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MESSAGE FROM THE EDITORIAL BOARD

The Editorial Committee is pleased to announce the release of the first-ever volume of Debre Markos University Chokie Journal of Law (DMU Chokie JoL, Volume 1, Issue 1). We are immensely grateful to everyone who contributed to the successful launch of the journal, including the Research and Community Service Vice President's Office of our university, the Law School community, authors, and reviewers. The Editorial Committee firmly believes that the scholarly journal will provide a platform for academic debates on legal issues within Ethiopia, the region, and the wider international legal communities. The journal aims to promote the creation and dissemination of legal knowledge.

We cordially invite legal scholars and practitioners, both within the country and abroad, to submit their scholarly articles, essays, case comments, legislative reviews, books or notes to the upcoming issues.

THE EDITORIAL BOARD

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ARTICLES

COMMENTARY

CONSUMER PROTECTION UNDER ETHIOPIA'S E-COMMERCE LAW: A FOCUS ON THE ELECTRONIC TRANSACTION PROCLAMATION

Ezra Dereje Bimrew*

Abstract

This article examines the consumer protection scheme under Ethiopia's e-commerce law to determine whether it requires improvements to enhance consumers' protection. Under a qualitative approach, it adopts, it mainly uses documentary, comparative and to some extent interview methods to collect, amass, analyze and interpret data. Accordingly, the finding reveals that Ethiopia's e-commerce law demands improvements in terms of protection mechanisms ranging from defining the nature, scope and effects of consumer transactions and parties to consumer contracts through forms of protection to enforcement of consumer rights.

Key words: Consumer; consumer protection; e-commerce law.

1. Introduction

In the newly emerging digital economy, electronic commerce (e-commerce) has been a major phenomenon since its inception around 1990s.[1] Along with the mushrooming information technology, e-commerce has been steadily increasing, both in terms of coverage and number of users.[2] Recently, it has been reported that COVID-19 has accelerated the growth in e-commerce.[3] Electronic consumer purchases are regarded as the main drivers for the increase of e-commerce.[4]

There are a range of consumer-specific problems, inherent to e-commerce.[5] The anonymity of persons and non-physical nature of communications threaten consumers'

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[1] OECD, 'Toolkit for Protecting Digital Consumers: A resource for G 20 policy makers' (2018) 5.

[2] Naoshi Takasugi, 'E-Commerce Law and the Prospects for Uniform E-Commerce Rules on the Privacy and Security of Electronic Communications' [2016] 33 Ariz J Int'l & Comp L 257, 257.

[3] United Nations Conference on Trade and Development, *Impact on Businesses and Policy Responses: COVID 19 and E-commerce* (2020) 8.

[4] OECD (n 1).

[5] Anne Salaiin, 'Consumer Protection Issues' in Ian Walden and Julia Hornle, *E-Commerce Law and the Practice in Europe* (Woodhead Publishing 2001) 1.

security of their transactions and create related privacy issues.[6] The ubiquitous information network infrastructure, particularly the Internet, also creates challenges in determining the applicable law and jurisdiction.[7] Additionally, the changes in technology expose vulnerable consumers to various risks due to their age, disability, minority and other recognizable disadvantageous positions.[8]

Ethiopia's legislative intervention through the Electronic Transaction Proclamation (ETP)[9] for the regulation of e-commerce in general and consumer protection in particular is an important measure that resolves the ambivalence that pre-existed its promulgation. The Proclamation, inter alia, deals with the applicability of the law in e-commerce,[10] the functional equivalence of electronic transactions (e-transactions) to paper-based transactions,[11] the rules governing e-communications,[12] the extent of liability of intermediaries,[13] the rules on consumer protection,[14] the duties of e-commerce operators, e-commerce platform operators and e-commerce intra-platform operators, and the dispute settlement mechanisms to be adopted in e-commerce.[15] Having this background at foot, this article discusses the notion of consumer protection in E-commerce in general in the first section and critically analyzes the Consumer protection rules in the ETP. For the purpose of this article, e-commerce law and the ETP are interchangeably used to mean the same thing. Finally, it recaps on concluding and recommendatory remarks.

2. General Overview of Consumer Protection in E-Commerce

2.1. The Notion of E-commerce and Consumers

In history, it is documented that formation of contracts through telegraph and telephone around the mid-1800s has marked the emergence of e-commerce.[16] Business-to-Business (B2B)

[6] Wenette Jacobs, 'The Electronic Communications and Transactions Act: Consumer Protection and Internet Contracts' [2004] 16 S Afr Mercantile LJ 556, 556.
[7] Faye Fangfei Wang, *Law of Electronic Commercial Transactions* (2nd edn, Routledge, 2014) 32.
[8] Mary O'Hara, 'Forward' in Christine Riefa and Séverine Saintier, *Vulnerable Consumers and the Law* (Routledge, 2021) 1, xiv.
[9] *Electronic Transaction Proclamation*, Proclamation No. 1205/2020.
[10] ibid., Art.3/1/B.
[11] ibid., Arts.7-18.
[12] ibid., Arts.19-22.
[13] ibid., Arts.23-27.
[14] ibid. Arts. 28-34.
[15] ibid., Arts.41-42.
[16] Alan Davidson, *The Law of Electronic Commerce* (Cambridge University Press, 2009) 1.

communications with a closed system of Electronic Data Interchange (EDI) technology and the practice of electronic fund transfers under protocolled and closed private networks commonly known as "VPNS" took this root in the 1970s.[17] The existing Internet-leveraged commercial e-commerce volume is an extension of these developments.[18] E-commerce also covers telex, fax, SMS, LAN, and any communication of connected computers.[19] The changes in Information Communication Technology (ICT) do not affect it to the extent it is electronic.[20]

There is no universally-accepted definition for the term "e-commerce".[21] The World Trade Organization (WTO), the United Nations Commission on International Trade Law (UNCITRAL), the Organization For economic Cooperation and development (OECD) and the International Chamber of Commerce (ICC) are some of the international organizations that defined e-commerce.[22] These institutions generally view any commercial transaction that involves all or some electronic media as e-commerce.[23] Poltad narrowly defines e-commerce as any commercial transaction conducted through digital communications.[24]

Currently, the Internet, which is an open network, is central to e-commerce.[25] It enables consumers to virtually and instantaneously exchange information to optimize their electronic market (e-market) demands.[26] Facebook, Google, Pinterest, Alibaba Group and Amazon are lucrative within this e-marketplace.[27] The electronic facilities in this market include, but not limited to, e-mail, listserv, telnet, internet relay chat, Usenet news groups, FTP, gopher and the web.[28] It is within this general framework of e-commerce that this Section explores the essence of consumer protection and the legal response.

Similarly, there is no uniform definition of consumers applicable across all jurisdictions.[29] It is customary for laws to define a "consumer" as a person who engages in purchase of goods

[17] Chris Reed, 'Electronic Commerce' in Chris Reed (ed) *Computer Law* (7thedn, Oxford University Press, 2012) 267.
[18] ibid.
[19] Paul Todd, *E-Commerce Law*, (1 edn, Cavendish Publishing Limited, 2014), 59.
[20] ibid.
[21] Alan (n 16).
[22] ibid. 4.
[23] Poltad (n 19) 41.
[24] ibid 59.
[25] ibid 60.
[26] Cristina Coteanu, *Cyber Consumer Law and Unfair Trading Practices* (1stedn, Markets and the Law, Geraint Howells (ed), Routledge) 38.
[27] Efraim Turban, David King Jae Kyu Lee, Ting-Peng Lian G and Deborrah C. Turban, *Electronic Commerce: A Managerial and Social Networks Perspective* (8thedn, Springer International Publishing Switzerland, 2015) 10.
[28] Cristina (n 26) 27.
[29] ibid.

and services for private consumption or in non-commercial capacity.[30] In matters under its coverage, the European Union (EU) Directive on Consumer Rights (CRD) recognizes natural persons acting out of their trade, business, craft or profession, or those engaging partially within and partially out of their trade and trade purposes as consumers.[31] Similarly, the South African electronic communication and electronic transaction act (SAECETA), defines a consumer as "any natural person who enters or intends entering into an e-transaction with a supplier as the end user of the goods or services."[32]

The term consumer in the United Nations (UN) Guidelines also refers to natural persons of any nationality, acting primarily for personal and household purposes.[33] Member countries are, however, allowed to adopt different definitions to meet domestic needs.[34] As seemingly implication of this discretion, Australia regards any customer of financial services worth less than forty thousands of AUD as a financial consumer.[35] If the financial service involves transaction of more than forty thousand AUD, the Australian law extends the definition of consumer upon customers who ordinarily obtain the services for personal or domestic or household uses, or consumption and small businesses acquiring such services for business use and/or consumption.[36] In most contemporary legal systems, small businesses, due to their weak positions, are increasingly being considered as consumers.[37]

Consumers can still be understood as average and vulnerable consumers.[38] The traditional neo-classical economic theory claims that consumers are rational to make decisions depending on the presence of all relevant information in the market.[39] Regulatory intervention through consumer laws is needed to fill market failures in the provision of information and consumers whose information barrier is avoided through disclosure rules are average consumers.[40]

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[30] Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union* (Routledge, 2011) 10.
[31] *European Union Consumer Rights Directive*, Directive No 83 (2011) recital 17.
[32] *South African Electronic Communication and Electronic Transaction Act*, No. 25/2002, Sec. 1/2.
[33] General Assembly, *United Nations Guidelines for Consumer Protection* (UNCTAD/DITC/CPLP/MISC/2016/1), (2015), Art. II/3.
[34] ibid.
[35] Andrew D. Schmulow and James O'Hara, 'Protection of Financial Consumers in Australia' in Tsai-Jyh Chen (ed), *An International Comparison of Financial Consumer Protection* (Springer, 2018) 31.
[36] ibid.
[37] Christina (n 26) 45.
[38] Tesfaye Neway, *Aspects of Law and Economics in Competition and Consumer Protection* (Addis Ababa, 2013) 240.
[39] Christine Riefa and Harriet Gamper, 'Economic theory and consumer vulnerability: Exploring an uneasy relationship' in Christine Riefa and Séverine Saintier, *Vulnerable Consumers and the Law, Markets and the Law Series* (Routledge, 2021) 52.
[40] ibid 54.

According to the school of behavioral economics, some consumers do not, however, behave rationally.[41] These groups of consumers are considered more vulnerable than their counter average consumers for flaws in their cognitive capacity and personal situations.[42] Vulnerable consumers are those whose decision-making power is compromised as a result of discrimination, disability and other reasons.[43] The UN Guidelines,[44] the EU Unfair Commercial Practices Directive (UCPD),[45] and the OECD Recommendations on Consumer Protection in E-commerce[46] recognize vulnerable consumers for special considerations.

2.2. Rationales for Consumer Protection in E-Commerce

Consumer confidence is at the core of success in e-commerce.[47] E-marketplace is unable to keep this core value intact for its failure to discipline the noble risks to consumers.[48] This proves the imperfection of the e-market, which necessitates regulatory interventions.[49]

2.2.1. Loss of trust in e-transactions

E-transactions are carried out between parties who do not exactly know each other.[50] The substitution of physical contacts with electronic take-turns puts consumers in positions in which they cannot touch and feel goods sold online and gauge voices, feelings and other forms of human reactions.[51] It is this feature of the electronic environment that creates a sense of insecurity.

i. Virtual organization of e-market actors

Websites help to easily reach millions of internet users without having physical presence within the jurisdiction of a country where the consumers reside, or with a server located out of such

[41] ibid.
[42] Christine Riefa and Séverine Saintier, 'In Search of (Access to) Justice for Vulnerable Consumers' in Christine Riefa and Séverine Saintier, *Vulnerable Consumers and the Law, Markets and the Law Series* (Routledge, 2021) 31.
[43] Robin Simpson, 'A universal perspective on vulnerability: International definitions and targets' in Christine Riefa and Séverine Saintier, *Vulnerable Consumers and the Law, Markets and the Law Series* (Routledge, 2021) 82.
[44] UN Guidelines (n 33).
[45] *The European Union Unfair Commercial Practices Directive*, No. 29/2005), Art.5.
[46] OECD, *Recommendations for Protection of Consumers in E-commerce* (2016).
[47] Thomas T Reith II, 'Consumer Confidence: The Key to Successful E-Commerce in the Global Marketplace' [2001] 24 Suffolk Trans Nat'l L Rev 467, 475.
[48] Cristina (n 26) 64-65.
[49] ibid 67.
[50] Rana Tassabehji, *Applying E-Commerce in Business* (SAGE Publications Ltd, 2003) 37.
[51] ibid.

jurisdiction.[52] E-communications facilitate instantaneous communications and efficient computations as between electronic vendors (E-vendors), e-platform operators, consumers and other actors.[53] This creates a favorable condition for consumers to actively participate in e-transactions.[54] A report that Ebay issued, revealed that consumers from India had used its platform to import goods from 141 countries.[55] For the reasons that e-vendors can make changes on their web-pages any time,[56] or misrepresent or conceal their real identity,[57] it is difficult for consumers to identify dishonest e-vendors from the genuine ones.[58]

ii. Privacy issues

Innovations in formation of big data are reported for their role in the dwindling privacy of consumers.[59] Billions of websites are indexed through search engines of Google such as: spiders, robots and wanderers, to manage trillions of inquiries.[60] Individuals may find their 'digital persona' on the web if they make searches to their names using these search engines.[61]

Without any prior consent from data subjects, consumer preferences, purchases, interests and other related data are tracked down for various subsequent functions.[62] Electronic traders (e-traders) are nowadays deepening their pockets through collecting consumers' personal data in explicit and implicit ways.[63] Explicit methods of personal data collection involve consumers' engagement in registration at e-commerce platforms through provision of personal information, filling forms of similar functions and through taking part in online contests while information tracking instruments, such as cookies and web bugs, are implicitly employed to collect personal information of consumers.[64] Both cookies and web

[52] Cristina (n 26) 77.
[53] Jorg Binding and Kai Purnhagen, 'Regulations on E-Commerce Consumer Protection Rules in China and Europe Compared - Same but Different' [201] 2 J Intell Prop Info Tech & Elec Com L 186, 189.
[54] Ashok R Patil and Pratima Narayan, 'Protection of Consumers in Cross-Border Electronic Commerce' [2014] 2 IJCLP 59.
[55] ibid.
[56] Cristina (n 26).
[57] James P Nehf, 'Borderless Trade and the Consumer Interest: Protecting the Consumer in the Age of E-Commerce' (1999) 38 Colum J Transnat'l L 457, 462.
[58] ibid.
[59] Rita S Heimes, 'Privacy and Innovation: Information as Property and the Impact on Data Subjects' [2015] 49 New Eng L Rev 649, 657.
[60] Alan Davidson, *Social Media and Electronic Commerce Law* (2nd edn Cambridge University Press, 2016) 94.
[61] Ibid.
[62] Ida Madieha Azmi, 'E-Commerce and Privacy Issues: An Analysis of the Personal Data Protection Bill' (2002) 16 Int'l Rev L Computers & Tech, 317, 318.
[63] Jehirul Islam, 'Consumers' Data Privacy in E-Commerce: Concerns, Legal Issues and Challenges' [202] 10 GNLU JL Dev & Pol 77, 80.
[64] ibid.

bugs are designed in a way they can surreptitiously record various appearances of users on the web.[65]

Predictive analytics may also be made by virtual merchants using the personal preferences of consumers.[66] In fact, it is not individual preferences of consumers, but a combination of many customers' previous history, which may be amassed and analyzed to prepare the predictive analytics model.[67] This model helps businesses sell personal data of customers for future commercial gains.[68] A fierce competition between e-businesses is created, which is what Shoshana Zuboff calls "surveillance capitalism", which is a new economic order that vows human experience as free raw material for translation into behavioral data that can be transformed into proprietary behavioral surplus.[69]

iii. Electronic payment issues

Consumers use digital wallets, new payment systems, crypto-currencies and unregulated financial institutions in their purchases.[70] They demand sufficient guarantee to confidently engage in such transactions.[71] Their confidence is mainly built upon the existence of secured payment system, affordable electronic payment (e-payment) instruments and adequate mechanism of ensuring e-payment system and neutralizing e-payment risks backed by legal provisions.[72]

The security of e-payment systems might be endangered with human intervention or technological default.[73] Through interception of payment card details,[74] hackers make unauthorized payments for their own purchases.[75]

Fraudulent e-vendors also engage in legitimate business practices, such as businesses facilitating online auctions, to collect money from consumers and disappear without delivering

[65]Alen (n 60) 99.
[66] Spencer, S. B., 'Privacy and Predictive Analytics in E-commerce' [2015] 49 New England Law Review 101, 111.
[67] ibid.
[68] ibid.
[69] Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Hachette Book Group, 2019) 14.
[70] Mark E. Budnitz, 'Principles and Programs to Protect Consumers from the Deleterious Effects of Technological Innovation', in Dan Wei, James P. Nehf, and Claudia Lima Marques (eds) *Innovation and the Transformation of Consumer Law: National and International Perspectives* (1stedn Social Sciences Academic Press, 2020) 13.
[71] ibid.
[72] Cristina (n 26) 91.
[73] ibid.
[74] Poltad (n 19) 205.
[75] ibid.

the merchandise.[76] On the other hand, payment card details are collected by sham websites not to directly settle in the accounts of consumers.[77] A sham trader in the course of its transactions with legitimate traders makes use of the stolen credit card details but effects purchases from its account.[78] The credit details of consumers simply enable bogus businesses to compete as genuine as they are with reputable business operating on websites of similar functions.[79] Besides, it is equally important to raise accessibility challenges of e- payment methods to vulnerable consumers.[80]

2.2.2. Information asymmetry

Information asymmetry exists when there is a knowledge divide between a consumer and trader over a product or service on which the later has control.[81] It is more practiced in e-commerce.[82] Information is central to informed choice and decision making by consumers in light of their social, ethical, health, environmental and economic realities.[83] Frustration of consumers begins with loss of trust in their transactions with e-vendors for reasons of privacy, payment, and other technical issues.[84] This can be seen as one aspect of information asymmetry. Mostly, information asymmetry is, however, created in the forms of non-disclosure of information, misleading online advertisements and spams.[85]

i. Non-disclosure of information

The failure of e-traders to place the required information on their e-communication tools refers to the notion of non-disclosure.[86] Information may be deemed undisclosed when: (1) it is not granted to consumers or is not communicated at all, and (2) an improper way is used to disclose the information.[87] In the first scenario, e-vendors are required to make a reasonable list of

[76] ibid.
[77] ibid 206.
[78] ibid.
[79] ibid.
[80] Sabrina Rochemont, 'Payments Revolution Towards Financial Exclusion or Inclusion?' in Cătălin-Gabriel Stănescu and Asress Adimi Gikay (eds) *Discrimination, Vulnerable Consumers and Financial Inclusion: Fair Access to Financial Services and the Law* (Routledge Research in Finance and Banking Law Series, 2021) 116.
[81] Cristina (n 26) 116.
[82] United Nations Conference on Trade and Development, Trade and Development Board, Trade and Development Commission, 'Intergovernmental Group of Experts on Consumer Protection Law and Policy Second session' (Geneva, 3-4 July 2017) 4.
[83] Alina Popescu, 'The Evolution of the Right to Information of the Consumer: References to European Policies and Legislation with Effects on Internal Law' [2018] 4 JL & Pub Admin 77, 81.
[84] Cristina (n 26) 138.
[85] ibid 124-160.
[86] ibid.
[87] ibid.

information which may, among others, include the identity of the e-vendors, the characteristics of goods or services, the terms and conditions of the transactions and other details.[88] This aspect of disclosure mainly involves what to disclose.

In the second scenario, non-disclosure is associated with the way information is presented.[89] Consumers may face challenges from the medium in which information is stored,[90] the technical and legalese nature of the language.[91] Generally, information asymmetry may happen if the information is not presented in an accessible, conspicuous, clear and intelligible manner.

ii. Misleading online advertisements and spams

The role of advertising in shaping the behavior of consumers and their preferences towards goods and services is not subject to debate.[92] Nowadays, countless Internet users are easily reached through online advertisements.[93] Advertisers target consumers through social media platforms, search engines, pop-up ads, visual and banner ads.[94]

The obscurity of a message in online advertisement is central in analysis of information asymmetry.[95] An information asymmetry comes to picture if the online advertisement contains inaccurate, ambiguous and incomplete commercial information about the goods or services, it promotes.[96] Besides, spams may be used to reach consumers in a misleading way.[97]

2.2.3. Unequal bargaining power

The notion of unequal bargaining power is traditionally recognized as a discrete rationale for consumer protection.[98] The new electronic environment has transposed the usual powerless position of consumers into more powerless situation.[99] The concept of unequal bargaining

[88] David Waite, 'Consumer Protection Issues in Internet Commerce' [1999] 32 Can Bus LJ 132, 135.
[89] Cristina (n 26) 125.
[90] ibid.
[91] Mark (n 70).
[92] Jan W. Wiktor and Katarzyna Sanak-Kosmowska, *Information Asymmetry in Online Advertising* (Routledge Studies in Marketing, Routledge, 2022,) 543.
[93] Kanchana Kariyawasam & Shaun Wigley, 'Online Shopping, Misleading Advertising and Consumer Protection' [2017] 26(2) Information and Communication Technology Law 3.
[94] ibid.
[95] Jan and Katarzyna (n 92) 66.
[96] ibid.
[97] Cristina (n 26) 141.
[98] ibid.
[99] Ajar Rab, 'Smart Contracts &Block chain: The Panacea to the Unequal Bargaining Power of Consumers?' [2020] 8 IJCLP 40, 42

power is described in terms of unfair online standard contracts and ineffective online dispute resolution (ODR) redress packages.[100]

i. Unfair online standard contracts

Online standard contracts do not grant consumers a latitude to negotiate on the terms.[101] They are mass contracts addressed to consumers of anywhere, regardless of national legal systems.[102] It is of practical necessity or no choice for consumers to adhere to such unilaterally designed terms and conditions on a 'take or leave it' basis.[103] Shrink-wrap, click-wrap and browse-up agreements epitomize online mass contracts.[104]

E-vendors approach consumers to adhere to wrap contracts, the terms of which may appear in a scroll box or behind a hyper link, on several pages or all on one page.[105] Consumers may also be requested to click on 'accept button' to show assent or their continued use may be deemed as acceptance.[106] In case, online contracts founded on early objectives of software companies to combat unauthorized copies of their software sales through wrap licenses are nowadays used to check e-mails, purchase products, download music and join social networking sites.[107]

Shrink-wrap agreements represent binding terms and conditions of a purchase enclosed in a container of the product unless the consumer objects to it before using or accessing the product.[108] Browse-wrap agreements are in most cases placed at the bottom of the website under which use of the site presumes consent to the agreements.[109] Click-wrap agreements are formed on the basis of user-consent to click on 'I agree' boxes or click on an acceptance icon.[110] In click-wrap agreements, it is hardly for users to access goods and services without compliance

[100] Cristina (n 26) 45.
[101]Aonghus McClafferty, 'Effective Protection for the Consumer in Light of the Consumer Rights Directive' [2012] 11 Hibernian LJ 85, 118.
[102]Immaculada Barral, 'Consumers and New Technologies: Information Requirements in E-Commerce and New Contracting Practices in the Internet' (2009) 27 Penn St Int'l L Rev 609, 621
[103] Ajar (n 99) 45.
[104] Roy J. Girasa, 'Click-Wrap, Shrink-Wrap, and Browse-Wrap Agreements: Judicial Collision with Consumer Expectations' [2002] 10 Ne J Legal Stud 102, 103-116.
[105] Nancy S. Kim, '*Wrap contracting and the online environment: Causes and cures'*, in John A. Rothchild (ed) Research Handbooks in Information Law Series (Edward Elgar Publishing Limited, 2016) 11.
[106] ibid.
[107] ibid.
[108] Batya Goodman, 'Honey, I Shrink-Wrapped the Consumer: The Shrink-Wrap Agreement as an Adhesion Contract' ([999] 21 Cardozo L Rev 319, 32.
[109] Ian Rambarran & Robert Hunt, 'Are Browse-Wrap Agreements All They Are Wrapped up to Be' [2007] 9 Tul J Tech & Intell Prop 173, 174.
[110] Roy J. Girasa (n 104) 109.

with 'click on' prescriptions.[111] Despite validity controversies, business-to-consumer (B2C) and consumer-to-consumer (C2C) transactions are reported to mainly depend on these models.[112]

Contemporary developments of e-commerce, however, depict that the standardization of online contracts has gone far from 'point and click' to the era of 'go and touch' and probably to a period of 'touch and talk'. Whereby computer brains autonomously function to form and enforce electronic contracts.[113] It has now been custom of the electronic community under which consumers and e-vendors entrust their respective tasks to electronic agents to initiate commercial transactions.[114] Some cyber scholars call this tradition of e-contracting through electronic agents as smart contract,[115] which is probably best suggested technological solution to avoid unequal narratives between consumers and businesses.[116] In fact, smart contracts or electronic agent-mediated contracts are neither considered as standard form contracts nor are contracts at all by some other writers.[117] They are rather understood as computer programs written and coded with predefined interests of traders and consumers to facilitate sales and purchases.[118] Nevertheless, automated commercial communications have still continued to challenge the bargaining power of consumers for many reasons attributable to technological defects of purchase machines, reduced technical capacities of consumers and their knowhow as regards vending machines.[119]

ii. Ineffective redress mechanism

The traditional consumer litigation practice is blameworthy for its failure to provide an effective redress scheme.[120] Ordinary consumers without legal expertise and knowhow of the complex court procedures are not psychologically and economically interested to confront businesses of huge economic power for low-value claims in lengthy process and costly dispute

[111] ibid.
[112] Nancy (n 105) 10.
[113] Christiana N. Markou, *Consumer Protection, Automated Shopping Platforms and EU Law*, (Routledge, 2020), 73.
[114] Cristina (n 26) 160.
[115] Mateja Durovic & Franciszek Lech, 'The Enforceability of Smart Contracts' [2019] 5 Italian LJ 493, 495.
[116] Ajar (n 99) 46-49.
[117] Mateja & Franciszek (n 115).
[118] Zach Smolinski, 'Smart Contracts' [2021] 17 NYU JL & Bus 704, 706-708.
[119] Cristina (n 26) 70.
[120] Sutatip Yuthayotin, Access *to Justice in Transnational B2C E-Commerce* (Springer 2015) 37.

resolution facilities.[121] A common understanding is reached as between consumer law scholars that consumers do not use the regular litigation channel.[122]

Alternative schemes, including administrative measures and direct negotiations[123] and alternative dispute resolution (ADR) services in online platforms, are best advocated for resolution of consumer disputes.[124] Nevertheless, the faceless communication as an impediment to effective communication, language barriers, the asymmetry in comprehension and use of technologies still remain to be challenges to ODR processes.[125] The knowledge divide in utilization of the technology especially puts consumers in risky position in which wealthy e-businesses capitalize on the gaps to exploit business inexperience of consumers.[126]

2.3. Forms of Protection

Cyber scholars who recognize Internet users as 'netizens'(citizens of the Internet world) and advocate 'netiquettes' (self-imposed rules) applicable to them in disregard of state regulation, contend that consumers should compete in the information super highway to help themselves unless the Internet community designs technical and technological solutions in their favor.[127] In fact, it is undeniable that encryption and digital signature, as boons of technology, have long been source of confidence as between e-contracting parties.[128]

These days, the international community is however working on the need for cooperation to issue an international internet law underpinning technical measures with a view to governing the cyberspace to which consumer protection laws are no exceptions.[129] As preexisting efforts of this big project, countries are already in active role for legislative responses tailored to range of consumer problems in the e-marketplace.[130] Accordingly, this section identifies common forms of protection in light of legislative responses.

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[121] ibid.
[122] ibid.
[123] ibid.
[124] Nandini CP, 'B2C E-Commerce and Consumer Protection with Special Reference to India - ADR a Best Possible Solution' [2018] 6 IJCLP 74, 85.
[125] Pablo Cortés (n 30) 157.
[126] Amy J. Schmitz, 'Building Trust in Ecommerce Through Online Dispute Resolution' in John A. Rothchild (ed), *Research Handbooks in Information Law Series* (Edward Elgar Publishing Limited, 2016) 308.
[127] Cristina (n 26) 8.
[128] Poltad (n 19) 111.
[129] Joanna Kulesza, *International Internet Law* (Magdalena Arent and Wojciech Wołoszyk – IURIDICO – Legal Consultancy & Translations, Routledge, 2012) 127
[130] Poltad (n 19) 14.

2.3.1. Ex ante measures

Consumers should adequately be protected in all stages of their contractual relations with e-businesses.[131] Ex ante measures are protective measures of consumer laws at pre-contractual and contractual levels.[132]

i. Information disclosure

Legislative prescription on information disclosure is a basic tool of consumer protection.[133] Information disclosure can be either substantive or formal. Substantive information disclosure in the OECD framework includes information about the business,[134] goods and services, digital content and services[135] and the transaction.[136] By formal information disclosure, the OECD framework mandates businesses to disclose information in a plain language, clear, accessible, accurate, and conspicuous manner in a way consumers can easily understand and retain the full record of the transaction.[137] Businesses are duty-bound not to engage in unfair commercial and contractual practices and not to disregard the special needs of vulnerable consumers.[138] Consumers should also be equipped with easy procedures to reject or accept spams.[139]

ii. The withdrawal mechanism

The withdrawal mechanism forms part of the protective measures of increased legislative interventions.[140] It grants consumers a relatively short cooling-off period to rethink of confirmed purchases and to withdraw, if they feel that their decision is wrong.[141] It is a legislative entitlement in the discretion of consumers to use and is meant for avoiding harms flowing from hastily made transactions.[142]

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[131] Jorg and Kai (n 53) 192.
[132] Ahmad Alhusban, *The Importance of Consumer Protection for the Development of Electronic Commerce: The Need for Reform in Jordan* (PhD in Law Thesis, 2014) 97.
[133] ibid 98.
[134] OECD Recommendations (n 46) Principles 28-30.
[135] Ibid principles 31-32.
[136] ibid principles 33-35.
[137] ibid principle 25.
[138] ibid principles 13-18.
[139] ibid principle 22.
[140] Gert Straetmans, 'Introduction' in Gert Straetmans (ed) *Information Obligations and Disinformation of Consumers* (Ius Comparatum - Global Studies in Comparative Law Series, Vol. 33, Springer Nature Switzerland AG, 2019) 17.
[141] Ahmad Alhusban (n 132) 100.
[142] ibid.

What comes next to information disclosure effects and before exercise of withdrawal right is the process of confirmation which may be termed as the confirmation right of consumers.[143] The OECD Recommendations oblige businesses to give assurance as to the clarity and certainty of any step to be followed by consumers in completion of their transactions.[144] In process, consumers can take time to review their purchases, correct errors, make changes, discontinue the process or confirm the transaction.[145] It is an express consent of the consumers that initiates processing of the transaction.[146]

The culmination of this confirmation phase marks the opening of another venue for consumers to withdraw from e-transactions. In this respect, the OECD Recommendations do not put particulars in exercise of this right except its indication for mandatory inclusion of the right in the list of information to be provided for consumers if law provides so.[147]

iii. Enhancing consumer confidence through other measures

1. **Privacy protection**

Consumers need an effective legal and technological guarantee to secure their privacy.[148] Traders may use access control, information flow control filtering, and authentication and encryption technologies to protect privacy of consumers.[149] It is important to complement these technologies through legislative intervention.[150]

The OECD Guidelines for Protection of Privacy and Trans-Border Flows of Personal Data require members to adopt laws to effectively deal with and enforce privacy issues.[151] The OECD Recommendations also mandate businesses to adopt lawful, transparent, fair, consumer-participatory and safe practice for protection of consumer-data.[152]

2. **Making the e-payment system secured**

[143] Anne (n 5) 24.
[144] OECD Recommendations (n 46) principle 36.
[145] ibid principle 37.
[146] ibid principle 38.
[147] ibid principle 35 (VI).
[148] Huancheng Liu Xiaolong Liu, 'The Protection of the Privacy Right in Electronic Commerce' 21 Zhengzhou Institute of Aeronautical Industry Management, 695.
[149] ibid.
[150] ibid.
[151] Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013), guideline 19(B-C).
[152] OECD Recommendations (n 46) principle 48.

In most cases, it is a matter of national laws to provide for particular rules on security of e-payment system.[153] The OECD Recommendations empower governments and stakeholders to work on minimum levels of consumer protection across payment mechanisms and cooperate on responding to payment-related risks in various ways.[154] This could involve regulation of businesses to apply security measures against unauthorized access, or use of personal data, fraud and identity theft, use easy method of access, devise chargeback mechanisms or develop other innovative payment methods like escrow services.[155] Businesses are also duty-bound to take into account the needs of persons with disability while designing e-commerce platforms in general and online payment systems in particular.[156]

3. **Consumer education**

Consumer education helps consumers know any benefits and risks of e-commerce.[157] The OECD Recommendations require governments to educate officials, businesses and consumers on the desire for strong framework of consumer protection.[158] Governments are also required to devise effective mechanisms of awareness raising program and improve on digital competence of consumers.[159]

2.3.2. Ex post measures

Ex post measures of consumer protection denote any form of dispute resolution mechanism directed at realization of effective consumer redress.[160] The notion of consumer redress ranges from general assumption of consumer-friendly justice system to specific award of compensation in e-commerce disputes.[161] In a varying degree of involvement and the nature of the measure, it is common for states to adopt criminal, administrative and private procedures to provide consumer redress systems.[162]

[153] Cristina (n 26) 54.
[154] OECD Recommendations (n 46) principles 40-41.
[155] ibid.
[156] ibid principle 24.
[157] Sue L.T. McGregor, 'Consumer Education and The OECD Electronic Commerce Consumer Protection Guidelines (Mount Saint Vincent University) 176.
[158] OECD Recommendations (n 46) principle 50.
[159] ibid principles 51-52.
[160] Sutatepe (n 120) 121.
[161] Pablo Cortés, *The Law of Consumer Redress in an Evolving Digital Market: upgrading from alternative to online dispute resolution* (1st edn, Cambridge University Press, 2018) 28.
[162] Sutatepe (n 120) 178-192.

These days, public authorities, however, highly invest on 'consumer ADR models' principally embedded in ODR strategies.[163] The term "ODR" refers to the synergy of ICT services and dispute settlement facilities for resolution of consumer disputes.[164] ODR takes form of internal and external mechanisms.[165] The process of internal ODR is controlled by the parties and a kind of this mechanism is labeled as the most popular and effective means of dispute resolution in B2C and C2C relations.[166] Direct negotiations, in-house customer satisfaction schemes and call centers are some of the effective internal complaint handling ODR products.[167] On the other hand, online arbitration, mediation, conciliation and technology assisted and third party controlled ODR represent external ODR, which is still best suited for resolution of consumer disputes.[168]

The OECD Recommendations, which enunciate the development of easy, effective, fair, timely, cheap, meaningful, transparent and accessible, in and out of court consumer dispute settlement forums, highly encourage businesses to establish charge-free internal complaint management procedures to informally handle their differences with consumers at the earliest stage possible.[169] Members are not allowed to make any limitation on choice of consumers to dispute settlement forums in their national laws.[170]

Consumers suffering from damages as a result of defective goods or damage to their device or quality compromise in their cross-border and domestic e-commerce should effectively be compensated.[171] Governments are also under obligation to develop an appropriate framework of redress for losses of consumers arising out of non-monetary transactions.[172] Besides, the OECD Recommendations encourage the joint task of government bodies, businesses, consumer organizations and other relevant bodies in ensuring effective enforcement of consumer protection.[173]

[163] Pavlo (n 161) 125.
[164] Pablo Cortés (n 30), 71
[165] ibid 60.
[166] ibid.
[167] ibid.
[168] ibid 65.
[169] OECD Recommendations (n 46) principlesv43-45.
[170] ibid.
[171] ibid principle 46.
[172] ibid.
[173] ibid principle 47.

