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Editorial – A Message from the Editorial Committee

Dear authors, reviewers, and readers:

It gives us immense pleasure to wish you all a Happy New Year 2025 from the *International Journal of Ethiopian Legal Studies* (IJELS). We feel honored and fortunate to be a part of this peer-reviewed international journal and are working as a highly effective team to ensure it continues to be a trusted source in the field of legal science.

We are delighted to publish Volume 9 No. 1 of the IJELS. The Editorial Committee extends its gratitude to those who keep on contributing and assisting us in various ways. Importantly, we are grateful to all manuscripts contributors, reviewers, and layout editors who did the painstaking editorial work of this issue. As in our previous issue, the Committee would like to amplify that the IJELS is destined to serve as a forum for the scholarly analysis of Ethiopian law and contemporary legal issues. It encourages professionals to conduct research works in the various areas of law and practice. Research works that focus on addressing existing problems, or those that contribute to the development of the legal jurisprudence as well as those that bring wider national, regional, supranational and global perspectives are welcome. The Editorial Committee makes a call to all members of the legal profession, both in academia and in the world of practice, to assist in establishing a scholarly tradition in this well celebrated profession in our country. The past few years have shown an increase in scholarly papers from different legal practitioners. However, more needs to be done for the research and writing community to put their imprints on the legal and institutional reforms that are still underway in Ethiopia and beyond. It is highly praiseworthy to conduct a close scrutiny of the real impacts of old and new laws upon the social, political, economic and cultural life of our society today. It is equally important to study and identify areas that really demand legal regulation and to advise the legislature to issue appropriate legal instruments in time. In this process, the IJELS serves as a forum to make meaningful contributions to our society and to the international community at large.

As we move forward, we expect our readers to provide us feedback that will inform us on how we are satisfying their needs and the extent to which they feel we are fulfilling our mandate to publish a scientific journal that provides the highest quality literature that is both informative and practical for students, researchers and practitioners in the field.

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INTERNATIONAL AND ETHIOPIAN LAWS ON CORPORATE SOCIAL RESPONSIBILITY (CSR): SOME PRACTICES IN INDUSTRIAL PARKS

Tesfaye Abate Abebe*

Abstract

The concept of CSR has gained attention under international and national laws. This article investigates this situation and how CSR is regulated in Ethiopia. The principles of CSR have been evolving at both levels. Comparative qualitative research methodology was employed, the international rules and Ethiopian laws governing the CSR were examined with interviews and focus group discussions were used to gather data from the practice. Observation of CSR practice in different industrial parks in Ethiopia has also been made. The data were analysed using qualitative and comparative analytical methods. The article identified that the concept of CSR in Ethiopia is not well developed and the binding laws do not explicitly enshrine the CSR as duties to be undertaken by an enterprise, there is no code of conduct on CSR for investors in industrial parks in Ethiopia. The practice shows that the concept remains at the infant stage where philanthropic principle has been employed by various investors working in different industrial parks of the country. This demands the Ethiopian Government to work more on awareness creation and developing the CSR principle to higher level to contribute to the sustainable development of the economy and to the meaningful implementation of CSR. The Ethiopian Government is required to work together with the investors in industrial parks to develop their own code of conduct on CSR and implement the same.

Keywords: Corporate Social Responsibility, international law, Ethiopian investment laws, Zoning law, human rights protection, environmental protection law

INTRODUCTION

The concept of CSR is subject of debate there being an acceptance that an enterprise should give priority for profit. Now, that acceptance is for its impact on the governance, society and the environment.[1] International and Ethiopian laws provide explicit or implicit provisions to regulate CSR which can be understood as conducting business in a prudent manner to mitigate the adverse effect of the activities of an enterprise on the society and the environment through the internationally recognized standards and the laws of the host state so as to protect human rights, comply with the social obligations and protecting the environment.[2] There is a recent

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[1] T. L. Hazen, 'Corporate and Securities Law Impact on Social Responsibility and Corporate Purpose', (2021), 62: 851 Boston College of Law Review, 853-854.

[2] I. Bantekas, 'Corporate Social Responsibility in International Law', Boston University International Law Journal 22, (2004), 317.

trend of bilateral investment treaties clearly incorporating the principle of CSR. Ethiopian laws also require investors to protect human rights, to comply with the labour rights of workers and to protect the environment; all related to the concept of CSR. The basic purpose of this article is to investigate how the international and Ethiopian laws regulate CSR and its implementation in some industrial parks in Ethiopia.

In Ethiopia, few researches have been made in relation to this topic. Demamu has examined the CSR in Ethiopia and stated that CSR is not alien to Ethiopian society, though not clearly provided by law as an obligation and is left to individual enterprise to adopt, optionally and voluntarily. Demamu has investigated the Commercial Code of the 1960 and the draft Code (now enacted) which do not clearly provide for the CSR. He also considered other laws such as investment proclamation and BITs. That paper focuses on the models of CSR[3] but does not consider the issue from the industrial parks law point of view, this article will.

Abate, in his part, concentrated on the environmental protection while considering the corporate responsibility under investment law (BITs) of Ethiopia.[4] The paper only considers principles of CSR focusing on the environmental responsibility concentrating on the relation between investment law and environmental protection law.[5] This present article is wide covering additional points. In his article 'An appraisal of the Legal bottom line of Corporate Environmental Responsibility in Ethiopia', Bishaw considers the CSR only from the environmental point of view.[6] He does not consider the full length of CSR, for instance, he does not consider CSR under investment law among others.

Boki has written an article entitled: "The Role of Investment Laws in Strengthening Corporate Social Responsibility: Ethiopia's Investment Regime in Focus"[7] which examines the bilateral investment treaties to which Ethiopia is a party. It focuses on the international investment law aspect of the country, while touching on the domestic laws.[8] That research does not sufficiently investigate the domestic investment law of Ethiopia. Another research identified there are no laws clearly providing the definition of CSR in Ethiopia. The practice is not encouraging either.[9] Further, an article entitled: 'Towards Socially Responsible Mining Investment in Ethiopia: Imagining a New Moral Economy'[10] investigates the concept of CSR under mining investment

[3] A.Y. Demamu, 'Towards Effective Models and Enforcement of Corporate Social Responsibility in Ethiopia', Mizan Law Review 14, (2020), 276-309.
[4] A. Abate 'Ethiopia's Bilateral Investment Treaties and Environmental Protection; the need of Re-negotiation for Corporate Responsibility', (2021) 21Global Jurist, available on: https://doi.org/10.1515/gj-2020-0067 Accessed on: April 12, 2024.
[5] *Ibid*.
[6] A.A. Bishaw, 'An appraisal of the Legal bottom line of Corporate Environmental Responsibility in Ethiopia' (2017) 7 Bahir Dar University Journal of Law
[7] I. Boki, 'The Role of Investment Laws in Strengthening Corporate Social Responsibility: Ethiopia's Investment Regim in Focus' (2020) 100 Journal of Law, Policy and Globalization
[8] *Ibid*.
[9] See T. Abitew, Approaches to Regulating Corporate Social Responsibility in Ethiopia: The Case of manufacturing Companies, (A Thesis Submitted in Partial Fulfilment for the Requirement of Master Degree in Business law (LL.M), 2021, Addis Ababa University, College of Law and Social Studies, School of Law and Governance Studies, School of Law) at 58
[10] W.K. Djigsa, **'**Towards Socially Responsible Mining Investment in Ethiopia: Imagining a New Moral Economy' Review Pub Administration Management, Vol. 9 Iss. 6, No: 291 (2021), 1-6.

law, particularly Proclamation No. 678/2010[11] but does not consider CSR under other laws and especially does not consider the new economic zone proclamation.

Generally, no sufficient research has been made on corporate social responsibility under Ethiopian laws, this article attempts to fill the gap. In addition, the Ethiopian Government has come up with new economic zone proclamation which repealed the previously existed Industrial Park Proclamation No. 886/2015 and Regulations No. 417/2017. Thus, this present article investigates this new proclamation from the CSR point of view examining the CSR in the full range of the international and Ethiopian laws on CSR focusing on the protection of human rights, environment and labour rights.

The general research objective of this article is to investigate how the international and Ethiopian laws regulate CSR and their implementation in some industrial parks in Ethiopia. The specific objectives of this article are to: examine the international norm that applies to the CSR; investigate the Ethiopian laws relevant to CSR, and discuss the implementation of laws of CSR by enterprises in the Ethiopian industrial parks.

This article applies qualitative research methodology, it examines the international law applicable to CSR, investigates the Ethiopian laws and the practice in some industrial parks against those international norms. The research investigates both primary and secondary sources of legal research in the field, including the international legal instruments and relevant national laws of Ethiopia. Internationally recognized publications have been closely consulted. Interviews with experts, officers and residents in respective local areas have been conducted. In addition, group discussions with the officers and local residents have been employed to gather data. The researcher also employed critical observations on industrial parks, and the data were analyzed qualitatively.

This article begins with the examination of the definition, nature of corporate social responsibility, and origin and development of CSR. Then, this is followed by the treatment of the basic theories on CSR and regulation of CSR under section two. Section three examines the application of international law in CSR. Section four investigates the relevant Ethiopian laws on CSR and their implementation in Ethiopian industrial parks, finally, a conclusion is offered.

1. THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY IN GENERAL

Under this part of the article, the concept of CSR in general is considered starting from the definition, its origin and development.

A. Definition of Corporate Social Responsibility

The term 'CSR' is defined in various ways depending on the philosophy and objective reality of a country. Under this section, the definitions from the ethical point of view and a definition that balances the profit maximization by an enterprise with responding to the social and environmental impacts are examined. Generally, the definitions could be categorized into

[11] *Ibid*.

voluntarism and legal point of view.[12] The legal definition considers the CSR as a duty of an enterprise while voluntarism accepts it as that left to the ethical decision of an enterprise.

CSR is defined as the extended form of governance by applying the concept of fiduciary duty from a mono-stakeholder setting to the multi-stakeholder setting by which an enterprise owes fiduciary duties to its stakeholders including the owners.[13] This definition informs us to consider the purpose of enterprise as to why it is established. The definition incorporates the fiduciary duties of an enterprise towards its stakeholders which include the owners of the enterprise itself and members of the society. The relationship between the enterprise and the society is based on trust and the enterprise is expected to act to promote the interest of the stakeholders. This definition takes into account the ethical obligation of an enterprise towards the society and in fact promotes its functions since trust by the society is important.

On the other hand, CSR is also defined as:

> "… operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business. CSR is seen by leadership companies as more than a collection of discrete practices or occasional gestures, or initiatives motivated by marketing, public relations or other business benefits. Rather, it is viewed as a comprehensive set of policies, practices and programs that are integrated throughout business operations, and decision-making processes that are supported and rewarded by top management…" [14]

This definition is so wide; it includes the responsibility of a business towards the society in addition to the commercial expectation of an enterprise, additionally covering the ethical responsibilities of an enterprise. CSR imposes a social responsibility on companies. However, the scope of 'social' is not fixed and it may be interpreted to include heath, education and security issues. On the other hand, 'social' may refer to the society, which includes planet and the environment. In general, a company is socially responsible for its own acts that affect the society.[15]

Further, the World Business Council for Sustainable Development considers CSR as '…the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families, as well as of the local community and society at large...'.[16] This definition is basically intending to promote economic development by an enterprise by requiring it to enhance the economic development, and to improve the quality of the local community and the society at large. Thus, the quality of its

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[12] *Ibid*.

[13] A.C. Pires, Why CSR should be a Legal Duty and not Framed as a Social or Ethical one?, (2017, University of Milan) available at: http://dx.doi.org/10.2139/ssrn.3033990 last visited on: 6 May 2024.

[14] P. Mazurkiewicz and DevCommon, Corporate Environmental Responsibility: Is Common CSR framework possible? (World Bank, 2004) 4-5.

[15] A. Vives, 'Corporate Social Responsibility: The Role of Law and Markets and the Case of Developing Countries' (2007) 83 Chicago-Kent Law Review 201.

[16] Mazurkiewicz and DevCommon, above note 14, at 5 ISO Defined CSR in a similar fashion as: "the responsibility of an organization for the impacts of its decisions and activities on society and the environment through transparent and ethical behavour that is consistent with sustainable development and the welfare of society; takes into account the expectations of stakeholders; is in commonplace with applicable law and consistent with international norms of behavour; and is integrated through the organization". International Standards Organization's ISO 26000 Working Group on Social Responsibility, (Sydney February 2007).

product and its service should improve the life of the community. This definition is based on ethical conception of CSR. According to this definition, an enterprise is not legally obligated to improve the life of the community and protect the environment, but rather it is an ethical obligation.

There is a move to the idea that enterprises should lead sustainable economic development by taking into account the interest of the society. Thus, it may be defined as the enhancement of sustainable development by private companies making them accountable for human rights and the environmental violations during the performance of their activities or pursuing their economic growth.[17] This definition is intended to promote sustainable development and protecting the human rights of the society and the environment as a legal duty. It also requires the enterprise to work for its economic development while enabling it to maximize profit.

CSR is also defined by the European Union as an enterprise accountable for its impact on all stakeholders. It considers a business to behave fairly and responsibly to contribute to economic development while enhancing the quality of life of the workers and their families and the local community.[18] This definition considers the interest of environmental protection in addition to contributing to the economic development and requires the company to improve the quality of the life of its workers, their families as well as that of the community. This definition, based on the legal obligatory conception, in general intends the enterprise to undertake its activities to improve the quality of life in general.

Generally, from the legal point of view, CSR is defined as '…business conduct consistent with applicable laws and internationally recognized standards in the area of human rights, international labour and environmental standards, anti-corruption, and, more generally, in any area that promotes sustainable development.'[19] This definition emphasizes on the law of business that regulates enterprises to ensure the protection and promotion of human rights, labour rights as well as environmental protection. In general, an enterprise is expected to promote and advance its contribution for the achievement of sustainable development particularly in the host state economy. The enterprise, by adopting this definition, is expected to behave responsibly by adopting and enhancing 'environmental, social, and governance' (ESG) standards.[20] The definition needs an enterprise to implement good governance which fights corruption.

In Ethiopia, there is no definition of the term CSR. From the general trend one can deduce the concept is based on a voluntary basis. However, the Ethiopian investment law requires investors to comply with the Ethiopian laws implying enterprises are required to undertake their investment by protecting the human rights, the labour rights and protecting the environment which the Ethiopian laws regulate. The concept, incorporated under BIT between Ethiopia and Brazil, requires investors to protect human rights, labour rights and the environment, and to

[17] Pires, above note 13.
[18] Mazurkiewicz and DevCommon, above note 14, at 5.
[19] K. Yannaca-Small, 'Corporate Social Responsibility and the International Investment Law Regime: Not Business as Usual' (2021) 17 University of St. Thomas Law Journal 403 The Concept CSR is defined as the enterprise's social responsibility to be carried out as responsible to the environment and the local community. S. Istikhoroh, et al, 'Human Capital as Moderating the Relationship between Corporate Social Responsibility and Company value in Indonesia Consumption Goods Companies', (2022) 7 Saudi J Bus Manag Stud 148.
[20] Yannaca-Small, *Ibid*.

promote good governance. Thus, the definition that considers CSR from the legal point of view to protect human rights, labour and the environment is adopted under this article.

B. Origin and Development of CSR

i. In the World

The early evolution of CSR is inclined towards the shareholders (stockholders) theory, which was characterized by companies providing certain gifts to the local community at the end of the financial year. This philanthropic form of CSR was prevalent in developing countries where developmental challenges are common. Making voluntary contribution in the form of philanthropy to the society depended on the willingness of the company.[21]

In the United States of America, the concept of CSR had been considered in 1930s particularly with regard to whether a company should undertake CSR. Then, due to the effects of World War II, attention was given to the redevelopment of the world and the issue of CSR was marginalized. Again, in the 1950s' an attempt to define the term was made.[22]

In the era of the 21st century globalization, the concept of corporate social responsibility has been developed in line with the stakeholders' theory that recognizes corporate behaviours that directly respond to the social expectations and operational control as well as regulation.[23] The former UK Government's Chancellor of the Exchequer, Gordon Brown, stated that corporate social responsibility of companies has gone beyond the old philanthropy and rather than giving money at the end of the financial year, companies are duty-bound to work all the year round in response to the environment, the local society and the working practice. He further explained that companies are required to contribute to poverty reduction to make a difference to the world in which we are living.[24]

In 1976, the Organization for Economic Cooperation and Development (OECD), enacted the guidelines for multilateral enterprises (OECD Guidelines), and the International Labour Organization (ILO) established the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social (MNE Declaration) responsibility in 1977. [25] Terms such as 'responsible entrepreneurship', 'responsible competitiveness', 'the triple bottom line', 'corporate citizenship' and 'corporate sustainability' are used to indicate that the term is intended to find a balance between the enterprise's purpose to strive for enhancing the interest of its stakeholders and the responsibility to achieve sustainable development.[26]

Today, the concept of CSR has developed into making a balance between the enterprise's purposes to make profit on the one hand and the impact it poses to the environment, the labour practice and the product quality on the other. This expectation is required to be regulated by the

[21]N.C.S Ogbuanya, 'Legal Status of Corporate Social Responsibility: From Philanthropy to Obligation' (2017) 1 AJLHR 50.
[22]International Labour Organization, International Training Centre, International Instruments and Corporate Social Responsibility, (2012), at 2.
[23] *Ibid*.
[24] *Ibid*.
[25] International Labour Organization, above note 22 This Declaration has been revised several times, and considered as the only of its kind to provide for corporate social responsibility. It addresses the labour issues.
[26] I. Nwabufo, The Legal and Regulatory Imperatives for Corporate Social Responsibility Practice in Africa, (February 2014), at 3.

law and policy relevant to the field.[27] Therefore, the CSR is considered as a socially responsible agent for the impact the companies put on the society.[28] In the foreign investment sector, new investment agreements are starting to provide provisions on CSR that would advance the sustainable development.

ii. Overview of the Concept of CSR in Ethiopia

In Ethiopia, the concept of the practice of philanthropy aims at providing aid for those who are in need. In Ethiopia, the historical objective reality which was related to drought forced the people to request aid and the existence of foreign Non-Governmental Organizations is used to promote the concept of CSR in its philanthropy essence. Research revealed the private sector in Ethiopia does not consider CSR since the company's primary concern is the maximization of profit which is economic in nature. As the research found, the fact that NGOs exist in the practice has influenced the development of the concept of CSR in Ethiopia.[29]

The legal framework regulating CSR in Ethiopia is not well structured[30] and no clear indication of CSR is available under Ethiopian law, the concept of CSR is understood differently. Some understood it as a philanthropic obligation totally left to the enterprise to undertake, while others perceive it as beyond moral obligation that a company should undertake so long as it does not affect its sustainable existence. Still others believe that CSR is a duty of enterprises towards the community and the environment.[31] With regard to whether CSR is voluntary or mandatory, some argue it is voluntary while others believe it should be a mixture of an obligation and voluntary depending on the nature of the responsibilities. It is argued today, the concept of CSR does not stand as voluntary but as an obligation that arises from the fact that society allows the enterprise to undertake its activities and the enterprise should not undertake its activities in a manner that adversely affect the society and the environment. Therefore, enterprises do have an obligation towards the community and the environment for the consequences of their actions. [32] This article considers CSR as an obligation of an enterprise because various Ethiopian laws incorporate provisions on CSR, but from the practical point of view, an enterprise is ethically duty-bound to help the local community.

2. THEORIES ON CORPORATE SOCIAL RESPONSIBILITY

There are different theories regarding the corporate social responsibility of enterprises. In the discussion below, the stockholder theory, stakeholder theory, legitimacy theory, the resource dependency theory and the Carroll theory are discussed since they are more relevant to the practice in Ethiopia.

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[27] Ogbuanya, above note 21, at 51.
[28] See Abitew, above note 9, at 14.
[29] F. Kassa, The Status of Corporate Social Responsibility in Ethiopia, (2018) 1, Ethiopian Journal of Business Management and Economics (EJBME) 7; T. Tefera, Corporate Social Responsibility Practices, benefits and Challenges: The Case of Ethiochicken, (2020), A thesis submitted to Research and Postgraduate office in Jimma University in partial fulfillment of the Requirements for the Award of the Degree of master of Business Administration (MBA) 27
[30] M.A. Gebreegziabher, Systematic Review of Potential Statutory and Policy Frameworks for Corporate Social Responsibility (CSR), Enforcement in Ethiopia: International and Local Experience, (2023) 14, Business management and Strategy 22.
[31] Abitwe, above note 9, at 41.
[32] *Ibid*.

A. The Stockholder Theory

The first CSR theory is a stockholder theory which argues the basic rational of an enterprise is to enhance its own business. As stated by the 1976 Nobel Laureate for Economics, Milton Friedman, 'the business of a business is businesses'.[33] According to this theory, the enterprise has only the purpose to promote its own business and become profitable rejecting corporate social responsibility towards the society other than promoting its own production and providing the market its production on competitive and fair manner.[34] This theory believes that social responsibility would distort the fair market competition of enterprises, the mere existence of CSR is taken as a problem in the enterprise. It argues that social responsibility is misuse of resources of the enterprise which would be used to promote the objective of the enterprise by investing.[35]

This theory purports the basic purpose of an enterprise is to maximize its profit and provide philanthropic activities only where there is a potential to get profits back. According to this theory, there should be no legal obligation to undertake CSR since it is left to the realm of philanthropy. Thus, enterprises, which accept this theory, respond to CSR only by corporate gifts. This approach is just cosmetic to show a good relationship with the local community and the workforce. [36]

B. The Stakeholder Theory

For this theory, an enterprise has a social responsibility beyond the production of goods and services to make profit. This theory, propounded in the United States, recognizes various relations between the enterprise and its stakeholders.[37] The term 'stakeholder' includes the shareholders, employees, consumers, the local community as well as the environment in which the enterprise operates.[38] The stakeholders' theory dates back to the 17th and 18th centuries' practice of the Quakers[39] who had adopted the business philosophy not primarily driven by profit maximization, but by the need to add value to the society at large. According to this philosophy, business was framed as part of the society.[40]

The proponents of the stakeholder theory agree that business is established primarily to make a profit. However, participating in social responsibility is also a major tool for making a profit since it improves the company's value in the stock market. This theory limits the liability of an

[33] In Ogbuanya, above note 21 at 47
[34] Ibid. The Social responsibility of a business, according to this theory, is to create profit. See M. Friedman, 'The Social Responsibility of Business is to create its profit' (1970) 13 New York Times 2
[35] Ogbuanya, above note 21 at 48
[36] *Ibid*.
[37] Bantekas, above note 2 at 311
[38] Ogbuanya, above note 21 at 49; Nwabufo, above note 26 at 14 The term stakeholder is defined to mean 'someone who has a vested interest or 'stake' in the operations of a company and who has an actionable opinion in the process, procedures, operations, and outcomes of the company's strategic and management decisions'. Nwabufo, ibid.
[39] Quakers employed the honesty, truth and integrity which helped them to promote social corporate responsibility from a responsible business. See generally, N. Burton, Quakers and Responsible Business: Lessons and Cases in Corporate Social Responsibility (2019)
[40] Ogbuanya, above note 21 at 48- 49

enterprise arising from failure to comply with the ethical considerations and best practices while having the relationship with the local community.[41]

C. Legitimacy Theory

Dowling and Pfeffer published on Organizational Legitimacy in 1975, a foundation for Legitimacy Theory.[42] David P. Crowther and Garry D. Bruton are the proponents of this theory.[43] The Legitimacy theory is based on the idea that the legitimacy of an enterprise is based on the 'social contract' with the society in which it undertakes its activities. The enterprise will get an organizational legitimacy from the society where its value is congruent with the value of the society. It will lose its legitimacy where the enterprise's value is inconsistent or opposite to the value of the society. Therefore, for the enterprise to ensure its legitimacy it should be responsible to the society and the environment in which it undertakes its activities.[44] Generally, this theory propagates that an enterprise should obtain legitimacy to undertake its activities from the society by implementing CSR.

D. The Resource Dependency Theory

Jeffrey Pfeffer and Gerald Salancik published their book "The External Control of Organizations. A Resource Dependence Perspective" in 1978, considered as important material to explain the concept of the resource dependency theory.[45] This theory provides that critical and important resources influence the decisions and actions of an enterprise.[46]

According to the resource dependency theory, an enterprise should control the external resources effectively. Since the stakeholders are ultimately the controller of the resources in the locality, the enterprise should develop a good relationship with the society. The resource dependency theory aligns with the stakeholders' theory. Nevertheless, the stakeholders' theory takes into account the interest of the stakeholders while the dependency theory considers the interest of the enterprises.[47] Resource dependency theory promotes the interest of the enterprise by ensuring it has access to the resources necessary to undertake its functions, which requires good relationships with the local community because the resource is under the control of the community.

E. The Carroll Theory

The Carroll theory is the most cited theory that considers different interests without making a hierarchy to explain the concept of CSR. According to this theory, an enterprise has economic, legal, ethical and philanthropic responsibilities, where the legal and economic responsibilities are

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[41] *Ibid*., at 49-50.
[42] J. Dowling and J. Pfeffer 'Organizational Legitimacy: Social Values and Organizational Behavior'. (1975) Pacific Sociological Review, 18, 122-136. https://doi.org/10.2307/1388226.
[43] V. Verma, 20 Theories of Corporate Social Responsibility (CSR) and Corporate Governance. https://www.linkedin.com/pulse/20.
[44] Abitew, above note 9 at 14.
[45] J. Pfeffer and G. Salancik, The External Control of Organizations: A Resource Dependence Perspective (1978), Stanford University Press.
[46] N. Werner, Resource dependence theory: How well does it explain behavior of organizations? (2008), Vol. 19, Management Revue Rainer Hampp Verlag, Mering at 11.
[47] Abitew, above note 9, at 14-15.

more important responsibilities. Then, Schwartz and Carroll provide a model that restructures the definition of CSR involving the economic, legal and ethical responsibilities[48] as equally important.[49]

To sum up, the theories regarding the CSR nowadays, accept both the maximization of profit for the enterprise and to respond to the social and environmental impact it causes. This basically balances the interest of the enterprise to work for profit and the existence of the enterprise at least in protecting the interests of the community including the environment. The theory in Ethiopia seems to adopt the dependency theory since it attempts to ensure enterprises live in peace with the society[50] in which the resource is available. However, this does not conform with what is indicated in the investment proclamation and special economic zone proclamation to comply with the social and environmental protection laws.

