed.) (2015), "Ethiopian Traditional Medicine: Past, Current and Future, Workshop Proceedings," *Ethiopian Public Health Institute*, Adama, Ethiopia, December 14 – 16;

Temesgen Assefa *et al*, (2002) "The Role of Medicinal Plants in Traditional Medicine in Adwa District, Tigray, Northern Ethiopia," *Asian Plant Research Journal,* P. 1. Medicinal pluralism works in most developing nations;

Chidi Oguamanam (2003), "Between Reality and Rhetoric: The Epistemic Schism in the Recognition of Traditional Medicine in International Law" 16 *St. Thomas Law Review* Vol. 16, p. 61.

[5] Thamizhoviya G. (2025), Global Integration of Traditional and Modern Medicine: Policy Developments, Regulatory Frameworks, and Clinical Integration Model. *Future Integr Med.*2025; 4(3):180 – 190 doi: 10/14218/FIM,2025,00033.

A documented Chinese traditional medicine practice goes back to 1,100 BCE. In China, traditional medicine practice is a comprehensive system that is recognized by law. *See* also Lin Peng (2022) Striking a Balance between Intellectual Property Protection of Traditional Chinese Medicine and Access to Knowledge, *Tinghua Law Review* Vol. 7 No. 2, p. 274; according to Wilder, "For developing countries, traditional medicine forms the basis for an important domestic industry and export." See Richard Wilder (2000), "Protection of Traditional Medicine", *Working Paper 66,* p. 9. Indian Council for Research on International Economic Relations. Available at: https://www.icrier.org/pdf/wilder66.PDF

In 1996 from total medicines transacted 43.8% were traditional medicines (Ibid). In South Korea Traditional Medicine are integrated into conventional medicines. Jieun Park, Eunhee Yi & Junhyeok Yi (2021), "The Provision and Utilization of Traditional Korean Medicine in South Korea: Implications on Integration of Traditional Medicine in a Developed Country", *Healthcare* Vol. 9, p. 1379.

needs.[6] Traditional medicine includes variety of products, processes and practices.[7] Although traditional medicines are not published in scientific journals, people have been using them and rely on their curative potential for centuries.[8] Traditional medicinal practitioners claim to have the wisdom to identify diseases by making spot evaluation of symptoms and physical diagnoses and craft medicines (products) from local resources (through undisclosed process).

Today, it is easy to challenge the efficacy of traditional medicines and the methods of patient diagnoses, but failure to recognize the already known and tested practice can take us nowhere. The best scenario is to recognize traditional medicinal products, the processes of making them and reward (and encourage) the practitioners to further the wisdom. This would make traditional products, knowledge and processes serve as 'development ladder' that the current and future generation can 'climb' in order to progressively advance the wisdom.

Traditional medicines are affordable, accessible, and acceptable by the people who rely on their therapeutic remedy.[9] If studied well and scientifically proven, traditional medicines can make immense contribution to unresolved issues in primary public health care. Some traditional medicinal practitioners grow medicinal plants and others harvest them from natural forests before processing them to medicinal products.[10] Traditional medicine practitioners

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[6] Mmamosheledi E. Mothibe & Mncengeli Sibanda (2019), "African Traditional Medicine: South African Perspective," in Congiz Mordeniz (ed) *Traditional and Complementary Medicine*, p. 31.

[7] Fokunang CN *et al*, (2011), "Traditional medicine: Past, Present and Future Research and Development Prospects and Integration in the National Health System of Cameroon." *African Journal of Traditional, Complementary and Alternative Medicines*, Vol. 8. No. 3, p. 284.

[8] The World Health Organization estimates 80% of Africans use traditional medicines. In Ghana, over half of the children with malaria are first treated with herbs. Available at: http://www1.voanews.com/english/news/africa/west/Ghana-traditional-health-care-part-two-voa-80335462.html. See also Fekadu Fulas, (2007) "The Role of Indigenous Medicinal Plants in Ethiopian Health Care," *African Renaissance* Vol. 4 No. 1 p. 76 – 80.

[9] During field visit traditional medicinal practitioners in Addis Ababa and two regional states, the author observed patients waiting to get service. Especially, the clinic of Hakim Abraham Walelign in CMC, Addis Ababa is no different from clinics of modern medicine practitioners. Hakim Abraham's clinic has waiting rooms with modern furniture, computers, examination rooms with full facility, and a pharmacy.

[10] For example, Merigeta Belay has a garden of traditional herbs in the Debre Markos city. He also gathers some medicinal herbs from Abay Gorge (Interview with Firehiwot Teka, Director of Traditional and Modern Medicine Directorate of Ethiopian Public

blend parts of herb (leaf, root, or fiber), animals, organs of animals, or minerals. However, herbal medicine practitioners and dealers endeavor to keep the processes of making medicines secret. Secret holding is assumed to guard property interest of the practitioner or secret holder.[11] Even when gathering herbs, practitioners strive to avoid detection.[12] In the marketplaces, the practitioners venture to avoid formulaic piracy.[13] Unless a given traditional medicine is publicly known or belongs to a given community, secretly held traditional medicinal products and processes belong to the possessor. Only holders of undisclosed medicinal products or process are

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Health Institute, Gulele Addis Ababa February 2021). Similarly, a traditional medicine practitioner in Southern Ethiopia Regional State, Wolaytta Zone, Damot Gale Woreda, some 5Kms from the district city –Bodit. This practitioner is alive and has been actively practicing traditional medication. She collects healer herbs from uncultivated grazing area during wet seasons. (Interview with the traditional medicinal practitioner popularly known as "*Eyoba Aye*" (Eyob's mother) at her home. Eyob has a modern pharmacy at Boditi town. He is a health officer, but supports his mother's practice.

[11] Joana Mantey witnesses secretive holding of traditional medicinal plants of Ghana saying: "Knowledge of herbal medicine is a closely guarded secret… Often it is shrouded in mystery and may be accompanied by the performance of certain rituals." Available at: http://www1.voanews.com/english/news/africa/west/Ghana-traditional-health-care-part-two-voa-80335462.html.

The expression "Secretly held" does not include communally known traditional knowledge, and bio piracy. If knowledge is owned by community, it may not be lost as far as the community exists. Though falls under traditional knowledge, secretly held knowledge is not community knowledge. It is possessed and owned by the secret holder – in most cases by individuals. See, Carlos M. Correa (2002), *Protection and Promotion of Traditional Medicine Implications for Public Health in Developing Countries,* University of Buenos Aires, (At introduction).
https://www.southcentre.int/wp-content/uploads/2019/02/Bk_2002_Protection-and-Promotion-of-Traditional-Medicine_EN.pdf. With regard to secretly held traditional medicines, the public gets the service whenever needed but there is no way to know the medicinal processes. This work attempts to find out possible legal solutions to preserve such an undisclosed medicinal wisdom.

[12] See, Tibebu Solomon (2013), "Assessment of Possible Intellectual Property Options of Traditional Knowledge System in Ethiopia". African Technology Policy Studies, ATPS *Technopolicy Brief* No. 40, p. 8.
Available at https://atpsnet.org/wp-content/uploads/2017/05/pb40.pdf

[13] For instance, traditional medicinal dealers decorate (with multiple colors) or reshape the medicines with a view to keep the nature and elements of the medicine unrecognized and make it hard to re-engineer.

aware of the curative herbs from which the therapeutic medicine was extracted, including its ingredients, methods of preservation, dose and use.[14]

It is this secretive method of holding that generates the right of ownership, and unless positive action is taken to elicit the formula, the danger is loss of the undisclosed invention upon the death of the inventor or possessor of the undisclosed creative wisdom.[15] Customarily, it is believed that some traditional medicinal practitioners disclose their medicine to their kin and train them, but knowledge of techniques of identifying or producing the medicines and the kind of diseases which the medicine may cure, is not simple enough to master. Moreover, descendants of traditional hakims may not have interest to serve as traditional medicine practitioners.[16] This would cause loss of the wisdom and skills.

The rationale for non-disclosure of the elements and processes of medication is usually related to loss of income.[17] If the process of making a medicinal product is publicly known, everyone would make their own medicine or even compete with the original inventor or possessor by offering for sale. Currently, there is no reliable procedure to sell or license a secretly hold traditional medicine.

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[14] This characteristic of traditional *hakims* is true in almost all over Africa. See BBC's special reports about secrecy effort of traditional medicine providers of Ghana. http://www1.voanews.com/english/news/africa/west/Ghana-traditional-health-care-part-two-voa-80335462.html; see also Conserve Africa, Indigenous Knowledge and Environment, Available at: http://www.conserveafrica.org.uk/sustainable-development-and-local-communities-in-africa/indigenous-knowledge-and-the-environment/; though herb knowledge itself cannot be a protected right, it is an important step in inventing a curative product through a protectable process.

[15] It was claimed that "… during the era of the Axumite kingdom (1^{st}-8/10^{th} C), about 8,000 plants were used as medicinal agents." This number considerably diminished during Zagwe dynasty (11th-13th C), (about 2,800 medicinal plants were recorded to have been used. Presently, there are between 650 and 1,000 medicinal plants). During the reign of Emperor Haile Selassie, it was believed that the number of known medicinal plants further diminished to the lowest level (700). Mulu T (2021). "Review on Phytochemical Studies of Ethiopian Medicinal Plants from 1970 – 2020 and the Potential as Modern Drug," *Adv. Phamacoepidemiol Drug Saf*, Vol. 10 Issue 4 No. 1000 p. 757. This shows how public memory on traditional medicines has been fading.

[16] Conversation with a Cameroonian witnessed that his grandmother who was a traditional medicine provider wanted to show him the herbs and the formula for making medicines. He refused to learn it. Now his grandmother is not alive, and no one had learned the processes of crafting the medicines.

[17] *See* Tibebu Solomon, *supra* note 12.

Innovation and creativity can be effectively protected by a patent system, but for centuries, most developing nations, including Ethiopia, had no comprehensive patent law and exhibited weak or no enforcement mechanism.[18] This, presumably, has caused inventors to apply self-policing mechanisms – maintaining a secretive atmosphere associated with their invention.

The existence of traditional medicinal practitioners and their medicine confers psychological confidence to the local people. Especially to the people with poor economic background, traditional medication is often preferred as a conventional option. It is exceedingly difficult or in some cases impossible to get an alternative.[19] Thus there is the need for due attention to useful traditional medicinal practices and preserve them.

Preserving what we have now and advancing what preceding generations had been using for centuries can be a good beginning for sustaining development. This article discusses the significance of patent system (specifically, utility model certification) as a legal solution to sustain and enhance progress by protecting the economic and moral interest of traditional medicinal innovators and practitioners. The patent system, especially utility model certificate, can *possibly* circumvent loss of traditional medicines. A detailed discussion on procedural rules of application for legal protection (patent or utility model protection), and granting processes is beyond the scope of this article.

The research is qualitative and socio-legal. The relevant statutes, court cases, secondary sources are briefly examined. Empirical data was collected from purposely selected traditional medicinal practitioners and beneficiaries as insights to the discussion and analysis.

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[18] In Ethiopia, a relatively comprehensive patent proclamation (A Proclamation Concerning Inventions, Minor Invention, and Industrial Design Proclamation No. 123/1995 *Neg. Gaz. of the Trans. Gov. of Eth,* 54th Year, No. 25 (May 1995) (herein after Patent Proclamation) was promulgated in 1995. It is effective after the enactment of the Regulation in 1997, but the existence of this law is still unknown to most traditional inventors. The legislation was designed in line with developed systems.

See also Fikremarkos Merso (2012), "Ethiopia's World Trade Organization Accession and Maintaining Policy Space in Intellectual Property Policy in the Agreement on Trade-Related Aspects of Intellectual Property Rights Era: …" *Journal of World Intellectual Property*, Vol. 15 No. 3, pp. 172, 173.

[19] Interview with Ato Bikamo Ukumo, a former customer of Kuta, Dangara Salata Kebele, Boloso Sore Woreda, Wolaytta Zone, Southern Ethiopia Regional State.

2. Overview of Views of Actual and Potential Beneficiaries of "Secretly Held" Traditional Medicines

The data collected from respondents with diverse background and socio-economic status reveal that substantial number of the respondents has had experience of using traditional medicines, and almost all of the traditional medicine practicing clinics suggested that legal protection should be accorded, and they underlined the need for positive action to be taken by the regulatory authority to preserve traditional medicinal knowledge and the practice.

The interviews included respondents from the Ethiopian Intellectual Property Office (EIPO), Directorate of Modern and Traditional Medicine Research Center of Ethiopian Public Health Institute (EPHI), ten traditional medicinal practitioners (from Addis Ababa,[20] Amhara Regional State [21] and Southern Ethiopia Regional State).[22] The views of respondents varied towards the use of traditional medicines.[23] While some of the respondents believe that the public has good impression to traditional medicines, others have expressed lack of confidence.[24]

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[20] Some traditional medicinal practitioners such as successors of Hakim Mamo, and others are current leaders of traditional medicinal practitioners, for instance, the owner and practitioner of Ethio-Mefte, Hakim Abraham Walelign of CMC Addis Ababa.

[21] In Amhara National Regional State, there was widespread public discourse regarding traditional pest that was claimed to destroy invasive weed (water hyacinth, locally known "Enboch." Water hyacinth or "Enboch" has been aggressively invading Lake Tana and other Ethiopian lakes.[21] The alleged "traditional" pest was invented by Merigeta Belay Adamu, but dispute arose regarding its efficacy. The author attempted to reach Merigeta Belay, interviewed pertinent government offices in Amhara National Regional State and visited research sites developed in collaboration of a research student of Bahir Dar University and Merigeta Belay Adamu.

[22] Visit to the regional state was needed because the original idea for this investigation arose from the prevailing situation in loss of traditional medication and the practice.

[23] Some of the causes include issues of spirituality which some do not believe, lack of scientific study on the healing quality, poor handling and apparent lack of hygiene of practitioners and containers of medicines, and lack of formal recognition by regulatory agencies.

[24] More empirical data on the significance of traditional medicines in Ethiopia is reported in Tibebu Solomon, *supra* note 12. The report deals with a survey of traditional medicines including community held traditional medicines. *See* also Gizachew Girma, *Protection of Traditional Knowledge under International and Ethiopian Law with particular Reference to Traditional Medical Knowledge: current Trends, Prospects and Challenges* (LL.M. Thesis, AAU (2011).

In accordance with the empirical data collected from beneficiaries of ten traditional medicine clinics, traditional medicinal products are on continuous deterioration. The cause of deterioration ranges from absence of legal protection, climate change that wipes out medicinal herbs, non-awareness of the possibilities of getting legal protection, or lack of legal or administrative support, non-availability of research facilities, lack of cooperation from the traditional medicinal practitioners due to fear of piracy, and the conflation of traditional medicinal knowledge with spirituality and belief of practitioners.[25]

Nearly half of the respondents believed that legal owners of the traditional medicine were practitioners,[26] and there were respondents who conferred ownership on local community and government. With regard to undisclosed traditional medicines, as the elements are secretly held and practiced by traditional healers, the local community or the regulatory agency is unaware of their nature, quality, or processes of preparation.

So far Ethiopia has lost a number of undisclosed traditional medicinal knowledge, and serious positive measures should be taken to save the wisdom. The measures are expected to include incentives that can encourage traditional medicinal owners and practitioners to disclose the process of crafting medicinal products by designing an effective and trustful legal mechanism that can guarantee current practitioners or possessors of the knowledge.[27] In this regard, a review of Ethiopian patent law and its adequacy to safeguard the interest of intellectual property right of holders/owners of secretly held traditional medicinal acumen appears pertinent.

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[25] 67% of the respondents view that traditional medicinal practice is intertwined with spiritual belief of practitioners. Hakim Alemayehu Gebib expressly disclosed that in certain exceptional cases, he uses prayer to cure incurable diseases. Interview with Hakim Alemayehu Gebib.

[26] 45% of the respondents believe ownership of undisclosed traditions belong to the practitioners, 12% of the respondents believe traditional medicines belong to local community. The latter appears applicable to traditional medicines known to the local people. 11% responded the owner of traditional medicines is the government, and 17% of the respondents believe that traditional medicines belong to the whole mankind. This assertion may work only to traditional medicinal knowledge that is under public domain.

[27] 37.5 % of the respondents suggest the government to afford legal protection to TM and the traditional practices.

3. Exploring the Regulatory Framework

Before the enactment of Patent Proc. No. 123/1995 (on 10 May 1995), Ethiopia had no comprehensive patent legislation. In the absence of a law that can effectively guard the interest traditional medicinal practitioners, there was no meaningful protection. Mere duplication of an invention by a competitor did not satisfy the requirements of the unfair competition, and hence the real inventor remained with no institutional protection. Anyone who was able to duplicate a given invention did it without the need to "waste time" by endeavoring to create a novel one. As a result, inventors or owners of inventions had to take care of their wisdom privately. The usual measure of protection was to keep the invention secret, as far as possible.

Devoid of trade secret laws in Ethiopia, secretive holding cannot be effective in all cases and situations. In developing nations where weak law enforcement and uncertain regulatory frameworks are prevalent, secretive holding of a valuable inventive formula is hard to maintain.[28] In this scenario, it may not surprise an inventor to see his/her invention being extensively produced or traded.

Secret holding of an invention may not be desired at least for two reasons. First, the inventor may pass away without passing the inventive formula to others. Next, trade secret system by itself is not helpful to enrich the public domain. While the inventor's property interest should be protected, such protection should meanwhile ensure benefits to the public by enriching public domain. Moreover, proof of piracy in trade secret law is very difficult and does not normally prevent independent creation and reverse engineering.

The advantage of trade secret is unlimited use of the right. This means, by maintaining secrecy, the innovator can use the creation until the secrecy is lost.[29] But in case the inventor dies without disclosing the formula to the next of kin or other "reliable" persons, the secret formula would "perish" upon the death of its holder. The patent system, on the other hand, can save innovation, by according innovators monopolistic holding for expressly delimited duration while enriching public knowledge domain.

[28] Gladstone Mills *et al* (2009). *Patent Law Fundamentals*, Lose leaf series, §4.

[29] For example, the formula of Coca Cola is never disclosed, and the Company enjoys the invention for unlimited period of time.

4. A Glimpse into Problems in Protecting Invisible Property Rights in Ethiopia

The Patent Proclamation[30] provides four kinds of protections: patent, patent of introduction of foreign issued patents, utility model certificates and certification of industrial designs. Although the time of protection varies, these privileges protect the interest of inventors and encourage them to disclose their invention to the regulatory agency – the Ethiopian Intellectual Property Office (EIPO).

In ancient and medieval societies, the property quality of intellectual property was hardly comprehensible.[31] As intellectual property is an invisible property in such societies, it did not sound as protectable. The expression, "[…] intellectual property may seem, at first glance, self-contradictory because it combines the ephemeral products of the intellect – ideas and […] with the concept of tangible property."[32] Moreover, unlimited number of people can use a given intellectual property at a given time, and the use cannot exhaust the property or diminish its number or quality. It was thus difficult to explain loss of a right that cannot deplete. This had negative effect in shielding rights in intangible properties including patent.[33]

Needless to say, a creation of the mind is property because one has endeavored to generate and realize it, spent time and money in having their mental vision brought into the reality. John Locke's labor theory of property justifies that a product of one's labor belongs to the laborer. Therefore, it is fair to afford legal protection to fruits of the mind including secretly held traditional medicines.[34]

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[30] Patent Proclamation No. 123/1995, *supra* note 18.

[31] In the absence of institutional protection, traditional people had to protect their economic interest. As Merges and Ginsburg noted "The legal safeguarding of rights in the product of creative thought was virtually ignored in ancient times." Robert P. Merges, Jane C. Ginsburg (2004), *Foundations of Intellectual property,* Foundation Press, p. 269.

[32] Bruce P. Keller and Jeffrey P. Cunard (2008) *Copyright Law, A practitioner Guide,* § 1.1. Practising Law Institute, pp. 1 – 2.

[33] Unless some form of visible property is taken, connotation of theft of a process may appear ridiculous. However, the information of the inventive process can enable others to make the same invention thereby putting the original inventor at risk. Loss of inventive information therefore is loss of property.

[34] John Locke, (1689) Second Treatise, §§ 25 – 51, 123 – 26; See §§ 138 – 40, in Ch. 17 No. 5; John Locke in his Treatises elaborated the relationship between one's labor and property right. Locke argues that property right arises from the labor that is exerted to produce it. He stresses that the laborer owns his labor and its fruits.

Intellectual property has great economic value, and hence should have better protection. A right of property includes "the power to exclude" others and this element also applies to patent thereby entitling an owner of intellectual property to exclude others from unauthorized duplication or use of the products of his/her mind.[35] However, intellectual property is intrinsically intangible, and its possessor or owner is not visible in an ordinary sense.[36] Nonetheless, these features cannot justify piracy.

To maintain continuity and enhance progress, innovative talents should be recognized, rewarded and fruits of their intellect should be preserved for the future generations. Protection of intellectual property rights of innovators is believed to stimulate further creativity. As duly noted: "In the knowledge-driven economy of the 21st century, intellectual property plays increasingly important role as a tool for economic, cultural and social development."[37] In this regard, the Director General of WIPO remarked:

> "The increasing market value of knowledge-based creations and outputs, and the economic dynamism they can fuel, is generating new and broad-based opportunities for economies to create national wealth, as the basis for sustainable development, and to deliver more widespread welfare gains from technological development."[38]

The recognition and legal protection of the rights of inventors would usher potential creative intellect and investment. The inventor's exclusive right can be best protected by an effective legal framework. In the context of traditional medicinal knowledge, the benefits of legal recognition and protection of owners of secretly held inventions include: saving undisclosed knowledge from possible loss, rewarding right holders for the disclosure, practicing hidden knowledge without fear of piracy, and stimulating interest of the generation to advance the knowledge through further investigation.[39]

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[35] Jay Dratler Jr & Stephen M. McJohn, (2009). *Intellectual property, commercial, creative and Industrial property* §1.01 Loose-leaf

[36] Ibid.

[37] Proposal by the United States of America to establish a Partnership Program in WIPO: An elaboration of Issues Raised in Document IIM/1/2 available at, http://www.wipo.int/edocs/mdocs/mdocs/en/pcda_1/pcda_1_4.pdf.

[38] WIPO, *Proposed Program and Budget for 2006/07* p. 8. Available at: https://www.wipo.int/edocs/mdocs/govbody/en/wo_pbc_8/wo_pbc_8_3-part5.pdf

[39] Disclosure of secretly held knowledge can enable the future generation to use the shoulder of forefathers to see further and come up with scientifically studied and improved innovation.

5. Exploring Patentability of Secretly Held Traditional Medicines in Ethiopia

5.1 The balance between exclusive rights in patent and public benefits

A patent is a document that can be granted by a government agency evidencing that the inventor mentioned therein is authorized to make, use, sell or offer to sell a given product in exclusion of others.[40] This is *a negative right* that is conferred on the patentee. The right to exclude others from making, using, offering for sale, selling or importing the invention confers a right of monopoly to the patentee.[41] A negative right is considered as an incentive to the disclosure of privately held or known wisdom. As invention necessarily entails cost and risk of loss, the exclusionary incentive thus is "[…] the fundamental purpose of the patent grant [….]"[42]

The right to exclude others is an essential feature of real property right that patent law shares.[43] If anyone attempts to make, sell, or use a patented invention without permission of the patentee, s/he can stop the usurper. The patentee can institute lawsuit against any person who infringes protected rights.[44] However, use of a patented invention for non-commercial purposes, like use for scientific research, use with the consent of the patentee, or other purposes that can promote public interest is not viewed as infringement.[45] Undoubtedly, monopolistic holding of an invention is a privilege that the law bestows as a price for the disclosure. The restrictive monopoly is a temporary deprivation. In Ethiopia the duration for monopolistic holding is 15 years, with the possibility of extending it for five more years provided the invention properly works in Ethiopia.[46]

Although monopolistic holding carries some societal cost as it stifles market competition, the long-term benefits of the invention outweigh its short run restriction. The rationale behind patent based monopolization is "[…] to encourage innovation and its fruits […] into the public domain through disclosure."[47]

[40] Fred Warshofsky (1994), *The Patent Wars,* Wiley.
See also Patent Proclamation *supra* note 18. Art. 15, 22 (1).
[41] This is the most important privilege of the patent holder. See Art. 22(2) of the Patent Proclamation *supra* note 18.
[42] Sung and Schwartz, (2000), *Patent Law Hand Book*, p. 109.
[43] Id.
[44] Patent Proclamation, *supra* note 18. Art. 24.
[45] Id., Art. 25.
[46] Id., Art. 16.
[47] I Miller *et al (*2009), *Patent Law Fundaments*, § 1:2 (2nd ed.) p. 1 – 6.

To counter the side effects of patent, monopolistic right can only be granted to inventions that pass the rigors of patentability thresholds. Patentability requirements and processes are very strict. By implication, therefore, patent protection cannot be granted without good reason. It should be granted to worthy inventions "[…] for the achievements of genius."[48] In the words of Maureen, patent laws that promote progress need "…an appropriate balance between the grant of exclusive rights to encourage innovation and the maintenance of viable public domain from which further progress may result."[49] A patent, is thus an incentive to the disclosure, and it cannot be granted unless the disclosure *teaches*.[50]

Disclosure of inventive elements is viewed as *quid pro quo* between the government and the inventor. The disclosure should be sufficiently clear thereby enabling experts in the field to remake the invention without further research.[51] Concealment of material information would cause denial of the protection. If the concealment of best mode is proved, even a granted patent may be invalidated or if it is under the process of prosecution, the application will be denied.[52] Each *claim* should demonstrate how the invention works.

The disclosure serves various functions: first, the inventor vividly limits the scope of the invention, and the patent monopoly cannot be extended beyond the contours of disclosure. The other advantage is that third parties will have fair notice of a given invention and would not waste time and resource by working to reach at a wisdom that is already known. Disclosure thus avoids duplication of effort.

5.2 Requirements for patentability: *Novelty, non-obviousness* and *applicability*

5.2.1 Novelty

As patent protection extends to the whole world, patentability requirements of Ethiopian patent law mirrors the enumerations of advanced patent systems.[53]

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[48] Merges and Ginsburg (*supra* note 31) 102.

[49] Maureen A. O Rourke (2000), "Toward a Doctrine of Fair use in Patent Law", *Columbia Law Review*, Vol. 100 No 5, p.1177.

[50] Mills *et al, supra* note 28

[51] 35 U.S.C. §112 (1994); See also Patent Proc. *Supra* note 19. Art. 9(4) (b) (c).

[52] See Donald S. Chisum (1997), "Best Mode Concealments and Inequitable Conduct in Patent: A Nutshell of Review of Recent Federal Circuit Cases and a Plea for Modest Reform," *Santa Clara High Tech. L. J.* Vol. 13, No. 2, p. 278.

[53] Apart from patenting a novel idea, patentability requirements in Ethiopia and the United States patent law are almost identical: These are: novelty (newness (Art. 3), non-obviousness, publication in scientific journals, use for more than a year etc. Though

In Ethiopia, too, an invention may be patented if it is "…new, [and] involves an inventive step and is industrially applicable."[54] The most important method of proof of novelty (newness) is describing a prior art and revelation of special features of the claimed product in comparison with the qualities of prior art. However, the Patent Proclamation does not require inventors to prove distinctive qualities of the claimed invention *vis-à-vis* prior art. An applicant is required simply to describe features of his/her invention in a way others can make the invention simply following the disclosure.