2.3.3. Control of unfair terms and conditions

The notion of controlling unfair business practice in consumer transactions exists before, during and after conclusion of consumer contracts.[174] In this regard, by Control of unfair commercial practices, The EU unfair commercial practices directive (UCPD) in its amendment prohibits provision of search results for online search queries of consumers without clearly divulging information about paid advertisements or any payment for achieving higher ranking of products within the search results.[175] It always regards the habit of reporting consumers' reviews without employing reasonable steps for verification of original publications from the consumers or submission of fake consumer review and endorsements for promotion of products, as unfair commercial practices in online marketplaces.[176] For products offered online, failure of intermediaries to disclose whether the party using their platform is a trader or non-trader to consumers and their respective relations is material in determination of misleading practices[177] in this respect, it should be noted that the usual privilege of intermediaries not to verify contents is lifted for consumer protection purposes.[178]

The UCPD including its amendment adopts different forms of measures to curb unfair commercial practices. Member states are duty-bound to establish an effective redress mechanism with which consumers can claim compensation and termination of contracts when suffering from unfair commercial practices.[179] The UCPD empowers members to take legal actions ranging from injunctive measures to imposition of fines of no more than 2 million Euros against unfair commercial practices within their respective competent bodies.[180]

On the other hand, as Control mechanism of Unfair Contract Terms, The EU Directive on unfair consumer-contract terms declares any part of a contract that is not individually negotiated and significantly impairs the equal bargaining power, particularly to the disadvantage of consumers, as unfair.[181] The Directive mandates EU members not to give effect contracts with unfair terms.[182] With a view of discouraging contracts containing unfair

[174] Cristina (n 26) 157.
[175] UCPD, as amended in Directive No. 2161/2019, Annex I, 11A,
[176] ibid Annex 23B and 23C.
[177] ibid Art. 7/4/F.
[178] Mariacristina Zarro, 'Online Unfair Commercial Practices: A European Overview' (2021) 7 Italian LJ 201, 215.
[179] UCPD as amended (n 175) Art.11A.
[180] ibid Arts.11 and 13.
[181] EU Council, *Directive on Unfair Terms in Consumer Contracts*, 93 (1993) Art.3/1.
[182] Ibid, Art.6(1)

terms in both offline and online transactions, fines are introduced into the Directive against unfair terms in consumer-contracts.[183]

2.4. Private International Law in Consumer Disputes

The traditional connecting factors for operation of private international law rules in determination of jurisdiction and applicable law do not squarely fit in the perplexing environment of e-commerce.[184] The noble issues in this business model continue to be impediments to effective consumer protection.[185]

2.4.1. Jurisdiction issues

In assuming jurisdiction over cross-border consumer contracts, the common law tradition, which US judicial decisions influenced, has already developed the 'zippo' test and the 'effects' test to establish that the defendant owes a minimum contact in the forum state.[186] By 'zippo' test, non-resident websites in furtherance of their commercial activities in the forum states are classified into active websites doing business in the forum state, interactive websites to which consumers interact for commercial purposes, and passive websites in the forum state for sole provision of information to consumers.[187] There is zero possibility for establishing minimum contact by courts to find jurisdiction over passive websites.[188] On the other hand, courts base the intentional conduct of websites in the forum state to determine jurisdiction by the operation of the doctrine of the 'effects' test.[189]

The Brussels I Regulation in the EU model has *sui generis* rules of jurisdiction for consumer disputes.[190] The rules of the Regulation apply on consumer contracts made with a person who conducts commercial or professional activities in a member state where a consumer is domiciled, or by any means directs such activities in that member state or several other states and the contract falls within the scope of such activities.[191] The notion of commercial

[183] Directive93, (As Amended by Directive No. 2161/2019), Art.8B
[184] Lorna E. Gillies, *Electronic Commerce and Private International Law: A Study of Electronic Contracts* (Markets and The Law Series, Routledge, 2016) 3.
[185] ibid.
[186] Anna Hutchings, 'Determining Jurisdiction in Consumer Contracts: Are Consumers Being Abandoned in Cyberspace' [2010] 4 Galway Student L Rev 56, 60
[187] ibid.
[188] ibid.
[189] ibid.
[190] ibid 57.
[191] Regulation (EU) No 1215 (2012) Art. 17/1/C.

operations or professions directed to member states of consumers' domicile is deemed to have been incorporated in the regulation to accommodate new developments of e-contracting through distant communications.[192] Accordingly, the regulation employs the following techniques of jurisdiction allocation for resolution of e-commerce disputes arising out of B2C and C2C commercial relations.

In the absence of an otherwise agreement,[193] it is the discretion of the consumer to initiate proceedings in his/her own domicile or in the domicile of the other party and courts of member states are duty-bound to handle cases presented to them this way.[194] It is, however, obligatory for the other party who wishes bringing an action against the consumer to use the jurisdiction of domicile of the latter.[195]

2.4.2. The applicable law

Party autonomy plays the major role in choosing applicable law for contractual obligations.[196] The weaker party protection in consumer contracts, nonetheless, places plenty of limitations which may range from restricting the types of the applicable laws to discarding parties' choice of law at all to the full exercise of the party autonomy principle.[197]

The Rome Regulation in the EU model adopts special rules for applicable laws to contracts made between consumers and professionals under which professionals conduct their commercial activities in the state of the consumer's habitual residence or direct such an activity in a country of similar characterization and the contract results from such an activity.[198] The requirement of directing commercial activity to the country of consumers' habitual residence is strictly understood in e-communications or distance selling from the Internet to imply that professionals clearly offer their goods or services or pay search engine operators to promote their trading activities in a country where the consumers reside.[199] Provided that these requirements of the law are duly met, the Regulation approaches the special rules from two perspectives.

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[192] Francesca Ragno, *Concise Commentary on the Rome I Regulation* (2nd edn, Cambridge University Press, 2020) 114.
[193] Regulation 1215 (n 191) Art.18/3.
[194] ibid Art.18/1.
[195] ibid. Art.18/2.
[196] Zheng Tang, 'Parties' Choice of Law in Consumer Contracts' [2007] 3 J Priv Int'l L113.
[197] ibid 114-128.
[198] Regulation (EC), No 593 (2008) Art.6/1/A-B.
[199] Francesca (n 192) 118.

The autonomy of parties is given priority in so far as the agreement in their choice of law does not contravene mandatory rules of the law of the country of consumers' residence.[200] The applicable law in agreement is not automatic in that it finds no applicability unless it accords more protection for consumers than they can get from the law of their habitual residence.[201] If the assessment of the applicable law in agreement in light of the law of the country of consumers' habitual residence turns out to be negative, or nothing is said in the agreement about choice of law, it will be the law of the country of consumers' habitual residence governing default contractual relations of consumers and professionals.[202]

3. Assessment of Consumer Protection under Ethiopia's E-Commerce Law

3.1. General Remarks on Consumer Protection and the E-Commerce Law

The concept of consumer protection, which has implicitly been practiced in the legislative history of the country dating back from the era of the *Fetha Nagast* to the period of modern codification and laws thereafter, is claimed to have gained a clear recognition in the 2010 trade competition and consumer protection law, which preceded the existing Trade Competition and Consumer Protection Proclamation No. 813/2013.[203] The existing consumer protection scheme lacks adequate space for "second generation rights" which are introduced as a result of e-commerce.[204] The fundamental policy initiatives of the country in the 2016 ICT Policy and Digital Transformation Strategy lay the foundation for the legal framework on e-commerce.[205]

The general principle of Ethiopia's contracts law does not make distinction as between methods of commercial communications to make offer and acceptance.[206] To a minimum degree of tolerance, the law in this respect does not explicitly discriminate e-

[200] Regulation 593 (n 198) Art.6/2.
[201] Francesca (n 192) 121.
[202] Regulation 1215 (n 191) Art. 6/1.
[203] Elias N. Stebek, 'Consumer Protection Law in Ethiopia: The Normative Regime and the Way Forward' [2018] 41 J of Consum Policy, 2.
[204] ibid 15.
[205] Yohannes Mebrate, 'The Regulation of the Future E-Commerce and Competition', in Kinfe Michael Yilma, *The Internet and Policy Responses in Ethiopia* (vol. 3, 2020) 102.
[206] Gebrehiwot Entehawu Desta, 'Enforceability of Electronic Contracts in light of the Ethiopian General Contract Law: Appraising the Issues' [2019] Information and Communication Technology Law, 28, 51.

communications.[207] Besides, the Civil Code adopts rules for contracts between absent parties.[208] This part of the law has particularly a clear dedication for 'telephonic contracts'.[209]

The promulgation of the Ethiopia's Commodity Exchange (ECX) Proclamation in 2007, which allows the ECX and its members to conduct electronic transactions, was a breakthrough in the country's legislative measure of recognizing e-commerce.[210] This trend was taken up in the National Payment System (NPS) Proclamation, which gives legal effects to transfer of funds made electronically.[211] The adoption of the E-signature Proclamation in 2018 came in front to end the legal barriers to the validity of electronic messages in any transaction.[212] The e-transaction legislation, under which relatively detailed coverage is given to e-commerce provisions, nevertheless appears as a separate body of law for e-transactions in general and issues in e-commerce, including consumer protection. Any transaction of goods and services made via the Internet or other information networks is e-commerce by the operation of this law.[213]

3.2. The Scope of Consumer Protection in the E-Transaction Law

Apart from the general scope of e-transactions,[214] the consumer protection section of the ETP does not define its scope.[215]

3.2.1. The notion of consumers

The ETP does not define consumers, which would have provided better clarity. As a family of the existing legal system in "legislative rush and reticent lawmaking" race among various sectors for regulation of cyber issues,[216] Ethiopia's e-commerce law seems to miss the central point for its failure to define consumers, whom it protects.

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[207] Ibid.
[208] *Civil Code of the Empire of Ethiopia*, Proclamation No. 165 /1960, Art.1692/1-2.
[209] George Krzeczunowich, *Formation and Effects of Contracts in Ethiopia's Law*" (Faculty of Law, Addis Ababa University, 1983) 21.
[210] Kinfe Micheal Yilma & Halefom Hailu Abraha, 'The Internet and Regulatory Responses in Ethiopia: Telecoms, Cybercrimes, Privacy, E-Commerce, and the New Media' [2015] 9 Mizzen L Rev 108, 138.
[211] ibid.
[212] Geberehiwot (n 206) 52.
[213] ETP (n 9) Art.2/11
[214] Ibid, art.3(2)
[215] ibid Art.28-34.
[216] Kinfe Micheal Yilma, 'Between Regulatory Reticence & Legislative Rush: Internet Lawmaking in Ethiopia — Editorial Introduction, in Kinfe Michael Yilma (The Internet And Policy Responses in Ethiopia, vol. 3, 2020) 3.

This poor draftsmanship of the e-commerce law also appears to be an antecedent to the problem of identifying average and vulnerable consumers. Neither the ETP nor its specific section on consumer protection provides for any set of rules to accommodate the interests of vulnerable consumers. This is contrary to the EU model[217] and the OECD model[218].

The General Comment 2 on the Convention on the Right of Persons with Disability (CRPD) underscores the right of persons with disability to ICT as accessibility precondition for persons with disability to fully and independently participate in e-transactions.[219] As Ethiopia is party to the Convention,[220] the ETP should have at least been drafted considering the special needs of persons with disability as consumers.

Equally important is the need for establishing the relations of consumers with the other party. The other party is understood as a trader who is a natural or legal person professionally acting in his private capacity or through agents in any form of commercial establishment.[221] In general terms, the OECD Recommendations considers the other party as a business in its commercial connections with consumers in the e-marketplace and businesses facilitating C2C transaction.[222] Regarding C2C e-transactions, consumer protection laws do not govern an ordinary relation of consumers.[223] They rather regulate C2C relations through proprietary platforms pursuing their commercial activities in sole facilitation of e-offers from consumers directed to consumers visiting such platforms.[224]

The ETP is hazy in stating forms of commercial relationships in which consumers engage. In an interview made with the Director of Legal Affairs Directorate at MInT,[225] this writer learnt that the term 'e-transaction' in the whole body of the ETP is intentionally chosen as an umbrella clause to cover any aspect of consumer transaction, which includes by extension, any form of B2C and C2C consumer relations. To relate this intention of the drafters to the words of the law, the type of consumer relationship we find in the ETP is the consumer-supplier

[217] EU CRD (n 31).
[218] OECD Recommendations (n 46) principle 23.
[219] The United Nations on Committee on the Rights of Persons with Disabilities, Eleventh session, *General Comment No 2* (Article 9 accessibility) 2014, 2
[220] *The Convention on the Right of Persons with Disability Ratification Proclamation*, Proclamation No. 676/2010.
[221] EUCRD (n 31) Art.2/2.
[222] OECD Recommendations (n 46) The Preamble.
[223] Christine Riefa, 'Consumer Protection and Online Auction Platforms: Towards a Safer Legal Framework' in *Markets and the Law Series* (Ashgate Publishing, 2015),24.
[224] ibid 25.
[225] Interview with Ato Ayaleneh Lema, Director of the Directorate of Legal Affairs in MIT), (on the date of November 14, 2021, at 10:30-11:23).

relationship.[226] The term supplier is not defined in any part of the Proclamation. It is now the question of whether any supplier in any of its e-transaction with consumers falls within the regulatory provisions of the Proclamation in its consumer protection section.

Under the ETP, we have e-commerce operators[227] and e-commerce platform operators[228] that may potentially be acquainted with the status of 'suppliers'. E-commerce operators are e-traders selling goods or providing services through the Internet or other information networks.[229] E-commerce platform operators are also understood to mean legal entities, who in e-commerce, supply online sites for other traders wishing to independently engage in business operations, match-making, information release and other services.[230] Unless a supplier is understood in reference to e-commerce platform operators, the use of the ETP consumer provisions not to cover any harm of consumers with ordinary sellers as suppliers would be against the very essence of consumer protection law. Therefore, it can be said that the words of the law, at least, show that e-commerce operators and e-commerce platform operators as suppliers are the other parties that form commercial relationship with consumers in the parlance of the law**.**

3.2.2. Defining consumer contracts

The quintessential aspect of consumer contracts may be expressed in terms of contracts for the sale of goods,[231] provision of services,[232] and supply of digital contents and digital services.[233] Contracts for supply of digital content and digital services are concluded between a trader and an consumer for supply of digital contents and digital services in exchange for personal data or price.[234] This is also true of contracts concluded for delivery of goods or provision of services.[235]

The ETP does not comprehensively deal with the nature of consumer contracts, nor defines goods, services, and digital content and digital services. The general scope of ETP

[226] ETP (n 9) Arts. 28-34
[227] ibid Art.2/13.
[228] ibid Art.2/14.
[229] ibid Art.2/13
[230] ibid Art.2/14.
[231] *The EU CRD*, (as amended by Directive No 2161/2019), Art.2/5.
[232] ibid Art.2/6.
[233] Directive (EU), 770, (2019) Art.1.
[234] ibid Art.3/1-2
[235] *EU CRD-amendment* (n 231) Art. 2/5-6 and 3/A.

excludes any transaction for transfer of immovable goods,[236] which necessarily applies to transfer of such goods in e-contracts. Just to give meaning for e-contracts in light of the ETP, any contract between e-commerce operators or e-commerce platform operators as suppliers and consumers for transfer of movable goods in the language of the Civil Code for price,[237] and provision of commercialized service other than services in wage or salary for consideration within the meaning of the General Consumer Protection Law (GTCCPL),[238] may be understood as an consumer-contract. A prototype of this construction still hosts flaws from its exclusionary approach to 'personal data' as an instrument of exchange.

A similar problem is also created on contracts for the supply of digital contents or digital services. Digital content represents data which are produced and provided in digital form[239], such as audio files, e-books, video files and applications.[240] The term digital service refers to a "service that allows the consumer to create, process, store or access data in digital form, or a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service".[241] The ETP is silent on consumer-contracts for supply of digital content or digital service.

3.3. Forms of Protection in the ETP

3.3.1. Information disclosure

i. Content of the information

The ETP requires traders who wish to offer goods or services "by way of e-transaction" to provide detailed information.[242] These details mainly involve types of information to be made available and obligation of traders to give adequate opportunity for consumers to effectively optimize the information disclosed.[243]

1. Type of information to be made available

a) Information about the identity of the traders

[236] ETP (n 9) Art.3/2/D.
[237] *Ethiopian Civil-Code*, Art. 1127-1129, 2266.
[238] *The Trade Competition and Consumer Protection Proclamation*, Proclamation No. 813/2013, Art.2/2.
[239] Directive 770 (n 233) Art.2/1.
[240] ibid recital 19.
[241] ibid Art.2/2/A-B.
[242] ETP (n 9) Art.28/1-2.
[243] ibid.

The ETP requires suppliers to divulge themselves on the following details as**:**

1. The full name, electronic address: telephone number, website and e-mail address of the supplier and physical address of the supplier, which includes the place where she or he is summoned;[244]
2. For legal persons: the name of its managers, its place of registration and its registration and operation numbers;[245]
3. For a member of a commercial body, on whose behalf goods are dispatched by such a commercial body: the contact details of such a body;[246]
4. Any code of conduct subscribed by the supplier and information to consumers on how to electronically access such a code.[247]

b) Information about transaction

Suppliers are also duty-bound to provide the following information:

1. Adequate explanation of the main characteristics of the goods or services and the total price, the relevant fees and costs related to purchase of such goods or services;[248]
2. Terms and conditions of the transaction which include: method of payment, terms of agreement on warranties and methods of assessing, storing and reproducing such terms through electronic means by consumers, period for delivery of goods or rendering of services, the period and manner of accessing to electronic records by consumers, and refund, exchange and return policies of the suppliers;[249]
3. For agreements to supply goods or services on a recurrent or temporary basis: the minimum span of the agreement.[250]

c) Information on dispute settlement and security measures

The ETP obliges suppliers in respect of their payment process and personal data protection to disclose their privacy policy and security procedures to consumers.[251] It places a similar duty upon them to make information available about any "alternative code of dispute resolution" for which subscription is made.[252] The information about this code should contain all basic

[244] ibid Art.28/1(A and E)
[245] ibid Art.28/1/D.
[246] ibid Art.28/1/B.
[247] ibid Art.28/1
[248] ibid Art.28/1/F-G
[249] ibid Art.28/1/H-L.
[250] ibid Art.28/1/O.
[251] ibid Art..28/1/N.
[252] ibid Art. 28/1/M.

particulars, the whole content of the code and the method by which consumers can electronically access such details.[253]

2. Obligation to give opportunity

As part of the pre-contractual phase of consumer protection, the ETP puts additional obligation on the supplier to provide consumers with the opportunity to review the entire transaction.[254] This is a checkpoint by which the law intends to make sure whether consumers are able to fully understand the information that has been provided to them. Effective exercise of this opportunity helps consumers either rectify errors or discontinue transactions before they finally vote for orders.[255]

The ETP, however, lacks clarity on how to communicate this opportunity of consumers' right to review and check whether a supplier has carried out its responsibility. On the other hand, the right of withdrawal of consumers from transaction as a result of their opportunity to review is baffled with the traditional notion of withdrawal rights often referred to after confirmation of orders. Having regard to the circumstances in context, the term should be understood to mean a stoppage of ongoing transaction.

The ETP also misses fundamental information provision requirement in relation to cooling-off period and withdrawal rights of consumers upon suppliers. The SAECETA has a provision for information disclosure on the right to cooling-off period for consumers.[256] It is also a common feature of the OECD and EU models to envisage information disclosure obligation on the right of withdrawal. Besides, the ETP does not impose an obligation of suppliers to divulge information on interoperability, functionality and compatibility of digital content and digital services to consumers.

ii. Form of information disclosure

The consumer protection scheme of the SAECETA is highly criticized for its failure to provide for a form of information disclosure.[257] In addition to proposing legislative revision on the issue, South African scholars have resorted to developing temporal constructions in light of common principles with a view to innovating a certain form of disclosure.[258] Regardless of any

[253] ibid.
[254] ibid Art.28/2/A.
[255] ibid Art.28/2(B-C).
[256] SAECETA (n 32) Sec.43/1.
[257] Wenette (n 6) 558.
[258] ibid.

criticism towards the SAECETA, all this conundrum is imported in the consumer protection section of Ethiopia's e-commerce law.

It is immaterial for provision of bulk of information if it is not intelligible to its addressees. Any information shared across any electronic platform should be presented in a way that is clear and comprehensible. Proximity of the information to the product or service, language used to present the information, and accessibility issues are important considerations in determining the form of information disclosure.

In an interview with the Director of the Legal Affairs Directorate at MInT,[259] though it was possible to know that a draft directive on consumer protection has been tabled for approval, the institution was not willing to share the draft work for reference. This writer is not, thus, sure whether the draft works would have answered problems in relation to form of information disclosure.

iii. The medium of information disclosure

In terms of the medium used for information disclosure, the ETP provides that suppliers should publish the information about goods and services in a website where such goods for offer are hosted.[260] In its section where e-transaction is defined, it is indicated that computer mediated networks including mobile phones and other devices may be utilized to conduct e-business which inter alia comprises of e-commerce.[261]

Mobile phones and other networking devices may be in place to display websites of such purpose. The consumer protection regime of the ETP is silent on the caveat of the networking devices in their capacity to display the information in a clear and legible manner. The capability of devices' effective disclosure of information may be challenged by their small screens or other technological limitations. Similarly, the very design of the website itself could be of limited space to display all the required information once. Information asymmetry resulting from such inconveniences hampers the decision-making power of consumers. The ETP does not prescribe rules for appropriateness of the media for effective information disclosure.

The ETP is not also clear whether suppliers can devise telephone calls, e-mail offers and social media sites to reach out consumers. We do not also have rules on the durability of the media at all.

[259] Ayaleneh (n 225).
[260] ETP (n 9) Art.28/1, The first paragraph.
[261] ibid Art.2/19.

Generally, the information disclosure aspect of the ETP requires rigorous consideration. As information disclosure rules of the GTCCPL are designed in response to brick-and-mortar B2C relations.[262] They cannot be of much help to fill in the gaps. In respect of these many issues, the need for legislative revision is thus imperative.

3.3.2. The right to withdrawal

The right of withdrawal is a right of consumers through which they can decide to walk away from contracts they concluded under some conditions. This right is introduced in the ETP in two ways, i.e. for non-compliance of suppliers with their information disclosure obligations,[263] and without any reason.[264] The prototype of a withdrawal right to be exercised without reason in the SAECETA is recognized as the right to cooling-off period,[265] while a kind of such distinction is not made in the provisions of CRD in the EU model.[266]

i. The scope of withdrawal right

Withdrawal rights basically have two limitations. In this paper, these limitations are called 'time limitations' and "exclusion limitations". By time limitations, consumers are limited by time to benefit from withdrawal rights. As their name indicates, they are benefits of consumers that expire after a certain period of time prescribed by law. On the other hand, certain goods or services are left out of the application of withdrawal rights through exclusion limitation. Exclusion of goods or services from the scope of withdrawal rights takes place for various policy and practical reasons.

We have two forms of time prescriptions within which consumers can withdraw from contractual obligations. These are 7-days,[267] and 14-days[268] time prescriptions. A period of 14 days is granted to consumers to unilaterally rescind their contracts with suppliers if the contract is concluded in violation of suppliers' information disclosure obligation.[269] This period is calculated from the time when the consumer receives the goods or the services. As regards the burden of proof on facts of non-compliance of the suppliers with mandatory information disclosure rules, the ETP has nothing to say. In this respect, the legislative practice of the EU

[262] *The Trade Competition and Consumer Protection Proclamation*, Proclamation No. 813/2013, Art. 14-18.
[263] ETP (n 9) Art.28/3.
[264] ibid Art.29/1.
[265] SAECETA (n 32) Sec.44/1.
[266] EU CRD (n 31) Art. 9-16.
[267] ETP (n 9) Art. 29/1.
[268] ibid Art. 28/3.
[269] ibid.

model shows that the obligation to prove compliance with information disclosure requirements lies on traders.[270]

As to the other form of time limitation, the ETP provides consumers with a right of withdrawing from any e-transaction or supply of credit agreement without any reason within a period of 7 days to be calculated from the time of receipt of the goods or beginning to receive services.[271] The transaction in supply of credit agreement is omitted from a similar provision of the Amharic version. It is not clear whether it was intentional. Similarly, despite the caption on termination of the contract, the content of the provision for exercise of such withdrawal right is designed in a way it embraces cancellation of the entire electronic transaction. Confusions in use of the terms may complicate the practical application of the right.

In addressing questions from members of the standing committee of the HPR, the drafters clarified that consumers who received defective goods can make use of this time limit to cancel their contractual obligations.[272] This poses the question as to how two consumers with and without reason can benefit from a similar provision. Let alone for their delivery of defective goods, suppliers are punished by unilateral cancelation of their contracts by consumers within 14 days of after the delivery time, for mere non-compliance with information disclosure provisions of the law.[273] It is with this understanding that the draft ETP came out as law. This general assumption of the lawmaker does not however go in line with the need for making difference between 7 and 14 days' period of time limit to rescind contracts and in light of the rationales for cancelation of contracts without and with reasons.

An exclusion limitation is commonly practiced in consumer legislations. In the SAECETA, the cooling-off period for the exercise of withdrawal rights does not apply, among others, to goods which are made to consumers' specifications, are clearly personalized, are perishable or cannot be returned by their nature, or lose their utility rapidly.[274] Transactions for sale of goods through auction, newspaper, magazines, periodicals and books are similarly excluded from the cooling-off period for withdrawal rights.[275] On the other hand, the SAECETA lifts the application of withdraw rights within the cooling-off period from certain categories of services, which include financial, investment, gaming and lottery services.[276]

[270] EU CRD (n 31) Art. 6/9.
[271] ETP (n 9) Art. 29/1.
[272] The minute with explainers (*Asrejis*) from the standing committee for human resource development and technology issues, (House of Peoples Representatives, 2020), 11.
[273] ETP (n 9) Art.28/3.
[274] SAECETA (n 32) Sec.42/2/F.
[275] ibid sec.42/1(B and H).
[276] ibid sec.42/1(A and I).

The ETP, however, adopted a different approach to limit exercise of withdrawal rights for no reason. The ETP provides that, application of the withdrawal right within 7 days takes effect 'depending on the nature of the goods'.[277] The Explanatory Notes on the ETP states that the phrase "depending on the nature of goods" is inserted to limit exercise of withdrawal rights in contract for sale of perishable goods.[278] On the session addressed to the Standing Committee on Human Resource Development and Technology Issues, the drafters of the ETP explained that the perishable nature of the goods shortens the 7-days period to 3, 2 and 1 day, as the case maybe.[279] This is nothing special from time limitation other than giving the discretion for law interpreters to shorten the time limit for withdrawal.

The 'nature of goods' approach in shortening the time limit for withdrawal may not appear sound for various justifications. For instance, some goods are made on consumers' specifications. Some goods are explicitly personalized to the consumer. In such cases, there will be no purpose to serve in granting the right of withdrawal to consumers who are fully aware.

In the other extreme, be it intentional or unintentional, a period of less than seven days limitation does not apply to service contracts.[280] This implies that consumers are at liberty to unilaterally cancel service contracts within 7 days of their access to the services. It can be said that e-contracts for services in the ETP are simply subject to time limitations, with or without reason. Conditions such as request of performance of the service by the consumer, acknowledgement of the consumer to performance of services by the trader, and omission of information by traders on existence of withdrawal rights etc. may legally be put to set aside the applicability of withdrawal rights in service contracts.[281] In our case, since it is the legislative force of the law that initiates the beginning of the performance of services, the role of any of the contracting parties to the effect of exercising withdrawal rights within the period of 7 days is irrelevant.

[277] ETP (n 9) Art.29/1.
[278] The explanatory note on the draft e-transaction Proclamation, House of Peoples' Representatives, 2020, 18.
[279] The Minute (n 272) 10.
[280] ETP (n 9) Art. 29/1, the first paragraph.
[281] EU CRD (n 31) Art.16/1/A.

ii. Effects of withdrawal right

Withdrawal ends contractual obligations.[282] Practically, the general exercise of withdrawal rights under ETP provisions does not cause penalty upon consumers.[283] In case where a consumer cancels a contract for no reason,[284] it is only the direct cost of returning the goods which is to be collected from the consumer or to be deducted from what the supplier refunds.[285] Suppliers are under obligation to refund full payment to consumers within 30 days to be counted from the date of cancellation of the contract.[286]

In the event of withdrawal for non-compliance of the supplier with the law,[287] the ETP requires consumers either to return performance of services if possible or to relinquish use of the service.[288] Consumers are entitled to full refund of what they have paid except the direct cost of returning the goods that the supplier deducts.[289] In this respect, it is not clear whether the supplier can collect a similar cost from consumer who did not affect payment to receive goods. On the same token, no period within which the supplier refunds payment to consumers is set. May we apply the 30 days' time limit which is applicable for refund of payments as a result of cancelation of contract by consumers without reason?

In both cases of withdrawal, it seems that it is the responsibility of suppliers to work on the task of returning the goods. In the law, there is no mechanism by which suppliers can be compensated for what they have performed during cancelation of service contracts. Similarly, the law has nothing to say on the fate of diminished value of goods when they are returned back to suppliers. This may cause unlawful enrichment, which is not a goal of consumer protection law.

Suppliers are under obligation to compensate any damage which may be caused to consumers for their use of insecure payment system.[290] This part of the ETP also begs the question of whether suppliers, who in non-performance of their obligations[291] or for a unilateral measure of contract cancellation by the consumer without reason,[292] refund payments are

[282] ETP (n 9) Art.28/3 and 29/1.
[283] ibid Arts.28/4 and 29.
[284] ibid Art.29/1.
[285] ibid Art.29/2-3.
[286] ibid Art.29/3.
[287] ibid Art.28/3.
[288] ibid Art.28/4/A.
[289] ibid Art.28/4/B
[290] ibid Art.28/6.
[291] ibid Art.31/3.
[292] ibid Art.29(1 and 3).

encumbered with a similar duty. This liability provision is formulated in a way it applies only to suppliers who violate their information disclosure obligations in the ETP.[293]

3.3.3. Security measures

The interplay between consumer confidence and e-marketplace remains positive if security measures are in place within the framework of both legal prescriptions and self-regulation codes.[294] Consumer protection laws develop on this thesis to furnish consumers security for their participation in e-commerce. This section highlights some of the security measures in favor of consumers under Ethiopia's e-commerce law.

i. Security of E-payment

When suppliers, whose contractual commitments are barred for their non-compliance with information disclosure requirements, defray back consumers,[295] they are duty-bound to use sufficiently secure payment system.[296] The sufficiency of the security of the payment system required by the law is measured in terms of accepted technological standards by the type of transaction concerned and at the time of the transaction.[297] The first limitation of this provision concerns its extent of applicability. The provision is formulated in a way it imposes such a duty upon only suppliers who do not comply with information disclosure rules of the law.[298]

The second problem relates to its relation with other laws. The payment system, including e-payment system, is generally governed by a separate national payment system law,[299] which precedes promulgation of the ETP. Though this Proclamation has long been criticized for its low dedication to protection of consumers in the e-payment system,[300] policy and legislative measures undergone in the area seem to have detracted such criticism.

The National Digital Payment Strategy, which has the goal of realizing the 2025 digital Ethiopia, has plenty of issues, such as interoperability of payment infrastructures, access and reliability of telecom infrastructures, payment gateways tailored to consumers and other

[293] ibid Art.28 (3 and 6).
[294] Cristina (n 26) 42-52.
[295] ETP (n 9) Art.28(3-4)
[296] ibid Art.28/5.
[297] ibid.
[298] ibid.
[299] *The National Payment System Proclamation* (The NPS-Proclamation), Proclamation No. 718/2012.
[300] Simret Zewdie Kebede, *Electronic Funds Transfer and the Case for Consumer Protection in Ethiopia* (LLM Thesis, University of Oslo, 2013) 10.

cashless innovative e-payment mechanisms and to achieve across all sectors including e-commerce.[301] As an implementing tool of this policy initiative and the specific Proclamation on NPS, the NBE has recently issued the Licensing and Authorization of Payment Instrument Issuers Directive,[302] and the Licensing and Authorization of Payment System Operators Directive,[303] with a view to ensuring, among others, effective protection of consumers across all their payment transactions. The ETP should, thus, have a clear communication to such laws with plainly identified role.

ii. Data protection

The consumer protection scheme of the ETP does not have any provision on protection of personal data of consumers. Recent reports show that the Ethiopia's government tracks the electronic communications of individuals without their knowledge.[304] This is so in the absence of a comprehensive and clear legal framework for collection, storage, dissemination and processing of personal data.[305]

The Explanatory Note developed on the ETP promises a tailored protection of personal data of consumers in a separate legislation. [306] Regardless of the specific relevance of the legislation to protection of consumers in e-commerce, the draft Data Privacy and Data Protection Proclamation contains the common details of data protection issue.[307] Till the writing up of this paper, the draft Proclamation has not yet come into effect. The consumer protection scheme in respect of this security measure will thus continue to be in vain. As a final remark, it is however important to note that, if a person who obtains the personal data of consumers in the form of electronic message is duty-bound to keep it confidentially, failure to discharge this obligation is punishable under the Criminal Code.[308]

[301] *The National Digital Payment Strategy 2021-2025* (The NBE 2021) 24.
[302] *The Licensing and Authorization of Payment Instrument Issuers Directive*, The NBE, Directive No. 01, 2020.
[303] *Licensing and Authorization of Payment System Operators Directive*, 2020, The NBE, Directive No. 002.
[304] Alebachew Birhanu Enyew, *Towards Data Protection Law in Ethiopia (*Law, Governance and Technology Series 1, Springer International Publishing AG 2016) 155.
[305] ibid.
[306] Explanatory-note (n 278) 15.
[307] Kinfe Micheal Yilma, 'Data privacy law and practice in Ethiopia' [2015] 5(3) International Data Privacy Law 177, 185.
[308] ETP (n 9) Art.43/2.

3.3.4. Containment of unfair trading practices

Unfair trading practices in respect of consumers may be manifested in terms of unfair commercial practices, unfair contractual terms and conditions and other forms of malpractices that traders may employ to influence weaker consumers. As stated in the second chapter of this paper, the EU and OECD countries have developed strong frameworks that easily contain such malpractices in the best interest of consumers.