3. REGULATION OF CSR UNDER INTERNATIONAL LAW

The term 'regulation' is defined variously. However, regulation from a legal point of view is defined as control or constraint. Here, 'control' means restriction.[51] In Black's Law Dictionary, 'regulation' is defined as an "…act or process of controlling by rule or restriction".[52] As one can understand, regulation in this sense means directing, restricting and showing what to do and what not to do. Generally, regulation is the enforcement of rules (and laws) to ensure the implementation of CSR.[53] From the CSR point of view, regulation may be an enactment of rules and ensuring their compliance by enterprises. It also may refer to the social regulation including non-state actors at the national and international level.[54]

Generally, the regulation is directing enterprises to apply relevant laws for CSR that include international law on labour, human rights and environment, national and subnational legislation in the host or home state. International law includes laws related to non-discrimination, security, occupational health and safety, working hours, remuneration, minimum wage, social and environmental impact assessment and environmental protection.[55] In this article, regulation of enterprises to ensure human rights, protection of the labour rights and environment are considered.

[48] Bantekas, above note 2 at 311.
[49] *Ibid*, at 312.
[50] See Ethiopian Investment Commission, Human Resource Guideline for Ethiopian Industrial Parks. The guidelines is intended to ensure that the industrial parks undertake their activities in peace with the local community by resolving disputes, Ibid, at 134.
[51] B. Orbach, What is regulation? (2016) Yale Journal on Regulation 3.
[52] B.A. Garner (Editor in Chief), (2004) Black's Law Dictionary, Eighth Edition 1311.
[53] See B. Preston, Regulatory Organizations, in E. Lees and J. E. Vinuales (eds.) (2018) The Oxford Handbook of Comparative Environmental Law, Available at: www.oxfordhandbooks.com Accessed on: 12 May 2020, at 720
[54] Abitew, above note9 at 23 The issue of CSR regulation is subject for debate where some argue for the regulation of CSR while other argue to the opposite. *Ibid*.
[55] K. Buhmann, 'Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR' 6(2) Corporate Governance: The international journal of business in society 5.

3.1 Respecting Human Rights

Attempts have been made to regulate the impacts of companies on human rights through regulations at national, regional and international levels.[56] At international level, various laws have been put in place to regulate the protection of human rights of persons by enterprises. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights requires states having primary responsibility to respect, ensure respect for, prevent abuse of and promote human rights recognized in international and national laws.[57] This includes transnational companies. Transnational corporations as well as other businesses have the obligation to respect, ensure respect for, prevent abuse of, and promote those human rights.[58] This Declaration requires enterprises to respect human rights while undertaking their investment activities, thus promoting respect the human rights of workers.

There is a consensus in both public and private sectors that enterprises should respect human rights.[59] Therefore, international human rights law applies to enterprises. There are two assumptions whereby the international human rights law applies to non-state actors including Multi National Enterprises (MNEs). First, there are specific human rights norms directed to non-state actors, second, human rights are universally applicable directly to state and non-state actors including MNEs.[60] Therefore, there is a relation between business and human rights but enterprises could abuse and violate economic, cultural and social rights. In such cases, states are obligated to protect from violation of human rights of their citizens by a third party, including enterprises. This obligation makes clear that states have direct responsibility under international law. Treaties provide an obligation of states to protect human rights[61] arising from the consent of states or from the practice of the relevant human rights law.[62]

The global economy needs the active involvement of MNEs. However, it is essential to check they do not violate human rights laws especially in developing countries where states may fail to regulate MNEs properly.[63] Now-a-days, the right to an environment permitting the health and wellbeing of a human being is accepted as a human right. In addition, the right to development has been developed. Both those rights are recognized under the African Charter on Human and People's Rights,[64] while the 1986 Declaration on the Right to Development recognises that right.[65]

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[56] R. McCorquodale, 'Corporate Social Responsibility and International Human Rights Law' (2009) 87 Journal of Business Ethics, at 385.

[57] Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/sub.2/2003/12/Rev.2(2003).

[58] Ibid. This Declaration takes into account the respecting of human rights recognized under the Universal Declaration of Human Rights, *Ibid*.

[59] Y. Aftab, 'The Intersection of Law and Corporate Social Responsibility: Human Rights Strategy and Litigation Readiness for Extractive-Sector Companies', (2014) Rocky Mt. Min. L. Inst. 19-1, 20

[60] A. Adeyeye, 'Corporate Responsibility in International Law: Which way to go?' (2007) 11 Singapore Year Book of International Law and Contributions at 142.

[61] *Ibid,*. at 143

[62] *Ibid*.

[63] *Ibid*.

[64] The Right to a general satisfactory environment favorable to peoples' development is enshrined under the Charter. Art. 24 African Charter on Human and People's Rights (Banjul Charter) Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986. It recognizes the economic, social and

Human rights are derived from the inherent dignity of the human person or groups of persons, which may be individual rights or group rights. They are non-derogable in nature and are rights universal to human kind.[66] Human rights include the right to security and liberty of persons, like the right to life; civil and political rights such as the right to religion; the right to freedom of thought; economic, social and cultural rights such as the right to work, and the right to development.[67] In most cases, MNEs violate rights related to security and liberty of persons, economic, cultural and social rights as is reported they violate labour rights of workers in general[68] at factories of apparel and footwear.

In factories such as those of apparel and footwear, it is reported that MNEs violate labour rights of workers in general[69] thus warranting regulation to ensure the protection of human rights. Companies may violate human rights of employees for instance by dismissal, or criminalize them for establishing their own organization, or the company may pollute the environment such as the air or land. In such cases, the state may be held liable for the failure to take positive action in responding to, or preventing, the violation of human rights by the company.[70]

The 1948 Declaration of Human Rights is considered the most appropriate standard for CSR by the Global Compact and the OECD Guidelines.[71] As enshrined under Principle 1 of the Global Compact, enterprises '… should support and respect the protection of internationally proclaimed human rights within their spheres of influence.'[72] Similarly, the OECD Guidelines provides that enterprises should respect labour rights of the workers recognized by the International Labour Organization (ILO) instruments such as the right to establish labour organizations.[73]

From the above mentioned two instruments, one can learn that enterprises or investors are required to respect and protect human rights. The responsibility to respect is defined as what is expected by the society from the company and it is sometimes called the social licence of the company to operate in the society. The company is expected to undertake its activities by 'doing no harm' to the society. This requires not only a passive responsibility but it also entails positive steps to be undertaken by an enterprise. Due diligence is required to discharge the duty to respect human rights.[74] Due diligence is defined as 'diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation'.[75] Broadly, it is defined as 'comprehensive, proactive attempt to uncover human rights risks, actual

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cultural right to development to peoples (Art. 22(1)) and States are duty bound to ensure the exercise of the right to development. Art 22(2).

[65] See United Nations Declaration on the Right to Development 1986.

[66] Adeyeye, above note 60, at 144

[67] *Ibid*.

[68] *Ibid*.

[69] *Ibid*.

[70] McCorquodale, above note 56, at 387

[71] Bantekas, above note 2, at 327

[72] U.N. Global Compact, The Ten Principles, Principle 1, (2000). Available at: http://www.unglobalcompact.org/Portal/?NavigationTarget=/Roles/portal_user/aboutTheGC/nf/nf/theNinePrinciples accessed on: 25 April, 2024.

[73] OECD Guidelines for Multilateral Enterprises (2011 Edition) Art. V(1).

[74] McCorquodale, above note 56, at 390.

[75] *Ibid*.. at 393.

and potential, over the entire life cycle of a project of business activity, with the aim of avoiding and mitigating those risks'[76]

Unlike the traditional human rights law, human rights in the CSR recognizes the human rights of the host state local communities living in or around the investment area, which relates to environmental and social wellbeing. This is based on the recognition that the investment may affect the social life and the environment of the local community.[77] Most of MNEs establish schools and clinics, provide scholarships and work on fresh water projects for the local communities in the form of philanthropy. Others make plans relating to education, health and agricultural assistance for the indigenous people but the practice shows they do not go beyond that plan.[78] The international human rights regime requires an enterprise to respect the human rights of workers and the community living in and around the investment area. This will strengthen the expectation of the society that enterprises should protect human rights.

A. Upholding Labour Rights Standards

The human rights law is applicable to labour rights since labour rights law is a specialized aspect of human rights. An enterprise that respects labour rights such as working hours, leave and well-being at work is considered a better enterprise.[79] According to the OECD Guidelines and the Global Compact, there are six core labour principles the enterprises must observe.[80] The principles are:

> Freedom of association and recognition of the right to collective bargaining; elimination of all forms of forced labour; abolition of child labour; elimination of discrimination of employment; encouraging the formation of human capital; and observance of effective health and safety regulations.[81]

The guidelines and Global Compact are soft laws but have a crucial role to play in ensuring the protection of labour rights. With regard to child labour, enterprises are required to release children from their burden and contribute to their social integration through the provision of vocational training, schooling, medical care and counselling. Wherever possible, the parents of the child or above working-age members of the family should participate in the process.[82]

In relation to the formation of human capital, providing vocational training and other education is enabled where it is undertaken on a large scale. The enterprise will benefit as the local labour will be more stable enabling the host state economy to benefit from this human capital.[83]

B. Respecting Environmental and Social Rights and Sustainable Development

The corporate social responsibility of a company towards the environment has become accepted. Any company aspiring to be successful and to be socially responsible is required to adhere to

[76] *Ibid*.
[77] Bantekas, above note 2, at 330.
[78] *Ibid*. at 330-31.
[79] M. P. M. Cooijmas, 'Human Rights and corporate social responsibility in B. Wemaart (ed). (2023), Applied human rights 254.
[80] Bantekas, above note 2 at 332.
[81] *Ibid*.
[82] *Ibid*., at 333.
[83] *Ibid*.

environmental laws and must keep the environment healthy. Today, the environmental responsibility of a company has become a prerequisite for people to survive. In short, environmental and social responsibility is the basis for sustainable development. A socially responsible company recognizes the socio-environmental and financial economic interests which give due attention to non-financial factors such as environmental protection, reputation and image building. Generally, the responsible attitude to environmental protection of an enterprise is an essential component of corporate social responsibility.

Socially responsible enterprise strictly follows the principle of environmental law compliance.[84] However, the issue of social responsibility of a business in the environmental component is subject to debate, and not yet settled.[85] Nonetheless, several international legal instruments incorporate the concept of corporate social responsibility with regard to the environment. The 1972 Stockholm Declaration states the state responsibility to protect the environment.[86] In 1992, the Rio Declaration provided for 27 principles to achieve sustainable development in a civilised society,[87] according to which, sustainable development is a fundamental prerequisite for healthy entrepreneurship.[88]

Enterprises do have the legal obligation to protect the environment as per applicable standards and may be held liable civilly or criminally for the violation of the environmental law.[89] In undertaking the legal obligations of environmental law, enterprises are expected to behave in a socially responsible manner towards the environment. To implement the environmental responsibility, an enterprise can undertake the following actions:[90]

The first important action is to comply with environmental laws by inspecting the facilities, monitor and evaluate the activities as per the environmental standards and introduce new technology that will help to protect the environment.

Employing effective environmental management is the second essential activity to be undertaken. New management systems and technology are imperative to minimise the negative effect of the production process on the environment plus the monitoring of the practice and passing appropriate decisions to protect the environment.

Another step requires the inclusion of the environmental issue in all decision-making and implementing the same. For instance, where paper is to be purchased, ensure it is environmentally friendly; it may be made from recycled materials etc. in choosing the supplier of certain material, not only the cost but also the quality of the material and the possibility to return it at the end of its service life for processing, should be taken into account.

[84] A.V. Kostruba, 'Corporate Responsibility in the Environmental Protection as an Element of Public-Private Partnership in Ukraine', (2021) 20 Public Policy and Administration 118-19.
[85] *Ibid*., at 119.
[86] *Ibid*., at 121 The 1972 Stockholm Declaration, States have the responsibility to ensure that activities in their jurisdictions do not cause damage to the environment of other states or areas beyond their jurisdiction. Principle 21
[87] Kostruba, above note 84.
[88] Ibid. United Nations, Rio Declaration on Environment and Development, 1992, A/CONF.151/26 (Vol. I)
[89] Kostruba, above note 84, at 122.
[90] *Ibid*., at 123.

Raising environmental awareness by training, educating the employers, providing information to customers, shareholders and the public on the environmental measures to protect the environment is also essential.[91]

Scientific research in the field of environmental protection is also important. Research with regard to the undertaking of environmental protection should identify the problems and appropriate solutions be made. Financial and other support are crucial in the undertaking of the research and feedback on the environmental legislation.[92]

In general international environmental law, treaties and declarations regulate the issue of environmental protection and sustainable development. Treaties are addressed directly to states as parties and do not directly apply to enterprises. However, enterprises are duty bound to comply with host state laws, which include the international treaties domesticated by the host states. The concept of sustainable development is basically addressed under the soft laws, such as declarations intended to pursue economic objectives while protecting the environment. Further, environmental considerations are integrated into economic development.[93] The MIGA convention under Article 12(d)(i) agrees to guarantee only those investments that are 'economically sound'.[94] This implies the investment is required to be environmentally sustainable and the interpretation of the provision has accepted to include the environmental performance and sustainable natural resource management.[95]

The OECD Guidelines and UN Global Compact are intended to ensure sustainable development by employing the precautionary approach fitted to industry needs, cleaner production, recycling and the use of renewable resources. The implementation of public disclosure and consultation with stakeholders are instruments by which sustainable development could be achieved.[96] Particularly, environmental impact assessment and strategic environmental assessment could help to ensure sustainable development.[97]

Reporting - Mandatory reporting is one of the environmental corporate social responsibilities requiring the company to report or disclose information about its social and environmental plans and actions as well as performance.[98] The reporting on the environmental, social and financial issues of an enterprise is called 'triple bottom line'.[99] Denmark, France, Norway, the Netherlands and Sweden put in place laws that demand enterprises to publish an annual report.[100] The communication theory, decision usefulness theory and legitimacy theory have considered reporting ~~as~~ a powerful communication. The theories require enterprises to report their

[91] *Ibid*.
[92] *Ibid*.
[93] Bantekas, above note 2, at at 334.
[94] Multilateral Convention establishing the Multilateral Investment Guarantee Agency, Concluded at Seoul 11 October 1985, Art. 12(d)(i).
[95] Bantekas, above note 2 at 335.
[96] *Ibid*.
[97] *Ibid*., at 336.
[98] L.W. Lin, 'Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and national Experiences' (2020) 23 University of Pennsylvania Journal of Business Law 432
[99] *Ibid,*. at 337.
[100] S. Dawood, 'Corporate Social Responsibility and NMCs: An Appraisal from Investment Treaty Law Perspective", (2021) 2 Indonesian Journal of Law and Society available on: https://doi.org/10.18184/ijls.v2i2.24262 accessed on: 24 April, 2024, at 223.

performance regarding environmental and social impacts so the society will judge how much the enterprises have undertaken their activities in line with the CSR standards. The society can act against the enterprise that fails to undertake its CSR responsibilities.[101]

The OECD Guidelines and the UN Global Compact do not contain a particular reporting mechanism.[102] However, the OECD Guidelines require investors to prepare reports on their performance, ownership, governance and financial situations. It also includes the remuneration plan and incentive schemes.[103] The Global Compact recognizes the importance of reporting by the enterprises through private or NGOs reporting mechanisms. The Global Reporting Initiative (GRI) has developed guidelines for reporting on and verification of economic, social and environmental performance of an enterprise. The report should use the criteria of transparency and inclusiveness to include the views of all stakeholders. It should be auditable, complete and relevant and prepared in the sustainability context, be 'accurate, neutral, comparable, clear and timely'.[104] The reporting system ensures the disclosure of environmental, social and risk reporting related to greenhouse gases as well as biodiversity. Domestic law is required to demand reporting to ensure the CSR of investors.[105] Only few domestic legislation demands reporting while others are not.[106]

CSR Integrated management and Corporate Governance - the corporate governance is required to integrate the duties to stakeholders to maximize profit with social responsibility. Corporate governance requires transparency with regard to the major share ownership, voting rights, the independence of the board of directors and key executives, remuneration information, as well as consultation with stakeholders, among others. The 1999 OECD Principles of Corporate Governance and the OECD Guidelines require corporate governance to be implemented by MNEs. The principle of corporate governance is aimed at the integration of CSR to be the strategic planning, daily and routine activities of an enterprise. Persistent due diligence is required to be prevalent in the enterprise.[107]

4. CORPORATE SOCIAL RESPONSIBILITY UNDER ETHIOPIAN LAWS AND OVERVIEW OF THE PRACTICE IN INDUSTRIAL PARKS

Though not sufficient and clear, certain principles of CSR are found incorporated under different laws of Ethiopia including the investment law, the special economic zone proclamation, the environmental laws and the labour proclamation. The bilateral investment treaty between the Government of Brazil and the Government of Ethiopia clearly provides the CSR of investors in some detail and accepts the principles provided under the OECD Guidelines as applicable to the State Parties.[108] An enterprise is required to comply with the relevant Ethiopian laws in

[101] *Ibid*., at 224.
[102] Bantekas, above note 2, at 337.
[103] Ibid.; Dawood, above note 100, at 224.
[104] Bantekas, above note 2, at 338.
[105] Dawood, above note 100, at 224-25
[106] See Bantekas, above note 2, at 337.
[107] *Ibid*., at 339.
[108] Agreement between the Federative Republic of Brazil and the Federal Democratic Republic of Ethiopia on Investment Cooperation and Facilitation, (2018) Art. 14. Commercial Code of Ethiopia does not provide corporate social responsibility, rather it is aimed at promoting the interest of the shareholders. See Arts. 362-364 Commercial Code of Ethiopia.

undertaking its activities[109] and is duty bound to undertake its activities in compliance with the environmental laws and standards, social obligations and labour laws of the country.[110] In addition, there are some codes of conduct prepared by the enterprises to implement CSR.[111]

The following section is devoted to investigating the Ethiopian laws to protect the human rights, labour rights, social obligations and environmental protection.

A. Protecting Human Rights

The FDRE Constitution clearly guaranteed the human rights of citizens including the labour rights of workers.[112] Though not in force, the bilateral investment treaty between Brazil and Ethiopia requires investors to respect the internationally recognized human rights when they undertake their investment activities.[113] Investors are duty-bound to undertake activities in accordance with the laws and regulations of Ethiopia. This requires investors to undertake their activities by respecting internationally recognized human rights, since as per Art. 9(4) of FDRE Constitution the internationally recognized human rights are part of the law of the country. However, the Ethiopian law does not sufficiently provide that an enterprise should protect the human rights of the workers and the local community. Thus, the Ethiopian Government needs to regulate this.

The Ministry of Agriculture has adopted a voluntary guideline requiring the protection of internationally recognized human rights, such as those enshrined under the United Nations Declaration on Human Rights.[114] This Guideline is voluntary but has a crucial role to play in protecting fundamental human rights in the agricultural sector.

B. Upholding Labour Rights in Ethiopia

The Ethiopian Constitution guarantees the right of everyone to engage in any economic activity to pursue his/her life.[115] Art. 41(2) of the Constitution also ensures the right to choose any profession and occupation. According to Art. 42(1)(a), a worker has the right to form an association, to improve the wellbeing of the worker and economic conditions. This right includes the right to form a trade union and to conduct collective bargaining. The worker, as per Art. 42(2), has the right to limited working hours, to leisure, to rest, leave and remuneration, as well as healthy and safe working conditions. According to Art. 89(8), the government has the duty to protect and promote the health, welfare and living standards of the workers of the nation.

The bilateral investment treaty between the Ethiopian Government and the State of Qatar provides the general provision requiring investors to comply with the labour laws and regulations

[109] Investment Proclamation No. 1180/2020, Federal Negarit Gazette, 26th Year, No .28, Addis Ababa 2nd Day of April, 2020, Art. 54(1).
[110] Special Economic Zone Proclamation No. 1322/2024, Federal Negarit Gazette, 30th Year, No. 25, Addis Ababa, 20th May, 2024, Art. 29(3); Investment Proclamation No. 1180/2020, id, Art. 54(2).
[111] Ethiopian Investment Commission, Human Resource Guidelines for Ethiopian Industrial Parks, 132-34
[112] Proclamation of the Constitution of Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta, 1st Year, No.1, Addis Ababa, 21st August, 1995, Arts, 10, Arts. 13- 44.
[113] BIT between Brazil and Ethiopia, above n. 107 Art. 14 (2) (b).
[114] Ministry of Agriculture, Inspiring Practices in corporate social responsibility: Guidelines for Commercial agriculture in Ethiopia 19-21.
[115] FDRE Constitution, above note 112 Art. 41(1).

of Ethiopia with regard to their investment management and operation of the investment.[116] This will be determined by the labour laws of Ethiopia and one can argue that the Qatar investor in Ethiopia is duty bound to respect the labour rights as provided under Ethiopian labour laws.

An investor or enterprise is obliged to comply with the relevant laws, which include the Constitution and other relevant labour laws.[117] The Ethiopian Government is obliged to give access to the industrial park developer, operator or enterprise to follow up and support regarding the health and safety of workers in relation to work.[118] Further, a mining investor is duty bound to protect the health of workers, agents and other persons[119] but does not clearly require the investor to protect human rights. However, this provision can be interpreted to include the right to live in an environment where the health of the workers and other persons is protected.

The Ethiopian Government has enacted a labour proclamation with the *reason deter*, among others, to guarantee the rights of the worker and employer,[120] to secure industrial peace and sustainable productivity,[121] to create favourable investment that will contribute to the achievement of national economic goals while respecting human rights.[122] Thus, an enterprise is obliged to comply with the provisions of the labour law[123] and the employer is duty bound to respect the human dignity of the worker.[124]

The Labour Proclamation regulates the wage (Arts 53-60), conditions of work and rest hours, and leave as well as providing for the general working conditions, safety and environment (Arts 92-102) and the working conditions of young persons (Arts 89-91) and women (Arts 87-88). According to the Regulations No. 207/2011, the investor in the area of floriculture is obliged to uphold the labour conditions of the workers in general. The investor must respect the rights of the workers to organize an association, the right to engage in collective bargaining as well as other labour rights.[125] The labour proclamation, the special economic zone proclamation and the investment law are binding laws on enterprises. Thus, the investors in industrial parks are duty bound to comply with these laws indicating the Ethiopian laws, like the international binding laws, are binding.

The Code of Practice for Commercial Agriculture gives due attention to safety conditions at work.[126] The Ethiopian Investment Commission with partners has prepared Human Resource

[116] Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Qatar for the Promotion and reciprocal Protection of Investment, 2017, Art. 14.
[117] Special Economic Zone Proclamation No. 1322/2024, above, n. 109, Art. 29(3); Investment Proclamation No. 1180/2020, above n. 108, Art. 54(1).
[118] Industrial Parks Council of Ministers Regulations No. 417/2017, Federal Negarit Gazette, 23rd Year, No. 93, Addis Ababa, 15th September, 2017, Art. 15(1)(x) This regulations is in force until replaced by another regulations; Special Economic Zone Proclamation No. 1322/2024, above, note 109, Art.92(2).
[119] Mining Proclamation No. 678/2010, Federal Negarit Gazette, 16th Year, No. 45, Addis Ababa, 4th August, 2010, Art. 34(1)(b).
[120] Labour Proclamation No. 1156/2019, Federal Negarit Gazette, 25th Year, No.89, Addis Ababa, September 2019, Preamble, 2nd Para.
[121] *Ibid*., Preamble, 1st Para.
[122] *Ibid*. , 3rd Para.
[123] Economic Zone Proclamation No. 1322/2024, above note 109, Art. 59(1) .
[124] Labour Proclamation No. 1156/2019, above note 120, Art, 12(4).
[125] Code of Practice of the Floriculture sector Council of Ministers Regulations No. 207/2011, Federal Negarit Gazeta, 17th Year, No.74, Addis Ababa, 7th June, 2011, Art. 5 (6).
[126] Ministry of Agriculture, above note, 114, at 21-22.

Guidelines for Ethiopian industrial parks, which presents human resource management solutions adapted to "the labour proclamation, the local culture, and international standards".[127] The Guidelines require investors to comply with labour rights of the workers. Coming to practice, in Hawassa Industrial Park, periodic audits have been undertaken to ensure the investors respect the human rights of the workers.[128]

C. Respecting Environmental and Social Rights and Sustainable Development

i. Respecting Environmental Rights and Sustainable Development

The FDRE Constitution guarantees the right to live in a clean and healthy environment for everyone.[129] As per Art. 92(1) of FDRE Constitution, the Ethiopian Government is duty bound to ensure all Ethiopians live in a clean and healthy environment. The Constitution provides that the preparation and implementation of programmes and development projects may not damage or destroy the environment (Art. 92(2)). This implies that investors are obliged to ensure their development projects do not cause adverse or serious damage to the environment. According to Art. 92(4) of the Constitution, both Government and citizens have the duty to protect the environment to ensure the right to live in a clean and healthy environment thus making clear that those Ethiopian investors, as citizens are obliged to protect the environment while undertaking their investments. Nevertheless, this does not mean that foreign investors are free from the duty as they are duty bound to protect the environment being obliged to undertake their activities as per the Ethiopian laws and regulations. The Special Economic Zone Proclamation under Art. 29(3) stipulates that an enterprise must comply with the environmental obligations provided under Ethiopian laws.

The Mining investors are also required to comply with the environmental protection laws of Ethiopia.[130] The Licensing Authority is responsible to ensure the mining investor is undertaking his/its/her activities protecting the environment and to the benefit of the community in the mining area.[131] This provision seems to have the intention to ensure the implementation of CSR in the mining area, since the company will be the beneficiary to the community will be the beneficiary where the company undertakes CSR including the protection of the environment. Those provisions make the investor responsible for the impact its activities will cause on the environment.

The Mining Investment Proclamation is not clear on the issue of CSR when it provides that the investor "…shall participate in a community development plan of the peoples within the license area, and shall allocate money for such expenses."[132] This provision requires the investor to allocate money to undertake the community's development plan. This will enable the investor to translate the concept of CSR into practice from an environmental protection point of view, a provision which seems to put an obligation on the enterprises to co-operate in social and/or

[127] Ethiopian Investment Commission, above note 110, at 10.
[128] Interview made with Informant No. 10 on 25/05/2013 EC, in Hawassa.
[129] FDRE Constitution, above note 112 Art. 44 (1).
[130] Mining Proclamation No. 678/2010, above note 118 Art. 34(1)(b).
[131] *Ibid.*, Art. 52 (4)(J).
[132] *Ibid.*, Art. 60(3).

community development activities. If one adopts this interpretation, one can conclude the provision includes the concept of CSR, particularly from social obligation point of view. However, the provision is mandatory - the investor must comply. This mining proclamation has been amended by Proclamation No. 816/2013 and 1213/2020 without incorporating clear provision on CSR implying the Ethiopian Government is not determined to regulate CSR under the binding law.