The invention need not be absolutely new, having no features of the existing product. Nowadays, it is hardly possible to innovate a thing completely new (never envisioned before) without holding some features of prior art. In this regard, Isaac Newton (1643-1727) had remarked how prior inventions accelerated his own novel discoveries: "If I have seen far, it is by standing on the shoulders of giants."[55]

In accordance with the Ethiopian patent law (that is crafted in line with the global patent system), a prior art comprises of "[…] everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way [.…]"[56] An applicant for patent protection therefore should provide sufficient description of the claimed invention to enable patent examination effective. On the basis of the disclosure, patent examiners will consider global database and determine whether the claimed invention is a novel one (new) or not.[57]

expressed in different terminology, the basic tenets of patentability in Ethiopia are almost similar to the patentability requirements of US patent law. This fit for all criteria of intellectual property system does not suit developing economies. Some argue for a *sui generis* intellectual property regime. See J. Janewa Osei-Tutu (2011), "A Sui Generis for Traditional Knowledge: The Cultural Divide in Intellectual Property Law" *Marquette Intellectual Property L. Rev* Vol. 15, p. 150.

[54] Patent Proclamation, *supra* note 18, Art. 3(1).

[55] Merges and Ginsburg (*supra* note 31) 165 (quoted from Suzanne Scotchmer, (1991) "Standing on the Shoulders of Giants: Cumulative Research and the Patent Law" 5 *The Journal of Economic Perspectives,* p.1.

[56] Ibid.

[57] In the case of traditional medicine, the inventor who secretly holds the invention, should describe the qualities of the medicine. The claimant should also sufficiently prove how his/her invention is different from known similar invention. An issue arises whether a poorly trained traditional medicinal practitioner can discharge the obligation of proving newness test. Given the current scenario, it appears unlikely. The requirement to prove novelty of traditional medicines appears very hard, if not impossible. This would discourage potential traditional inventors to disclose their intention or does not encourage them to engage in inventive ventures. The Ethiopian law prohibits issue of

With regard to traditional medicinal invention, description of the best mode of invention necessarily requires laboratory test and description of chemical components of the claimed medicine. Empirical data and the reality on the ground reveal that Ethiopian traditional medicinal practitioners are not in a position to test their invention by themselves, or may not be willing to offer the claimed medicine for testing.[58] Laboratory test certainly requires traditional practitioners to show the invention, the herbs from which the claimed invention was extracted, and the chemistry of the medicine. According to a respondent, traditional medicinal practitioners do not usually cooperate with research centers, unless assurance is given from the highest public authorities,[59] and there are traditional medicinal practitioners who do not trust the law in its current form, and agencies that have research facilities.[60]

patent if similar invention is already known anywhere in the world. In Ethiopia, the applicant for patent need not prove the non-existence of a similar item or how the invention is completely different from the prior art, but the applicant should sufficiently describe the qualities of the invention. It is up to the patent examiners to search for similar inventions anywhere in globe in light of the description provided.

[58] The attempt of Ethiopian Public Health Institute to convince Merigeta Belay signifies this fact. The Research Directorate of EPHI attempted to work with the traditional medicinal practitioner but all possibilities to convince him to continue working together failed. (Interview with Firehiwot Teka, *supra* note 10). Moreover, Merigeta Belay refused to provide the alleged traditional medicine that had dried up the invasive weed in research pods developed by the PhD student of Bahir Dar University for laboratory test. Initially Merigeta Belay claimed to have a traditional medicine that can wipe out the weed to the Bahir Dar University. A regional government body that was entrusted with mandate of coordinating removal of the invasive weed had aligned Merigeta Belay with the research student. The student prepared two ponds near Abay River that can grow the weed for research purposes. This author observed both of the ponds. According to Ayalew Wondie (PhD), Merigeta Belay poured the claimed medicine on to the weed that was picked from the pond. The weed dried up within 24 hours. The PhD student researcher was so happy and asked Merigeta Belay to give her the alleged traditional pest for laboratory testing. He denied the request alleging piracy. (Interview with Ayalew Wondie (PhD), Associate Professor of Aquatic Wetland Science at Bahir Dar University and Coordinator of the regional government agency that was set up to oversee removing the invasive weed known as water hyacinth, *Eichhornia Crassipes,* locally known as "Enboch"). Merigeta Belay initially applied to get patent of the claimed invention at the Ethiopian Patent Office, but later he abandoned it. (The initial application record is available at the Ethiopian Patent Office in Addis Ababa).

[59] Interview with Hakim Alemayehu Gibeb, Alpha Traditional Medicine Centre, Addis Ababa.

[60] The actions and reactions of Merigeta Belay Adamu are examples for the reluctance of Ethiopian traditional medicine practitioners to cooperate with research centres and researchers.

These challenges not only cause further deterioration of traditional knowledge but, also adversely affect scientific research that gears toward improving traditional inventions, including traditional medicines.

Even where laboratory test is not a requirement, traditional medicinal practitioners are not usually willing to describe the best mode of making the invention. They are reluctant to deal with third parties in fear of piracy.[61] Thus unless the secretive tendency of traditional practitioners is changed the chance of getting patent protection is doubtful.

In addition to novelty, newness of an invention inherently holds time element. An inventor seeking patent should file as early as possible. The term 'new' intuitively does not support unwarranted delay in seeking protection or disregards old innovations that have been in use. Expeditious disclosure serves public interest as it would avoid or lessen the chance of loss of the already acquired knowledge. The inventor should seek patent grant as soon as s/he is sure that the invention deserves patent protection. Any unwarranted delay would affect patentability.[62]

The Proclamation prohibits patent protection to an invention if it has been in use or offered for sale for a period exceeding one year.[63] Arguably, therefore if an invention is not offered for sale, or not used in any way, the one-year period of limitation will not run. It can be suggested that an undisclosed invention that is not in use or offered to the public in any way can be patented at any time whenever the inventor wishes protection. The newness requirement does not suggest non-disclosure for all purposes and in all cases. For instance, disclosure of an invention for the purpose of trial cannot affect the newness requirement. Further, the inventor may offer the thing invented to the public for promotion or mass trial. If the inventor files for patent protection within 12 months of such disclosure, the disclosure cannot affect newness.[64]

Regarding secretly held traditional medicines, it is not easy to comprehend an exact time in which the invention was discovered.[65] In some cases,

[61] Id.

[62] In the United States, an inventor is expected to apply for patent within a year of the completion of testing of the invention.

[63] Legislative lacunae are filled by US courts; some of the cardinal rules of patent law are stipulated by the judiciary.

[64] Id. Patent Proc., *supra* note 18, Art. 3 Sub-art. 3.

[65] For instance, an interview respondent at Alpha Traditional Medicine Center informed that he learned the practice and curing herbs from his uncle long time ago. He never disclosed the curing herbs and the methods of preparation of the medicines to anyone

practitioners themselves may not be aware of an exact time in which the idea of medicine was realized.[66] Substantial numbers of traditional medicinal practitioners have inherited the knowledge from their parents or close relatives. Despite the possibility of use or sale, the public has no clue about the nature or the herbs from which the medicines were derived and the chemistry of making. Thus, the availability of the medicines to the public does not mean availability of the wisdom.[67] It is to be noted that unless the inventive formula (processes and procedures of making) is known by using carefully designed patent system or unless the formula is sold to someone else, the undisclosed chemistry in making critical medicinal knowledge (and product) cannot be preserved to the future generation.

5.2.2 Non-obviousness

There is a requirement of proving *non-obviousness*[68] for the patentability of a given invention because the new invention should involve inventive step.[69]

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so for. He gathers medicinal herbs from Awash area and North Shoa but has no garden of his own. He got a letter of cooperation from the head of medicinal plant section of the chairman of Ethiopian Traditional medicine Association. (Interview with Hakim Alemayehu Gebib –Alpha Traditional Medicine Center, Addis Ababa.

[66] For example, a traditional *hakim* in Boditi town, Wolaytta Zone, S/N/N/R/S informed that it took several years to practice medication. She knew the medicine would work but afraid of intimating the same to the public. She consulted some of her friends who encourage her to operate the practice. This took several years from the moment of discovery of the medicine and the practice. (Interview with Eyoba Aye, Bodit, Wolaytta)

[67] Inventors of the traditional medicine often withhold the inventive formula and the kind of herb from which the medicines invented secret. They change the color, odor or other identifiable features. Thus, use or offer for use of the medicines simply cannot teach for remaking. Denying patent protection for the sole reason of use appears contrary to the cherished goals of patent. However, if the traditional medicine is offered to the public in a way the user or experts in the field can identify the source of the medicine and remake it, after lapse of one year, patent protection cannot be granted. This rule also works to community held traditional medicines. As the very purpose of patent system is to save loss of the already known wisdom and everybody is aware of the wisdom, it is assumed that the knowledge is in the public domain. Yet, the "use requirement" cannot obstruct granting utility model certificate (discussed in later sections). The Ethiopian Patent Office has already granted utility certificate to three community known medicinal wisdom after through laboratory test by the Research Directorate of Ethiopian Public Health Institute.

[68] *Graham v. John Deere Co*, 383 U.S. (1996) p.1; Non-obviousness requirement is the most significant obstacle that a patent applicant faces. It has been called the "final gatekeeper of the patent system."

[69] Patent Proclamation, *supra* note 18, Arts. 3(1), and 4(2).

The non-obviousness requirement constitutes the core element of the patent system that justifies patent grants.[70] It is "a condition in which an invention cannot receive a valid patent because a person with ordinary skill in that technology can readily deduce it from publicly available information."[71] The non-obviousness requirement seems an extension of novelty. While novelty focuses on the newness of the invention, non-obviousness is about non-implication of the already invented discovery or the already existing and known invention.

Almost all patent laws require non-obviousness for patentability.[72] The inventor must exert innovative acumen to come up with a new thing because s/he cannot enjoy monopoly over an item that is already in the public domain or that makes no contribution to the public. Things in the public domain are the property of everyone and should not fall under the exclusive use of a single person. A trivial contribution thus cannot allow a person to have the benefit of patent monopoly.

5.2.3 Usefulness (applicability)

A patentable product should have features of applicability. The invention should have significance "[…] in handicraft, agriculture, fishery social services and any other sector."[73] This list in the domains of applicability is not exhaustive,[74] and a traditional medicine practitioner can prove how the claimed invention can heal or serve the claimed purpose. In other words, the invention should be useful. Usefulness is gauged based on the product's quality in tackling societal problem. Thus, the applicant for patent should prove how the invention would address a current or future problem.

The foregoing discussion indicates that traditional medicinal inventions may not pass through the complexities of patentability yardsticks that make patent protection out of reach for traditional medicinal practitioners.[75]

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[70] See, Merges and Ginsburg (*supra* note 31) 91

[71] Garder-Shafran Rachel, (2004). *Intellectual Property Law Dictionary*, Loose-leaf Series.

[72] The expression "Non-obviousness" appears equivalent to the phrases, "inventive step" as used by some jurisdictions, including Ethiopia. See Patent Proc. *supra* note 18, Art. 3(4).

[73] Patent Proclamation, *supra* note 18. Art 3(5).

[74] The United States patent law simply expresses usefulness as a requirement for patentability.

[75] For detailed discussion on troubled relationship between traditional knowledge and intellectual property see Chidi Ogumanam, (2008), "Patents and Traditional Medicine: Digital Capture, Creative Legal Interventions, and the Dialects of Knowledge Transformation," *Indiana J. Global L. Stud* Vol. 15 No. 2 p. 489.

Consequently, traditional inventors would tend to ignore the law and sustain *self-help* method of protection. In the absence of protection and incentives through viable options, it thus seems unlikely for a traditional inventor (who secretly holds therapeutic formula of crafting a traditional medicinal product or process) to disclose composition of the medicine. In effect, undisclosed inventions have the tendency to stay in secret holding, which may not enrich public domain.

6. Utility Model Certification *vis-à-vis* Secretly Held Traditional Medicinal Products

6.1. Utility model certification: Nature and significance

International patent norms that emerged in developed economies to address the needs of the advanced nations may not suit to traditional and minor inventions.[76] Traditional inventors cannot fairly compete with big innovators that have extensive experience and strong financial power. The consideration of global standards can become uphill thresholds to minor inventors. This would discourage traditional inventors and force them to pursue a greater level of secrecy. Variation in standards of development may thus need a *sui generis* form of intellectual property regime.[77] With a view to address the need for protection, most developing, and some developed nations have devised alternatives of patent system that can possibly safeguard the interest of traditional innovators.

A minor invention is a useful innovation in local communities even though it may not be absolutely novel in global standards. It may not also meet the inventive step (non-obviousness) criterion, as required in patent law. With a view to attract and encourage traditional innovators, nations have devised the *utility model certification*.[78] In this model, the requirements and procedures of

[76] Id., Forward by Ortiz at vii.

[77] Consequently, according to Ruth Okediji, "Despite a multilateral impasse at the World Intellectual Property Organization (WIPO), formal *sue generis* regime for the protection of TK [Traditional Knowledge] are on rise globally." See Ruth Okediji, (2021), "Grafting Traditional Knowledge onto a Common Law System," *Georgetown L. J*. Vol. 110 p. 77.

[78] According to Ortiz, utility model may "[…] serve as a useful tool for promoting the type of innovation generated in developing countries." See Uma Suthersanen (2006), "Utility Models and Innovation in Developing Countries," *UNCTAD-ICTSD*, forward by Ricardo Menéndez, Ortiz p. vii, Available at: https://unctad.org/system/files/official-document/iteipc20066_en.pdf Nations are not uniform in use of the connotation "utility model." Use of the terms denoting utility model reflect the purpose and interest of nations. Australia captions the terms "utility

getting certificate of protection can be shaped in consideration of local realities. Therefore, a developing nation can relax the requirements for getting legal protection by setting its own standards, which may consider the volume of available minor inventions, the need for further invention and the extent of motivation needed to attract potential innovators. Therefore, in developing nations where minor inventions are frequent, the utility model system has paramount importance.

Recognition of the utility model enables owners of minor inventions to enjoy monopolistic use of an invention.[79] Ethiopian law authorizes owners of minor inventions to enjoy utility model certification provided that the invention meets the standards of novelty and industrial applicability.[80] It is to be noted that a simple change in the shape of an item, proportions, or material of a patented object or (one that is under public domain) cannot be protected.[81] However, if the change in shape improves the quality of the item or elevates the quality of use or suppresses problems in use of the item, utility model protection can be granted.[82]

Likewise, where an inventive knowledge, which is under public domain, has been improved either in quality or function, it can be protected on account of a new and useful improvement.[83] But "… mere replacement of elements in a known combination by other known elements having an equivalent function, which does not produce [..some kind of] improvement in its use or the effect of its intended functions," cannot be protected.[84] The utility model certificate holder can enjoy all the benefits until the lapse of the duration stated in the utility model certificate. In Ethiopia, such time is five years with the possibility of extension to five more years depending upon the function and

model as innovational patent, while Malaysia use the words, "utility innovation," France applies the expression, "utility certificate," and in Belgium it is "short term patent." Id, at 1.

[79] The World Intellectual Property Office attests this fact stating: "While the requirement of "novelty" is always to be met, albeit some countries only on a local level, that of "inventive step" or "non-obviousness" may be lower or absent or absent altogether." See WIPO, Utility Model. Available at: https://www.wipo.int/patents/en/topics/utility_models.html

[80] Patent Proc. *supra* note 18, Art. 38.

[81] Id., Art. 39(1).

[82] Ibid.

[83] Id., Art, 40.

[84] Id., Sub Art. 2.

significance of the invention.[85] The possibility of getting utility model certificate for traditional medicines is briefly discussed below.

6.2. Can undisclosed traditional medicine be protected under Utility Model Certification?

Unlike patent which is international in standard and universal in content, the *utility model* system allows due consideration of national situation (sui generis) in affording protection. The good side of this standard is the possibility of gauging the scope of the newness in local standards. This is one of the relaxations that a minor inventor can enjoy. Accordingly, a nation can craft its utility model law in a way it can attract emerging minor innovators. In Ethiopia, "[a] minor invention that possesses novelty and industrial applicability [can be protected through utility model.]"[86]

The expression, 'minor invention' denotes that the invention is not a ground-breaking novel, but it has a better quality that is different from the existing similar items (prior art), either in terms of quality or function. Traditional medicines, as minor inventions, could be protected under the utility model, provided that the requirements of novelty and industrial applicability are met.[87] Utility model is suitable to traditional medicinal products because there is a possibility for further localization of standards. This aligns with the legislative rationale as indicated in the preamble of Proclamation No. 123/1995 which aims at encouraging local creativity – advancing local creativity.[88]

In determining newness (novelty) and industrial applicability, the scope of comparison is narrow –only prior arts available in Ethiopia will be used as a standard of comparison. In Ethiopia, an applicant for utility model certification is required to describe the best mode of his/her product, but need not describe qualities of prior art. However, examination of distinctive features of the invention in comparison with prior art is highly strategic to expedite the process. One can still question the meaning and scope of prior art in the case of traditional medicines, and the methods of comparison. The claimant of utility model certificate is required to prove how his/her invention alleviates a problem that no prior art does. In this regard, the claimant shall describe the new qualities that the claimed invention possesses. Description

[85] Id., Art. 44.
[86] Patent Proclamation, *supra* note 18. Art. 38.
[87] Id., Art. 38(1).
[88] The first statement of Proc. No. 123/1995 states, "[…] in order to encourage local inventive and related activities thereby building national technological capability."

of the best mode would disclose how the new invention is pragmatically different from similar products.

However, to an Ethiopian traditional medicinal practitioner description of distinctive qualities of their medicine may not be easy. The practitioner is required to sufficiently describe the qualities and nature of the claimed invention, and the adequacy of the description depends upon the way it would teach other professionals (inventors of traditional medicine or holders of inventive formula) by explaining the processes of making the claimed invention, how it works (how it cures), the nature of disease that the medicine actually has cured (either in test period or during secret holding), the dose, its side effect, if any, etc., including the herb, parts of her, animals, parts of animal, or mineral from which the raw material was extracted.

In addition to the proof of newness, an applicant for utility model certificate should show industrial applicability medicinal product or process. Monopolistic use of a claimed invention cannot be granted to something that is so obvious or trivial. If a medicinal product or process is already in public domain or where it is possible to make it, or where the process of making the product is already known to the professionals in the field, there is no need to permit exclusive use. Therapeutic qualities of traditional medicinal product or process, its distinctive characteristics, components, actual or potentials problems that the medicine tackles or the possibility product could tackle, or would suppress potential diseases etc., shall be sufficiently described. As briefly indicated above, descriptions of medicinal qualities of traditional medicine necessarily calls for scientific study and laboratory test. The proof would enable practitioners to get approval from the regulatory agency – Food and Drugs Authority and later on utility model certification.

A question arises whether Ethiopian traditional healers can pass through all these hurdles and get legal protection. Although it may appear unlikely, it is not impossible. If socio-economic conditions and interest of traditional medicinal practitioners is appreciated by the regulatory agency and research centers, the current discouraging scenario could be altered. Currently Ethiopian traditional medicinal practitioners are not only in the position to meet the tough requirements of the law, but substantial numbers of traditional medical practitioners are not willing to offer their invention for scientific scrutiny. They usually hesitate and suspect the potential loss of secret holding in fear of piracy. Moreover, some consider that the curative efficacy of the traditional medicine would be diluted if all of the components of a product and the procedures of making the medicine are disclosed to the public.[89]

Thus, attitudinal challenges (lack of trust) is among the problems that hinder legal protection to traditional medicinal inventions. This is a big problem to the regulatory agencies and researchers.[90] In some cases, the lack of trust is attributable to strong spiritual belief that the medicine works in a highly secretive environment.[91]

In spite of these challenges, some traditional medicine practitioners have expressed willingness to cooperate with researchers if the government or an accredited agency offers recognition of the medicinal product and assures legal protection. For example, Abraham Walelign of Ethio-Mefteh Traditional Medicine Center, and President of the Ethiopian Traditional Medicine Practitioners Association expressed interest to work with researchers and cooperate with the regulatory agency.[92] Another traditional medicine practitioner expressed distrust and wishes to continue a secretive holding. When asked how to save the traditional medicinal knowledge and the practice for the future generation, he expressed his plan to train his son from his young age. A traditional hakim in Boditi town, expressed her interest to train anyone willing to get training and show the herbs and the processes of making the medicine. However, when asked if she could show at the time of interview, she responded herbs do not grow in dry season and it takes three to four hours travel to collect the herbs.

Beneficiaries of traditional medicine suggest that the government should take measures of awareness creation campaign thereby helping traditional medicine practitioners to get acquainted with the procedures of application for the protection.[93] As summarized above, the traditional medicine practitioners

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[89] Interview with Hakim Alemayehu Gebib, Alpha Traditional Medicine Centre, Addis Ababa. Also see the problem encountered with Merigeta Belay *supra* note 58.

[90] According to Firehiwot Teka, director of the Modern and Traditional Medicine Research Directorate of Ethiopian Public Health Institute (EPHI), Merigeta Belay started to work with the Research Center but disappeared or turned his phone off after the relationship reached to the level of disclosure of the herb and therapeutic procedure for laboratory testing.

[91] Interview with Hakim Alemahyehu Gebib, of Alpha Traditional Medicine Centre; interview with Firehiwot Teka, Director of Modern and Traditional Medicine and Research Directorate also disclosed the same point.

[92] Interview with Abraham Walelign, traditional medicine practitioner and President of Ethiopian Traditional Medicine Practitioners Association in Addis Ababa.

[93] 76% of the respondents (to questionnaires) view that the government should strengthen community awareness towards the importance of traditional medicines.

and persons who have participated in focused group discussion, and respondents of questionnaire suggested that the government should provide incentive measures that can motivate traditional medicine practitioners to cooperate with the regulatory agency and researchers in the field.

Attitudinal changes cannot be gained overnight; it takes time and positive action. Awareness creation through teaching and provision of incentives would encourage traditional medicinal practitioners to seek legal protection and disclose the wisdom. Moreover, the government should offer an unequivocal assurance that a disclosed traditional medicinal wisdom cannot be pirated. Moreover, traditional medicine practitioners should be convinced that the date of disclosure through registration in the Patent Office is considered in setting the priority, and no one can get priority over the invention under scrutiny.

Fear of piracy, unproven assumptions, and the secretive tendency of traditional medicinal practitioners can be changed through training, provision of incentives, and reliable guarantee system stemming from trusted sources which can be legislative or administrative. The way forward envisages the alignment of traditional medicine practitioners with research centers and patent lawyers that can assist them. In the absence of awareness enhancement and motivating factors that can change the behavioral hurdles, traditional medicinal practitioners are likely to continue being attracted by the financial gain they would make through their secretive practices.

Financial incentives would attract all concerned to take part in researching and documenting the invention thereby saving loss of privately held undisclosed traditional medicinal wisdom. Thus, the alliance and meaningful research-assisted innovation call for allocation of research fund and incentives. Lessons can be drawn from Indian researchers who collectively worked in modernizing traditional medicines and got patent protection.[94] In China, before adoption of TRIPS, patent was granted to certain traditional medicines.[95] South Korea has been working to integrate traditional medicines with conventional medicines.[96] The integration of traditional medicines with conventional ones through research and incentive measures maximizes primary health care system.

The possibility of granting utility model protection to traditional medicinal knowledge is practically proven, and it can indeed be effective if various factors including incentives and harmonized interventions are addressed. The

[94] Wilder, *supra* note 5.
[95] Thamizhoviya G. *supra* note 5; See also Lin Peng. *supra* note 5
[96] Park J et al, *supra* note 5

Research Directorate of Modern and Traditional Medicine at the Ethiopian Public Health Institute, after scientific verification of the efficacy of community-held traditional medicines, has acquired utility model certificates.[97] This plausibly exhibits that secretly held traditional medicines can be protected by utility model certification in Ethiopia.

7. Conclusion and the Way Forward

While several factors have caused the steady decline in traditional medicinal products and wisdom, the major factor is attributable to the absence of meaningful, legal and institutional protection. To safeguard the property interest of their innovation, traditional medicine practitioners apply secretive methods of self-policing. Such secretive holding cannot enrich public domain of knowledge unlike the patent system that is believed to balance the interest of innovators and the public by offering possibilities for monopolistic use of the invention and disclosure. As discussed in the preceding sections, the patent system, not only shields innovators in using fruits of their labor, but also safeguards public interest by enriching public domain through disclosure.[98]

The patent shield encourages innovators to disclose their invention without the fear of piracy.[99] The disclosure will make secretly held medicinal knowledge available to researchers and potential innovators that wish to use the disclosed information as stepping stone for further innovation. However, the current standards of gauging patentability requirements easily disqualify 'secretly held' traditional medicines from protection. This calls for the application of a mechanism that is relatively more effective. The utility model certification can be appropriate for the protection of innovation that may not meet elevated standards of patent.

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[97] Interview with Firehiwot Teka, the Director of the Directorate of Modern and Traditional Medicine Research Directorate of Ethiopian Public Health Institute (EPHI), *supra* note 10. The Directorate has got utility model certificate *Damacase* and Shiferaw (Mornga). It is publicly known for the medicinal value of these herbs, but the actual nutrients other chemical components were not scientifically proven by the community. The scientific proof and study of the chemical elements was taken as some think novel and protection was given.

[98] Fusco Stefania, (2008- 2009), "Is the use of Patents Promoting the Creation of New Types of Securities?" 25 *Santa Clara Computer & High Tech L. J.* p.243

[99] The disclosure would help innovators to practice their creation openly hiring unlimited number of employees or assistants without fear of piracy. This would also protect parallel creation or reverse engineering.

As the utility model certification can be crafted in contemplation of local realities, it can be modified with a view to ushering undisclosed (secretly held) traditional medicinal products to light. This disclosure will save the innovation for future generations. However, unless positive supportive measures are offered by the regulatory agency, the poorly trained Ethiopian traditional medicinal practitioners are not in a position to prove novelty and industrial applicability of medicinal products.

Moreover, there are attitudinal challenges because most traditional practitioners in Ethiopia are either reluctant to twin with researchers, or they hesitate to disclose the curative medicines in fear of piracy or on spiritual grounds. Therefore, the way forward envisages that the regulatory agencies should aggressively work on awareness creation, provision of incentives and revision of the Proclamation to accommodate the interest of traditional medicinal product holders. The utility model section of the Patent Proclamation should thus be modified to include incentive measures such as training, alignment of research centers and patent attorneys, and other positive actions that can be determined in consultation with traditional medicinal practitioners. In the absence of such reform and measures, the practitioners will continue to apply the self-regulation method that cannot spare the steady decline and loss of traditional medicinal wisdom in Ethiopia. ■

Cited References

Assefa, Temesgen *et al,* (2002). "The Role of Medicinal Plants in Traditional Medicine in Adwa District, Tigray, Northern Ethiopia," *Asian Plant Research Journal.*

Chisum Donald S. (1997). "Best Mode Concealments and Inequitable Conduct in Patent: A Nutshell of Review of Recent Federal Circuit Cases and a Plea for Modest Reform," *Santa Clara High Tech. L. J.* Vol. 13, No.2.

Correa, Carlos M. (2002). *Protection and Promotion of Traditional Medicine Implications for Public Health in Developing Countries*, University of Buenos Aires.

Dratler J & McJohn SM (2009). *Intellectual property, commercial, creative and Industrial property* §1.01 (Loose-leaf).