Under the consumer protection section of the ETP, the only regulated aspect of unfair commercial practice is control of spams.[309] The ETP obliges suppliers to devise a mechanism with which consumers can make a choice to opt-out any unsolicited commercial communication from their mailing list.[310] They are also required to give details on source of consumers' personal information to direct the communications upon request by consumers.[311]

We do not find another explicit provision, which is designed to control unfair trading practices in e-commerce, unless the general non-compliance of suppliers with consumer protection section of the ETP reported by consumers to the MInT[312] is taken as an act of unfair trading. The GTCCPL has 18 list of unfair trade practices.[313] Any businessperson in violation of any one or all of these unfair practices is punishable with fine and rigorous imprisonment of no more than 5 years.[314] It is possible to use provisions of the GTCCPL to counter any non-compliance of e-traders with any of their obligations under the ETP in connection with these trading malpractices as appropriate. It is however the problem that power conflict between MInT and consumer protection entities to entertain the issues may complicate the situation. Besides, the GTCCPL does not have a mechanism of control of unfair commercial practices tailored to e-commerce.

The Advertisement Proclamation, which recognizes internet websites and telecom as media of commercial advertisements,[315] outlaws commercial advertisements through telephone against the consent of the user but in exclusion of public advertisements and advertisements of telecom service providers,[316] and dissemination of an advertisement of liquor with more than

[309] ibid Art.30.
[310] ibid Art.30/1.
[311] ibid Art.30/2.
[312] ibid Art.34.
[313] *The Trade Competition and Consumer Protection Proclamation*, Proclamation No. 813/2013, Art.22.
[314] ibid Art.43/2-3.
[315] *The Advertisement Proclamation*, Proclamation No. 759/2012, Art.2/2.
[316] ibid Art.22/2.

12% alcoholic content via electronic screens.[317] This Proclamation also makes an illustrative list of practices that it considers are misleading or unfair in their presentation and content to consumers.[318]

The applicability limitation of the Proclamation to organizations established in Ethiopia and persons who reside in Ethiopia[319] excludes those advertising from anywhere to Ethiopia using the Internet. It does not also provide for rules on ads and online search functionalities. Unless an appropriate interpretation is resorted to the umbrella phrase 'any other similar advertisement misleading or unfair with its content or presentation'.[320]

Ethiopia's e-commerce law, in its consumer protection regime, particularly does not regulate unfair commercial practices of the online marketplace, such as report of fake consumer reviews about products, deletion of bad consumer reviews about products, hiding the status of high ranking products in search results, products in search results as paid, or any indirect payment for achieving high ranking. Unfair commercial practices of online search functionalities may be committed by e-traders, including intermediaries, search engines, comparison websites and other online marketplaces.[321] Intermediaries of mere conduit, caching, hosting and resource locating or interface service provision under the ETP, are not disciplined in a way they can have obligations towards consumers to provide details on the nature of the content running in their services. Without the need for referring to the private laws in force, it does not also grant a specific device of containing unfair online contract terms and conditions.

3.3.5. Effective consumer redress

i. The dispute settlement mechanism

Basically, the ETP recognizes two forms of dispute settlement mechanisms that may be relevant for resolution of consumer disputes. These are the MInT complaint handling

[317] ibid Art.26/2.
[318] ibid Art.8.
[319] ibid Art.3/3.
[320] ibid Art.8/18.
[321] Amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83, (EU) Directive No. 2161 (2019) recital 20.

mechanism,[322] and the ODR mechanisms, i.e., the internal dispute settlement mechanism[323] and the external dispute settlement mechanisms.[324]

1) The MInT complaint handling mechanism:

The MInT entertains any grievance of consumers in their relations with suppliers.[325]The forms of complaints by consumers may be of any kind so long as they fit the non-compliance of suppliers with ETP provisions.[326]

The ETP does not provide any procedure under which the MInT receives complaints from consumers and solves any dispute therefrom. The ETP does not say anything on the power of the MInT whether it exercises judicial or administrative or investigative power. This work is informed of the fact that there is no specific division or department resolving disputes at the MInT.[327]This writer equally learnt that the idea of organizing such a department is not yet a completed task.[328] Therefore, this work questions both the possibility and legality of answering these complicated issues through a directive as promised by the MInT.[329]

2) The Online Dispute Resolution Mechanism

The ODR dispute settlement mechanisms that the ETP recognizes are mainly internal and external mechanisms. By the internal dispute settlement mechanism, e-commerce platform operators are duty-bound to establish an internal dispute settlement code through which they can resolve ecommerce disputes without the intervention of a third party.[330] To connect this to the specific dedication of the duties of the traders in their relations with consumers, the ETP obliges suppliers to, among others, inform consumers of their internal codes and accessibility thereto through electronic means.[331] Though the duty of establishing a kind of this internal mechanism is put on e-commerce platform operators, suppliers as e-commerce operators or

[322] ETP (n 9) Art. 34.
[323] ibid Art.42/1.
[324] ibid Art.42/3.
[325] ibid Art.34.
[326] ibid.
[327] Ayaleneh (n 225).
[328] ibid.
[329] ibid.
[330] ETP (n 9) Art.42/1.
[331] ibid Art.28/1/C.

intra-platform operators are not also prohibited to engage in subscribing or establishing any computer mediated code to resolve their disputes with consumers.[332]

As an external dispute settlement mechanism, arbitration is provided as the only method for resolution of e-commerce disputes that could not be resolved through internal dispute settlement mechanisms.[333] Consumers also have the right to be informed of any alternative dispute settlement codes to which suppliers subscribe and of the details how to access them.[334] But, it is restricted to arbitration.[335] In this respect, the prime difficulty goes to inarbitrability of consumer disputes.[336]The fact that consumer disputes are not arbitrable also conflicts with the norm of external dispute settlement mechanism under the ETP. The external dispute settlement mechanism will thus face a legitimacy crisis.

Despite the exclusion of courts' role in the ETP, the draft Regulation on E-transaction has a provision for non-preclusion of courts in favor of ADR mechanisms.[337] Mediation is also inserted as an alternative to arbitration.[338] It is questionable, however, whether this draft can have the power of adding other dispute resolution methods.

ii. Forms of remedies

Under the consumer protection provisions of the ETP, we do not find any direct form of remedy that may be awarded to consumers. The ETP obliges suppliers to make damages good for a harm they cause upon refund of consumers through insecure payment system.[339] There is no explicit procedure by which the damage is calculated, determined, and enforced. It is also specific to cancelation of contracts for non-compliance with the provisions of the law.

To the extent practical, consumers are not precluded to use compensation schemes of the GTCCPL, which result from the use of goods and damage incurred from defective goods.[340] The same goes to criminal provisions of the GTCCPL.[341] Some of the non-compliance issues,

[332] ibid.
[333] ibid Art.42/3.
[334]Ibid., Art.28/1/M.
[335] ibid Art. 42/3.
[336] *The Arbitration and Conciliation working Procedure Proclamation*, Proclamation No. 1237/2021, Art.7/8..
[337] *The Draft E-transaction Regulation*, Council of Ministers, Art.44.
[338] ibid.
[339] ETP (n 9) Art.28/6.
[340] *The Trade Competition and Consumer Protection Proclamation*, Proclamation No. 813/2013, Arts. 14/5 and 20/3.
[341] ibid Art.43/2-3.

such as spams[342] and unauthorized callback services,[343] may also be backed through computer crime and telecom fraud laws. Since it is not clear what form of power the MInT assumes, it is hard to say that consumers are awarded such form of remedy in the ETP provisions. However, we can be sure that the arbitration forum can provide with civil redress. This still remains unfeasible in that the rules and procedures for conducting ODR arbitration are not clearly provided in active subsidiary laws.[344]

3.3.5.3. Rules of conflict of laws in consumer disputes

Irrespective of boundary limit, the ETP applies to 'e-commerce'.[345] E-traders may conduct or direct their business activities in Ethiopia using e-commerce from every angle of the globe. This potentially forges a relationship of foreign traders and Ethiopia's consumers, the situation of which may bring about conflicts in laws and jurisdiction.

On its mention to application of foreign laws, the ETP excludes any 'legal system' upon which parties agree to govern their relations.[346] To give meaning to the provision, it is important to relate the caption on 'applicability of foreign law' to the general essence of the provision. Accordingly, connecting the dots, we find that any foreign law as part of a legal system under the ETP is left out as a law of governing consumer contracts regardless of any agreement to that effect.

The legal system in the main body of the provision for its foreign element in the caption does not similarly govern consumer relations of the ETP under its consumer protection section. Moreover, the term "legal system" is jurisprudentially understood as a synergy of laws, actors, judges, police, prosecutors, courts and other entities making up the system.[347] One can thus argue that all private international law issues are implicitly and explicitly avoided from Ethiopia's consumer protection regime for policy reasons.

It is not only in respect of foreign legal system that the law prohibits agreement of parties to avoid the consumer protection section of the ETP. The ETP does not allow conclusion of consumer contracts through a waiver of any right provided for in it, including its consumer

[342] *The Computer Crime Proclamation*, Proclamation No. 958/2016, Art.15.
[343] *Telecom fraud offence Proclamation*, Proclamation No. 761/2012, Art.8.
[344] ETP (n 9) Art.42/3.
[345] ibid Art.3/1/B.
[346] ibid Art.32.
[347]Murado Abdo, *Legal History: Teaching Material*, Justice and Legal System Research Institute (2009) 67.

protection provisions.[348]This does not however hinder the development of better protection through provision of consumer rights in other laws.[349]

The better protection discourse in other laws may be arguable whether it includes foreign laws. The comparison between the ETP and other laws in achieving better protection should be understood in a way that refers to laws of parity application from the legislature of the country. It is futile for the ETP to have a single provision on inapplicability of foreign laws, unless a constructive interpretation is given. Besides, the intention of the legislature in inserting the provision on 'applicability of foreign law' under the consumer protection chapter of the SAECETA is to do away with general application of foreign laws.[350]

3.4.The Institutional Framework for Enforcement of Consumer Rights

The existing GTCCPL's institutional framework for enforcement of consumer rights in the brick-and-mortar transactions is criticized for its intolerant approach for representation of major stakeholders: consumer organizations, consumer representatives and other relevant bodies within the organization of the authority.[351] The general justice system adopted in such a framework hosts similar critic in that it does not promote public interest and collective action litigation systems to effectively contain small claims of consumers in one basket or to do away with economic incapacities for individual redress requests.[352]

The MInT is generally entrusted with the major function of enforcing the ETP in its individual capacity and in coordination with the private and government sectors.[353] The ETP empowers the MInT with among other responsibilities:

1. To issue a directive on consumer protection;[354]
2. To enact a directive for implementation of the ETP;[355]
3. To receive complaints from consumers against suppliers for non-compliance with provisions of the ETP;[356]

[348] ETP (n 9) Art.33/1.
[349] ibid Art.33/2.
[350] Wenette (n 6) 557.
[351] Tessema Elias, 'Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia' [2015] 9 Mizan L Rev 83, 105.
[352] Elias (n 203) 21.
[353] ETP (n 9) Art.5/1.
[354] ibid Art.5/2/D.
[355] ibid Art.45/2.
[356] ibid Art.34.

4. To establish or clarify rules in a directive for a system of arbitration adopted the ETP and its regulations.[357]

The function of the MInT to enact a directive on consumer protection is redundant. If the MInT is naturally authorized to issue a directive for implementation of the Proclamation and regulations thereunder, it follows that no additional provision is necessary to that effect. Deletion of Article 5/2(d) would thus avoid power redundancy and confusion in the authority of the MInT.

Apart from the general statement of the law on the function of the MInT to entertain consumer complaints, the scope of the power of the MInT, methods of receiving claims and other organizational and operational complaint handling mandates are not explicitly indicated. It is not clear whether consumers can be represented in collective actions public bodies, consumer associations, civil society organizations and other special forms of representations in approaching the MInT for resolution of their complaints. It is not also clear whether consumers are free for submission of their complaints in their discretion, either with the MInT or to ADR bodies, or which one precedes the other and the effects thereof. In respect of all these issues, the MInT believes that subsidiary laws will have adequate responses.[358] The MInT is, however, convinced that the ETP in its existing form cannot be enforced.[359]

The ETP is also nebulous in the policy of the MInT in its power distribution culture to regions and city administrations. The Proclamation remains applicable to any entity of the country.[360] It is not; however, clear if the MInT can establish agencies in regions and city administrations for enforcement of consumer rights. The role of consumer education and enhancing digital competence is not entrusted to the MInT or another authority with the same function. The ETP does not clearly state the power of MInT or other government bodies in policing, prosecuting and disciplining traders in violation of provisions of the MInT on consumer rights.

5. Conclusion

The recent Ethiopia's e-commerce law does not define consumers, which would have provided clarity on who the law aims at protecting. It follows that no mechanism is put in place in the legislation to enhance the level of protection on the part of some vulnerable consumers,

[357]ibid Art.42/3.
[358] Ayalneh (n 225).
[359] ibid.
[360] ETP (n 9) Art.3/1/A.

such as persons with disability, minors, aged and other sections of communities that behavioral economists consider their rational decision making is affected in comparison to average consumers. Similarly, determination of a consumer is a potential source of controversy. On the other hand, the term 'supplier' as a party to consumer transactions is not defined in the law. In such situations, it is difficult to evaluate the relationship between suppliers and consumers as commercial relationship, which is to be established between a stronger and weaker parties respectively.

A continuation of this terminology problem also goes to goods, services, digital content and services as objects of contracts and the medium of exchange to be employed. Except for exclusion of immovable goods from the general scope of the e-commerce law, the legislation neither refers to other laws in defining goods, services, or digital content and digital services or all in one, nor covers them by itself. Nowadays, it is usual for consumers to engage in non-monetary transactions in exchange for their personal data. This is a newly introduced exchange medium equivalent to price. Though, to some extent, controversies as to meaning of goods and services may be solved by reference to other commercial laws of the country, regulation of digital content and digital services and personal data as medium of exchange is still hard to establish.

With all this conundrum, the legislation has incorporated basic forms of consumer protection. The prime form of consumer protection is information disclosure. The information disclosure aspect in terms of content is relatively formulated well. This aspect still misses the important component of ensuring consumer protection on the existence of the right of withdrawal. But, the form of disclosure in e-transaction is not regulated. This makes presentation of both information and contractual terms and conditions unstable for consumers to feel confident in e-commerce. The medium of both information disclosure and form of disclosure is not clear and is subject to debate. Besides, there is a loophole for the law to use website as medium of offer and acceptance in exclusion of e-mail and other computer mediated transactions or social media sites to make offers.

The second form of consumer protection in e-commerce is the right of withdrawal mechanism. A prototype of this mechanism is unique to electronic consumer contracts in particular and distant contracts and off-premises contracts in general. Consumers in Ethiopia's e-commerce law can use this mechanism to withdraw from confirmed commercial transactions with and without reason. The terms cancellation and termination are confusingly used to refer

the effects of contracts in measure of withdrawal. The law does not provide for any remedy for the suppliers in their services received by consumers till the cancellation date or diminished value of the goods to be returned to the traders. There are also discriminatory obligations on traders to use secure e-payment system and to pay damages for defective payment systems. On the other hand, the scope of right of withdrawal in the ETP is ill-drafted, inconvenient and hard to apply. It is sometimes impossible or much painstaking to return some goods.

The third category of consumer protection mechanism generally refers to security of consumer transactions and effective containment of unfair commercial practices. Apart from the non-communicative nature of the law with financial laws of the country, problems in e-payment security are not more issues. The security threat in protection of personal data and the confidence in exchange for personal data will remain in quest for legislative response. On the other hand, the ETP never sets a mechanism of identifying and containing unfair commercial and contractual practices. Search engines intermediaries and online traders keep detached from the regulation of the law.

The fourth form of consumer protection, which is effective redress mechanism, is not satisfactorily responded through the ETP. The MInT and the ODR (ADR) dispute settlement mechanisms do not address the nature of remedies that can be awarded to consumers. The ETP does not provide any form of remedy to consumers except statement to liability of suppliers to the damages caused to consumers in use of insecure payment system at the time of cancelling contracts for non-compliance of suppliers with the law.

Finally, the institutional framework is provided in the law generally, with broad mandate of the MInT. The fate of regions and city administrations is also not clear. The role of courts, forms of consumer actions, the role of consumer organizations, associations, and consumer representatives are not dealt in a way that can buttress the enforcement task. Generally, this paper finds that the ETP in its consumer protection scheme needs improvements both through incorporation of new provisions addressing all gaps indicated in this work and promulgation of subsidiary laws or other adjective laws to better protect consumers.

CRITICAL ANALYSIS OF THE REGULATORY FRAMEWORKS GOVERNING CORPORATE INCOME TAX PLANNING IN ETHIOPIA

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Abstract

The integrity of international taxation has been seriously marred due to tax planning techniques employed by multinational companies (MNCs), resulting in profit shifting from where they have real economic activities to no or low tax jurisdictions. This article has examined the depth and breadth of corporate income tax planning by MNCs. The paper has employed a largely doctrinal research approach to evaluate the existing rules set under the Ethiopian income tax regime and international tax rules to counter corporate income tax planning. The author found that although there is an attempt to align Ethiopian income tax rules with global frameworks such as the OECD and UN Model Tax Conventions, the Ethiopian framework failed to benefit from the subsequent amendments made to the original instruments by these international institutions. The article also found a gap in terms of engagements and participation on the part of Ethiopia in the international cooperation frameworks to counter tax planning.

Key terms: Corporate income tax; international taxation; tax planning; tax avoidance

1. Introduction

The tax planning aspect of corporate taxation has recently become prominent because of its resultant economic and social repercussions. Tax planning involves making financial choices to lower tax liabilities while staying within legal boundaries. The objective is to optimize investments, transactions, and economic status to reduce the overall tax burden. This includes leveraging tax credits, deductions, exemptions, and incentives offered by tax regulations.

The issue of tax planning is gaining from policymakers and the international community has made it a forefront agenda in international taxation. There are growing

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arguments that governments are losing substantial corporate revenue as a result of tax planning aimed at shifting profits in ways that erode taxable base to the jurisdictions with more favorable tax treatment.[1] At the global level, robust empirical evidence evinces that multinational companies (hereinafter, MNCs) engage in tax planning.[2] Through the mechanics of tax planning, these MNCs exploit the differences in tax jurisdictions in which they operate. They also exploit the differences in the tax treatment of certain entities, instruments, or even transactions and preferential tax treatment for certain activities or incomes to reduce their tax burden.[3]

The situation in Africa worsened due to fragile legal and institutional frameworks to contain such harmful tax practices, including MNCs' tax planning. A study conducted on the revenue loss in Africa due to illicit capital flight, including tax planning, in 2019 indicated that the continent loses 80 billion USD annually.[4]

The revenue losses due to corporate tax planning are increasing with the reports made successively. For example, the September 2020 Financial Accountability, Transparency, and Integrity report states that the annual revenue loss as a result of tax planning by MNCs over the globe is between 500-600 Billion USD.[5] This posed a serious challenge to governments since the problem was not only the money squandered but that which was not even collected in the first place.

Although the exact figure on revenue lost as a result of tax planning in Ethiopia is not clearly known, there are reports that due to corporate income tax planning, the country is losing an enormous amount of revenue. IMF, for instance, reported that Ethiopia lost 1.28 Billion

[1] OECD, *Addressing Base Erosion and Profit Shifting* (2013) 13.
[2] Asa Johansson and others, 'Tax Planning by Multinational Firms: Firm-level Evidence from Cross Country Database' [2017] 1355 OECD Economics Department Working Papers 6. There are also country-based reports on how the tax planning has affected their economy and even led to political discontent. For instance, in 2012/13, Starbucks had sales of 400 million Euros but paid NO tax! It transferred some of its money to its sister company in the Netherlands, and with the remaining money, it bought coffee beans from Switzerland and paid high interest on the money it borrowed. Amazon, too, had sales of 3.35 billion Euros in 2011 but reported only tax expense of 1.8 million Euros. The same goes for the major companies in the world. Vanessa Barford and Gerry Holt, 'Google, Amazon, Starbucks: The rise of 'tax shaming'' (BBC, April 2020) <https://www.bbc.com/news/magazine-20560359>, accessed on 9 August 2020.
[3] ibid.
[4] Africa Initiative Progress Report, *Tax Transparency in Africa, Global Forum on Transparency and Exchange of Information for Tax Purposes* (2019) 8.
[5] Financial Accountability, Transparency and Integrity, FACTI Panel Interim Report, September 2020, P. 7. The High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) was convened by the 74th President of United Nations General Assembly and the 75th President of the Economic and Social Council on 2 March 2020.

USD in 2013 due to tax planning.[6] Similarly, in 2017, Tax Justice Network reported that Ethiopia lost 1.1084 Billion USD through profit shifting by MNCs that used different avoidance tricks.[7] A report by the United Nations Economic Commission in 2018 estimated the country's revenue loss to be 10 percent of the economy.[8]

Ethiopia has amended its Income Tax Proclamation in 2016. It has also come up with the Tax Administration Proclamation, which is a new introduction to the country's tax regime. One of the defining features of those amendments made in the 2016 tax legislation was that there is a better-articulated rule purported to curb tax planning and avoidance. It recently amended the transfer pricing Directive in 2024 with a similar purpose.

However, the gist of those rules has not been evaluated, particularly in light of international standards to curtail tax planning. There are further reports that the Double Tax Avoidance Treaties that Ethiopia has signed with different countries[9] as well as a fiscal investment regime provided to attract foreign direct investments[10] have been an abused by MNCs operating in Ethiopia as they have been elsewhere. Therefore, the main question that this piece tried to address is to what extent the regulatory framework in Ethiopia is up to international best practices and to what extent is then sufficient to properly address the increasing concerns of tax planning by MNCs.

This article tried to examine the regulatory framework that Ethiopia has put in place against international instruments, as well as developing practices. Although this piece addressed a high-level normative concept with a view to have a proper elucidation, the main objective is to critically assess the aptness of the rules Ethiopia has put in place to counter tax-planning tricks by MNCs operating in Ethiopia. Hence, the article set of with the discussion of the general principles and international practices to curb tax planning and it then delved to examine if Ethiopia has put in place apt regulatory framework to regulate tax planning by MNCs.

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[6] Alex Cobham and Petr Jansky, 'Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-estimation and Country Results' [2018] JID 230.
[7] New Business Ethiopia, 'Profit Shifting Companies Steal 1.1 Billion annually' (New Business Ethiopia, 2020) <<https://newbusinessethiopia.com/finance/profit-shifting-companies-steal-1-1-billion-annualy-ethiopia-report/>>, last accessed on 8th December 2020.
[8] United Nations Economic Commission for Africa, *Base Erosion and Profit Shifting in Africa: Reforms to Facilitate Improved Taxation of Multinational Enterprises* (2018) 33.
[9] UNCTAD, *Tackling Illicit Financial Flows for Sustainable Development in Africa, Economic Development in Africa* (2020) 83.
[10] Laura Abramovsky and others, in *Review of Corporate Tax Incentives for Investment in Low- and Middle-Income Countries* (299 IFS, 2018), p. 8

2. Major Tax planning Mechanisms Employed by MNCs

2.1. Sham Transactions and Abuse of Tax Laws by MNCs

Generally speaking, 'sham transactions' are those conducted for the sole or main purpose of tax benefit and do not have economic substance.[11] Thus, MNCs enter into different kinds of dealings and make some transactions merely to get a tax advantage from the tax authority. One of the doctrines developed to test and identify these sham transactions from those genuine ones is the 'economic substance doctrine.'[12]

Economic substance doctrine states that if a given transaction does not have economic motive or substance, then all tax results of that transaction, including the claimed tax benefit, income, and deductions, should be disregarded as if the transaction had never occurred.[13] Proponents of this doctrine argued that transactions that claim inappropriate tax benefits are a perennial problem and hold that if a given transaction does not pass the economic substance test, then the taxpayer should not be allowed to benefit from the tax advantage he purported to take through that transaction.[14]

On the other hand, there are writers who oppose the application of this economic substance doctrine. They hold that this doctrine is too good to be an appropriate test to identify sham transactions from others. For example, Lederman states:

> Unfortunately, the economic substance doctrine is a terrible tool for that endeavour… the doctrine is so disconnected from the inquiry of whether a transaction was abusive that one judge had called it a 'smell testy.' Moreover, given the doctrine's focus on the taxpayer's purpose and whether there was a prospect of pre-tax profit, taxpayers can easily manipulate it.[15]

It is not clear whether the tax authority has to verify whether the specific taxpayer claiming tax advantage of such sham transaction had an economic motive or whether, in disregard of

[11] Karen Nelson Moore, 'The Sham Transaction Doctrine: An Outmoded and Unnecessary Approach to Combating Tax Avoidance' 41 FLR 3.
[12] ibid.
[13] Rebecca Rosenberg, 'Codification of the Economic Substance Doctrine: Agency Response and Certain Other Unforeseen Consequences' [2018] 10 William & Mary Business Law Review 4.
[14] Leandra Lederman, 'W(h)ither Economic Substance?' [2020] Maurer School of Law: Indiana University, 392.
[15] ibid 391-392.

such motive, the tax authority has to assess objectively whether such transaction will be acceptable for tax benefits sought in general.

2.2. Principle of Transfer of Pricing and Arm's Length Principle

In a globalized economy, MNCs operate their cross-border investments through the most tax-efficient corporate structures,[16] spreading their functions, assets, and risks across multiple related entities located in different jurisdictions. In the case of developing countries, such as African countries, this practice has resulted in value-adding activities being transferred away from where the initial economic activity took place.[17] These cross-border movements of goods and services require transfer pricing, a standard practice within MNCs that was not originally meant to be illegal.

For taxation of their incomes, these MNCs are not considered as one and single taxpayers. This is because a company incorporated and established in one country may have different subsidiaries or branches in different countries. Moreover, companies want to deal with those related entities when that is possible if the nature of the transaction they desire is possible through related entities.

The UN Practical Manual on Transfer Pricing for Developing Countries defines transfer pricing as the pricing of cross-border, intragroup transactions in goods, intangibles, or services.[18] The OECD has also come up with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in 2017 which is an amendment to the one it fathered in 2010. These guidelines are meant to serve as support for individual states' efforts to come up with their own national transfer pricing rules. Studies reveal that transfer pricing remains central to MNCs' tax strategy in intra-group transactions,[19] and a serious headache to states in exercising their taxing right.

The rules of arm's length principles are developed to deal with the transactions between such related entities. This principle dictates that transactions between related parties shall be at the price that would have been had the same transaction taken place between independent

[16] United Nations Conference on Trade and Development, *World Investment Report, Reforming International Investment Governance* (2015) 188.
[17] ibid.
[18] United Nations, *Practical Manual on Transfer Pricing for Developing Countries, Department of Economic & Social Affairs* (2017) 24.
[19] Khadija Sharife, *Tax Us If You Can: Why Africa Should Stand for Tax Justice* (Tax Justice Network-Africa, 2011) 12.

parties. As markets are thinner in developing countries, there is consensus that even with the best intentions, the arm's length principle is more difficult to implement there than it is in developed countries.[20]

A related but distinct issue here is the issue of secrecy in international taxation. The profits are, in one way or another shifted to a tax haven, which is sometimes called secrecy jurisdiction. It provides facilities that enable corporations to escape liability.[21]

Trade mispricing is done by manipulating intragroup import and export prices whereby affiliates in high-tax countries import goods and services at high prices from firms in low-tax countries. In such case, since an affiliate has to pay much higher prices than that would have otherwise been paid by an independent company, its tax base will be eroded.

The location of intangibles and intellectual property (for example, brands, research and development, algorithms, and other intangibles) whereby an entity holds its intangible assets and intellectual property in a tax haven and charges its affiliates service fees for using these assets. We will discuss in greater detail these later.[22]

Article 9 of the OECD Model Tax Convention better explains this. It reads 'where conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, because of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly'.[23]

[20] The United Nations Conference on Trade and Development (UNCTAD), *Tackling Illicit Financial Flows for Sustainable Development in Africa, Economic Development in Africa* (2020) 83.
[21] The shifting profits to these secret jurisdictions got momentum since the leakage of the Panama Papers. The 'Panama Papers,' or as they are commonly referred to as 'the Panama Leaks,' are around 12 million documents that contain vastly discrete financial, and they contain clandestine financial information. See Syed Haider Ali Zaidi and others, 'Panama Papers and the dilemma of global financial transparency' [2017] 1 IJMRM 1. From an operational perspective, abusive transfer pricing, a form of trade mispricing, is abated through the application of the arm's length principle. The practice is based on the excessive manipulation of prices of cross-border transactions between related parties by MNCs.
[22] Ayene Mengesha, *The Challenges of Taxing Multinational Enterprises in Ethiopia: A Developing Country Perspective* (LLM Thesis, Bahir Dar University School 2017.) 38. Generally speaking, through these techniques of abusive transfer pricing, it will then be the MNCs themselves that will be the ultimate decision-makers regarding the question of how much and to which authority they should pay tax, which is strictly against the fiscal sovereignty of national governments. They decide how much should be artificially shifted elsewhere and how much shall remain for the source state, where they (MNCs) generated income as income tax revenue.
[23] OECD, *Model Tax Convention on Income and Capital* (OECD Publishing 2010) Art 9.

It must be recognized that the arm's length principle has drawbacks, too. To apply this principle, there has to be a comparable transaction against which the transaction between related parties is to be evaluated. In this sense, it is very difficult to find comparable transactions for every transaction that is undertaken. It is particularly difficult to determine the arm's length price for intangible properties such as intellectual properties. This is simply an extension of the fact that implementing transfer pricing rules is tedious by itself. As Edward Klein Bard, Chief of Staff of the US Congress on the Committee of Taxation, once said, 'transfer pricing enforcement is dead. Despite everyone's efforts, we're not collecting tax. It's a global problem.[24]

The Global Formulary Apportionment is the other alternative tabled by tax scholars. This approach tries to allocate a global profit generated by the MNCs group on a consolidated basis among the associated enterprises found in different jurisdictions based on a predetermined and mechanistic formula.[25] According to OECD, although this approach has never been tried between countries so far, it is in use by some local taxing jurisdictions.[26] OECD reasoned that this approach is extremely difficult to implement, time-consuming, and all in all unrealistic in tackling double taxation and hence rejected it. This alternative is suggested along with the application of 'unitary taxation' in recent tax literature, which is being considered for application by the European Union.[27]

2.3. Royalty Payment

The increasing trend in the use of capital-enhancing technologies and various intellectual property rights has brought about major concerns in international taxation. Corporate taxation becomes particularly pressing because of the difficulty of subjecting the payment of royalties for the use of these intellectual properties to the arm's length principle.[28] There is no consensus, both among policymakers and academia, on how best to approach royalties that are extensively used to avoid the payment of taxes by MNCs. In this regard, Steffen suggested, 'we show that

[24] Jamie Morgan, 'Corporation tax as a problem of MNC organisational circuits: The Case for Unitary Taxation' [2016] 18 BJPLR 466.
[25] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2017) 39
[26] Ibid.
27 Matti Ylonen, *Back from Oblivion? The Rise and Fall of Early Initiatives Against Corporate Tax Avoidance from the 1960's to the 1980's* (2017) 23 Transnational Corporations 50.
[28] Steffen Juranek and others, *'Royalty Taxation under Tax Competition and Profit Shifting'* [2018] Public Finance 2.

it is optimal to set a withholding tax on (intra-firm) royalty payments equal to the corporate tax rate and deny any deductibility of royalty payments.[29]

Regarding the deductibility of royalty payments, there is a disparity among jurisdictions, which the UN Tax Model Convention tried to balance.[30] For MNCs, royalty payment has been one of the most effective instruments in shifting their profits from where they do their business. It can turn its profits by paying royalty for the use of intellectual property as per the license agreement. These MNCs pay excessive amounts of royalty for the 'use' of intellectual property belonging to the other, thereby eroding its tax base. The concern here can be seen in light with the discussion we had in relation to transfer pricing too.

2.4. Debt- Equity Financing (Thin Capitalization)

Debt and equity are taxed differently in most states. The basic difference underlying the two is that while interest on the debt is generally a deductible expense of the taxpayer and taxed at ordinary rates in the hands of the payee, dividend is not deductible and is typically subject to some kind of tax relief (an exemption, exclusion, credit) in the hands of the payee.[31] This is manageable in domestic context as these differences in treatment may result in debt and equity being subject to a similar overall tax burden. However, such difference in the treatment of debt and equity creates a tax-induced bias when it comes to cross-border investments by MNCs.[32]

In the cross-border context, the main tax policy concerns surrounding interest deductions relate to the debt funding of outbound and inbound investments by MNCs.[33] These MNCs are typically able to claim relief for their interest expense. At the same time, the return on equity holdings is taxed on a preferential basis, benefiting from a participation exemption, preferential tax rate, or taxation only on distribution.[34] On the other hand, subsidiary entities may be heavily debt-financed, using excessive deductions on intragroup loans, which leads to base erosion on the subsidiary's income and lifts the local profits from being taxed.[35] Taken together, these opportunities surrounding inbound and outbound investment potentially create competitive

[29] ibid.
[30] Certain countries do not allow royalties paid to be deducted from the payer's tax unless the recipient also resides in the same State or is taxable in that State. Otherwise, they forbid the deduction; see OECD, *Commentaries of the Articles of Model Tax Convention* (2010) 206.
[31] OECD, *Base Erosion and Profit Shifting Project: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments Action 4: Update Inclusive Framework on BEPS* (2016), p. 19.
[32] ibid.
[33] ibid.
[34] ibid.
[35] OECD, *BEPS Action 4: Interest Deductions and Other Financial Payments* (2015) 6.

distortions between groups operating internationally and those operating in the domestic market.[36] This situation is referred to us, in tax scholarship, as "thin capitalization" to indicate that the entity is 'thinly capitalized' with equity while it is funded with a substantial amount of debt.[37]

Action 4 of the Action Plan on Base Erosion and Profit Shifting, developed by the OECD, pertains to limiting base erosion through interest deductions and other financial payments.[38] In its 2015 Final Report, the OECD recommended the so-called fixed ratio approach. This approach limits an entity's net deductions for interest to the percentage of its earnings before interest, taxes, depreciation, and amortization (EBITDA).[39] The OECD suggested this approach should at least be applicable to MNCs to avoid base erosion.[40] The OECD recommended a ratio of between 10%-30% of the entire earnings to be allowed as a deductible expense for taxpayer but stressed that it should be as low as possible.[41]

2.5. Special Purpose Entities (SPE)

MNCs can gain tax advantages through SPEs or regular operating units and this often involves shifting profits to a low-tax jurisdiction through debt allocation, transfer pricing, or corporate inversions.[42] Tax scholars have estimated that 40 percent of global FDI is routed through special purpose entities, which are often set up solely for tax avoidance purposes; 85 percent of that is in just eight jurisdictions.[43] In other words, 40 percent of global investments are phantom investments whose money passes from one to the other through empty corporate shells named 'special purpose entities.'[44] These shells, otherwise called 'special purpose entities', do not have business activities as such apart from carrying out holding activities,

[36] ibid.
[37] To avoid such abuse of the interest deductibility by MNCs that results in base erosion, countries usually stipulate some sort of restrictions on the amount of interest deductibility. They have implemented rules to curb tax-driven debt financing that leads to excessive interest deductions from tax authorities' point of view and to protect their corporate tax bases.
[38] OECD (n2)
[39] OECD, *BEPS Limiting Base Erosion Involving Interest Deductions and Other Financial Payments* (Action No. 5, 2015) 11.
[40] ibid.
[41] ibid.
[42] Jannick Damgaard and Thomas Elkjaer, *The Global FDI Network: Searching for Ultimate Investors* (International Monetary Fund, 2017) 9.
[43] ibid.
[44] Jannick Damgaard and others, 'The Rise of Phantom Investments, Empty Corporate Shells in Tax Havens Undermine Tax Collection in Advanced, Emerging, and Developing Economies' [2019] Finance and Development, 12-13. These authors mentioned an example of "double Irish with a Dutch sandwich," which involves transfers of profits between subsidiaries in Ireland and the Netherlands with tax havens in the Caribbean as the typical final destination. These tactics achieve even lower tax rates or avoid taxes altogether."

conducting intrafirm financing, and management of intangible assets, which simply aim at minimization of the MNCs' global tax liability.[45] As this income is reported neither at the domicile of the parent company nor at the place of production, tax scholars referred to such income as 'stateless income.'[46] This has already blurred traditional FDI statics and made it quite impossible to understand genuine economic integration.[47]

2.6. Tax Treaty Abuse (Treaty-shopping)

Double tax treaties (DTTs) are an instrument with the main purpose of facilitating cross-border trade and investment essentially by 'demarcating the taxing rights of countries.[48] However, it has been found that treaty shopping is pervasive in countries that have signed DTTs with investment hubs[49]. DTTs are agreements between states that divide up the right to tax cross-border economic activity.[50] These bilateral DTT generally have the principal aim of reducing double taxation and thus encouraging cross-border investments.[51] Accordingly, there are now over 3,000 DTTs in force worldwide, covering 96 percent of foreign direct investment.[52] Treaty-shopping is one of the techniques employed by MNCs to shift their profits from where they do their economic activity. By misusing and abusing DTTs, enormous amount of revenue has been evaded to tax havens or low tax jurisdictions by these MNCs.