The Ethiopian Government has enacted an environmental protection proclamation for the benefit of the environment that provides for environmental standards. According to the Environmental Control Proclamation, no one is allowed to pollute the environment or cause the pollution of the environment by violating the environmental law and environmental standards.[133]

The Constitution guarantees the right to sustainable development to the people as a whole and the Nations, Nationalities and peoples individually.[134] Bilateral investment treaties have recognized the crucial contribution of investment to sustainable development in the host states, i.e. Ethiopia, particularly by increasing the productive capacity, development of human capacity, technology transfer and economic growth.[135] Contribution to the sustainable development is the major principle of CSR and this crucial point is recognised by the bilateral investment treaty. No clear provision is found in the body of the BIT which under Art. 14, simply states that the Qatar investor in Ethiopia is obliged to observe the environmental laws and regulations of Ethiopia. The BIT between Ethiopia and Qatar emphasizes that investment contributes for the sustainable development in the contracting states.[136] So, investors are duty bound to contribute to the economic development of the host state, to the extent possible through their management policies and practices.[137] The problem of this provision is that it does not state the obligation to contribute to the sustainable development in the body beyond the aspiration made in the paragraph of the preamble. However, the UAE investor is required to contribute to sustainable development of Ethiopia since Ethiopian laws oblige the investor to observe Ethiopian laws.[138] Further, the Parties to the BIT call for the higher standard of environmental laws.[139]

The BIT between Brazil and Ethiopia clearly stipulates investments must be undertaken in line with the principles of sustainable development.[140] In addition, the Special Economic Zone Proclamation under Art. 4(3) has the objective to enhance export performance, international trade, links and import substitution as well as increase integration into global value chains and

[133] Environmental Pollution Control Proclamation No. 300/2002, Federal Negarit Gazeta, 9th Year, No. 12, Addis Ababa, 3rd September, 2002, Art. 3(1).
[134] FDRE Constitution, above note 112, Art. 43(1); for further treatment of the concept sustainable development, see Tesfaye Abate Abebe, (2018), Laws of Investment and Environmental Protection: the Case of Ethiopian Large Scale Agriculture, (University of South Africa, LL. D Thesis), at 64-76.
[135] Agreement between Government of FDRE and Government of Qatar, above note 115, preamble, 3rd paragraph
[136] Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the United Areb Emirates (UAE) Concerning the promotion and Reciprocal Protection of Investment, (2016), preamble, 3rd paragraph.
[137] *Ibid*., Art. 11(2).
[138] *Ibid*., Art. 11(1). One of the rationales of the BIT is to comply with the host state laws. See Bilateral Investment Treaty between FDRE and UAE, above note 135 preamble, 2nd paragraph.
[139] Ibid. Art. 12.
[140] Bilateral Investment Treaty between the Government of Brazil and the Government of FDRE, above n. 100, Art. 14 (2) (a).

sustainable growth. An enterprise,[141] and special economic zone operator[142] have the obligation to observe environmental protection legislation.[143]

Investment projects, the implementation of which would likely have a negative effect on the environment, require environmental impact assessment.[144] An investor wishing to implement such projects is required to provide environmental impact assessment.[145] The environmental impact study report shall include, *inter alia*, the nature and content of pollutant to be released in the implementation of the project,[146] and the plan, including technology to be used to avoid or minimize the pollutants.[147] Environmental impact assessment is an essential management tool to predict and manage the environmental, as well as the social impacts, of the implementation of investment project.[148] This is taken as challenge in the implementation of CSR.

In relation to industrial parks, the law stipulates an industrial park developer is required to submit the project environmental impact assessment report which has been approved and given permit for its implementation.[149] A special economic zone operator is required to conduct and submit a social and environmental impact assessment and an environmental management plan dully approved by the relevant body to apply for an investment permit.[150] If this provision is implemented properly, the environment will be protected and will enable the investor to comply with the CSR from the environmental protection point of view.

An environmental impact study is submitted to the investment commission. The latter will provide the service to approval of the environmental impact study and issuance of certificate.[151] This would help to ensure that the investment may not adversely affect the environment. Thus, environmental impact assessment is a crucial instrument to ensure that the investment is socially responsible.

The Industrial Pollution Control Regulations prevent or minimize the generation of pollutant and meet the environmental standards.[152] In addition, a company should handle inputs and products in a manner to prevent damage to the environment, human or animal health.[153] The competent

[141] Special Economic Zone Proclamation No. 1322/2024, above note 110, Art.29(3).
[142] *Ibid.*, Art. 27(6).
[143] *Ibid.*, Art.29(3).
[144] Environmental Impact Assessment Proclamation No. 299/2002, Federal Negarit Gazeta, 9th Year, No. 11, Addis Ababa, 3rd December, 2002, Art. 5 (2)(b)
[145] *Ibid*., Art. 3(1) The Directive provides for the list of investment projects that must go through EIA. Directive No. 1
[146] Environmental Impact Assessment Proclamation No. 299/2002, above note143 Art. 8(2)(b).
[147] *Ibid*. Art. 8(2)(f)
[148] *Ibid*. Preamble, first paragraph. For the detailed treatment of environmental impact assessment and follow up, see T. A., Abebe, "Environmental Impact Assessment and Monitoring under Ethiopian Law" (2012) 1 Haramaya Law Review 103-123.
[149] Regulations No. 417/2017, above note 117 Art. 5(8) (C).
[150] Special Economic Zone Proclamation No.1322/2024, above note 110, Art. 16(2) (C) For the discussion of Environmental protection and promoting sustainable development in Ethiopian Industrial parks, see T.A. Abebe, Greening Industries in Ethiopia: Analysis of Laws and Overview of Compliance in Three Industrial Parks, (2024) 18 Mizan Law Review, at 295-330.
[151] Regulations No. 417/2017, above note 117 Art. 15(1) (s).
[152] Prevention of Industrial Pollution council of Ministers Regulations No. 159/2008, Federal Negarit Gazetta, 15th Year, No. 14, Addis Ababa, 7th January 2009, Art. 4(1).
[153] *Ibid*., Art. 4(2).

environmental authority has the power to demand a company that violates the environmental standard to take measures to remove the risk.[154] Where this provision is effectively implemented, the environmental protection will be ensured.

The Code of Conduct Regulation for a floriculture investor under Art. 5 requires the investor to undertake his/her/its investment, *inter alia*, to put in place environmentally sound waste management, assess environmental impacts (Sub Art 3) and ensure safe agrochemical storage and use (Sub Art. 4). The guideline for Commercial Agriculture investment requires the farm investor to protect the land and water by employing sound waste management while undertaking its activities.[155]

Coming to the practice, in Hawassa Industrial Park, investors are working on the protection of the environment by planting trees in the park.[156] This is encouraging, but the most important point required from the socially responsible enterprise, is to undertake activities to protect the environment within the local community consequently the activity of the Hawassa Industrial Park is not sufficient. In the Kombolcha Industrial Park, it was not possible to plant the desired fruit trees in the industrial park since the soil was sandy so with the co-operation of the community, the industry park prepares the ground for the trees by importing fertile soil.[157] This greening of the industrial park by the responsible enterprise is expected as part of environmental protection activities in the locality of the community outside the industrial park.

The investor is also required to submit an environmental clearance where it wishes to renew their investment permit to ensure they are protecting the environment in the industry park.[158] The Hawassa Industrial Park was established with the intention to make it eco-industry that protects the environment, promotes development and contributing for sustainable development.[159] According to informants, the Park is undertaking its activities in line with the standards of UNIDO regarding corporate social responsibility issues,[160] but the Environmental Protection Authority in Hawassa has complained the investors in the industrial park have been polluting the environment. The environmental experts in the region argued the investors have been releasing dirty (polluted) water to the nearby lake with a negative impact on the animal life in the lake.[161]

According to informants, the practicing of environmental protection in Ethiopia is an activity to be undertaken gradually due to the difficulty to ensure a pollution free environment and make a production process free from environmental pollution once and for all, an investor cannot fulfil the environmental standards while promoting productivity, but the environment should be protected. Therefore, it requires appropriate mechanisms not to lose the investment while attempting environmental protection, to follow-up investors to ensure they install and use appropriate technology gradually to protect the environment while they continue productivity.[162]

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[154] *Ibid*. Art. 4(6).
[155] Ministry of Agriculture, above, note 113 at 27-31.
[156] Interview made with Informant No. 3.
[157] *Ibid.*
[158] *Ibid*. However, at the time of the gathering of data, no environmental expert was available in the one stop centre in the industry. *Ibid*.
[159] Interview made with Informant No.6.
[160] Interview made with Informant No. 5, on 26 /05/13 in Hawassa.
[161] Group discussion No. 2, on 25/05/13EC, in Hawassa.
[162] Interview made with Informant No. 8 on 27/05/13 EC, in Hawassa.

Generally, in Ethiopia, industrial parks show interest to undertake the CSR. Research reveals that industrial parks employ CSR by indulging in the practice of protecting the environment from pollutionand reducing greenhouse gases, water consumption and waste disposal. In general, the practice in Bole Lemi Industrial Park and Adama Industrial Park confirm–they are seriously involved in environmental protection through the implementation of CSR. However, research reveals the practice is not developed[163], but indicates that industrial parks are engaged in philanthropic and voluntary CSR in donating to the local community. This is not encouraging since it will negatively affect the sustainable competitive advantage of the industries.[164]

CSR Integrated management and Corporate Governance - we have seen that CSR and integrated management as well as corporate governance are important to implement CSR. The BIT between Ethiopia and UAE requires investors of a contracting party, as far as possible, to comply with the internationally accepted standards of corporate governance especially transparency and accounting practices.[165] This provision is not strict. Therefore, its implementation seems to be left to the good will of an enterprise. On the other hand, according to the BIT between Ethiopia and Brazil, the investor must employ management systems to strengthen mutual trust between the investment and the local society[166] the investor is obliged to support and advocate for good corporate governance principles and must develop and apply good practices of corporate governance.[167] The practice in Hawassa Industrial Park is that the investor should have a certificate of environmental friendly, otherwise the foreign market will not accept its products.[168] This could promote the environmental protection by the industrial parks.

Monitoring - is the other enforcement mechanism of CSR in investment. The investor must put in place the monitoring mechanism to ensure its/his/her activities are undertaken in a manner of compliance with the health, environmental and social requirements.[169] The validator is empowered to verify the compliance of the investor on the environmental and social plan before approval for certification.[170]

ii. Social obligations

The Ethiopian investment proclamation introduces the concept of social responsibility of an investor and investment. The investors are duty-bound to take into account the 'social and environmental sustainability values including environmental protection standards and social inclusion objectives in carrying out their investment projects.'[171] This provision is considered as a provision on corporate social responsibility of investors.[172] The foreign investor, who comes from Brazil, if the agreement is enforced, must encourage local capacity building in co-operation

[163] B. Solomon, 'Discharging the Corporate Social Responsibility by Bole Lemi and Adama Industrial Parks, Ethiopia' (2022) 7 African Journal of Leadership and Development, at 65
[164] *Ibid*.
[165] Bilateral Investment Treaty between FDRE and UAE, above note 143 Art. 13.
[166]Agreement between Brazil and Ethiopia, above note 107 Art. 14 (2) (g).
[167] *Ibid*. Art. 14 (2) (f)
[168] Interview made with Informant No. 9, Hawassa, on 27/5/13E.C.
[169] Regulations No. 207/2011, above note 125 Art. 5(8)
[170] *Ibid*. Art. 9(1)(b).
[171] Investment Proclamation No.1180/2020, above note 101, Art. 54(2).
[172] See Bereket Alemayehu Hagos, 'Legal Aspects of Corporate Social Responsibility in Ethiopian Law: A Sustainable Development Perspective', The Journal of Sustainable Development Law and Policy, Vol. 13:2, 1-27, DOI: 10.4314/jsdlp.v13i2.1 , at 14.

with the local community.[173] Additionally, a special economic zone operator is duty bound to comply with the social protection laws.[174] As per Art. 29(3) of Proclamation No. 1322/2024, a special economic zone enterprise must comply with the laws that provide social and labour obligations, the Human Resource Guidelines for Ethiopian Industrial Parks provides that investors "…can benefit from setting up structures to share knowledge and efforts to comply with social and environmental-related national laws and international standards…".[175] However, this obligation is not legally binding, but playing a crucial role in promoting social corporate responsibilities.

The floriculture Regulations request the investor to provide financial resources for the local society to enhance vegetation cover, increase the carrying capacity of water bodies, lakes and wet lands, to conserve the biodiversity and to increase the quality of ground water, rivers and air;[176] an attempt to implement the social responsibility of an investor. The Code of Practice for Commercial Agriculture requires agricultural investors to discuss on the land, water and handling waste with the local community.[177]

The practice in Ethiopian industrial parks shows investors donated money to health and educational facilities to the local communities while the general intention of the Government is to build socially responsible industrial parks in Ethiopia.[178] Bole Lemi I Industrial Park, though the law does not impose any obligation, used to provide educational materials for those who were displaced due to the construction of the park.[179] However, enterprises supplying school exercise books to children without a well-equipped school and good teachers, and those supplying medicines without having hospitals with medical personnel is not acceptable.[180] Therefore, the practice, in this regard shows the industrial parks in Ethiopia are not doing well in the implementation of CSR. The practice sited above is a voluntary exercise of CSR which is clearly philanthropic.

The Kombolcha Industrial Park has constructed and opened a recreation area for the community to use for marriage ceremonies and other activities. This is commendable. In addition, the Hawassa Industrial Park has installed a machine to conduct training for TVET. It provides teaching materials to the students of the dislocated people and undertakes consultations and discussions with the local community[181] as well as creating job opportunities for some of the displaced persons.[182] All those could be considered as activities to comply with the social responsibility of the Park but are not sufficient. Providing training and education in co-operation with higher education is an internationally recognized social obligation incorporated under Art. 10 of Industrial Park Proclamation No. 886/2015 but this obligation is not incorporated in the Special Zone Proclamation.

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[173] Agreement between the Government of Brazil and the Government of Ethiopia, above note 107, Art. 14 (2)(c).
[174] Special Economic Zone Proclamation No. 1322/2024, above note 110, Art. 27 (6).
[175] Ethiopian Investment Commission, above note 103, at 155.
[176] Regulations No. 207/2011, above note 125, A 1(1) (2).
[177] Ministry of Agriculture, above, note 106 at 23.
[178] Interview made with Informant No. 3 on 25/05/2013 E.C, in Hawassa.
[179] Interview made with Informant No. 1 on 06/02/2012 E.C.
[180] Ogbuanya, above note 21 at 48.
[181] Interview made with Informant No. 7 on 25/05/2013 E.C, in Hawassa; Interview made with Informant No. 10 on 25/05/2013 EC, in Hawassa; Group Discussion No. 1 made with personnel in Kombolcha.
[182] Interview made with Informant No. 7 ; Interview made with Informant No. 10 .

In Ethiopia, the Floriculture Regulations requests the investor should ensure workers are given training on the safe handling of agrochemicals and the use of appropriate protective devices as well as hand washing[183] training for its workers on the environmental and social issues.[184]

In Hawassa Industrial Park, there is apparently a problem regarding training and technology transfer, as it is not undertaken as required[185] although the Park has delivered training to the workers.[186] The technology transfer issue is totally ignored in Kombolcha Industrial Park.[187]

At the time of COVID - 19, the Hawassa Industrial Park was producing masks for the local community[188] which could be considered one stance indicating the investor has responded to the social problem of the society. However, informants question the status of the awareness of the community regarding the CSR to consult and discuss with investors since an appropriate standard of knowledge is required.[189]

In general, research reveals that companies in Ethiopia do not undertake their CSR properly.[190] The informants in the Supreme Court of the SNNP Region confirmed no case regarding CSR has ever been brought to the court.[191] The informant from the Attorney General office explained that cases are related to forest clearance and no cases related to CSR.[192]

CONCLUSION

The term 'corporate social responsibility' has various definitions. In general, it is defined as the enhancement of sustainable development by an enterprise considering the respecting of human rights, upholding labour standards, protecting the environment and respecting social obligations towards the community. The concept CSR, nowadays, makes a balance between the enterprise's purpose of profit making, the impact it poses to the environment, the labour rights in practice as well as the production of quality product. New investment agreements incorporate the principles of CSR and foreign investors are duty bound to uphold these principles. Different theories have been developed to promote the principles of CSR and today, the theories promoting the interest of local society in respecting human rights, labour rights, protecting the environment and undertaking social obligations have been gaining acceptance. This has enhanced the level of CSR from voluntary to binding.

Today, international law and national law provide for the CSR as a binding obligation. Labour Conventions, bilateral investment treaties and industrial pollution control treaties regulate CSR at the international level. In addition, the UN Global Compact and the OECD Guidelines as well as UN Declarations are essential soft laws regulating CSR. At the national level, Ethiopia has

[183] Regulations No. 207/2011, above note 125, Art. 5(7).
[184] *Ibid*., Art. 5(12).
[185] Interview made with Informant No. 7.
[186] Interview made with Informant No. 6 on 25/05/2013 EC, in Hawassa.
[187] Group Discussion No. 1 made with personnel in Kombolcha.
[188] Interview made with Informant No. 10 .
[189] Group discussion No. 2, on 25/05/13EC, in Hawassa; Group Discussion 1 made in Kombolcha Industrial Park
[190] A.M., Eyasu and M., Endale, 'Corporate Social Responsibility in Agro-processing and Garment Industry: Evidence from Ethiopia' (2020) 7 Cogent Business and Management, available on: https://doi.org/10.1080/23311975.2020.1720945 Accessed on: 15 April 2024.
[191] Interview made with Informant No. 2, on 26/05/13E.C, in Hawassa.
[192] Interview made with Informant No. 4, on 26/05/13E..C, in Hawassa.

enacted binding laws on CSR, impliedly. The FDRE Constitution stipulates for the right to sustainable development and the duty to protect the environment. Recent BITs, the investment law, the special economic zone proclamation, the environmental protection laws require investors to discharge CSR. The BIT between Brazil and Ethiopia provides for the concept of CSR in some detail, but it is not enforced. Therefore, the Ethiopian government needs to bring it into effect.

This article identified the laws that provide for CSR do not explicitly provide for CSR, but rather imply investors are required to implement CSR. The Article identified that no code of conduct for industrial investors is available in Ethiopia, there are some soft laws such as a code of conduct in agricultural investment, that provide for CSR, but the practice of CSR in Ethiopian investment is at its infant stage whereby investors provide gifts such as exercise books, at the end of the year. This requires the Ethiopian Government to now regulate investors by law to undertake CSR obligations. In addition, the Ethiopian Government needs to enforce the bilateral investment treaties that include the CSR in some detail. Further, the Ethiopian Government should work on the awareness creation of the CSR to investors since one of the basic obstacles is lack of awareness on the part of the investors. The Ethiopian Federal Government needs to work hard to encourage investors in industrial parks to prepare their own code of conduct to implement CSR.

REVISITING THE PUBLIC PURPOSE DOCTRINE IN ETHIOPIA'S EXPROPRIATION LAWS: LEGAL AMBIGUITIES, COMPARATIVE INSIGHTS AND INTERNATIONAL NORMS

Worku Kassaw Tsegaye*

Abstract

The doctrine of public purpose anchors expropriation law by legitimizing expropriation of private property in pursuit of public welfare. In Ethiopia, however, its doctrinal ambiguity - especially under Article 2(1) of Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 1161/2019 and Article 40(8) of the 1995 Constitution of Ethiopia - grants broad executive discretion without verifiable criteria, judicial oversight or procedural safeguards. This elasticity facilitates third-party transfers, elite capture and tenure insecurity, disproportionately affecting vulnerable groups such as smallholder farmers with secondary claims. The absence of definitional clarity and institutional checks undermines legal predictability and erodes public trust in land governance. Employing doctrinal legal analysis, this article draws on comparative jurisprudence from Germany, South Africa, India and the United States benchmarking Ethiopia's expropriation framework against a constellation of binding and non-binding international instruments. These include key human rights treaties - such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (ACHPR), and the Universal Declaration of Human Rights (UDHR) - as well as international investment law (BITs, ICSID jurisprudence) and influential soft-law frameworks including but not limited to FAO's Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), the African Union's Land Policy Guidelines, and the World Bank's Environmental and Social Standard 5 (ESS5). The article finds that Ethiopia's expropriation regime lacks definitional precision, procedural safeguards, institutional checks and post-expropriation accountability mechanisms. It argues for a fundamental reconceptualization of public purpose as a legally bound, empirically verifiable and rights-sensitive doctrine - rather than an aspirational or discretionary policy device. By advancing legal and policy reforms - such as statutory codification, the introduction of necessity and proportionality tests, pre-dispossession judicial review and participatory governance mechanisms - the article contributes to a growing body of critical scholarship on equitable land governance and constitutional accountability in the Global South.

Keywords: Public Purpose Doctrine, Expropriation Law, Property Rights, Legal Ambiguity, Comparative Legal Analysis, Land Governance, Ethiopia

INTRODUCTION

Over the past two decades, Ethiopia's urban transformation agenda has accelerated under the weight of state-driven infrastructural expansion, industrialization and land-based investment

schemes.[1] Anchored in successive Growth and Transformation Plans (GTPs), this developmental vision seeks to reposition cities such as Addis Ababa, Bahir Dar and Hawassa as economic growth poles.[2] To achieve these aims, the government has increasingly relied on expropriation as a legal mechanism to make land available for infrastructure, commercial development and private investment.[3] However, the central legal doctrine legitimizing such takings - the doctrine of "public purpose" - has become a normative flashpoint in debates over the legitimacy, equity and constitutionality of state practice for acquiring land.[4]

Ethiopia's Federal Constitution[5] under Article 40(8) authorizes the government to expropriate private property for "public purposes," provided that "*compensation commensurate to the value of the property"* is paid in advance. In theory, this arrangement reflects an attempt to balance state sovereignty with the sanctity of private property[6]. However, Proclamation No. 1161/2019[7], the most recent expropriation law, adopts a highly discretionary formulation. Under Article 2(1), public purpose is defined as any land use *"believed to bring better economic and social development"* based on government-approved plans. This belief-based and benefit-driven framing lacks substantive criteria, measurable thresholds or procedural constraints.[8] As a result, administrative authorities are empowered to justify expropriation on speculative or ideologically constructed assumptions of public benefit with minimal judicial or institutional oversight.[9]

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[1] Peter A. Dorosh & James Thurlow, *Urbanization and Economic Transformation: A CGE Analysis for Ethiopia,* (Int'l Food Pol'y Research Inst. Discussion Paper No. 01194, (2011), accessed at: https://hdl.handle.net /10568/ 152600

[2] Mezgebo, TG, *"Urbanization and Development: Policy Issues, Trends and Prospects*". In Mengistu K. and Getachew D. (Ed), *State of the Ethiopian Economy 2020/2021: Economic Development, Population Dynamics and Welfare*, Addis Ababa: Ethiopian Economic Association (2021). Accessed at: https://eea-et.org/wp-content/ uploads/2021/06/SEE-Book-2020_2021.pdf

[3] Ayenachew YA and Abebe BG, *Navigating urbanization implications: effects of land expropriation on farmers' livelihoods in Addis Ababa, Ethiopia*. Front. Sustain. Cities. 6:1385309 (2024), accessed at https://www.frontiersin.org/journals/sustainable-cities/articles/10.3389/frsc.2024.1385309/full.

[4] Gebremichael B., *Public Purpose as a Justification for Expropriation of Rural Land Rights in Ethiopia.* Journal of African Law; 60(2):190-212, (2016) accessed at: https://repository.up.ac.za/bitstream/2263/60123/1/Gebremichael_Public_2016.pdf.

[5] Government of Ethiopia, *Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995*, Berhanena Selam Printing Press, Federal Negarit Gazette, Year 1 No.1 ADDIS ABABA, 21st August, (1995)

[6] Daniel Woldegbriel, *Land Rights and Expropriation in Ethiopia*, PhD thesis, School of Architecture and the Built Environment, Sweden, Royal Institute of Technology) 325 (2013), accessed at http://www.kth.se/ polopolyfs/1.448667!/Menu/general/columncontent/attachment/Thesis%20Final_Daniel_2013.pdf.

[7] Governments of Ethiopia, *Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019*, Berhanena Selam Printing Press, Federal Negarit Gazette, 25th Year No. 90 ADDIS ABABA, 23rd September, (2019).

[8] Daniel Weldegebriel, *Expropriation of Urban Property: A Reflection on the New Expropriation Laws, in Ethiopia's Urban Land Question: Focus on Access to Justice and Dispute Resolutions.* School of Law, Addis Ababa University. (M. (Ed) Abdo ed., 2020), (2020) accessed at: https://etd.aau.edu.et/bitstreams/05c2dc15-b706-4d7a-8950-3c30dac05bc9/download.

[9] *Ibid.*

This legal elasticity is not merely a drafting flaw - it is symptomatic of a deeper structural problem in Ethiopia's land governance system, where developmental prerogatives often eclipse constitutional commitments to rights protection.[10] The state's monopolistic control over land[11] exacerbates this imbalance, granting officials the power to unilaterally determine what constitutes a public purpose without transparent, participatory or rights-sensitive processes. Numerous scholars have documented the consequences of this disjuncture: forced evictions, tenure insecurity, elite capture and declining public trust in land institutions.[12]

Ethiopia is not the only place where debates about the doctrine of public purpose take place. International legal scholarship has long grappled with the normative boundaries of legitimate takings, particularly in contexts of rapid urbanization, privatization and investment-led development. On one side, developmentalist scholars and policymakers argue for a broader conceptualization of public purpose that accommodates economic growth, infrastructure needs and poverty reduction.[13] From this perspective, state flexibility is essential to overcome land market failures, facilitate planning and attract investment - especially in post-colonial settings where formal land markets are weak or exclusionary.[14] On the other side, scholars of land governance and rights-based advocates warn that an overly elastic notion of public purpose transforms law into an instrument of dispossession. They point to the global trend of "land grabbing," disguised under development rhetoric and stress the importance of substantive proportionality tests, participatory mechanisms and judicial oversight.[15]

Comparative legal systems illustrate both the risks of definitional vagueness and the possibilities of doctrinal reform. South Africa distinguishes between "public purpose" and "public interest," grounding both in a transformative constitutional framework that mandates equitable redistribution and restitution (Section 25 of the Constitution).[16] Germany subjects expropriation decisions to proportionality review, requiring that takings be suitable, necessary and the least restrictive means to achieve a legitimate goal.[17] India's 2013 Right to Fair Compensation and Transparency in Land Acquisition Act (LARR) integrates consent-based mechanisms, livelihood rehabilitation and social

[10] M. Abdo, *Reforming Ethiopia's expropriation law*. Mizan Law Review, 9(2), 301-340,(2015) accessed at: https://www.ajol.info/index.php/mlr/article/view/132158

[11] Governments of Ethiopia, supranote 5, Article 40(3).