Fokunang CN *et al* (2011). "Traditional medicine: Past, Present and Future Research and Development Prospects and Integration in the National Health System of Cameroon," *African Journal of Traditional, Complementary and Alternative Medicines*, Vol. 8(3).

Fulas, Fekadu (2007). "The Role of Indigenous Medicinal Plants in Ethiopian Health Care." *African Renaissance* Vol. 4 No. 1.

Fusco, Stefania (2008- 2009). "Is the use of Patents Promoting the Creation of New Types of Securities?" *Santa Clara Computer & High Tech L. J.* Vol. 25.

G. Thamizhoviya (2025). Global Integration of Traditional and Modern Medicine: Policy Developments, Regulatory Frameworks, and Clinical Integration Model, *Future Integr Med*. Vol. 4 No. 3.

Garder-Shafran, Rachel (2004). *Intellectual Property Law Dictionary*, (Loose-leaf Series).

Girma, Gizachew (2011). *Protection of Traditional Knowledge under International and Ethiopian Law with particular Reference to Traditional Medical Knowledge: current Trends, Prospects and Challenges,* LL.M. Thesis, AAU (Unpublished).

J, Park; Yi, E; J., Yi (2021). The Provision and Utilization of Traditional Korean Medicine in South Korea: Implications on Integration of Traditional Medicine in a Developed Country, *Healthcare* Vol. 9.

Keller BP & Cunard JP (2008). *Copyright Law, A Practitioner Guide*, § 1.1

Merges RP & Ginsburg JC (2004). *Foundations of Intellectual property*, Foundation Press

Merso, Fikremarkos (2012). "Ethiopia's World Trade Organization Accession and Maintaining Policy Space in Intellectual Property Policy in the Agreement on Trade-Related Aspects of Intellectual Property Rights Era: …". *Journal of World Intellectual Property*, Vol. 15 No. 3.

Miller I et al (2009). *Patent Law Fundaments*, (2nd ed.).

Mills, Gladstone et al (2009). *Patent Law Fundamentals*, (Loose leaf series, §4).

Mothibe, Mmamosheledi E. & Sibanda Mncengeli (2019). "African Traditional Medicine: South African Perspective," in Congiz Mordeniz (ed) Traditional and Complementary Medicine.

Negero, Gemeda *et al* (ed.) (2015). "Ethiopian Traditional Medicine: Past, Current and Future, in Workshop Proceedings," Ethiopian Public Health Institute, Adama, Ethiopia, December 14 – 16.

O'Rourke Maureen A. (2000). "Toward a Doctrine of Fair use in Patent Law," *Columbia Law Review*, Vol. 100 No 5.

Oguamanam Chidi (2003). "Between Reality and Rhetoric: The Epistemic Schism in the Recognition of Traditional Medicine in International Law," *St. Thomas Law Rev.(16)*

Oguamanam Chidi, (2008). "Patents and Traditional Medicine: Digital Capture, Creative Legal Interventions, and the Dialects of Knowledge Transformation," *Indiana J. Global L. Study,* Vol. 15 No. 2.

Okediji, Ruth, (2021). "Grafting Traditional Knowledge onto a Common Law System," *Georgetown Law Journal,* Vol. 110.

Osei-Tutu, Janewa (2011). "A Sui Generis for Traditional Knowledge: The Cultural Divide in Intellectual Property Law" *Marquette Intellectual Property L. Rev.* Vol. 15.

Pend LIN (2022). "Striking a Balance between Intellectual Property Protection of Traditional Chinese Medicine and Access to Knowledge," *Tinghua Law Review* Vol. 7 No. 2.

Prima Braga, Carlos A. *et el* (2000). "Intellectual Property Rights and Economic Development," *World Bank Discussion Paper* No. 412.

Solomon. Tibebu (2013), "Assessment of Possible Intellectual Property Options of Traditional Knowledge System in Ethiopia". African Technology Policy Studies, ATPS *Technopolicy Brief* No. 40.

Sung & Schwartz (2000). *Patent Law Hand Book*.

Suthersanen, Uma (2006). "Utility Models and Innovation in Developing Countries," *UNCTAD-ICTSD,* forward by Ricardo Menéndez, Ortiz p. vii. https://unctad.org/system/files/official-document/iteipc20066_en.pdf

T., Mulu (2021). "Review on Phytochemical Studies of Ethiopian Medicinal Plants from 1970 – 2020 and the Potential as Modern Drug," *Adv. Phamacoepidemiol Drug Saf,* Vol. 10 Issue 4 No. 1000.

Warshofsky, Fred (1994). *The Patent Wars,* Wiley

Wilder, Richard (2000). "Protection of Traditional Medicine, Indian Council for Research on Int'l Economic Relation", *Working Paper* 66, Indian Council for Research on International Economic Relations https://www.icrier.org/pdf/wilder66.PDF

Laws

Proclamation Concerning Inventions, Minor Inventions and Industrial Design (1995), (Proc. No. 123/1995), *Neg. Gaz. of Transitional Gov. of Eth*. 54[TH] Year -No. 25, A.A.

Inventions, Minor Inventions and Industrial Designs, Council of Ministers Regulation (1997) Reg. No. 12/1997, *Fed. Neg. Gaz.* 3[rd] Year – No. 27, A.A.

EIPA (2025), Patent Examination Guidelines (1[st] ed.).

Interviews

Firehiwot Taka, the Director of the Directorate of Modern and Traditional Medicine Research Directorate of Ethiopian Public Health Institute (EPHI), Gulele Addis Ababa, Feb, 2021

Walelign, Abraham, Chairman of Ethiopian Traditional Medical Practitioner and Founder of Ethio-Mefthe Traditional Medicine Center, Addis Ababa, March 2021.

Interview with Ukumo, Bikamo, a former customer of Kute, Dangara Salata, Southern Ethiopia, March 2021).

Hakim Gibeb Alemayehu – a traditional *hakim* at Alpha Traditional Medicine Center, Addis Ababa, March, 2021.

Wondie Ayalew (PhD), Director of Lake Tana and Water Resources Protection Agency of Amhara Regional State, Bahirdar, Feb. 2021.

Eyoba Aye, a traditional healer in Damot Gale Woreda, Wolaytta Zone, Southern Ethiopia at her residence, Feb, 2021.

COMMENT

Federal Intervention *versus* State of Emergency: Observations relating to the 2023 State of Emergency in the Amhara Regional State of Ethiopia

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Abstract

The Council of Ministers of the Federal Democratic Republic of Ethiopia (FDRE) had declared State of Emergency in the Amhara Regional State on the 4th of August 2023, which was later endorsed by the FDRE House of Peoples' Representatives. The Federal Government posed the state of emergency as being a response to a request from the then-president of the Amhara Regional State. Having examined the Federal Government's response to the reportedly made request in light of the law that regulates the relation between the Federal Government and a region with a deteriorating peace and security, this comment observes that the Federal Government's attempt to link the state of emergency to the request from the Regional Government is contrary to the truth, an underlying requirement of transparency. Moreover, the misleading information provided, including through official media outlets, would jeopardize the trust relationship that should exist between citizens and their government.

Keywords

Amhara Region, federal intervention, insincerity, state of emergency, transparency

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Contents

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1. Background

Popular support including from the Amhara regional state were "instrumental" in bringing about the reform in 2018 as beacon of hope. This support quickly vanished following the multidimensional attacks including routine displacement and persecution[1] of the Amharas residing in regions outside of the Amhara Regional State and the restriction on residents of the Region from entering the federal capital city, Addis Ababa.[2] Waves of protests[3] across the major cities of the Region calling the Federal and Regional governments to take steps to address the matter were by and large ignored.[4]

[1] East African Review, (September 30, 2024), "Amhara Farmers in Ethiopia's Wollega: Battling for Survival Under Abiy's Administration" https://www.eastafricanreview.com/2024/09/30/amhara-farmers-wollega-survival-ethnic-violence/ ; The Associated Press, (June 20, 2022), "Witnesses say more than 200 killed in Ethiopia ethnic attack" https://apnews.com/article/ethiopia-africa-kenya-government-and-politics-race-ethnicity-8313964aace8621130ecdf75917818cc ; Human Rights Watch, (August 31, 2022), "Ethiopia: Civilians in Western Oromia Left Unprotected", https://www.hrw.org/news/2022/08/31/ethiopia-civilians-western-oromia-left-unprotected.

[2] Biruk Alemu and Getahun Tsegaye (August 12, 2022), "News Analysis: South Wollo, Debre Berhan drivers, passengers ban entering Addis Abeba", Addis Standard, https://addisstandard.com/news-analysis-south-wollo-debrebirhan-drivers-passengers-ban-entering-addis-abeba/ ; Borkena, (August 14, 2022), "Travelers from Amhara region of Ethiopia denied right to enter Addis Ababa", https://borkena.com/2022/08/14/travelers-amhara-region-of-ethiopia-denied-right-to-enter-addis-ababa/

[3] Martina Schwikowski (September 08, 2023), "Ethiopia grapples with clashes in Amhara region", DW, https://www.dw.com/en/ethiopia-amhara/a-66483313 ; Kalkidan Yibeltal, (April 10, 2023) "Ethiopia's Amhara region hit by protests over move to dissolve regional forces", BBC News, https://www.bbc.com/news/world-africa-65194146 ; Zecharias Zelalem, (July 06, 2022), "'Death sentence': Massacres fuel protests, resentment in Ethiopia", Aljazeera, https://www.aljazeera.com/news/2022/7/6/massacre-of-hundreds-fuels-protests-resentment-in-ethiopia.

[4] Zecharias Zelalem, (July 06, 2022), "'Death sentence': Massacres fuel protests, resentment in Ethiopia", Aljazeera, https://www.aljazeera.com/news/2022/7/6/massacre-of-hundreds-fuels-protests-resentment-in-ethiopia.; Hone Mandefro, (August 04, 2023), "How years of tension in Amhara boiled to the surface", African Arguments", https://africanarguments.org/2023/08/how-years-of-tension-in-amhara-boiled-to-the-surface/.

Despite this, the Amhara Region and people were supportive[5] of the Federal Government during the Tigray war from November 2020 to November 2022, when it was ended by the Pretoria Agreement.[6] Lack of formal and genuine representation and participation of the Region during the Pretoria Agreement[7] made the Amhara elite feel betrayed by the Federal Government. In particular, the lack of clarity around the content of the agreement relating to the status of controversial border areas between Tigray and the Amhara Regions[8] – *Wolkait* and *Raya*[9] – has made the Amharas to be suspicious of the agreement.[10] Furthermore, the Federal Government forces are criticised for not consistently defending against the TPLF advance in the

[5] The support went to the extent of the regional forces and the Fano forces joining the Federal military forces in the war against the TPLF. The name "Fano" refers to "freedom fighter, and stretches back to the successful campaign by a volunteer army against the Italian fascist occupation of Ethiopia in the 1930s." Present day Fano are "an ethno-nationalist group that claims to represent the Amhara, Ethiopia's second-biggest community, and seem to have widespread popular support." Simon Vera, (November 12, 2024), "Who is Fano? Inside Ethiopia's Amhara rebellion", The New Humanitarian, https://www.thenewhumanitarian.org/news-feature/2024/11/12/who-fano-inside-ethiopia-amhara-rebellion.

[6] The Pretoria Agreement is a peace agreement between the Ethiopian government and the Tigray People's Liberation Front (TPLF). It was signed on November 2, 2022 to end the conflict between the two.

[7] Though the Vice president of the Amhara Region was included in the delegation representing the Federal Government, he was not formally assigned by the Region to represent the Region during the negotiation. It was a two-party negotiation – the Federal Government and TPLF. For the legal issues relating to the selection and composition of the delegation see: Wondwossen Kassa, (July 06, 2022), "Rule of Law, not Expediency, Should Guide the Negotiation with TPLF", *Borkena,* https://borkena.com/2022/07/06/ethiopia-rule-of-law-not-expediency-should-guide-negotiation-with-tplf/

Desalegn Chanie, member of Parliament, asked the Prime Minster not to sideline those who were involved in the conflict including the Amhara and the Eritrean Government. Facebook, (June 15, 2022), https://web.facebook.com/doonyadheer/videos/amhara-political-leaders-are-open-about-their-traitorous-and-treasonous-stance-i/1126334431257307/?_rdc=1&_rdr#.

[8] Africa Confidential (August 24, 2023), "The avalanche catches up with Abiy Ahmed", Vol 64, No. 17, https://www.africa-confidential.com/article/id/14568/the-avalanche-catches-up-with-abiy-ahmed.

[9] These districts had been under the Tigray Regional State since the coming to power of the EPRDF in 1991. Following the clash between the Federal Government and the TPLF in 2020, the places have been controlled by the Amhara Regional State.

[10] Armed Conflict Location & Event Data Project, (August 10, 2023), Crisis in Ethiopia's Amhara Region, https://www.jstor.org/stable/resrep52746 p. 4

Amhara Region in 2021 and 2022. The Ethiopian National Defence Forces withdrew from towns and cities in Amhara resulting in the Amhara civilians facing abuses by TPLF forces.[11]

The Federal Government's controversial decision to dissolve Regional Special Forces and integrate them into federal security institutions in April 2023 and its swift move to implement the decision in the Amhara Region, without the status of these controversial border areas being settled and the TPLF fighters disarmed, worsened the public's grievance.[12] Indeed, this became an immediate cause for increasing unrest and frequent clashes between the state and Fano forces.

The crisis escalated when the federal government ordered the Ethiopian National Defence Force (ENDF) to take action[13] against what it refers to as 'extremist' elements following the assassination of the head of the Amhara Prosperity Party by an unidentified armed group in April 2023.[14] Fano raised arms and openly demanded withdrawal of the ENDF troops from the region and managed to take control of the Region's big cities, including the regional capital Bahir Dar in the last week of July and first week of August 2023.

A letter claimed to be written by the then president of the Amhara Regional State, Yilekal Kefale (hereafter referred to as president's letter or letter) was published on a state media[15] on the 3rd of August 2023. The content of the

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[11] Ibid.

[12] Ibid; Kalkidan Yibeltal, (April 10. 2023), "Ethiopia's Amhara region hit by protests over move to dissolve regional forces", BBC News, https://www.bbc.com/news/world-africa-65194146. Aljazeera Newsfeed, "Protests in Ethiopia over plans to disband Amhara paramilitary", https://www.youtube.com/watch?v=XU5DSmuqmnw

[13] Though the Federal military had been engaged with the Amhara Fano from April 2023, Federal government's involvement in the Region was not formalized until the State of Emergency, mandating the military to take measures in the Region, was declared in August 2023.

[14] Fana Broadcasting Corporate, (April 28, 2023) 'The Security and Safety Joint Task Force announced that it is taking decisive action against the extremist forces that are trying to take control of regional power by destroying the constitutional system in Amhara region,' in ACLED, Fact Sheet: Crisis in Ethiopia's Amhara Region, accessed on 01 December 2025: acleddata.com/2023/08/10/fact-sheet-crisis-in-ethiopias-amhara-region

[15] Sources that reported to have been published on state media include: Dawit Endeshaw (August 04, 2023), Ethiopia's Amhara region requests federal help over militia unrest, https://www.reuters.com/world/africa/mobile-internet-outages-ethiopias-amhara-amid-fighting-residents-say-2023-08-03/; Huaxia (August 04, 2023), "Ethiopia declares state of emergency in troubled Amhara region", *Xinhua*,

letter shows the President's request for the Federal Government to "implement the necessary legal framework"[16] to help reinstate peace and security in the Region.[17] On the 4th of August 2023 the Council of Ministers declared *State of Emergency Proclamation Issued to Protect Public Peace and Security Council of Ministers Proclamation No.6/2023* (hereafter *state of emergency proclamation*),[18] which was later endorsed by the House of Peoples Representatives.[19] Initially declared for six months, the state of emergency was extended by four months.[20]

What made the Federal Government to declare the state of emergency and launch a massive military measure characterizing it as 'law enforcement' has been murky. In particular, the role of the President's letter in the declaration has been unclear. On the one hand, the Federal Government cited the letter as prompting declaration of the state of emergency. On the other hand, the law regulating the federal government's power when it receives a request for assistance from a region that is in a state of deteriorating peace and security does not provide for declaration of state of emergency as a legally permissible option as discussed in Section 3.

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https://english.news.cn/20230804/5011802ce6af4a2e86c2c1eb482f9101/c.html

16 Addis Standard, (August 03, 2023) "News Update: Amhara region requests federal gov't to intervene amid escalating security crisis, reports of internet and flight interruptions",https://addisstandard.com/news-update-amhara-region-requests-federal-govt-to-intervene-amid-escalating-security-situation-reports-of-internet-and-flight-interruptions/ .

17 For more on the content of the letter, see: borkena, (August 03, 2023), "Amhara regional state president calls for Federal gov't intervention", https://borkena.com/2023/08/03/amhara-regional-state-president-calls-for-federal-govt-intervention/

18 Its scope is broad enough to allow the authorities to take action in any part of the country if they believe such steps need to be taken in relation to the security failure in the Amhara Region. As such, while the Proclamation was predominantly applicable in the Amhara National Regional State, it was also applicable in any other part of the Country as necessary in connection with the need to take measures to maintain public peace and security or against activities or situations that exacerbate the Regional or National security condition in the Region.

19 The parliament passed "A State of Emergency Proclamation Enacted to Protect Public Peace and Security No. 6/2023 Ratification Proclamation No. 1299/2023" to ratify the state of emergency proclamation declared by the Council of Ministers.

20 ENA, (February 02, 2024), "House Extends State of Emergency" https://www.ena.et/web/eng/w/eng_3959449 . The State of emergency has never been formally terminated. Noting the continued dominance of the military in the Region one may claim the Region has continued to be in *defacto* state of emergency.

2. Federal Government's Attribution of State of Emergency to the Regional President's Letter

Article 12(1) of the FDRE Constitution requires the conduct of government affairs to be transparent. This calls for the federal government not only to announce its vital decisions but also to reveal its views about the decisions to the public. Declaration of state of emergency is among decisions that need to be communicated to the public transparently.

Accordingly, the Federal Government made statements about the state of emergency declared in the Amhara Regional State. The State of Emergency General Department Command linked it to the president's letter as follows:

> It is to be recalled that Amhara Regional State has requested the federal government to take measures and enforce law in the region as the situation has become very serious and cannot be controlled by the regular law enforcement system. *Accordingly*, a state of emergency was declared by the Council of Ministers and activities have been commenced by establishing General Department Command to implement the state of emergency proclamation.[21]

Similarly, in anticipation of the House of Peoples Representatives' emergency meeting to approve the state of emergency decreed by the Council of Ministers, Fana Broadcasting reported:

> The house is expected to discuss the State of Emergency decree the Council of Ministers declared during its 23rd regular session on 4 August 2023 and pass decision accordingly. It is to be recalled that the Council of Ministers in its 23rd regular session on August 4, 2023, unanimously passed decision to declare a state of emergency in the Amhara Region *following the request made by the Regional State* to the federal government.[22]

Requiring transparency of government conduct is premised on the expectation that officials give public justifications for their decisions noting that collective policy choices in a democracy cannot be justified solely on the

[21] Fana Broad Casting (August 06, 2023), "Activities underway to reinstate peace in Amhara Region by finalizing Law enforcement soon: State of Emergency General Command", (emphasis added) https://www.fanamc.com/english/activities-underway-to-reinstate-peace-in-amhara-region-by-finalizing-law-enforcement-soon-state-of-emergency-general-command/ .

[22] FBC, (August 14, 2023), "House Holding First emergency session" (emphasis added), https://www.fanamc.com/english/house-holding-first-emergency-session/

basis of self-interest.[23] This publicity of governmental conduct will give enhanced opportunity to the public to deliberate, censure and hold public officials accountable for their decision and action. As Staszewski has noted, the purposes of the requirement that public officials give reasoned explanations for their decisions are:

> *First*, reason-giving promotes accountability by limiting the scope of available discretion and ensuring that public officials provide public regarding justifications for their decisions. *Second,* reason-giving facilitates *transparency,* which, in turn, enables citizens and other public officials to evaluate, discuss, and criticize governmental action, as well as potentially to seek legal or political reform. Most fundamentally, reason-giving fosters democratic legitimacy because it both embodies, and provides the preconditions for, a deliberative democracy that seeks to achieve consensus on ways of promoting the public good that take the views of political minorities into account.[24]

Implicit in the requirement of transparency is sincere disclosure of information.[25] That is, for the purposes of transparency (the reason-giving requirement) to be served, the reasons for decision making or action taking should not only be publicly available but also genuine.[26]

Indeed, relying on the expectation that the government provides credible information and genuine justification for its decision, the Federal Government's portrayal of the President's letter has made both local and foreign news outlets to present the state of emergency as resulting from the alleged letter.[27] In particular, the way *Addis Standard* reported the relationship between the president's letter and the state of emergency was revealing of the

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[23] Glen Staszewski, (2009), "Reason-giving and accountability", *Minnesota Law Review,* 93(4), 1253-1326.

[24] Id., p.1279

[25] Mathilde Cohen, (2010), "Sincerity and reason-giving: when may legal decision makers lie", *DePaul Law Review*, 59(4), 1091-1150; P.1100

[26] Serious discussion on the government conduct would be unlikely if citizens do not receive accurate information about the conduct.

[27] Dawit Endeshaw (August 05, 2023), "Ethiopia declares six-month state of emergency in Amhara after clashes", *Reuters,* https://www.reuters.com/world/africa/ethiopia-declares-state-emergency-following-militia-clashes-2023-08-04/ ; *Borkena,* (August 04, 2023), "Council of Ministers agrees to declare state of emergency in Amhara Region", https://borkena.com/2023/08/04/ethiopia-amhara-region-state-of-emergency-council-of-ministers/ ; AP News (August 04, 2023) "Ethiopia's declaring a state of emergency in its Amhara region as local fighters clash with military", https://apnews.com/article/ethiopia-amhara-military-violence-cd880a2e8c5256e1ef4af52598e9d44d

effectiveness of the Federal Government's narration in shaping the understanding as regards to the link between the state of emergency and the president's letter.

On its report following the declaration of state of emergency by the Council of Ministers, the *Addis Standard* stated:

> The Council's decision today followed a letter issued yesterday by the president of Amhara regional state, Yelikal Kefale requesting the federal government to intervene in the region and "implement the necessary legal framework" in order to control the deteriorating security crisis in the region.[28]

On the 7th of August, the Newspaper reported:

> The Council has made a decision *in response* to a letter sent on 3 August, 2023, by Yelikal Kefale, the President of Amhara Regional State. The letter urged the federal government to step in and address the escalating security crisis in the region by implementing the necessary legal measures.[29]

Africa Confidential went further and reported that the Region's president requested "the Addis Ababa government to declare a state of emergency in the region."[30] However, as discussed below the law that regulates how the Federal Government should respond to a regional request for help in cases of deteriorating peace and security indicates that what the Federal Government did – declaration of state of emergency – is not within the ambit of legally permissible responses.

3. The Regional President's Request *versus* the Federal Government's Response

This section examines the regional president's request and the Federal Government's response in light of the law that regulates the relation between the Federal Government and a region with a deteriorating peace and security.

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[28] Addis Standard, (August 04, 2023), "News Update: Council of Ministers green lights state of emergency declaration in restive Amhara region", https://addisstandard.com/news-update-council-of-ministers-green-lights-state-of-emergency-declaration-in-restive-amhara-region/.

[29] Addis Standard, (August 07, 2023) "News: Lecturers from universities in Amhara region stranded in Addis Abeba, facing predicament amid ongoing conflict (emphasis added) https://addisstandard.com/news-lecturers-from-universities-in-amhara-region-stranded-in-addis-abeba-facing-predicament-amid-ongoing-conflict/

[30] *Supra*, note 8

This would allow one to see if the state of emergency the Federal Government declared can legally be treated as a measure taken in response to the regional president's request.

As noted, the President's letter requested the Federal Government to take "legal measures" stating the deterioration of peace and security in the region. The FDRE Constitution envisions different measures that the Federal Government may take in the form of federal intervention where a region approaches it seeking security-related assistance. Of the different constitutional provisions empowering the Federal Government to intervene in the regions,[31] Article 51(14) is most pertinent to the matter at hand – regional appeal for help to the Federal Government on ground of deteriorating security situation in the region. This provision empowers the Federal Government to "deploy, at the request of a state administration, Federal defence forces to arrest a deteriorating security situation within the requesting State when its authorities are unable to control it."

The *System for the Intervention of the Federal Government in the Regions Proclamation* No 359/2003 regulates the details of federal intervention in regional states. Articles 4, 5 and 6 of the Proclamation deal with intervention in case of deteriorating security situation. As per Article 4, where any region faces a deteriorating security situation and unable to arrest it on its own, its Council or the highest executive organ shall present its request to the Prime Minister. The Prime Minster will then deploy forces of the Federal Government as detailed under Article 5 of the Proclamation.

Noting that the letter requested the Federal Government to take '*lawful'* measures, this should normally lead the federal government to consider what is referred to as *federal intervention* on the ground that the region faced "a deteriorating security situation and unable to arrest it on its own". The law provides two crucial restrictions, perhaps to prevent potential misuse or abuse of power, on the federal government when such intervention is in place. First, the Prime Minster would be required to provide to the House of Peoples' Representatives 'periodic'[32] report on the activities of the Federal Forces in the region. Second, such intervention shall be terminated where it achieved its objective – restore peace and security in the region – or where the State organ upon whose invitation the federal government intervened *requested the intervention to be terminated*.

[31] For other situations where the federal government may intervene in Regions see Articles 55 (16) and 62(9) of the FDRE Constitution.

[32] Though this requirement suggests that the Prime Minster shall provide a regular report to the House, no time interval is specified for the report.

The Federal Government approached the Region's problem through state of emergency arguably disregarding the Region's request for federal intervention. Though the Federal Government presented the Proclamation on media as driven by a request from the Amhara Regional State, the preamble part of the State of Emergency Proclamation does not make reference to a region's request. It simply refers to "a breakdown of law and order which endangers the Constitutional order, and which cannot be controlled by the regular law enforcement agencies and personnel"[33] as necessitating the declaration of state of emergency.

What the regional president requested – *federal intervention* – is different from the measure the federal government took – declaration of *state of emergency*. Although the Federal Government intervenes in both cases, declaration of *state of emergency* is quite different from the *federal intervention* that the Constitution and Federal Intervention Proclamation envisage.[34] Federally declared state of emergency lacks the *two key features* of federal intervention – it does not impose on the Prime Minister the obligation to provide periodic report to the HPR; nor does it give power to the region to terminate the federal intervention. Furthermore, the State of emergency empowered the Federal Government to take measures in other Regions as it deems necessary,[35] a power that it could not have under ordinary federal intervention.

If, based on its own assessment, the Federal Government concluded that the situation can only be addressed by a declaration of state of emergency (not by the federal intervention that the law of federal intervention envisions and the president's letter requested for), it should have owned the decision to declare the state of emergency instead of externalizing and linking it to the request from the Region. However, instead of justifying the state of emergency by its own assessment of the circumstances in the Region (as per its power under Article 93 of the FDRE Constitution) and relying on these to defend the aptness of state of emergency, Federal Government organs attributed the state of emergency to the regional state president's letter.

[33] This is one of the reasons Article 93 (1) (a) of the FDRE Constitution lists as grounds for the Federal Government to declare state of emergency. The other grounds are occurrences of an external invasion, a natural disaster, and an epidemic.

[34] A state of emergency at federal level is to be declared based on federal government's assessment, not upon request of the regions.