It is reported that, currently, there exists more than 500 DTTs which are in force in Africa. Researchers from the IMF and the World Bank further estimate the cost of treaty-shopping in Africa to be about 20 to 26 percent of corporate income tax revenue from each treaty with an investment hub.[53]

Therefore, it has been evidenced that DTTs, whose primary purpose was, as the UN Model Tax Treaty states, to promote, by eliminating international double taxation, exchanges of goods

[45] ibid.
[46] Edward D. Kleinbard, 'Through a Latte, Darkly: Starbucks's Stateless Income Planning' [2013] Legal Studies Research Paper Series, 1518.
[47] ibid.
[48] Sebastian Beer and Jan Loeprick, 'The Cost and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa'[2017] WP/18/227 IMF Working Paper 4.
[49]. ibid.
[50] The United Nations Conference on Trade and Development (UNCTAD) (n 20).
[51] ibid.
[52] ibid.
[53] ibid.

and services, and the movement of capital and persons, have become an important instrument of corporate tax planning by MNCs.[54]

3. Major Efforts in Dealing with Tax Planning at the International Level

3.1. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters[55] is the most comprehensive instrument that is meant to tackle corporate tax dodging across the world through cooperation between states. This convention was developed by OECD in collaboration with the Council of Europe in 1988 and was amended by Protocol in 2010.[56] By September 2020, more than 141 countries have already signed the Convention. It strives to coordinate countries to assist each other in various means to make sure that due taxes are collected properly. The preamble of the Convention indicated its purpose and as such, it is written that the aim was "to facilitate administrative cooperation among member countries so that they could effectively counter international tax evasion and other forms of non-compliance".[57]

One of the primary tax areas to which the application of the Convention extends is, as provided for under Article 2, the profit/income tax. Therefore, the Convention undoubtedly plays a pivotal role in assisting member states to collect taxes they have to and tackle international tax planning by MNCs. Regrettably, Ethiopia is not a signatory to this Convention yet. It, therefore, cannot benefit from the benefit of mutual assistance encapsulated by the Convention. Mutual administrative assistance between states is critical in international taxation, as we have seen before.

[54] ibid.
[55] OECD/Council of Europe, 'The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol', OECD Publishing, Paris, available on: https://www.oecd.org/tax/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters-9789264115606-en.htm#:~:text=The%20Convention%20was%20developed%20jointly,top%20priority%20for%20all%20countries, accessed on 18th March 2024.
[56] ibid.
[57] OECD/Council of Europe (n 55) preamble.

3.2. OECD Experiences

A well-coordinated fight against corporate tax planning was started with a landmarking project set in 2013 when the G20 countries mandated the OECD to launch and come up with reports on the Action plans on aggressive tax planning by MNCs. It, therefore, came up with a report that is coined as a Base Erosion and Profit Shifting (BEPS), which basically consists of 15 Action Plans categorized under three major pillars, as depicted below.[58]

After two years, the OECD came up with a Final Action Plan in 2015 that needs to be considered to fight base erosion and profit shifting effectively. OECD and G20 then continued to work on equal footing in 2015; they came up with a more comprehensive framework package for the project. In fact, this BEPS comprehensive package represents the greatest renovation to international tax rules, and the OECD itself praised this work as the "first substantial renovation of the international tax rules in almost a century."[59] This BEPS project concluded that 'fundamental changes are needed to effectively prevent double non-taxation, as well as cases of no or low taxation associated with practices that artificially segregate taxable income from the activities that generate it.'[60]

The OECD/G20 also fathered a BEPS Inclusive Framework in 2016 so that more countries (outside of OECD and G20 member states) can join the initiative and work together.[61] Currently, more than 128 countries are working together to tackle corporate tax planning by MNCs following the Base Erosion and Profit Shifting report provided by the OECD.[62] It is believed that this will ensure inclusivity and also set a very good level-playing field for all concerned (developed, developing, and emerging economies). Before the OECD launched this Inclusive Framework, which invited developing countries as well, it was highly criticized as being only an advocate of developed countries.[63]

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[58] OECD (n 2) 7- 8.
[59] OECD/G20, *Preventing the Artificial Avoidance of Permanent Establishment Status, Base Erosion and Profit Shifting, Final Report* (2015) 3.
[60] ibid 3.
[61] OECD, 'About the Inclusive Framework on BEPS' (OECD 2020), **https://www.oecd.org/tax/beps/flyer-inclusive-framework-on-beps.pdf,** accessed on March 18, 2024
[62] ibid.
[63] Joseph Stiglitz, 'Corporate tax avoidance, It is No Longer Enough to take half measures' (The Guardian, October 2019, available on https://www.theguardian.com/business/2019/oct/07/corporate-tax-avoidance-climate-crisis-inequality accessed on March 18, 2024.

4. Regulatory Framework against Corporate Income Tax Planning in Ethiopia

4.1. General Overview

Ethiopia has been the major investment destination in East Africa for the last decade with the ever-increasing surge of foreign direct investment (FDI) and commerce. Ethiopia is recorded as the biggest FDI recipient among East African countries for 2020 as well.[64] The economic liberalization that is being undertaken in the country, its accession to the World Trade Organization (WTO), which is in the finalization stage, as well as the establishment of the Continental Free Trade Area (CFTA), will put Ethiopia a fitting position to continue to be one of the investment hubs of Africa.

It has been revealed that "corporate tax revenue and Foreign Direct Investment (FDI) are two important development finance sources, which are closely linked to the taxation of MNCs."[65] One of the major issues that member states of the Addis Ababa Action Agenda (AAAA) agreed upon was also to make sure that all companies, including MNCs, pay taxes to the government of countries where economic activity occurs, and value is created. This is mainly so because the biggest public challenge that hinges upon the governments of developing countries is not the money squandered or stolen but that which is never collected in the first place.[66] Due to the lack of capacity to put in place a strong corporate tax regime and effectively implement the anti-avoidance rules, these developing countries could not collect the taxes due to them by MNCs. Tax planning by MNCs deprives developing countries like Ethiopia of the resources required to combat poverty. It weakens the capacity of the country to address the basic needs of its citizens.

As we have seen in chapter two of this paper, corporate tax planning is a global threat, and it is not peculiar to developing countries alone. It is an "epidemic" to use Oxfam's expression,[67] that the world is dealing with. However, although the amount of revenue lost could even be

[64] ibid 34.
[65] Sabine Laudage, 'Corporate Tax Revenue, and Foreign Direct Investment: Potential Trade-Offs and How to Address Them'[2020], German Development Institute, Working Paper, 1.
[66] The Economist, 'Taxing times African governments are trying to collect more tax' (The Guardian, 2019) <<https://www.economist.com/middle-east-and-africa/2020/01/11/african-governments-are-trying-to-collect-more-tax>> accessed 14 November 2020.
[67] Oxfam International, 'Inequality and Poverty, the Hidden costs of tax dodging' (Oxfam, 2019) <<https://www.oxfam.org/en/inequality-and-poverty-hidden-costs-tax-dodging>> accessed 7 November 2020.

higher in developed countries as a result of these MNC's tax planning, on utility terms, it is developing countries that suffer most as they already have poor capacity on provisions of necessary social services and tax planning by MNCs will simply exacerbate the problem. In this regard, it has become evident that the

> The international corporate tax system is outdated and unfair and will continue to cost developing countries tens of billions of dollars in lost revenue each year unless it is completely overhauled. Tax abuse by multinational corporations increases the tax burden on other taxpayers, violates the corporations' civic obligations, robs developed and developing countries of critical resources to fight poverty and fund public services, exacerbates income inequality, and increases developing country reliance on foreign assistance.[68]

Therefore, despite an increase in FDI, the sufficiency of correspondingly effective corporate taxation rules, which are capable of curtailing tax planning by MNCs in developing countries such as Ethiopia, is a pressing issue.[69] In the absence of such safeguarding anti-abuse rules to exercise their legitimate taxing right over these MNCs, the development agenda they have will not be realized. It resulted in MNCs getting in jeopardy of these countries' legitimate taxing rights.

In this section, we will examine the rules set by Ethiopia to counter corporate income tax planning by MNCs. We shall see the rules under income tax legislations, double tax treaty regime, as well as fiscal incentive regime. Before that, however, we will briefly see the share of MNCs in Ethiopia's FDI and the level of corporate income tax dodging in Ethiopia.

4.2. Revenue Effect of Corporate Income Tax Planning in Ethiopia

Tax constitutes a lion's share of Ethiopia's revenue.[70] Undeniably, Ethiopia has recorded a significant increase in the amount of tax revenues collected in recent years.[71] However, several reports are revealing that Ethiopia continues to lose an enormous amount of revenue due to

[68] Independent Commission for Reforms in International Corporate Taxation (ICRICT), *Illicit Financial Flows and Development Financing* (2015) 3.
[69] Yosef Alemu Gebreegziabher, 'Ethiopia Law on Transfer Pricing: A Critical Examination [2013] 5 JUJL 218.
[70] Workineh Ayenew, 'Determinants of Tax Revenue in Ethiopia (Johansen Co-integration / Approach) [2016] 3 IJBEM 70-72.
[71] For instance, Ethiopia collected 198.1 billion Birr (5.5 billion USD) in the 2018/2019 Fiscal Year, while it managed to collect 233.7 billion Birr (6.5 billion USD) in the 2019/2020 Fiscal Year, according to a source from the Ministry's website https://www.mor.gov.et/ accessed on 15th December 2020.

corporate tax planning. The latest data in 2020 shows that the country's tax contribution to GDP is 6.2 percent. For comparison, the world average in 2020 based on 122 countries is 16.68 percent.[72]

A report by the United Nations Conference on Trade and Development (UNCTAD) in 2015 indicated that Ethiopia is among the victims of corporate tax planning. It estimated the total amount avoided by MNCs from developing countries through tax planning to be 100 billion dollars a year.[73] In the same year, 2015, an IMF researcher disagreed with this amount and provided that an amount of close to 213 billion dollars is avoided every year from developing countries as a result of tax planning by multinationals.[74] As one of those developing countries, it seems reasonable that Ethiopia is exposed to corporate income tax abuses by MNCs. Indeed, Sara Dillion already argued that 'In no sense can widespread tax avoidance by corporations be a matter of indifference to the societies in which the corporations operate.[75]." This simply implies that where MNCs are, corporate tax avoidance exists.

A piece of closer information was disclosed by *The East African* on December 7, 2020, in which it reported, referring to watchdog organizations such as Tax Justice Network, Public Services International, and Global Alliance for Tax Justice, that Ethiopia, Kenya, Burundi, Tanzania, Uganda, South Sudan, and Rwanda together lose 1.2 billion USD annually as a result of avoidance by MNCs.[76]

Although the fact that MNCs are taking advantage of the loopholes in Ethiopia's income tax regime is generally confirmed, the figures on amount of revenue lost is not clear. The same confusions exist at the global level where the IMF reported the annual amount of revenue lost as a result of tax planning to be 600 billion USD, while Tax Justice Network and reported the total amount of revenue lost to be 500 billion USD.[77] The data concerning the revenue lost

[72] International Monetary Fund, 'Executive Board Consultation with the Federal Democratic Republic of Ethiopia' (2016) Press Release No. 16/443.
[73] United Nations Conference on Trade and Development (n17) 200.
[74] Ernesto Crivelli, 'Base Erosion, Profit Shifting, and Developing Countries, as cited by the Guardian, Tax Dodging by Big Firms "robs poor countries of billions of dollars a Year' (The Guardian, 2019) <https://www.theguardian.com/global-development/2015/jun/02/tax-dodging-big-companies-costs-poor-countries-billions-dollars> accessed 15 December 2020
[75] Sara Dillion, 'Tax Avoidance, Revenue Starvation and the Age of the Multinational Corporation," [2016] Vol. 50, No. 2 Legal Studies 6.
[76] *Kennedy Senelwa and Mohamed Issa, 'Africa Losing 25.7 Billion to fraudsters using tax havens' (The East African, December7, 2020), available on: https://www.theeastafrican.co.ke/tea/business/east-africa-fraudsters-using-tax-havens-3220952 accessed on March 18, 2024.*
[77] FACTI (n 5).

from Africa as a result of tax planning by MNCs is prone to similar challenges as well. Ethiopia is losing an enormous amount of revenue due to such tax planning exercises by MNCs is a matter of consensus.

4.3. Major Rules Designed to Counter Corporate Income Tax Planning in Ethiopia

The rules on corporate income tax planning are primarily provided for under the Federal Income Tax Proclamation No. 979/2016. However, the treaty-shopping aspect of tax planning also has a treaty regime, and to that extent, it is imperative to examine what the double taxation treaties that Ethiopia has signed with different countries so far have to say. There are also some shreds of evidence that indicate that fiscal incentives granted by the Ethiopian investment regime are serving as a pretext for MNCs to avoid corporate income taxes. Thus, in this section, a detailed explanation of the two regimes (income tax legislation and double taxation treaty) and a synopsis of the fiscal incentive under the investment regime as a tool for tax planning in Ethiopia will be made.

4.3.1. The Federal Income Tax Proclamation

4.3.1.1. Transfer Pricing Rules

We have seen earlier in this Article that transfer pricing is one of the most effective instruments employed by MNCs to avoid paying taxes. In fact, as the OECD deliverables are gradually increasing as far as other tax planning strategies are concerned, MNCs will perhaps be left with transfer pricing to avoid paying taxes. In an attempt to mitigate this, the income tax proclamation[78]stated that in cases where the transaction between two related bodies does not reflect what would have been had the transaction taken place between independent entities, the tax authority may make necessary adjustments. Article 79 reads:

> The Authority may, in respect of any transaction that is not an arm's length transaction, distribute, apportion, or allocate income, gains, deductions, losses, or tax credits between the parties to the transaction as is necessary to reflect the income, gains, deductions, losses, or credits that would have been realized in an arm's length transaction.

[78] *Federal Income Tax Proclamation*, Proclamation No.979/2016 (Hereinafter Fed. Inc. Proclamation)

Transfer pricing may, in particular, be used by non-resident companies to reduce the tax due in Ethiopia by one of its subsidiaries or permanent establishment. For instance, a non-resident parent company may supply goods or services to its subsidiary in Ethiopia for a higher price than that would have been had it supplied for an independent company. As the Ethiopian subsidiary has to pay more costs for these goods and services, the tax liability of this subsidiary can be significantly reduced or even go into loss, in which case loss carry forward may even be requested. A similar problem could happen concerning the head office of a non-resident taxpayer located outside of Ethiopia and a permanent establishment located in Ethiopia.

To abate this, Ethiopia has introduced the rules of the arm's length principle in 2002. Although the former tax proclamation, which was repealed in 2016,[79] Had a provision requiring that transactions between related parties be at arm's length, there was no guidance on how that rule was to be implemented. However, the Ministry of Finance and Economic Cooperation (MOFEC) came up with a more comprehensive Transfer Pricing Directive in 2024.[80]

Article 4 of this Directive states, ‘where a taxpayer engages in a transaction with a related person; the taxpayer shall determine the amount of its taxable income in a manner that is consistent with the arm`s length principle.' It then goes on to state that this amount of taxable income shall align with the arm`s length principle if the conditions of those transactions do not differ from the ‘conditions that would have applied between unrelated persons in comparable transactions carried out under comparable circumstances’.[81] Here, the comparability approach is to be employed, and the comparison should be made between controlled and uncontrolled transactions.[82] The definition for related persons is already made by Article 4 of the Federal Tax Administration Proclamation.[83] This comparability could be internal (which means a given transaction between related persons will be compared with the transaction one of such parties had with independent party) or external (which means a given transaction will be compared with transaction between independent parties outside of such MNCs).[84] The Directive has borrowed five major actors that need to be taken into account in making the comparison (entirely taken from OECD Guidelines).

[79] *Federal Income Tax Proclamation*, Proclamation No. 286/2002.
[80] MOFEC, *Directive to Provide Rules on Transfer Pricing*, Directive No. 981/2024.
[81] ibid Art 4.
[82] The Directive has defined 'controlled transaction' as a transaction between related parties while 'uncontrolled transaction' is a transaction between unrelated parties.
[83] *Federal Tax Administration Proclamation*, Proclamation No. 983/2016.
[84] MOFEC, *Directive to Provide Rules on Transfer Pricing*, Directive No. 981/2024, Art. 11.

Hence, it has been tried to align the gist of this Transfer Pricing Directive with the principles enshrined under the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of 2010 (OECD Guidelines). However, the OECD substantially revised the content of these Guidelines in 2017, while the Directive remained the same and has been unrevised since it was issued.[85] Consistency changes have been made to the rest of the OECD Transfer Pricing Guidelines.

Moreover, the Directive does not contain administrative and/or penal clauses.[86] For instance, Article 15 of the Directive states that a taxpayer must have in place contemporaneous documentation that verifies that the conditions in its controlled transactions for the relevant tax year are consistent with the arm's length principle and provide the same to the tax authority within 45 days upon request duly issued onto him by the tax authority. It is not clear what penalty will follow if he fails to do so. Nigeria also encountered a similar problem as it did not provide for a penalty clause under its Transfer Pricing Regulation until it amended it in 2018, where it inserted a provision on penalty for failure to declare or notify.[87] The Nigerian Transfer Pricing Regulation states that 'a connected person shall declare its relationship with all connected persons whether such persons are resident in Nigeria or elsewhere'.[88] Therefore, MNCs operating in Nigeria are obliged to report to the Nigerian Federal Inland Revenue Service (FIRS) their relationship with any of their related companies/counterparties. The Ethiopian Transfer Pricing Directive does not have a similar provision.

Moreover, Article 14 of this Nigerian transfer pricing directive stipulated that MNCs should, without notice or demand, disclose controlled transactions that are subject to the regulations.[89] However, the Ethiopian Transfer Pricing Directive article 15 states that such disclosure will only be made when the authority makes such request in writing and, even then, within 45 days of the date of request by the tax authority. This is indeed a serious flaw in the Directive.

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[85] OECD, *Revised Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2017) 236.
[86] Although Tax Administration Proclamation No 983/2016, Art. 111 has a general provision on tax avoidance penalty, it does not seem to have envisaged such matters.
[87] Nigerian Federal Inland Revenue Service (FIRS), *Public Notice, on the Implementation of the Revised 2018 Trans Pricing Regulations, available on:* .**https://www.mondaq.com/nigeria/transfer-pricing/743188/firs-issues-public-notice-on-implementation-of-the-revised-2018-transfer-pricing-regulations**, accessed on March 18, 2024
[88] ibid.
[89] ibid. Article 13 of this Regulation has already provided that a company has to declare its relationship with any of its related parties within 18 months from the date of incorporation or within six months after the end of the Accounting Year.

Malawi also published its new Transfer Pricing Regulation in 2017 (which is exactly similar to ours), but it has inserted a penalty provision for failure related to documentation.[90] It is believed that such prudent provision alerts MNCs to make proper declarations and notifications to the tax authority.

4.3.1.2. General Anti-Avoidance Rules (GAAR)

The General Anti Avoidance Rules (GAAR) is one of the newly embraced rules to the 2016 income tax proclamation, although the Value Added Tax Proclamation had an equivalent clause.[91] These rules are rules that enable the tax authority to scrutinize schemes that are entered into 'for the sole or dominant purpose of enabling tax benefit for one or all of the parties to the scheme.'[92] The requirements that trigger the action of a tax authority under Article 80 are provided under sub-article 1 of the Federal Income Tax Proclamation(FITP). Article 80 of the FITP provided for how the scheme, whose main or sole purpose was to gain tax benefits, has to be dealt with. The scheme, as per sub-article 4 of Article 80 of the FITP, is to be understood broadly and is not limited to a direct, legally enforceable course of action. It might even include actions that may not be enforceable by legal proceedings, as well as a unilateral course of action.

Second, a person must have obtained a tax benefit in connection to this scheme. Tax benefit for this anti-avoidance purpose is already listed under sub-article 4 of Article 80 and, as such, it includes a reduction in liability of a person to pay tax, a delay in the arising of a liability of a person to pay tax, and any other avoidance of a liability of a person to pay tax. The third requirement that Article 80 of the FITP stipulated, and which seems more subjective, is the 'purpose of the scheme' as can be established given the facts. If given the substances of the scheme, 'it would be concluded that a person or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,' sub-article (2) empowers the Authority to determine the liability of such person or

[90] *Taxation (Transfer Pricing) Regulations (2017)*, Government Notice No. 37

[91] Initially, this rule was adopted by the Value Added Tax Proclamation No. 285/2002 in Article 60 with the heading "Schemes for obtaining tax benefits. VAT Proclamation.

[92] This also includes what is commonly called a 'sham transaction' or 'simulation transaction' where the taxpayer presents to the tax authorities a purported transaction, but the legal reality of the transaction is different, in which case the tax will be applied according to the actual legal reality, not the taxpayer's pretended reality. Victor Thurnoni, *Comparative Tax Law* (Kluwer Law International 2003) 157.

'any other person related to the scheme as if the scheme had not been entered into or carried out.'[93]

It has to be noted that, unlike specific anti-avoidance rules, a GAAR is intended to apply to all types of transactions and arrangements, all types of taxpayers, all types of taxes, including capital gains tax, and all types of payments and receipts. GAAR is a provision of last resort which the Ethiopian Ministry of Revenue may claim to strike down with aggressive tax planning by MNCs in cases where the scheme is 'so blatant, artificial or contrived that it is only explicable by the desire to obtain a relevant tax benefit.'[94]

The problem with Ethiopia's GAAR is that the threshold is so high that it may not be able to catch those schemes that have, as one of their reasons, the purpose of obtaining a tax benefit. This is because it says the Authority may only intervene as per Article 80 of the proclamation where the scheme has been entered into for the sole or dominant purpose of enabling that person to obtain a tax benefit. The rules under the MLI, for instance, provide that such intervention is triggered even where one of the main purposes is to obtain a tax benefit, and it does not have to be the sole or dominant reason as such.[95] The 'sole' or 'dominant purpose' tests under the income tax proclamation to deny tax benefit seems an unwarranted threshold.

Ethiopian GAAR also failed to state the period within which the Ministry of Revenue has to notify the taxpayer of the new adjustment made. Can, for example, such an assessment by the Ministry of Revenue be notified to the taxpayer after ten years from the year to which the assessment relates? In its sample GAAR, IMF suggested such assessment shall be notified 'within 5 years from the last day of the tax year to which the determination or adjustment relates'.[96]

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[93] ibid. In determining a person's tax liability as if the scheme had not been entered into or carried out, sub-article (2) enables the Authority to "rewrite" a transaction by treating particular events as if they did or did not happen at such time or involving such third-party deals. Sub-article (2) also empowers the Authority to make corresponding adjustments to the tax liability of any other person affected by the scheme. For a corresponding adjustment to be made with a person, the person need not be a party to the scheme; it is required only that he/she/it is affected by the scheme.

[94] Waerzeggers Christophe and Cory Hillier, 'Introducing a general anti-avoidance rule (GAAR)—Ensuring that a GAAR achieves its purpose' [2016] 1 IMF Technical Note Legal Department 1.

[95] Article 7 of the Convention reads: Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit unless it is established that granting that benefit in these circumstances would be per the object and purpose of the relevant provisions of the Covered Tax Agreement.

[96] Waerzeggers Christophe (n 95) 10.

Finally, it has to be noted that GAAR is not a self-executing rule, unlike many of the rules that we have seen in this paper. Far from that, this rule may only be properly implemented where the Ethiopian Ministry of Revenue is capable of making a valid determination. That is why GAAR is not a rule that every country in the world has accepted. IMF stated that the proper application of GAAR could be tedious in countries such as Ethiopia as it challenges 'the capacity of the tax authority to appropriately apply the GAAR in a measured, even-handed and predictable way,' adding that some countries have formed a dedicated GAAR panel for this purpose.[97]

4.3.1.3. Thin Capitalization Rules

Thin capitalization is a common practice by the MNCs to avoid taxes.[98] It involves taking advantage of the mismatches between different tax systems about interest and dividends. Thin capitalization results, as we have discussed in chapter two, when a company is financed more by debt than by equity; hence, the company is 'thinly capitalized.' These MNCs also try to ensure the lender is in a very low tax rate (because they receive interest income) and the borrower is in a country where interest cost can be deducted for income tax purposes.[99] Thus, using advantage of the choice between equity and debt financing as well as the location of debtor and borrower, MNCs shift profits.

Article 47 of the income tax proclamation provides that a foreign-controlled resident company other than a financial institution that has an average debt-to-equity ratio above 2 to 1 for a tax year is not allowed deduction as far as the excess interest it has paid is concerned. This provision should be understood in line with what has been provided for under Article 23 of the same proclamation, which states that interest expenditure concerning loans used to generate business income is deductible. A debt-to-equity ratio of 2 to 1 means that the company uses 2 Birr/dollar debt for every 1 Birr/dollar equity. If a foreign-controlled company working in Ethiopia is financed through debt more than what is stipulated above, it may not be given a deduction benefit as far as that excess interest is concerned.

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[97] ibid 1.
[98] OECD, *Base Erosion and Profit Shifting Project* (n 31) 19.
[99] Prijohandojo Kristanto, 'New Capitalization Rules' (Taxand, 3 Feb 2016,) <,https://www.taxand.com/our-thinking/news/new-thin-capitalization-rules/#:~:text=Thin%20Capitalisation%20refers%20to%20a, Indonesia's%20new%20Thin%20Capitalisation%20rules> accessed 22 November 2020.

This Article applies to a foreign-controlled resident company. For that provision, a foreign resident company is defined as a resident company in which more "than 50% of the membership interests in the company are held by a non-resident either alone or together with a related person or persons".[100] An Explanatory note on the Final Draft of the Income-tax proclamation, while it was drafted, has made the following remarks concerning how MNCs take advantage of the thin capitalization in Article 47:

> The advantage arises because interest expense is fully deductible to the subsidiary (the tax value of the deduction is 30%) and taxed at 10% to the non-resident parent under the non-resident tax in Article 51. Thus, the effective rate of the Ethiopian tax rate on the profits derived by the subsidiary and repatriated to the parent as interest is 10%. This can be compared to an equity investment where dividends are paid by the subsidiary out of profits that have been taxed at the corporate rate of 30% and, besides, non-resident tax at the rate of 10% applies to the dividends (i.e., the effective rate of tax on an equity investment is 37%). The differential in tax encourages non-residents to use excessive levels of debt to finance their Ethiopian operations to reduce the level of Ethiopian tax paid.[101]

This guides the non-resident taxpayers on how to finance their operations in Ethiopia. Parent companies tend more often to finance their operations in Ethiopia through debt than through equity financing. Therefore, the rule of thin capitalization is crafted to make sure that excessive debts are not employed to take advantage of the tax implications of debt and equity and escape profits untaxed through excessive debts. Hence, Article 47 of the income tax proclamation essentially limits the debt amount that a company may have since it is limited to 2 to 1 of its equity investments.

Finally, it is important to note that although Ethiopia has gone appreciable miles in crafting important rules on thin capitalization to tackle base erosion and profit shifting, these rules have their defects. First of all, we have said that thin capitalization rules determine the maximum debt or interest on which deduction is allowed. In tax scholarship, the former is called thin capitalization or indirect interest deduction rule, while the latter is called interest deduction rule

[100] *Federal Income Tax Proclamation*, Proclamation No. 286/2002, Art. 47.
[101] An Explanatory note on the Final Draft of the Income-tax proclamation, 2016 (with the author).

or direct interest deduction, or earning stripping approach.[102] The income tax proclamation provided for thin capitalization or indirect interest rules only and failed to provide for the direct interest deduction, and some argued that it should have included that too.[103]

This author argues that Ethiopian thin-capitalization rules should be revised to reflect the amendments made by OECD in its 2015 Final Report. As we have seen in Chapter Two of this paper, the OECD recommended limiting the ratio of a number of interests to be allowed as deductible in relation to the company's total earnings before interest, taxes, depreciation, and amortization. The author argues that the recommended ratio by the OECD (which is a ratio of between 10%-30% of the entire earnings) seems reasonable to adopt, as the practice of many countries shows as well.

Moreover, Ethiopia's thin capitalization rules have also failed to provide the debt-equity ratio as well as the maximum deductible rate when it comes to financial institutions. However, since currently there is no foreign-controlled financial institution in the country, it might be argued that the above limitations are not pressing to render Ethiopia's thin capitalization rules overtly defective.

4.3.2. Ethiopia's DTT Regime and Tax Planning by MNCs

We have seen in the previous section that bilateral tax treaties signed between states have been [ab]used to jeopardize the taxing rights of source countries. Generally, these (DTTs) have three characteristics that are worth mentioning. First, they limit the rate at which the source state can impose withholding taxes. Second, they also limit what can be subjected to tax, for instance, through the (re)definition of a permanent establishment, which sets a minimum threshold of activity that must take place in a country before its government can levy a tax on the profits generated there by the taxpayer concerned. Third, tax treaties exempt some types of income earned in the source country from taxation in that country altogether, for example, taxes on capital gains in particular circumstances. Therefore, all these three features of DTTs are a voluntary limit on the source country's taxing rights.

[102] Desalegn Deresso Disassa, 'Analysis of Interest Deduction Rules Under Ethiopian Corporate Tax System' [2020] I JSTS 138.
[103] ibid 147.

Ethiopia's effort to attract FDI includes signing various bilateral DTTs with different countries.[104] So far, Ethiopia has signed these DTTs with different countries, including Algeria, the Czech Republic, France, India, Israel, Italy, Kuwait, Romania, Russia, South Africa, Tunisia, Turkey Yemen, the Netherlands, and China. Although the existing literature on the cost of DTTs is very much limited and the estimates vary, it is a commonly shared view that a significant amount of revenue due by MNCs is not being paid due to the DTTs states sign.[105]

Taking after the UN and OECD Model Conventions,[106] Most of the DTTs that Ethiopia has signed (which I have consulted) embodied preemptory provisions on treaty abuse, such as Limitations on benefits (LOB), Capital Gains, and permanent establishment (PE) provisions. These DTTs are a verbatim copy of the UN Model Double Taxation Convention between Developed and Developing Countries.[107]. In fact, in terms of the gist of these DTTs, they have similar content as well. For instance, if we consider the DTTs signed between Ethiopia and the Netherlands on the one hand and Ethiopia and China on the other, we see that they both have 29 Articles, which almost entirely correspond to each other with insignificant disparity.

Article 48 of the income tax proclamation also deals with the issues of DTTs. One of the questions answered by the proclamation is the status of such treaties *vis-à-vis* the proclamation itself. It sets the priority rule. As such, sub-article 2 provides that where conflict happens as to the applicability of the terms of the DTTs and the provisions of the proclamation, in principle, the treaty shall prevail.[108] However, it is also stipulated that as far as part eight of the proclamation (those dealing with tax avoidance) are concerned, the proclamation prevails over the DTTs. [109]

[104] Aschalew Ashagre, 'A Note on Resolution of Tax Disputes Arising from DTTs and Implications for Developing Countries [2019] 13 Mizan Law Review 513.
[105] Petr Jansky and Marek Sedivy, 'Estimating the Revenue Costs of Tax Treaties in Developing Countries' [2019] 42 The World Economy 2. See also Oxfam Case Study, *Cursed by Design: How the Uganda-Netherlands Tax Agreement is denying Uganda a fair share of oil revenues* (2020) 3-4.
[106] The OECD has revised this model tax law in 2017. OECD, *Update to the OECD Model Tax Convention* (2017), Fiscal Affairs, 22.
[107] United Nations, *Model Double Taxation Convention between Developed and Developing Countries, Department of Economic & Social Affairs* (New York 2001).
[108] This also ignites the debate on the status of treaties generally under Ethiopia's hierarchy of laws. Article 9(4) of the FDRE Constitution states that "All international agreements ratified by Ethiopia are an integral part of the law of the land." The position of human rights treaties seems to be at least equal to the Constitution, as has been enunciated under Article 13 (2). However, much debate is there when it comes to non-human rights treaties such as that of DTTs that we are considering.
[109] *Federal Income Tax Proclamation*, Proclamation No. 286/2002, Art. 48/2.

Moreover, the provision on the priority of DTTs over the proclamation is also limited by conditions provided for under sub-article 3. Accordingly, it provides that any exemption, reduction of tax rates, or exclusion that is accorded according to DTTs may only be claimed by a resident of the other contracting state. Moreover, it even adds that to be qualified to be a resident of that contracting state, at least fifty percent of underlying ownership shall belong to the individual(s) who are residents of that other contracting state and shall be doing active business there. This is a wise rule to avoid treaty-shopping, as we have seen in the preceding Chapter. Had it not been for this rule, MNCs that do not have any business relationship in another contracting state with Ethiopia would simply do their business through that contracting state to benefit from the privileges that DTT might accord. These DTTs Ethiopia signed with different countries also provide for their definition of resident.

These DTTs signed between Ethiopia and different countries have their problem, which will help MNCs in engaging in tax planning. The major drawback of these DTTs, however, is that they have excessively reduced the applicable rates on dividends, interests, and royalty payments. In most cases, the applicable tax rate for passive income under these DTTs is a maximum of 5%. This seems disadvantageous to Ethiopia. It also goes counter to what is provided for in the UN Model Convention on Taxes on Income and Capital of 2017. This Model Convention suggested a 15% tax rate (Article 10, save for special exception provided) on dividends and a 10% tax rate on interest (Article 11), although it did not suggest any definitive tax rate applicable to royalties (Article 12).