[12] Gebremichael B. (2016), supra note 4, Daniel Woldegbriel (2013), supra note 6, Stebek, E. N, *Role conflict between land allocation and municipal functions in Addis Ababa*. Mizan Law Review, 7(2), 241-282 (2013), accessed at https://www.ajol.info/index.php/mlr/article/view/108306/98159 ,

[13] Deininger, K., & Byerlee, D., *The rise of large farms in land abundant countries: Do they have a future?* World Bank Policy Research Working Paper, (5588) (2011), accessed at https://ssrn.com/abstract=1792245

[14] Hoops, B., *The Legitimate Justification of Expropriation: A Comparative Law and Governance Analysis by the Example of Third-Party Transfers for Economic Development*. [Thesis fully internal (DIV), University of Groningen]. University of Groningen (2017), accessed at: http://www.rug.nl/research/portal

[15] N. K. Tagliarino, *National-Level Adoption of International Standards on Expropriation, Compensation, and Resettlement: A Comparative Analysis of National Laws Enacted in 50 Countries across Asia, Africa, and Latin America*, (2019), accessed at https://research.rug.nl/files/80482480/Complete_thesis.pdf; Sikor, T., & Lund, C. *Access and property: a question of power and authority. Development and change*, 40(1), 1-22 (2009), accessed at https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-7660.2009.01503.x ; Wily, L. A. (2011). 'The law is to blame': the vulnerable status of common property rights in sub-Saharan Africa. Development and change, 42(3), 733-757, accessed at https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-7660.2011.01712.x

[16] Hoops, B. (2017), supra note 14, Slade, B. V., *The justification of expropriation for economic development* (Doctoral dissertation, Stellenbosch: Stellenbosch University)(2012), accessed at https://scholar.sun.ac.za/handle/10019.1/71965

[17] Hoops, B. (2017), supra note 14.

impact assessments as part of its procedural safeguards[18]. In contrast, U.S. jurisprudence *post Kelo v City* of New London has sparked controversy by endorsing economic development as a public purpose, thereby legitimizing transfers to private entities - an approach criticized for privileging capital over community.[19]

In light of these developments, Ethiopia's public purpose doctrine appears both doctrinally underdeveloped and normatively out of sync with evolving global standards. International instruments such as the ICESCR, VGGT, and the ESS5 emphasize legality, necessity, proportionality, informed participation and livelihood restoration as benchmarks for lawful expropriation.[20] Ethiopia's expropriation laws fall short of these standards, lacking enforceable definitions, transparent procedures or meaningful ex-post accountability mechanisms.[21] The resultant legal vacuum not only undermines the legitimacy of state-led development but also endangers social stability, intergenerational equity and the integrity of constitutional governance.[22]

In this context, the article aims to examine the legal understanding, practical use and overall consistency of the public purpose doctrine in Ethiopia's expropriation system. By revisiting how public purpose is defined and operationalized - particularly in the context of expropriation for economic development - the study seeks to contribute to the on-going scholarly and policy debates over property rights, developmental justice and the boundaries of state power. Central to this inquiry is the question of whether current practices in Ethiopia conform to constitutional guarantees, uphold procedural fairness and align with evolving international legal and human rights standards.

To address this overarching concern, the article advances four inter-related objectives that together provide a multidimensional analysis of the public purpose doctrine in Ethiopia's expropriation laws. It begins by examining the legal and doctrinal evolution of the public purpose standard within Ethiopia's constitutional and legislative framework, tracing how its formulation has developed over time and the extent to which it reflects or departs from foundational legal principles.

Building on this, the second objective investigates how the discretionary power vested in administrative authorities - coupled with the judiciary's limited engagement - has shaped the practical application of public purpose, often at the expense of procedural safeguards and rights-based scrutiny. The third objective engages in a comparative analysis of selected jurisdictions - namely South Africa, Germany, India and the United States - where more nuanced doctrines and oversight mechanisms have emerged to regulate state takings and balance public interest with private rights. Finally, the article assesses Ethiopia's expropriation regime in light of international legal instruments and human rights norms, evaluating its alignment with global standards of legality, necessity, proportionality and inclusive development. Collectively, these objectives aim to inform legal reform and promote a more coherent, accountable and equitable framework for expropriation in Ethiopia.

[18] Hoops, B., & Tagliarino, N. K., *The Legal Boundaries of 'Public Purpose' in India and South Africa: A Comparative Assessment in Light of the Voluntary Guidelines*. Land, 8(10), 154 (2019), accessed at https://www.mdpi.com/2073-445X/8/10/154
[19] Hoops, B. (2017), supra note 14.
[20] Hoops, B. (2017), supra note 14.
[21] Daniel Weldegebriel, (2020), supra note 8.
[22] M. Abdo (2015) , supra note 10.

Methodologically, the article employs a doctrinal legal analysis, reviewing Ethiopia's constitutional and legislative texts, administrative regulations and judicial reasoning (where available). It integrates comparative legal methods, draws on case law and statutory developments in selected countries and incorporates international normative frameworks. Although primarily legal in orientation, the analysis is influenced by research from other fields like governance, political economy and land rights to highlight the wider effects of public purpose as both a legal idea and a political tool.

The article is organized as a critical understanding of the public purpose doctrine and its application within Ethiopia's expropriation framework. Following the introductory section, which outlines the research context, questions, methodology and significance of the study, Section 2 establishes the conceptual and theoretical foundations underpinning the public purpose doctrine. It engages with jurisprudential, philosophical and policy-orientated debates to frame the normative stakes involved in state-led takings. Section 3 presents comparative legal insights by exploring how jurisdictions such as South Africa, Germany, India and the United States have structured their public purpose doctrines, highlighting regulatory safeguards and oversight mechanisms that can inform Ethiopian legal reform.

Building on this, Section 4 evaluates Ethiopia's compliance with international legal instruments and governance norms, focusing on standards of legality, necessity, proportionality, participation and livelihood protection. Section 5 then turns to the Ethiopian legal context, offering a detailed doctrinal and normative analysis of expropriation laws, with particular emphasis on definitional ambiguities, institutional mandates, and the operational gaps in implementing public purpose. Section 6 critically examines the broader implications of legal and institutional ambiguity - particularly in relation to tenure security, administrative accountability and the equitable distribution of development benefits.

Finally, the article closes by reaffirming the urgent need for doctrinal precision, institutional oversight and a justice-orientated reconfiguration of public purpose in Ethiopia's evolving land governance system and wrapping up the main analysis by suggesting specific laws, institutional changes and policy ideas to better align Ethiopia's expropriation practices with constitutional rights and international standards.

1. THE JURISPRUDENTIAL AND THEORETICAL FOUNDATIONS OF PUBLIC PURPOSE IN EXPROPRIATION

The theoretical and doctrinal foundations of the public purpose doctrine in expropriation law are pivotal for understanding its legal and practical applications.[23] This section delves into the intricate historical and philosophical roots of the doctrine, tracing its evolution from classical liberalism to contemporary interpretations within developmental states. Additionally, it examines how economic development theories justify expropriation and the ensuing debates over balancing state-led development with individual property rights. By addressing these complex issues, the given article aims to elucidate the nuanced interplay between legal doctrines and economic imperatives.

1.1. Jurisprudential Origins of the Public Purpose Doctrine

[23] Meidinger, E. E., *Public uses of eminent domain: History and policy*, the. Envtl. L., 11, 1(1980), accessed at https://core.ac.uk/download/pdf/236359896.pdf

1.1.1. The Global Perspective

The concept of public purpose in expropriation law has undergone significant evolution over time, shaped by diverse philosophical traditions, legal systems and socio-political transformations.[24] At its core, the doctrine of public purpose operates as the normative justification for state takings of private property, intended to reconcile individual property rights with collective welfare. Its conceptual foundations can be traced back to early natural law theorists such as Hugo Grotius, who in De Jure Belli ac Pacis (1625), acknowledged the legitimacy of state interference with private property under conditions of necessity, provided compensation was afforded to those affected.[25] This early formulation anticipated later Enlightenment thought, notably in John Locke's Two Treatises of Government, where property rights were grounded in labour and natural law, but subject to state expropriation for legitimate public ends - so long as just compensation was ensured[26]. In contrast, Jean-Jacques Rousseau's theory of the general will emphasized that collective interests may justifiably override private claims, laying the groundwork for more state-centred interpretations of the public good.[27]

These foundation ideas shaped the modern codification of public purpose within both common law and civil law traditions.[28] In Anglo-American legal systems, expropriation or eminent domain, was historically constrained to narrow public utilities - roads, defence or public buildings - as seen in the U.S. Constitution's Takings Clause.[29] However, judicial interpretations expanded its scope over time, particularly in landmark cases such as *Kelo v. City of New London (2005),* which controversially upheld land transfers to private developers for economic revitalization purposes[30]. Critics argued that such rulings diluted the principle of public use, allowing economic development alone to suffice as justification for state takings.[31] In civil law jurisdictions such as France and Germany, statutory regulation offered more rigid constraints, demanding that expropriations be both lawful and demonstrably in the public interest.[32] The German constitutional system further introduced proportionality as a doctrinal tool to evaluate whether the state's interference with property rights was necessary, suitable and minimally restrictive.[33]

Throughout the 20th and 21st centuries, the meaning and application of public purpose expanded in response to developmental imperatives and shifting economic ideologies.[34] Welfare states utilized expropriation to promote social housing, infrastructure development and redistributive land

[24] N. K. Tagliarino, supra note 15.
[25] N. K. Tagliarino, supra note 15.
[26] N. E. Nedzel, *Eminent Domain: A Legal and Economic Critique*, 7 U. MD. LJ RACE, RELIGION, GENDER & CLASS, (2007), accessed at https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1122& context t=rrgc
[27] *Ibid*, Hoops, B. (2017), supra note 14.
[28] Chun Peng, *Theoretical Foundations of Land Taking Powers in China*, 3 PEKING UNIVERSITY LAW JOURNAL 87 (2015), accessed at https://www.tandfonline.com/doi/abs/10.1080/20517483.2015.1048998
[29] Nedzel, supra note 26.
[30] Somin, I., *The Grasping Hand: Kelo v. City of New London" and the Limits of Eminent Domain.* University of Chicago Press (2019), accessed at https://press.uchicago.edu/ucp/books/subject/su34/su34_4.html
[31] Ibid
[32] Schäfer, H. B., & Singh, R., *Takings of land by self-interested governments: Economic analysis of eminent domain.* The Journal of Law and Economics, 61(3), 427-459 (2018) accessed at https://papers.ssrn.com/sol3 /papers.cfm?abstract_id=3026204
[33] Hoops, B. (2017), supranote 14.
[34] Nedzel, supra note 26.

reform.[35] Socialist regimes adopted even more expansive takings, subordinating property rights to collective ownership under centrally planned economies.[36] With the rise of neoliberal globalization, however, expropriation increasingly served private capital and market efficiency.[37] This shift, often termed "market-enabling expropriation," legitimized land transfers to corporate actors under the rhetoric of job creation and public benefit, despite concerns about elite capture, speculative investment and forced displacement.[38] The Kelo decision in the United States epitomized this turn, drawing widespread criticism for allowing state power to serve private commercial interests under the banner of public purpose.[39]

In response to growing concerns about the misuse of expropriation, international legal and policy frameworks have sought to articulate clearer principles and safeguards.[40] Instruments such as UN Resolution 1803 on Permanent Sovereignty over Natural Resources[41], the European Convention on Human Rights (Protocol 1, Article 1)[42], and the World Bank's Environmental and Social Standard 5 emphasize legality, necessity, transparency, proportionality and the restoration of livelihoods[43]. The FAO's Voluntary Guidelines on the Responsible Governance of Tenure (VGGT Guideline 16) similarly stress participatory processes and non-discrimination[44]. Importantly, the African Union's Framework and Guidelines on Land Policy calls on states to adopt people-centred land governance, recognizing customary tenure systems and securing land rights for marginalized populations.[45]

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[35] Vince Mangioni, *The Evolution of the "Public Purpose Rule" in Compulsory Acquisition*, 28 Property Management 93 (2010), accessed at https://www.researchgate.net/publication/243463243_The_evolution_of_the_Public_Purpose_Rule_in_compulsory_acquisitio

[36] *Ibid*, Gashi, H., Expropriation *and protection of private property: Analysis of the recent applicable law in Kosovo in relation to international standards.* SEER: Journal for Labour and Social Affairs in Eastern Europe, 153-169 (2016), accessed at https://www.jstor.org/stable/26379888.

[37] Mc Cawley, D. G., *Law and Inclusive urban development: lessons from Chile's enabling markets housing policy regime.* The American journal of comparative law, 67(3), 587-636 (2019), accessed at https://www.semanticscholar.org/paper/Law-and-Inclusive-Urban-Development%3A-Lessons-froCawley/0d337807cab95de9f217d264276ec47969bb1f7d.

[38] Domurath, I., & Gil, D., *Re-Imagining Housing Provision from Markets to Welfare*. German Law Journal, 25(9), 1525-1544 (2024), accessed at https://www.researchgate.net/publication/389059164_Re-Imagining_Housing_Provision_from_Markets_to_Welfare.

[39] *Ibid.*

[40] B. L. Benson, *The Evolution of Eminent Domain: A Remedy for Market Failure or an Effort to Limit Government Power and Government Failure?*, 423-432, 12 THE INDEPENDENT REVIEW (2008), accessed at https://www.researchgate.net/publication/237557893_The_Evolution_of_Eminent_Domain_A_Remedy_for_Market_Failure_or_an_Effort_to_Limit_Government_Power_and_Government_Failure .

[41] Hobe, S., *Evolution of the Principle on Permanent Sovereignty Over Natural Resources: From Soft Law to a Customary Law Principle? In Permanent sovereignty over natural resources* (pp. 1-13). Cham: Springer International Publishing (2015), accessed at https://www.researchgate.net/ publication/285601644_Permanent_Sovereignty_over_Natural_Resources.

[42] Mititelu, C., *The European Convention on Human Rights. EIRP Proceedings*, 10 (2015), accessed at:https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1608.

[43] Ormaza, M. V. C., & Ebert, F. C., *The World Bank, human rights, and organizational legitimacy strategies: The case of the 2016 Environmental and Social Framework*. Leiden Journal of International Law, 32(3), 483-500 (2019), accessed at https://www.researchgate.net/publication/334022507_The_World_Bank_human_rights_and_organizational_legitimacy_strategies_The_case_of_the_2016_Environmental_and_Social_Framework..

[44] Seufert, P., *The FAO voluntary guidelines on the responsible governance of tenure of land, fisheries and forests. Globalizations*, 10(1), 181-186 (2013), accessed at https://www.fao.org/4/i2801e/i2801e.pdf.

[45] Union, A., *Land policy in Africa: A framework to strengthen land rights, enhance productivity and secure livelihoods*. Addis Ababa: African Union and Economic Commission for Africa (2009), accessed at https://archives.au.int/handle/123456789/1399.

Meanwhile, the European Union's land policy frameworks promote tenure security, sustainability and equitable access as essential components of land governance and spatial justice.

Yet, despite the emergence of these normative standards, the definition of public purpose remains contested in practice. Proponents of broad state discretion argue that developmental states require flexibility to facilitate investment, urban renewal and national infrastructure, particularly in contexts where land markets are underdeveloped or tenure systems are informal.[46] From this perspective, public purpose must remain elastic to accommodate evolving economic priorities. Conversely, critics warn that such elasticity enables administrative overreach, undermines judicial oversight and masks predatory land grabs behind technocratic or economic rationales.[47] The failure to precisely define public purpose creates legal uncertainty, exacerbates tenure insecurity and diminishes accountability - particularly in states with weak institutions, opaque governance or limited access to justice.[48]

The global evolution of the public purpose doctrine thus reveals a deep and enduring tension between state authority and property rights, between developmental imperatives and rights-based safeguards.[49] As expropriation laws are increasingly invoked in the name of economic growth, the doctrine of public purpose must be subjected to rigorous legal scrutiny.[50] This requires not only doctrinal clarity but also a reimagining of public purpose as a principle rooted in equity, participation and constitutional accountability. Contemporary legal systems must navigate the pluralism of legal traditions, the diversity of land tenure systems and the socio-political contexts of land governance if they are to develop expropriation frameworks that are both developmentally effective and normatively legitimate.

1.1.2. The Ethiopian Perspective

The conceptualization of public purpose in Ethiopia's expropriation law has evolved in tandem with shifting regimes, ideological realignments and contestations over state authority and developmental priorities.[51] Unlike jurisdictions where the public purpose doctrine has emerged through gradual judicial refinement and constitutional jurisprudence, Ethiopia's experience has been marked by sharp discontinuities and legal ruptures.[52] From the codification hesitancy of the imperial period to the statist authoritarianism of the Derg and the market-driven developmentalism of the Ethiopian People's Revolutionary Democratic Front (EPRDF) era, the notion of public purpose has remained doctrinally fluid, vulnerable to political instrumentalization and insufficiently tethered to rights-based legal guarantees.[53]

[46] Nedzel, supra note 26.
[47] Nedzel, supra note 26.
[48] Nedzel, supra note 26.
[49] Hoops, B. (2017), supranote 14.
[50] Hoops, B. (2017), supranote 14.
[51] Kiros Haileselasie, *Analysis of Legal and Institutional Framework for Expropriation of Farmlands and Properties: A Case Study of Per-Urban Areas of Mekelle City*, (2020), accessed at https://etd.aau.edu.et/items/0e9d9219-f049-4494-8c23-ce90dd6f2599.
[52] Ambaye, D. W., *The history of expropriation in Ethiopian law*. Mizan Law Review, 7(2), 283-308 (2013), accessed at https://www.ajol.info/index.php/mlr/article/view/108307
[53] Ibid

During the Imperial period, early expropriation laws reflected a cautious embrace of modernization.[54] While the 1931 Constitution was largely silent on property rights, the 1955 Revised Constitution introduced protections for private property under Article 44, permitting expropriation only upon payment of compensation and for purposes deemed to serve the public good.[55] This was followed by the 1960 Civil Code and early proclamations that formalized state authority to expropriate land, yet without providing substantive standards to define or contest the meaning of public purpose. Legal scholars argue that expropriation under the imperial regime frequently served elite consolidation and foreign investment rather than distributive justice and that the lack of procedural safeguards entrenched legal inequality and weakened tenure security for peasant populations and indigenous users.[56]

The Derg era (1974–1991) introduced a radical socialist restructuring.[57] The Land Nationalization Proclamation No. 31/1975 abolished all private landownership and declared land to be the "common property of the people." [58] Expropriation became a mechanism of ideological transformation, facilitating collectivization, villagization and planned economic redistribution. The Expropriation of Urban Lands and Extra Houses Proclamation No. 47/1975 and the 1987 PDRE Constitution operationalized public purpose within a centralized command economy framework. However, in practice, these laws led to widespread displacement, particularly among rural communities and marginalized ethnic groups, with compensation either absent or symbolic.[59] The literature underscores how the Derg's legal regime privileged state prerogative over land rights, eroding customary land governance and silencing community participation in land-use decisions.[60]

The transition to a federal system under the 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) marked a formal return to legal pluralism and constitutional guarantees. Article 40(3) reaffirmed state ownership of land, while Article 40(8) authorized expropriation for public purposes subject to the payment of commensurate compensation.[61] However, the Expropriation Proclamation No. 455/2005 and its successor, Proclamation No. 1161/2019, delegated broad discretion to regional and federal authorities to determine what constitutes public benefit, often based on subjective belief rather than objective criteria.[62] Scholars warn that under this framework, the public purpose doctrine has facilitated "developmental

[54] Ganta, B. G., *The post-1991 rural land tenure system in Ethiopia: Scrutinizing the legislative framework in view of land tenure security of peasants and pastoralists*. University of Pretoria (South Africa) (2018), accessed at https://repository.up.ac.za/handle/2263/70095
[55] *Ibid.*
[56] *Ibid.*
[57] Dw Ambaye 2013, Supra note 52
[58] Dw Ambaye 2013, Supra note 52
[59] Gezahegn, M., *Expropriation of Urban Lands and its Implications for Tenure Security of Old Possessors.* Bahir Dar University Journal of Law, 7(1), 37-59 (2016), accessed at https://journals.bdu.edu.et/index.php/ bdujl/ article/view/1344
[60] Minta, M., Kibret, K., Thorne, P., Nigussie, T., & Nigatu, L., *Land use and land cover dynamics in Dendi-Jeldu hilly-mountainous areas in the central Ethiopian highlands.* Geoderma, 314, 27-36 (2018), accessed at https://www.ilri.org/knowledge/publications/land-use-and-land-cover-dynamics-dendi-jeldu-hilly-mountainous-areas-central.
[61] M. Abdo (2015), supra note 10.
[62] Daniel Weldegebriel, (2020), supra note 8.

dispossession" - the transfer of land from smallholders to private investors under the guise of national growth, with inadequate attention to tenure security, displacement or livelihoods.[63]

Regional land laws, such as those adopted in Amhara, Oromia and Tigray, add further complexity by diverging in how they interpret and implement federal mandates, often exacerbating legal fragmentation and weakening accountability.[64] Moreover, the absence of an integrated national land policy continues to undermine coherence across Ethiopia's federal land governance system.[65]

Overall, Ethiopia's laws regarding public purpose show a consistent pattern of prioritizing state development goals over individual property rights and local needs. Whether framed in terms of imperial modernization, socialist redistribution or neoliberal growth, expropriation has functioned less as a tool of equitable planning and more as an instrument of top-down land reallocation. The lack of consistent doctrinal development—combined with weak judicial oversight, minimal community participation and inadequate compensation regimes - raises serious normative concerns. As the literature increasingly emphasizes, rethinking Ethiopia's public purpose doctrine requires more than technical legal reform; it demands a structural realignment toward a rights-sensitive, transparent and participatory land governance paradigm harmonized with both regional African frameworks and international human rights standards such as the VGGT, ICESCR and the African Union Framework and Guidelines on Land Policy (2009).

1.2. Theoretical Foundations for Public Purpose in Expropriation

The doctrine of public purpose lies at the normative core of expropriation law, serving as the primary legal and moral justification for state interference with private property rights.[66] Its meaning, however, is far from static or universally agreed upon, rather, it emerges from a web of competing theoretical frameworks that articulate differing visions of the relationship between the individual, the state and the broader public good.[67] At the heart of these debates are enduring tensions between private autonomy and collective welfare, market efficiency and redistributive justice and state authority and democratic legitimacy.[68] Property theories, rooted in natural law and liberal constitutionalism, emphasize the inviolability of private ownership, with figures like Locke affirming expropriation only under conditions of clear necessity and just compensation.[69] In contrast, public interest theories treat land as a social institution, advancing the notion that its use

[63] Stebek, E. N., *Role conflict between land allocation and municipal functions in Addis Ababa*. Mizan Law Review, 7(2), 241-282 (2013), accessed at https://www.ajol.info/index.php/mlr/article/view/108306/98159 , M. A. Srur, *State Policy and Law in Relation to Land Alienation in Ethiopia*, PhD Thesis, University of Warwick., (2014), accessed at https://wrap.warwick.ac.uk/id/eprint/74132/.

[64] Ganta, B. G. (2018), Supra note 54.

[65] *Ibid*.

[66] Tashakkori, A., & Creswell, J. W, *Exploring the nature of research questions in mixed methods research*. Sage Publications Sage CA: Los Angeles, CA (2007), accessed at https://journals.sagepub.com/doi/10.1177/1558689807302814 .

[67] Creswell, J. W., & Plano Clark, V. L., *Revisiting mixed methods research designs twenty years later. Handbook of Mixed Methods Research Designs*, 21–36 (2023), accessed at https://www.researchgate.net/publication/379062715_Revisiting_Mixed_Methods_Research_Designs_Twenty_Years_Later; Larbi, W. O., Antwi, A., & Olomolaiye, P., *Compulsory land acquisition in Ghana - Policy and praxis.* Land Use Policy, 21(2), 115–127(2004). https://doi.org/10.1016/j.landusepol.2003.09.004.

[68] *Ibid*.

[69] Thomson, F., *Expropriations of Private Property for Economic 'Development' in the United States: Re-Thinking the Titling and Rule of Law Solutions to Land Grabs in the Global South*. Estudios Socio-Jurídicos, 22(2) (2020), accessed at https://doi.org/10.12804/revistas.urosario.edu.co/sociojuridicos/a.7872.

must serve broader societal needs, particularly in the pursuit of equity, inclusion or environmental sustainability.[70]

Economic and developmental state theories complement these perspectives by framing expropriation through the lens of utility, efficiency and national growth. Economic theories, grounded in utilitarian logic, justify takings when they maximize aggregate welfare - often through infrastructure, industrialization or urban expansion.[71] Yet critics warn such justifications, while seemingly neutral, can facilitate elite capture and deepen inequality under neoliberal development regimes. Developmental state theory, drawn from East Asian experiences, offers a more state-centric model, where land is viewed as a strategic asset mobilized to advance state-led economic transformation. While effective in catalysing growth, this model raises concerns about technocratic overreach, lack of accountability and the marginalization of vulnerable communities. Taken together, these theoretical lenses provide critical tools for interrogating how the public purpose doctrine is conceptualized, applied and contested - particularly in contexts like Ethiopia, where rapid urbanization, land scarcity and competing claims to land rights heighten the stakes of expropriation law.[72]

1.2.1. Property Theories of Public Purpose

The legitimacy of expropriation for public purpose is deeply rooted in property theories that articulate the moral, legal and social foundations of ownership and its limits. At the core are normative frameworks such as natural rights theory, where John Locke famously posited that property originates from labour and individual autonomy, protected by the social contract and limited only by the state's obligation to provide just compensation.[73] Yet, Locke's framework, while empowering, has been criticized for fostering excessive individualism and legitimizing inequality under the guise of consent.[74] Building on these liberal foundations, human flourishing theory[75] introduces a more collective lens, asserting that expropriation must be evaluated through its capacity to enhance meaningful life opportunities for all - though critics caution that "flourishing" remains difficult to operationalize in diverse socio-cultural contexts. Hegelian and personhood theories[76] further shift attention toward the subjective and identity-forming nature of property, contending that dispossession undermines personal autonomy and dignity unless balanced by demonstrable societal benefit.