[35] Article 3 of the State of Emergency Proclamation Issued to Protect Public Peace and Security Council of Ministers Proclamation No 6/2023.

The Federal Government might have opted for the declaration of state of emergency either because the state of emergency, in contrast to ordinary federal intervention, gives more power to the Federal Government or because the Federal Government genuinely believed that a federal intervention short of declaration of state of emergency would not be proportional to the Region's worsening security situation. Irrespective of its motive, since the Federal Government declared the state of emergency instead of the federal intervention that the regional government requested for, the decision to declare state of emergency was made by the Federal Government[36] (independent of the regional president's letter). As such, the state of emergency should not be linked to the president's letter. It is only due to the flawed overuse of the letter in the context of the state of emergency that the state of emergency might appear to have been declared upon the request of the Regional Government.

4. Implications and Concluding Remarks

In a letter reportedly written to the Federal Government, the former president of the Amhara Regional State requested lawful measures to be taken to address the deteriorating security situation in the Region. Under such circumstances, the measure the FDRE Constitution envisions is 'f*ederal intervention*', the details of which are provided under the Federal Intervention Proclamation. It follows that had the Federal Government acted in response to the letter, it would have ordered '*federal intervention*'. However, while invoking the president's letter that called for federal intervention, the Federal Government declared state of emergency, thereby seizing far more power than it would have in case of federal intervention. This constitutes a clear case of failure to be transparent about the state of emergency.

As Cohen observed, "if the reason-giver does not regard the given reason as supporting the decision in any way, then the presentation of it as a justificatory reason seems manipulative",[37] which, among others, is meant to

[36] It is to be noted that despite the Federal Government's deployment of the national army for months before the state of emergency was declared, the military was unable to resist the FANO forces which controlled major cities including the regional capital city. In view of this, the Federal Government might have already been convinced that it should declare state of emergency. This coupled with the fact that the letter requested federal assistance through federal intervention (different from declaration of state of emergency), the relevance of the letter to the declared state of emergency is minimal, if relevant at all. The letter was manipulated to attribute the state of emergency to the request from the Region.

[37] Cohen (*supra* note 25)1135

"avoid political accountability."[38] While the federal government's conduct in this particular case might relate to evading scrutiny and political accountability for the declaration and implementation of state of emergency in the Amhara Regional State, it would also have an extended impact on the democratic culture within the society. That is, the provision of this misleading information, including through official media outlets,[39] would jeopardize the trust relation (if any) between the people and the government.

Jaksa and Pritchard stated that "public trust in, and respect for, elected officials is fundamental to the effective functioning of a democratic government and its institutions."[40] They noted that ultimately governmental deceptions would "contribute to a crisis of confidence in public officials and make the restoration of trust a serious challenge to …society."[41] Similarly, noting that ethicality is most needed in governmental communications, many have denounced misrepresentation or providing misleading information to citizens on ethical grounds. According to Bok, those in government and other positions of trust "should be held to the highest standards."[42] Turner observed that "the concern for ethics is nowhere more important than in governmental communication."[43] Indeed, Gouran has identified "disguised communication" as a conduct that historically resulted in "possible indictment" of government officials for being "irresponsible".[44]

If the Federal Government's declaration of emergency is said to be a genuine response to the president's letter, its action may not constitute insincerity. However, it would still be problematic in that it would constitute an infringement of the relevant provision of the FDRE Constitution and the

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[38] Helen Norton, (2017), "The Government's Manufacture of Doubt," *First Amendment Law Review,* 16 (2), 342-366, p. 355.

[39] The use of Fana Broadcasting to communicate the misleading information makes it more concerning. One of the situations where governmental communications would be "inappropriate and irresponsible" is where "official news sources are deliberately used for the purpose of obscuring … deceitful governmental acts." Denis S. Gouran, (1976), "Guidelines for the analysis of responsibility in governmental communication", https://files.eric.ed.gov/fulltext/ED102610.pdf , p. 9.

[40] James M. Jaksa & Michael S. Pritchard, (1988), *Communication ethics: Methods of analysis* Belmont, CA: Wadsworth. p. 19

[41] Id., p. 23

[42] Sissela Bok (1978), *Lying: Moral choices in public and private life,* Vintage Books Edition, p. 191.

[43] John R. Turner, (1989), "*An Analysis of Ethical Issues In Governmental Communication*", a paper presented at the annual convention of the Speech Communication Association, November 18-21, 1989, San Francisco, California. P.2

[44] Gouran (*supra* note 39) 21.

law dealing with Federal Intervention. In responding to the president's letter, the Federal Government exceeded its power by declaring a state of emergency instead of federal intervention, thereby evading the checking mechanisms.

In sum, the foundation of the 2023 state of emergency in Amhara Region is suspicious. The Federal Government has to own the state of emergency and take the responsibility or credit depending on the assessment of the (constitutional) validity of the state of emergency and measures taken based upon it. ■

Cited References

Bok, Sissela (1978). *Lying: Moral choices in public and private life,* Vintage Books Edition

Cohen, Mathilde (2010). "Sincerity and reason-giving: when may legal decision makers lie", *DePaul Law Review*, 59(4), 1091-1150

Gouran, Denis S. (1976), "Guidelines for the analysis of responsibility in governmental communication"

Jaksa, James M & Pritchard, Michael S (1988). *Communication ethics: Methods of analysis* Belmont, CA: Wadsworth Norton, Helen (2017), "The Government's Manufacture of Doubt," *First Amendment Law Review,* 16 (2), 342-366

Staszewski, Glen, (2009). "Reason-giving and accountability", *Minnesota Law Review*, 93(4), 1253-1326.

Turner, John R (1989). "*An Analysis of Ethical Issues In Governmental Communication*", a paper presented at the annual convention of the Speech Communication Association, November 18-21, 1989.

Laws

The Constitution of the Federal Democratic Republic of Ethiopia

The System for the Intervention of the Federal Government in the Regions, Proclamation No 359/2003

Other References

Addis Standard, (August 03, 2023). "News Update: Amhara region requests federal gov't to intervene amid escalating security crisis, reports of internet and flight interruptions",

Addis Standard, (August 04, 2023). "News Update: Council of Ministers green lights state of emergency declaration in restive Amhara region"

Addis Standard, (August 07, 2023). "News: Lecturers from universities in Amhara region stranded in Addis Abeba, facing predicament amid ongoing conflict

Africa Confidential (August 24, 2023). "The avalanche catches up with Abiy Ahmed", Vol 64, No. 17

Alemu, B & Tsegaye, (August 12, 2022). "News Analysis: South Wollo, Debre Berhan drivers, passengers ban entering Addis Abeba", *Addis Standard*.

Aljazeera Newsfeed, “Protests in Ethiopia over plans to disband Amhara paramilitary”

Armed Conflict Location & Event Data Project, (August 10, 2023), Crisis in Ethiopia’s Amhara Region,

Armed Conflict Location & Event Data Project, (December 01, 2025) Fact Sheet: Crisis in Ethiopia’s Amhara Region

Borkena, (August 03, 2023). “Amhara regional state president calls for Federal gov’t intervention”

Borkena, (August 04, 2023). “Council of Ministers agrees to declare state of emergency in Amhara Region”

Borkena, (August 14, 2022), “Travellers from Amhara region of Ethiopia denied right to enter Addis Ababa”.

East African Review (September 30, 2024). “Amhara Farmers in Ethiopia’s Wollega: Battling for Survival under Abiy’s Administration”.

ENA, (February 02, 2024), “House Extends State of Emergency”

Endeshaw, Dawit (August 04, 2023). Ethiopia's Amhara region requests federal help over militia unrest

Endeshaw, Dawit (August 05, 2023). “Ethiopia declares six-month state of emergency in Amhara after clashes”, *Reuters.*

Fana Broadcasting (August 06, 2023). “Activities underway to reinstate peace in Amhara Region by finalizing Law enforcement soon: State of Emergency General Command”

Fana Broadcasting (August 14, 2023). “House Holding First emergency session”

Huaxia (August 04, 2023), “Ethiopia declares state of emergency in troubled Amhara region”, *Xinhua*

Human Rights Watch, (August 31, 2022). “Ethiopia: Civilians in Western Oromia Left Unprotected”

Kassa, Wondwossen “Rule of Law, not Expediency, Should Guide the Negotiation with TPLF”, *Borkena*

Mandefro, Hone (August 04, 2023). “How years of tension in Amhara boiled to the surface”, African Arguments”

Schwikowski, Martina (September 08, 2023). “Ethiopia grapples with clashes in Amhara region”, DW

The Associated Press (August 04, 2023). “Ethiopia’s declaring a state of emergency in its Amhara region as local fighters clash with military”

The Associated Press. (June 20, 2022). “Witnesses say more than 200 killed in Ethiopia ethnic attack”

Vera, Simon (November 12, 2024). “Who is Fano? Inside Ethiopia’s Amhara rebellion”, The New Humanitarian,

Yibeltal, Kalkidan (April 10. 2023). “Ethiopia's Amhara region hit by protests over move to dissolve regional forces”, BBC News

Zelalem, Zecharias (July 06, 2022), “‘Death sentence’: Massacres fuel protests, resentment in Ethiopia”, *Aljazeera*.

COMMENT

Legal Regulation of Electronic Games in Palestinian Legislation and Comparative Experience in Selected Jurisdictions

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Abstract

This comment deals with the regulation of electronic games in Palestinian legislation and the significance of such legislation to society, players, producers, and developers. Descriptive and analytical method is used to clarify electronic games, collect relevant information and analyze the information in order to discover the legal framework applying to them. The paper argues that video games are, *inter alia*, sport activities and this feature of electronic games comes under the supervision of the Olympic Committee, the Supreme Council for Youth and Sport, and the Sports Law. This necessitates legislation that takes into account the impact of video games on their players with a view to formulating a clear legal basis in order to protect players and users. The brief comparative discussion in this comment considers selected regulatory models in three jurisdictions: France, South Korea, and the United Kingdom. This is meant to draw lessons from such comparative practices that can inform future Palestinian laws that are expected to deal with the legal, social, and economic issues related to electronic games.

Keywords

E-sports regulation, electronic games, Palestinian Electronic and Mind Games Union, legal regulation.

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Contents

1. Introduction

In the era of the digital revolution that has been experienced by modern societies, digital technologies are a fundamental characteristic of the daily rhythm of life. The shift in technology has in a fundamental way changed the dynamics of social, cultural, and economic interactions. With the evolution that the shift in digital communications industries has generated, electronic games have effects in the economic, entertainment, and social domains.

Video games are computer games that are enjoyed through computers, mobiles, and video game players. The games contain a vast range of titles such as sports games, strategy games, simulation games, and many more. There is a widespread global proliferation of these games, including in Arab societies, where they have become an integral part of youth culture and daily lifestyle.

This development requires legal regulation commensurate with the level of the development of the electronic games in order to protect the users from potential harm – the majority of whom are children and young adults who can be exposed to addiction, violence on the internet, violation of the right of privacy, and other legal and moral issues. The regulatory framework for these games are not consistent among countries, and they vary in accordance with the existing body of laws, culture, and society.

In this context, Palestinian legislation deserves examination with regard to the extent to which it is catching up with the newest computer game trends, especially with reference to the absence of clear and new legislation to govern the activities. This comment highlights the computer game legal framework in Palestinian legislation and whether it adequately addresses current challenges in the field of law and society.

There is the need to give due attention to the legal regime on electronic games which requires the comprehension of the essence of the games, the rules of law applying to them, and the fast transformation in the utilization of technology – from classic games to electronic gaming through the use of technology and the internet. This requires clarifying the legal and legitimate means of practicing electronic games in a manner that ensures legal protection for users and producers of these games, as well as defining the rights and obligations of all parties involved.

Given the accelerating pace of technology and digital transformation in general, electronic games have become a legal challenge for users and producers in many jurisdictions including Palestine. It is not clear whether such games should be considered a sporting activity, and thus subject to the legal rules governing various sports. This necessitates research into the regulatory frameworks governing the practices. Therefore, this comment focuses on the legal regulation of electronic games by the Palestinian legislation, and the extent to which the absence of special regulation of the electronic games in the Palestinian law implies the failure of the constitutional duty to protect children, the youth, and digital consumers at large.

The next section highlights the nature and the sources of electronic games. Section 3 deals with the legal rules that govern electronic games in Palestine. Sections 4 and 5 discuss and comparative practices in three jurisdictions and the lessons that can be drawn, and are followed by conclusion and suggestions on the way forward. The research is descriptive and analytical in dealing with the meaning of the electronic games, gathering the applicable regulatory rules, and interpreting the laws that govern the electronic games.

2. The Nature of Electronic Games and Their Sources

With the development of technology and its extensive application, electronic games have become widespread and are played on tablet devices and computers. The following sub-sections define electronic games, how they were developed and their sources.

2.1 Definition and legal nature of electronic games

Technically, electronic games refer to interactive programs that are intended to create recreational, educational, or sports experiences to users by using multiple digital devices that include personal computers, gaming consoles (Xbox), smartphones, tablets, and other internet-based platforms. There are jurists[1] who have described them as interactive digital programs that simulate reality (real or virtual) with automated media tools, to entertain, educate or recreate. This definition concentrates on the key features of interactivity and

[1] A. Al-Atari & I. Mahyoubi (2021). Parent associations and their educational role in preventing student addiction to electronic games. *The Professional Journal of Sports Science and Humanities*, 2, 296-313.

simulation which are the key features which make it unique as compared to other types of software.

Another work[2] uses a layer that categorizes electronic games as software developed under multidisciplinary teams of engineers, programmers, audio, motion, and visual imagery experts, and exercised using assorted digital devices. It emphasizes the productive and organizational nature of such games which opens the sphere of defining the legal liability of the production and distribution of such games. This conception of electronic games points to the multidisciplinary nature of the game production process, which needs coordination at a multidisciplinary level.

Legally and socially, electronic games qualify as a cultural and economic commodity with a global revenue of billions of dollars, and as the means of social and cultural interaction between people, especially among the young population. Legally, e-games are classified under the category of digital products and are covered by the law of intellectual property, e-commerce, consumer protection, anti-addiction and other laws that deal with digital activities. Such classification can provide the games with a multi-dimensional legal nature since these games are not only recreational tools, because they also constitute a part of the current digital economy thereby requiring legal regulation that will take their complex features into account.

Although electronic games have recreational and education values, they also pose a number of legal and social threats that need to be controlled. Some of the researchers[3] point out the phenomenon of excessive consumption of such games which can cause psychological and behavioral disorders. These problems are comparable to drug addiction because a person addicted to electronic games loses sense of control, and is often obsessed with games, and no longer wants to engage in social life manifest their symptoms.

Another effect of combating games or games that are founded on challenge and competition can be the entrenchment aggressive behaviours on the users, especially children and adolescents[4], and they may cause violent behaviours in real world. This evokes a major issue of law with regard to the level of

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[2] A. Mazouri & H. A. Badr al-Din (2022). Digital imitation of electronic game programs in Algerian legislation. *Journal of Law and Humanities,* 2, 310-329

[3] R. M. S. Ahmed, (2020). The relationship between maladaptive cognitive schemas in individual service and electronic game addiction among a sample of female university students. *Journal of Studies in Social Work and Humanities,* 51, 883-926.

[4] J. A.Al-Dahshan & M. G.Sawalim (2021). Risks of student addiction to combat electronic games and methods of confronting them. *Journal of Educational Sciences,* 1, 1-17

responsibility of the producers and distributors of these games in relation with the material they supply and how they meet the standards of consumer protection, particularly the vulnerable segments.

One of the challenges in the legal control of electronic games is attributable to the difficulty in categorizing them into commercial, purely recreational, or sports activities. This categorization has immediate implications for the laws that would be applied, which include taxation (if viewed as commercial activity), age control (if involving violent or sexual content), sports regulation (if viewed as professional sports activity), or protection from addiction (if viewed as dangerous activity that needs stringent control). This uncertainty regarding classification is an impediment to efficient application of the law and it exposes society to gaps in adequate protection from the probable harm that may emanate from the games. As highlighted in Section 3, no clear legal meanings exist under Palestinian legislation, and it becomes challenging to delineate the legal responsibilities of the parties for harm caused in the course of electronic games.

Lack of consistency in interpreting the term ‘electronic games’ in respect of their legal status, classification and content raises differential application of the legislation. This leads to the absence of legal guarantees for the protection of the user, and the adverse impact is indeed grave on children and juveniles in particular. This comment analyzes the term ‘electronic games’ and seeks to examine its control under Palestinian legislation. This is meant to achieve a balance between freedom of creativity and innovatory spirit on the one hand and at the same time protect the society from the harmful risks it may encounter as a result of unregulated electronic games.

2.2 Historical development of electronic games

Electronic games began as simple games for personal computer usage in the 1960s and 1970s and gradually emerged as a huge digital industry shaping various aspects of social, economic, and cultural lives. The industry was modest in its beginning through the launch of the game ‘Pong’ by Japanese Atari company, bringing into the world the first successful commercial game in the industry and accordingly kindling a revolution in digital entertainment.[5] With the development of digital technologies, the emergence of internet and access to fast connectivity, electronic games transformed from simple individual activities into collective interactive experiences that engage millions of players from the globe in a common platform and morphing into

[5] Kariman, A. (2021, October 24). Article published online. https://www.entro4kids.com/ar/article?i=96

a prime provider of entertainment, recreation, culture and learning in the modern world.

This technical innovation was not only the game video and audio optimization, but went a further step in creating the very content of the interactive relationship between players. Individuals now could chat with each other across the globe through the internet, participate in shared virtual worlds, and play in world championship games transmitted worldwide. Influences of these games went into deeper levels thereby affecting personal and communal conduct, and some studies identified them as associated with criminal acts in addiction or exposure to violence.[6] Such influence has turned electronic games into a social force that deserves keen examination of the sources, types, and legal character of the games.

Sources of electronic games can be classified into several categories that reflect diversity in production and distribution processes. Initially, electronic games emerged (more than thirty years ago) in Japan and the United States as a result of advanced industries prepared by specialized designers in conceptualizing design in terms of form and place, establishing a comprehensive professional production model. Technical programmers then played a role in developing game engines and controlling devices through tools, discs, programs, and electronic cards, and forming the technical backbone of any successful electronic game. Moreover, specialists in producing visual content for game characters play a central role in attracting users by designing heroes, monsters, cars, buildings and characters in interactive and attractive ways.

With the development of the digital market, development and production companies emerged, and they designed, developed, and distributed electronic games to stores and electronic platforms that provide gaming services to users, such as Steam, Blizzard, and Xbox. These companies are transformed into massive economic entities controlling the fate of the global gaming industry. It is important to note that due to the introduction of amateurs and independents who do not base their work on the traditional commercial system, the content is highly diverse and creative forms of games are introduced. This multiplicity of sources has resulted in the electronic gaming industry that is currently becoming a free zone in terms of creativity and innovation, while on the other hand causing legal concerns regarding the challenges in controlling and monitoring such activities.

[6] Al-Anzi, M. A. (2022). The role of practicing some electronic games in committing crimes among a sample of residents of the Social Observation Center. International Journal of Educational Research, 4(2), 289-322.

Although the practice of electronic games is interactive and personal, they are subject to rules and laws. Practitioners of these games who are entitled to the principle of personal freedom are at the same time constrained by rules of clean electronic gaming. This is because responsible practices in electronic games require commitment from producers and players not to violate the rights and freedoms of others, and not to cause psychological or social harm to users, particularly vulnerable groups. Hence, legal rules that regulate these games are indispensable in order to clearly identify responsibilities and duties of all concerned parties, i.e., producers, distributors, or users. This legal regulation becomes an urgent necessity given the wide expansion of electronic games and their profound impact on society. This requires careful study of the existing legal framework and analysis of its adequacy in facing contemporary challenges, as highlighted in the following section.

3. Electronic Games and Their Legal Regulation in Palestine

In Palestine, there is no specific legislation that governs electronic games. Yet, there are various rules, regulations, and principles that regulate the technology industry in general.

3.1 The status of electronic games in Palestinian legislation

Electronic games represent one of the most complex contemporary legal phenomena due to their multiple intersections between commercial law, sports law, digital law, and international law. From this perspective, it becomes necessary to analyze the legal status of these games through the international reference framework established by the Olympic Charter issued by the International Olympic Committee, which serves as the primary reference in regulating electronic sports globally.

The Olympic Charter describes electronic sports as a form of competition that is practiced by the use of digital equipment. Since the decision of the International Olympic Committee, electronic sports are recognized in 2017. The legal implication of this international classification is fundamental because electronic games are not only recreational activities, but are also considered as official sports activities that are subject to international sports laws, such as laws on sports integrity, anti-doping, organizing international matches, and safeguarding the rights of athletes. This evokes a significant inquiry into the limits of implementation of those international law, particularly since we have no explicit local regulations concerning this sector.

Labeling electronic games as electronic sports is a significant move since it converts games from commercial digital commodities into official sports events governed by regulations. Electronic sports are defined as “competitive games practiced in virtual digital environments that require highly specialized knowledge and vocational preparation, organized within official professional championships”. [7]

This definition introduces a limited set of fundamental legal considerations into the picture. The competitive factor that distinguishes electronic sports from other games is the official competition that is carried under some laws, the virtual stadium where the above-mentioned games are practiced under controlled network areas governed internationally, and professionalism where the players of the above-mentioned games are perceived as professionals with corollary privileges and responsibilities. This categorization provides a way for the local implementation of international sports laws covering sports licensing laws, hosting championships laws, athlete rights protection laws, and anti-sport bribery and corruption laws. Nonetheless, without comprehensive Palestinian sports laws, those international laws are left practically unused, forming a legal vacuum.

The problem in determining the status of computer games in Palestinian law is related with the lack of a distinct legal definition. Without distinct legislation, the games pose basic legal questions: Do electronic games fall under purely recreational games? In this event, e-commerce legislation and legislation for the protection of consumers would be applied, without any sports or educational control. Or are they considered as official sports games? In this event, international sports legislations would be applied, including integrity, licensing, and content control legislations. Or are they considered as economic activities? In this case, legislations of digital investment, tax, and intellectual property would be applied. Such variation in legal categorization causes confusion in the application of the law, whereby different legislations are applied for the same phenomenon without harmony among them. This causes contradictory application and lack of comprehensive legal protection for beneficiaries.

It can be argued that computer games go beyond serving as a mere tool for amusement because they extend into the realms of economics, sports, sociology, and culture. Due to this multi-dimensionality, a holistic legal framework that covers all dimensions of this multi-dimensional character should exist. In Palestinian legislative practice, however, computer games are dealt with under generic and non-specialized legislation that are comprehensive and do not specifically target computer games. These laws,

[7] Article B(8)(a) of the International Esports Federation Statutes states that its objectives include dealing “with all issues relating to Global Esports and bring together all Esports stakeholders in the spirit of solidarity, understanding, freedom, and peace.” https://iesf.org/wp-content/uploads/2026/02/IESF-Statutes-6-Dec-2025.pdf

for instance, include the combating of information crimes law, the consumer protection laws and the e-commerce legislations. This leaves Palestinian society open to a myriad of risks, which include spreading of addiction, children's exposure to violence, lack of content supervision, and failure to safeguard the rights of professional gamers.

The lack of clear legal definition of these games is an impediment to investment in the field because no clear legal assurances exist for the investor and producers. Such gaps cause challenges to the regulating authorities in the carrying out of their responsibilities because no adequate legal framework exists for regulatory decisions and measures. It also hinders engagement in world electronic sport competitions, and in effect, the youth misses the opportunity of taking part in the international arena.

Thus, there is the need for the enactment of specific legislation that defines the nature of electronic games and that comprehensively regulates their practice. Such legislation must consider the multi-dimensional aspects of these games and provide a transparent legal framework that balances freedom of creativity and public safety, economic development and public mores, open technology and regulatory controls that are so urgently required. Without such legal framework, effective regulation of these games cannot be ensured, stakeholders cannot be protected against the risk that they entail, and Palestine cannot catch up with the pace of global development in this strategic industry.

3.2 Palestinian jurisdiction electronic game laws

Palestinian gaming legislation is an example of the inability of positive law to respond to the digital revolution where existing legal systems are put at risk by phenomena they were not designed to confront in the development of their legislation in the past. It is a structural legal development that represents the dissolution of the boundary between the law and technology and the erosion of the capacity of the legal system to produce legal meaning in the face of the contemporary digital phenomenon. From this very profound perspective, analysis of the contemporary legislation of computer games in Palestine is necessary in order to gain an understanding of the form of this conceptual dissolution and the implications that it has for the social, economic and cultural architecture of Palestinian society.

The rationale of the regulation propelling the urgency of special rules of law to control computer games is not merely based upon technical and security concerns. It further serves a perceived demand for comprehension of the character of the game as a whole digital social system that redefines exchange relationships of power and production relations in the digital society. These games are more than entertainment media but further involve the economic, cultural, and social system that redefine patterns of interaction and power relationships in the digital society.

Hence, the regulatory framework is expected to give due attention to the demands that are beyond defending the users against the perceived threat of addiction, violence from the world of fantasy, and stimulation for hatred. They further provide a level playing field in favor of long-term fairness aims, developing parameters of license for the games, supporting intellectual property rights protection and maintaining safety and security for the users and the providers of the content. Such aims are only attainable through specialized legislation that considers the features of the games and the complexities of control of the law that allow a level of control that balances the freedom of creation and protection of the community.

The Palestinian Federation for Electronic and Mental Games Sports initiative of the year 2020 was the first effort to fill this institutional vacuum because it is the first authoritative reference-point in Palestine in the electronic games arena. Even though this federation has been awarded some world and regional accreditation by a limited number of the world's leading electronic sport bodies, specific legal rules are missing. This does not seem to be an inadvertent administrative foot-dragging but is rather a symptom of a deep crisis of comprehension of the nature of electronic games and the legal classification of the same.

To date, the championship and other activity have continued without well-defined legal parameters. This renders all the parties vulnerable to a lack of legal protection and is a stumbling-block to the sector's sustainable development. The Palestinian Olympic Committee as the authoritative body of reference for world-level sport activity operates under a context of legal challenges that manifest the conflict between technical contemporaneity and the tradition of law.

The activity of the committee is governed by the fundamental law emanating from Decree-Law No. 11 of the year 2008 on the laws of sport. Article 1 of this law states that "the sporting federation control[s] one or more games." This narrow definition does not expressly include electronic games as organized sports activities, as the nature of electronic games transcends traditional boundaries of the conventional concept of sports games. Electronic games are practiced in virtual environments rather than real fields, require advanced digital technologies, constitute a massive economic market subject to e-commerce laws, and affect social behavior while raising multiple psychological and legal issues. This narrow definition of sports games creates a legal barrier against including electronic games among official sports activities, thereby causing the absence of legal regulation for these games.

Decree-Law No. 11 of 2008 reflects traditional legislative intention that did not consider the changing nature of modern sports, especially electronic sports. As indicated in the preceding paragraph, the first provision of the law describes the federation of sports as an entity that governs one or more games but without specifying what these games are and whether electronic games fall within the domain of its functions. This limited definition of sports games poses a legal impasse because it fails to classify electronic games as official sports activities thereby giving rise to lack of express legal regulation for such games.

The uniqueness of electronic games sets them apart in a number of ways. (i) they are virtual; (ii) they demand the use of sophisticated digital technologies; (iii) they represent a huge economic market and fall under the jurisdiction of e-commerce laws; and (iv) they have an impact on societal behavior and have a number of psychological and legal implications. These distinguishing features demand special laws that address their complicated nature beyond the mere incorporation of these features in the general non-specialized laws.