Although empirical data is lacking, some studies revealed that Ethiopia and many other African countries are losing revenue due to the low tax rate applicable to dividends, interests, and royalties.[110] Some studies show that DTTs do not benefit low-income countries like Ethiopia anyway.[111] These DTTs simply ensure that the income of investors is not opened to double taxation and also shield the MNCs from being taxed in the country where they have real economic activities.

The DTTs signed by Ethiopia with different countries have a defective provision with regard to the permanent establishment as well. MNCs do their businesses in Ethiopia through permanent establishment while they will be a resident elsewhere, and it is crucial to carefully

[110] Petr Jansky and Marek Sedivy state that Ethiopia is one of those "developing countries in the ActionAid tax treaty dataset where there is no available IMF CDIS data about stocks. Petr Jansky and Marek Sedivy (n 105) 1.
[111] IMF, OECD, UN, and World Bank, *Options for Low-Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A report to the G-20 Development Working Group* (2015) 1.

craft a permanent establishment clause. In this regard, Action 6 and 7 of the OECD 2015 Action Plan calls for a revision to the definition of permanent establishment to prevent abuses. It also reminds countries to take care in replacing arrangements under which the local subsidiary traditionally acted as a distributor by "commissionaire arrangements" with a resulting shift of profits out of the country where they have real economic activities without significant substantive change in the functions performed. The basic reason for such a commissionaire arrangement is to make sure that the income of a non-resident company is not subject to tax. Let us see this by example.

Through this arrangement, MNCs shift their profits through commissioner arrangements, which are not considered a permanent establishment under these DTTs. A similar problem is reflected in the DTTs signed by Ethiopia with different countries. For instance, Article 5(6) of *Ethio-China* DTT states:

> 'Enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.'[112]

Last but not least, the way the title and preamble of those DTTs are crafted has its problems. The title of all DTTs that Ethiopia has signed says "…for the avoidance of double taxation and prevention of fiscal evasion". However, the OECD, in its amended Model Convention in 2017, suggested that this kind of conventional stipulation in the DTTs is defective. It suggested that it should clearly state that the purpose of DTTs is not only to avoid double taxation but also to avoid double non-taxation or reduced taxation.[113]

[112] Agreement between the Government of People's Republic of China and the Government of the Federal Democratic Republic of Ethiopia, Ethiopia-China Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income, available on http://internationaltaxtreaty.com/download/Ethiopia/DTC/Ethiopia-China-DTC-May-2009.pdf, accessed on March 18, 2024.

[113] Article 6 of MLI states that a covered tax agreement shall be modified to include the following preamble text; "Intending to eliminate double taxation with respect to taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions". This purpose of DTTs should have been clearly stated in the title and preambular provisions as they, under Article 31(2) of the Vienna Convention on the Law of Treaties, form part of the main context of the DTTs.

4.3.3. Fiscal incentive scheme and tax planning by MNCs

Ethiopia's investment regime offers a generous and extended incentive for foreigners. The maximum nine years exemption period provided for in Regulation No. 270/2012[114] It was amended in 2014 to even increase the incentives to 15 years for some sectors.[115] The country has also recently come up with a new investment proclamation, proclamation No. 1180/2020.[116] Although generally, section six of the proclamation provided for a general framework of available investment incentives, it stated under Article 17 that details of such investment incentives will be determined by regulation to be issued following the adoption of the proclamation. Accordingly, the Council of Ministers has adopted Regulation No. 517/2022 to provide for income tax and duty incentives to encourage investment in the sectors eligible for incentives.[117]. The schedule for investment areas and income tax incentives attached to this regulation clearly provides for income tax exemptions up to 15 years. Thus, MNCs investing in Ethiopia will be entitled to a tax holiday of up to 15 years, depending on the sector in which and place where it is investing.

Although the core rationale behind granting such extended income tax holidays seems to attract FDI, studies show that there is no such positive correlation between investment incentives and an increase in FDI. Atakilti and Yohannes have argued, after examining existing literature on the matte, that the existing literature shows inconclusive evidence between the two.[118]

They concluded that evidence from cross-country studies using aggregate-level outcomes show that tax incentives may affect FDI levels but not necessarily a total investment, suggesting the possibility of crowding out effects".[119] Hence, the conception that an increase in fiscal incentives necessarily leads to increased FDI is misguided. Some hold that these tax breaks and loans so far extended by the government in pursuit of encouraging investment were simply

[114] I*nvestment Incentives and Investment Areas Reserved for Domestic Investors,* Council of Ministers Regulation No. 270/2012.
[115] *Investment Incentives and Investment Areas Reserved for Domestic Investors*, Council of Ministers (Amendment) Regulation No. 312/2014.
[116] Eric Neumayer, 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?' [2007] 43 JDS. 12.
[117] *Council of Ministers Regulation to Provide for the Investment Incentives*, Regulation No. 517, Fed. Neg. Gazette Year 28, No. 39, 2022.
[118] Laura Abramovsky and others (n10) 8.
[119] ibid.

unproductive.[120] These incentives are, as major international institutions reported, "generally rank low in investment climate surveys in low-income countries, and there are many examples in which they are reported to be redundant; that is, the investment would have been undertaken even without them."[121] A survey made by OECD on whether investors would have invested had this fiscal incentive not been provided indicated that 'over 90 % of investors would have invested even if incentives were not provided.[122]

These unwarranted tax incentives can create tax-planning opportunities, resulting in revenue leakages. OECD reports that existing MNCs reconstitute themselves as "new" ones towards the end of their tax holiday periods so that they can continue to be tax exempted.[123] They also attempt to re-characterize certain activities so that they fall within the boundaries of qualifying economic activities.[124] Similarly, tax incentives pave opportunities for profits and deductions to be artificially shifted across MNCs with different tax treatments either domestically or internationally.[125]

This is a dilemma that not only Ethiopia, but also similar developing countries are facing. They avail generous tax exemptions and hence forge their taxing right, but they sometimes turn out to be in vain. Tax incentives may be effective in attracting some efficiency-seeking FDIs, which are motivated by lowering production costs compared to other types of investment.[126]

Ethiopia should also make sure that these incentives are not being nullified by the tax systems.[127] This is so because even if the host country, Ethiopia, for instance, gives such holidays and incentives, the country of residence of these MNCs applies taxes on worldwide income, and the entire income of Ethiopia's operation, which benefited from such tax holiday is going to be taxed by residence state; it will then nullify the incentives itself. To avoid this

[120] Tewodros Makonnen and James Rockey, 'The Effectiveness of Industrial Policy in Developing Countries: Causal Evidence from Ethiopian Manufacturing Firm' Leicester University Department of Economics, Working Paper No. 16/07 (2016) 1.
[121] IMF, OECD, UN, and World Bank (n 111) 1.
[122] ibid.
[123] ibid 22.
[124] ibid.
[125] ibid.
[126] Maria R. Andersen, *Corporate Tax Incentives and FDI in Developing Countries: Global Investment Competitiveness Report* (2018) pp. 73 and 90. However, many developing countries, including Ethiopia, offer incentives to almost all investors, including those motivated by access to natural resources or the domestic market, who are less likely to respond to incentives. There are scuttlebutts that MNCs operating in Ethiopia are excessively manipulating and abusing these incentives.
[127] Dhammika Dharmapala and Céline Azémar, 'Tax Sparing, FDI, and Foreign Aid: Evidence from Territorial Tax Reforms' [2016] University of Chicago, Working Paper No. 758, 47.

situation, a tax-sparing mechanism emerged in many DTTs between residents and host countries. A study in 2016 disclosed that from OECD member states, Ethiopia has such an agreement only with one member.[128] Therefore, it is imperative to re-examine to what extent these tax holidays granted are indeed meeting their objectives.

5. Conclusion and Recommendations

This paper emphasizes the challenges Ethiopia faces in corporate income tax planning, identifying four main areas for action.

To begin with, the country's legal front, the current Ethiopian income tax regulations, including the Income Tax Proclamation, Transfer Pricing Directive, investment incentive regime, and Double Tax Treaties (DTTs), have incorporated important rules to address the challenges of tax planning. However, their execution posed significant challenges. Therefore, those rules incorporated in these laws need to be properly implemented.

Secondly, on the fiscal incentives and capacity building, fiscal incentives aimed at attracting Foreign Direct Investment (FDI) are considered unwarranted and potentially abused by Multinational Corporations (MNCs). The real investment return on foregone revenues is unclear. Addressing this issue requires a focus on capacity building to implement anti-avoidance rules. MNCs employ complex mechanisms to shift profits, necessitating institutional capacity to combat such tax planning practices. Therefore, Ethiopia needs to reassess whether these fiscal incentives extended to attract investors have indeed been utilized to their end goal.

Thirdly, Ethiopia lags in the international cooperation regime, with limited benefits in tackling corporate tax planning. Lack of participation in crucial initiatives like the Convention on Mutual Administrative Assistance in Tax Matters, the Multilateral Convention to Implement Tax Treaty Related Measures (MLI), and the Africa Initiative hinders its ability to combat corporate tax dodging through cooperation and information exchange.

Finally, Ethiopia needs to reconsider the DTTs it signed with different countries so far. To facilitate easy renegotiation of DTTs it has signed so far, it needs to ratify the MLI. Ratification of this Convention will make such renegotiation easy. Preambles of these DTTs should be amended to include avoidance of double non-taxation as their objective as well. Provisions

[128] ibid 19.

relating to tax rates for passive incomes, which in most cases is put at a maximum of 5%, and provisions on the residence and permanent establishment should be revised. Ethiopia also must consider signing an overwhelmingly important Convention on Mutual Administrative Assistance in Tax Matters, which has been signed by more than 141 countries. This is because the Convention is a major coordination vehicle between states in dealing with corporate tax dodging by MNCs. Ethiopia should also actively engage in regional, continental, and international forums and initiatives working to fight corporate income tax planning by MNCs.

LEGISLATIVE CONFLICT RESOLUTION MECHANISM UNDER FDRE CONSTITUTION: THE CASE OF CONCURRENT LEGISLATIVE POWERS

Habtamu Birhanu Woldeyohanis*

Abstract

The Constitution of Federal Democratic Republic of Ethiopia (hereafter FDRE Constitution) consists of varieties of concurrent legislative matters over which both federal and regional government have simultaneous legislative power. The exercise of these legislative powers gives rise to legislative conflict between the laws of the federal and regional governments. This in consequence requires a mechanism to solve any potential legislative conflict arising out of the exercise of these legislative powers. However, FDRE Constitution does not contain a mechanism to solve legislative conflict arising out of the exercise of these legislative powers. The objective of this article was to make an appraisal on mechanism to solve legislative conflict between the laws of the federal and regional government arising out of the exercise of concurrent legislative power under the FDRE Constitution. This has been done through extensive analysis of provisions of the FDRE Constitution and subsequent legislation as well as the Constitutions of some federal countries as a primary source of data. Scholarly materials have also been extensively used as secondary sources of data. The finding of the article revealed that the FDRE Constitution lacks appropriate mechanism to solve legislative conflict between the laws of the federal and regional government arising out of the exercise of concurrent legislative powers.

Key words: - Concurrent power; legislative conflict; supremacy clause; federal supremacy.

1. Introduction

The FDRE Constitution establishes federal state structure.[1] Like any other federal constitutions around the world, it establishes a formula for a formal division of legislative powers between federal and regional states.[2] Both the federal and regional states are empowered to legislate on subject matter reserved to them.[3] The Constitution, moreover, contains number of legislative matters over which both the levels of governments have simultaneous legislative power. The

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[1] *Constitution of Federal Democratic Republic of Ethiopia*, Proclamation No. 1/1995.

[2] The term regional states are known by different name under different federal constitutions. Such as states in the case of US, provinces in the case of Canada and South Africa, Cantons in Swiss Confederation, Lander in the case of German, and Austria, and Regions in Ethiopia. For the sake clarity, throughout this paper, the term regional states are used to refer constituents' units of federation

[3] *FDRE Constitution*, Proclamation No. 1/1995, Art. 51 and 52.

exercise of such simultaneous legislative power elevates possibility of legislative conflict between the laws of federal and regional states. Unlike some other federal Constitutions, the FDRE Constitution does not envisage a mechanism to solve legislative conflict arising out of the exercise of such simultaneous legislative powers by the federal and regional states. The objective of this article is to make an appraisal on a mechanism to solve legislative conflict between the laws of federal and regional states under the FDRE Constitution. Based on this general objective, the paper is meant to examine when legislative conflict between the laws of federal and regional government would arise? Which law would prevail in case when there is a legislative conflict between the laws of the federal governments and regional state? Should the laws of the federal or the laws of the states prevail? Or should it be decided case-by-case? Finally, the paper examines whose power is to adjudicate the case involving legislative conflict arising out of the exercise of concurrent legislative power under the FDRE Constitution.

Section one of the paper presents the fact that legislative conflict is an inevitable in the case of concurrent legislative powers. In doing so, it firstly examines the nature and variations of concurrent legislative powers. A mechanism to solve legislative conflict arising out of the exercise of concurrent legislative powers will also be discussed under this section. Section two examines legislative conflict resolution mechanism in Ethiopia. This section examines varieties of concurrent legislative matters under the FDRE Constitution. Finally, this section examines the organ having the power to adjudicate legislative conflict. Finally, the paper comes to an end with conclusion under section three.

2. Legislative Conflict Resolution Mechanism in Federations: The Case of Concurrent Legislative Powers

2.1. On the Concurrent Legislative Powers

Concurrent legislative powers are the exercise of legislative power by federal and constituent units with respect to the same subject matters. It represents the meeting point of the two levels of government exercising legitimate exclusive legislative power but over the same legislative area.[4] They may be explicitly provided in a constitution or impliedly inferred from the text of the constitution. In the case of the former, the lists of functional competencies of both levels of governments are provided for under the Constitution. The Constitutions of Nigeria, India, Basic

[4] Assefa Fiseha and Zemelak Ayele, 'Concurrent Powers in the Ethiopian Federal System in Nico Steytler(ed), *Federal Systems: Meaning, Making, Managing* (Brill Nijhoff, Boston 2017) 241.

Law of Federal Republic Germany and the Constitution of South Africa are notable constitutions of world with explicit concurrent legislative powers. They provide lists of concurrent legislative matters. In the latter case, however, there is no expressly provided lists of concurrent legislative powers. The Constitution rather simply lists the legislative competencies of both levels of the governments. In such case, whether a given power is concurrent or not is identified by looking into the structure of the division of legislative powers. If it is provided for under the lists of legislative competence of both levels of governments, it falls under the categories of concurrent legislative power. But, if it is found under the lists of legislative competency either of them only, it is the exclusive power of such level of government and not concurrent legislative power. The FDRE Constitution is typical example of the Constitution with implied concurrent legislative powers. It, unlike the above-mentioned Constitutions, does not provide the lists of concurrent legislative powers. There is no comprehensive list of concurrent legislative powers under the FDRE Constitution.[5]

In spite of the existence of significant variations in the way the concurrency is used and applied,[6] the exercise of concurrent legislative power brings much legislative conflict between the federal and regional state laws. It requires individuals to comply with laws enacted by more than one order of government on the same subject matter and the laws enacted by each order may overlap.

Legislative conflicts are bound to occur in the areas of concurrent legislative power where the federal and regional states laws which are otherwise valid may come into conflict.[7] This demands a mechanism to avoid or solve the inconsistency between the federal and regional state laws. Therefore, a constitution that establish concurrent legislative powers must provide for a mechanism to avoid or solve any potential legislative conflict arising out of the exercising such concurrent legislative powers. This helps to avoid legal uncertainty arising out of incompatibility between the federal and regional states laws. It moreover avoids unjustified shift of power in the favor of one level of government. This in turn helps to keep balance of power between the federal and regional states.

2.2. A Mechanism of Legislative Conflict Resolution

[5] See art 52/1 of *FDRE Constitution*
[6] Assefa Fiseha and Zemelak Ayele (n 4).
[7] Arun Sagar, 'Federal Supremacy and the Occupied Field: A Comparative Critique' [2013] 2 Publius 251, 253.

Division of legislative powers is common to federal constitutions. With almost no exception, all federal constitutions establish a formula for formal division of legislative powers between federal government and regional states. It is universal to almost all federal constitutions. And hence, it constitutes one of the hallmarks of a federal system.[8] However, there is a great deal of variations among federal constitutions in terms of the scope and pattern of division of legislative powers.[9]

No matter a division of legislative powers is attempted to be comprehensive, conflict between the laws of federal government and laws of regional states is inevitable.[10] The constitutional formula for a formal division of legislative powers cannot be made in the way it avoid legislative conflict.[11] The existence of division of power between federal and regional states offers a fertile ground for legislative conflict. Therefore, it is necessary to have a mechanism to manage or solve such legislative conflict. In this regard, it is suggested that all national legal systems have rules to resolve legislative conflict between federal and regional state laws.[12] However, there is no common formula that applies to all federal constitutions. Just as divisions of legislative powers copiously vary, so mechanism solve legislative conflict varies. For example, the Constitution of USA and Basic Law of Federal Republic of Germany establishes federal supremacy whenever there is conflict between federal and regional laws.[13] They maintain that valid federal law overrides otherwise valid states law in the case of legislative conflict. That means a particular regional states laws in conflict with a particular federal law will be trumped in cases where both apply.[14]

In similar way, the 1999 Constitution of Nigeria establishes supremacy of federal law but with slight difference. It provides that if any law enacted by House of Assembly of State is inconsistent with any law validly enacted by the House of National Assembly, the law made by the National Assembly prevails and the law of state, to the extent of inconsistency, is void.[15] It, unlike the Constitutions USA and Basic Law of Federal Republic of Germany, limits the

[8] Assefa Fiseha and Zemelak Ayele (n 4).
[9] See Ronald L.Watts, *Comparing Federal System in the 1990s* (Institute of Intergovernmental Relation 1966) 32.
[10] Assefa Fiseha and Zemelak Ayele (n 4).
[11] See Anna Dziedzic and Cheryl Saunders, 'The Meanings of Concurrency, Concurrency Power' in Nico Steytler(ed), *Federal Systems: Meaning, Making, Managing* (Brill Nijhoff, Boston 2017) 20
[12] Ibid 21.
[13] The Basic Law of Germany and the Constitution of USA are among the notable federal constitutions that provide for federal supremacy. Basic Law of Germany (1949) Art. 11 and USA Constitution, Art. VI.
[14] Stephen A. Gardbaum, 'The Nature of Preemption' [1994] *79* Cornell Law Review 767, 770.
[15] Section 4/5 of the 1999 Constitution of Nigeria provides that if any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

effect of invalidity of states legislation only to extent of inconsistency. That means only conflicting part will be invalidated.

The Constitution of India also establishes supremacy of federal laws. It provides that whenever there is legislative conflict between national and provincial laws in relation to any matter found in the concurrent list, the provincial law to the "extent of repugnance" is void.[16] Like the Constitution of Nigeria, the Constitution of India recognizes that the laws of provincial are void only to extent of repugnance. However, unlike the Constitution of Nigeria, it, under section two of art 254, envisages conditions for the supremacy of provincial laws.

Contrarily, the Constitution of South Africa incorporates supremacy of provincial law in case when there is legislative conflict between the law of national and provincial law with respect to concurrent legislative power.[17] However, it explicitly enumerates wide range of criteria in which national law prevails over provincial laws. When one of the conditions envisaged under section 146/2 and section 146/3 of the Constitution are proved to be existed, national legislation would immediately prevail. These are when a) the national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually, the national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing - (i) norms and standards; (ii) frameworks; or (iii) national policies. (c) The national legislation is necessary for - (i) the maintenance of national security; (ii) the maintenance of economic unity; (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour; (iv) the promotion of economic activities across provincial boundaries; (v) the promotion of equal opportunity or equal access to government services; or (vi) the protection of the environment. In the absence these criteria, the laws of provinces immediately take upper hand.[18] The perusal of the Constitutions of South Africa indicates that the supremacy of national law is conditioned on existence such criteria having national implication. This implies that while the supremacy of constituent units is a rule, supremacy of national law is an exception.

The Constitution of South Africa establishes some procedural aspects on how to determine legislative conflict between the two laws. Accordingly, it is provided for that

[16] *Constitution of India*, Art 254.
[17] *Constitution South Africa*, 1996, Section 146/2 and 146/3.
[18] ibid Section 146/5.

decision as to which law should prevail must be made within thirty days its first sitting after a law was referred to it by the court. If it does not reach a decision within the thirty days, that law would be considered as though it were approved by the Council for all purposes. However, if it rejects the law accordingly referred to it, it is required to forward reason for not approving the law to the organ referred the law to it within thirty day of its decision.[19] This kind of clause would significantly maintain balance of power as it 'adheres to and invokes the very factors and values that informed the initial choice of federalism.'[20]

There are also some federal Constitutions that establish outright supremacy of regional law. The Constitution of Iraq follows this path by recognizing the supremacy of the law of constituent units. It provides that when legislative conflict between federal and regional laws in relation to shared powers occurs, the law of regional state prevails over conflicting federal law.[21] The same pattern is adopted by the Constitution Canada in the case of pension law. It is provided for that provincial law on age pensions prevail over federal legislation on the same subject.[22]

A rule of legislative conflict in federal system balances legislative power relation between federal and constituent units. This is done by specifying the law that prevails in the case of conflict between the laws of federal law and constituent units. In fact, it must be noted that, absolute subscription to the supremacy of the laws federal or constituent units on abstract level is not preferable. It gives rise to an unnecessary shift of balance of power in the favor of a level of government with strong arm.

While outright subscription to the supremacy of federal laws in long run divert the balance of power in the favor central government, absolute subscription to the supremacy of the law of constituent units on abstract level ends with "decentralization to the extent that secession or fragmentation could occur. This could finally render the central government ineffective.[23] Consequently, this may result in the demise of a federal system. Therefore, subscribing to either of them on abstract level is not desirable.

[19] ibid Section 146/5-146/7.
[20] Harman, Brady, *Maintaining the Balance of Power: A Typology* (2015) 714.
[21] *Constitution of Iraq*, 2005, Art. 115/2.
[22] Canada Constitution, *Act 11867*, Section 94/A.
[23] Harman Brady (n 20) 723.

3. Legislative Conflict Resolution Under the FDRE Constitution: The Case of Concurrent Legislative Powers

3.1. Varieties of Concurrent Legislative Powers

As per Art 52(1) of the FDRE Constitution, all powers which are not exclusive to federal government or concurrently to both federal and states are belongs to the states. This provision implies of the existence of concurrent legislative powers of the federal and regional states.[24] However, it does not contain separate lists of concurrent legislative powers. Art 98 is the only provision of the Constitution that seems to imply the existence of concurrent legislative power. This is because the very title of the article reads "concurrent taxation power" thereby indicates the existence of concurrent power though it is limited to taxation. The problem of this article is that though it reads "concurrent taxation power, the careful perusal of the same is not about the concurrent power rather it is about the fact that both federal and regional governments sit "together" to levy and collect taxes on the matter specified therein.[25] Other than this, the FDRE Constitution does not incorporate clear list of concurrent legislative powers. This does not imply the absence of concurrent legislative powers at all. There are wide ranges of matters that are simultaneously given to both the federal and regional state and consequently fall under concurrent legislative power.

The first one is Art. 93(1) of the Constitution. Art. 93(1) of the Constitution empowers both federal and regional governments to declare state of emergency in the case of "natural disaster or epidemic." The power to declare emergency in case of natural disaster and/or epidemic falls within the category of concurrent legislative power. In this case, both federal and regional states can simultaneously declare state of emergency. They both have legitimate legislative power. At this juncture, we can mention the 2020 state of emergency to protect the public from Covid-19 Pandemic. Both federal government and the then Tigray Regional State declared emergency declaration to contain the spread of Covid-19 pandemic.

[24] Assefa Fiseha and Zemelak Ayele (n 4) 245.

[25] See Taddese Lencho, 'The Ethiopian Tax System: Excesses and Gaps' [2010] 20(2) Michigan State International Law Review 327. Nevertheless, this article has been amended to change the spirit of concurrency in to revenue sharing that allows the specified taxes to be determined and administered by the federal government while the constituent units share the proceeds from it. However, the amendment to this provision has not been formally published in Federal Negarit Gezeta. For more discussion on this issue, see Zelalem Eshetu Degifie, 'Unconstitutional Constitutional Amendments in Ethiopia: The Practice under Veil and Devoid of A Watch Dog' [2015] 4(1) Haramaya Law Review 66.

Chapter three of the Constitution is another area that fall under concurrent power of federal and regional government. The Constitution imposes the responsibility and duty to respect and enforce human rights, among other, on the legislative organs both federal and regional states.[26] This is not exclusive power of either of them. Rather, it falls under the concurrent power whereby empowers both federal and regional government to simultaneously enact law to protect these fundamental rights and freedoms.

Another area that falls under the concurrent legislative power under the FDRE Constitution is the duty to protect and defend the federal Constitution. The Constitution imposes the duty to protect and defend the federal Constitution both on the federal and regional governments. Under art 51(1), federal government is duty bound to protect and defend the federal Constitution. The same duty is imposed on regional government.[27] The other important area where concurrency found is where the Constitution empowers the House of Federation (HoF) and Regional Governments to decide on issues related to self-administration. As per Article 62 (3) of the FDRE Constitution, it is the House of Federation that decides on the rights to self-determination of Nations, Nationalities, and Peoples of Ethiopia, including secession. On the other hand, article 52 (2) (a) of the FDRE Constitution provides that the regional governments have the power to decide on the establishment of a state administration to advance their self-government.[28] This assertion of the constitution "concurrently" empowered both the HoF and Regional Governments to decide on issues related to self-administration including the request of distinct ethnic identity.[29]

The Constitution moreover envisages the existence of concurrent legislative power in area of social and economic matters in the form of policy framework. The Constitution entrust the federal government to 'formulate and implement the country's policies, strategies, and plans in respect of the overall economic, social and development matters'.[30] The Constitution concurrently authorizes the states 'to formulate and execute' their own state-wide 'economic, social and development policies, strategies and plans'.[31] Such key functional areas of

[26] *FDRE Constitution*, Proclamation No. 1/1995, Art. 13/1.
[27] ibid Art. 52/2/A.
[28] This provision provides that Consistent with sub-Article 1 of this Article, States shall have the following powers and functions: (a) to establish a State administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the Federal Constitution. See Behaylu Girma, 'The Predicament of Ethnic Identity and the Right to Self-Determination in Ethiopia: Overview of Procedural and Practical Issues of the House of the Federation' [2020] 4 Hawassa University Journal of Law 67.
[29] Ibid.
[30] See for example *FDRE Constitution*, Proclamation No. 1/1995, Art. 55/10.
[31] Ibid Art. 52/2/C.

governance are subject to concurrent jurisdiction of the federal government and constituent units in many federations.[32]

The preceding discussion indicates that the FDRE Constitution consists of varieties of concurrent legislative powers though they are not separately categorized as the lists of concurrent legislative powers. The exercise of these constitutional provisions, in one way or another, requires existence of legislative basis for their practical operations. In other word, both federal and regional governments can enact laws for the proper implementation of these constitutional provisions. So long as the Constitution does not limit the exercise of these concurrent powers by federal and regional governments, theoretically speaking, both federal and regional government can enact law independently of one other. Therefore, it is natural to ask which law prevails when there is an inconsistency between the laws enacted by the federal government and the laws enacted by regional states in the exercise of concurrent legislative powers.

3.2. Legislative Conflict Resolution Mechanism in the Case of Concurrent Legislative Power: An Appraisal

The FDRE Constitution, apart from sanctioning both federal and regional states to respect the power of one another,[33] does not contain provisions dealing with the relation between federal and regional laws. It is silent on the relation between federal and regional laws. More particularly, it is not clear on how to solve legislative conflict between the laws of federal and regional laws in the case of concurrent legislative powers. The trend of Germany indicates that the House of Federation (equivalent to Bundesrat) is a legitimate organ through which regional states can participate in parliamentary legislation. However, the way it is institutionalized and lack of legislative power make it in appropriate to represent the regional states in parliamentary legislation like that of Budesrat. This because, unlike the Bundesrat of Germany which is a representative of Landers, the House of Federation is not a representative regional state rather

[32] Nico Steytler, 'The Currency of Concurrent Powers' in in Nico Steytler(ed), *Federal Systems: Meaning, Making, Managing* (Brill Nijhoff, Boston 2017) 1-12.

[33] *FDRE Constitution*, Proclamation No. 1/1995, Art. 50/8. This provision indicates that the FDRE Constitution envisages principle of "mutual respect" between and regional governments and "rule of non-interference" in one another affair. Tsegaye Regassa, 'State Constitutions in Federal Ethiopia: A Preliminary Observation' (Paper presented at the Ballagio Conference, 2004) 4.; Ameha Wondirad,, 'An Overview of the Ethiopian Legal System' [2014] 20 CLJP/JDCP 174, 178.

it is the representative of nation, nationality and people Ethiopia.[34] Moreover, the HoF, unlike its counterpart Bundestrat of Germany, has no law-making power.

It follows that it is difficult to locate the relation between federal and regional laws the FDRE Constitution.[35] Against this, two views are suggested. The first view is the one that argue for the supremacy of federal law by default and settle legislative conflict in favor of the federal law.[36] According to this version, the silence of the Constitution is to mean that it recognizes the supremacy of federal laws.

The second view asserts that the principle of 'supremacy of the nations, nationalities and peoples' provided in the Constitution makes it is difficult to claim that federal law is supreme over state law since the regional governments are largely expressions of the sovereignty of 'nations and nationalities'.[37] In other words, the special emphasis given to nation, nationality and peoples gives the impression that the regional states enjoy more legislative autonomy.[38] This is further buttressed the fact that the Constitution reserves residual power to regional states.[39] The residual power that is reserved to regional state plus the rights of ethno-nationals give the impression that regional states enjoy more legislative power by which the valid regional law prevails in the case of legislative. However, neither view is of little help in addressing the issue as neither of it is supported by critical or comparative analysis.

There are some legislative practices that give supremacy to federal laws. Ethiopian Electoral Proclamations is among federal laws with federal supremacy.[40] This proclamation

[34] *FDRE Constitution*, Proclamation No. 1/1995, Art. 60.
[35] In all other cases where the matter falls within the exclusive jurisdiction of the federal or state government, inconsistencies are to be resolved by invalidating the law that was enacted in contravention to the constitutional delineation of powers. This position is supported by the constitutional provision that obliges states and the federal government to respect each other's sphere of competence. See Gedion Temotios and Abduletif Kedir,. 'The Supreme Court of Ethiopia: Federalism's Bystander in Nicholas Aroney and John Kincaid (eds), Courts in Federal Countries Federalists or Unitarists?'(University of Toronto Press 2017) 177.
[36] Assefa Fiseha and Zemelak Ayele (n 4) 258-259. It is also argued that the basic goals and principles of federalism is another indicative of the fact that the FDRE Constitution gives slight supremacy for the federal government. See Legesse Tigabu Mengie, 'Federalism as an Instrument for Unity and the Protection of Minorities: A Comparative Overview: Ethiopia, India and the US' [2016] 10(2) Mizan Law Review 265-295.
[37] Semahagn Gashu Abebe, 'The Last Post-Cold War Socialist Federation: Ethnicity, Ideology and Democracy in Ethiopia' 2014, Ashgate 83.
[38] Assefa Fiseha and Zemelak Ayele (n 4) 258-259; See also Assefa Fiseha, 'Federalism and the Adjudication of Constitutional Issues: The Ethiopian Experience' [2005] 52 Netherlands International Law Review 1, 10-11; See also Tsegaye Regassa, 'Comparative Relevance of the Ethiopian Federal System to other African Polities of the Horn: First Thoughts on the Possibility of "Exporting" Multi-ethnic Federalism' [2010] 1(1) Bahir Dar University Journal of Law 28.
[39] *FDRE Constitution*, Proclamation No. 1/1995, Art. 51/2.
[40] *Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct,* Proclamation No. 1162/2019.

impliedly recognizes the supremacy of federal law. It under article 4(2) says that "regional election laws that pertain to regional council elections shall be in accordance with relevant provision of this proclamation." The careful inspection of this provision suggests that there exist regional election law that is pertains to regional election but required to be consistent to federal electoral law. This federal supremacy is not granted by the Constitution.[41] Thus, the supremacy clause must be incorporated in the Constitution and not in subsidiary legislation.[42]

The practice of regional states constitutions reinforces the existence of federal supremacy clause. Of the nine regional state constitutions, six of them establish federal supremacy.[43] According to Fisseha, this is not surprising as it is the byproduct of a strong grassroots-based and centralized party system.[44] It can also be argued that this is one way of exercising constitutional space reserved to states by the FDRE Constitution.[45] Some regional states constitutions formally recognize the supremacy federal law whiles other do not using their constitutional space.

What one can understand form the preceding discussion is that the silence of the Constitution gives rise to diverse opinions. It is therefore suggested that the best compromise is 'to decide the issues on a case-by-case basis rather than subscribing to either principle on the abstract level.'[46] However, in the absence of any guiding principles, this may in long run results the balance of power to be skewed in the favor of a government with strong arm. Therefore, instead of leaving the matter to be decided case by case or subscribing to one principle on abstract level, it is preferable to provide guiding principles on the basis of which the appropriate organ will resolve legislative conflict.

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[41] Fedesa Mengesha, 'The Emergence of Precedent Over Precedent and its Potential Conflict with the Principle of Self-Rule in Ethiopian Judicial Federalism: The Case of Oromia Courts' [2020] 9(1) Oromia Law Journal 44.
[42] Habtamu Birhanu. and Zelalem Kebu. 'Inter-Federal-Regional Conflict Resolution Mechanisms in Ethiopian Federacy: A Comparative Appraisal on the Legal and Institutional Frameworks' [2019] 10 Beijing Law Review 1374, 1384-1386.
[43] Nigussie Afesha, 'The Practice of Informal Changes to the Ethiopian Constitution in the Course of Application' [2016] 10(2) Mizan Law Review 396.
[44] Assefa Fiseha and Zemelak Ayele (n 4) 259.
[45] The term "Constitutional space" refers to the range of discretion available to subnational constitution makers. Subnational constitutional space would seem to include, though it might not be limited to the power to draft a constitution, amend that constitution, replace that constitution, set goals of government, define the rights that the constituent unit will protect, structure the governmental institutions of the constituent unit including whether the legislature shall be bicameral or unicameral and the power to define the process by which law is enacted in the constituent unit. See G. Alan Tarr, 'Subnational Constitutions and Minority Rights: A Perspective on Canadian Provincial Constitutionalism' 2018, 2 Revue québécoise de droit constitutionnel 174-194.
[46] See also Assefa Fiseha, 'Federalism and the Adjudication of Constitutional Issues: The Ethiopian Experience' [2005], 52 Netherlands International Law Review 1, 10-11

3.3. Whose Power is to Adjudicate Legislative Conflict under the FDRE Constitution?

When federal and state governments concurrently exercise certain powers or functions, the need arises to put in place appropriate institutions and mechanisms of coordination.[47] It is equally important that legislative conflict resolution mechanism requires the institution established to perform the task of adjudicating issues of legislative conflict. For example, the Basic Law of Germany authorizes the Constitutional Court of Germany to decide the case involving the compatibility of lander law with federal law. The Constitutional Court of Germany is the highest court in Germany with the power of constitutional review. The Court determines the competing federal and landers lists of powers against one another in its day to day task of constitutional review power. It entertains case involving legislative conflict between the law of the lander and federal on the application of Federal Government, government of a Lander or of one fourth of the Members of the Bundestag.[48] The fact that standing is given to Landers is meant to allow Landers to defend their legislative powers against infringements by federal laws.[49]

In contrast to the Basic Law of Germany, the FDRE Constitution is silent on whose power is to adjudicate issues involving legislative conflict. The experiences of the Basic Law Germany suggests that the power to adjudicate issues involving legislative conflict falls under the jurisdiction of the organ with the power of constitutional review i.e House Federation in our context. The assumption is that issues involving legislative conflicts are constitutional matters that are supposed to be adjudicated by the organ with constitutional review power. Accordingly, the House of Federation (HoF) seems to be an appropriate organ to adjudicate legislative conflict between the laws of federal and regional government arising out of the exercise of concurrent legislative powers.