These perspectives raise essential questions about which types of property deserve stronger legal protection and how deeply property is entwined with the individual self. Social contract theorists, including Hobbes, Locke and Rousseau, add yet another dimension by grounding property rights in

[70] Dw Ambaye 2013, Supra note 52
[71] Hoops, B. (2017), supra note 14.
[72] Dw Ambaye 2013, Supra note 52.
[73] Locke, J., *Natural rights. Ethical Theory: Classical and Contemporary Readings*, 596–601(1989), accessed at https://search.worldcat.org/title/Ethical-theory-:-classical-and-contemporary-readings/oclc/647620794
[74] Mack, E., *The natural right of property. Social Philosophy and Policy*, 27(1), 53–78(2010), accessed at https://www.proquest.com/scholarly-journals/natural-right-property/docview/205289678/se-2 ; Tuck, R. *Power and Authority in Seventeenth Century England.* The Historical Journal, 17(1), 43–61(1974), accessed at https://www.semanticscholar.org/paper/5942e9b89886c590f53ca30be1c82c9498975e7f
[75] Alexander, G. S., *Property and human flourishing.* Oxford University Press (2018), accessed at https://academic.oup.com/book/1678.
[76] Radin, M. J. *Property and personhood.* Stanford Law Review, 957–1015(1982), accessed at https://law.stanford.edu/publications/property-and-personhood/.

collective agreements, arguing that the state's authority to expropriate must be bounded by legitimacy, procedural fairness and redistributive justice.[77] Critics, however, point to the risk of state overreach and the erosion of individual protections, particularly when public interest becomes a vague or manipulatable justification.[78] Together, these theories frame public purpose not as a mere administrative label but as a normative battleground over autonomy, justice and the government's role, highlighting that any taking of property must consider both individual rights and the changing needs of the community.

1.2.2. Public Good Theories of Public Purpose

Public good theories offer a foundational lens through which expropriation for public purpose can be normatively and legally justified, asserting that state action must ultimately serve the collective welfare to be deemed legitimate.[79] Rooted in classical legal philosophy and political theory, this approach contends that private property rights, though fundamental, may be subordinated when public interest is demonstrably at stake.[80] However, what exactly counts as "public good" is still widely debated, with some people focusing on clear rules and others stressing the importance of open discussions and transparency in decision-making.[81] Utilitarianism, at the substantive end of the spectrum, offers a consequentialist rationale that justifies expropriation if it maximizes aggregate social welfare.[82] This approach, while practical, creates ethical issues when the benefits for most people lead to the displacement of vulnerable minorities, resulting in concerns about fairness and morality.[83]

In contrast, Rawls' theory of justice presents a fair process saying any rightful taking of resources should come from an agreement made by everyone starting from a level playing field.[84] While some critics doubt whether Rawls' idea of fairness can really work, supporters believe that following fair procedures - especially with safeguards for those who are worst off - can prevent powerful groups from taking control and stop unfair government actions.[85] However, both utilitarian and Rawlsian views agree expropriation should not just be a technical process; it also needs to consider how resources are shared, involve the community and be considered legitimate.[86] In the end, public good theories highlight that expropriation is not right just because it leads to development or is legally allowed, but because it is ethically sound, follows a democratic process and has a fair social impact.

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[77] Quante, M. *Personal Autonomy.* In Spirit's Actuality (pp. 219–239) (2018), accessed at https://philpapers org/rec/QUAIDO.

[78] Hoops, B. (2017), supra note 14.

[79] Hoops, B. (2017), supra note 14.

[80] Wortley, B. A., *Some Early but Basic Theories of Expropriation*. German YB Int'l L., 20, 236(1977), accessed at https://referenceworks.brill.com/display/entries/HACO/A9789024728473-02.xml?language=en

[81] Oakland, W. H., *Theory of public goods. In Handbook of public economics* (Vol. 2, pp. 485–535, (1987). Elsevier, accessed at https://www.sciencedirect.com/science/article/pii/S1573442087800046

[82] Epstein, R. A. *Postscript: Subjective Utilitarianism*. Harv. JL & Pub. Pol'y, 12, 769 (1989), accessed at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2241&context=journal_articles&httpsredir=1&referer=

[83] Getzler, J. *Theories of Property and Economic Development.* Journal of Interdisciplinary History, 26(4) (1996), 639, accessed at https://www.jstor.org/stable/i210509

[84] Sen, A., *What do we want from a theory of justice? In Theories of Justice*, pp. 27–50, (2017). accessed at https://www.taylorfrancis.com/chapters/edit/10.4324/9781315236322-4/want-theory-justice-sen-amartya

[85] Haksar, V., *Rawls' theory of justice. Analysis*, 32(5), 149–153, (1972), accessed at https://www.jstor.org/stable/191037

[86] Pogge, T., *Freedom from poverty as a human right: Who owes what to the very poor?* Oxford University Press (2007), accessed at https://global.oup.com/academic/product/freedom-from-poverty-as-a-human-right-9780199226184

1.2.3. Economic Theories of Public Purpose

Economic theories of expropriation offer a nuanced analytical framework for understanding the normative and practical justifications for state takings of private property in pursuit of public purpose.[87] These theories revolve around the interplay between market efficiency, property rights and state intervention, invoking foundational contributions from classical, neoclassical and institutional economics. Adam Smith's "invisible hand" theory champions market autonomy and cautions against expropriation disrupting allocative efficiency[88], yet critics highlight government action may be necessary in cases of market failure - particularly in delivering public goods and infrastructure.[89] John Stuart Mill's utilitarianism, while ethically grounded in maximizing collective welfare, raises difficult questions about the moral permissibility of overriding individual property rights for the benefit of the majority, especially when harm disproportionately affects vulnerable groups.[90] Ronald Coase's theorem posits that well-defined property rights and low transaction costs allow for efficient negotiation without state interference, but its assumptions rarely hold in real-world settings marked by power asymmetries and negotiation frictions.[91] Public Choice Theory injects a critical lens, warning that rent-seeking behaviour and bureaucratic incentives may distort expropriation decisions, highlighting the need for institutional accountability.

On the other hand, institutional economics, especially as explained by Douglass North and Harold Demsetz, highlights that having strong and adaptable property rights, supported by good institutions, is crucial for investment and growth, although strict rules can unintentionally limit economic activity.[92] Pigouvian insights on externalities reinforce the state's corrective role in mitigating social costs through targeted expropriation, while the concepts of Pareto and Kaldor-Hicks efficiency provide evaluative criteria - albeit ethically contested - for assessing whether societal gains outweigh individual losses.[93] These theories collectively underscore the complexity of justifying expropriation in economic terms, as they straddle pragmatic concerns of welfare maximization with normative imperatives of equity, consent and compensation.[94]

1.2.4. Theories of Economic Development and Land Use and Public Purpose

[87] Tobin, J., *Notes on the economic theory of expulsion and expropriation. Journal of Development Economics*, 1(1), 7–18 (1974), accessed at https://www.sciencedirect.com/science/article/pii/0304387874900194

[88] Kochugovindan, S., & Vriend, N. J., *Is the study of complex adaptive systems going to solve the mystery of Adam Smith's" invisible hand"?* The Independent Review, 3(1), 53–66(1998), accessed at https://www.researchgate.net/publication/227473827_COMPLEX_SYSTEMS_IN_THE_THEORIES_OF_F_AHAYEK_AND_H_A_SIMON

[89] Falkenburg, B., *The invisible hand: What do we know? In Epistemology and the Social*, pp. 207–224 (2008). accessed at https://philpapers.org/rec/FALTIH

[90] Patrick, T., & Werkhoven, S., *An Analysis of John Stuart Mills's Utilitarianism*. Macat Library (2017), accessed at https://www.taylorfrancis.com/books/mono/10.4324/9781912282272/analysis-john-stuart-mills-utilitarianism-tom-patrick-sander-werkhoven

[91] Boudreaux, D. J., *The Coase theorem and strategic bargaining. Advances in Austrian Economics*, 3, 95–105(1996), accessed at https://www.emerald.com/insight/content/doi/10.1016/S1529-2134(96)03007-4/full/html

[92] Kapp, K. W., Berger, S., & Steppacher, R., *The foundations of institutional economics*. Routledge(2012), accessed at: https://www.routledge.com/The-Foundations-of-Institutional-Economics/Berger-Kapp-Steppacher/p/book/ 9781138799547?srsltid=AfmBOoq9WNcbdUOPKTnCDrFtxkQtEqd0_aMcsWgB449ehz1KvcCyrgc0

[93] Marciano, A., & Medema, S. G., *Market failure in context: Introduction*. Duke University Press(2015), accessed at: https://read.dukeupress.edu/hope/article-pdf/47/suppl_1/1/430673/ddhop_47_suppl_1_01Marciano_Fpp.pdf

[94] Hoops, B. (2017), supra note 14.

Theories of economic development and land use provide a foundational lens for understanding the role of land in structural economic transformation and the justification of expropriation under the banner of public purpose. Land, as a productive and strategic asset, underpins agricultural efficiency, capital accumulation and urban expansion - key processes in classical economic thought as articulated by Smith and Ricardo, who viewed agricultural surplus as a driver of industrialization and urban labour mobilization.[95] Building on this, the dual-sector model of Arthur Lewis frames economic growth as a transition from traditional agricultural sectors to modern industrial economies, necessitating the reallocation of land and labour.[96] In this context, expropriation is often seen as a policy instrument to facilitate development, particularly where fragmented tenure impedes large-scale investment. However, while proponents argue expropriation can promote productivity and modernization, critics highlight its significant distributive and ethical implications - particularly when it undermines tenure security, displaces vulnerable populations and exacerbates existing inequalities.[97]

Settlements and ecological degradation are significant issues. These transformations call for integrated land use planning that reconciles economic imperatives with principles of equity, participation and environmental stewardship. Theoretical ideas agree planning should include everyone, be open and clear, and use creative methods like land value capture to make sure the benefits of development are shared fairly.[98] Ultimately, these theories underscore that land is not merely a factor of production but a contested socio-political space, whose governance must balance growth with justice and state authority with the rights and voices of affected communities.

1.2.5. Synthesis of the Theories

The integration of property, public good, economic, developmental state and land use theories offers a comprehensive framework for analysing expropriation for public purpose. Property theories emphasize individual rights, compensation and constitutional safeguards. Public good theories prioritize collective welfare but demand democratic legitimacy and clear boundaries. Economic theories justify state intervention to overcome inefficiencies, yet raise concerns over equity and distribution. Developmental state theory supports expropriation as a driver of rapid growth but risks elite capture and marginalization. Land use and transformation models highlight expropriation's role in reallocating land for industrialization and urbanization. Together, these theories demonstrate that expropriation must balance public interest with justice, rights and inclusive development. In Ethiopia's context, where the Expropriation Proclamation No. 1161/2019 broadly defines public purpose, theoretical synthesis calls for stronger safeguards to ensure fairness and accountability. Expropriation must not only enable economic progress but also protect the rights and livelihoods of affected communities.

2. PUBLIC PURPOSE IN OTHER JURISDICTIONS: COMPARATIVE LEGAL INSIGHTS

[95] Hubacek, K., & Bergh, J. C. J. M. V. den. *The role of land in economic theory*, (2002), accessed at https://pure.iiasa.ac.at/id/eprint/6748/

[96] Van der Veen, A., & Otter, H. S., *Land use changes in regional economic theory. Environmental Modelling & Assessment*, 6, 145–150(2001), accessed at https://link.springer.com/article/10.1023/A:1011535221344

[97] Van Kooten, G. C., *Land resource economics and sustainable development: Economic policies and the common good.* UBC Press (2011), accessed at https://books.google.cd/books?id=hsLGvOcCobAC

[98] Kim, J. H., *Linking land use planning and regulation to economic development: A literature review.* Journal of Planning Literature, 26(1), 35–47(2011), accessed at https://journals.sagepub.com/doi/10.1177/0885412210382985

The conceptualization and delimitation of "public purpose" in expropriation law remain deeply contested across legal systems, reflecting enduring tensions between state-led developmental objectives and the constitutional protection of property rights. A comparative examination of selected jurisdictions - Germany, South Africa, India and the United States - reveals not only doctrinal divergences rooted in distinct legal traditions but also normative debates over the legitimacy, scope and constraints of state power in regulating land. This research does not seek to find a single best model but instead aims to gather important insights for Ethiopia's changing expropriation laws by engaging in discussions with global legal experiences. To this end, the selected jurisdictions offer a valuable lens through which to interrogate how the concept of public purpose is constructed, operationalized and bound by law. The analysis critically engages with each system's doctrinal structure, institutional safeguards and interpretive tensions to illuminate the competing logics and normative trajectories that shape expropriety.

On one side of the comparison, Germany is a clear example of strict legal rules and constitutional limits, where taking property is controlled by the rules in Article 14(3) of the Basic Law (Grundgesetz). The law is known as the Grundgesetz. This provision requires takings serve the "public welfare," be accompanied by fair compensation and be subject to judicial oversight. The use of the proportionality principle - made up of suitability, necessity and strict proportionality - acts as a key rule limiting how the state can interfere with private property. Forsthoff (1968) and other scholars have advocated for a robust constitutionalism system that controls expropriation through legal rules to prevent misuse.[99] Yet, critical voices point to the rigidity of this model, particularly in contexts requiring rapid economic adaptation or redistributive land policies. The German experience shows how legal formalism can help control government actions, but it also highlights its weaknesses in dealing with changing economic needs.[100]

In contrast, Section 25 of the 1996 Constitution in South Africa codifies a constitutional order aiming to reconcile private property rights with historical redress and social equity, positioning expropriation in this context. The concept of transformative justice distinguishes between "public purpose" and the broader concept of "public interest," which permits expropriation not only for common public goods but also for objectives such as land reform and equitable resource access.[101] This dual construct has generated rich constitutional jurisprudence, including *First National Bank of SA Ltd t/a Wesbank v. Commissioner, SARS (2002)*[102], where the Constitutional Court affirmed the need to balance individual property rights with the imperatives of social justice. The jurisprudential shift from a market-based to a justice-orientated compensation standard - framed as "just and equitable"—has been lauded by scholars such as Budlender (2005) and Claassens & Cousins (2008) for aligning legal doctrine with redistributive goals. The expansive and indeterminate scope of "public interest" has prompted concerns over its potential abuse by political elites, particularly in the wake of debates surrounding expropriation without compensation. The South African model thus

[99] Henning, P., *Thoughts on administrative law*. Comparative and International Law Journal of Southern Africa, 2(1), 86-98 (1969), accessed at https://journals.co.za/toc/cilsa/2/1

[100] Hoops, B. (2017), supra note 14.

[101] Slade, B. V., *The Justification of Expropriation for Economic Development* (2012), accessed at http://scholar.sun.ac.za

[102] *First National Bank of SA Ltd t/a Wesbank v. Commissioner for the South African Revenue Service 2002 (4) SA 768 (CC),* accessed at https://collections.concourt.org.za/handle/20.500.12144/2128

offers a compelling yet contested experiment in recalibrating property law in service of structural transformation.[103]

Moving further along the continuum, India introduces a procedurally intensive model that foregrounds democratic participation, consent and social accountability, reflecting a legislative reaction to past injustices in land acquisition. The 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR) was a significant change from the old colonial Land Acquisition Act of 1894, which allowed the government to take land with very few rules to protect people.[104] The LARR Act narrows the definition of public purpose, mandates social impact assessments and requires prior informed consent from affected communities in private and Public-Private Partnership projects (PPP projects) - thereby institutionalizing a procedural model of expropriation that emphasizes democratic legitimacy.[105] This procedural turn has been celebrated for enhancing transparency and embedding expropriation within a rights-based developmental framework. However, its implementation has triggered resistance from state governments and investors, who view the procedural requirements as burdensome and inhibitory to infrastructure development. Moreover, the exclusion of purely public projects from the consent requirement raises questions about the internal consistency and reach of the Act's normative.[106] India's model thus embodies a tension between participatory ideals and developmental pragmatism, illustrating the political economy constraints that accompany rights-sensitive legal reforms.

In contrast, the United States adopts a market-driven and judicially permissive approach to expropriation, exposing deep tensions between development goals and individual property protection through expansive interpretations of "public use".[107] The Fifth Amendment to the United States Constitution permits takings "for public use" with just compensation.[108] In the controversial case of Kelo v. City of New London (2005), the Supreme Court of the United States interpreted "public use" to include economic development initiatives undertaken by private actors, provided they served a broader public benefit. This interpretation provoked widespread criticism, with scholars such as Epstein (2008) and Merrill (2006) warning it erodes constitutional safeguards and facilitates regulatory capture.[109] The post Kelo backlash resulted in over 45 states enacting statutes or constitutional amendments to restrict the definition of public use. Despite these corrective efforts, the American model continues to exemplify the risks associated with deferring to executive and legislative discretion in the name of economic revitalization.[110] It serves as a critical reference point for evaluating the consequences of an overly expansive and market-orientated reading of public interest.

[103] Hoops, B. (2017), supra note 14.
[104] Downing, C., *Eminent Domain in 21st Century India: What New Dehli Can Learn from New London.* NYUJ Int'l L. & Pol, 46 (2013), accessed at https://nyujilp.org/wp-content/uploads/2010/06/46.1-Downing.pdf
[105] Singh, C., *In Search of an Appropriate Land Acquisition Act-Traverse of Hurdles and Support*. Editorial Board, 45(1), 11(2016), accessed at https://www.researchgate.net/publication/355402460_Resettlement_and_development
[106] *Ibid.*
[107] Jerold S. Kayden, *The-Myth-and-Reality-of-Eminent-Domain-for-Economic-Development* (John D. Echeverria ed., 2008), accessed at https://www.lincolninst.edu/app/uploads/2024/04/2082_1405_LP2008-ch08-The-Myth-and-Reality-of-Eminent-Domain-for-Economic-Development_0.pdf
[108] Nedzel, supra note 26.
[109] Nedzel, supra note 26.
[110] Hoops, B. (2017), supra note 14.

Together, these jurisdictions span a complex continuum—from Germany's constitutional rigor and India's participatory safeguards, to South Africa's redistributive ambitions and the United States' permissive economic pragmatism. Each model reflects context-specific legal traditions, political economies and constitutional trajectories, offering distinct insights into the design and regulation of expropriation regimes. From this comparative lens, several critical lessons emerge for Ethiopia. First, the notion of "public purpose" must be clearly defined in law and made subject to robust judicial review, as opposed to being delegated to executive discretion or administrative fiat. Second, the incorporation of proportionality and necessity tests, as illustrated in Germany and India, provides a principled framework for evaluating the legitimacy of state takings. Third, procedural innovations - including social impact assessments, community consent and post-expropriation rehabilitation - are essential for ensuring not only legal compliance but also social legitimacy. Finally, South Africa's integration of equity-based considerations into compensation standards highlights the need to move beyond market value as the sole metric of justice in expropriation.

What emerges from this comparative engagement is not a singular model to be replicated, but a set of normative benchmarks and critical cautionary tales. These underscore the importance of situating expropriation within a broader constitutional, institutional and ethical framework - one that genuinely aligns state developmental goals with the protection of property rights and the advancement of social justice. For Ethiopia, the challenge lies not merely in legal transposition but in constructing an endogenous expropriation regime responsive to historical legacies, developmental needs and democratic aspirations.

3. ETHIOPIA'S EXPROPRIATION FRAMEWORK IN LIGHT OF INTERNATIONAL LEGAL NORMS

The evolving international discourse on expropriation increasingly constrains the state's power to take property through the invocation of public purpose. While once treated as a sovereign prerogative, the notion of public purpose has become a deeply contested legal category, shaped by normative demands for legitimacy, proportionality and accountability. A review of international human rights law, investment arbitration and global land governance frameworks reveals a convergence toward more restrictive and procedurally conditioned understandings of public purpose. This section critically assesses how these international regimes conceptualize and discipline the doctrine and evaluates the extent to which Ethiopia's legal framework aligns with these standards.

3.1. Public Purpose in International Human Rights Instruments: From State Prerogative to Normative Constraint

International human rights law has subtly but significantly reshaped the doctrinal understanding of public purpose. While no major human rights instrument offers a codified definition, their textual commitments and jurisprudential developments implicitly discipline the scope and content of public purpose in expropriation contexts.[111] The Universal Declaration of Human Rights (UDHR), through Article 17, prohibits arbitrary deprivation of property, thereby transforming public purpose from a presumed justification to a claim requiring legal validation. Although not legally binding, the emerging norm that expropriation must serve a genuine public purpose has gradually influenced

[111] Badar, M. E., *Basic principles governing limitations on individual rights and freedoms in human rights instruments*. The International Journal of Human Rights, 7(4), 63-92(2003), accessed at https://www.tandfonline.com/doi/abs/10.1080/13642980310001726226

customary international law and regional frameworks, emphasizing non-arbitrariness, transparency and respect for human dignity.[112]

In the ICCPR, although there is no express treatment of expropriation, Articles 14 and 17 collectively demand that any state interference with property or home be legally justified and reviewable. These provisions suggest public purpose must be capable of judicial scrutiny, rather than existing as an unreviewable administrative determination. Thus, international civil and political rights embed public purpose within a framework of legal accountability rather than mere political necessity.[113] The ICESCR, though orientated toward socio-economic rights, reinforces a broader reconceptualization of public purpose by implying that legitimate state interference with property must contribute to progressive realization of public goods - such as housing, food security and adequate living standards.[114] Hence, public purpose under ICESCR is not merely a tool for economic growth but a redistributive instrument tied to collective entitlements.

At the regional level, the African Charter on Human and Peoples' Rights (ACHPR) is more explicit. Article 14 permits expropriation only in the interest of *"public need or in the general interest of the community,"* introducing a public interest test that invites a broader interpretation than classical public use.[115] Yet, decisions like *Endorois v. Kenya and Ogiek v. Kenya*[116] have clarified that such interest must be proven, consultative and community-affirming. In other words, public purpose must not only be declared but socially legitimatised and procedurally justified.

The European Convention on Human Rights (ECHR) - especially through Article 1 of Protocol No. 1 - has refined the conceptual scope of public purpose through its case law. While acknowledging wide state discretion, the European Court of Human Rights insists public purpose must be proportionate, necessary and rationally connected to a legitimate social goal.[117] In *Vistins and Perepjolkins v. Latvia*[118], the Court affirmed that economic development can constitute public purpose but warned that the absence of transparent legal justification renders the claim invalid. Hence, the ECHR jurisprudence demands a structured rationality in public purpose claims - one that resists opportunism or private rent-seeking under the guise of public benefit.

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[112] Almeida, B., *Expropriation or plunder? Property rights and infrastructure development in Oecusse*. THE PROMISE OF PROSPERITY, 99(2018), accessed at https://www.researchgate.net/publication/329756432_Expropriation_or_plunder_Property_rights_and_infrastructure_development_in_Oecusse.

[113] Xu, T., & Gong, W., *Communal Property Rights in International Human Rights Instruments: Implications for De Facto Expropriation. Property and Human Rights in a Global Context*, 1, 225 (2015), accessed at https://eprints.whiterose.ac.uk/103595/1/Xu%20and%20Gong_The%20Legitimacy%20of%20Extralegal%20Property%20-%20author's%20final.pdf.

[114] Desierto, D. A., *ICESCR minimum core obligations and investment: Recasting the non-expropriation compensation model during financial crises*. Geo. Wash. Int'l L. Rev., 44, 473(2012), accessed at https://scholarspace.manoa.hawaii.edu/bitstream/10125/35189/1/Desierto_44GeoWashIntlLRev473.pdf .

[115] Munene, A. W. *Realizing the right to development in Kenya under the 2010 Constitution through poverty alleviation, anti-corruption and public participation interventions* (Doctoral dissertation) (2019), accessed at https://wiredspace.wits.ac.za/bitstreams/13323ec7-4bad-4b99-adb4-06f1f738a1a6/download.

[116] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois) v. Kenya, Comm. No. 276/2003*, Afr. Comm'n H.P.R., 27th Activity Report (2010), accessed at https://caselaw.ihrda.org/entity/qlw2i6u4vw8?page=1&file=15555005007057glq02av379.pdf.

[117] Hoops, B., *Expropriation. In Research Handbook on European Property Law* (pp. 247-257), Edward Elgar Publishing, (2024), accessed at https://www.e-elgar.com/shop/gbp/research-handbook-on-european-property-law-9781839105838.html?srsltid=AfmBOoo06a59N3jmS7jOpiDbYS8q5tZBukJRycO7DGdh7SF-0t3XDN6V

[118] *Vistins and Perepjolkins v. Latvia, App. No. 71243/01*, Eur. Ct. H.R. (2012), accessed at https://hudoc.echr.coe.int/eng?i=001-142270.

Across these human rights frameworks, we observe a normative convergence: public purpose must be substantively linked to community-orientated outcomes, procedurally accountable and juridically reviewable. The classical positivist view - treating public purpose as a matter of sovereign discretion - is decisively rejected in favour of a rule-of-law-based conception embedded in human rights values.

3.2. Public Purpose in International Investment Law: Between Regulatory Deference and Investor Scrutiny

In international investment law, public purpose occupies a paradoxical position: it is both a necessary condition for lawful expropriation and a contested site of arbitral discretion. Most Bilateral Investment Treaties (BITs) and the International Centre for Settlement of Investment Disputes (ICSID) Convention include public purpose as a justificatory clause, yet rarely define it. This definitional ambiguity has given rise to doctrinal inconsistencies and competing arbitral standards.[119]

At one end of the spectrum, arbitral tribunals in cases like *Methanex v. United States* have endorsed a deferential approach, recognizing public purpose may include environmental regulation or health policy, even if foreign investments are adversely affected.[120] This reading aligns with the "police powers doctrine," which allows states to regulate in the public interest without triggering unlawful expropriation. However, other tribunals, such as in *Tecmed v. Mexico*[121], have adopted a narrower, investor-centric lens, requiring states to prove that expropriatory measures were not only lawful but also necessary, proportionate and the least restrictive means available to achieve a public interest goal. Here, public purpose is not presumed - it must be empirically demonstrated and balanced against the investor's legitimate expectations.