The basic law of the Palestinian Higher Council for Youth and Sports embodies political will in developing the sports sector. Article 6 provides that "the Higher Council works on forming and supporting sports federations in accordance with formations existing at the international level, striving to have them recognized at any level, granting them legal personality, and setting basic laws ensuring their connection to the Palestinian Higher Council for Youth and Sports." This text demonstrates interest in institutional development of Palestinian sports, but lacks qualitative determination of sports activities subject to this regulation. The legal challenge here lies in the absence of clear regulatory rules for electronic games, despite their inclusion within the council's scope of interest. Absence of specialized legislation makes sports federations concerned with electronic games practice their activities without a clear legal framework. This leads to institutional instability and weak legal protection.

The global legislation trend of the electronic games market necessitates regional legislation, especially in the Arab countries, in order to ensure the essential legal guarantees to the victims of advanced new technologies. Owing to the rapid pace in the spread of these games amongst the youth and especially children, protection of the latter becomes a requirement in tandem with global instruments that include children's right treaties and personal data protection laws. Given the lack of inclusion of the necessary guarantees of the law in the Palestinian legislation, Palestinian society is not thus adequately protected from risks of the games. This constitutes failure to protect sensitive groups (including the youth and children) from risks.

The preceding paragraphs show that the Palestinian legislative framework for electronic games suffers from a fundamental crisis in understanding this complex legal phenomenon because it faces challenges to be applied in contexts it was not meant to address in its traditional legislative horizon. This jeopardizes the freedom of all the parties in question. The stakeholders in this regard include from players, producers, and manufacturers. This renders society vulnerable in the absence of protection against possible risks.

Hence there is the need for the issuance of specialized legislation that comprehensively regulates electronic games by balancing freedom of creation and protection of society on the one hand, and economic growth and social values on the other hand. Such legal framework is the only option to ensure effective regulation of the games and protect all the pertinent parties from possible evils. This enables Palestine to keep abreast of the world progress in this relevant field.

4. Comparative Legal Approaches to the Regulation of Electronic Games

Comparative legal analysis is a vital methodological tool in determining the sufficiency and legality of national legal systems, especially in areas of rapidly developing technologies like electronic games. Since there is no specific legislation in Palestinian law designed to govern the electronic games, a comparative analysis foreign jurisdictions offers the crucial information on the reaction of the legal regimes to the complexities of the electronic phenomenon. This section uses a functional comparative approach, centering on selected jurisdictions that have established unique but effective regulatory approaches to electronic games based on cultural, public health, consumer protection and economic approaches. France, South Korea, and the United Kingdom are selected for comparative practices as they represent several objectives of legislature and regulation.

4.1 France: Integrative norm according to cultural policy and child protection

France practices an *integrative approach to law* which conceives the electronic games as cultural items, economic activities, and as practices that can create social risk. In French law, the video games are protected by intellectual copyrights, and the developers and publishers have strong legal protection; on the other hand, they are exposed to government control. The regulatory framework is embodied in the framework of a larger audiovisual and cultural policy. It is administered by the Centre National du Cinéma et de l'Image Animée (CNCA) which regulates funding mechanisms, the regulation of content and the development of the industry.

The implementation of the legally binding age-rating system of Pan-European Game Information (PEGI) is considered as one of the cornerstones of the French regulatory model. In this context, the classification of age is not only a recommendation, but it places a binding condition on the distributors and digital media to limit access to age-restricted contents. This mechanism indicates a proactive legislative approach aiming at the protection of children and adolescents against exposure to violent, addictive or psychologically abusive material.

Moreover, French legislation provides a fair balance between regulatory intervention and economic encouragement by providing tax credits and financial incentives to local game developers. This two-sided strategy shows that the regulatory regime does not necessarily stifle the innovation but on the contrary, it can promote the existence of a sustainable digital industry and social responsibility. In terms of good practices, the French model is a good example on how an all-inclusive regulatory framework (which does not exist in the Palestinian legislative framework) can balance cultural protection, child welfare, and economic benefits.

4.2 South Korea: State intervention and public health-oriented regulation

South Korea is an example of an *interventionist regulatory approach* in the sphere of electronic games based on a solid rationale of the public health. Electronic games fall under the Game Industry Promotion Act, which provides a centralized mechanism of licensing, material classification and governmental control of the development and distribution of games. The framework represents an acknowledgment of the ability of electronic games to be a strong social force that can affect behavior, mental health, and social interaction, especially among minors.

The main characteristic of the Korean approach is its *legal recognition of gaming addiction as a social risk*. The online games in minors were limited by the legislative acts, the most prominent one being the so-called Shutdown Law, which limited the access of minors to online games at the later hours of the day to alleviate the addiction and safeguard physical and psychological health. Despite being a controversial and constitutional issue, this policy – to a great degree – shows the extent to which the state is ready to intervene in digital practices when the health of the population is at risk.

South Korean legislation also contains strong requirements on the game providers in terms of transparency, data protection, and content control. Such measures establish an all-encompassing protection of the user and accountability of the developers and publishers. In contrast to the current Palestinian law, which is silent on the issue of addiction, age-based limitations and mental healthcare consequences, the Korean model pursues a regulatory approach, which prioritizes *societal safety* over *market freedom* and finds useful insights in jurisdictions that embrace comparable societal issues.

4.3 United Kingdom: Consumer protection and market-based regulation

The United Kingdom uses a *market-oriented regulatory framework* that mostly focuses on electronic games, using consumer protection and electronic market law as a primary means of regulation, as opposed to gaming-specific legislation. Under the Consumer Rights Act 2015, video games are legally defined as digital content and provide users with a right to quality, functioning and defect remedies in instances of flawed/inaccurate digital goods. This would position the electronic games on the greater hierarchy of contractual fairness and consumer rights.

The UK has an age classification based on statutory acknowledgment of PEGI system making it compulsory in both physical and digital distribution. The non-observance of the age-rating requirements can lead to legal penalties thereby turning the ethical norms into legal authority. The latest regulatory discussions have extended the focal point of gaming regulation to the so-called loot boxes, which are seen as more questionable regarding their monetization formats and the ability to psychologically influence a minor (as a form of gambling).

UK's legal framework adequately responds to new digital risks without necessarily relying on a very strict or intrusive regulation. In the case of Palestine, this would provide a subtle way of temporary control by adapting the current consumer protection and digital commerce statutes, until specific laws are created.

5. Relative assessment and normative implication to Palestinian law

An overview of the three jurisdictions in the preceding section shows that there is a recognition of electronic games as intricate legal phenomena that need intentional regulatory intervention. Although there are variations in the rationales of the three legislative approaches, the models share three components: (i) the official legal acknowledgment of electronic games, (ii) the assignment of regulatory power, and (iii) the creation of measures that protect vulnerable users.

On the contrary, Palestinian laws do not have these three components. Electronic games are legally undefined, regulation has been divided or not established at all, and there are no proper control measures which can safeguard children, consumers and professional players. This silence of legislations not only brings about uncertainty in the law but also exposes the Palestinian society to social, psychological, and economic hazards.

Conventionally, the lack of regulatory protection can be considered the failure to adhere to the duty of the state to promote the welfare of the populace, the rights of children, and social security in the realm of the Internet. Practical experience indicates that efficient regulation does not require importing foreign examples in packages but needs to adjust the best practices to the local legal, cultural, and institutional conditions.

In this regard, the Palestinian legislators can seek comparative benefits and shape a progressive regulatory system that would first incorporate the electronic games into the current legal frameworks, including the consumer protection laws, the cybercrime laws, and the child welfare laws, with a view to leading towards a wholesome, specialized legal framework. This would address the gap in regulation that currently exists, and would bring the Palestinian law and regulations in line with international law, and at the same time harmonize the pursuits of safeguarding the society as well as facilitating development in the digital domain.

6. Conclusion and the Way Forward

The comparative analysis in this comment attests that the regulatory vacuum in the Palestinian law can draw lessons from comparative best practices. Electronic games have been accepted by jurisdictions including France, South Korea and the United Kingdom, as complex legal phenomena that need special regulation. This analogy confirms the finding that Palestinian law should shift from descriptive recognition and pursue organized legal intervention.

The proliferation of electronic games in contemporary societies cannot be underemphasized in terms of importance. Electronic games are not only ordinary plaything devices, but have currently been elevated to an economic activity that contributes to the gross domestic product of a vast majority of countries, a medium of social communication that brings together millions of users worldwide, and a creative industry that produces diversified digital content that is repackaged and traded in world markets. From this perspective, legal regulation of the games becomes not only a legislative requirement but an existential necessity to ensure the survival of the industry and protect all the stakeholders from the risks that it embodies. Owing to the diversity and complexity that are inherent in electronic games, they require an adequate legal framework commensurate with the multi-dimensional character of the activity in order to harmonize freedom of creation with the protection of society, and maintain the balance between economic growth and social values.

Effective legislation of electronic games through the law transcends the creation of generic legislation and requires a specific legislation that expressly outlines the character of the games and their status under the law. Such specific legislation regulates effective control relating to production, manipulative advertising and consumption domains. It also provides effective conflict of interest settlement tools, and avails effective legal protection for the parties engaged in the process of its distribution and usage. Such control ought to take into account the constantly developing technical progress of the games that is capable of adapting to future developments, and at the same time be broad enough to provide legal protection for all the beneficiaries, which include the players, producers, distributors, and the investors.

The Palestinian Federation for Electronic and Mental Games Sports represents the first institutional reference in Palestine for activities related to these games. It was established under the auspices of the Palestinian Olympic Committee and the Higher Council for Youth and Sports, and has received international and regional recognition from several prestigious electronic sports organizations. However, in the absence of internal legal rules, this federation has no option other than operating without a clear legal framework that clearly defines participants' rights and duties. This constitutes a major institutional challenge and exposes all concerned parties to gaps in legal protection. Palestinian Olympic Committee and the Higher Council for Youth and Sports laws organize championships and games in the sector of electronic games, in the absence of direct texts concerning the nature of the games and their legal status. This inconsistency results in variable practice and poor legal protection, and leaves society (mainly the weak segments) unprotected from the dangers of these games.

Another significant conclusion is that video games fall within the scope of e-sports by international standards and are governed by common sports law basics, thus clearing the way for applying international sports legislations in video games. Using this legislation in Palestinian legislations, however, is plagued by obscurity and ineffective implementation due to lack of specialized legislations that offer the correct legal framework.

The study has further confirmed that computer games represent computer programs and conceptualizations made by programmers and manufacturers, and are practiced by enthusiasts and responsible bodies organizing championships and events. Such affected parties require direct legal control defining the responsibilities and the prerogatives of each of the parties. There is also the need for refining a balance in the prerogatives of the affected parties.

In light of the discussion above, Palestinian lawmakers are required to strive for the enactment of specialized legislation pertaining to the practice of electronic games in general and providing complete legal coverage for all involved parties. Legislation would be required to take into account the complex nature of the games and provide a clear legal framework that would strike a fair balance between liberty of creativity and public safety. There is also the need to systematize the grant of official license to publishers and game developers that are required to fulfil their duties under the laws on game conditions and quality. Such licenses must be backed with clear quality content rules and effective control systems with respect to the commitment of publishers and developers to laid-down standards.

Moreover, there is the need to draw up clear guidelines that safeguard the rights of consumers and formulate effective complaint mechanisms and fault rectification schemes in respect of electronic games. Such guidelines must consider the nature of the digital consumers and accord special protection against vulnerable groups of the public at large, and in particular, children and adolescents. This requires clear legal guidelines with a view to giving legal protection to intellectual property of computer games: i.e., copyrights, trademarks and patent protection. Such protection is indispensable for encouraging the creation and innovation of level playing fields in free competition and the right of developers and originators.

With regard to remedies against offences, there is the need for express provisions in the Cyber Crimes Law that criminalizes the breach of rules of fair play in playing electronic games of sport and which embodies deterrent penalties against offenders thereof. Such provisions are indispensable to safeguard fairness, equity, accountability, competition integrity and the protection of the electronic sport's reputation. ■

Cited References

Ahmed, R. M. S. (2020). The relationship between maladaptive cognitive schemas in individual service and electronic game addiction among a sample of female university students. *Journal of Studies in Social Work and Humanities*, 51, 883-926.

Al-Anzi, M. A. (2022). The role of practicing some electronic games in committing crimes among a sample of residents of the Social Observation Center. *International Journal of Educational Research*, 4(2), 289-322.

Al-Atari, A., & Mahyoubi, I. (2021). Parent associations and their educational role in preventing student addiction to electronic games. *The Professional Journal of Sports Science and Humanities*, 2, 296-313.

Al-Dahshan, J. A., & Sawalim, M. G. (2021). Risks of student addiction to combat electronic games and methods of confronting them. *Journal of Educational Sciences*, 1, 1-17.

Mahria, K. (2020). Effects of electronic games using smartphones on student achievement from their mothers' perspective. *Arab Journal of Qualitative Education*, 13, 173-184.

Mazouri, A., & Badr al-Din, H. A. (2022). Digital imitation of electronic game programs in Algerian legislation. *Journal of Law and Humanities*, 2, 310-329.

Niar, B. K. (2017). *Introduction to new media and electronic cultures* (Translated by Ali, J. D.). Hindawi Publishing Corporation. (Original work published 2017)

List of Laws:

Decree-Law No. 11 of 2008 Regarding Sports Law.

Basic Law of the Palestinian Olympic Committee, 2018.

Basic Law of the Palestinian Higher Council for Youth and Sports.

International Esports Federation Laws

Websites:

Basic Law of the Palestinian Higher Council for Youth and Sports. Published on Palestinian News Agency Wafa. Retrieved from: https://info.wafa.ps/ar_page.aspx?id=2390

International Esports Federation Statutes: https://iesf.org/wp-content/uploads/2026/02/IESF-Statutes-6-Dec-2025.pdf

International Olympic Committee. (2021). https://olympics.com/ar/privacy-policy

Kariman, A. (2021, October 24). *Article published online*. https://www.entro4kids.com/ar/article?i=96

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COMMENT

Gaps in the Legal Protection of Traditional Medicinal Knowledge in Ethiopia (Amharic)

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Abstract

A comprehensive *sui generic* legal protection for traditional medicinal knowledge could enable Ethiopia to obtain wide-ranging benefits from the sector and preserve it for future generations. Despite the long-lived accumulated traditional knowledge, traditional medicinal knowledge is susceptible to bio-piracy, decline in traditional medicine and its gradual extinction due to the absence of proper administration and protection. Traditional healers are hesitant to share their medicinal knowledge owing to legal insecurity. This comment examines the sufficiency of international, national and regional legal protections given to traditional medicinal knowledge and the institutional frameworks in Ethiopia. There is a need for a comprehensive legal framework in Ethiopia, especially with regard to *sui generic* legal protection to traditional medicinal knowledge. Moreover, the gaps in the institutional framework require the establishment of an independent institution in charge of its administration.

Keywords

Indigenous, traditional medical knowledge, institution, legal protection, Ethiopia

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በኢትዮጵያ የባህላዊ ሕክምና እውቀት የሕግ ጥበቃ ክፍተቶች

*መኮንን ንጉሤ** እና አንተነህ ገረመው***

አህጽሮተ-ይዘት

የሀገር በቀል ሕክምና እውቀትን የሚመለከት ሁሉን አቀፍ የሕግ እና ተቋማዊ መዋቅር መኖር ኢትዮጵያ ከዘርፉ ማግኘት የሚገባትን ጥቅም እንድታገኝ እና እውቀቱንም ከትውልድ ወደ ትውልድ ለማስተላለፍ ይረዳል። ይሁን እንጂ ይህ ለዘመናት የዳበረና የተከማቸ የሃገር በቀል ሕክምና እውቀት በተደራጀ እና ራሱን በቻለ ሕግ እና ተቋም ባለመተዳደሩ በዘመናት ሂደት ውስጥ ከፍተኛ የሆነ የመጥፋትና የመመናመን ተግዳሮት ተጋርጦበት ይገኛል። የእውቀቱ ባለቤት የሆኑት የባህላዊ ሕክምና አዋቂዎችም ቢሆኑ እውቀታቸውን ለማጋራት እና ወደ ምርት ለመለወጥ አይበረታቱም። የዚህ ጽሁፍ ዋና ዓላማ የመጀመሪያ እና ሁለተኛ ደረጃ የመረጃ ምንጮችን በመጠቀም አግባብነት ያላቸውን የሕግ፣ፖሊሲ እና ተቋማት ማዕቀፎችን እና በተግባር የሚታዩ ተግዳሮቶችን መለየት ነው። ስለሆነም ይህ ጽሁፍ በዓለም አቀፍ፣ ሀገር አቀፍ እና በአማራ ክልል ደረጃ ለሀገር በቀል እውቀት የተሰጠውን የሕግ፣ ፖሊሲ እና ተቋማት ሽፋን በቂነት በመመርመር ተንትኗል። በመሆኑም እንደጽሁፉ ውጤት እስካሁን በኢትዮጵያ የባህላዊ ሕክምና እውቀትን ለማልማት እና ለማስተዳደር የሚያስችል ራሱን የቻለ ሁሉን አቀፍ የሕግ ማዕቀፍ እና ተቋማዊ መዋቅር የለም። በተለይ የእውቀቱ ባለቤት ማነው? ለሚለው ጥያቄ ምላሽ የሚሰጥ የባህላዊ ሕክምና እውቀት ባህሪን ከግምት ውስጥ ያስገባ ራሱን የቻለ የአፅምሯዊ ንብረት ሕግ (sui generic protection) እስካሁን አልወጣም። ስለሆነም የሚመለከተው የመንግሥት አካል ከሌሎች ባለድርሻ አካላት ጋር በመተባበር የባህላዊ ሕክምና እውቀትን የሚመለከት ሁሉን አቀፍ ሕግ እንዲወጣ እና ራሱን የቻለ ተቋም እንዲቋቋም አበክሮ መሥራት ይገባዋል።

መሪ ቃላት፡- *ሀገር በቀል፣ ባህላዊ ሕክምና እውቀት፣ ተቋም፣ የሕግ ጥበቃ፣ ኢትዮጵያ*

ይዘት

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1. መግቢያ

ሀገራችን ኢትዮጵያ ባላት የረጅም ጊዜ ታሪክ፤ ከፍተኛ የብዝሀሕይወት ሀብት እና ማዕድናት እንዲሁም ጥቅም ላይ ሊውል የሚችል የሀገር በቀል ሕክምና እውቀት እንዳላት ይታወቃል[1]፡፡ ይህ ለዘመናት የዳበረና የተከማቸ የሀገር በቀል ሕክምና እውቀት በጊዜ ሂደት ከፍተኛ የመጥፋትና የመመናመን ተግዳሮት ተጋርጦበት ይገኛል[2]፡፡ በአፍሪካ ብዙ ቁጥር ያለው የመድሃኒታማ እፅዋት እና የሕዝብ እውቅና ቢኖርም እነዚህ የባህላዊ ሕክምና እውቀቶች እንደሌሎች ዘመናዊ መድሃኒቶች ሕጋዊ መሠረት የላቸውም[3]፡፡ በኢትዮጵያ ከጥንት ጀምሮ እፅዋቶች የተለያዩ ሕመሞችን ለማከም እንደ መድሃኒት ምንጭነት ሲያገለግሉ ቆይተዋል[4]፡፡

አስፋው እንደገለፀው እስከ ዛሬ 600 የመድሃኒታማ እፅዋት ዓይነቶች ተመዝግበው ይገኛሉ[5]፡፡ እንደ ተዘራ ጀምበሬ ግኝት 80% የሚሆነው የኢትዮጵያ ሕዝብ የጤና ጥበቃ ፍላጎቱን የሚያሟላው ከባህላዊ መድሃኒቶች ነው[6]፡፡ በታዳጊ ሀገሮች ውስጥ ከ70% እስከ 95% የሚደርሰው ነዋሪ ባህላዊ ሕክምናን እንደ አማራጭ ወይም ተጨማሪ የጤና አገልግሎት ምንጭ እንደሚጠቀሙበት ያሳያል[7]:: የባህላዊ መድሃኒቶች በኢትዮጵያ በስፋት ልዩ ልዩ የጤና ችግሮችን ለመፍታት ጥቅም ላይ ይውላሉ[8]፡፡ ቢያንስ እስከ 25% የሚሆነው ዘመናዊ መድሃኒትበቴክኖሎጂ በመታገዝ በቀጥታም ሆነ በተዘዋዋሪ በቀዳሚነት ከባህላዊ መድሃኒቶች የተቀመመ ነው [9]፡፡

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[1] Fekadu Fullas (2001). *Ethiopian Traditional Medicine: Common Medicinal Plants in Perspective*. USA.

[2] Bekele Kindie (2023). "Analysis of Medicinal Plants and Traditional Knowledge Development in Ethiopia". *International Journal of Advanced Pharmaceutical Sciences and Research* (IJAPSR) ISSN: 2582-7618 (Online), Volume-4 Issue-1, December 2023 26 Published By: Lattice Science Publication (LSP)

[3] Henok Demeke, Gemmechu Hasen, Teshome Sosengo, Jafer Siraj, Ramanjireddy Tatiparthi, Sultan Suleman (2022). "Evaluation of Policy Governing Herbal Medicines Regulation and Its Implementation in Ethiopia". *Journal of Multidisciplinary Healthcare*:15 1383–1394

[4] Asfaw Tora &Tarekegn Helisob (2017). "Assessment of the Indigenous Knowledge and Use of Traditional Medicinal Plants in Wolaita Zone, Southern Ethiopia". *International Journal of Medicinal Plants and Natural Products* (IJMPNP) Volume 3, Issue 1, 16-22

[5] Ibid.

[6] Tezera Jemere Aragaw, Dessie Tegegne Afework & Kefyalew Ayalew Getahun (2020). "Assessment of Knowledge, Attitude, and Utilization of Traditional Medicine among the Communities of Debre Tabor Town, Amhara Regional State, North Central Ethiopia: A Cross-Sectional Study". *Wiley Online Library*.
https://doi.org/10.1155/2020/6565131
See also: Asfaw Tora &Tarekegn Helisob. ከላይ በተራ ቁጥር 4 የተጠቀሰ

[7] የዓለም ጤና ድርጅት እ ኤ አ በ2011 ዓ ም ላይ ባህላዊ መድሃኒትን አስመልክቶ የወጣ አመታዊ ሪፖርት

[8] Fitsum Meseret Legesse & Akalework Mengesha Babanto (2023). "Factors Associated With the Use of Traditional Medicine in Wolaita Zone, Southern Ethiopia", *SAGE Open*, January-March 2023: 1–10

[9] Asfaw Tora &Tarekegn Helisob, ከላይ በተራ ቁጥር 4 የተጠቀሰ

በብዙ ታዳጊ ሀገራት የመድሃኒታማ እፅዋቶች ተጠንተው አልተሰነዱም[10]፡፡ አብዛኛዎቹ ባህላዊ ሕክምና እውቀቶች በባህል ሕክምና አዋቂ ግለሰቦች ዘንድ የተያዙ ሲሆን አንዳንዴ እውቀቱ ሲጠፋ ወይም ደግሞ ከትውልድ ወደ ትውልድ በቃል ሲተላለፍ ይስተዋላል[11]፡፡ እንደ ዶ/ር ፍቃዱ ፉላስ ትርጓሜ ባህላዊ ሕክምና ማለት *"ከማስተዋል፣ ተመክሮ፣ ከትውልድ ወደ ትውልድ በቃል ወይም በጽሁፍ የሚተላለፍ የአካል፣ የአእምሮና የማህበራዊ ኑሮ መዛባትን ለመገንዘብ ለመከላከል ወይም ለማስወገድ የሚጠቅም የእውቀትና ተገብሮ ጥምር ውጤት ነው"*[12]፡፡ የባህላዊ ሕክምና እውቀት አንዱ የማህበረሰብ እውቀት ዘርፍ ነው፡፡ የኢትዮጵያ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998 አንቀጽ 2(14) *"የማህበረሰብ እውቀት' ማለት የጀኔቲክ ሀብት ማንበርን ወይም መጠቀምን በሚመለከት የአካባቢ ማህበረሰቦች የፈጠሩት ወይም ለዘመናት ያዳበሩት ዕውቀት፣ አሠራር፣ ፈጠራ ወይም ጥበብ ነው"* በማለት ተርጉሞታል[13]፡፡

የሀገራችን ኢትዮጵያ ሀገር-በቀል እውቀቶች እና ባህላዊ ሕክምና ሥርዓት ራሱን የቻለ የእውቀት ሥርዓት ሆኖ እንደ ብሔራዊ እሴት ሊቆጠር የሚገባው ሀብት ነው ፡፡ የኢትዮጵያ ባህላዊ ሕክምና ሥርዓት ከሕብረተሰቡ ባህላዊ አኗኗር ጋር የተዋሃደና የራሱ ልዩ ባህሪያት ያሉት ሲሆን በዋነኝነት ከሃይማኖታዊ ተግባራትና እምነቶች ጋር ባለው ጥብቅ ትስስር ይገለፃል[14]፡፡ በሃገራችን ዘመናዊ ሕክምና ወደተግባር ከገባበት ዘመን ጀምሮ እስከአሁን ድረስ የሀገር በቀል ሕክምና እውቀቱን እንደአጋዥ በመቁጠር እንዲበለጽግ ለማድረግ እንደ ሌሎች ሃገራት ለምሳሌ ቻይና እና ሕንድ ተቋማዊ በሆነ መልኩ በሕግ ባለመደገፉ ማህበረሰቡና ሃገራችን ከዘርፉ ማግኘት የሚገባቸውን ጥቅም ሳያገኙ ቆይተዋል[15]፡፡

ከላይ የተገለፀውን ነባራዊ ሁኔታ መሠረት በማድረግ የሀገር በቀል እውቀት ስነዳ እና የመድሃኒታማ እፅዋት ማንበር እና ወደምርት የመለወጥ (Indigenous knowledge documentation, medicinal plant conservation towards standardization) ሥራን በመሥራት ውጤታማ ለመሆን ሁሉን አቀፍ የባህል ሕክምና ሕግ መኖር አስፈላጊ መሆኑ አጠያያቂ አይደለም፡፡ ስለሆነም የዚህ ጽሁፍ ዋና ዓላማ አግባብነት ባላቸው ዓለም አቀፍና የኢትዮጵያ ሕጎች ለሀገር በቀል እውቀት የተሰጠውን የሕግ እና ፖሊሲ ሽፋን በቂነት መመርመር እና መተንተን፣ እንዲሁም በአማራ ክልል ያሉ የባህል ሐኪሞችን የሕግ እና ፖሊሲ ጥበቃ እና አስተዳደር ሁኔታን መፈተሽ እና መተንተን፤ በሀገር አቀፍ እና በክልሉ የባህላዊ ሕክምና እውቀት ለማስተዳደር እና ለማልማት የተመሠረቱ ተቋማት በቂ መሆናቸውን እና በባህላዊ ሕክምና እውቀት ማበልፀግ ዙሪያ ያላቸውን ሚና መተንተን ነው፡፡

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[10] Gidey Yirga (2010). "Assessment of traditional medicinal plants in Endrta District, South-eastern Tigray, Northern Ethiopia". *African Journal of Plant Science* Vol. 4(7), pp. 255-260, Available online at http://www.academicjournals.org/ajps

[11] Ibid.