However, the FDRE Constitution in nowhere empowers the HoF to adjudicate the case involving legislative conflict between federal and regional laws. Though it can be argued that constitutional review power of the HoF may be extended to include the issue involving legislative conflict, HoF is not in a position to adjudicate such legislative conflict. The

[47] Assefa Fiseha and Zemelak Ayele (n 4) 256.
[48] *Basic Law for Federal Republic of Germany*, Art 93/1/2 See also Christine Landfried, 'The Judicialization of Politics in Germany' [1994] International Political Science Review 113, 114.
[49] Rainer Grote, 'Constitutional Courts in Federal States: The Case of Germany', 17 Fédéralisme 7.

Constitution under art 84(1) requires the case involving constitutional resolution to be submitted to the HoF through the Council of Constitutional Inquiry (CCI). The issue involving constitutional resolution that the CCI required to submit to the HoF is not the conflict between federal and regional laws. Rather it is the conflict between the FDRE Constitution and federal/state laws.[50] As per this provision, the constitutional issue to be submitted to the HoF through the CCI is limited to the conflict between the FDRE Constitution and federal/state laws. This excludes conflict between federal laws and state laws.

The CCI proclamation also reinforces this position.[51] The proclamation, while expands the substantive contents of the constitutional disputes to be submitted to the HoF, it does not make reference to the legislative conflict.[52] Both the Constitution and proclamation exclude the case involving legislative conflicts. Even if it may be roughly argued that the case involving legislative conflict, without being submitted to the CCI, can directly be submitted to the HoF, regrettably, the draft proclamation to consolidate the powers and functions of the HoF requires the House to forward the new case directly submitted it to the CCI.[53] Consequently, the power of the HoF to adjudicate legislative conflict is hampered by procedural hurdles.

Perhaps, it may be argued that the Federal Courts have jurisdiction over the cases involving legislative conflicts. The proclamation provides that federal courts have jurisdiction over 'cases arising under the Constitution.'[54] Since the term that reads cases arising under the Constitution is broad enough to include issues involving legislative conflict, it can be argued that federal courts have jurisdiction over the cases involving legislative conflicts. Though the proclamation empowers the Federal courts to interpret and observe the Constitution pursuant to Article 9(2) and 13(1) of it, the power to interpret the Constitution is given to the HoF in general term. So, the power relation between the regular courts and the HoF is not clear. Moreover, proclamation empowers federal courts that are initially there to interpret the laws of federal government. The issue of impartiality may arise. In other word, it is not possible to think that federal courts entertain impartially in case they found regional law contradicting with federal laws. The doctrine of counter majoritarian democracy and judicial activism moreover influenced the framers of the Constitution to eliminate courts from exercising constitutional

[50] *FDRE Constitution*, Proclamation No. 1/1995, Art. 84/2.
[51] *Council of Constitutional Inquiry*, Proclamation No.798/2013.
[52] ibid Art. 3/1.
[53] *Draft Proclamation on the Power and Function of the House of Federation*, Art. 11.
[54] *The Federal Court Proclamation*, Proclamation No. 1234/2021 Art. 3/1/A.

review power.[55] Therefore, the Ethiopian legal system lacks appropriate institutional frameworks to rule on legislative conflict arising out of the exercise of concurrent legislative powers.

4. Conclusion

The main thesis of this article was to make an appraisal on the FDRE Constitution on a mechanism to solve legislative conflict arising out of the exercise of concurrent legislative powers. As such, it has been identified that the FDRE Constitution consists of varieties of concurrent legislative powers though they are not expressly provided. The existence and exercise of concurrent legislative power in particular opens room for legislative conflict between federal and regional laws. In this regard, it is indicated almost all federal constitutions establishes a mechanism that fits their own context.

The trend of the FDRE Constitution is different from these trends. It in nowhere consists of a clear rule to solve legislative conflict between the laws of federal and regional government. It is silent. This is despite the fact that the success or failure of a federal system depends on maintaining balance of power between the levels of governments through effective legislative conflict resolution mechanism. The absence of such constitutional rule results in the unjustified centralization or decentralization of powers as the case may be.

Moreover, the FDRE Constitution lacks appropriate institutional framework to adjudicate legislative conflict between the laws of federal and regional government. Though the comparative appraisal on some federal constitutions suggests that the HoF is appropriate institution to solve any legislative conflict arising, it is identified that the HoF is not in a position to adjudicate legislative conflict between the laws of federal and regional government due to substantive and procedural problems. It is also identified the regular courts are also not in to entertain legislative conflict.

[55] See Yonatan Tesfaye Fessha, 'Judicial Review and Democracy: A Normative Discourse on the (Novel) Ethiopian Approach to Constitutional Review' [2006] 14(1) African Journal of International and Comparative Law 53-82. See also Assefa Fiseha, 'Constitutional Adjudication In Ethiopia: Exploring the Experience of the House of Federation (HoF) [2007] 1(1) Mizan Law Review 1-32.

COMPARATIVE STUDY OF FEDERAL AND REGIONAL RURAL LAND LAWS: A DEPARTURE FROM THE CONSTITUTIONAL LEGISLATIVE POWER OF THE FEDERAL GOVERNMENT

Abebaw Abebe Belay*

Abstract

Based on Art. 51(5) of the Federal Democratic Republic of Ethiopia (hereinafter, FDRE) constitution, the federal government has the power to enact laws for the utilization and conservation of land and other natural resources; whereas Art. 52 (2(d)) of the same constitution granted regional states the power to administer lands under their jurisdiction based on federal law. Article 50(9) of the Constitution states that the federal legislative power may be, when necessary, delegated to the regional states. Through the federal rural land administration and use Proclamation No. 456/2005 Art. 17, the federal government delegated regional states the authority to enact detailed laws, but the provisions of these laws have to be enacted according to and in line with the federal law. However, there are two different arguments regarding this matter. One argument asserts that the legislation on land administration is entrusted to the federal government, while the opposing viewpoint asserts that the federal government's legislative power focuses on land utilization, leaving the residual land administration responsibilities to the regions. Nevertheless, it is crucial to delve deeper into this issue to gain a comprehensive understanding of the complexities involved. Therefore, the main objective of this paper is to comparatively study the federal and regional rural land laws, and assess whether there is a departure from the Constitutional legislative power. A doctrinal type of legal research is applied. Besides, an interview was used as a primary data collection method. The research revealed that regional rural land laws, in many instances, contradict the federal framework of rural land law, which is a departure from the constitutional legislative power of the federal government. Among others, strict compliance with the constitutional legislative power; and periodical legal auditing are recommended.

Keywords: Legislative power; FDRE constitution; federal government; regional governments; rural land law.

1. Introduction

Land is a constitutional issue in Ethiopia. Article 40 of the FDRE constitution enshrines governing provisions about the ownership and administration of both rural and urban lands.

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Land belongs to the state and the people of Ethiopia and it is not subject to sale or other means of exchange.[1] Besides, Art. 89(5) of the FDRE Constitution entrusts the government with the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development.[2] Peasants and pastoralists have the right to obtain land without payment and the protection against eviction from their possession.[3]

Based on Article 51(5) of the FDRE constitution, the federal government shall enact laws for the utilization and conservation of land and other natural resources. Article 52 (2(d)) of the same constitution granted regional states the power to administer lands under their jurisdiction, based on federal laws. Per Article 50(9) of the constitution, the Federal Government possesses the prerogative to delegate powers and functions stipulated in Article 51 of the same constitution, to the States whenever deemed necessary. According to the powers entrusted to it by Article 51 of this Constitution, the federal government has enacted rural land administration and use Proclamation No. 456/2005. As per Article 50(9) of the constitution and Article 17 of the federal Rural Land Administration and Use Proclamation 456/2005, the federal government delegated regional states with the power to enact detailed rural land administration and use laws to effectively administer their lands. The federal government, after providing general framework provisions, bestowed the regional states to enact their rural land administration and use laws.[4] Written Montgomery Wray believes that the delegation is partial that created significant differences among State laws.[5] However, regional laws have to be enacted according to and in line with federal law; as proclamation No. 456/2005 is the governing framework law that regulates rural land administration at the current time.[6] The following supports this argument.

> Regional governments are given the right to administer land while the federal government enacts laws concerning land and natural resources, which amounts to guiding norm/framework legislation. Article 52 (2) (d) of the FDRE constitution, here, the power of regional governments to administer land

[1] *Constitution of the Federal Democratic Republic of Ethiopia.* Proclamation No. 1/1995, Art. 40/3
[2] ibid Art. 89/5.
[3] ibid Art. 40/4 and Art. 40/5.
[4] Adam, Achamyeleh Gashu, and Tadesse Amsalu Birhanu, 'Decentralized Rural Land Administration in Ethiopia: The Case of Amhara Region' [2018] 6(1) Journal of Land and Rural Studies 34, 49.
[5] Witten, Montgomery Wray., 'The protection of land rights in Ethiopia. Afrika Focus' [2007], p. 153-184.
[6] Wabelo, Temesgen Solomon, 'Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries' [2020] 11 Beijing Law Review, 11, 64, 98.

> following Federal laws is recognized. The power to administer impliedly indicates the making of laws to facilitate endeavours of land administration and to enact laws in the domain left by federal land laws based on particular local conditions. Besides, Art.17 of Federal Land Proclamation 456/2005 reveals the existence of the power of regional states to "enact rural land administration and land use law" which is consistent with it (Proc. 456/2005) to implement the land administration mandate. Accordingly, all of the regional states have adopted their own Rural Land Administration and Use proclamations to implement the federal rural land proclamations.[7]

Based on this, all regional states (except South West Ethiopia regions[8]) have promulgated their land laws for rural land administration.[9] A piece of research findings argue that apart from the general delegation of power to enact land legislation, regional states have inherent legislative power over matters of land administration. The arguments are based on the blurred stipulation of the FDRE Constitution about the power-sharing scheme in relation to land. Specifically, the constitutional power allocation scheme over land does not clearly state the extent of federal legislative power over land and whether states have inherent legislative power over land administration.[10] This line of argument also said that the federal government is intervening against states' power to administer land and legislations regarding land administration should have been left to the states by virtue of residual power under the constitution.[11]

This paper argues and is based on the framework that the federal government has the power to enact rural land administration and use laws. The argument of some writers including Sitotaw, H., Abdo, M., & Gashu, A. (2019) is that the term "utilization and conservation of land" do not include land administration issues. Nevertheless, this argument does not seem to go in line with the intention of the FDRE Constitution in apportioning power over land and

[7] Geberamanuel, Daniel Behailu, and Gemmeda Amelo Gurero, 'The enigma of informal rural land deals in Ethiopia: evidence from peri-urban areas of Hawassa City' [2017] Haramaya Law Review 6: 43-66.
[8] These two newly established regions have adopted the former SNNPR rural land law through their respective regional councils. Recently Sidama National Regional State has adopted its rural land administration and use proclamation.
[9] Abdo, Muradu, 'Legislative protection of property rights in Ethiopia: an overview' [2013] 7(2) Mizan Law Review, 165-206.
[10] Sitotaw, Habtamu, Muradu Abdo, and Achamyeleh Gashu, 'Power of Land Administration under the FDRE Constitution' [2019] 31 Journal of Ethiopian Law, 83.
[11] Semahagne, Habtamu Sitotaw, 'The Power to Administer Land in Ethiopia: Scrutinizing Federal Legislative Interventions' [2015] 6 Bahir Dar University Journal of Law, 195.

other natural resources between the federal and state governments. The reading of article 52(2(d) of the same constitution states that regional states have the power "to administer land and other natural resources in accordance with Federal laws", which implies that land administration laws need to be enacted by the federal law unless there is some sort of delegation to the states.

In addition to this, the historical brief of the Constitution Drafting Commission briefly elucidates the necessity of granting the federal government the authority to legislate land-related laws, encompassing land administration and land use. It was stated in the brief that, this power is of utmost importance in fostering the building one economic community.

According to anecdotal accounts, the House of Federation (hereinafter, HoF) was approached for constitutional interpretation regarding the jurisdiction to establish land laws during the enactment of the Urban Landholding Registration Proclamation, No. 818/2014. These accounts suggest that the HoF has concluded that the federal government holds the authority to legislate on matters pertaining to land. It is because of this that Urban Landholding Registration Proclamation, regulations, directives, and guidelines are enacted at the federal level leaving implementation power to the regions. The HoF stands as the esteemed institution entrusted with the vital task of interpreting the Constitution. Through its discerning lens, we gain valuable insight into the Constitution's intent to bestow the responsibility of land-related law promulgation, including land administration, upon the federal government.

Moreover, the enactment of expropriation and compensation proclamations and regulation, which form an essential part of land valuation, at the federal level serves as a clear testament to the extensive powers bestowed upon the federal government. As a result, regional governments' power is to administer their land based on federal law. The federal government can delegate regions to have detailed land administration laws as per Art. 50(9) of the FDRE constitution; and it has already been delegated based on Art. 17 of Proclamation 456/2005.

Despite all these, the pieces of literature the author reviewed do not comparatively review the federal and regional land administration and use laws. A few related works looked at the pre-conditions required to be fulfilled to exercise different rural land rights[12] (among others, inheritance, land rent, donation, and the like)[13]; and the dispute resolution mechanisms (both

[12] Alemu, Getnet, *Rural land policy, rural transformation and recent trends in large-scale rural land acquisitions in Ethiopia. European Report on Development*, Overseas Development Institute (ODI), 28.
[13] Geberamanuel, Daniel Behailu, and Gemmeda Amelo Gurero. (n 7).

formal and informal).[14] There are comparisons on the modalities of rural land dispute resolution mechanisms within the regional states.[15] However, the previous studies do not compare the provisions of the regional rural land administration laws with the federal framework law provisions. Considering this literature gap, this paper aims to comparatively study the Regional Rural Land Administration and use Laws and assess whether there is a departure from the constitutional legislative power of the federal government.

To that end, the methodology adopted is largely a qualitative approach. Doctrinal type of legal research, which is a document review and legal analysis type of research, is applied to figure out the matter at hand, which deals with studying existing laws (both federal and regional laws). In addition, a Key Informant Interview was conducted with land administration professionals, judges and prosecutors at both the federal and regional levels. Moreover, it used the reflection of previous work experience and experience sharing of the writer. The scope of the study is limited to the rural land laws of the federal and four regional states (Amhara, Oromia, Tigray, and the former Southern Nations, Nationalities and Peoples Region (hereinafter, SNNPR)).

2. Results and Discussions

Eight thematic areas[16] have been identified for the comparison of regional and federal rural land laws. In the subsequent section, we will delve into the discussions and outcomes of this comparison. As mentioned earlier, regional states are formulating their land laws based on the authority delegated to them by the federal government. However, it is crucial to note that regional states must adhere to the framework rules outlined in the proclamation. Despite this fundamental principle, regional states often deviate from the constitutional legislative power vested in the federal government. One contributing factor to this deviation is the lack of timely updates to the federal land law, which has remained unchanged for 18 years since the adoption of Proc. No. 456/2005. In the following section, we will elaborate on the instances where regional laws diverge from the constitutional legislative power of the federal government.

[14] Wabelo and Temesgen Solomon. (n 6)
[15] ibid.
[16] Acquisition of rural landholdings, land rent, donation, inheritance, dispute settlement, period of limitation, land-related criminal cases, and obligation of rural landholders are the 8 thematic areas assessed in this paper.

2.1. Acquisition of Rural Land as a Holding

Acquisition of rural land as a holding is the basic thing in the rural land administration system of Ethiopia. As per Article 40 (4) of the 1995 FDRE constitution, Ethiopian peasants have the right to get land without payment and they are guaranteed protection against eviction from their possession. Similarly, Article 40 (5) of the same constitution enshrined that Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their lands. From these two provisions, it is clear that only peasants and pastoralists have the right to get land free of charge. Others, other than peasants and pastoralists, do not have the right to get landholding right free of charge, rather they can access land through payment arrangements, through lease, by fulfilling requirements set for this purpose. With this understanding, Article 5 of Proc. No. 456/2005 stipulated that peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge. When we assess the intention of the constitution and the land law, landholding rights can be acquired free of charge through three different mechanisms: allocation by the government, donation, and inheritance. Unlike landholding rights, land use rights can also be accessed through different mechanisms (among them land rent, sharecropping, and similar contractual or legal arrangements). To get land with these three mechanisms, the recipient should be a peasant or pastoralist. Except for these three groups of people, acquiring landholding rights is not allowed.

When we come to regional states, the Amhara rural land law[17] states any person who resides in the region and is mainly engaged in agricultural activities or who wants to engage in the same activity can be a rural landholder. The requirements needed for a person to be a landholder are one, residency (which can be proved through kebele ID or any other mechanism), mainly engaged in agriculture, or the desire to engage in it (which can be proved through clearance letter from public office, for instance). Similarly, the Oromia and the former SNNPR land laws[18] also state that any resident of the region, aged eighteen years and above, whose livelihood depends on agriculture and/or wants to live on, has the right to get rural land free of charge. Unless these requirements are fulfilled, a person cannot get land as a landholder through any of the three land-accessing mechanisms (allocation, inheritance, and donation). This is in line with the federal proclamation and constitution, and is, more or less, implemented in the

[17] *The revised Amhara National Regional State Rural Land Administration and Use Determination Proclamation*, Proclamation No. 252/2017, Art. 7.
[18] *The Oromia Regional State Rural Land Administration and Use Proclamation*, Proclamation No. 248/2023, Art. 7/1.

region. In practice, in Oromia and the former SNNPR, individuals are accessing and becoming landholders without fulfilling the above-mentioned requirements. In these regions, individuals who have income other than agriculture; like public servants, merchants, etc.; are landholders.[19]

2.2. Land Rent

Tigray	Amhara	Oromia	Former SNNPR
• SLLC is a prerequisite • Up to half of the total holding • Up to 3 years for traditional farming • Maximum 20 years	• Without displacing the landholder • For annual crops up to 10 years • For perennial crops up to 30 years	• Up to half of the total holding • Up to 3 years for traditional farming • Up to 10 years for modern farming • VGs right to rent whole holding	• A landholding certificate is a prerequisite • Without displacing the landholder • Farmer to farmer up to 5 years • Farmer to investor for annual crops up to 10 years • Farmer to investor for perennial crops up to 25 years

Table 1: Comparison of Regional States on Land Rent/Lease Clauses

The Federal Land Law 456/2005 uses the words "rent" and "lease" interchangeably. Article 8 of the proclamation stipulates that Peasant farmers, semi-pastoralists, and pastoralists, who are given holding certificates can lease to other farmers or investors land from their holding of a size sufficient for the intended development in a manner that shall not displace them, for a period to be determined by rural land administration laws of regions based on particular local conditions. There are several issues where regional state laws appear to contradict the overarching federal law.

In order to lease rural land, it is imperative to possess a valid landholding certificate as stipulated by the federal land law. This requirement is further emphasized by the former SNNPR land law. The landholding certificate can be either the First Landholding Certificate

[19] Key Informant Interviews made with experts of the two regional states.

(FLLC) or the Second Level Landholding Certificate (hereinafter, SLLC). However, the Tigray rural land administration law imposes the SLLC as a mandatory prerequisite, arguing that it provides a more comprehensive understanding of landholding rights. Unfortunately, this provision places an undue burden on landholders whose lands have not yet undergone surveying and SLLC issuance. Consequently, this requirement contradicts the federal land law.

As per the federal land law, the size of rural land illegible for land rent is "…*in a manner that shall not displace them …*" This criterion needs to be decided case by case. It shall be based on the size of land that landholders have that this should be decided. Those who have large landholdings can rent out most of the holdings, as the remaining will be enough for them not to be displaced. Whereas those having very smallholding may be precluded from renting out. Those who have off-farm activities may also be allowed to rent out their whole holdings. Despite the case being this, the Oromia and Tigray land laws allow land rent up to half of the total holding. This contradicts the federal mother law and has two major problems. One, it is very difficult for the land administering body to know every land rental contract that they are up to the "half of the holding" framework. Those who want to engage in off-farm activities by renting out their holdings are prohibited from doing so. Two, the condition "…*in a manner that shall not displace them …*" needs to be decided case by a case basis taking into account the size of the family, the size of the land, the fertility of the land, the engagement of the landholder in off-farm activities and the like. It may not be possible to say "…half of the holding…", for instance, as it affects the rights of vulnerable groups. One of the best experiences enshrined under Oromia land law is that those vulnerable groups who are not able to cultivate their lands can rent out their whole holdings. This is very important as this is not found and practiced in other regional states.

2.3. Inheritance

Inheritance has two types: with will (testate succession) and without will based on the law (intestate succession).

2.3.1. Inheritance with Will

Tigray	Amhara	Oromia	Former SNNPR
• Not possible	• To anyone whose livelihood is dependent on agriculture or wants to engage in it	• To heirs who have the right to inheritance following the relevant law	-

Table 2: Comparison of Regional States on Inheritance with Will Clauses

As per the federal land law[20], any landowner has the right to transfer their rural land use rights through inheritance to their family members. This seems the right of landholders to transfer their landholding right through a will. Family members are defined under the law[21] as any person who permanently lives with the holder of holding rights and shares the livelihood of the latter. Based on this, any landholder has the right to transfer their landholding through will only to their family members. When examining the land laws of the Tigray and Amhara regions, we observe the presence of provisions that contradict the federal provisions mentioned earlier.

The Tigray land law[22] unequivocally prohibits the transfer of assets through a will. The provision explicitly endorses inheritance without any reference to testamentary bequests. This constitutes a blatant infringement of the fundamental federal legislation. The Amhara land law[23] has a provision for inheritance with a will. Any individual who owns rural land has the right to transfer, through a legally valid will, their landholding and use rights to another person involved in agricultural activities or to anyone interested in pursuing such activities. Despite the federal land law strictly limiting inheritance with a will to family members only, the Amhara land law broadened the inheritance with will beneficiaries to "…any person engaged in an agricultural activity or to any other person who wants to engage in this activity …" This situation presents a clear contradiction, as it grants a right that is not provided by federal law.

[20] *Proclamation to provide for the Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation*, Proclamation No. 456/2005, Art. 8/5.
[21] ibid Art. 25.
[22] *Tigray Rural Land Administration and Use Proclamation*, Proclamation No. 239/2014, Art. 14.
[23] *The Revised Amhara National Regional State Rural Land Administration and Use Determination Proclamation*, Proclamation No. 252/2017, Article 17/1.

The regional law permits certain groups of individuals to receive benefits through a will, even though they are not entitled to such benefits under federal law. Additionally, the regional law imposes restrictions on those who have the right to inherit land through a will, as it allows individuals outside the scope of federal law to share in the inheritance property. Furthermore, it is essential to consider the implications of these contradictory provisions. Such inconsistencies can lead to confusion, disputes, and potential legal challenges. As per the former SNNPR[24] land laws, inheritance with will is allowed to family members. On the other hand, the Oromia land law[25] enshrines inheritance to heirs who have the right to inheritance following the relevant law.

2.3.2. Inheritance without Will

A will to be a valid legal document should fulfil all the essential requirements of a contract, if not the document will be invalidated and the succession will devolve according to the provisions of the law irrespective of the words of the deceased. In this regard, the federal land law is almost silent. One can say that the provision enshrined under Article 8(5) of the federal land law, which says, "any holder shall have the right to transfer his rural land use right through inheritance to members of his family" is equally applicable to intestate succession. When we assess the regional laws based on this assertion, they have provisions, which contradict the federal mother framework law.

Tigray	Amhara	Oromia	Former SNNPR
• Under Age Children • Landless adopted or natural children who attained a majority • Landless Immediate ascendants • Those who were supporting	• Immediate descendants • Immediate ascendants • Other family members as per the law • Land Bank	• Heirs having the right to inherit – per the order of inheritance provided by the relevant law. • The provisions of the civil code shall be applicable as necessary.	• Family members

[24] *The Southern Nations, Nationalities, and People's Regional State Rural Land Administration and Utilization Proclamation*, Proclamation No.110/2007, Art. 8/5

[25] *The Oromia Regional State Rural Land Administration and Use Proclamation*, Proclamation No. 248/2023, Art. 12.

• Land Bank (Distributed by the Kebele)			

Table 3: Comparison of Regional States on Inheritance without Will clauses

The Tigray land law[26] goes beyond family members as follows.

A. If there are minor children of the deceased, it is impossible to devolve land through succession. These minor children may or may not be family members as defined by the law. Not only does this contradict the federal land law pertaining to the structure of family membership, but it also undermines the fundamental principle of succession, which asserts that the process begins promptly at the time and place of the deceased's passing. In practice as well, in Tigray land inherited by a minor child stays registered in the name of the deceased.[27] Although well-intentioned, leaving the land in the name of the deceased makes it easier for others to infringe, harder to conduct transactions, and may cause confusion or conflict between heirs who attain the majority of age at different times.[28] What is special in Tigray is its proclamation about the inheritance rights of minor children. The regional land proclamation stipulates that minors are not allowed to have holding certificates in their name (instead, the certificate is issued in the name of deceased parent(s) until such time when minors attain majority age). Presumably, this rule is meant to protect minors against unscrupulous tutors titling that land (improperly) in their name. This approach is inconsistent with the federal land proclamation, which clearly states any holder of rural land shall be given a holding certificate in his/her name. A person can be a holder of rights and duties from the date of birth to the date of death. However, a deceased person cannot be a holder of rights and responsibilities; therefore, registering land in the name of the deceased appears contrary to the law. Moreover, the practice more often harms the child's interest rather than helps. In the case of multiple heirs, when the oldest attains a majority age and wishes to claim the land, it may prejudice his/her minor siblings and create confusion as to how to divide land rights among heirs. Other regions typically list minor heirs and legal tutors on the title. If the deceased remains on the title, it creates problems for transactions or court representation on this land. For example, how can renting out be

[26] *Tigray Rural Land Administration and Use Proclamation*, Proclamation No. 239/2014, Art. 14.
[27] Key Informant Interviews made with the region land administration experts.
[28] Abebaw Abebe Belay. 'Protecting the Land Rights of Women through an Inclusive Land Registration System: The Case of Ethiopia' [2020] 3(2) African Journal on Land Policy and Geospatial Sciences, 29, 40.

done? How can land rights infringement be defended? These and similar issues will not be practical if the regional law is implemented as it is.[29]

B. If there is no minor child of the deceased, the succession will devolve to natural or adopted children who do not have landholding and who attained majority age. In these groups of successors, there are no criteria to be family members, unlike the federal land law.
C. If there is no natural or adopted child, landless immediate ascendants will take the estate despite they do not fulfil the criteria of family membership,

Generally, the succession rules outlined in the Tigray land law contradict the principle of "family membership" established in the federal land law. This discrepancy creates a conflict between the two legal frameworks.

Besides this, the law[30] completely excludes the applicability of civil code provisions concerning succession and donation. This is very difficult, as the land law does not contain all succession and donation provisions. As an example, the existing code lacks provisions pertaining to trustworthiness, which sets it apart from the civil code. Consequently, when faced with uncertainties regarding the trustworthiness of heirs, we are compelled to consult the civil code for guidance.

When we see other regions, the Amhara land law[31] goes beyond family members. Irrespective of the requirement of family membership, when one is found intestate or the given will is void, the right is transferred to deceased children, parent/parents, or to any legally permitted other family member who engaged in or wants to engage in agricultural activity. The former SNNPR[32] land law continues to maintain the concept of "family membership" as a fundamental principle. The Oromia[33] land law broadened the right to include heirs having the right to inherit per the order of inheritance provided by the relevant law. The law also enshrined that provisions of the civil code are applicable as necessary.

[29] Abebaw Abebe Belay, 'Women's land rights: Customary Rules and Formal Laws in the Pastoral Areas of Ethiopia–Complementary or in Conflict?' [2022] 5(5) African Journal on Land Policy and Geospatial Sciences, 1047-1065.
[30] *Tigray Rural Land Administration and Use Proclamation*, Proclamation No. 239/2014, Art. 14/10.
[31] *The Revised Amhara National Regional State Rural Land Administration and Use Determination Proclamation*, Proclamation No. 252/2017, Art.17/5.
[32] *The Southern Nations, Nationalities, and People's Regional State Rural Land Administration and Utilization Proclamation*, Proclamation No. 110/2007, Art. 8/5.
[33] *The Oromia Regional State Rural Land Administration and Use Proclamation*, Proclamation No. 248/2023, Art. 12.

2.4. Donation

As per federal land law,[34] donation is permitted to family members only. Except for the former SNNPR, the Tigray, Oromia, and Amhara land laws go beyond family membership regarding donation. As shown in the following table (Table 4), the Tigray land law[35] allowed donations to landless immediate descendants, adopted children, or immediate ascendants irrespective of their family members. This provision has a departure from federal law in two perspectives:

A. Those who are not family members are allowed to get land via donation as long as they can fulfill the requirements enshrined in the regional law.
B. Those who are family members may be precluded from getting land through donation if they are not landless.

Similarly, the Amhara land law[36] has expanded the list of beneficiaries eligible to receive donations. In addition to family members, children, grandchildren, and individuals who have been providing support to the donee are now included. To acquire land through donation, it is not necessary to be a family member, which deviates from the regulations set forth by federal land law. This means that individuals such as children, grandchildren, and other supporters of the donnee can also benefit from this opportunity.

Tigray	Amhara	Oromia	Former SNNPR
• Landless immediate descendants, adopted children, or immediate ascendants	• Requirements A. Child, grandchild, family members B. Supporting the donor	• Children or grandchildren	- Family members

Table 4: Comparison of Regional States on Donation Clauses

[34] *Proclamation to provide for the Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation*, Proclamation No. 456/2005, Art. 5/2.
[35] *Tigray Rural Land Administration and Use Proclamation,* Proclamation No. 239/2014, Art. 8.
[36] *The Revised Amhara National Regional State Rural Land Administration and Use Determination Proclamation*, Proclamation No. 252/2017, Art. 16.

2.5. Dispute Settlement

The federal land law[37] enshrines negotiation and mediation as the first means of rural land-related dispute settlement. If these two methods are not successful, the dispute will be solved based on the provisions of the laws of regional states. We can infer from the provision that negotiation and mediation are optional avenues that are given to disputant parties. Parties can either use these avenues or directly resort to courts as per the regional land laws.

Region	**Legal Framework**	**Who chooses mediators?**	**Who are mediators?**	**The practice in reality**
Tigray	Not mandatory before bringing a court case	Parties	Predominantly male local elders	Lack of knowledge by women/VGs on the procedure
Amhara	Not mandatory before bringing a court case	Parties	Predominantly male local elders	Lack of knowledge by women/VGs on the procedure
Oromia	Mandatory. The distinction between mediation and arbitration is blurred.	Parties. However, Kebele selects in certain circumstances.	Predominantly male local elders	Mediators (Arbitrators) impose decisions (that may disadvantage women and VGs though they can be appealed)
Former SNNPR	The law is not clear but mandatory in practice before bringing a court case. Some blurring of the distinction between mediation and arbitration.	In theory, the parties. Nevertheless, in practice, the KLAUC influences the selection or at least the pool from which mediators are chosen.	Predominantly male local elders	Mediators lack capacity and respect for women/VG rights. "Mediation" tends toward arbitration because "recommendations" of mediators are given to the court.

[37] *Proclamation to Provide for The Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation*, Proclamation No. 456/2005, Art. 10.

Table 5: Comparison of Regional States on Mediation Clauses (Data collected through Key Informant Interviews made with land administration experts, judges and prosecutors)

In two of the study regions, Amhara[38] and Tigray, like the federal one, mediation is not a mandatory step that an aggrieved party (i.e. someone with a land right-related complaint) must take before filing a court case. However, in Oromia[39] and the former SNNPR[40], an aggrieved party is required to attempt mediation before taking a land case to court. In the former SNNPR, the law is not clear as to whether mediation before taking a case to the court is mandatory or optional. However, practically it is mandatory. A person cannot take his case directly to court without first trying mediation.[41]

In addition, in Oromia, the distinction between mediation and arbitration is blurred both in the law and in practice, with the "mediators" sometimes acting as arbitrators who impose decisions (albeit decisions that can be appealed)[42]. In the former SNNPR, the mediators also tend to overstep pure mediation by making recommendations to the court. As compared with the general population, women, and VGs are affected in different ways by mediation, which offers both advantages and disadvantages depending on the governing legal framework and the way it is practiced on the ground.[43]

In Oromia and the former SNNPR, mediation is mandatory before taking a land case to court, and the mediators must present their report to the court. KLAUCs recommend the group of elders from whom the parties choose two mediators each. Recommendations of the mediators will be sent to the court with the stamp of the Kebele administration. In Oromia, the land proclamation (Article 16) and land regulations (Article 18), the processes of dispute settlement are detailed, but the concepts of arbitration and mediation are mixed:

First, the application shall be submitted to the local Kebele Administration. The parties shall elect two arbitrary elders each. Chairpersons of arbitration elders are elected by the parties or by the arbitral elders. If the parties do not promptly select arbiters or the chairperson, then the local Kebele Administrator will assign them. The Kebele Administration to whom the

[38] The revised Amhara National Regional State rural land administration and use determination proclamation, Proclamation No. 252/2017, Article 52
[39] *The Oromia Regional State Rural Land Administration and Use Proclamation*, Proclamation No. 248/2023, Art. 34.
[40] *The Southern Nations, Nationalities, and People's Regional State Rural Land Administration and Utilization Proclamation*, Proclamation No. 110/2007, Art. 12.
[41] Key Informant Interviews made with regional land administration experts, judges, and prosecutors.
[42] ibid.
[43] ibid.

application is lodged shall cause the arbitrary elders to produce the result of the arbitration within 15 days. The result of the arbitration shall be registered at the Kebele Administration, and a copy with an official seal shall be given to both parties.

A party who has a complaint about the result of arbitrating elders has the right to file a case at the woreda court, attaching the result of the arbitration, within 30 days of when the arbitration result was registered by the Kebele Administration. The woreda court should not accept the lawsuit if the result given by the arbitration is not attached to the filing. The party dissatisfied with the decision given by the woreda court shall have the right to appeal to the high court. If the high court altered the decision rendered by the woreda court, the dissatisfied party may appeal to the Supreme Court. The decision given by the Supreme Court shall be the final. Notwithstanding the above provision, the parties shall have the right to resolve their cases in any form they agree upon.

Making mediation a mandatory procedure before taking a land case to the court of law is a clear contradiction with the federal rural land law. Understanding this, the Federal Supreme Court Cassation Division under Volume 24, Cassation file number 169648 decided that making mediation a mandatory procedure before going to the court of law is against access to justice principles. Landholders should have the right to choose between resorting to mediation or not.