This duality creates a tension: while public purpose remains a core justification, its elasticity invites arbitral subjectivity. Some tribunals defer to national policy goals, others engage in a quasi-constitutional review of state actions. As Schill (2021) notes, the absence of a universal definition in BITs has led to "fragmented legitimacy," where identical public policies are upheld in one case and invalidated in another.[122]

Recent treaty reforms reflect a normative recalibration. New-generation BITs increasingly attempt to predefine public purpose categories (e.g., environmental protection, public health and infrastructure) and introduce carve-outs for non-compensable regulatory actions. This trend suggests a shift toward re-conceptualizing public purpose not as a flexible justification, but as a categorically protected domain of sovereign regulatory authority. Thus, investment law illustrates the contestability of public purpose - caught between a state's duty to promote collective welfare and an international legal system structured to protect capital. For developing countries like Ethiopia, this underscores

[119] Maupin, J. A., *Public and private in international investment law: an integrated systems approach.* Va. J. International., 54, 367, (2013), accessed at https://scholarship.law.duke.edu/faculty_scholarship/3128/.

[120] *Methanex Corp. v. United States, Final Award of the Tribunal on Jurisdiction and Merits, NAFTA/UNCITRAL Arb. (Aug. 3, 2005),* accessed at https://www.italaw.com/cases/683

[121] *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID Case No. ARB(AF)/00/2, Award (May 29, 2003),* accessed at https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/45/tecmed-v-mexico

[122] Schill, S. W., & Tams, C. J., *International investment protection and constitutional law: Between conflict and complementarity. In International Investment Protection and Constitutional Law* (pp. 2-37). Edward Elgar Publishing(2022), accessed at https://www.e-elgar.com/shop/gbp/international-investment-protection-and-constitutional-law-9781839100413.html?srsltid=AfmBOopHs-0DlIKUntLHcp8uUT8vmXRFD4MREDmZvh3_QBucEy_gW2Mor

the importance of treaty design: public purpose must be clearly articulated, have boundaries and insulated from undue investor challenges.[123]

In the international investment law domain, public purpose occupies a legally essential but theoretically unstable role. While most Bilateral Investment Treaties (BITs) and the ICSID Convention includes public purpose as a necessary element of lawful expropriation, the absence of definitional clarity has resulted in jurisprudential inconsistency. Tribunals like *Methanex v. United States* have favored regulatory deference under the police powers doctrine, allowing states broad space to pursue environmental or public health goals. In contrast, decisions like *Tecmed v. Mexico* impose strict standards of necessity and proportionality, requiring the state to demonstrate expropriation is the least restrictive means of achieving the purported public purpose.

This doctrinal dualism generates what Schill (2023) calls "fragmented legitimacy," where tribunals oscillate between deference and scrutiny, undermining consistency and predictability. For developing countries like Ethiopia, whose BITs often follow traditional models, this fragmentation introduces legal uncertainty and potential exposure to investor-state dispute settlement (ISDS) claims. Recent treaty reforms - such as those incorporating pre-listed public interest categories and regulatory carve-outs - reflect a normative recalibration toward safeguarding public purpose as a sovereign regulatory domain, though Ethiopia has yet to adopt such revisions.[124]

3.3. Public Purpose in Global and Regional Land Governance Frameworks: From Political Justification to Normative Obligation

Beyond binding treaties and arbitral jurisprudence, an important layer of the international normative architecture emerges from non-binding but influential global and regional policy instruments.[125] These frameworks - developed by multilateral institutions and regional bodies - are instrumental in translating abstract principles into operational standards for how "public purpose" in expropriation should be defined, governed and constrained. The shared trajectory across these instruments is clear: public purpose is no longer presumed as a political assertion, but rather conditioned by legality, transparency, participation and demonstrable public benefit.

3.3.1. FAO's Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)

VGGT Guideline 16 conceptualizes public purpose as a structured legal category, requiring ~~that~~ any land acquisition must serve a clearly defined, legally grounded and publicly justified objective. It explicitly cautions against the misuse of vague public interest claims, particularly in contexts of third-party land transfers to private actors. Crucially, the guideline calls for independent scrutiny of whether the expropriation serves a genuine public benefit, embedding public purpose within a framework of accountability and distributive equity.[126] In doing so, VGGT reframes public purpose

[123] *Ibid.*

[124] Schill, S. W., *Sources of international investment law: Sonderweg or lodestar in international dispute settlement? In International Investment Law and General International Law* (pp. 47-78). Edward Elgar Publishing(2023), accessed at https://www.e-elgar.com/shop/gbp/international-investment-law-and-general-international-law-9781800884052.html?srsltid=AfmBOooveKkIsiHMw1hSBXhpfWcyym0-_qWnMnm9f7YjngLyu21PwiPt

[125] Hoops, B. (2017), supra note 14.

[126] Björn Hoops & Nicholas K. Tagliarino, *The Legal Boundaries of 'Public Purpose' in India and South Africa: A Comparative Assessment in Light of the Voluntary Guidelines*, 8 LAND (2019), accessed at https://www.mdpi.com/2073-445X/8/10/154

not as a justification for development, but as a normative filter through which all expropriation claims must pass.

3.3.2. World Bank's Environmental and Social Framework (ESF)

Within the Environmental and Social Standard 5 within the World Bank's Environmental and Social Framework (ESF), public purpose is indirectly but normatively structured through requirements of proportionality, stakeholder engagement and impact justification. While the ESF does not offer a formal definition, its procedural architecture implies that land acquisition is legitimate only when substantively necessary, demonstrably linked to broader public outcomes and governed by transparent decision-making. Public purpose is thus positioned as a threshold condition for lawful interference with land rights - one that cannot be satisfied by general developmental claims, especially in projects benefiting private developers.[127]

3.3.3. International Financial Corporation Performance Standard 5 (IFC PS5)

IFC PS5 offers similar guardrails, particularly in cases involving private-sector actors in public-private partnerships. It introduces the principle that public purpose must not only be declared but independently verifiable and contingent upon least harmful alternatives. It requires states and developers to show expropriation is the last resort and the asserted public interest objectives could not be realized through less intrusive means. In this way, public purpose is framed as a burden of justification - subject to rigorous proportionality analysis and independent monitoring.[128]

3.3.4. UN-Habitat Urban Land Governance Framework

UN-Habitat directly critiques the instrumentalization of public purpose in urban land acquisitions, especially in Africa and the Global South. It warns against "developmental capture," where public purpose is invoked to enable land transfers to elite or foreign investors without tangible benefit to local populations. The framework calls for a relational understanding of public purpose - one that links legal legitimacy to social outcomes, especially in terms of equity, access and empowerment. It proposes that any claim to public interest must be measurable, contestable and inclusive, rejecting opaque or purely economistic interpretations.[129]

3.3.5. The Framework and Guidelines on Land Policy in Africa (F&G-LPA)

Developed jointly by the African Union, UNECA and the African Development Bank, the F&G-LPA represents a landmark continental consensus on land governance. It reframes public purpose within a pan-African vision of equitable development, stating land acquisition by the state must be justified by clear and verifiable societal benefits, with special protections for the poor, women,

[127] Dadang Mohamad et al., *The World Bank - Environment and Social Framework: Expectations and Realities of Implementing Environmental and Social Safeguards in Infrastructure Projects in Indonesia*, 17 IJSDP 225 (2022), accessed at https://www.iieta.org/journals/ijsdp/paper/10.18280/ijsdp.170122

[128] Isabel María García-Sánchez et al., *The Explanatory Effect of CSR Committee and Assurance Services on the Adoption of the IFC Performance Standards, as a Means of Enhancing Corporate Transparency*, 10 SAMPJ 773 (2019), accessed at https://digibug.ugr.es/bitstream/handle/10481/93241/2019_SAMPJ_versi%C3%B3n% 20revisada.pdf?sequence=1.

[129] Muñoz-Gielen, D., *Urban governance, property rights, land readjustment and public value capturing.* European Urban and Regional Studies, 21(1), 60-78(2014), accessed at https://journals.sagepub.com /doi/abs/10.1177/ 0969776412440543.

pastoralists, and customary users. The F&G-LPA challenges the legacy of top-down, state-centric land governance by advocating for democratic accountability in public purpose claims. It recommends that land laws clearly define public interest and require participatory processes to determine whether a proposed expropriation genuinely serves national or community development, rather than elite or speculative interests.[130]

This framework is particularly important for Ethiopia, as it offers a regionally relevant normative model grounded in African realities. It emphasizes public purpose must be contextual, inclusive and procedurally validated - not reduced to a legal abstraction or administrative prerogative. By linking land governance to human development outcomes, the F&G-LPA elevates public purpose to a moral and developmental obligation, not just a legal requirement.[131]

3.3.6. The European Union Land Policy Guidelines

The EU Land Governance Guidelines, part of its broader development co-operation strategy, advance a concept of public purpose that is rights-based, socially embedded, and environmentally sustainable. The EU emphasizes expropriation is only justifiable when land use changes produce collective benefits that are transparent, participatory and legally reviewable. The guidelines oppose the use of public interest narratives to justify agribusiness expansion or urban mega-projects without inclusive governance structures. Like the African framework, the EU approach views public purpose as a legally contestable and socially negotiated outcome, not a unilateral administrative assertion. The EU framework introduces a sustainability test into public purpose evaluation: land must be acquired only when its new use demonstrably advances intergenerational equity, environmental protection and social inclusion. This broadens the evaluative criteria of public purpose, aligning it with contemporary global development priorities.[132]

3.4. Ethiopia's Compliance with International Standards: Gaps and Legal Reform Imperatives

Despite Ethiopia's constitutional and legislative recognition of public purpose in expropriation, significant gaps remain in aligning with international normative standards. Although Article 40 of the Ethiopian Constitution permits expropriation for public purposes, it offers no definition of the term. This definitional gap is filled by Expropriation Proclamation No. 1161/2019, which adopts a broad and discretionary formulation authorizing takings for any land use believed to contribute to economic and social development. However, this definition lacks the precision, proportionality and review mechanisms emphasized in international human rights and land governance frameworks. Unlike the ACHPR jurisprudence, Ethiopian law does not explicitly require community consultation or prior consent, particularly in cases affecting indigenous or customary landholders.

In contrast to the procedural safeguards outlined in VGGT Guideline 16 and the World Bank's ESS5, Ethiopia's legal regime provides limited avenues for meaningful participation or challenge by affected persons. There is no guaranteed right to judicial review before dispossession, nor a requirement for social impact assessments that substantiate the necessity or proportionality of

[130] Union, A., *Land policy in Africa: A framework to strengthen land rights, enhance productivity and secure livelihoods. Addis Ababa*: African Union and Economic Commission for Africa, (2009), accessed at https://repository.uneca.org/handle/10855/17789

[131] *Ibid.*

[132] Altes, W. K. K., *Land Policy for Rural Development in the European Union and its Impact on Access to Land. European Countryside*, 14(4), 658-674 (2022), accessed at https://sciendo.com/article/10.2478/euco-2022- 0033.

expropriation. Furthermore, the law does not impose a binding obligation on the state to demonstrate expropriation is the least restrictive alternative available - falling short of the standards upheld in international cases like *Tecmed v. Mexico or Vistins and Perepjolkins v. Latvia.*

From an investment law perspective, Ethiopia's BITs tend to follow traditional models that allow broad state discretion, with minimal reference to carve-outs for non-compensable public interest regulation. This raises risks of investor-state disputes where public purpose definitions are vague and potentially vulnerable to arbitral scrutiny. Ethiopia has yet to incorporate the recent trend in BIT reform that explicitly lists protected policy objectives - such as environmental or health regulation - as presumptively legitimate.

By way of conclusion, the evolving international legal and policy frameworks on expropriation reflect a shift from discretionary public purpose claims to normatively bounded, rights-sensitive governance models. Across human rights instruments, investment law and land governance regimes, there is a clear normative convergence on the need for legal clarity, proportionality, accountability and community participation in land takings. Ethiopia's current expropriation regime, while making legislative progress, remains misaligned with many of these standards. Bridging these gaps requires both conceptual clarity and institutional reform. Incorporating international best practices into national law will not only promote legal certainty and equitable development but also reinforce Ethiopia's credibility in international human rights and investment arenas.

4. NORMATIVE FRAMEWORKS GOVERNING PUBLIC PURPOSE IN ETHIOPIA'S EXPROPRIATION LAWS

The governance of public purpose in Ethiopia's expropriation regime is shaped by a combination of legal norms and institutional arrangements determining when and how the state may take land from individuals and communities. The normative foundation draws primarily from the 1995 FDRE Constitution and key legislative instruments, most notably Proclamation No. 1161/2019, which outlines the criteria for expropriation, compensation and procedural obligations.[133] However, translating these principles into practice depends not only on the strength of the legal framework but also on the functionality and co-ordination of institutional actors at federal, regional and local levels. This section critically examines the legal frameworks defining public purpose in Ethiopian expropriation law, followed by an analysis of the institutional frameworks responsible for its interpretation and implementation. By exploring both dimensions, it highlights areas of normative ambiguity, institutional fragmentation and legal-institutional disjuncture that affect the fairness, consistency and legitimacy of state-led takings.

4.1. Legal Frameworks Governing Public Purpose in Ethiopia's Expropriation Laws

The legal foundation for expropriation in Ethiopia is primarily derived from the 1995 FDRE Constitution and further elaborated in legislative instruments such as Proclamation No. 1161/2019. These texts establish the state's authority to expropriate land for public purposes and outline procedural and compensation requirements. However, significant ambiguity persists in how "public purpose" is defined and applied. Article 2(1) of the Expropriation Proclamation No. 1161/2019 defines public purpose as *"a decision that is made by the cabinet of a Regional State, Addis Ababa, Dire Dawa or the appropriate Federal Authority on the basis of an approved land use plan,*

[133] Daniel Weldegebriel, (2020), supra note 8.

development plan, or structural plan under the belief that the land use will directly or indirectly bring better economic and social development to the public." While the provision links public purpose to formal planning instruments, it relies heavily on subjective state belief and offers no measurable criteria or substantive thresholds, thereby granting broad discretionary power to administrative authorities. This vagueness raises serious concerns regarding legal certainty, transparency and the protection of landholders' rights. This subsection examines the content, evolution and limitations of Ethiopia's legal provisions governing public purpose in expropriation.

The foundation of Ethiopia's expropriation regime lies in the 1995 FDRE Constitution, which vests land ownership in the state and authorizes expropriation for public purposes, albeit without providing a clear definition of what constitutes such a purpose.[134] The 1995 FDRE Constitution provides the normative anchor for Ethiopia's expropriation framework, establishing legal justification for compulsory acquisition of land under the doctrine of "public purpose." Article 40 affirms state ownership of all land, granting individuals only usufruct rights while allowing the government to expropriate landholdings to serve ambiguously framed public objectives.[135] From a developmentalist perspective, this structure is defended as a mechanism to prevent speculative accumulation and to facilitate industrialization and infrastructure expansion. However, the constitutional text - particularly Article 40(8) - offers no clear criteria or definitional boundaries for what constitutes a valid public purpose, effectively granting the state unchecked discretion in the expropriation process. This vagueness invites arbitrary administrative decisions, enabling expropriation for purposes that may prioritize private investment or revenue generation over the broader public interest.[136]

Critically, the absence of a precise constitutional test for public purpose undermines key principles of rule of law and legal certainty. Comparative constitutional jurisprudence emphasizes expropriation must be justified by demonstrable public benefit, guided by principles of necessity, proportionality and democratic legitimacy. In contrast, Ethiopia's framework lacks procedural mechanisms - such as independent review bodies or participatory assessment processes - that could ensure accountability in defining public interest claims. Empirical cases, such as industrial park developments in cities like Gondar, illustrate the risks of executive-driven expropriations disproportionately benefitting private actors while displacing communities without verifiable public gain. While the Constitution ostensibly balances development goals with property protections, its silence on the substantive and procedural content of public purpose raises significant normative concerns. As global best practices increasingly demand transparent, legally reviewable and community-centred definitions of public purpose, Ethiopia's constitutional architecture appears ill-equipped to constrain state power or ensure socially just outcomes.

In addition to the FDRE Constitution, a critical examination of Proclamation No. 1161/2019 - alongside Ethiopia's rural and urban land administration laws - reveals the normative construction of "public purpose" remains broadly defined, leaving significant interpretive discretion to administrative authorities and raising concerns over legal certainty, rights protection and consistency in expropriation practices.

A closer analysis of Proclamation No. 1161/2019, together with Regulation No. 472/2020, illustrates the legal framing of "public purpose" is insufficiently constrained, enabling expansive administrative interpretation and raising critical concerns regarding transparency, accountability and rights

[134] Governments of Ethiopia (1995), supra note 5.
[135] Gebremichael B. (2016), supra note 12.
[136] M. Abdo (2015). supra note 10.

protection in expropriation processes.[137] Ethiopia's Proclamation No. 1161/2019 and its implementing Regulation No. 472/2020 were introduced to modernize the legal regime governing land expropriation, including refining the notion of "public purpose." However, the continued absence of a precise legal definition or substantive criteria for determining what qualifies as public purpose leaves considerable room for executive discretion.[138]

In practice, this vagueness has allowed land to be expropriated for investor-led projects that offer limited collective benefit, raising concerns over the legitimacy of public interest claims. While the proclamation includes procedural safeguards such as notification and consultation, these often remain formalistic and do not meaningfully constrain state authority. The lack of judicial oversight further weakens legal accountability, as courts rarely assess whether expropriation meets a genuine public interest threshold. The conceptual indeterminacy of "public purpose," combined with institutional asymmetries and limited participatory mechanisms, undermines the normative coherence of Ethiopia's expropriation regime.[139] In contrast with international legal standards - which emphasize proportionality, necessity and human rights alignment - Ethiopia's framework lacks clear doctrinal tests, risking the misuse of public interest narratives to justify elite-driven land transfers.

When examined in conjunction with expropriation laws, the Urban Land Lease Proclamation No. 721/2011 brings to light critical ambiguities in how public purpose is invoked and implemented in urban contexts - raising concerns about the balance between rapid urban development and the protection of urban land users' rights.[140] The Urban Land Lease Proclamation No. 721/2011 represents a key component of Ethiopia's attempt to modernize urban land governance by consolidating leasehold tenure as the exclusive legal form for urban landholding. Framed as a mechanism to curtail speculation, enhance state planning capacity and ensure equitable distribution, the leasehold system simultaneously centralizes state authority over land transactions. However, in practice, the proclamation operates within a broader expropriation framework where the boundaries of "public purpose" remain legally ambiguous and administratively malleable. State authorities frequently invoke public purpose to justify compulsory land takings, only for the expropriated land to be reallocated to private investors through urban lease arrangements. This pattern, evident in cities such as Addis Ababa, Bahir Dar and Dire Dawa, raises substantive concerns about the integrity of the public purpose doctrine and its alignment with both constitutional principles and international best practices. When land expropriation facilitates private wealth accumulation rather than demonstrable public benefit, the legitimacy of state-led urban development strategies is fundamentally called into question.[141]

From a normative standpoint, the Urban Land Lease Proclamation lacks robust procedural safeguards to distinguish genuine public interest from private gain pursued under state authority. Despite the inclusion of provisions for competitive bidding and public notice, the implementation of these safeguards is undermined by bureaucratic opacity, political patronage and the absence of independent review mechanisms.[142] International land governance frameworks - including the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), the UN Basic Principles on Development-Based Evictions and jurisprudence from human rights bodies - insist public purpose

[137] Government of Ethiopia (2019), supra note 7.
[138] Daniel Weldegebriel, (2020) supra note 8.
[139] M. Abdo (2015). supra note 10.
[140] Ganta, B. G. (2018), Supra note 54.
[141] Gezahegn, M. (2016), supra note 59.
[142] Stebek, E. N. (2013). Supra note 63.

must be narrowly construed, evidence-based and subject to transparent adjudication. By contrast, Ethiopia's urban land expropriation practices remain largely executive-driven, with minimal judicial scrutiny or legislative oversight. The normative elasticity of public purpose within the lease-based urban system reflects deeper structural challenges in land governance, where the conflation of public interest with economic growth narratives enables elite capture and exclusionary urbanization. Rectifying this requires not only legal clarification of the public purpose standard but also the institutionalization of participatory planning, pre-expropriation judicial review and stronger protections for the urban poor and displaced communities.

A closer look at the Rural Land Administration and Use Proclamation No. 1324/2024 exposes the persistence of vague and discretionary formulations of public purpose in the rural land context, enabling far-reaching state interventions in the name of development while offering limited procedural safeguards or substantive protections for rural landholders - particularly small-scale farmers and customary land users who remain vulnerable to dispossession. Ethiopia's legal architecture for rural land governance continues to reflect a state-centric model grounded in the principle of public ownership.[143] The Rural Land Administration and Use Proclamation No. 1324/2024 reinforces this model by upholding the state's authority to expropriate land for public purposes. While the proclamation introduces certain administrative and procedural reforms, it fails to substantively clarify or limit the scope of what qualifies as "public purpose." In contrast to international best practices - which define public interest through structured legal tests of necessity, proportionality and democratic legitimacy - Ethiopia's legal framework retains a vague and open-ended definition. This normative ambiguity enables broad administrative discretion and exposes the expropriation process to potential misuse, particularly in large-scale agricultural, industrial or infrastructural developments.[144]

Critically, the proclamation lacks robust legal safeguards to ensure that land takings under the guise of public purpose genuinely serve collective welfare rather than private or politically motivated interests. Without clear legislative thresholds, independent review mechanisms or participatory governance procedures, the invocation of public purpose risks becoming a rhetorical device to justify state-led or investor-driven land transfers. The absence of meaningful judicial oversight and pre-expropriation review compounds the problem, limiting landholders' ability to contest the legitimacy of public purpose claims.

4.2. Institutional Frameworks Governing Public Purpose Expropriation in Ethiopia

In addition to legal norms, the interpretation and implementation of public purpose in expropriation depend on a network of institutions operating at federal, regional and local levels. Ministries, investment commissions and land administration offices play crucial roles in identifying, approving and enforcing expropriation decisions. However, overlapping mandates, weak inter-agency coordination and limited judicial engagement undermine consistency and accountability. This subsection explores the roles, functions and practical challenges faced by key institutions involved in operationalizing the public purpose standard.

Within the broader institutional landscape governing public purpose expropriation in Ethiopia, particular attention must be given to the fragmentation of mandates and the complex dynamics between federal and regional authorities, which significantly influence the interpretation,

[143] Ganta, B. G. (2018), Supra note 54
[144] Gebremichael B. (2016), 12.

implementation and oversight of expropriation processes.[145] Ethiopia's federal-regional land governance structure, rooted in the dual mandates of the FDRE Constitution (Articles 51(5) and 52(2d)), establishes a fragmented institutional framework that complicates the consistent interpretation and application of public purpose in expropriation.[146] While federal institutions such as the Ministry of Construction and Urban Development (MoCUD) and the Ministry of Agriculture (MoA) are tasked with policy formulation and oversight, regional states exercise significant discretion in defining and implementing public purpose standards. This decentralization has produced inconsistencies in legal interpretation, procedural safeguards and administrative enforcement, particularly due to the absence of clear legal thresholds and judicial review mechanisms.

The divergence between federal proclamations and regional practices not only weakens normative coherence but also opens space for executive overreach and politicized land acquisitions. Unlike federal systems such as Germany, where expropriation decisions must pass uniform constitutional tests and judicial scrutiny, Ethiopia lacks integrated oversight architecture capable of harmonizing public purpose determinations across jurisdictions. As a result, institutional fragmentation undermines legal predictability and accountability, calling for structural reforms that align Ethiopia's decentralized governance model with internationally accepted standards of rule of law, transparency and participatory land governance.[147]

Ethiopia's dual-tiered legislative framework assigns distinct but asymmetrically empowered roles to federal and regional legislatures in governing expropriation for public purpose. At the federal level, the House of Peoples' Representatives (HPR) is vested with constitutional authority to enact land laws, yet in practice, its role is largely limited to formal ratification. The Expropriation Proclamation No. 1161/2019 and its Implementing Regulation No. 472/2020 delegate expansive powers to executive bodies, allowing them to define and operationalize public purpose with minimal parliamentary scrutiny.[148] This executive dominance over public purpose determinations undermines the constitutional principle of checks and balances and contrasts sharply with comparative models such as South Africa's Expropriation Act (1975) or Kenya's Land Act (2012), where legislative institutions play an active role in reviewing the legitimacy, necessity and proportionality of state takings.[149] The absence of structured parliamentary oversight in Ethiopia dilutes legislative accountability and permits opaque decision-making, creating opportunities for political expediency to shape land acquisition decisions rather than genuine public need.

At the regional level, legislative oversight is even more attenuated. While regional constitutions - such as Amhara - formally assign land governance responsibilities to regional councils (e.g., ANRS Constitution, Art. 49), the reality is one of executive capture, where regional legislative bodies play a perfunctory role.[150] Directives such as ANRS Directive No. 44/2021 are typically drafted and enforced by executive agencies, with minimal debate or legislative intervention. This institutional

[145] Ganta, B. G., *Federalism and land rights in the context of post-1991 Ethiopia.* Journal of Developing Societies, 38(4), 398-420 (2020), accessed at https://journals.sagepub.com/doi/abs/10.1177/0169796X221130533.
[146] *Ibid.*
[147] *Ibid.*
[148] M. Abdo (2015), supra note 10
[149] Deininger, K. W., *Land policies for growth and poverty reduction.* World Bank Publications(2003), accessed at https://openknowledge.worldbank.org/entities/publication/05d6d32a-4620-5c6b-bdea-ed3d82a4560b.
[150] Yirsaw, B., *Expropriation, Valuation and Compensation Practice in Amhara National Regional State (ANRS)—The Case of Two Cities (Bahir-Dar and Gondar).* Nordic Journal of Surveying and Real Estate Research, 9(1) (2012), accessed at https://journal.fi/njs/article/view/4131/5872.

inertia stands in contrast to countries like India, where the Right to Fair Compensation and Transparency in Land Acquisition Act (2013) mandates rigorous scrutiny of expropriation proposals by both central and state legislatures. The Ethiopian model, by contrast, side-lines legislative oversight at both tiers, allowing public purpose claims to proceed without rigorous legal or evidentiary standards. This legislative passivity not only erodes public trust in expropriation decisions but also limits democratic input, undermining transparency and weakening landholder protections.[151] To align with international norms, Ethiopia's legislative bodies must reclaim their constitutional role in scrutinizing and contesting public purpose claims through clear legal standards and independent review mechanisms.