[12] Fekadu Fullas፣ ከላይ በተራ ቁጥር 1 የተጠቀሰ.

[13] የኢትዮጵያ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998

[14] Dawit Abebe and Ahadu Ayehu (1993). *Medicinal plants and enigmatic health practices of northern Ethiopia* (BSPE, Addis Ababa). See also: Gelahun Abate (1989). Etse Debdabe (Ethiopian traditional medicine) (in Amharic), p. 244

[15] Henok Demeke *et al*, ከላይ በተራ ቁጥር 3 የተጠቀሰ

ይህ ጽሁፍ በዋናነት ዓይነታዊ ተግባር ተኮር (qualitative-doctrinal) የጥናት ምርምር ዘዴን ተጠቅሟል፡፡ በኢፌዲሪ ሕገ-መንግሥት አንቀጽ 9/4 መሠረት ኢትዮጵያ የፈረመቻቸው ዓለምአቀፍ ስምምነቶች የሀገሪቱ ሕግ አካል ተደርገው ይቆጠራሉ፡፡ በመሆኑም የፈጠራ ውጤት መብቶች፤ የማህበረሰብ እውቀት ጥበቃ፤ የተፈጥሮ ሀብት ጥበቃና ሌሎች አግባብነት ያላቸው ዓለምአቀፍ ሕጎች ምርመራ ተደርጓል፡፡ በሕገ-መንግሥቱ አንቀጽ 51/5 እና አንቀጽ 55/2/ሀ መሠረት የፌደራል መንግሥት የተፈጥሮ ሀብቶችን በተመለከተ ገዢ ሕጎችን የማውጣት ሥልጣን ተሰጥቶታል፡፡ በተመሳሳይ የሕገ-መንግሥቱ አንቀጽ 55/2/ሰ የፌደራል ሕግ አውጪ የፈጠራ መብትን የሚመለከቱ ሕጎችን የማውጣት ሥልጣን አለው፡፡ በመሆኑም የፌደራል ሕጎች ከሚመለከታቸው አስፈፃሚ አካላት ጋር በጥናቱ ተዳሰዋል፡፡ በሌላ በኩል በፌደራል ማዕቀፍ ሥር ክልሎች የተፈጥሮ ሀብትን የመጠበቅና አግባብነት ያላቸውን ሕጎች የማውጣት ሥልጣን አላቸው፡፡ ይህ ጥናት የጄኔቲክ ሀብትን እና የማህበረሰብ እውቀትን የሚያስተዳድሩና ለርዕሱ አግባብነት ያላቸውን ዓለም-አቀፍ፣ አህጉር-አቀፍ፣ ሀገር-አቀፍና የአማራ ክልላዊ መንግሥት ሕጎች መስተጋብር በመመርመርና እና በተግባር የሚታዩ ተግዳሮቶችን በመለየት ላይ አተኩሯል፡፡

የዚህ ጥናት የመጀመሪያ ደረጃ የመረጃ ምንጮች ዓለም አቀፍ እና በሀገር ደረጃ የወጡ ሕጎች እና ፖሊሲዎች፣ ስምምነቶች ሲሆኑ በተለይ አዋጆች፣ ዓለምአቀፍ ስምምነቶች፣ ደንቦችና መመሪያዎች እንዲሁም ተያያዥ የፖሊሲ ማዕቀፎችና ስትራቴጂዎች የመረጃ ምንጮች ናቸው፡፡ ከዚህ በተጨማሪ ሁሉን አቀፍ ሕግ እና የተለየ ተቋም እንዳይኖር የሚያደርጉ ተግዳሮቶችን ለመለየት የብዝሀሕይወት ኢንስቲትዩት፤ የሕብረተሰብ ጤና ኢንስቲትዩት፣ የጤና ቢሮ፤ የትምህርት ሚኒስቴር ኃላፊዎች ቃለ መጠይቅ ማድረግን እንደ መጀመሪያ ደረጃ የመረጃ ምንጭነት ተጠቅመናል፡፡ የጥናቱ ሁለተኛ ደረጃ የመረጃ ምንጮች ተዛማጅ መጽሐፍት፤ ጆርናሎች፤ ሪፖርቶች ወዘተ ናቸው፡፡

ከላይ ከተዘረዘሩት የመረጃ ምንጮች በተለያየ መንገድ መረጃ የተሰበሰበ ሲሆን በሕጎችና ፖሊሲዎች ላይ ከተደረገው ዳሰሳ በተጨማሪ በከፊል የተደራጀ ቃለ መጠይቅ የመረጃ መሰብሰቢያ መሣሪያ ሆኖ አገልግሏል፡፡ የመረጃ ምንጭ ከሆኑት የመንግሥት ተቋማት ኃላፊዎችጋር ማለትም ከአማራ ክልል የብዝሀሕይወት ኢንስቲትዩት፣ ጤና ቢሮ፣ ባህል እና ቱሪዝም ቢሮ፣ እና ከኢፌዴሪ ትምህርት ሚኒስቴር የሀገር በቀል እውቀት ዴስክ ኃላፊ ጋር ቃለ መጠይቅ ተደርጓል፡፡ የቁልፍ ቃለ መጠይቅ ተሳታፊዎች ዓላማ-ተኮር በሆነ የንሞና ዘዴ የተመረጡ ናቸው፡፡ የተመረጡበት ምክንያትም ከጥናቱ ርዕሰ ጉዳይ አንፃር በቂ መረጃ ይሰጡናል ብለን በማሰብ ሲሆን ከባህላዊ ሕክምና እንዲሁም ከሀገር-በቀል እውቀት ጋር በተገናኙ መስኮች የሚሠሩ ናቸው፡፡ ከሕግ ዳሰሳው የተገኘ ውጤት ትርጉም-ተኮር እና ሥነ-አመክኖአዊ በሆነ ዘዴ ሲተነተን፣ ከቃለ መጠይቅ የተገኘው መረጃ ደግሞ ጭብጥን መሠረት ባደረገ መልኩ ተተንትኗል፡፡

2. የ'ባህላዊ ሕክምና እውቀት' ትርጓሜ

በዓለም ጤና ድርጅት ትርጉም መሠረት፣ ባህላዊ ሕክምና ማለት ጤንነትን ለመጠበቅ፣ በሽታን ለመከላከልና ለማከም ጥቅም ላይ የሚውሉ የተቀመሙ መድሃኒቶችን፣ መንፈሳዊ ፈውሶችንና ሌሎች ዘዴዎችን በሚመለከት የምንጠቀማቸውን እውቀቶች፣ ክህሎቶች፣ አሠራሮችንና እምነቶችን የሚይዝ የእውቀት ሥርዓት ነው[16]፡፡ የተለያዩ ምሁራንም ሆኑ የሕግ እና ፖሊሲ ሰነዶች ለባህላዊ ሕክምና ትርጓሜ የሚሰጡ ሲሆን፣ ከላይ በተራ ቁጥር 1፣ 3ኛ ፓራግራፍ እንደተገለፀው፣ *"ከማስተዋል፤ ተመክሮ፤ ከትውልድ ወደ ትውልድ በቃል ወይም በጽሁፍ የሚተላለፍ የአካል፤ የአዕምሮና የማህበራዊ ኑሮ መዛባትን ለመገንዘብ ለመከላከል ወይም ለማስወገድ የሚጠቅም የእውቀትና ተገብሮ ጥምር ውጤት ነው"*[17]፡፡ ጽንሰ ሓሳቡን ስንተረጉም የመድሃኒቱን ግብዐቶች ወይም መገኛ ምንጮች (እጽዋት፤ የእንስሳት ተዋጽኦ፤ ማዕድናት ወይም ሌሎች ውህዶች)፤ የሕክምና እውቀቶች ወይም ባለሙያዎች (ወጌሻ፤ የመድሃኒት ቅመማ፤ የመድሃኒት አወሳሰድ፤ የበሽታ ምልክቶች ወዘተ፤ እውቀቶቹ የተገኙበት አግባብ (በቃለ መጠይቅ፤ ጥንታዊ ሠነዶችን በማገላበጥና በማጥናት) እና ሌሎችንም ተያያዥ ባህላዊና ማህበራዊ ገጽታዎች ከግምት ውስጥ ማስገባት ይገባል፡፡

የባህላዊ ሕክምና እውቀት አንዱ የማህበረሰብ እውቀት ዘርፍ ነው፡፡ የማህበረሰብ እውቀት ከተለያየ አመለካከት አንፃር በልዩ ልዩ ስያሜዎች ይጠራል፡፡ የማህበረሰብ እውቀት እንደ ቅርስ የሚቆጠር ከመሆኑ አኳያ 'ባህላዊ ወይም ጥንታዊ እውቀት' በመባል የሚጠራ ሲሆን፣ ይህ እውቀት በጋራ እንደተያዘ በሚቆጥርበት አመለካከት ደግሞ 'የማህበረሰብ እውቀት'፣ 'ሃገር በቀል እውቀት' እና 'አካባቢያዊ' እውቀት በመባል ይታወቃል፡፡ በዓለም አቀፉ የአዕምሯዊ ንብረት ድርጅት የተቋቋመው የበይነ መንግሥታት ኮሚቴ ትርጓሜ መሠረት የማህበረሰቦች እውቀት ማለት "ባህላዊ መሠረት ያላቸው የሥነ ጽሁፍ፣ ሥነ ሥዕል ሥራዎችን ወይም ሣይንሳዊ ሥራዎችን፣ ፈጠራና ግኝቶችን፣ ዲዛይኖችን፣ ምልክቶችን፣ መለያዎችን፣ ስሞችን፣ በምስጢር የተያዙ መረጃዎችን፣ የባህላዊ መድሃኒት እውቀቶችን፤ የሰብል አመራረትና የእንስሳት አረባብ ዘዴዎችንና የአካባቢ እንክብካቤ ዘዴዎችን፣ ሌሎችንም በልዩ ልዩ መስኮች የሚገኙ የአዕምሮ ፈጠራዎች ያጠቃልላል" በማለት ተተርጉሟል[18]፡፡

የዓለም አቀፉ አእዕምሯዊ ንብረት ድርጅት ባካሄደው ጥናት መሠረትም የማህበረሰቦች እውቀት ዋና ዋና ዘርፎች የግብርና እውቀት፤ ሣይንሳዊ እውቀቶች፤ ቴክኒካዊ እወቀቶች፤ የሥነ ምህዳር እውቀት፤ የባህላዊ ሕክምና እውቀት እና ከብዝሀሕይወት ጋር ተያያዥ የሆነ እውቀት ናቸው[19]፡፡ ከዚህ በተጨማሪ የኢትዮጵያ የጄኔቲክ ሃብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998 አንቀጽ 2(14) 'የማህበረሰብ እውቀት' ማለት

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[16] WHO, Traditional Medicine Strategy 2002-2005, p. 115.

[17] Fekadu Fullas፣ በተራ ቁጥር 12 የተጠቀሰ

[18] Established in 2000, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is currently undertaking text-based negotiations with the objective of finalizing an agreement on one or more international legal instruments that would ensure the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions

[19] የዓለም አቀፉ አእምሯዊ ንብረት ድርጅት ጥናት 1998

የጀነቲክ ሃብት ማንበርን ወይም መጠቀምን በሚመለከት የአካባቢ ማህበረሰቦች የፈጠሩት ወይም ለዘመናት ያዳበሩት እውቀት፣ አሠራር፣ ፈጠራ ወይም ጥበብ ነው" በማለት ተርጉሞታል[20]።

3. ባህላዊ ሕክምና እውቀትን ለማስተዳደር እና ለማበልፀግ የወጡ ዋና ዋና ዓለም አቀፍ የሕግ እና የፖሊሲ ማዕቀፎች

እስካሁን በዓለም አቀፍ፤ በሀገር አቀፍ እና በክልል ደረጃ የባህላዊ ሕክምና እውቀትን ለማስተዳደር እና ለማበልፀግ የሚረዱ የተለያዩ የሕግ ማዕቀፎች ወጥተዋል። በዓለም አቀፍ ደረጃ ለመጀመሪያ ጊዜ የጄኔቲክ ሀብቶችን ለመጠበቅ እንዲረዳ በማሰብ እ.ኤ.አ በ1992 በሪዮ ዲጄኔሮ ተፈርሞ የፀደቀው ስምምነት *ዓለም አቀፉ የብዝሀሕይወት ስምምነት* እና ይህን ተከትሎ የወጣው *የናጎያ ፕሮቶኮል* ተጠቃሽ ናቸው ።

ዓለም አቀፉ የብዝሀ ሕይወት ስምምነት[21] በ1992 እ.ኤ.አ በሪዮ ዲጄኔሮ በተባበሩት መንግሥታት የአካባቢ እና ልማት ጉዳይ በተደረገው ኮንፈረንስ የምክክር ውጤት ሲሆን እስካሁን በዓለም አቀፍ ደረጃ (ኢትዮጵያን ጨምሮ) ከ192 በላይ ሀገራት ስምምነቱን ፈርመው አፅድቀውታል። ኢትዮጵያ ስምምነቱን ለማስተግበር የሚረዳ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998 አውጥታ እየተተገበረች ትገኛለች። የስምምነቱን አንቀጽ 8(ቀ)፣ 10፣ 15፣ እና 16 በአንድ ላይ ስንመለከት በጄኔቲክ ሀብቶች፣ ባህላዊ እውቀት እና አእምሯዊ ንብረት መካከል ያለውን ዝምድና እና የፈራሚ ሀገራትን ግዴታዎች ለመረዳት እንችላለን። የባህላዊ ሕክምና እውቀት አንዱ የጄኔቲክ ሀብት እንደመሆኑ የእውቀቱ ባለቤት የሆኑ ማህበረሰቦችም ሆኑ ግለሰቦች በስምምነቱ አንቀጽ 8 እና 10 መሠረት እውቀቱ ከሚያስገኘው ጥቅም ፍትሐዊና ኢኮኖሚያዊ ተጠቃሚነት መብት እንዳላቸው መረዳት ይቻላል።

የናጎያ ፕሮቶኮል[22] እ.ኤ.አ በጥቅምት 29፣ 2010 ዓ.ም በጃፓን ሃገር ናጎ የተፈረመ ሲሆን ወደ ተግባር የገባው እ.ኤ.አ በጥቅምት 12/ 2014 ነው። የናጎያ ፕሮቶኮል የዓለም አቀፉን የብዝሀሕይወት ስምምነት ተከትሎ በተለይ በስምምነቱ ላይ የተገለፁትን ዓላማዎች (ከጄኔቲክ ሀብቶች የሚገኘውን ጥቅም በፍትሐዊነት መጠቀምን) ለማሳካት የወጣ ተጨማሪ አስገዳጅ ስምምነት ነው። በፕሮቶኮሉ አንቀጽ 5(2) ላይ በግልጽ እንደተደነገገው በአንድ አካባቢ ማህበረሰብ የተያዘ የማህበረሰብ እውቀትንም ሆነ ሌሎች የጀኔቲክ ሃብቶችን በሕጋዊ መንገድ በመጠቀም ከሚገኘው ጥቅም ፍትሐዊ ተጠቃሚ ይሆኑ ዘንድ ፈራሚ ሃገራት አስፈላጊውን የሕግ እና ፖሊሲ እንዲሁም አስተዳደራዊ እርምጃ መውሰድ አለባቸው። ከዚህ በተጨማሪ በፕሮቶኮሉ አንቀጽ 7 ላይ እንደተደነገገው ፈራሚ ሃገራት የየሃገራቸውን ሕግ በማይጣረስ መልኩ በአንድ አካባቢ ማህበረሰብ የተያዘ ሃገር በቀል እውቀትንም ሆነ የጀኔቲክ ሀብቶችን ለመጠቀም ማህበረሰቡ የተሳተፈበት የቅድመ እውቅና ፈቃድ መኖር እንዳለበት የሚያስገድድ ሕግ ማውጣት ይገባቸዋል።

[20] *የኢትዮጵያ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር* 482/1998

[21] *ዓለም አቀፉ የብዝሀሕይወት ስምምነት ሪዮ ዲጄኔሮ* 1992 *እ.ኤ.አ* (The Convention on Biological Diversity, 1992, Rio de Janeiro)

[22] Nagoya Protocol on Access to Genetic Resources and the Fair and equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological resources, 29 October 2010, in Nagoya Japan.

ከዚህ ጋር ተያይዞ የሚነሳው ሰነድ የባህል ብዝሀነትን ለመጠበቅ የተዘጋጀው ዓለምአቀፍ መግለጫ (Universal Declaration of Cultural Diversity)[23] ነው፡፡ በዚህ መግለጫ አንቀጽ 7 ላይ፣ የባህላዊ ማንነቶች ለዘላቂ ልማትና ለፈጠራ ሥራ ያላቸው አስተዋፅኦ በግልጽ የተመለከተ መሆኑንና፣ ይህም የባህላዊ ሕክምና እውቀትን ጭምር እንደሚመለከት መረዳት ይቻላል፡፡

4. በቻይናና ሕንድ የባህላዊ ሕክምና ጥበቃ

4.1 ቻይና

ከክርስቶስ ልደት በፊት ከ5000 እስከ 4000 ዓ.ዓ በቻይና መድሃኒታማ እፅዋት ጥቅም ላይ ይውል ነበር[24]፡፡ ቻይና ባህላዊ ሕክምናን የሚመለከቱ ተከታታይ የጥበቃ ሕጎችን ከማውጣቷም በላይ ዘርፉን በበላይነት የሚያስተዳድር የባህላዊ መድሃኒት አስተዳደር ኤጀንሲ አቋቁማለች[25]:: ይህ ኤጀንሲ ባህላዊ መድሃኒትን በሚመለከት ደንቦችንና አዋጆችን የማዘጋጀት እንዲሁም የመድሃኒት ደረጃዎችን መቆጣጠርና ዘርፉን ለማስተዳደርና ለመምራት የሚያስችሉ ምርምሮችን የማካሄድ ሥልጣን ተሰጥቶታል[26]:: በቻይና የባህላዊ ሕክምና እውቀት በሦስት ደረጃ ባሉ የሕግ መዋቅሮች ጥበቃ ይደደረግለታል፡፡ ይህም የሚከናወነው በሀገሪቱ ሥራ ላይ ባለው የአእምሯዊ ንብረት የሕግ ሥርዓት[27]፣ በዓለም አቀፉ የብዝሀሕይወት ስምምነት[28] እና በአዲስ በወጡ ልዩ የባህላዊ ሕክምና ሥርዓት (*sui generis system of protection*) አማካይነት ነው[29]፡፡ በቻይና የባህላዊ ሕክምናን በአዕምሯዊ ንብረት ሕጎች ማስጠበቅ አዳጋች እንደሆነ ይገለጻል[30]፡፡ በቻይና የፓተንት ሕግ የጥበቃው ከፍተኛ ዘመን (እንደ ምዕራብያኑ) ለ20 ዓመት ሲሆን፣ የዲዛይን ፓተንት ለ15 ዓመት፣ ዩቲሊቲ ሞዴል ፓተንት ደግሞ እስከ

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[23] የባህል ልዩነቶችን ለመጠበቅ የተዘጋጀው የውል ስምምነት (Universal Declaration of Cultural Diversity)

[24] T. Berhane and G. Vijaibasker, "Assessment of traditional home remedy usage among people in Harar, Ethiopia,"
International Journal of Pharmaceutical Sciences and Research, vol. 6, no. 6, p. 2451, 2015

[25] Teresa Schroeder (2002). "Chinese Regulation of Traditional Chinese Medicine in the Modern World: Can the Chinese Effectively Profit from One of Their Most Valuable Cultural Resources?" *Washington International Law Journal* V.11 No. 3.
The State Administration of Traditional Chinese Medicine ("SATCM") is dedicated solely to TCM (ብሔራዊ የቻይና ባህላዊ መድሃኒት አስተዳደር ኤጀንሲ).

[26] Ibid.

[27] Please see Trademark Law (1983,2001),Patent Law(1984,1992,2000), Copyright Law(1990,2001), Law against Unfair Competition(1993), Regulations on the Protection of New Plant Varities(1997) of China.

[28] The Convention on Biological Diversity 1992

[29] See the Patent Law of 2000 and the Regulations on the Protection of Varieties of Chinese Traditional Medicine;

[30] Nan Xia (2023). "Intellectual property protection for traditional medical knowledge in China's context: a round peg in a square hole?" *Medical Law Review,* 31, 358–390 https://doi.org/10.1093/medlaw/fwad006

10 ዓመት ይቆያሉ፡፡ እ.ኤ.አ በ2000 የወጣው የቻይና የባህል መድሃኒት ልዩ ጥበቃ ሕግ (the Patent Law of 2000 and the Regulations on the Protection of Varieties of Chinese Traditional Medicine) ዋና ዓላማ ለባህላዊ መድሃኒት የአእምሯዊ ንብረት መጠበቅ ጠቃሚ እና አዋጭ ዘዴ ለመፍጠር በማሰብ ነው፡፡

4.2 የሕንድ ባህላዊ ሕክምና ሕጋዊ ጥበቃ

የሕንድ የባህላዊ ሕክምና የእውቀት ሥርዓት ረጅም ዕድሜ ያስቆጠረ መሆኑና ልዩ ልዩ ዘርፎች እንዳሉት ይገለፃል፡፡[31] ሕንድ ሁለት ዋና ዋና የባህላዊ መድሃኒቶች ጥራዞች (the Ayurvedic pharmacopoeia of India and the Unani pharmacopoeia of India) ያሏት ሲሆን፣ በውስጣቸው ያለው የመድሃኒቶቸ ባህሪና ተያያዥ ጉዳዮች ከሃገሪቱ መደበኛ የጤና ሥርዓት ጋር እንዲጣጣሙ ተደርገዋል፡፡[32] በአሁኑ ወቅት ሕንድ ውስጥ ከ4300 በላይ የሚሆኑ ተለይተው የተመዘገቡ ባህላዊ የዕፅዋት መድሃኒቶች ሲኖሩ እነዚህ ባህላዊ መድሃኒቶች በሦስት የሕንድ ባህል ሕክምና ዘርፎች (Ayurvedic, Unani and Siddha) ላይ ያተኮሩ ናቸው::[33]

ሕንድ ለባህላዊ ሕክምና በሥራ ላይ ባለው የአእምሯዊ ንብረት ሕጎችም ጥበቃ ታደርጋለች፡፡ ለምሳሌ እ.ኤ.አ በ1970 የወጣውና በ1999፣ 2002 እና 2005 የተሻሻለው የፓተንት ሕግ በዚህ ረገድ ተጠቃሽ ናቸው፡፡ ከዚህ ባሻገር እ.ኤ.አ በ1999 የወጣው የንግድ ምልክት ሕግ፤ እ.ኤ.አ በ1999 የወጣው የጂኦግራፊያዊ አመላካች ሕግ፤ እ.ኤ.አ በ1957 የወጣው የዲዛይን ሕግ፤ እ.ኤ.አ በ2001 የወጣው የእጽዋት ዝርያ እና የገበሬዎች መብት ሕግ ተጠቃሽ ሕጎች ናቸው፡፡

ሕንድ ከአእምሯዊ ንብረት ሕጎች ባሻገር የባህላዊ ሕክምናን የሚመለከቱ ሌሎች ሕጎችንም*(sui generis system of protection*) አውጥታ ወደ ሥራ አስገብታለች፡፡ ለምሳሌ እ.ኤ.አ በ 2002 የወጣው የብዝሀሕይወት ሕግ የባህላዊ ሕክምናንም የሚገዛ ነው፤ በሕንድ የመድሃኒት እና ኮስሞቲክስ ሕግ እንዲሁም ደንብ 1945 የመድሃኒታማ እፅዋትን የሚገዙ ሕጎች ናቸው፡፡ ይህን ለማስተደደር ኃላፊነት የተሰጠው የባለሥልጣን ተቋም ደግሞ የአዩሽ ክፍል ይባላል፡፡ በተጨማሪም፣ በግንቦት 2006 ዓ.ም የሕንድ ፓርላማ የባህላዊ መድሃኒት ሽያጭን ለማስተዳደር በማሰብ የባሕላዊ የመድሃኒታማ እፅዋት ሕግ አውጥቷል፡፡ በመጨረሻም እ.ኤ.አ በ2006 የወጣው የታቀደላቸው ነገዶች እና ሌሎች ባህላዊ የጫካ ነዋሪዎች (የደን መብቶችን እውቅና የመስጠት) አዋጅ ለባህላዊ ሕክምና ሕጋዊ ጥበቃ ሰጥቷል፡፡ በሕንድ ለባህላዊ ሕክምና የመብት ጥበቃ አስተዋፅኦ

[31] Pulok K. Mukherjee, M. Venkatesh, V. Kumar (2007). "An Overview on the Development in Regulation and Control of Medicinaland Aromatic Plants in the Indian System of Medicine" *Derechos de Publicación*. Boletín Latinoamericano y del Caribe de Plantas Medicinales y Aromáticas, 6(4), 129 –136

[32] Ibid.