2.6. Period of Limitation

The period of limitation is the amount of time after which the claimant no longer can assert their rights to the property (in this case the landholding right) because the encroaching party can raise the "period of limitation" as a defence to the claimant's assertion.

The following table summarizes the regional variations in the application of the period of limitation. The regional land laws of Tigray and the former SNNPR are silent on the application of period of limitation to landholding rights disputes; whereas the Amhara land proclamation and the Oromia land regulation contain guidance, which is altogether unclear. The federal land law is silent on the application of v period of limitation to landholding rights disputes, but judges in the regions do rely on various provisions of the civil code to come up with rules.

No.	Region	period of limitation in inheritance cases between heirs	period of limitation in inheritance cases between heir and non-heir	period of limitation in non-inheritance cases between private individuals	period of limitation in cases where the land occupied is state (public) land
1	Tigray & former SNNPR	3 years applied (based on the federal civil code)	10 years (based on the federal civil code)	10 years (based on federal cassation bench opinion)	No POL applied
2	Amhara	3 years usually applied (but some disagreement on the application of the regional law provision)	10 years (but some disagreement on the application of the regional law provision)	No period of limitation applied (citing regional land proclamation)	
3	Oromia	3 years applied (based on the federal civil code)	10 years (based on the federal civil code)	12 years (regional land regulation)	

Table 6: Comparison of Regional States on Period of Limitation Clauses/practices (Data collected through Key Informant Interviews made with land administration experts, judges, and prosecutors)

In general, the period of limitation defence arises in both inheritance and non-inheritance cases. The following scenarios summarize the legal analysis:

First of all, in a landholding dispute between putative heirs, the period of limitation is commonly accepted to be three years. This is based on Articles 999 and 1000 of the federal civil code provision. Those provisions are not specifically aimed at landholding cases, but they have been applied in the absence of other overriding authority.

Second, if the land-holding right case is between an heir and non-heir, then a period of limitation is commonly accepted to be 10 years, based on Articles 1677 and 1845 of the federal

civil code. As in the scenario between heirs, those provisions are not specifically aimed at landholding cases, but they have been applied in the absence of other overriding authority. According to Article 1677, the relevant provisions of that section of the code (Title XII of Book IV of the Civil Code), governing contracts, shall apply to obligations notwithstanding that they do not arise out of a contract. A person who is not an heir must give back property (including land holdings) he took or occupied illegally to the heir and this is treated as an obligation under these provisions. Therefore, Article 1845 regarding the period of limitation is applied to these landholding disputes, and reads, "unless otherwise provided by law, actions for the performance of a contract, actions based on the non-performance of a contract and actions for the invalidation of a contract shall be barred if not brought within ten years."

Third, when the landholding claim is unrelated to inheritance and does not involve heirs, then Tigray and former SNNPR regions (but not Amhara and Oromia) apply a recent ruling from the recent federal cassation bench in which 10 years is applied. (The ruling is also based on Articles 1677 and 1845 of the civil code). A separate federal cassation bench ruling clarified that the assertion of the period of limitation defense does not apply to the occupancy of state land. In other words, there is no period of limitation if the claimant party is the government.

Fourth, in Oromia, when the dispute is unrelated to inheritance but is a landholding issue, it is stipulated by the Oromia regulation under Article 32 that the period of limitation is 12 years. The provision states: "Any person squatted rural land shall not be limited to leave the land up to 12 years by the termination of periods." This 12-year period of limitation is enshrined in the regulation. This provision in the regulation gives a right to some and narrowed down the right for others which otherwise is not found in the proclamation. This is against legislation principles. In general, regulations cannot contain provisions, that cover issues not found in the proclamation, or that significantly change rights and obligations found in the proclamation. As a result, the legality of the POL clause in the regulation is questionable.

Finaly, in Amhara, there is a difference of opinion regarding the application of period of limitation if the dispute is between private individuals. This stems from how to interpret Article 55 of the Amhara land proclamation, which states: "Any person found to be using rural landholding in invasion or any illegal means cannot raise the period of limitation as an objection when he is asked by any other person or authorized government body or accused before the court." In this regard, there are two views among judges, prosecutors, and land administration experts.

Some experts maintain that Article 55 has not eliminated the use of period of limitation as a defense against eviction because the language focuses on invasion (which is taken by some to refer only to encroachment on communal land) and illegal means (which is interpreted by some to exclude occupation in good faith). Judges who subscribe to this interpretation apply 10 years as the period of limitation for landholding cases arising between private parties (relying on Articles 1677 and 1845 of the federal civil code). Those who support the continued use of period of limitation in Amhara also cite the general policy justifications for period of limitation. One of the objectives is to punish those negligent landholders. The other is not to disturb those who establish their livelihood on the land for a long period (for more than 10 years). This period of limitation can penalize those lazy and non-diligent landholders and benefit those who base their livelihood on the land. Of course, families who have based their livelihood on using a particular parcel of land may very well include women and VGs for which finding a replacement livelihood may be harder than for others in the general population. This type of displacement could disproportionately affect women and VGs negatively.

Other experts and judges in Amhara said that period of limitation can no longer be raised as a defense in Amhara because they interpret Article 55 of the regional proclamation to eliminate such a defense in the cases of rural land encroachment (except, according to some of these judges, in inheritance-related cases, in which a period of limitation of three years is applied between heirs or 10 years between an heir and non-heir).

2.7. Land-Related Criminal Cases

As per Article 19 of Proclamation number 456/2005, any person who violates this Proclamation or the regulations and directives issued for the implementation of this Proclamation shall be punishable under the applicable criminal law. As this proclamation does not have implementation regulations and directives, regulations, and directives referred to in this provision are those enacted by regional states. As a result, regional states do not have the power to enact provisions having a criminal nature as these are to be governed by criminal law. The Amhara and former SNNPR land laws are enacted in line with this principle. Articles 58(2) of Amhara and 16 of the former SNNPR proclamations stipulate that any person who violates the provisions of the proclamation or deliberately hampers their implementation is punished by appropriate criminal law.

Despite this core principle, regional state land laws contain criminal provisions. The Tigray rural land law[44] enshrined criminal provisions related to land. The respective penalties for these criminal provisions are also included in Article 35 of the same proclamation. These penalties include fine or imprisonment or both, which range from 100 to 200,000 birr fine and/or from 1-year simple imprisonment to 10 years rigorous imprisonment. Besides this, confiscation of the land is another type of penalty included in the law.

2.8. Obligation of Rural Landholders

The federal land law[45] enshrined five obligations for landholders: the obligation to protect the land; the obligation to allow the construction of irrigation canals and other infrastructures; the obligation to cooperate when requested by the competent authority to measure and survey his land; the obligation to notify the competent authority when he abandons at will his land use right; and the obligation to cooperate for the implementation of the law.[46] There are unfair and burdensome obligations laid on landholders by the rural land laws of regional states.

There are also unfair rules under the Tigray land law about losing land rights if the minor moves to another kebele/woreda for schooling. If minors move to regular/normal schools, then they retain their existing land rights but may lose new rights from succession or donations that arise in their absence. If they move and enrol in an "irregular"[47] school program, then they will lose even their existing land rights. This unfair result flies in the face of international, regional, and national legal instruments, which aim to protect the right to education. As a result, the regional law needs amendment. The majority of regional experts interviewed agree on the irrationality of this provision. However, some of them said that those who are attending irregular education might have other jobs as civil servants or merchants. This is a weak argument. If they are civil servants or merchants, then their land can automatically be taken away based on other relevant provisions of the regional law. It should not be that irregular education which is the reason for taking away land rights. On the other hand, orphans who relocate to be with another family for support, whether in rural or urban areas, do not lose landholding rights in the original kebele.

[44] *Tigray Rural Land Administration and Use Proclamation*, Proclamation No. 239/2014, Art. 34.
[45] *Proclamation to provide for the Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation*, Proclamation No. 456/2005, Art. 10.
[46] *ibid*, Art. 18.
[47] Irregular school refers to night, weekend and distance educations.

Related to the issue of residency, but in a different context, is the Tigray land law which provides that community members lose their land rights if they move away from the village (immediately if they take on other work, or eventually after two years if they do not return to the village). There is an exception for women who move away to another rural area to marry. However, even with this exception (which is important) this rule still tends to discriminate against women because after divorce it is more likely for a woman to move away from the village to seek support from relatives or friends in other areas or the town.

3. Summary of Findings, Conclusion, and Recommendations

3.1. Summary of Findings

This paper presents a compelling argument, asserting the federal government's jurisdiction in enacting laws pertaining to the administration and utilization of rural land. Concurrently, regional governments are granted the authority to administer their respective lands in accordance with federal legislation. Notably, the federal government possesses the power to delegate regions to establish comprehensive land administration laws, as explicitly stated in Article 50(9) of the FDRE constitution. This delegation has already been effectively implemented, as evidenced by the provisions outlined in Article 17 of Proclamation 456/2005.

With regard to rural land rent, the Tigray rural land administration law requires SLLC as a pre-requisite to rent out a rural landholding. This is burdensome as there are landholders whose lands are not surveyed and SLLC issued. This provision contradicts the federal land law. Another area of contradiction is the size of land allowed to be rented out. The federal law stipulated "…*in a manner that shall not displace them …*" but the Oromia and Tigray land laws allow land rent up to half of the total holding.

Concerning inheritance, the federal land law allowed inheritance with a will to family members. Family members are clearly defined. But the Tigray and Amhara regional land laws, contain provisions, which contradict the aforementioned federal provision. The Tigray law does not allow inheritance with a will at all. In Amhara, any rural landholder may transfer his land to any person engaged in agricultural activity or to any other person who wants to engage in this activity through a will. This law broadened the inheritance with will beneficiaries despite the federal land law strictly limiting inheritance with a will to family members only. There are also similar inconsistencies regarding intestate succession. The federal law seems to follow a

"family membership" approach to this succession without a will. Minor children; natural or adopted children who do not have landholding and who attained the majority age; landless immediate ascendants are legal successors. Nevertheless, this provision contradicts the federal land law, as there are no family membership requirements in the former law. The Amhara land law goes beyond family members as well. Irrespective of the requirement of family membership, when one is found intestate or the given will is void, the right is transferred to deceased children, parent/parents, or to any legally permitted other family member respectively who engaged in or wants to engage in agricultural activity.

Similar to succession, a donation is permitted to family members as per the federal land law. The Tigray and Amhara land laws go beyond the family membership requirement. The Tigray land law allowed donations to landless immediate descendants, adopted children, or immediate ascendants irrespective of their family members. Similarly, the Amhara land law added children, grandchildren, and others who have been supporting the donee, to family members as beneficiaries of donation.

As per the federal land law, negotiation and mediation as the first means of rural land-related dispute settlement, which are optional avenues that are given to disputant parties. Parties can either use these avenues or directly resort to courts. In Oromia and the former SNNPR, an aggrieved party is required to attempt mediation before taking a land case to court. In the former SNNPR, the law is not clear as to whether mediation before taking a case to the court is mandatory or optional. However, practically it is mandatory. A person cannot take his case directly to court without first trying mediation. In addition, in Oromia, the distinction between mediation and arbitration is blurred both in the law and in practice, with the "mediators" sometimes acting as arbitrators who impose decisions (albeit decisions that can be appealed). In the former SNNPR, the mediators also tend to overstep pure mediation by making recommendations to the court.

3.2. Conclusion

The power to enact land administration-related laws is given to the federal government, which is inferred from the FDRE constitution, its historical brief, and the constitutional interpretation made recently during the enactment of urban landholding registration proclamation number 818/2014. In the realm of governance, the federal government wields the power to entrust regional states with the authority to legislate. This discretionary act of delegation empowers

regional states to craft their land laws, tailored to their unique needs and circumstances. Nevertheless, these regional states must operate within the confines of the framework rules enshrined in the federal proclamation.

In defiance of the aforementioned principle, regional states consistently introduce provisions that not only contradict but also deviate from the constitutional legislative authority bestowed upon the federal government. This audacious departure from federal jurisdiction is most strikingly observed within the realm of land administration, where the regional states' actions significantly undermine the federal legislative power.

Regional states wield considerable power in various aspects related to rural lands, such as land acquisition for holding purposes, land rent/lease requirements, inheritance procedures with or without a will, donations, dispute resolution mechanisms, period of limitations, criminal cases involving land, and the obligations imposed on landholders. However, this authority often clashes with federal law, which has entrusted them with the task of formulating region-specific legislation.

3.3. Recommendations

Based on the findings of the research, the following recommendations are made:

A. First, the regional states have to obey the framework rules enshrined under the federal proclamation, as the latter is the mother and enabling legislation.
B. Periodical legal Auditing is necessary to be able to monitor and evaluate the compliance of regional land laws with the federal framework of rural land laws.
C. As one of the reasons for the departure of regional rural land laws from the federal land law is because the federal land law is not updated on time, updating the federal framework of rural land law is critical.
D. When there is non-compliance of regional rural land laws with the federal one, there should be a habit of taking these cases to the court of law and getting a court decision/decree (may be seeking for constitutional interpretation), which can be used to informally enforce regional states to change their laws. This can be used as “public interest litigation” where anyone can bring cases respecting public interest matters in service of the legality principle.

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Abstract

The author is triggered to write on this topic following taking part in a training focusing on the draft criminal procedure and evidence law. The draft come up with intriguing principles and concepts. The paper aims to compare and contrast the current Ethiopian criminal procedure law with the draft of criminal procedure and evidence law with the perspective of issues experienced in practice. One of the major objectives of the legislation is to ensure the respect for constitutionally guaranteed human rights in the process of criminal investigation, prosecution, trial and execution of judgment. Hence, the draft legislation recognized presumption of innocence, prohibition of double jeopardy and equality before the law. The draft has also introduced novel legal principles and mechanisms such as alternative dispute resolution, review of final judgment and international cooperation on criminal matter. While these changes are commendable, the author tried to pinpoint issues still to be fixed in relation to treatment of arrested persons, police investigation, remand and bail, preliminary inquiry, adjudications of courts and charges.

አጽሮተ ጽኑፍ

የወንጀል ሥነ-ሥርዐት እና የማስረጃ ረቂቅ ሕግ ስልጠና ስሳተፍ ረቂቁ ያስተዋወቃቸው የሕግ መርሆች እና በሕጉ የተቀመጡት አዳዲስ ጽንሰ ሃሳቦች ትኩረቴን ስቦታል። ይህም በ1954 ዓ.ም የወጣዉን እና እስከ አሁን በስራ ላይ ያለዉ የወንጀለኛ መቅጫ ሥነ ሥርዓት ሕግ (ከዚሕ በኋላ የወ/መ/ሥ/ሥ/ሕ/ እንደ አስፈላጊነቱ የሚባለዉ) እና ይህን ሕግ ለማሻሻል የወጣዉ ረቂቅ የወንጀል ሥነ-ሥርዐት እና የማስረጃ ሕግ (ከዚሕ በኋላ ረ/የወ/ሥ/ሥ/ እና ማ/ሕ እንደ አስፈላጊነቱ የሚባለዉ) ጋር ምን ልዩነት እና አንድነት እንዳላቸው እንዲሁም በተግባር ከሚታዩ ችግሮች አንፃር እንድዳስስ አነሳስቶኛል። የረቂቁ ሕግ አንድ ዓላማ በወንጀል ምርመራ፣ ክስ፣ ፍርድ ሂደትና የውሳኔ አፈጻጸም ወቅት በሕገ መንግሥቱ የተረጋገጡ የሰብዓዊ መብቶችን ማክበር እና ማስከበር ሲሆን ለዚህም ነፃ ሆኖ የመገመት መብት፣ በአንድ ወንጀል ድጋሚ ክስ ስለመከልከሉ፣ በሕግ ፊት እኩል መሆን እና ሌሎች መሰረታዊ ጥበቃዎች በረቂቁ እውቅና ተሰጥቷቸዋል። በተጨማሪም አማራጭ የሙግት መፍቻ፣ የመጨረሻ ፍርድን እንደገና ማየት፣ በወንጀል ጉዳዮች የዓለም አቀፍ ትብብርን አስፈላጊነት ከግምት አስገብቷል። ነገር ግን በወንጀል ስነስርዐት ውስጥ በተግባር የሚስተዋሉ ችግሮችን ማለትም የፖሊስ ምርምራ እና የተከሳሽ አያያዝ፣ በፖሊስ ጣቢያ እና በማረሚያ ቤት የእስረኞች እንክብካቤ፣ ጊዜ ቀጠሮ እና ዋስትና፣ ቀዳሚ ምርመራ፣ የፍ/ቤቶች ሥረ ነገር ስልጣን፣ የዓ/ሕግ ክስ፣ የተከላካይ ጠበቃ አገልግሎት እና ሌሎችም ጉዳዮች ላይ ረቂቅ ሕጉ ሊቀርፋቸው የሚገቡ ክፍተቶች በዚህ ፅሁፍ ተነቅሰዋል።

* ፀሀፊው የህግ ድግሪውን ከቅድስተ-ማርያም ዩንቨርሲቲ፤ ሁለተኛ ድግሪውን በEnvironmental and Land Law ከባህርዳር ዩንቨርሲቲ ያገኘ ሲሆን በአሁኑ ወቅት በምስራቅ ጎጃም ዞን ከፍተኛ ፍርድ ቤት በዳኝነት እየሰራ ይገኛል። ፀሀፊውን በ antenanietiru1@yahoo.com ወይም +251913406704 ማግኘት ይቻላል።

1. መግቢያ

በኢትዮጵያ የመጀመርያዉ አለማዊ ሕግ የምንለዉ ፍትሐ-ነገስት ሲሆን ንጉስ አፄ ሀይለስላሴ ስልጣን ሲይዙ ወቅቱን የጠበቀ ከአለም አቀፍ የተቀዳ ሕግ የኢትዮጵያ የወ/ሥ/ሥ/ሕግ እንዲያዘጋጅላቸዉ የሕግ ሊቁን ፕሮፌሰር ግራቭን አዘዉት ረቂቅ ሕጉን አዘጋጅቶ ለኮሚሽኑ አቀረበ። ነገር ግን ኮሚሽነሮች በእንግሊዝ በኮመን ሎዉ ሕግ ተጽዕኖ ስር የወደቁ ስለነበር እና የግራቭን ረቂቅ ሕግ የሲቪል ሎዉ ተከታይ ሐገራትን ስርዓት የተከተለ ስለነበር ረቂቁን አልተቀበሉትም። እንደገና የግራቭንን ረቂቅ ሰር ቻርለስ ማተዉ አሻሽሎ እንዲያቀርብ በኮሚሽኑ ታዞ ረቂቁ ተሻሽሎ ቀርቧል።[1] ሁለተኛዉ ረቂቅ ሕግ የኮመን ሎዉ ስርዓት የተከተለ ሲሆን የክርክር ሃላፊነቱን ለተከራካሪ ወገኖች የሰጠ እና ዳኛዉ በገለልተኛነት እንዲያየዉ ተደርጎ የተቀረጸ ሲሆን ኮሚሽኑ ተቀብሎ አጽድቆት በ1954 ዓ.ም. ሕግ ሁኖ ወጥቷል። የወንጀል ሕጋችን የሲቪል ሎዉ የሕግ ስርዓትን የሚከተል ሆኖ የወ/መ/ሥ/ሥ/ሕ/ የኮመን ሎዉ ስርዓት ተከታይ ሀገራትን የወንጀል ስነ-ስርዐት ህግ የሚከተል ሆኖ በመቀረፁ የአሰራር ግጭቶችን እየፈጠረ እስከ አሁን ድረስ እየተሰራበት ቆይቷል። የኢፌደሪ የወንጀል ሕግ በ1996 የተሻሻለ ሲሆን የወ/መ/ሥ/ሥ/ሕጉ ሳይሻሻል ስለቆየ እንዲሁም የወንጀል ሥነሥርዓት እና የማስረጃ ሕግ ድንጋጌዎች በተለያዩ ወቅታዊ አዋጆች ተሸራርፈዉ እና ተበታትነዉ ስለወጡ በአንድ ጥራዝ በማውጣት ለአሰራር አመችነት ለመፍጠር እና ወቅቱን የዋጀ ሕግ እንዲሆን ታስቦ ረቂቅ የወንጀል ሥነ-ሥረዓት እና የማስረጃ ሕግ በሚል ተዘጋጅቷል። የረቂቅ ሕጉ ዋና አላማ እና ምን ምን ድንጋጌወችን አካቷል የሚሉትን ነጥቦችን በተመለከተ በቀጣዩ ርዕስ እናያለን።

2. ረቂቅ ሕጉ ያካተታቸዉ ዋና ዋና ጉዳዮች

ሕጉን ለማዘጋጀት ያስፈለገዉ ለምንድን ነዉ?፣ ይህ ረቂቅ ሊሸር የፈለጋቸዉ ሕጎች ምን ምን ናቸዉ?፣ የረቂቁ መሸጋገርያ ድንጋጌ እና የትርጓሜ ክፍል እና ይሕ ሕግ ምን ምን ያካትታል? የሚሉትን ጉዳዮችን በዚህ ክፍል ለማየት እንሞክራለን።

2.1. የረቂቅ ሕጉ አስፈላጊነት

የረቂቅ ሕጉ አላማ በወንጀል ምርመራ፣ ክስ፣ ፍርድ ሂደትና የውሳኔ አፈጻጸም በሕገመንግሥቱ የተረጋገጡ የሰብዓዊ መብቶችን ማክበር እና ማስከበር ሌላዉ የወንጀል ፍትሕ ሥርዐቱ እውነትን ማውጣት የሚያስችል፣ ውጤታማ እና ፍትሐዊ እንዲሆን ማድረግ ማስቻል እና በወንጀል ፍትሕ ሥርዐቱ ውስጥ የሕግ የበላይነትን ማረጋገጥ ነው። በ1954ዓ.ም የወጣዉን የወ/መ/ሕ/ሥ/ሥ/ሕ ለማሻሻል ረ/የወ/ሕ/ሥሥ/ እና ማ/ሕ ማዘጋጀት ያስፈለገዉ ከኢትዮጵያ

[1] ሙራዱ አብዶ፣ *የሕግ ታሪክ እና ባህል ማስተማሪያ መጽሐፍ* (አዲስ አበባ 2009) 295።

ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ መንግሥት እና ኢትዮጵያ ከተቀበለቻቸው ዓለም አቀፍ ስምምነቶች ጋር የተጣጣመና መርሆቻቸውንና እሴቶቻቸውን ለማስፈጸም የሚያስችል እንዲሆን ነዉ፡፡ እንዲሁም የወንጀል ክርክር የሚመራበትን የሥነ-ሥርዐትና የማስረጃ ድንጋጌ ወጥና አካታች በሆነ መልኩ እንደገና ማደራጀት በማስፈለጉ ነዉ፡፡

2.2. ረቂቅ ሕጉ ሊያሸሽላቸው/ሊሽራቸው የሚችላቸው ሕጎች

አሁን በስራ ላይ ያለዉ የወ/መ/ሕ/ሥ/ሥ መሻሩ የተጠበቀ ሁኖ በረ/የወ/ሕ/ሥሥ/ሕ ሊሻሻሉ የሚችሉ ህጎች የፌዴራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013፣ የፀረ ሽብርተኝነት አዋጅ ቁጥር 652/2000፣ በሕገ-ወጥ መንገድ የተገኘን ገንዘብ ሕጋዊ አስመስሎ ማቅረብ እና ሽብረተኝነትን በገንዘብ መርዳትን ለመከላከል የወጣ አዋጅ ቁጥር 780/2005፣ የንግድ ውድድርና የሸማቾች አዋጅ ቁጥር 813/2006፣ የፀረ-ሙስና ልዩ ሥነ-ሥርዐትና የማስረጃ ሕግ አዋጅ 434/2005፣ የተሻሻለው የፀረ ሙስና ልዩ የሥነ ሥርዓትና የማስረጃ ሕግ አዋጅ 882/2007፣ ሕገ-ወጥ የሰዎች ዝውውር እና ስደተኞችን በሕገ-ወጥ መንገድ ድንበር ማሻገር ወንጀልን ለመከላከልና ለመቆጣጠር የወጣ አዋጅ 909/2007፣ የኮምፒውተር ወንጀል አዋጅ ቁጥር 958/2008፣ የቴሌኮም ማጭበርበር ወንጀል አዋጅ ቁጥር 761/2004 ናቸዉ፡፡ ነገር ግን ከላይ የተደነገጉት ቢኖሩም ስለ ወታደራዊ ወንጀሎች የተደነገገ ልዩ የሥነ-ሥርዓት እና ማስረጃ ደንቦች የተጠበቁ እንደሚሆኑ የረቂቁ አንቀጽ 2 በግልፅ አስቀምጧል፡፡

2.3. ሌሎች በረቂቅ ሕጉ የተካተቱት ዋና ዋና ነጥቦች

በ1954ዓ.ም ከወጣዉ የወ/ሕ/ሥሥ/ሕ በተሻለ እና በተብራራ በረቂቅ ሕጉ ብይን፣ ዉሳኔ፣ ፍርድ እና ትዕዛዝ ምን ማለት እንደሆነ ተተርጉሞ እናገኘዋለን፡፡ ከአለም አቀፍ የሰብዓዊ መብቶች ስምምነት፣ ከኢ.ፌ.ዴ.ሪ ሕገ-መንግስት እና ከወንጀል ፖሊሲ የተቀዱት በረቂቁ ወ/መ/ሕ/ሥ/ሥ እና ማ/ሕግ የተካተቱት መሠረታዊ መርሆዎች የሚከተሉት ናቸው፡፡ አንድ የወንጀል ተጠርጣሪ የጥፋተኝነት ፍርድ እካልተሰጠዉ ነፃ ሆኖ የመገመት መብት አለዉ፤[2] በአንድ የወንጀል ድርጊት ድጋሜ ሊከሰስ አይገባዉም፤[3] ተከሳሽ ሕግ ፊት ልዩነት ሳይደረግበት በእኩልነት መርህ ይዳኛል፤[4] ሕጋዊ ምክንያት ሳይኖር አላግባብ ማንኛዉንም ግለሰብ መያዝና ማሰር አይቻልም፤ እንዲሁም ከተያዘ በኋላ ድብደባ የአካል ሆነ የሞራል ጉዳት የሚያደርስ ኢ-ሰብዓዊ አያያዝ ሊኖር አይገባዉም፤[5] የተያዘ ተጠርጣሪ ጠበቃ ወክሎ የመከራከር መብት አለዉ ከባድ ወንጀሎች ከሆኑ መንግስት ጠበቃ የማቆም ሐላፊነት አለበት፤[6] ፍ/ቤቱ

[2] *የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ ሕገ መንግስት*፣አዋጅ ቁጥር 1/1987፣አንቀፅ 20(3)፡፡
[3] *የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ የወንጀል ሕግ*፣አዋጅ ቁጥር 414/1996፣አንቀጽ 2(5)፡፡
[4] ዝኒ ከማሁ፣ አንቀፅ 25፡፡
[5] ዝኒ ከማሁ፣ አንቀጽ 18(1)::
[6] ዝኒ ከማሁ፣ አንቀጽ 20(5)::

የተጠርጣዉን ጉዳይ በተፋጠነ ዉሳኔ መስጠት አለበት። ፍ/ቤቱ የፌደራል ሆነ የክልሉን መግባቢያ ቋንቋ መሰረት አድርጎ ተጠርጣሪዉን ማስተናገድ አለበት። ተከሳሽ ቋንቋዉን ካላወቀዉ በተርጓሚ እንዲስተናገድ ይደረጋል።[7] ተጠርጣሪዉ የሚቀጣዉ ድርጊቱ በወንጀል ሕግ ወንጀል ነዉ ተብሎ ተደንግጎ ሲገኝ ነዉ። የግል አቤቱታ የሚቀርብ ካልሆነ በስተቀር የወንጀል ክስ የመንግሥት ነዉ። የፍትህ ተቋማት አላማቸዉ እውነትን ማውጣት እና አጥፊዉ ተለይቶ ለእሱ ሆነ ለመሰሎቹ አስተማሪ ቅጣት እንዲያገኝ ነው በሚል ተደንግገዉ እናገኛቸዋለን።[8]

በ1954 ዓ.ም የወጣዉ ወ/መ/ሕ/ሥ/ሥ ሕግ የዘረጋውን የወንጀል ስነ-ስርዓት በረቂቅ ህጉ የበለጠ ተብራርተው እንደሚከተለው ተቀምጠዋል። በመጀመሪያ ወንጀል ሲከሰት ጥቆማ የደረሰዉ ፖሊስ ምርመራ ያደርጋል።[9] ፖሊስ ወንጀል ተፈጽሟል ብሎ ካመነ ለተጠርጣሪዉ መጥርያ ያደርሳል።[10] ተጠርጣሪዉ በፖሊስ ቁጥጥር ከዋለ በኋላ ለፍ/ቤት ይቀርባል።[11] ፍ/ቤቱም በፖሊስ ሆነ በተጠርጣሪዉ ጥያቄ ሲቀርብለት (የጊዜ ቀጠሮ።[12] ዋስትና።[13] እና ብርበራ[14]) ጉዳይ ብይን ይሰጣል። ፖሊስ የምርመራዉን ዉጤት ለዓ/ሕግ ሲያስተላልፍለት[15] ቀዳሚ ምርምራ ካስፈለገ ዓ/ሕግ ፍ/ቤቱን ይጠይቃል። ዓ/ሕግ መዝገቡን መርምሮ ክስ ያስከስሳል ብሎ ካመነ ለፍ/ቤቱ ክስ ያቀርባል።[16] ፍ/ቤትም ለተከሳሽ መጥርያ ደርሶት ሲቀርብ የተከሳሽን ማንነት ካረጋገጠ በኋላ ከባድ ወንጀል ከሆነ በራሱ ወይም በመንግስት ለተከሳሽ ጠበቃ እንዲቆምለት ካደረገ በኋላ ክሱን ለተከሳሽ ያነባል። የእምነት ክህደት ቃሉን በመቀበል ተቃዉሞ ካለ ብይን ይሰጣል። በሌላ በኩል ተቃወሞዉ ዉድቅ ከሆነ የዓ/ሕግን ማስረጃ ሰምቶ ብይን ይሰጣል። ይከላከል ከተባለም የተከሳሽን መከላከያ ምስክር ሰምቶ ዉሳኔ ይሰጣል።[17] እንዲሁም ጥፋተኛ ከተባለ ቅጣት ይጥላል።[18] ጉዳዩ በሌለበት የሚታይበት።[19] ስለመሰየም እና ወጣት አጥፊዎች ስለሚዳኙበት።[20] የወንጀል እና የፍትሃ-ብሄር የካሳ ክስ አጣምሮ ማቅረብ

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[7] ዝኒ ከማሁ፣ አንቀጽ 19(1) እና 20(7)።

[8] *የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ የወንጀል ሕግ ሥነ-ሥርዓት እና የማስረጃ ረቂቅ ሕግ*፣ አንቀጽ 4-17።

[9] *የወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት*፣ አዋጅ ቁጥር 1/ 1954፣አንቀፅ11-16።

[10] ዝኒ ከማሁ፣ አንቀጽ 25።

[11] ዝኒ ከማሁ፣ አንቀጽ 28።

[12] ዝኒ ከማሁ፣ አንቀጽ 59።

[13] ዝኒ ከማሁ፣ አንቀጽ 29።

[14] ዝኒ ከማሁ፣ አንቀጽ 32-33፤ አንቀጽ 97።

[15] ዝኒ ከማሁ፣ አንቀጽ 33-34።

[16] ዝኒ ከማሁ፣ አንቀጽ 42።

[17] ዝኒ ከማሁ፣ አንቀጽ 142-149።

[18] *የተሻሻለዉ የፌደራል ጠቅላይ ፍ/ቤት የወንጀል ቅጣት አወሳሰን መመሪያ*፣ መመሪያ 2/2006።

[19] *የወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት*፣ አዋጅ ቁጥር 1/ 1954፣ አንቀጽ 161።

[20] *የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ የወንጀል ሕግ ሥነ-ሥርዓት እና የማስረጃ ረቂቅ ሕግ*፣ አንቀጽ 376-385።

እና ደንብ መተላለፍ ስለሚመራበት[21] ሥነሥርዓት እንዲሁም የይግባኝ እና የሰበር ስርዓት በዝርዝር ተድንግጎ እናገኘዋል። ሌላዉ በዚሕ ረቂቅ የተጠቀሰዉ ‹‹የፍትሕ ተቋም›› የምንላቸዉ የፌዴራል ወይም የክልል ፖሊስ፣ ጠቅላይ ዐቃቤ ሕግ፣ ፍርድ ቤት፣ ማረሚያ ቤትና የተከላካይ ጠበቃ ተቋምን የሚያጠቃልል ሲሆን የእነዚህን ተቋማት ስልጣን እና አተገባበር[22] በተጨማሪም የንብረት እግድ እና አስተዳደር መርህ በዚህ ረቂቅ ተካቶ እናገኘዋለን።

3. በረቂቅ ሕጉ የተካተቱት አዳዲስ ጽንሰ ሃሳቦች እና አሁንም ያልተፈቱ ክፍተቶች እና የመፍትሔ ሃሳቦች

3.1. ሊደነቁ የሚገባ በረቂቅ ሕጉ የተካተቱ አዳዲስ ጽንሰ ሃሳቦች

3.1.1. አማራጭ የሙግት መፍቻ መንገዶች

የወንጀል ጉዳይ ውሳኔ የሚሰጥባቸው አማራጭ መንገዶችና መፍትሔዎች በዚህ ረቂቅ ሕግ መካተቱ ይበል የሚያስብል ነዉ። በግል ተበዳይ የሚቀርብ እርቅ በስራ ላይ ባለዉ የወ/ሕ/ሥ/ሥ ከመገለጹ ዉጭ በረቂቅ ሕጉ አዲስ ጽንሰ ሃሳብ ነዉ። ይህን በተመለከተ የሕግ ምሁራን ብዙ ዓላማ እና ጥቅም ስላለዉ በትምህርት፣ በስልጠና እና በምርመራቸዉ ስላስፈላጊነቱ ሲጠቁሙ ቆይተዋል። የአማራጭ ፍትህ ስርዐት በወንጀል ፍትሕ ሥርዐት የማኅበረሰቡን ተሳትፎ በማረጋገጥ፣ እውነትን በማውጣት፣ የወንጀል ጉዳዮችን ሰላማዊ፣ ቀልጣፋና ወጭ ቆጣቢ በሆነ መልኩ ዘለቄታዊ ዕልባት እንዲያገኙ ማስቻል ነው።