While legislative institutions establish the formal legal framework for expropriation, the actual interpretation and implementation of public purpose are predominantly shaped by executive bodies - whose centralized authority, broad discretion and limited oversight mechanisms raise critical concerns about transparency, consistency and accountability in practice.[152] Ethiopia's expropriation regime is marked by a highly centralized executive structure that wields expansive discretion in defining and implementing public purpose land takings. While Proclamation No. 1161/2019 and Regulation No. 472/2020 set out the formal legal framework, their execution is predominantly driven by federal and regional executive agencies, with minimal legislative oversight or judicial intervention. Institutions such as the Ministry of Construction and Urban Development (MoCUD), Ministry of Agriculture (MoA) and the Ethiopian Investment Commission (EIC) play central roles in facilitating land acquisition for infrastructure, agriculture and investment-driven projects.[153] However, the absence of procedural safeguards and independent oversight mechanisms has raised significant concerns about the arbitrary use of public purpose, undermining transparency and accountability in land governance.

At the regional and local levels, the decentralization of expropriation responsibilities has not translated into institutional autonomy or democratic accountability. Regional executives, often operating with limited legislative scrutiny, approve public purpose land acquisitions that reflect broader political and economic agendas rather than local development needs. Local administrations, including Woreda and municipal offices, are tasked with operationalizing expropriation decisions, yet they face critical resource shortages, capacity constraints and limited authority to question upper-level directives. This institutional fragility has led to inconsistent application of public purpose standards and heightened vulnerability for communities subjected to displacement and land loss. Unlike jurisdictions such as Germany, South Africa and India - where judicial and parliamentary review mechanisms act as constraints on executive overreach - Ethiopia's executive-centred model lacks such institutional checks.[154]

Given the expansive discretion exercised by executive institutions in defining and implementing public purpose, the role of the judiciary becomes vital in providing checks and balances - yet in Ethiopia's expropriation framework, judicial oversight remains limited, raising important questions about legal accountability, procedural fairness and the protection of property rights. Ethiopia's judiciary, though formally tasked with safeguarding legality and procedural fairness, plays only a limited role in expropriation governance due to structural and legal constraints. Most critically, the absence of pre-expropriation judicial review prevents courts from intervening before landholders are

[151] Gebremichael B. (2016), supra note 12.
[152] M. Abdo (2015), supra note 10.
[153] Daniel Weldegebriel, (2020) supra note 8.
[154] Ganta, B. G. (2022), supra note 145.

dispossessed - an arrangement that contradicts foundational due process principles and international standards. Proclamation No. 1161/2019, while granting landholders the right to appeal (Art. 18), undermines this by requiring property surrender prior to litigation (Art. 20(2)), denying individuals the ability to seek injunctive relief. This procedural defect facilitates unchecked executive discretion, with courts relegated to post-factum adjudication, often after irreversible harm has occurred.[155] In contrast, jurisdictions such as Germany and South Africa mandate judicial scrutiny prior to expropriation, applying legal tests of necessity, proportionality and public interest - standards Ethiopia has yet to institutionalize.

In lieu of robust judicial mechanisms, Ethiopia's administrative review bodies - such as Complaint Hearing Boards and Appeal Councils - function as substitutes but remain embedded within the executive structure. Their lack of autonomy, combined with insufficient procedural safeguards (e.g., public hearings, cross-examination rights), renders them largely ineffective in curbing unlawful expropriation or enforcing meaningful accountability. Such bodies rarely overturn state-led land takings, their decisions are often opaque and politically influenced. This institutional configuration has created a system where public purpose claims - even when serving private or elite interests - escape rigorous legal testing. Comparatively, India and Kenya have adopted expropriation tribunals and high court reviews to filter public interest claims, ensuring they are not manipulated for rent-seeking or speculative purposes.[156]

To address these systemic weaknesses, Ethiopia requires urgent institutional and legislative reforms to re-establish the judiciary as an effective guarantor of constitutional protections. Abolishing the land surrender rule (Art. 20(2)) is a necessary first step, enabling landholders to contest takings before displacement.[157] Furthermore, establishing independent land tribunals and mandating parliamentary oversight - as done in South Africa's Expropriation Act (1975) - would enhance procedural integrity and limit executive overreach. These reforms would shift public purpose from a political declaration to a judicially testable standard, aligned with human rights principles and international norms such as the Voluntary Guidelines on Tenure (VGGT) and Free, Prior and Informed Consent (FPIC). Without these safeguards, Ethiopia's current framework risks facilitating state-driven dispossession under the guise of public welfare, thereby deepening tenure insecurity and undermining social justice.[158]

5. DISCUSSION: LEGAL AMBIGUITY, GOVERNANCE RISKS AND DEVELOPMENTAL TENSIONS

The doctrine of public purpose lies at the normative core of expropriation law, serving as both the legal threshold and the moral justification for compulsory land takings. In the Ethiopian context, however, the elasticity of this doctrine - particularly as framed in Article 2(1) of Proclamation No. 1161/2019 - has introduced a troubling combination of definitional ambiguity and procedural fragility that undermines constitutional guarantees of tenure security and due process. The provision's formulation - allowing expropriation "under the belief that the land use will directly or indirectly bring better economic and social development" - rests not on verifiable standards but on discretionary administrative conviction. This subjective phrasing departs from established comparative models,

[155] Daniel Weldegebriel, (2020) supra note 8.
[156] Daniel Weldegebriel, (2020) supra note 8, M. Abdo (2015), supra note 10.
[157] Daniel Weldegebriel, (2020) supra note 8.
[158] Hoops, B. (2017), supra note 14.

such as Germany's Basic Law or South Africa's Expropriation Bill (2020), where public purpose is judicially justiciable, legislatively codified and subject to necessity and proportionality tests.

In Ethiopia, the absence of such legal thresholds renders public purpose an indeterminate and malleable concept, susceptible to instrumentalization by powerful actors and detached from empirical metrics of societal benefit. This definitional vagueness, when embedded in an executive-dominated institutional architecture, facilitates what scholars such as Cotula (2007) and Harvey (2003) describe as accumulation by dispossession.[159] The lack of a codified typology of acceptable public purposes, coupled with the absence of pre-expropriation judicial review, affords government authorities broad discretion to repurpose land without evidentiary scrutiny or participatory safeguards. Landholders are not meaningfully consulted in the decision-making process and redress mechanisms - both judicial and administrative - remain inaccessible or subordinated to political hierarchies.[160] Comparative experiences in Kenya, where the National Land Commission serves as an independent oversight body, or in India, where the 2013 Land Acquisition Act mandates social impact assessments and community consent for certain acquisitions, illustrate that procedural rigor and legal transparency are not antithetical to development, but essential to its legitimacy.

Particularly problematic is the reliance on indirect benefits - such as job creation, increased tax revenues or economic modernization - as justifications for expropriation. While such rationales are frequently invoked in Ethiopia's policy discourse, including for industrial parks and commercial agriculture, studies consistently show that promised benefits rarely materialize for displaced communities.[161] Projects like the Hawassa Industrial Park and the Kuraz Sugar Development Project displaced thousands of smallholders with limited compensation, minimal local employment and negligible reintegration support. The state's failure to conduct baseline socio-economic assessments or post-project evaluations further obscures whether these expropriations yield verifiable public value[162]. Without objective indicators or independent audits, the invocation of public purpose becomes an administrative fiction - a rhetorical device cloaking elite-centric development trajectories.[163]

The assumption that new land uses are inherently more efficient than previous ones must be critically interrogated. Ethiopia's expropriation discourse presumes that reallocating land to state-favoured investors or large-scale commercial actors will yield superior economic outcomes. Yet empirical evidence challenges this premise. Holden and Ghebru (2016), for instance, demonstrate that smallholder farmers - when supported with inputs, infrastructure and market access - can outperform capital-intensive agribusinesses in terms of land productivity and employment per hectare. Efficiency, when defined solely in terms of capital accumulation or GDP contribution, ignores broader metrics of social welfare, livelihood security and environmental sustainability. In the absence of multi-

[159] Cotula, L., *Sustainable Markets Investment Briefings: Foreign investment contracts*, (2007), accessed at https://www.iied.org/17015iied.

[160] Harvey, D. R., *Agri-environmental relationships and multi-functionality: Further considerations.* World Economy, 26(5), 705-725 (2003), accessed at https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9701.00543.

[161] Deininger, K., *Land policy reforms. Analyzing the distributional impact of reforms,* Volume One. Washington, DC, World Bank, 213-259(2005), accessed at https://openknowledge.worldbank.org/entities/publication/11adab30-05f2-5463-b532-034c648e4fb6 .

[162] Gebresenbet, F., *Land acquisitions, the politics of dispossession, and state-remaking in Gambella, Western Ethiopia.* Africa Spectrum, 51(1), 5-28(2016), accessed at https://www.jstor.org/stable/43941302.

[163] Lavers, T., '*Land grab' as development strategy? The political economy of agricultural investment in Ethiopia.* Journal of Peasant Studies, 39(1), 105-132 (2012), accessed at https://www.tandfonline.com/ doi/abs/ 10.1080/03066150.2011.652091.

dimensional efficiency assessments - including cost-benefit analysis, livelihood tracking and ecological impact - expropriation risks becoming a tool of speculative land conversion rather than sustainable development.[164]

These normative and empirical failures are compounded by systemic disregard for spatial planning laws. Article 2(1) of Proclamation No. 1161/2019 requires alignment between expropriation decisions and approved land use or structural plans. Yet, in practice, there is no institutional mechanism to verify such alignment. Unlike Germany, where urban planning commissions validate land acquisitions through rigorous spatial coherence reviews, or South Africa where expropriation must conform to Integrated Development Plans (IDPs), Ethiopia allows regional and federal authorities to unilaterally reallocate land based on opaque criteria. In peri-urban areas especially, where land rights are weakly formalized, this has resulted in fragmented development, speculative land grabs and intensified spatial inequality. The absence of post-expropriation land-use audits permits further deviations, often facilitating high-end real estate development under the guise of public interest.

These structural flaws feed directly into growing public distrust in the expropriation regime. Legal redress is constrained by procedural asymmetries: landholders must relinquish property before mounting legal challenges (Article 20(2)) and courts typically defer to administrative determinations of public purpose. As a result, affected communities experience expropriation not as a lawful instrument of collective advancement but as a top-down mechanism of extraction and exclusion. This perception is especially acute in rural and indigenous areas, where land is not merely a commodity but a repository of identity, culture and survival. As trust in state institutions erodes, the risks of resistance, land conflict and institutional illegitimacy escalate - a trend documented in comparative settings such as Nigeria, Cambodia and Uganda.[165]

Ethiopia's legal framework reflects an unresolved tension between a developmentalist paradigm that privileges executive agility and a rights-based paradigm grounded in procedural fairness and distributive equity. The former emphasizes rapid transformation, investor confidence and infrastructure expansion, while the latter foregrounds legal predictability, participation and socio-economic justice. Yet, these paradigms need not be mutually exclusive. Hybrid models from India and South Africa demonstrate that strong procedural safeguards and independent oversight can coexist with developmental ambition. India's LARR Act (2013) requires pre-acquisition judicial review, clear definitions of public purpose and resettlement plans; South Africa's expropriation regime integrates environmental impact assessments, parliamentary oversight and judicial remedies. These systems provide instructive models for Ethiopia's reform trajectory.

To transform expropriation into a legitimate vehicle for equitable development, Ethiopia must initiate structural and normative reforms. First, the doctrine of public purpose should be anchored in statutory law through a clear, exhaustive list of permissible objectives, subject to regular legislative review. Second, pre-dispossession judicial review must be mandated to ensure that land takings satisfy tests of necessity, proportionality and genuine public interest. Third, expropriation decisions must be vetted by independent spatial and infrastructural planning authorities to ensure alignment with long-term development strategies. Fourth, participatory processes - including stakeholder consultations,

[164] Ghebru, H., & Holden, S., *Land rental markets and rural poverty dynamics in Northern Ethiopia: Panel data evidence using survival models.* Review of Development Economics, 23(1), 131-154 (2019), accessed at https://onlinelibrary.wiley.com/doi/abs/10.1111/rode.12548.

[165] Hoops, B. (2017), supra note 14.

social and environmental impact assessments and local review panels - must be institutionalized and made legally binding. Finally, post-expropriation audits should be conducted to assess whether land was used as declared and to measure the distributive outcomes of the taking.[166]

In the final analysis, the legitimacy of Ethiopia's expropriation framework hinges not on its alignment with aspirational development narratives but on its fidelity to constitutional norms, human rights obligations and democratic governance principles. Without definitional precision, procedural integrity and institutional oversight, the doctrine of public purpose risks devolving into a technocratic myth - used to rationalize dispossession rather than to advance the public good. Ensuring that expropriation serves as an instrument of transformative and inclusive development, rather than a mechanism for elite accumulation, requires nothing short of a paradigm shift in how land governance is conceptualized, legislated and enforced in Ethiopia.[167]

The foregoing analysis reveals that Ethiopia's public purpose doctrine - marked by definitional ambiguity, institutional opacity and procedural asymmetries - has evolved into a legal instrument that disproportionately favours executive authority while undermining constitutional commitments to tenure security, due process and inclusive development. Addressing these multifaceted deficits necessitates a comprehensive and interdisciplinary reform agenda, one that reconstitutes the normative foundations, institutional architecture and implementation strategies of expropriation law in line with international best practices and rights-based governance paradigms.

CONCLUSION AND RECOMMENDATIONS

Having explored the conceptual foundations, comparative jurisprudence, international legal norms and the Ethiopian legal and institutional context surrounding public purpose expropriation, the concluding section distils the article's central arguments and advances a normative case for reform. It underscores the structural and doctrinal deficiencies in Ethiopia's current framework and highlights the urgency of reframing public purpose as a justiciable, transparent and rights-based principle of land governance.

Ethiopia's public purpose doctrine, as codified under Article 2(1) of Proclamation No. 1161/2019, stands at a crossroads between normative aspiration and institutional disrepair. Its definitional ambiguity, permissive phrasing and lack of enforceable safeguards have rendered the doctrine susceptible to instrumentalization by political and economic elites. Far from functioning as a shield for collective welfare, the current formulation permits sweeping discretionary authority without procedural discipline, thereby undermining constitutional principles of legality, transparency and accountability. The consequences are not abstract. They materialize in the form of tenure insecurity, livelihood disintegration, spatial inequality and public disillusionment - especially in communities where land is not merely an asset but a locus of identity, culture and social continuity.

Empirical and comparative evidence confirms that legal systems which rely on subjective or open-ended notions of public purpose invariably invite abuse, foster elite capture and generate social unrest. In contrast, jurisdictions such as Germany, India, South Africa and Kenya have demonstrated the feasibility of embedding public purpose within constitutional, statutory and judicially testable frameworks. These models combine codified definitions, proportionality analysis, judicial review and participatory planning mechanisms to ensure that expropriation remains both legitimate and

[166] Daniel Weldegebriel, (2020) supra note 8.
[167] M. Abdo (2015), supra note 10.

accountable. Ethiopia's current trajectory—marked by executive dominance, procedural opacity and planning-law circumvention - deviates significantly from these global norms and exposes the expropriation system to erosion of legitimacy and rule-of-law principles.

Thus, reforming the expropriation regime is not a matter of technocratic refinement but of normative recalibration. The doctrine of public purpose must be treated not as an administrative convenience but as a constitutional guarantee - bounded, testable and grounded in distributive justice. Statutory codification of legitimate expropriation grounds, the institutionalization of judicial and independent oversight and the embedding of participatory and inclusive planning are all essential pillars of a just land governance system. These reforms must also be accompanied by mechanisms that ensure landholders - particularly those in rural, informal or marginalized settings - are not only protected but meaningfully engaged throughout the land acquisition process.

The implications extend beyond Ethiopia. In a world where land has become a central site of contestation - whether in relation to urbanization, climate adaptation or economic transformation - the integrity of public purpose doctrines will define whether expropriation is a tool of social progress or a mechanism of legalized exclusion. Ethiopia's experience offers a critical lesson for the Global South: that development, if not grounded in rights, legality and public accountability, can easily become a euphemism for dispossession. Reimagining public purpose as a doctrinal, institutional and ethical commitment to justice is not only possible - it is imperative.

Reforming Ethiopia's expropriation regime requires more than technical adjustments, it demands a fundamental rethink–of the public purpose doctrine - doctrinally, institutionally and operationally. Doctrinal clarity, institutional accountability and rights-based implementation must work together to ensure that land acquisition serves inclusive development rather than administrative convenience or elite interests. The following recommendations outline key reforms to advance this objective.

At the doctrinal level, the concept of "public purpose" must be unambiguously codified in statutory law. The current formulation under Article 2(1) of Proclamation No. 1161/2019 - permitting expropriation "under the belief" that land use may lead to development - is not only conceptually vague but institutionally dangerous. Comparative experiences from Poland, Chile and Ghana show the imperative of enumerating permissible grounds for expropriation in specific, restrictive terms, such as public infrastructure, defence, or utilities. Such definitional precision curbs discretionary abuse and enhances legal predictability. Moreover, codification should be accompanied by mandatory necessity and proportionality tests, ensuring that any expropriation meets demonstrable public needs and represents the least intrusive means of achieving development objectives. These substantive safeguards serve as normative bulwarks against arbitrary land takings and ideological distortions of the "public interest."

Institutional reform must confront the entrenched asymmetries of power that currently define Ethiopia's expropriation governance. The absence of pre-dispossession judicial review and the subordination of grievance mechanisms to executive hierarchies have fostered a regime in which legality is presumed, rather than proven. To reverse this dynamic, Ethiopia should establish a dedicated judicial mechanism - such as an independent Land Acquisition Tribunal - authorized to review the legality, procedural integrity and proportionality of expropriation claims before dispossession occurs. In parallel, an autonomous oversight body - akin to Kenya's National Land Commission or South Korea's Expropriation Review Commission - should be created with binding authority to assess the conformity of expropriation decisions with statutory mandates and spatial

development plans. These institutions would serve not only as technical regulators but as normative gatekeepers ensuring that land acquisition remains tethered to law, evidence and democratic deliberation.

Policy implementation must be reoriented around a rights-sensitive, developmentally inclusive paradigm. Expropriation inflicts multidimensional harm - economic, social, cultural and spatial - that cannot be redressed by monetary compensation alone. A holistic restoration approach should be adopted, including alternatives such as land-for-land schemes, joint ventures with displaced communities and community benefit-sharing agreements. These models, practiced in countries like India and Brazil, enhance distributive equity and mitigate conflict. Institutionalizing participatory governance mechanisms - such as mandatory stakeholder consultations, environmental and social impact assessments and community review panels - can further democratize decision-making and elevate the voices of affected populations. Particular safeguards must be introduced to protect the rights of customary land users, pastoralist groups and informal urban dwellers, whose tenure claims are often invisible in statutory frameworks but indispensable to social stability and livelihood resilience. Legal pluralism should not be seen as a complication but as a normative necessity for building equitable land systems.

LEGAL RECOGNITION AND SELF IDENTIFICATION OF PEOPLE WITH MIXED ETHNIC IDENTITIES IN ETHIOPIA

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Abstract

This study interrogates the constitutional and socio-political invisibility of individuals with mixed ethnic identities in Ethiopia; an omission rooted in the country's rigid ethnic federalism. While the 1995 FDRE Constitution champions collective ethnic rights and self-determination, it fails to recognize people with mixed ethnic identities of those born to parents from different ethnic backgrounds. Through a mixed-methods approach combining doctrinal legal analysis and interpretive phenomenological inquiry, the research captures the lived experiences of mixed-ethnic students at the University of Gondar. Three distinct patterns of self-identification emerge: singular affiliation, blended identity, and categorical rejection, each shaped by cultural exposure, lineage, institutional labelling, and socio-political constraints. The findings reveal how Ethiopia's legal framework, grounded in primordial definitions of ethnicity, marginalizes mixed-ethnic individuals by denying them recognition, representation, and equitable access to rights. This paper calls for transformative constitutional reform that embraces identity fluidity, dismantles exclusionary categorization, and aligns national law with international human rights obligations. By centering the voices of those navigating complex ethnic realities, the study contributes to a more inclusive discourse on identity, and legal recognition in multi-ethnic societies.

Keywords: Mixed Ethnic Identity, Ethnic Federalism, Self-Identification, FDRE Constitution, Legal Recognition, Identity Politics, Ethiopia

INTRODUCTION

In human interaction and communication, questions like 'What are you?' and 'Where are you from?' are commonly asked[1] and also be asked of oneself "Who am I?". They can be asked as an individual or a group member.[2] This can emerge from a person's interest in knowing with whom one communicates[3], out of confusion about the individual's self. However, the reason people bother about those questions is that all are signals of identity. Identity is the central

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[1] Olyedemi, M. (2013). Towards a psychology of mixed-race identity development in the United Kingdom (Doctoral dissertation). United Kingdom.
[2] Vignoles, L. (2017). Identity: Personal and Social. In K. D. Synder (Ed.), Oxford Handbook of Personality and Social Psychology. Oxford University Press.
[3] Olyedemi, M. (2013).

theme in the lives of human beings, involving a wide range of psychological and social processes.[4]

Ethnicity, part of human social identity,[5] is a cultural 'vessel' whose components change over time and boundaries shift in situations of contact with another group.[6] This concept of ethnicity can further be understood from the constructivist perspectives of identity and ethnicity. The constructivist approach claims ethnic identity is socially constructed through social interaction, stratification and social processes.[7]

With the concept of identity as where one belongs and what is expressed as self-image,[8] ethnic identity appears in identification with one ethnic tradition as an exclusive model of shared life, which is close to other social groups. However, it seems confusing when applied to people of mixed ethnic backgrounds. In this regard, the dynamism of identification and associated circumstances of ethnic identification are explored in this research.

The phrase “people with mixed identities” or ‘’mixed ethnic heritage’’ lacks a universally accepted definition.[9] Scholars and authorities have tried to provide working and tentative definitions but consensus remains elusive.[10] The absence of a universal, authoritative definition does not justify denying rights to people with mixed identities. International instruments that deal with this group often avoid explicitly defining the term, focusing instead on safeguarding the rights of all individuals regardless of their diverse backgrounds and identities. In this research context, people with mixed identities refer to individuals whose heritage is from two diverse ancestral backgrounds. These individuals embody the fusion of elements from more than one ethnicity, creating a unique mix reflecting the interconnectedness of human history and culture.[11]

Ethiopia is renowned for its ethnic diversity, with over 80 distinct groups. This diversity has historical roots, including the Italian occupation of the 1930s, which contributed to ethnic diversification.[12] The largest ethnic groups include the Oromo, Amhara, Tigray and Somali,

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[4] Vignoles, L. (2017).
[5] Anne, F. (1994). Ethnicity. Edinburgh: Edinburgh University Press.
[6] Barth, F. (1998). *Ethnic groups and boundaries: The social organization of cultural differences.* Waveland.
[7] Ibid
[8] Golubović, Z. (2014). *An anthropological conceptualization of identity.* Synthesis Philosophica.
[9] People with mixed identities are individuals who embody multiple cultural, ethnic, or national backgrounds. This can include those with parents from different racial or ethnic groups, individuals who have lived in multiple countries, or those who navigate various cultural contexts in their daily lives. These identities are complex and multifaceted, influencing personal and social experiences.
[10] For instance see the following: Root, M. P. P. (1996). *The Multiracial Experience: Racial Borders as the New Frontier*. Thousand Oaks, CA: Sage Publications. Root explores the diverse experiences of multiracial individuals and the challenges they face in society. Rockquemore, K. A., & Brunsma, D. L. (2002). *Beyond Black: Biracial Identity in America*. Thousand Oaks, CA: Sage Publications. This book examines the identity formation of biracial individuals in the United States.Tashiro, C. (2002). *Standing on Both Feet: Voices of Older Mixed-Race Americans*. Boulder, CO: University Press of Colorado. Tashiro provides insights into the experiences of older mixed-race individuals and their identity struggles. Williams, D. R., & Mohammed, S. A. (2009). Discrimination and racial disparities in health: Evidence and needed research. *Journal of Behavioral Medicine*, 32(1), 20-47. This article discusses the impact of racial discrimination on health disparities, including those affecting mixed-race individuals. Morning, A. (2008). Ethnic classification in global perspective: A cross-national survey of the US, Canada, and Mexico. *Comparative Sociology*, 7(4), 527-570. Morning's study highlights the complexities of ethnic classification and the challenges faced by individuals with mixed identities.
[11] Kim, H. S., Sherman, D. K., & Taylor, S. E. (2008). Culture and social support. *American Psychologist*, 63(6), 518–526.
[12] Yetena, Y. D. (2022). Discursive trajectories in the making of Amhara identity in Ethiopia. Nations and Nationalism, 28(4), 1267-1281.

each with unique languages, cultures and histories. The ethno-linguistically based federal government struggles to harmonize multiple ethnic interests with the need for a shared national vision impacting Ethiopia's social, political, and economic dynamics.

People, who have mixed ethnic identities or multi-ethnic, are significant in number in Ethiopia, particularly in urban areas.[13] Their identity is influenced by factors such as their family background, politics, and cultural knowledge including language, geographic location, socio-historical context and personal choice. In general, mixed-ethnic populations are vastly under-reported due to political pressures, discrimination and data biases. Similarly, the estimated population of mixed-ethnic individuals in Ethiopia varies widely, with censuses reporting between 13,496 (1994) and 47,798 (1984), likely under-reported due to political pressures, fear of discrimination and biased data collection.[14] The 2016 Demographic and Health Survey reveals low inter-ethnic (12.4%) and inter-religious (2.5%) marriage rates, reflecting limited integration.[15] Comparing this with other African countries, inter-ethnic marriage rates vary widely, for example in Sub-Saharan Africa the average inter-ethnic marriage rate is around 22.3%, with countries like Gabon and Zambia having rates approaching 50% for recent marriages.[16] Inter-religious marriage rates are generally lower in Sub-Saharan Africa, averaging around 5%.[17]

Rittenour indicates that having mixed ethnic identity can have advantages, such as being more culturally aware, creative, flexible and resilient, but also difficulties, such as facing discrimination, prejudice, identity confusion and marginalization.[18] While it's not exclusive to those with mixed ethnic identities, the concept of identity is inherently fluid and dynamic. It evolves and adapts over time and across different contexts, influenced by the ever-changing societal and cultural environments. This dynamic nature of identity highlights the richness and complexity of human experience, reflecting how we continuously reshape who we are based on our surroundings and experiences.[19] In this respect, this paper challenges the existing customarily and de facto ways of identifying and catagorizing people by ethnicity and argues for a more inclusive recognition of people with mixed ethnic identity under the Ethiopian federal arrangement.