[33] Saloni Singh, Vikesh Kumar Shukla (2021). "Current regulations for Herbal Medicines in India". International *Journal of Drug Regulatory Affairs*. Volume 9, No. 2, DOI: 10.22270/ijdra.v9i2.466

ካደረጉት መካከል የሕንድ የባህላዊ ሕክምና እውቀት የዲጂታል ላይብረሪ ግንባታ ተጠቃሽ ነው፡፡[34]

5. በኢትዮጵያ የባህላዊ ሕክምናን የሚመለከት የሕግ እና ፖሊሲ ማዕቀፍ ዝግጅት ታሪካዊ ዳራ

በኢትዮጵያ ለመጀመሪያ ጊዜ ለባህላዊ ሕክምና እውቀት ጥበቃ ለማድረግ የተሞከረው እ.ኤ.አ በ1948 የሕክምና ባለሙያዎች ምዝገባ አዋጅ ቁጥር 100/1948 በማውጣት ነው፡፡[35] በተጨማሪም እ.ኤ.አ. በ1978 የቅድመ ጤና አጠባበቅ ስትራቴጂ ወጥቶ ነበር፡፡[36] በተለይ እ.ኤ.አ. በ1993 በተዘጋጀው ብሔራዊ የጤና ፖሊሲ[37] እና በፖሊሲው ማስፈፀሚያ አዋጅ ቁጥር 661/2002[38] ለባህላዊ ሕክምና እውቀት ከፍተኛ ትኩረት እንደተሰጠ መረዳት ይቻላል፡፡ ከዚህ ባሻገር በቅርቡ በፌዴራል ጤና ሚኒስቴር የተዘጋጀው የብሔራዊ የመድሃኒት ፖሊሲ 1112/2019 የባህላዊ ሕክምና እውቀትን ለማልማት የሚያስችል ዓላማ እና ስትራቴጂ እንዳካተተ ከፖሊሲው አንቀጽ 5.2.2 እንዲሁም 8.1 እስከ 8.5 መረዳት ይቻላል፡፡[39]

የኢፌዴሪ ሕገ መንግሥት፡ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998[40] እና ይህን አዋጅ ለማስተግበር የወጣውን ደንብ ቁጥር 169/2001[41]፤ እንዲሁም የ2004ቱ የሣይንስ ቴክኖሎጂ እና ኢኖቬሽን ፖሊሲ[42] ለባህላዊ ሕክምና እውቀት ትኩረት የሰጡ ተጠቃሽ የሕግ ማዕቀፎች ናቸው፡፡ የኢፌዴሪ ትምህርት ሚኒስቴር በከፍተኛ ትምህርት ተቋማት የሀገር በቀል እውቀት (የባህላዊ ሕክምና እውቀትን ጨምሮ) ለማስተዳደር እና ለማልማት የሚያስችል መመሪያ አዘጋጅቷል፡፡[43] በብሔራዊ ክልል ደረጃ፣ በዚህ ጽሁፍ በተካተተው በአማራ ብሔራዊ ክልል በ2006 ዓ.ም የባህላዊ ሕክምና አስተዳደር እና ቁጥጥር መመሪያ[44] ተዘጋጅቶ ወደ ሥራ ገብቷል፡፡

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[34] Saikat Sen and Raja Chakraborty Traditional Knowledge Digital Library: a distinctive approach to protect and promote Indian indigenous medicinal treasure Current Science, 25 May 2014, Vol. 106, No. 10 (25 May 2014), pp. 1340-1343

[35] እ.ኤ.አ በ1948 የሕክምና ባለሙያዎች ምዝገባ አዋጅ ቁጥር 100/1948

[36] እ.ኤ.አ. በ1978 የቅድመ ጤና አጠባበቅ ስትራቴጂ

[37] እ.ኤ.አ. በ1993 በኢትዮጵያ የሽግግር መንግሥት ወቅት የተዘጋጀው ብሔራዊ የጤና ፖሊሲ

[38] እ.ኤ.አ. በ1993 በኢትዮጵያ የሽግግር መንግሥት ወቅት የተዘጋጀው ብሔራዊ የጤና ፖሊሲ ማስፈፀሚያ አዋጅ ቁጥር 661/2002

[39] የኢፌዴሪ ጤና ሚኒስቴር የተዘጋጀው 1112/2019 የብሄራዊ የመድሃኒት ፖሊሲ

[40] የኢፌዴሪ ሕገ መንግሥትን፡ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998

[41] የኢፌዴሪ ሕገ መንግሥትን፡ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998 ማስፈፃሚያ ደንብ ቁጥር 169/2001

[42] የ 2004ቱ የሣይንስ ቴክኖሎጂ እና ኢኖቬሽን ፖሊሲ

[43] የኢፌዴሪ ትምህርት ሚኒስቴር በከፍተኛ ትምህርት ተቋማት የሀገር በቀል እውቀት (የባህላዊ ሕክምና እውቀትን ጨምሮ) ለማስተዳደር እና ለማልማት የሚያስችል መመሪያ

[44] የአማራ ብሔራዊ ክልላዊ መንግሥት ደግሞ በ2006 ዓ.ም የባህላዊ ሕክምና አስተዳደር እና ቁጥጥር መመሪያ

5.1 የባህላዊ ሕክምና እውቀትን በሀገር አቀፍ የሕግ ማዕቀፎች ለማስተዳደር የተደረገ ሙከራ

የባህላዊ ሕክምና እውቀት አንዱ የማህበረሰብ እውቀት ዘርፍ እንደመሆኑ መጠን በኢትዮጵያ እውቀቱን ለማልማት የወጡ አንዳንድ የሕግ ማዕቀፎች ዓላማቸው እውቀቱን ከአዕምሯዊ ንብረት መብት አንፃር ለመጠበቅ ባይሆንም በጥቅሉ ለማስተደደር ሞክረዋል[45]፡፡ የባህላዊ ሕክምና እውቀት ካለው ልዩ ባህሪ እና ከማህበረሰቡ ባህላዊ ማንነት ጋር የተቆራኘ ከትውልድ ወደ ትውልድ የሚተላለፍ መሆኑን እስካሁን በዚህ ጽሁፍ ላይ ገልፀናል፡፡ ስለሆነም የ1987ቱን የኢፌዴሪ ሕገ መንግሥት[46]፤ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998[47]፤ ደንብ ቁጥር 169/2001[48] እና እ.ኤ.አ በ2010 በወጣው የጀኔቲክ ሀብቶች አርክቦት እና የማህበረሰብ እውቀት የጥቅም መጋራት የሥነ-ምግባር መመሪያን[49] ስንመለከት ባህላዊ የሕክምና እውቀትን በቀጥታ እና ራሱን በቻለ መልኩ የሚመለከቱ አይደሉም፡፡

ነገር ግን የባህላዊ ሕክምና እውቀትን እንደ አንድ የጀኔቲክ ሀብት ወይም የማህበረሰብ እውቀት በመቁጠር እውቀቱን ወይም ሀብቱን እንዴት ማግኘት፤ መሰብሰብ እና ማህበረሰቡ ከእውቀቱ የሚገኘውን ጥቅም በፍትሐዊነት ተጋሪ የሚሆንበት ሁኔታን ደንግጓል፡፡ በዚሁ መሠረት በአዋጁ አንቀጽ 7 እና 12 የጄኔቲክ ሀብቱ ባለቤት የሆነው መንግሥት እና የማህበረሰብ እውቀት ባለቤቶች የሆኑት አካባቢ ነዋሪዎች ፈቃዳቸውን ሳይሰጡ ሀብቱን ማልማት አይቻልም ይላል[50]፡፡ ይሁን እንጂ በአዋጁ አንቀጽ 15 የከፍተኛ ትምህርት ተቋማት በሀገር ውስጥ ለሚያካሂዱት የልማትና የአካዳሚ ምርምር ሥራ የጄኔቲክ ሀብትና የማህበረሰብ እውቀት በቀላሉ ማግኘት እንዲችሉ በብዝሀሕይወት ኢንስቲትዩቱ በኩል የተለየ የአርክቦት ፈቃድ ሊሰጣቸው እንደሚችል ተደንግጓል፡፡ ስለሆነም በዚህ ረገድ ከፍተኛ የትምህርት ተቋማት በባህላዊ ሕክምና ዙሪያ ለሚያካሂዷቸው ምርምሮች ወይም ፕሮጀክቶች ይህንን እንደ አንድ የሕግ መሠረት አድርገው ሊጠቀሙበት ይችላሉ፡፡

ይሁን እንጂ የአዕምሯዊ ንብረት ሕግ ለባህላዊ ሕክምና እውቀት ልዩ ባህሪውን መሠረት ያደረገ ጥበቃ ማድረግ ይችላልን? ለሚለው ጥያቄ የዘርፉ ምሁራን የተለያየ ሓሳቦችን ያንፀባርቃሉ፡፡ ከፊሎቹ ምሁራን የአዕምሯዊ ንብረት ሕግ ለባህላዊ ሕክምና እውቀት ጥበቃ ማድረግ *አይችልም*[51] ሲሉ ከዚህ ጋር ተያይዞ ሙጋቤ የሚባለው ምሁር የአእምሯዊ ንብረት 'በካፒታሊስቶች የኢኮኖሚ የበላይነት መርህ ላይ የተመሠረተ ስለሆነ' ጥበቃ ማድረግ አይችልም በማለት ገልፆታል[52]፡፡ ከዚህ በተቃራኒ ሌሎች ምሁራን ደግሞ

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[45] አንቀጽ 8፣9 እና 10 የኢፌዴሪ ሕገ መንግሥትን፡ የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998.

[46] የ1995ቱን የኢፌዴሪ ሕገ መንግሥት

[47] የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998

[48] የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998 ማስፈፀሚያ ደንብ ቁጥር 169/2001

[49] እ.ኤ.አ በ2010 በወጣው የጀኔቲክ ሀብቶች አርክቦት እና የማህበረሰብ እውቀት የጥቅም መጋራት የሥነ-ምግባር መመሪያ

[50] የጄኔቲክ ሀብቶች እና የማህበረሰብ እውቀት አርክቦት አዋጅ ቁጥር 482/1998

[51] W. Wendland, 'Intellectual Property, Traditional Knowledge and Folklore: WIPO's Exploratory Program' IIC, Vol. 33, p. 48

[52] J. Mugabe (1998). "Intellectual Property Protection and Traditional Knowledge: An exploration in International Policy". Discourse' paper presented to a WIPO Seminar on Traditional Knowledge. (www.acts.or.ke)

የአዕምሯዊ ንብረት ሕግ የባህላዊ መድሃኒት አዋቂዎች መብትን ለማስጠበቅ ሲባል መጣጣም አለበት፣ ይህ ካልሆነ ግን የባህላዊ ሕክምና አዋቂዎችን አዕምሯዊ ንብረት ለመጠበቅ ልዩ ባህሪውን መሠረት ያደረገ አዲስ ጥበቃ *(sui generis system of protection)* የግድ ያስፈልጋል ይላሉ[53]፡፡

በመሆኑም የታዳጊ ሃገራት መንግሥታትም ሆኑ የየሃገራቱ አካባቢ ነዋሪዎች ከባህላዊ ሕክምና እውቀቱ የጥቅም ተጋሪ እንዲሆኑ በማሰብ ከእውቀቱ ጋር የተጣጣመ የሕግ ጥበቃ ሥርዓት *(sui generis system of protection)* በዓለም አቀፍ ደረጃ እንዲወጣ ሲወተውቱ ይስተዋላል[54]፡፡ በዚህ ረገድ የባህላዊ ሕክምና እውቀት ስነዳ እና ምዝገባ በተለይ በሃገር-አቀፍ ደረጃ የባህላዊ ሕክምና እውቀት ዲጂታል ላይብረሪ ግንባታ (ለምሳሌ የሕንድ የባህላዊ ሕክምና ዴታቤዝ) ለእውቀቱ ልዩ ጥበቃ በማድረግ ሂደት የራሱን ወሳኝ ሚና ይጫወታል[55]፡፡ ምንም እንኳን እ.ኤ.አ እስከ 2000 ዓ.ም ሁሉን አቀፍ የሆነ የባህላዊ ሕክምና እውቀትን ለመጠበቅ የሚረዳ ዓለም አቀፍ የአእምሯዊ ንብረት መብት ሕግ ባይኖርም ከ2000 ዓ.ም ጀምሮ በዓለም አቀፉ የአዕምሯዊ ንብረት ድርጅት በኩል ለባህላዊ ሕክምና እውቀቱ ሁሉን አቀፍ ጥበቃ ለማድረግ እንዲረዳ የበይነመንግሥታት ዓለም አቀፍ ኮሚቴ ተቋቁሟል[56]፡፡ ኮሚቴው በተለያየ ጊዜ በጉዳዩ ላይ ባደረገው ውይይት ልዩ ልዩ መብቶችን፤ የሕግ ፍልስፍናዎችን እና ፖሊሲዎችን ያጣመረ ወጥ ሕግ ለባህላዊ ሕክምና እውቀቱን ጥበቃ ለማድረግ ሊረዳ እንደሚችል ገልጿል[57]፡፡

የአዕምሯዊ ንብረት መብትን የሚመለከቱ የኢትዮጵያ ሕጎች የሀገር በቀል የሕክምና እውቀቱን ለማስጠበቅ የራሳቸው አስተዋጽኦ አላቸው፡፡ የአዕምሯዊ ንብረት መብት ማለት አንድ የፈጠራ ሥራ አመንጪ ለፈጠራው አዲስ እውቀት ወይም የፈጠራ ሥራ የሚሰጥ የባለቤትነት መብት ነው[58] በጥቅሉ ሲታይ አዕምሯዊ ንብረት የቴክኒክ፤ የሕግ፤ የንግድ ጉዳዮችን ይይዛል[59]፡፡ የአዕምሯዊ ንብረት ጥበቃ ዘዴዎች/ ሕጎች ስንል የፓተንት (patent)፣፤ ንግድ ምልክት (trademark)፣ ኮፒራይትና ተዛማጅ መብቶች (copyright & related rights)፣፤ ኢንዱስትሪያዊ ንድፍ (industrial design)፣ የጂኦግራፊ አመላካች (geographical indication - GI)፣ የእጽዋት አዳቃይ መብት (plant breeders right)፣ እና የንግድ ምስጢር (trade secret) ሕጎችን የሚያካትት ነው፡፡[60]

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[53] Barry Steven Mandelker (2000). Indigenous People and Cultural Appropriation: Intellectual Property Problems and Solutions'. 16 *Canadian Intellectual Property Review*.

[54] WIPO Background Brief N:1 Traditional Knowledge and Intellectual Property: https:// www.wipo.int/publications/en/details.jsp?id=3858

[55] Ibid.

[56] Aman Gebru (2015). "International Intellectual Property Law and the Protection of Traditional Knowledge: From Cultural Conservation to Knowledge Codification".

[57] WIPO, Traditional Knowledge: Policy and Legal Options, WIPO/GRTKF/IC/6/4, 12 December 2003, para. 11.

[58] The Convention Establishing the World Intellectual Property Organization 1967

[59] Ibid.

[60] Copyright and Neighboring Rights Protection Proclamation No. 410/2004, Trademark Registration and Protection Proclamation No, 501/2006, and Proclamation No. 123/1995 A Proclamation Concering Inventions, Minor Inventions and Industrial Designs

በሥራ ላይ ያሉ የኢትዮጵያ የአዕምሯዊ ንብረት ሕጎችና ብሔራዊ ፖሊሲዎችን ስንመለከት የባህላዊ ሕክምና እውቀት ባለቤት ማነው? ለሚለው ጥያቄ በግልጽ መልስ አይሰጡም፡፡ እስከአሁን ድረስ ከባህላዊ ሕክምና እውቀቱ ባህሪ ጋር የተጣጣመ ግልፅ የባለቤትነት አወቃቀር ሕግ (sui generis intellectual property protection) አለመዘርጋቱ እውቀቱን ለማልማት እና የባህላዊ ሐኪሞችን ስጋት በበቂ ሁኔታ ለመቅረፍ አዳጋች አድርጎታል፡፡

ይሁን እንጂ የባህላዊ ሕክምና እውቀትን ለማልማት አሁን በሥራ ያሉት የአእምሯዊ ንብረት ሕጎች አያስፈልጉም ማለት አይደለም፤ የባህላዊ ሕክምና እውቀቱ ሕጎቹ የሚደነግጉትን መስፈርት እስካሟላ ድረስ ሕጎችን መጠቀም አይከለከልም፡፡ ለምሳሌ አዲስነት፤ፈጠራዊ ብቃት እና ኢንዱስትሪያዊ ተግባራዊነት የሚሉትን ሦስት መስፈርቶች ያሟላ የባህላዊ ሕክምና እውቀት ግኝት በፓተንት አዋጅ ቁጥር 123/1995 መዳኘት ይችላል፡፡ ከዚህ በተጨማሪ በንግድ ምልክት አዋጅ ቁጥር 501/2006 መሠረት እውቀቱን ተጠቅሞ ለሚመረተው ምርት ንግድ ምልክት በማስዝገብ ሠርተፊኬት ማግኘት ይቻላል፡፡

የኢትዮጵያ የአዕምሯዊ ንብረት ጽ/ቤት እ.ኤ.አ በ2003 በአዋጅ ቁጥር 320/2003 መሠረት የተቋቋመ ሲሆን በአንቀጽ 5 ላይ እንደተገለፀው አራት ዋና ዓላማዎቹ፡- “አዕምሯዊ ንብረት በቂ የሕግ ጥበቃ የሚያገኝበትንና በሀገር ውስጥ ጥቅም ላይ የሚውልበትን ሁኔታ ማመቻቸት፤ በፓተንት ሰነዶች የታቀፉ የቴክኖሎጂ መረጃዎችን ማሰባሰብ ማደራጀት፣ ማሰራጨትና ጥቅም ላይ እንዲውሉ ማበረታታት፤ የአእምሯዊ ንብረት ፖሊሲዎችን ሕጎችን ማጥናት መተንተንና ለመንግሥት ሓሳብ ማቅረብ፣ እና በሕዝቡ ዘንድ የአእምሯዊ ንብረት እውቀትና ግንዛቤ እንዲዳብር ማድረግ” ናቸው፡፡

በአዋጁ አንቀጽ 6 ላይ ደግሞ የአእምሯዊ ንብረት ሕጎችን እና ፖሊሲዎች አፈጻፀም ለመከታተል እንዲሁም በአእምሯዊ ንብረት ባለቤቶች እና የቢዝነስ ሰዎች መካከል ያለውን ግንኙነት ለማቀላጠፍ የሚረዳ የፓተንት እና የንግድ ምልክት ምዝገባ ማመልከቻ የመቀበል ሥልጣን አለው፡፡ በንግድ ምልክት አዋጁ መሠረት[61] የኢትዮጵያ የአዕምሯዊ ንብረት ጽ/ቤት የንግድ ምልክት መረጃዎችን መመርመር፤ መመዝገብ፤ ሠርተፊኬት መስጠት፤ መብትን ማስተላለፍ እና ማሳወቅ ይችላል፡፡ ስለሆነም የባህላዊ ሕክምና እውቀት አሁን በሥራ ላይ ባለው የአእምሯዊ ንብረት ሕጎች ጥበቃ እንዲያገኝ በማድረግ ረገድ ጽ/ቤቱ የበኩሉን ሚና መጫወት ይችላል፡፡

የባህላዊ ሕክምና እውቀት ራሱን የቻለ የሕግ ማዕቀፍ ከሌለውና በጥቅሉ የሀገር በቀል እወቀቶችን በሚገዛው ሕግ ቢተዳደር የባህላዊ ሕክምናን ጉዳይ በአግባቡ ለማስተዳደር ያስቸግራል፡፡ ለምሳሌ በኢፌዴሪ ትምህርት ሚኒስቴር በኩል የተዘጋጀውን መመሪያ ወይም በተለያየ ጊዜ የሚወጡ ባህላዊ ሕክምናን በቀጥታም ሆነ በተዘዋዋሪ የሚመለከቱ ከላይ በዚህ ጽሁፍ የተዘረዘሩትን የጤና ፖሊሲዎች ስንመለከት እያንዳንዳቸው ስለ እውቀቱ በተናጠል ስለሚደነግጉ እውቀቱን ወጥነት ባለው መልክ ለማልማት ያስቸግራል፡፡ በሁለተኛ ደረጃ ደግሞ የብዝሀሕይወትን እና ጤናን የሚመለከቱ የተለያዩ ሕጎች በየራሳቸው ስለ ባህላዊ ሕክምና የሚደነግጉ ከሆነ፣ ይህ አሠራር እርስ በእርስ የሚቃረኑና ወጥ ያልሆኑ፣ ብዙ ድግግሞሽ ያላቸው ሕጎች እንዲኖሩ ያደርጋል፡፡ በአንፃሩ ደግሞ፣ የባህላዊ ሕክምና እውቀት ራሱን በቻለ ሕግ የሚተዳደር ከሆነ ከዓለም አቀፍ ልምድ እና ስታንዳርድ አንፃር አጣጥሞ ለመሄድ ይረዳል፡፡

[61] አንቀጽ 11, 12, 13, 15, 16 and 28 of የንግድ ምልክት አዋጅ ቁጥር. 501/2006

ምንም እንኳን ባህላዊ ሕክምና ሁሉን አቀፍ የሆነ የሕግ ማዕቀፍ ባይኖረውም (ዩኒቨርሲቲዎችን ጨምሮ) የምርምር ተቋማት ከባህል ሐኪሞች ጋር ለሚደርጉት መስተጋብር ለጊዜውም ቢሆን እንዲረዳ እና የባህል ህክምና አዋቂዎችን ጥያቄ በመጠኑ ለመመለስ እንዲያስችል ታስቦ በኢትዮጵያ አእምሯዊ ንብረት ጽ/ቤት በኩል ባለ 28 አንቀጽ ሞዴል የእውቀት ሽግግር ስምምነት ተዘጋጅቶ ወደ ሥራ ተገብቷል፡፡ በዚህ ሞዴል ስምምነት የውል ሰጭና ተቀባይ ዝምድና ወይም ግንኙነት፤ የሰጭና ተቀባይ መብቶችና ግዴታዎች፤ የጥቅም ክፍፍል እና የሚደረጉ የሥልጠና ድጋፎች፤ ምስጢር የመጠበቅ ግዴታዎች፤ ምስጢር የመጠበቅ ግዴታዎች ተፈጻሚ የማይሆንባቸው ሁኔታዎች፤ ከምርምር የሚገኙ ውጤቶች አያያዝና ባለቤትነት፤ እንዲሁም ሌሎች ድንጋጌዎች ተካተዋል፡፡

5.2 በኢ.ፌ.ዴ.ሪ ትምህርት ሚኒስቴር የከፍተኛ ትምህርት ተቋማት የሀገር-በቀል ዕውቀት ልማት እና አስተዳደር ረቂቅ መመሪያ

በኢትዮጵያ የከፍተኛ ትምህርት ተቋማት የሀገር በቀል እውቀት ልማት እና አስተዳደርን በሚመለከት ትምህርት ሚኒስቴር የሀገር በቀል ልማት ዳይሬክተር አስተባባሪነት በከፍተኛ ትምህርት አዋጅ ቁጥር 1152/2011[62] አንቀጽ 95 ንዑስ አንቀጽ 2 መሠረት ረቂቅ መመሪያ አዘጋጅቶ በስትራቴጂ መልክ አጽድቋል፡፡ ይህ ረቂቅ መመሪያ በጎ ጅምር ቢሆንም የባህላዊ ሕክምና እውቀትን በቀጥታ የሚመለከት ካለመሆኑም ባሻገር ከእውቀቱ ባህሪ አንፃር ግልፅ የሆነ የባለቤትነት አወቃቀር አልዘረጋም፡፡

በመመሪያው አንቀጽ 5 ላይ አንድ ዋና ዓላማ፣ እና አራት ዝርዝር ዓላማዎች የተገለፁ ሲሆን የባህላዊ ሕክምና እውቀት በተለየ ሁኔታ አልተጠቀሰም፡፡ ያም ሆኖ ግን፣ በመመሪያው ዋና ዓላማ ላይ "በከፍተኛ ትምህርት ተቋማት የሀገር-በቀል እውቀት በአግባቡ እንዲሰነድ፣ እንዲጠና፣ እንዲለማ እና እንዲተዳደር የሚያስችል የአሠራር ሥርዓትን በመዘርጋት ለሀገራዊ ልማት አስተዋፅኦ ማድረግ ነው" የሚለው አገላለፅ የባህላዊ ሕክምና እውቀትንም እንደሚመለከት መገንዘብ ይቻላል፡፡

በመመሪያው አንቀጽ 5 (ንዑስ አንቀጽ 5) ላይ እንደተደነገገው የመመሪያው አንዱ ንዑስ ዓላማ "የሀገር-በቀል እውቀት በጥናት የሚለይበት፤ በአእምሯዊ ንብረት ጥበቃ ሥርዓት ውስጥ የሚካተትበት፤ እንዲሁም የእውቀቱና የሀብቱ ባለቤቶች እና ሀገራችን የጥቅሙ ተጋሪ የሚሆኑበት አካታች ሁኔታ መፍጠር፤" የሚለው ሐረግ የሕክምና እውቀት ለሚፈልገው የሕግ ማዕቀፍ አግባብነት ያለው ነው፡፡ ይሁን እንጂ የባህላዊ ሕክምና እውቀት እንዴት በአእምሯዊ ንብረት ጥበቃ ሥርዓት ውስጥ ይካተት አልያም ራሱን ችሎ ይተዳደር? ለሚለው ጥያቄ ረቂቅ መመሪያው በግልፅ እና በዝርዝር መልስ አይሰጥም፡፡

ከላይ ካየነው ክፍተት በቀር ከረቂቅ መመሪያው እንደምንረዳው በተለይ በአንቀጽ 8(3) የሀገር-በቀል እውቀትን እና የትምህርት መርሀ ግብር መስተጋብርን በሚመለከት የሀገር-በቀል እውቀት ደረጃ በደረጃ ወደ ሥርዓተ-ትምህርት እንዲካተት ይደረጋል፤ በምርምርና ሥርፀት እንዲሁም በማህበረሰብ አገልግሎት ላይ በተገለፁት ተግባራት ላይ በመመሥረት የሀገር በቀል እውቀትን በትምህርት ሥርዓት ውስጥ የማካተት ሂደት ይከወናል በሚል ተደንግጓል፡፡ በተጨማሪም በአንቀጽ 8(4) የሀገር-በቀል እውቀት የመረጃ አስተዳደርን በሚመለከት፣ በከፍተኛ ትምህርት ተቋም ተለይቶ የታወቀ የሀገር-በቀል እውቀትን በሕትመት እና በኤሌክትሮኒክስ ዘዴ መረጃው በተደራጀ መልኩ እንዲቀመጥ ያደርጋል፤

[62] የከፍተኛ ትምህርት አዋጅ ቁጥር 1152/2011

የከፍተኛ ትምህርት ተቋም በመረጃ አስተዳደር እና ስነዳ ሂደት ውስጥ የሀገር-በቀል እውቀት ባለቤቶች እንዲሳተፉ ማድረግ ይኖርበታል፤ በከፍተኛ ትምህርት ተቋም የተለዩ የሀገር-በቀል ዕውቀትን ለማስቀመጥ መረጃ ቋት እንዲደራጅ ያደርጋል፤ በከፍተኛ ትምህርት ተቋም ወቅታዊ የቴክኖሎጂ ግኝቶችን በመጠቀም የሀገር-በቀል እውቀት የመረጃ አስተዳደር እንዲዘምን ያደርጋል የሚሉት ድንጋጌዎች የሀገር በቀል እውቀት በአጠቃላይ በከፍተኛ ትምህርት ተቋማት እንዲለማ እና በአግባቡ እንዲተዳደር የሚያስችሉ ድንጋጌዎችን ይዟል ማለት ይቻላል፡፡

የመመሪያው ተፈፃሚነት በከፍተኛ ትምህርት ተቋማት እንደመሆኑ፣ የዩኒቨርሲቲዎች ፕሮጀክቶች ሕጋዊ መሠረት እንዲኖራቸው አስተዋፅኦ ያደርጋል፡፡ ለምሳሌ በረቂቅ መመሪያው አንቀጽ 17 ላይ እንደተደነገገው ከፍተኛ ትምህርት ተቋማት ለሚሠሩት የሀገር በቀል እውቀት ልማት ፕሮጀክቶች ይረዳቸው ዘንድ መመሪያውን ሳይቃረኑ ዝርዝር የአሠራር ስታንዳርዶች፣ የድርጊት መርሀ ግብር ወይም ማንዋሎችን ማውጣት ይችላሉ ስለሚል ዩኒቨርሲቲዎች ለሚሠሩት የባህል ሕክምና እውቀት ማልማት ሥራ የሚረዱ ዝርዝር የአሠራር ስታንዳርዶች ወይም መመሪያዎችን ለማውጣት እውቅና ይሰጣቸዋል፡፡ በተለይ በዩኒቨርሲቲ ውስጥ የባህል ሕክምና እውቀቱን በማስተዳደር እና በማልማት ረገድ የትኛው ክፍል ምን ዓይነት ኃላፊነት አለበት? ከባለድርሻ አካላት ጋር ያለው ግንኙነትስ ምን ሊሆን ይችላል? የሚሉትን መሰል ጉዳዮች በአግባቡ ለመረዳት እና ለማስተግበር ጉልህ አስዋፅኦ ያደርጋል፡፡ ይሁንና ዩኒቨርሲቲዎች ከባህል ሐኪሞች ጋር ለሚኖራቸው ሕጋዊ ግንኙነት መመሪያው ግልፅ ድንጋጌዎች የሉትም፡፡