3.1.2. ፍርድን እንደገና ማየት

ፍርድን እንደገና የማየት ሂደት ዓላማ በተዛባ ፍርድ ንፁሃን እንዳይቀጡ ፍርዱን ለማረም ነው። በሌላ በኩል የሕግ ባለሙያዎች የሚያነሱት ስጋት ከዚህ አላማ ዉጭ አሳማኝ ማስረጃ ሳይኖር ፍርድ እንደገና ይታይ በማለት የፍ/ቤትን መዝገብ ማጨናነቅ እና ስራ ጫና ሊኖር ይችላል የሚል ሲሆን በቂ ባለሙያ በመመደብ ይህን ስጋት መቀነስ ይቻላል። ይህም ሲባል ንጹህ ሰዉ መጀመሪያ አላግባብ እንዳይፈረድበት መጠንቀቅ እንዳለብን ሳይዘነጋ ነው። ይህም ከታለፈ ፍርድ እንደገና ሲታይ ፍ/ቤቱ ተገቢዉን ጥንቃቄ ማድረግ ይኖርበታል። የወንጀል ፍርድ እንደገና እንዲታይ በቂ ማስረጃ ሲኖር ይኸዉም ፍርድ ከተሰጠ በኋላ ጥፋተኛውን ነፃ ሊያደርግ የሚችል ጠቃሚ ማስረጃ ከተገኘ፣ ከፍርድ በኋላ በሳይንሳዊ ዘዴ የተገኘ እውነት እንደሆነ፣ ከጉዳዩ ጋር በተያያዘ ዳኛው ኃላፊነቱን አጓድሏል ተብሎ በወንጀል ጥፋተኛ ከተባለ፣ በጉዳዩ ላይ ሌላ በነፃ የተለቀቀ ሰው ከፍርድ ቤት ውጭ በሚታመን ሁኔታ ወንጀሉን መፈጸሙ

[21] ዝኒ ከማሁ፣ አንቀጽ 386-393።
[22] ዝኒ ከማሁ።

ጥፋተኛነቱን በማመን ቃል የሰጠ እንደሆነ ወይም እውነተኛ መስሎ የቀረበ ማስረጃ በሐሰት ወይም በማጭበርበር መዘጋጀቱ ሲረጋገጥ ነው።[23]

4. በስራ ላይ ባለው ሕግ ያሉ በረቂቅ ሕጉ ያልተመለሱ ክፍተቶች እና የመፍትሔ ሃሳቦች

አዲሱ ረቂቅ ሕግ በስራ ላይ ያለው ህግ ያሉ ስርዐቶችን አብራርቶ ማቅረቡ እንዲሁም አዳዲስ ፅንሰ-ሀሳቦችን ማስታወቁ መልካም ሆኖ አሁንም ሊሻሻሉና ረቂቁ ህግ ሆኖ በሚወጣበት ወቅት ከግምት መግባት ያለባቸው ጉዳዮች አሉ።

4.1. የፖሊስ ምርመራ እና የተጠርጣሪ አያያዝ

በፖሊስ ምርመራና አያያዝ ላይ ከሚነሱ ቅሬታዎችና በስራ አጋጣሚ ከታዘብኩት መካከል ያለምክንያታዊ ጥርጣሬ ግለሰቦችን ማሰር፤ በ48 ሰዓት ዉስጥ ተጠርጣሪን ፍ/ቤት አለማቅረብ፤ ክስ ከተመሰረተ ጀምሮ ፖሊስ ተከሳሽን ያቅረብ ተብሎ በፍ/ቤት ሲታዘዝ ተግቶ ተከሳሽን ይዞ አለማቅረብ፤ ኢሰብዐዊ የሆነ አያያዝ፣ ተጠርጣሪው (ተከሳሽ) በፍ/ቤት ሳይወሰንበት ንፁሕ ሁኖ የመገመት መብቱን በጣሰ መልኩ በሚዲያዎች ወንጀለኛ እንደሆነ መግለጽ፤ ሕጻናት በወንጀል ሲጠረጠሩ የፍ/ቤት መመርያ ሳይቀበሉ ምርምራ ማድረግ፤ ለመያዝ፣ ብርበራ ወይም ፍተሻ የፍ/ቤት ትዕዛዝ በሚያስፈልግበት ሁኔታ ፍ/ቤቱ ትዕዛዝ ሳይሰጥ ተጠርጣሪን መያዝ ወይም ብርበራና ፍተሻ ማከናወን እና የጊዜ ቀጠሮ ሳይጠይቁ ተጠርጣሪን ለረጅም ጊዜ በማረሚያ ውስጥ ማቆየት ይገኙበታል። እኚህ ቅሬታዎች ህዝብ በፍትሕ ስርዐቱ ላይ ያለውን አመኔታ ስለሚያሳጡ እንደ ሃገር ሊያመጣ የሚችለዉ ተጽኖ ቀላል አይሆንም። በመሆኑም እነዚህን መሬት ላይ ያሉ ችግሮች በአግባቡ ተረድቶና አጥንቶ ችግሮቹን ለመቅረፍ ወይም ለመቀነስ የሚረዱ የቁጥጥርና የተጠያቂነት ስርዐቶች በግልጽ ሊደነገግ ይገባል።

4.2. የጊዜ ቀጠሮ እና ዋስትና

ፖሊስ የጊዜ ቀጠሮ ሲጠይቅ ፍ/ቤቱ ተጠርጣሪዉ የተጠረጠረበት ጉዳይ ዋስትና ይከለክላል/አይከለክልም የሚለዉን ሊያጣራ ይገባል። በሕግ ሆነ በሁኔታ ዋስትና የማይከለክል ከሆነ ዋስትና መፍቀድ ዋስትና የሚከለክል ከሆነ የጊዜ ቀጠሮ መስጠት አለበት። ይሕ ካልሆነ በአንድ ችሎት የጊዜ ቀጠሮ በሌላ ችሎት የዋስትና ጥያቄ እየሆነ የተጠርጣረዉን መብት ያጣብባል፤ የፍ/ቤቱን ተገማችነት ያሳጣል እንዲሁም አንዱ ችሎት የሌላዉን ችሎት ስልጣን ለመጣስ ስለሚችገር በተግባር በስራ ላይ እያጋጠመን ስለሆነ ፖሊስ ጊዜ ቀጠሮ ሲያቀርብ ፍ/ቤት የተጠርጣሪዉን የዋስትና ጉዳይ በቅድሚያ አይቶ እልባት መስጠት እንዳለበት በአማራጭነት ሳይሆን በአስገዳጅነት መደንገግ አለበት ብሎ ጸሐፊዉ ያምናል።

[23] *ዝኒ ክማሁ*፣ አንቀጽ 365-389።

4.3. ቀዳሚ ምርምራ

በአሁን ሕግ ሆነ በረቂቁ ሕግ በቀዳሚ ምርመራ ወቅት ተጠርጣሪዉ ፍ/ቤት ከቀረበ ምስክር ይሰማል ቢልም ተጠርጣሪዉ ካልቀረበ ከቀዳሚ ምርመራ አላማ አንፃር ምስክሮች ይሰማሉ ብለዉ የሚከራከሩ የሕግ ባለሙያወች ሲኖሩ በሌላ በኩል ተጠርጣሪዉ ካልቀረበ ከተጠርጣሪዉ መብት አንጻር ምስክር ሊሰማ አይገባም በማለት የሚከራከሩ ስላሉ ይሕን ክርክር እልባት ለመስጠት ሲባል በድንጋጌዉ በግልጽ ሊቀመጥ ይገባል።

4.4. የዓ/ሕግ ክስ አመሰራረት

ዓ/ሕግን በተመለከተ በስራ አጋጣሚ ካስተዋልኳቸው ክፍተቶች መካከል ክስ ሲመሰረት በአግባቡ መጣራቱን ሳያረጋግጥ ክስ መመስረት በዚህም ምክንያት የአንድ ቤተሰብ አባላትን በጅምላ መክሰስ ይገኝበታል። ሌላው የግል ተበዳይን የጉዳት መጠን መጨረሻ ሳያረጋግጥ ክስ መመስረት ለምሳሌ በግድያ ክስ ሊመሰርት የሚገባዉን ጉዳይ ፈጥኖ በመግደል ሙከራ ወይም በአካል ጉዳት ማድረስ ወንጀል ክስ መመስረት ነው። በዚህም ምክንያት ዉሳኔ ከተሰጠ በኋላ የግል ተበዳይ ቢሞት በግድያ ወንጀል ዓ/ሕግ በድጋሜ ክስ ቢመሰረት በሕገ-መንግስት አንቀጽ 23 መሰረት የድጋሜ ዳኝነት ተቃዉሞ ተከሳሽ ቢያቀርብ ተቀባይነት ያለዉ መሆኑን በፌደራል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት አስገዳጅ ዉሳኔ ተሰጥቶ እናገኝዋለን።[24] ስለዚህ የግል ተበዳይን የሕክምና ዉጤት አረጋግጦ ክስ መመስረት የተሻለ ነዉ። ሌሎች ክፍተቶች በቀጥታም ሆነ በተዘዋዋሪ ስለጉዳዩ የሚመሰክር ምስክር እያለ የግል ተበዳይ ቤተሰብን አደራጅቶ እንዲመሰክሩ ማድረግ፤ ኤግዚቪት እያለ ክስ ላይ አለመጥቀስ፤ በወ/መ/ሥ/ሥ/ሕ/ቀ/ 109 መሰረት ከፖሊስ የምርመራ መዝገቡ ደርሶት በ5-15 ቀን ክስ አለመመስረት፤ ዓ/ሕግ በወ/መ/ሥ/ሥ/ሕ/ቁ/ 111 እና 112 መሰረት የተከሳሽን ድርጊት እና ተገቢዉን ድንጋጌ ሳይለዩ ክስ መመስረት፤ በወ/መ/ሥ/ሥ/ሕ 122 መሰረት እና በዓቃቢ ሕግ ማቋቋሚያ አዋጅ መሰረት ክስ መነሳት ያለበትን ሳይለይ ክስ ማንሳት፤ ክስ ካነሳ በኋላ ደግሞ መዝገቡ ይንቀሳቀስ ማለት ሲገባዉ በሌላ መዝገብ ክስ መመሰርት የሚጠቀሱ ናቸው። ከላይ የተገለጹት ችግሮች ለመፍታት የሚያስችሉ ድንጋጌዎች በረቂቁ ውስጥ ቢካተቱ እንዲሁም የዓ/ህግን የህግ ጥሰት ከተቋማዊና የግል አስተዳደራዊና የፍትሐ-ብሔር ተጠያቂነት ጋር ማያያዝ ቢቻል መልካም ነው።

4.5. በፍ/ቤት የሚስተዋሉ የወንጀል ስነስርዐት ክፍተቶች

[24] አመልካች የትግራይ ክልል አጽቢ ወረዳ ዓ/ሕግ አና ተጠሪ ተማሪ ሐጎስ ወልደሚካኤል [2004] የኢትዮጵያ ፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት 72304፣ [2005] 13 የኢትዮጵያ ፌደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ዉሳኔ 308።

ለዳኛ አንድ የወንጀል ክስ ሲቀርብለት የተከሳሽ ድርጊት እና የተጠቀሰውን የሕግ ድንጋጌ አግባብነት አለማየት፣ ተከሳሽ ክሱን ሲያምን የእምነት ክህደት ቃሉን በአግባቡ አለመመዝገብ፣[25] ወንጀሉን ከካደም ምስክሮችን በአግባቡ አለመጠየቅ እና አለመመዝገብ፤ ፍርድ እና ቅጣት ከተሰጠ በኋላ በእግዚቪት እና በዋስትና ላይ ትዕዛዝ አለመስጠት፤የተፋጠነ ፍትህ አለመስጠት፤ በተለይ እኔ በምሰራበት ክልል ተዘዋዋሪ ችሎት ጉዳያቸው የሚታይ ታራሚዎች ከአመቱ ግማሽ በኋላ በፍ/ቤት በጅት እጥረት ተዘዋዋሪ ችሎት ላይመደብ ስለሚችል ለረጅም ጊዜ ታስረዉ መቆየታቸዉ የተፋጠነ ፍትህ ማግኘት አልቻልንም በማለት በማረሚያ ቤት ጉብኝት ወቅት በቅሬታ መልክ ይቀርባል። ስለሆነም የግለሰቦች ነፃነት ያለአግባብ ከፍር በፊት እንዳይገደብ የጠፋጠነ ፍትህን የሚያሰፍን አሰራር በረቂቅ ህጉ ቢዘረጋ ይበጃል። በሌላ በኩል የማስረዳጃ ምዘናን በተመለከተ ተከሳሽ ይከላከል ለማለት ማስረጃ የሚመዘነዉ ከምክንያታዊ ጥርጣሬ በላይ ተረጋግጧል ብሎ ፍ/ቤቱ ሲያምን ተብሎ በረቂቁ ድንጋጌ መገለጹ[26] በበቂ ላስረዳ ነዉ ከጥርጣሬ በጸዳ ነዉ የሚለዉ በግልጽ አለመቀመጡ አከራካሪነቱ መቀጠሉ አይቀርም። ስለዚሕ ይህን ክርክር ለመፍታት በሥነሥርዓቱ በግልጽ መቀመጥ አለበት ብሎ ጸሓፊዉ ያምናል።

5. ማጠቃለያ

የፍትሕ አካላት በወንጀል ምርመራ፣ ክስ፣ ፍርድ ሂደትና የውሳኔ አፈጻጸም ጊዜ በሕገ መንግሥቱ የተረጋገጡ የሰብዓዊ መብቶችን ማክበር እና ማስከበር ይጠበቅባቸዋል። እነዚህ ተቋማት መሰረታዊ የሕግ መርሆችን እነሱም የተጠርጣሪወችን ነፃ ሆኖ የመገመት መብት በማክበር፣ በአንድ ወንጀል ድጋሚ ክስ ባለማቅረብ፣ የተከራካሪወችን የእኩልነት መብት በማክበር፣ የተጠርጣሪወችን የሰበዓዊ አያያዝ በጠበቀ መልኩ በመያዝ፣ የተጠርጣሪወችን በጠበቃ የመወከል መብታቸዉን በመጠበቅ፣ ቀልጣፋ ውሳኔ በመስጠት፣ በግልጽ ችሎት በመዳኘት በአግባቡ ሊሰሩ ይገባል። ለዚህ ፅሁፍ መነሻ በሆነው ረቂቅ ሕግ የተደነገጉትን አዲስ ጽንሰ ሐሳቦች ለምሳሌ አማራጭ የሙግት መፍቻ፣ የመጨረሻ ፍርድን እንደገና ማየት፣ በወንጀል ጉዳዮች ዓለም አቀፍ ትብብርን በተመለከተ ተጠርጣሪወች እና ማህብረሰቡ እንዲረዷቸዉ እና እንዲተገብሯቸዉ የንቃተ ሕግ ትምህርት እና የስልጠና መድረኮች ሊመቻቹ ይገባል። ዋና ዋና ጉዳዮች የፖሊስ ምርምራ፣ በፖሊሰ ጣቢያ እና በማረሚያ ቤት የእስረኞች አያያዝ፣ ጊዜ ቀጠሮ እና ዋስትና፣ ቀዳሚ ምርመራ፣ የፍ/ቤቶች ሥረ ነገር ስልጣን፣ የዓ/ሕግ ክስ፣ የተከላካይ ጠበቃ አገልግሎት፣ የዳኞች ፍርድ ተግባር እና ሐላፊነት በአግባቡ በሕጉ

[25] *የወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት*፣ አዋጅ ቁጥር 1/ 1954፣ አንቀጽ 134።

[26] *የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ የወንጀል ሕግ ሥነ-ሥርዓት እና የማስረጃ ረቂቅ ሕግ*፣ አንቀጽ 297።

መሰረት መሰራት አለመስራታቸዉን በየጊዜዉ ጥናቶች እየተካሄዱ የሕግ እና የአሰራር ክፍተቶችን በመለየት በረቂቅ ህጉ ውስጥ ሊካተቱ ይገባል።

CHOKIE JOURNAL OF LAW AUTHOR'S GUIDELINES

The Law School of Debre Markos University publishes a peer-reviewed journal of law, Chokie Journal of Law. This brief guideline is prepared based on the Journal's Policy with a view to inform potential contributors.

1. Content of the Journal

The Journal publishes:

1.1. Feature Articles: which are a thorough, original and high-quality academic analysis. These are scholarly writings on any law or law related topic that meet the rigors of academic writing. The Journal shall feature at least three articles in each issue.

1.2. Case Comments: which are manuscripts in which authors critically comment on relevant cases decided by domestic and international courts as well as international tribunals and other quasi-judicial body.

1.3. Legislative Reviews: which are manuscripts presenting the salient features of a new or revised legislation in Ethiopia or comparative analysis of related laws.

1.4. Book Reviews: which are manuscripts that provide a summary and critic of a book on Ethiopian laws or other topics and themes related to law.

1.5. Reflections/Notes: which are manuscripts in which authors put forward their personal thoughts and insights on a pressing issue of law with a view to stimulating a discussion and/or debate.

1.6. Review Article: an article that generally summarizes the current state of understanding on a given topic. It surveys scholarly researches already conducted in an area, and it should give an overview of current thinking on the theme.

1.7. Letter /Letter to the Editor/: refers to written submissions to the Editor-in-Chief making comments on an article published in previously published issues of the same journal.

2. Language of Publication

2.1. Contributions can appear in the Journal in Amharic or English language. Contribution in Amharic language shall have English Abstract

2.2. Contributions shall be published in the language their author has originally authored them in.

2.3. All contributions, whether in Amharic or English should be submitted using "Template for Chokie JoL".

3. Exclusivity of Contributions

All contributions that appear in the Journal should be unpublished original works of the author.

Copyright

3.1. The Publisher (School of Law of Debre Markos University) retains copyright over the articles published in the Journal. However, authors may be granted the right to republish their articles if the Board is notified of such use and that it carries the appropriate copyright notice.

3.2. The author of a published manuscript is entitled to receive electronic copy of his contribution and one complimentary copy of the issue in which his contribution appears, free of charge.

4. Process of Submission

4.1. Contributions may be submitted as an attached MS Word document, to the Editor-in-Chief via the via the email chokiejol@dmu.edu.et

4.2. Authors should submit a separate cover letter using the "**Cover Letter for Chokie JoL**" format.

5. Size of Contributions

The size of contributions shall be as follows, excluding footnotes:

5.1. Articles (5000 to 12000 words)
5.2. Review Articles (5000 to 10000 words)
5.3. Legislative reviews (1000 to 3000 words)
5.4. Case Comments (1000 to 4000 words)
5.5. Book/Article reviews (1000 to 3000 words)
5.6. Notes (2000 to 4000 words)
5.7. Letter to the Editor (1000 to 2000 words)

6. Content and Presentation Style of manuscripts

6.1. Feature articles, review articles, and notes/reflections should be using "**Template for Chokie JoL**" and have the following structure:

i. Title

The article title appears center justified at the top of the first page. The title font is 16 pt, bold. The rule for capitalizing the title is; all words should be capitalized. Do not begin titles with articles (e.g., a, an, the) or prepositions (e.g., on, by, etc.).

ii. Author's name

The list of author/s/ immediately follows the title. The font is 12 pt bold and the author(s)' names are left justified.

iii. Author's affiliations and biographies (see 7.6)

iv. Abstract

With single-paragraph, the abstract should be a summary of the paper and not an introduction. Because the abstract may be used in abstracting and indexing databases, it should be self-contained (i.e., no numerical references) and substantive in nature, presenting concisely the objectives, methodology used, results obtained, and implication/recommendation. The abstract should be an objective representation of the article and it must not contain results that are not presented and substantiated in the main text and should not exaggerate the main conclusions. Complete sentences, active verbs, and the third person should be used. The tense should be in simple past. No literature should be cited. Abstract should not exceed 300 words.

v. Key words/terms

List three to five pertinent keywords/ terms specific to the article yet reasonably common within the subject discipline. The key words should indicate the content of the manuscript but

without merely replicating its title or textual sub-headings. These words should be separated with semicolons.

vi. Introduction

The introduction part should provide adequate background that puts the manuscript into context. This is to allow readers to understand the purpose and significance of the study. Authors should avoid a detailed literature survey or a summary of the results. Hence, it has to define the problem addressed and why it is important. It should also include a brief review of the key literature. It should also note any relevant controversies or disagreements in the field. Finally, it needs to conclude with a brief statement of the overall aim of the work and the organizational structure of the paper.

vii. Body

The body should contain discussions, analyses, arguments, etc. and may be divided into sections, and subsections depending on the author's approach to the subject matter. The body of the paper consists of numbered sections that present the main findings. The rules for capitalizing for sentences are; only the first word, proper nouns, and acronyms should be capitalized. At the first occurrence of an acronym, spell it out followed by the acronym in parentheses, e.g., United Nations High Commissioner for Refugees (UNHCR).

Paragraphs that immediately follow a section heading are leading paragraphs and should not be indented, according to standard publishing style. The same goes for leading paragraphs of subsections and sub-subsections. First lines of subsequent paragraphs should be 1.5 inch left indented. Sections should be numbered sequentially. Spaces should be added before and after each section, sub-sections and sub-subsections. There should not be extra spacing between paragraphs.

viii. Conclusion

Conclusion reflects the author's synoptic opinion on the subject matter, and may include suggestions, proposals, affirmation, recommendations, etc.

ix. Appendices

Brief appendices may be included when necessary, such as copy of letters or decisions. The format for appendices is similar with Heading 1 except they will not be numbered.

x. Disclosures

Conflicts of interest should be declared under a separate header after conclusion. If the authors have no competing interests to declare, then a statement should be included declaring no conflicts of interest. The format for the disclosure is similar with Heading 1. The disclosure section does not have a section number.

xi. Acknowledgments

Acknowledgments and funding information (if necessary) should be added after the disclosure of conflict of interest. The acknowledgments of people, grants, funds, etc. should be brief. You must ensure that anyone named in the acknowledgments agrees to being so named. Include grant numbers and the full name of the funding body. The format for acknowledgement is similar with Heading 1. The acknowledgments section does not have a section number.

6.2.Case comments: Case comments to be submitted to the Journal should bestructured as follows:

i. Main subject heading;
ii. Case name and citation;
iii. Text: (1) the facts, (2) the decision, and (3) the commentary on the case; and Summary remark.

6.3.Legislative reviews: Legislative reviews to be submitted to the Journal should be structured as follows:

i. Main subject heading;
ii. Name of the legislation and citation;
iii. Body: (1) Background on the subject matter, (2) the objective of the legislation, (3) introduction to main parts of the legislation, (4) the commentary on the legislation; and its implication

6.4.Book reviews: book reviews should have the following elements:

i. A Header, that should include: (1) author(s)/editor(s) name, (2) title of book, (3) year of publication, (4) edition (if second or subsequent), (5) publisher and place of publication, (6) number of pages, (7) format (hardback, if available in e-copy), (8) ISBN, and (9) price (if available);
ii. A summary of the intended audience and purpose of the book and how it contributes to the field of scholarship;
iii. A description of the way the author approaches his or her topic, the rigor of the research and scholarship, the logic of the argument, and the readability of the prose;
iv. A comparison with earlier or similar books (if any) in the field to place the book in the existing literature;
v. An evaluation of the book's merits, usefulness, and special contributions, along with constructive comments on its limitations; and indication of who would find the book useful and its implication for research, policy, practice, or theory.

6.5.Letters: The letter to the editor should convey its message in a short and definitive fashion. The comments should be objective and constructive.

6.6. Author’s affiliation and biographies: For all kinds of contributions, the author’s affiliation shall be indicated in a footnote marked by an asterisk and not by an Arabic number. Affiliations and biographies should be inserted as footnotes. They should be approximately 75 words or fewer. Similar with other footnotes, the font is 10 pt and single space. Superscript letters (a, b, c, etc.) should be used to associate multiple authors with their respective affiliations. The corresponding author should be identified with an asterisk, and that person's email address and phone number should be provided in addition to the affiliation. Authors shall refer to themselves, if at all, in the third person pronoun throughout the text.

7. Page Setup and Fonts

Top, bottom, left, and right margins should be 1 inch. Use Times New Roman font throughout the manuscript, in the sizes and styles shown in Table 1.

Table 1: Recommended fonts and sizes.

Style name	**Brief description**
Article Title	**16 pt, bold, uppercase, center**
Author Names	**12 pt, bold**
Footnotes and Author Affiliations	10 pt
Abstract	12 pt
Keywords	12 pt
Heading 1	**16pt, bold**
Heading 2	**14 pt, bold**
Heading 3	**13 pt, bold**
Heading 4	**12 pt, bold**
Body Text	12 pt
Figure caption	10 pt
Table caption	10 pt

8. Requirements as to Reference/ Citation Rule

8.1. Chokie Journal of Law follows footnote citation style.

8.2. The style of referencing for any contribution to Chokie Journal of Law shall be based on citation rule annexed at the end of this policy, which is the customized version of the OSCOLA Citation Rules (Annex 1).

8.3. Where the customized version falls short of completeness for a specific citation, Authors should resort to the latest editions of the OSCOLA Citation Rules.

Annex 1-Citation Rule- Customized version of OSCOLA Citation Rules

- ✓ Chokie Journal of Law has adopted *the Oxford Standard for Citation of Legal Authorities* (OSCOLA) 4th Edition, 2012 with some modifications.
- ✓ OSCOLA can be accessed following the link; https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf
- ✓ The editors reserve the right to change manuscripts to make them conform with the house style, to improve accuracy, and to eliminate mistakes and ambiguity.

1. Basic guidelines

1.1.Italicization

When the manuscript is written in English, non-English words must be *italicized.* When the manuscript is written in Amharic, non-Amharic words must be *italicized*

1.2.Emphasis

Use *italics* for emphasis.

1.3.Quotations

Quotations of more than three lines should be double indented paragraph without quotation marks. Quotations of less than three lines should be in a single quotation mark and not indented from the text. Use square bracket [ ] to note any change in the quoted material, Ellipsis … to indicate omitted material, and [sic] to indicate mistake in the original quote. Begin with an Ellipsis … when a quotation starts mid-sentence. Any comments on the quotation should be in the text or in a footnote. The superscript footnote marker comes last, after both the punctuation and the closing quotation mark. Indicate any use of emphasis in a parenthetical clause after superscript footnote marker by use of (emphasis added).If you omit citations or footnotes from a quotation, put (citation(s) omitted) or (footnote(s) omitted) after the superscript footnote marker.

1.4.Footnotes

References in footnotes should generally contain sufficient information about the source material. Footnotes should in accordance with the original language of the source document referred to. The footnote marker should appear after the relevant punctuation in the text (if any) and normally at the end of a sentence. It may sometimes be necessary, for the sake of clarity, to put the footnote after the word or phrase to which it relates. Footnotes should be consecutively numbered and be set out at the foot of each page. Close footnotes with a full stop (or question or exclamation mark.

2. Specific Citation Rules

2.1. Primary Sources

2.1.1. Legal Instruments

Cite a domestic laws including *italicized* title followed by type and number of legislation, the specific provision using Art., Sec. or Parag.

Federal Courts Proclamation, Proclamation No. 25/1996, Art 3.

Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Art. 29.

Criminal Procedure Code of Ethiopia, Proclamation No. 185/1961, Art. 31.

Amharic National Regional State The Urban landholding Registration and Information Offices Establishment and Determination of Their Powers and Duties, Council of Regional Government Regulation No. 137/2015, Art. 2.

- Cite legal instruments from other jurisdictions as they are cited in their own jurisdiction.

Accident Compensation Act 1972 (NZ)

2.1.2. Cases

- For cases, the general citation rule is:

*The parties na*me [year of the decision] The Court and file number), [Year of publication in the law report] volume/issue and the Law Report and first page of the relevant case.

Azeb Tamiru v Dejene Zewde [2009] Ethiopian Federal Supreme Court Cassation Bench 104621, [2010] 21 Decisions of Ethiopian Federal Supreme Court Cassation Bench 47.

- The above example indicates a case between AzebTamiru and DejeneZewde decided by Ethiopian Federal Supreme Court Cassation Bench on 2009 EC with a file number 104621, and that the report can be found on volume 21 of Decisions of Ethiopian Federal Supreme Court Cassation Bench starting from page 47.
- When pinpointing, give the exact paragraph/page number in square brackets at the end of the citation.

  E.g. Azeb Tamiru v DejeneZewde [2009] Ethiopian Federal Supreme Court Cassation Bench 104621, [2010] 21 Decisions of Ethiopian Federal Supreme Court Cassation Bench 47 [49].
- If the case is not reported in the Law Reports, provide all neutral citations as follows.

E.g. Alemu Fisseha v Bahiru Belay [2007] Federal High Court Lideta Bench 12890.

- Where a case name is given in the text, it is not necessary to repeat it in the footnote, instead provide other details.
- Cite overseas cases as they are cited in their own jurisdiction with similar information like domestic cases are included. E.g. *Roe v Wade* 410 US 113, 163-64 (1973).
- If the name of the case cited does not itself indicate the jurisdiction and the court of decision, and the jurisdiction and court are not obvious from the context of your work, you should indicate these in parentheses at the end of the reference.

2.1.3. International Treaties

- When citing the instrument for the first time, the *italicized* name of the treaty shall be followed by the date of adoption and entry into force in bracket. Then the specific provision/section/paragraph shall be provided as seen below.
- *International Covenant on Civil and Political Rights*, (adopted 16 December 1966, entered into force 23 March 1976), ICCPR, Art. 10.

2.2.Secondary Sources

2.2.1. Books

2.2.1.1. Sole authored books

- Use italics for the title, and put the publication information in roman within parentheses. Author, *Title in Italics* (series title, edition publisher, place date) page. E.g. John Baker, *An Introduction to English Legal History* (4thedn Butterworths, London 2002)419–421.
- Where a book has a title and subtitle not separated with punctuation, insert a colon. E.g. Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford University Press, Oxford 1995) 297.
- Where there are up to three authors, cite the name of all authors.

E.g. Gwyne Davis, Nick Wikeley and Richard Young, *Child Support in Action* (Hart Publishing, Oxford 1998) 48.

- Where there are more than three authors, cite the first author followed by 'and others'.

  E..g. Roy Goode and others, *Transnational Commercial Law: International Instruments and Commentary* (Oxford University Press, Oxford 2004)6.
- Names of Ethiopian authors should appear as follows: Author's given (first) name and his/her father's name without changing the order. Subsequent, references should be limited to given names. E.g. Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, (2nd edn Wolf Legal Publishers, Nijmegen 2007) 235.

2.2.1.2. Edited and Translated Books

- The rules are the same as sole authored books, except for the insertion of '(ed)' or '(tr)'. Where there are two editors insert '(eds)' or '(trs)'. E.g.1. Peter Birks and Grant McLeod (trs), *The Institutes of Justinian* (Duckworth, London 1987) 14-15. E.g.2. Gareth Jones (ed), *Goff and Jones: The Law of Restitution* (6th edn Sweet & Maxwell, London2004) 152.

  E.g.3. Konrad Zweigertand Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr3rd ednOxford University Press, Oxford 1998) 286–94.

2.2.1.3. Contributions to books

- Cite essays and chapters in edited books as:

The contributing author/s Name, 'Title of the Chapter' in Author, *Title of the book in Italics* (series title, edition publisher, place date) page. E.g.1. Ian Brownlie, 'The Relation of Law and Power' in Bin Cheng and ED Brown (eds), *Contemporary Problems in International Law: Essays in Honour of Georg Schwarzenberger on his Eightieth Birthday* (Stevens and Sons, London 1988)233.

2.2.2. Articles

2.2.2.1. Hard Copy Published Articles

- The style for articles generally follows the style for books except peculiarities provided as follows.

Name of the author, 'Title of the Article' [year of publication] volume number or issue abbreviation/name of the journal the first page of the article, pinpoint page cited.

E.g. 1Andrew Ashworth, 'Social Control and "Anti-Social Behavior": The Subversion of Human
Rights' [2004] 120 LQR 263, 276.

E.g. 1. Minasse Haile, 'The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development' [1996]20 Suffolk Transnat'l L. Rev 1, 6.

2.2.2.2. Electronic Journals

- For journals that are only published electronically, give publication details as for hard copy published journals ,but also provide the website address and most recent date of access within angled brackets as <web address> | date accessed with

no full stop at the end.

- Include page number if there is any. E.g. Carolyn Penfold, 'Nazis, Porn and Politics: Asserting Control over Internet Content' [2001] 2 JILT<http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_2/penfold> accessed 27 April 2005

- Where the author is not identified, cite the body that produced the document; if no such body can be identified, insert two joined dashes (like this: ——).

2.2.3. Other Secondary Sources

2.2.3.1. Theses

- When citing unpublished theses, give the author, the title and then in brackets the type of thesis, university and year of completion with no full stop. E.g. Javan Herberg, 'Injunctive Relief for Wrongful Termination of Employment' (LL.M thesis, University of Oxford 1989) 34

2.2.3.2. Interviews

- When citing an interview, you conducted yourself, give the name, position and institution (as relevant) of the interviewee, and the location and full date of the interview. E.g. Interview with Irene Kull, Assistant Dean, Faculty of Law, Tartu University (Tartu, Estonia, 4 August 2003)
- If someone else conducted the interview, the interviewer's name should appear at the beginning of the citation.

2.2.3.3. Websites and blogs

- When citing websites and blogs, use the following citation style. Name of the writer, 'Title of the text' (Name of the Website, Date) <the link> date of access. E.g.1. Sarah Cole, 'Virtual Friend Fires Employee' (Naked Law, 1 May 2009) <www nakedlaw com/2009/05/index html> accessed 19 November 2009

2.2.3.4. Newspaper/Magazine Articles

- When citing newspaper articles:

Name of the author, 'The Title' The Newspaper (Place of publication, Date) page

E.g 1. Jane Crof, 'Supreme Court Warns on Quality' Financial Times (London, 1 July 2010) 3

Ian Loader, 'The Great Victim of this GetTough Hyperactivity is Labour' The Guardian (London, 19 June 2008) <www guardian co uk/commentisfree/2008/jun/19/justice ukcrime> accessed 19 November 2009

2.2.3.5. Speeches

- If the speech is unpublished: E.g. Vladimir Putin, Address on Security Council meeting (Moscow, 13 Mach 2022)
- If the speech is taken from published document:
- Vladimir Putin, Address on Security Council meeting (Moscow, 13 Mach 2022) in Russia Today (Moscow, 13 Mach 2022) 3

2.3.Bibliography

- Items in bibliographies take the same form as all other citations but with no specific page/section/provision.

3. Short Forms for subsequent citations

- If you want to cite the same exact source in the footnote immediately following the full citation, you can generally use 'ibid'.
- If you are citing the same, work but with different page or provision, add the page number/provision that is different from previous citation. E.g. ibid 345.
- If there is more than one citation in the preceding footnote, use ibid only if you are referring again to all the citations in that footnote. Otherwise, use the citation rule for other subsequent citations as provided below.
- In subsequent (not immediate) citations of a source, identify the source and provide a cross citation in brackets to the footnote in which the full citation can be found. Assefa (n 12) 34.
- The above example refers to page 34 of Assefa's work as initially cited under footnote number 12 of your paper.
- If you have previously cited several works by the same author, the name and the title of the work (or a short form of the title) should be given to differentiate from other works. E.g. Assefa 'Federalism and Development' (n 15) 22.
- For subsequent citations of a case, you can abbreviate the names of the parties after the first citation. E.g. *Azeb Tamiru v DejeneZewde* (n 1).
- For subsequent citations of legislations, you shall use the full form. E.g. *Criminal Procedure Code of Ethiopia,* Proclamation No. 185/1961, Art. 31.
- Subsequent citations of treaties, you may use abbreviations or other short forms. E.g ICCPR (n 3) Art. 6.
- Never italicize or capitalize for ibid or n.; Do not use supra, infra, ante, id, op cit, loccit, contra.

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