6. የአማራ ብሔራዊ ክልላዊ መንግሥት የባህላዊ ሕክምና አስተዳደርና ቁጥጥር መመሪያ

የአማራ ብሔራዊ ክልላዊ መንግሥት በ2006 ዓ.ም የባህል ሕክምና አስተዳደር እና ቁጥጥር መመሪያ አዘጋጅቶ ወደ ሥራ ገብቷል፡፡ መመሪያው በክልሉ ጤና ቢሮ አማካይነት በአብክመ የምግብ፤ የመድኃኒትና የጤና እንክብካቤ አስተዳደር እና ቁጥጥርን ለመወሰን የወጣ ክልል መስተዳደር ምክር ቤት ደንብ ቁጥር 105/2004[63] አንቀጽ 20(8) መሠረት የወጣ ነው፡፡ መመሪያው በስድስት ክፍሎች እና በ 30 አንቀጾች የተከፋፈለ ከመሆኑም ባሻገር የባህል ሐኪሞችን በተመለከተ ዝርዝር ድንጋጌዎችን አካቷል፡፡ በመመሪያው ክፍል ሁለት ሰለባህላዊ ሕክምና መማክርት ጉባዔን መቋቋም፣ በመመሪያው ክፍል ሦስት ስለ የባህላዊ ሕክምና አዋቂዎች ምዝገባ ተደነግጓል፡፡ የመመሪያው ክፍል አራት፤ አምስት እና ስድስት ስለባህላዊ ሕክምና አገልግሎት መስጫ ቦታ፤ ስለ አስተዳደራዊ እርምጃ እና ልዩ ልዩ ጉዳዮች የሚደነግጉ ናቸው፡፡

መመሪያው በአጠቃላይ ሲታይ በክልሉ የባህላዊ ሕክምናን በማስተዳደር ረገድ አንድ እርምጃ እንደሆነ መገንዘብ የሚቻል ቢሆንም፣ አብዛኛዎቹ የመመሪያው አንቀጾች ስለባህላዊ ሐኪሞች ፈቃድ አሰጣጥ፤ ምዝገባ እና አስተዳደር ከመደንገግ ውጪ ስለባህላዊ ሐኪሞች ፈጠራ የአእምሯዊ ንብረት የባለቤትነት አወቃቀር አይደነግጉም፡፡ ለዚህም ማሳያ የሚሆነው መመሪያው በአንቀጽ 25 ላይ የባህላዊ ሕክምና እውቀት ባለቤትነት

[63] በአብክመ የምግብ፤የመድሃኒትና የጤና እንክብካቤ አስተዳደር እና ቁጥጥርን ለመወሰን የወጣ ክልል መስተዳደር ምክር ቤት ደንብ ቁጥር 105/2004

መብት ጥያቄ የሚስተናገደው የኢትዮጵያ ሣይንስና ቴክኖሎጂ ኤጀንሲ በሚያወጣቸው መመሪያዎች መሠረት ነው በሚል የተደነገገ መሆኑ ነው፡፡

የአብክመ የባህላዊ ሕክምና ዕውቀት መመሪያውን ዝርዝር ድንጋጌዎች ስንመለከትም በአንቀጽ 9 እና 10 መሠረት ማንኛውም የባህል ሕክምና አዋቂ በመመሪያው ላይ በተገለፁት መሥፈርቶች አግባብ በክልሉ ጤና ቢሮ ወይም በተወካይ መሥሪያ ቤቶች መመዝገብ ይኖርበታል በሚል ደንግጓል፡፡ የባህል ሕክምና አዋቂው ከላይ በአንቀጽ 11 እና 12 ላይ የተገለፁትን ቅድመ ሁኔታዎች ካሟላ በአንቀጽ 13 ላይ እንደተገለፀው የምዝገባ የምሥክር ወረቀት በፈቃድ ሰጭው አካል ይሰጠዋል፡፡ መሥፈርቶችን ካላሟላ ግን የባህል ሕክምና አዋቂው ጉድለቶችን በ 30 ቀናት ውስጥ አስተካክሎ ሲቀርብ ሊስተናገድ ይችላል፡፡ የባህል ሕክምና አዋቂው የምዝገባ የምስክር ወረቀቱን ካገኘ በኋላ በአንቀጽ 14 መሠረት በየ 5 ዓመቱ ማሳደስ ይኖርበታል፡፡

ከዚህ በተጨማሪም መመሪያው የባህላዊ ሕክምና አገልግሎት መስጫ ቦታ ምን መሆን እንዳለበት እና መሥፈርቱም ምን እንደሆነ በአንቀጽ 15 ላይ በግልፅ ደንግጓል፡፡ በመመሪያው አንቀጽ 15(ለ) እና (ሐ) እንደተ፤ደነገገው፣ ሕክምናው የሚሰጥበት ቦታና ሌሎች የሚጠቀሙባቸው ቁሳቁሶች ንፅህናቸውን የጠበቁና ከማንኛውም ብክለት ነፃ እንዲሆኑ እንዲሁም የተገልጋዮች ስም፤ የመኖሪያ አድራሻ እና ሌሎች አስፈላጊ መረጃዎችን የሚይዝበት የምዝገባ ሰነድ፤ የሰነድ ማስቀመጫ ሽልፍ ማዘጋጀትና የሁሉንም ተገልጋዮችን መረጃ አሟልተው መገኘት አለባቸው፡፡

መዋቅርን በሚመለከት፣ በመመሪያው አንቀጽ 6(ሀ) መሠረት በባህላዊ ሕክምና ላይ የሚሠሩ 18 ባለ ድርሻ አካላት ያሉበት መማክርት ጉባኤ በአብክመ ጤና ቢሮ ተቋቁሟል፡፡ የመማክርት ጉባኤ አባላት በመመሪያው አንቀጽ 6(ለ) መሠረት እንደአስፈላጊነቱ በክልሉ ጤና ቢሮ ሌሎች አካላት በአባልነት ሊወከሉ እንደሚችሉ ተደንግጓል፡፡[64] እነዚህ የመማክርት ጉባኤ አባላት የክልሉን ጤና ቢሮ በባህላዊ ሕክምና እውቀት ልማት፤ ምርምር እና ሥርፀት እንዲሁም አስተዳደር ጉዳዩች የማማከር ሥራ እንደሚሠሩ ከመመሪያው አንቀጽ 7 መረዳት ይቻላል፡፡

7. በአማራ ክልል የባህላዊ ሕክምና አዋቂዎችን በማስተዳደር ረገድ እያጋጠሙ ያሉ ተግዳሮቶች

በአማራ ብሔራዊ ክልላዊ መንግሥት የባህል ሐኪሞችን በማስተዳደር ረገድ የተለያዩ ተግዳሮቶች አጋጥመዋል፡፡ በዚህ ረገድ የአብክመ ሕብረተሰብ ጤና ኢንሲቲትዩት ባለሙያዎችን በማነጋገር ምላሾች ተገኝተዋል፡፡ የሕብረተሰብ ጤና ኢንስቲቲዩቱ በባህል ሕክምና ዘርፍ አንዳንድ ምርምር ከማድረግ ውጪ በሕግ ማዕቀፍ ዝግጅት ብዙም ሚና እንደሌለው አቶ ታዬ ገልፀውልናል፡፡ ከዚህ በተጨማሪም ለክልሉ ጤና ቢሮ፤

[64] የመማክርት ጉባኤ አባላት የሚከተሉት ናቸው፡-
የክልል ጤና ጥበቃ ቢሮ፣ የክልል ትምህርት ቢሮ፣ የክልል ግብርናና ገጠር ልማት ቢሮ፣ የክልል እንስሳት ሀብት ልማት ኤጀንሲ፣ የክልል እፅዋት ክሊኒክ፣ የክልል ደን ልማት ኤጀንሲ፣ የክልል ግብርና ምርምር ኢንስቲትዩት፣ የባህርዳር የሕብረተሰብ ጤና ምርምርና ላብራቶሪ ማዕከል፣ የክልል ባህልና ቱሪዝም ቢሮ፣ የክልል የጤና ባለሙዎች ማህበር፣ የክልል ፋርማሲ ማህበር፣ የክልል አካባቢ ጤና አጠባበቅ ማህበር፣ የክልል ነርሶች ማህበር፣ የክልል ሚድዋይፈሪ ማህበር፣ የክልል ላቦራቶሪ ባለሙያዎች ማህበር፣ የክልል ባህል ሕክምና አዋቂዎች ማህበር፣ በክልሉ ካሉ ዩኒቨርሲቲዎች መካከል የሚወከል አንድ ዩኒቨርሲቲ፣ የክልል የሃይማኖት መማክርት ጉባኤ፡፡

የብዝሀሕይወት ኢንስቲትዩት የአብክመ ቅርንጫፍ እና የባህል ቢሮ ባላሙያዎች ቃለ መጠይቅ ተደርጓል፡፡ ለባህል ሕክምና እውቀት ልማትና አስተዳደር ወጥ ሕግ ባለመኖሩና የባህል ሐኪሞች እውቀታቸውን ለማካፈል ባለመሞከራቸው ተግዳሮቶች እንደገጠሙ በቃለመጠይቁ ወቅት ተገልጧል፡፡ በተለይ እንደ አቶ ሙሉነህ (የአብክመ ጤና ቢሮ የባህል ሕክምና ክፍል ፈቃድ አሰጣጥ ኦፊሰር) ምላሽ የአብክመ ጤና ቢሮ የባህል ሐኪሞችን ለማስተዳደርም ሆነ ፈቃድ ለመስጠት የሚያስችል መመሪያ አውጥቶ እየሠራ ቢሆንም የባህል ሐኪሞችን የአዕምሯዊ ንብረት መብት የተመለከተ ራሱን የቻለ የሕግ ማዕቀፍ ያልወጣ መሆኑ እስከ 500 (አምስት መቶ) የሚደርሱት የባህል ሐኪሞች እውቀታቸውን ከማጋራት ወደ ኋላ እንዲሉ ያደረጋቸው መሆኑን ገልፀዋል፡፡

በተጨማሪም፣ የጤና ቢሮው ለባህል ሐኪሞች ፈቃድ ሲሰጥ የባህል ሐኪሞቹ ከማህበራዊ ፍርድ ቤት አስወስነው ይሄን ይሄን በሽታ አድናለሁ ብለው ሲመጡ ብቻ ፈቃድ የሚሰጣቸው መሆኑን አቶ ሙሉነህ ገልፀው፣ ነገር ግን የባህል ሐኪሞቹ ፈቃድ ከወሰዱበት የበሽታ ዓይነት ውጪ ሌሎች ለማመንም ለሚከብዱ መንፈሳዊ የሆኑ በሽታዎችን ጭምር እናድናለን የሚል ማስታወቂያ በመለጠፍ ሲሠሩ እንደሚታዩ፣ ይህም ታካሚዎችን እንደሚያሳስትና በዚህ ረገድ በየዘርፉ ያለ የጤና ቢሮው የቁጥጥር ችግር እንደሚታይ አስረድተዋል፡፡ አቶ ሙሉነህ የጤና ቢሮው በመመሪያው መሠረት 18 አባላት ያሉት የባህል ሕክምና መማክርት ጉባዔ መሥርቶ በየዓመቱ ከ 4 ሚሊዮን ብር በላይ በማውጣት እየሠራ መሆኑን፣ ነገር ግን ለባህል ሕክምና አዋቂዎች ፈቃድ ሲሰጥ የክልሉ የንግድ ቢሮ ከፍተኛ ግብር በመጣሉ አንዳንድ የባህል ሐኪሞች ፈቃዳቸውን መልሰው ወደ ቀድሞ ድብቅ ሥራቸው እንደተመለሱ አስረድተዋል፡፡

የጤና ቢሮው ከተለያዩ ዩኒቨርሲቲዎች ለምሳሌ ከጎንደር፤ አዲስ አበባ ዩኒቨርሲቲ እና ወሎ ዩኒቨርሲቲ ጋር በመተባበር ከ 3 ሚሊዮን ብር በላይ አውጥቶ የባህላዊ ሕክምና እውቀትን ለማልማት እየሠራ መሆኑን አቶ ሙሉነህ አስረድተዋል፡፡ ለባህል ሐኪሞች ሥልጠና መስጠት እንዲሁም የባህል ሐኪሞች የራሳቸው ፋርማሲ ከፍተው እንዲሠሩ ይቻል ዘንድ ረቂቅ የአሠራር መመሪያ ለማዘጋጀት የተሞከረ ቢሆንም፣ ከባለ ድርሻ አካላት ጋር ተቀራርቦ መሥራት ላይ ግን ተግዳሮቶች መኖራቸውን ገልፀዋል፡፡

የአማራ ብዝሀሕይወት ኢንስቲትዩት ኃላፊ አቶ ደሳለኝ ኢንስቲትዩቱ የባህላዊ ሕክምናን ለማልማት የሚፈልግ አካል ሲመጣ ፈቃድ በመስጠት የጄኔቲክ ሀብቶች እንዲለሙ የሚያደርግ እንደሆነና ለጎንደር ዩኒቨርሲቲ 19 ያህል የጄኔቲክ ሃብቶች እንዲለሙ ፈቃድ የተሰጠ መሆኑን አስረድተው፣ በፈቃድ አሰጣጥ ሂደቱ ግን የተለያዩ ተግዳሮቶች እንደሚያጋጥሙ ገልፀዋል፡፡ በዚህ ረገድ በዋናነት የጄኔቲክ ሀብቱን ለመስረቅ የሚደረግ ሙከራ ተጠቃሽ ነው፡፡ የባህል እና ቱሪዝም ኃላፊ አቶ ቢተው ሕሊናም እንደገለፁት ለባህል ሕክምና አዋቂዎች ፈቃድ የሚሰጠው አካል የክልሉ ጤና ቢሮ ቢሆንም እውቀቱ የባህል አንዱ አካል እንደመሆኑ መጠን ለጥበቃው መንግሥት ተገቢውን ድጋፍ ሊያደርግ እንደሚገባ አሳስበዋል፡፡

ከዚህ ባሻገር የኢ.ፌ.ዴ.ሪ ትምህርት ሚኒስቴር የማህበረሰብ ጉድኝት እና ሀገር በቀል እውቀት ዴስክ ኃላፊ የሆኑት ወ/ሮ ሰላም ዓለሙ እስከ አሁን በከፍተኛ ትምህርት ተቋማት የሀገር በቀል እውቀትን የሚመለከት የሕግ ማዕቀፍ አለመኖሩንና መሥሪያ ቤታቸው ያዘጋጀውን የሕግ ረቂቅ ከሚመለከታቸው ባለሙያዎች እና ባለድርሻ አካላት ጋር በውይይት የማዳበርና የማፅደቅ ሥራ እያከናወነ መሆኑን አስረድተዋል፡፡ ይሁን እንጂ መመሪያው በቀጥታ የባህላዊ ሕክምና እውቀትን በዝርዝር የሚመለከት ባለመሆኑ ወደፊት ከከፍተኛ ትምህርት ተቋማት ጋር መሥሪያ ቤታቸው ተቀራርቦ እንደሚሠራ ገልፀዋል፡፡

ከላይ የተመለከቱትን ክንውኖችና ክፍተቶች መሠረት በማድረግ፣ የአማራ ብሔራዊ ክልላዊ መንግሥት ጤና ቢሮ የባህላዊ ሕክምና እውቀትን ለማስተዳደር ያወጣውን መመሪያ ተግባራዊነት በሚመለከት ከክልሉ ጤና ቢሮ ጋር ተቀራርቦ መሥራት አለበት፡፡ በተለይ በመመሪያው መሠረት በተቋቋመው የመማክርት ጉባኤ ዩኒቨርሲቲዎች የመማክርቱ ተወካይ በመሆን ጭምር ተሳትፎ ማድረግ፣ እንዲሁም የሀገር በቀል እውቀት ማዕከላት ከባህላዊ ሕክምና አዋቂዎች ጋር እንደሚሠሩት ሁሉ የማህበረሰብ እውቀት ላይ ተመርኩዘው መሥራት ይጠበቅባቸዋል፡፡

የቃለ መጠይቅ ተሳታፊዎች እንደገለፁት፣ ባልተቀናጀ መልኩም እንኳን ቢሆን የጤና ሚኒስቴር እና የአብክመ ጤና ቢሮ፤ የግብርና ሚኒሰቴር፤ የሕብረተሰብ ጤና ኢንስቲትዩት፤ የኢፌዴሪ ምግብ፤ መድሃኒት ቁጥጥር እና አስተዳደር፤ የትምህርት ሚኒስቴር፤ የአብክመ ባህል እና ቱሪዝም ወዘተ የባህል ሕክምና እውቀትን ከዋና ሥራቸው በተደራቢነት ለማስተዳደር የሚሞክሩ ተቋማት ቢሆኑም ዋናዎቹ በአዋጅ ሥልጠን የተሰጣቸው ተቋማት ግን የብዝሀሕይወት ኢንስቲትዩት እና አእምሯዊ ንብረት ጽ/ቤት እንደሆኑ መገንዘብ ችለናል፡፡ የኢትዮጵያ ብዝሀሕይወት ኢንስቲትዩት የብዝሀሕይወት እና ተያያዥ ጉዳዩችን ለማስተዳደር ሥልጣን የተሰጠው ተቋም ነው፡፡ በመሆኑም የብዝሀሕይወትን እና የጄኔቲክ ሀብቶችን በማልማት በኩል ይህ ተቋም ኃላፊነቱን በአግባቡ የሚወጣ ከሆነ ለባህላዊ ሕክምና እውቀት ልማትም በተዘዋዋሪ መንገድም ቢሆን አስተዋፅኦ ይኖረዋል፡፡

8. ማጠቃለያ

ከላይ ከሚገኙት የጽሁፉ ክፍሎች እንደምንገነዘበው እስካሁን በኢትዮጵያ የባህላዊ ሕክምና እውቀትን ለማልማት እና ለማስተዳደር የሚያስችል ሁሉን አቀፍ የሕግ ማዕቀፍ እና የተለየ ተቋማዊ መዋቅር የለም፡፡ የእውቀቱ ባለቤት ማነው? ለሚለው ጥያቄ ምላሽ የሚሰጥ የባህላዊ ሕክምና እውቀት የአእምሯዊ ንብረት ሕግ እስካሁን አልወጣም፡፡ በኢትዮጵያ የጀኔቲክ ሀብቶች፤ የማህበረሰብ እውቀት እና የሕይወት አርክቦት አዋጅ ቁጥር 482/2006 ተጠቃሽ አዋጅ ቢሆንም አዋጁ የባህላዊ ሕክምና እውቀትን እንደ አንድ ጄኔቲክ ሀብት ወይም የማህበረሰብ እውቀት ቆጥሮ የእውቀቱ ባለቤት የሆኑት ማህበረሰቦች እውቀቱን የሚያገኙበትን እና ከእውቀቱ የሚመነጨውን ጥቅም ተጋሪ የሚሆኑበትን ሁኔታ የደነገገው በተዘዋዋሪ መንገድ ነው፡፡

ከዚህ ጋር ተያይዞ የኢ.ፌ.ዴ.ሪ ትምህርት ሚኒስቴር ያዘጋጀው እና በከፍተኛ ትምህርት ተቋማት ላይ ተፈፃሚ የሚሆነው ረቂቅ መመሪያ እንኳን ስለ ባህላዊ ሕክምና እውቀት በቀጥታ ሳይደነግግ፣ ይህን እውቀት ያካተተው ሀገር በቀል በሚል ስያሜ ውስጥ ነው፡፡ በዚህ ረገድ በአማራ ብሔራዊ ክልላዊ መንግሥት ጤና ቢሮ በኩል ጥሩ ጅምር ያለ ሲሆን ቢሮው የባህላዊ ሕክምና እውቀትን በቀጥታ የሚመለከት የባህላዊ ሕክምና አስተዳደር እና ቁጥጥር መመሪያ በ2006 ዓ.ም አውጥቷል፡፡ ይሁን እንጂ ይህ መመሪያ ስለ ባህላዊ ሕክምና እውቀት ባለቤቶች አዕምሯዊ ንብረት ጉዳይ አይደነግግም፤ ለመደንገግም ክልሉ ሕጋዊ ሥልጣን አልተሰጠውም ፡፡

የሚመለከተው የመንግሥት አካል አሁን በሥራ ላይ ያሉትን የሕግ ማዕቀፎች እንደ መነሻ በመጠቀም ለባህላዊ ሕክምና እውቀቱ ሁሉን አቀፍ የሕግ ማዕቀፍ እንዲዘጋጅለት እና በተለይ የባህል ሕክምና አዋቂዎችን እውቀት በሚመለከት ከእውቀቱ ጋር የተጣጣመ የአእምሯዊ ንብረት ሕግ እንዲኖር ከሚመለከታቸው የባለድርሻ አካላት ጋር ተባብሮ መሥራት እና የሕግ መነሻ ሓሳብ ማቅረብ አስፈላጊ ነው፡፡ የሚመለከተው የመንግሥት አካል የባህላዊ ሕክምና እውቀቱን በአግባቡ ለማስተዳደር እና ለማልማት ይረዳ ዘንድ

የባህላዊ ሕክምና እውቀት ራሱን በቻለ የተለየ ተቋም (ኤጀንሲ) እንዲመራ/እንዲተዳደር ከባለድርሻ አካላት ጋር ተባብሮ መሥራት ይገባል፡፡ በኢ.ፌ.ዴ.ሪ ትምህርት ሚኒስቴር በማህበረሰብ ጉድኝት እና ሀገር በቀል እውቀት ዴስክ በኩል ተዘጋጅቶ የፀደቀው መመሪያ ከፍተኛ ትምህርት ተቋማት ለሚሠሩት የሀገር በቀል እውቀት ልማት ፕሮጀክቶች ይረዳቸው ዘንድ መመሪያውን ሳይቃረኑ ዝርዝር የአሠራር ስታንዳርዶች፣ የድርጊት መርሀ ግብር ወይም ማንዋሎችን ማውጣት ይችላሉ ስለሚል ከፍተኛ ትምህርት ተቋማትም ለሚሠሩት የባህል ሕክምና እውቀት የማልማት ሥራ እንዲረዳቸው መመሪያውን እንደ አንድ ግብአት መጠቀም ይገባቸዋል፡፡ ■

ማጣቀሻዎች (Cited References)

Abate, Gelahun (1989). Etse Debdabe **ዕፀ፡ደብዳቤ - ከጥንት እስከ ዛሬ** (Ethiopian traditional medicine) (in Amharic) Research and Publication office, Addis Ababa University

Abebe D & Ayehu A (1993). Medicinal plants and enigmatic health practices of northern Ethiopia, BSPE, Addis Ababa.

Aragaw TJ *et al* (2020). "Assessment of Knowledge, Attitude, and Utilization of Traditional Medicine among the Communities of Debre Tabor Town, Amhara Regional State, North Central Ethiopia: A Cross-Sectional Study". *Wiley Online Library*. https://doi.org/10.1155/2020/6565131

Berhane T & and Vijaibasker G (2015). "Assessment of traditional home remedy usage among people in Harar, Ethiopia." *International Journal of Pharmaceutical Sciences and Research*, V. 6, N. 6.

Demeke H *et al* (2022). "Evaluation of Policy Governing Herbal Medicines Regulation and Its Implementation in Ethiopia". 15 *Journal of Multidisciplinary Healthcare* 1383–1394. DOI: https://doi.org/10.21203/rs.3.rs-3298134/v1

Dubale, S *et al* (2023). *Traditional Medicine Regulatory Framework and Legal Basis in Ethiopia: A Critical Evaluation of Challenges and Opportunities for policy Implementation* (Pre-print version).

Fekadu Fullas (2001). *Ethiopian traditional medicine. Common medicinal plants in perspective*. Sioux City, Iowa, USA.

Gebru, Aman (2015). "International Intellectual Property Law and the Protection of Traditional Knowledge: From Cultural Conservation to Knowledge Codification". 15 *Asper Review of International Business and Trade Law*.

Kindie, Bekele (2023). "Analysis of Medicinal Plants and Traditional Knowledge Development in Ethiopia". *International Journal of Advanced Pharmaceutical Sciences and Research* (IJAPSR) Volume-4 Issue-1, 26.

Legesse, FM & Babanto, AM (2023). *Factors Associated With the Use of Traditional Medicine in Wolaita Zone, Southern Ethiopia*, SAGE Open Vol. 13(1)

Mandelker BS (2000). Indigenous People and Cultural Appropriation: Intellectual Property Problems and Solutions', 16 *Canadian Intellectual Property Review*

Mugabe, J (1998). *Intellectual Property Protection and Traditional Knowledge: An exploration in International Policy Discourse* (paper presented to a WIPO Seminar on Traditional Knowledge). (www.acts.or.ke)

Mukherjeee PK *et al* (2007). "An Overview on the Development in Regulation and Control of Medicinaland Aromatic Plants in the Indian System of MedicineDerechos de Publicación". *Boletín Latinoamericano y del Caribe de Plantas Medicinales y Aromáticas*, 6 (4), 129 –136

Saloni S. (2021). "Current regulations for Herbal Medicines in India". *International Journal of Drug Regulatory Affairs.* DOI: 10.22270/ijdra.v9i2.466

Sen S & Chakraborty R (2014). "Traditional Knowledge Digital Library: a distinctive approach to protect and promote Indian indigenous medicinal treasure". *Current Science*, Vol. 106, No. 10 (25 May 2014) 1340-1343

Tora A & Helisob T (2017). "Assessment of the Indigenous Knowledge and Use of Traditional Medicinal Plants in Wolaita Zone, Southern Ethiopia". *International Journal of Medicinal Plants and Natural Products* (IJMPNP) Volume 3, Issue 1, 16-22. DOI: http://dx.doi.org/10.20431/2454-7999.0301003 www.arcjournals.org.

Yirga, Gidey (2010). "Assessment of traditional medicinal plants in Endrta District, South-eastern Tigray, Northern Ethiopia". *African Journal of Plant Science* Vol. 4(7).

MIZAN LAW REVIEW

St. Mary's University

Center for Law in Sustainable Development

Cultural Problems in Research and Publications

Source:
Reform Document on Legal Education and Training in Ethiopia (2006) § 2.4.1/A

1. [R]esearch, reading, and writing culture
   - Complacence with our work merely as teachers.
   - [The need for] sense of urgency ... to engage in research and turn up research products.
   - [The need for] '*publish or perish*' attitude.
   - [Working] beyond the positive laws.
2. [I]nstitutional Commitment
   - In terms of budget, time, and resource allocation for R&P
   - In terms of reduction of teaching load or granting (Research Leave).
3. [T]eam spirit for Research and Publications
   - Among staff members;
   - Between staff and students;
   - [The need for] collaboration among institutions.
4. [I]nnovation in diversification of publications, and problems regarding spheres of focus in research.
5. Raising the stakes too high in assessing the quality of publishable manuscripts (despite) shortage of (such) manuscripts.
6. [T]radition of salvaging "distressed" manuscripts through sympathetic editing without compromising quality.
7. Weak consumption of research products in the legal professional community and in government institutions, and poor state of constructive feedback.
8. Inadequate attention to relevance of research to the real life or actual problems of the society.

Vision of law schools

Law schools shall have vision towards elevating the standard and quality of legal education to the level of leading law schools in other countries, and towards preparing graduates who will have optimum impact in Ethiopia's development, democracy, good governance and social justice.

Mission of law schools

Law schools shall promote the intellectual and social conditions of Ethiopia by providing equitably accessible quality legal education and training programs through teaching, research and service to prepare competent and responsible members of the legal profession who actively contribute towards rule of law, democracy, human rights, good governance, social justice, equality, tolerance and development.

***Source:* Ethiopian Legal Education and Training Reform Document (June 2006)**

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