The 1995 FDRE Constitution established Ethiopia as a federal state, recognizing the autonomy of various ethnic groups while aiming to maintain national unity. It guarantees fundamental human rights, judicial independence and the rule of law, providing a legal basis

[13] In previous Ethiopian censuses, specifically in 1994 and 2007, ethnic identification was mandatory. Individuals had to identify with a specific ethnic group, often linking with their father's ethnic background. Those who did not fit into a single ethnic category were generally categorized under "Other" or "Mixed Nationalities" A, Camille L & Dalaya. (2022). Unpacking the Addis Ababan Exceptionalism—Living and Identity in Ethiopia's Capital. *Urban Forum*.

[14] Assefa T. (2021). Ethnic categorization and mixed identities in Ethiopia: A critical analysis. Addis Ababa UniversityPress.

[15] Central Statistical Agency (CSA) [Ethiopia. (2017). Ethiopia Demographic and Health Survey 2016. Addis Ababa, Ethiopia

[16] Smith, L., (2013). *Making citizens in Africa: Ethnicity, gender, and national identity in Ethiopia* (No. 125). Cambridge University Press.

[17] Smith, L. (2020). *Marriage Patterns in Sub-Saharan Africa*. Cambridge University Press.

[18] Rittenour, C. (2017). Perceived Benefits and Challenges of a Multiethnic-Racial Identity: Insight From Adults With Mixed Heritage. *Identity*. This study identifies themes related to the benefits and challenges of having a mixed heritage. See also JA, B. (2012). Ethnic studies, citizenship education, and the public good. *Intercult Educ*, 23(6):467–473.

[19] Shastra, N. (2023). Understanding the Sociological School of Jurisprudence: Exploring the Intersection of Law and Society. *Humanities CORE*.

for ethnic federalism. The federal system divides powers between the central government and regional states, each with its own judiciary. This structure aims to address the diverse needs of Ethiopia's ethnic groups by allowing regional autonomy. However, challenges such as representation, resource distribution and power dynamics among ethnic groups persist, impacting the effectiveness of the legal system in managing ethnic diversity.

This article utilizes a mixed-methods approach, integrating doctrinal and non-doctrinal legal research. Through interpretive phenomenological analysis, it delves into the lived experiences of mixed-ethnic individuals via in-depth, face-to-face interviews. Purposive sampling identified 10 students from the University of Gondar who self-identified as having parents from two distinct ethnic groups. The University of Gondar was chosen for its convenience, one researcher was teaching there and the other was a student, and for its diverse student population from various regions of the country, providing an ideal setting to explore mixed ethnic identities and their sense of belonging. This combination of convenience and diversity created a unique and practical research context. Maximum variation sampling was attempted, considering gender, religion and birthplace, but limited availability constrained this effort. Snowball sampling supplemented recruitment. Data saturation justified the number of informants. In-depth, semi-structured interviews were conducted face-to-face in Amharic, capturing authentic narratives. An interview guide included demographic questions and open-ended prompts about identity negotiation, societal perceptions and systemic challenges. Follow-up interviews enriched the data depth. Interviews were transcribed verbatim, translated into English and analyzed using thematic analysis. Emergent themes such as “singular affiliation” and “categorical rejection” were identified.

This article highlights the need for more inclusive policies recognizing the fluid and dynamic nature of mixed ethnic identities. It calls for greater legal and societal recognition of mixed-ethnic individuals, advocating for their rights to equality, dignity and participation. By shedding light on the lived experiences of mixed-ethnic individuals, this study contributes to the broader discourse on ethnicity, identity and legal recognition in Ethiopia and beyond.

This article is organized into four main sections. The first section explores the theoretical underpinnings of ethnicity, the second section discusses the political and legal implications for people with mixed ethnic identities in Ethiopia, the third delves into various dimensions of ethnic identification through qualitative inquiry, and the final section concludes the paper and discusses the implications of the findings.

1. CONCEPTUALIZING ETHNIC IDENTITY

Ethnicity in sociological understanding refers to a particular way of defining others and oneself.[20] Weber, a classical sociologist, defined ethnic groups as "human groups that entertain a subjective belief in their common descent because of similarities of physical type or custom or both."[21] This definition emphasizes that the belief in common descent is subjective and based on perceived similarities rather than objective, verifiable genetic or

[20] Cornell, S. & Hartman. (1996). *Ethnicity and Race: Making Identities in a Changing World.* SAGE.
[21] Isajiw, W. (1993). *Definition and Dimensions of Ethnicity: A Theoretical Framework. Challenges of Measuring an Ethnic World, Science, Politics and Reality.*

biological connections. Therefore, while common descent is crucial in identifying ethnicity and ethnic groups according to Weber, it is important to note that this common descent is based on subjective belief rather than objective evidence. Similarly, Cornell and Hartman highlight the importance of descent and kinship in contemporary social theories of ethnicity is diminishing.[22] They refer to ethnicity as shared culture; an ethnic group is identified as a group of individuals distinguished by language, religion or other patterns of shared behaviour.

Gray defined an ethnic group as a self-perceived collective of people who uphold a set of customs distinct from those of others with whom they interact.[23] Folk, religious customs and beliefs, language, a feeling of historical continuity and a shared ancestry or place of origin are examples of such traditions. Therefore, ethnicity is a sense of continuity with a real or imagined past that is upheld as a crucial component of an individual's identity.

In the writing of Radhakrishnan, ethnicity is also intimately related to the individual need for a collective continuity as a belonging member of some group.[24] The individual senses some degree of threat to their survival if the group or lineage is threatened with extinction. Ethnicity includes a sense of personal survival through an historical continuity of belonging that extends beyond the self.[25] For this reason, failure to remain in one's group leads to feelings of guilt for some individuals. It is a sort of murder committed to one's ancestors, including parents, who continue to exist as long as some of their cultural symbols are carried forward from the past into the present.[26]

Some elements characterizing ethnic identification are lineage groups or membership in some societies. The subjective definition of ethnic identification differs, however, as do its functions. A lineage group or caste perceives itself as an interdependent unit of society, whereas members of an ethnic group stick to a sense of having been an independent people, in origin at least, whatever unique role they have collectively come to play in a pluralistic society.[27]

With all the characteristics and features of ethnic identity, the experience of people who share a mixed ethnic background from their parents appeared as an area of inquiry in this study. An individual born from a mother of one ethnic group and a father of another ethnic group probably shares some elements of both parents' ethnicity. Thus, the determining circumstances for choosing an ethnic group of people of mixed ethnic backgrounds appear to be questioned. In this regard, both individuals and society have their part in defining a group of people and their ethnic identification. Accordingly, this study focuses on ethnic identification, recognition, inclusion and the legal and social barriers they face.

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[22] Cornell, S. & Hartman. (1996).
[23] Gray, D. (2004). *Collecting primary data: Interviewing. Doing Research in the Real World.* Thousand Oaks, California: SAGE.
[24] Radhakrishnan, R. (1987). *Culture as common ground: Ethnicity and beyond*. MELUS, 14(2), 5-19. https://doi.org/10.2307/467349
[25] Gray, D. (2004).
[26] Anne, F. (1994). Ethnicity. Edinburgh: Edinburgh University Press.
[27] Ross, L. R. (1996). *Ethnic Identity: Creation, Conflict, and Accommodation.* AltaMira Press,U.S.

The 1995 FDRE Constitution under Article 1 establishes Ethiopia as a federal state ensuring power-sharing between the central government and regional units. Article 8 is declaring sovereignty and resides in nation, nationality and people, framing the state as a voluntary union of ethnic communities. Article 5 of the same Constitution recognizes all Ethiopian languages equally and empowering regions to adopt local languages for governance and education, with over 57 languages now used in schools. Article 47 divides Ethiopia into ethnically defined regional states and chartered cities, formalizing territorial autonomy. The Constitution's emphasis on ethnic sovereignty has enabled cultural preservation, self-governance and secession as a symbolic right, though no group has successfully exercised this due to political, logistical and demographic complexities. Despite progressive provisions, implementation gaps and contradictions persist, such as centralized party dominance undermining regional autonomy, minority marginalization within ethnically defined regions and border disputes revealing flaws in the ethnic-territorial model.

Most importantly, the FDRE Constitution defines ethnic groups as "Nations, Nationalities, and Peoples," emphasizing their right to self-determination, including the right to secession. According to Article 39, these groups are characterized by shared culture, customs, language and a common psychological makeup. This definition aligns with Weber's sociological understanding of ethnicity, which highlights common descent and shared customs. However, it also incorporates modern perspectives, such as those of Cornell and Hartman, who emphasize shared culture over descent. In the Ethiopian context, the constitutional definition provides a legal framework for recognizing and preserving the diverse cultural identities within the country. This approach is somewhat unique compared with other sociological theories, which may focus more on the social and cultural aspects without the legal implications of self-determination and secession.

1.1. Theoretical Underpinnings of Ethnicity

Ethnic groups are groups of people with a common ancestry, culture, language, religion, or history and who feel a sense of belonging and solidarity with each other.[28] However, people with mixed ethnic identities may not fall under this definition since they emerged from various factors, such as intermarriage, migration, adoption, conversion or self-identification[29] being the results of different ethnic groups who have different cultures, languages, religions and histories and who may not feel a sense of belonging and solidarity with each other since they lack a common denominator.[30] As a result, they may not qualify for the requirement of the traditional meaning of ethnicity/ethnic group. Mixed ethnic identity can be manifested in various ways, such as through names, languages, religions, cultures or affiliations. It is not a novel or uncommon phenomenon, as it has occurred throughout history and across cultures.[31]

Mixed ethnic identity has become more noticeable and widespread in countries like Ethiopia, due to the increased mobility, diversity and interconnection of people and societies. This

[28] Britannica, E. (2024). *ethnic group.* Encyclopedia Britannica.
[29] Stephan, C. W. (1992). Mixed-heritage individuals: Ethnic identity and trait characteristics. In M. P. Root (Ed.), *Racially mixed people in America* (pp. 50–63).
[30] Stephan, C. W. (1992).
[31] Stephan, C. W. (1992).

section of the paper explores the theoretical explanations of ethnicity. For the purpose of this paper, by borrowing the idea of Stephen, mixed ethnic identity denotes the identification and experience of individuals who belong to more than one ethnic group.[32] Ethnicity is a complex and disputed concept that can be approached through three main perspectives: primordialism, constructivism, and instrumentalism.

Primordialism claims that ethnicity is an inherent characteristic of humans, shaped by genes, culture or history.[33] Some contend that ethnicity is defined by common cultural features, while others maintain it is affected by historical ties.[34] It implies ethnic groups and identities are ancient, stable and uniform, and cannot be easily modified or mixed. On the other hand, constructivism argues that ethnicity is a social and political construct based on subjective, contextual and relational factors.[35] Some constructivists maintain ethnicity is a matter of self-identification, social interaction or political mobilization.[36] Others maintain ethnicity is a result of political mobilization, varying across situations and settings. Constructivism suggests ethnic groups and identities are new, fluid and diverse, and can be easily formed, changed or mixed.[37] As indicated above, ethnicity is innate, rooted in shared ancestry, language or culture. In this respect, the FDRE Constitution's definition of nation nationalities and peoples emphasizes "common culture, language, or psychological makeup," aligning with Weber's focus on subjective belief in shared descent. This framework struggles to accommodate mixed-ethnicity individuals or urban populations, where inter-marriage and migration blur primordial boundaries.

The instrumentalist theory of ethnicity proposes ethnicity as a tactic used by individuals and groups to attain goals such as political power, economic resources or social status. Similar to constructivism, they claim ethnicity is not a fixed trait but a flexible and dynamic one that can vary depending on the context and interests of the actors.[38] This theory has been used to account for ethnic conflict, voting, social movements, and federalism, but has been condemned for being too simplistic, deterministic and cynical, and neglecting cultural, historical and emotional aspects of ethnicity.[39] The constructivist perspective on ethnicity contends an attractive framework for people who have a mixed ethnic identity, as it reflects their reality and values their diversity.

The constructivist perspective opposes the primordial and instrumentalist perspectives, which maintain ethnic identity is either stable or adaptable, by showing that ethnic identity is dynamic and dependent.[40] It discloses that ethnic identity is influenced and changed by social

[32] Stephan, C. W. (1992).
[33] Geertz, C. (1963). The Integrative Revolution: Primordial Sentiments and Politics in the New States. In C. Geertz, *Old Societies and New States: The Quest for Modernity in Asia and Africa* (pp. 255–310). London: London Free Press.
[34] Geertz, C. (1963).
[35] Chandra, K. (2012). *Constructivist theories of ethnic politics.* ISBN 978-0-19-989315-7. OCLC 829678440.: Oxford University Press.
[36] Chandra, K. (2012).
[37] Chandra, K. (2012).
[38] Esteban, Joan, Laura Mayoral and Debraj Ray. (2012). Ethnicity and Conflict: An Empirical Study. *American Economic Review*, 102 (4), 1310–1342.
[39] Ibid.
[40]Williams, D. (2015). How Useful are the Main Existing Theories of Ethnic Conflict? *Academic Journal of Interdisciplinary Studies,* 4 (1), 147–152.

interactions, political processes and historical events and that it can change over time and across situations.[41] The constructivist perspective also accepts that people who have a mixed ethnic identity have multiple and complex ethnic affiliations and they can decide and express their ethnic identity in different ways. The constructivist perspective enables people who have a mixed ethnic identity to have agency, choice and diversity in their ethnic identity.[42]

According to the constructivist, ethnicity is fluid, socially constructed and shaped by state policies, historical narratives and political mobilization.[43] In the context of Ethiopia, the FDRE Constitution promlugates ethnicity as a political identity, framing Ethiopia as a collection of "Nations, Nationalities, and Peoples".[44] The Ethiopian federal system institutionalizes ethnic boundaries by creating ethnolinguistic regions, reinforcing territorialized identities.[45]

The instrumentalist perspective on ethnicity, in contrast, is more troublesome for people who have a mixed ethnic identity, as it questions their authenticity and meaning. The perspective views ethnic identity as a strategic and rational choice made by individuals and groups to achieve their interests and goals. It suggests that ethnic identity can be used as a tool or resource to achieve specific objectives, but it does not negate the emotional and cultural significance of ethnic belonging. Ethnic identities can be both strategically useful and deeply meaningful, reflecting a complex interplay of rational choice and genuine cultural attachment.[46] Litreature in Ethiopia indicates Ethnicity is a tool for political or economic gain (e.g., resource allocation, electoral mobilization).[47]

Research shows that individuals with mixed ethnic identities often strategically navigate their identities, switching or hiding aspects based on context and incentives.[48] This flexibility challenges the instrumentalist view reducing ethnicity to a mere tool for achieving goals. Theoretical frameworks typically assume clear ethnic identities, overlooking the unique experiences of those with mixed backgrounds.[49] Studies highlight the complexity of verifying

[41] Williams, D. (2015).
[42] Williams, D. (2015).
[43] Nagel, J. (1994). Constructing ethnicity: Creating and recreating ethnic identity and culture. *Social Problems, 41*(1), 152–176. https://doi.org/10.2307/3096847
[44] Article 8 of the FDRE Constitution
[45] Article 47 of the FDRE Constitution
[46] Chandra, K. (2012).
[47] Ethnicity in Ethiopia has been strategically utilized for political and economic gain, particularly through resource allocation and electoral mobilization. Studies highlight how ethnic identity formation and politicized statehood narratives have influenced political agency and resource distribution, often leading to increased ethnic tensions and competition. For the details please see: Aalen, L. (2006). Ethnic federalism and self-determination for nationalities in a semi-authoritarian state: The case of Ethiopia. *International Journal on Minority and Group Rights*, 13(2-3), 243-261.; Abbink, J. (2011). Ethnic-based federalism and ethnicity in Ethiopia: Reassessing the experiment after 20 years. *Journal of Eastern African Studies*, 5(4), 596-618.; Berhanu, K. (2019). Challenges of politicized statehood narratives and identity politics in Ethiopia. *African Studies Review*, 62(3), 1-23.
[48] Sociology Institute. (2023). *Instrumentalism and ethnic identity: Strategic fluid boundaries*. Retrieved from https://sociology.institute/sociological-theories-concepts/instrumentalism-ethnic-identity-strategic-fluid-boundaries/
[49] Epstein, G. S., & Heizler (Cohen), O. (2015). Ethnic identity: A theoretical framework. *IZA Journal of Migration, 4*(9). https://doi.org/10.1186/s40176-015-0033-z

ethnic identity for mixed individuals, suggesting that existing theories may not fully capture their nuances.[50]

1.2. Actors in Ethnic Identity Construction

Barth articulated the notion of identity and ethnicity as mutable.[51] He argued that ethnicity is a product of social attribution, a labelling process by oneself and others. According to Nagel, ethnic identity is the outcome of a dialectical process involving both internal and external perspectives, as well as people's self-identification and others' identity (ethnic) designations.[52] According to this perspective, one's ethnic identity is a composite of one's view of oneself and the view held by others about one's ethnic identity. As such, ethnicity can change and vary according to situations and audiences. In the explanations of Nagel, the chosen ethnic identity is determined by the individuals' perception of its meaning to different audiences, its salience to various social contexts and its utility in other settings.[53]

In Cornell and Hartman's argument, identities are not simply labels forced on people.[54] They argue that people "accept, resist, choose, invent, redefine, reject, and actively defend identity." Takaki also agrees with this argument and states:

> People are not merely victims of discrimination and exploitation. They are entitled to be viewed as subjects…with minds, wills, and voices. In the telling and retelling of their stories, people make their identity.[55]

Similarly, Min explains that while societal explanations and barriers impact identity construction, people as social actors have agency.[56] They do not passively accept labels by society but try to negotiate identities in social interaction with others. An individual can choose from among a set of ethnic identities; however, they are limited to socially and politically defined ethnic categories. Sometimes, the array of available ethnic groups will be restricted.[57]

Apart from the role of agency, the state is the other party with a profound effect on identity construction. Anthony wrote, "State makes race and ethnicity".[58] He argued that identity serves as a criterion of stratification embedded in economic, social and political-ideological relations within a nation. In addition, he held that those distinctions are socially constructed and the state plays a significant role in creating and enforcing institutional boundaries of identity. Supporting this argument, Wondwosen discussed the role of government in ethnic identity formation and boundary make-up among people in Ethiopia. Nagel also points out

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[50] Burke, P. J., & Harrod, M. M. (2021). Ethnic identity measurement and verification. In P. S. Brenner, J. E. Stets, & R. T. Serpe (Eds.), *Identities in action* (Vol. 6). Springer, Cham. https://doi.org/10.1007/978-3-030-76966-6_2
[51] Barth, F. (1998). *Ethnic groups and boundaries: The social organization of culture difference.* Waveland.
[52] Nagel, J. (1998). Masculinity and nationalism: Gender and sexuality in the making of nations. *Ethnic and racial studies*, 21(2), 242-269.
[53] Nagel, J. (1998).
[54] Cornell, S. & Hartman. (1996).
[55] Takaki, R. (1993). *A Different Mirror: A History of Multicultural America.* Back Bay Books.
[56] Min, G. (2002). The second generation: Ethnic identity among Asian Americans. *Rowman Altamira*, Vol. 9.
[57] Park, J. (2004). Theoretical framework: Three strands of identity Chinese South African identities. *Aldine*.
[58] Anthony, S. (2010). *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism.* New York: Routledge. P 74

that official ethnic categories and meanings are political and the state is the dominant institution in arranging the system of ethnic classification and patterns of ethnic identification.[59]

2. MIXED ETHNIC IDENTITIES FROM THE LEGAL PERSPECTIVE

2.1 People with Mixed Ethnic Identities and Their Number in Ethiopia

The number of people with mixed ethnic identity in Ethiopia is highly debated. While some estimates suggest a population of 30 million[60], this figure lacks a clear methodology and reference. Census data provides more conservative estimates, with the 2007 Census reporting 36,570 individuals[61], the 1994 Census reporting 13,496[62], and the 1984 Census reporting 47,798.[63] These discrepancies may be influenced by political factors and the social environment at the time of each census.[64]

Scholars argue the low figures reported in the 1994 and 2007 Census' for people with mixed-ethnic identities can be attributed to several major factors.[65] During the era of the Ethiopian People's Revolutionary Democratic Front (EPRDF), the political climate in Ethiopia was tense and often antagonistic towards certain ethnic groups. The EPRDF's policies and governance sometimes exacerbated ethnic tensions, leading to a hostile environment for individuals belonging to specific ethnicities.[66] The process of enumeration often involves complex dynamics between the enumerator and the enumerated, particularly for individuals of mixed ethnic identity. Fear of discrimination, social ostracism or even physical harm can compel these individuals to conceal their true identity and instead identify with a single, less controversial ethnic group. This fear is rooted in historical and contemporary contexts where certain ethnic groups face prejudice and exclusion. Additionally, respondents might not perceive the significance of accurately reporting their mixed heritage, especially if they believe it won't impact their access to resources or social standing. The interaction between the enumerator and the enumerated, including trust and privacy concerns, further influences how people report their identity. Thus, the enumeration process is shaped by a myriad of social, political and personal factors that drive individuals to navigate their ethnic identity cautiously. In a society where ethnic identity plays a crucial role in accessing resources and opportunities, individuals might have prioritized practical considerations over accurate self-identification.[67] For example, someone with a mixed heritage might choose to identify solely

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[59] Nagel, J. (1998). Masculinity and nationalism: Gender and sexuality in the making of nations. *Ethnic and racial studies*, 21(2), 242-269.
[60] Belachew, A. (2021). *Where are the children of mixed unions in Ethiopia?* Retrieved from https://borkena.com/wp-content/uploads/2021/01/Where-are-the-Children-of-Mixed-Unions1-Revised.pdf
[61] Federal Democratic Republic of Ethiopia, Population Census Commission, Summary and Statistical Report of 2007 Population and Housing Census, December 2008, Addis Ababa
[62] Central Statistical Agency. (1994). *1994 population and housing census of Ethiopia*. Addis Ababa, Ethiopia
[63] Central Statistical Agency. (1984). *1984 population and housing census of Ethiopia*. Addis Ababa, Ethiopia
[64] Belachew, A. (2021). *Where are the children of mixed unions in Ethiopia?* Retrieved from https://borkena.com/wp-content/uploads/2021/01/Where-are-the-Children-of-Mixed-Unions1-Revised.pdf
[65] Ibid
[66] Ibid
[67] Sociology Institute. (2023). *Instrumentalism and ethnic identity: Strategic fluid boundaries*. Retrieved from https://sociology.institute/sociological-theories-concepts/instrumentalism-ethnic-identity-strategic-fluid-boundaries/

with the ethnic group offering better social or economic advantages. Literature also suggests the same.[68] The process of data collection itself might have been compromised. These factors combined to create an environment where the true number of people with mixed-ethnic identities was significantly under-reported which has implications for the recognition and rights of people with mixed-ethnic identities, as it affects their visibility and representation in social, political and economic spheres.

Studies confirm low rates of inter-ethnic marriages in Ethiopia.[69] The 2016 Demographic and Health Survey (DHS) data shows only 12.4% of marriages as inter-ethnic and 2.5% as inter-religious. These figures are among the lowest in Sub-Saharan Africa. Factors such as urbanization, literacy, wealth and employment in non-agricultural sectors are positively correlated with higher rates of inter-ethnic marriages, while agricultural employment is negatively correlated.

A study suggests the rigid ethnic classification system and the political environment in Ethiopia have significant implications for the rights and recognition of people with mixed ethnic identities.[70] These individuals face challenges in accurately reporting their identity, which affects their access to political and economic opportunities. The low rates of inter-ethnic marriages also reflect broader issues of social integration and acceptance.

2.2 Ethnic Federalism, Mixed Ethnic Identities and the Constitutional Dilemmas in Ethiopia

The federal system in Ethiopia, established during the transitional period, marked a significant shift from the centralized governance model that previously characterized the country.[71] The Transitional Charter of Ethiopia profoundly influenced the FDRE Constitution, institutionalizing key principles such as ethnic federalism, which created nine ethnic-based regional states granting them significant autonomy.[72] The Constitution

[68] Erica Chito Childs, Alyssa Lyons & Stephanie Laudone Jones (2019): Migrating mixedness: exploring mixed identity development in New York City, *Journal of Ethnic and Migration Studies*, DOI: 10.1080/1369183X.2019.1654153

[69] Demarest, L., & Haer, R. (2021, December 9). *What interethnic marriage rates tell us about ethnic conflict and cooperation in Africa*. Africa at LSE. Retrieved from https://blogs.lse.ac.uk/africaatlse/2021/12/09/what-interethnic-marriage-rates-tell-us-about-ethnic-conflict-and-cooperation-in-africa/

[70] See for instance, Birhan, A. T. (2024). *Ethnic Identity and National Unity in Ethiopia: Challenges and Opportunities for Building National Consensus*. Journal of Political Science and International Relations. Retrieved from https://sciencepublishinggroup.com/article/10.11648/j.jpsir.20240702.12

[71] The Transitional Period Charter of 1991 marked a transformative shift in Ethiopia's governance by recognizing the country as a multi-ethnic state and emphasizing ethnic equality, addressing historical marginalization. It introduced an ethnic-based federal system, granting regional states significant autonomy to manage local affairs and empowering historically disadvantaged communities. The Charter also recognized the right to self-determination, including secession, as a means to resolve grievances, and emphasized cultural and linguistic rights, allowing regions to adopt their own official languages and promote local heritage. Additionally, it established the Transitional Government of Ethiopia (TGE) to guide the transition from military rule to democracy, ensuring inclusivity by involving diverse ethnic and political groups in drafting a new constitution and organizing elections.

[72] Despite Article 47(2) of the FDRE Constitution, no new regions were created until 2018, when ethnic-based zones in the Southern Nations, Nationalities, and Peoples' Region (SNNPR) began demanding autonomy. This triggered a transformative phase of federal restructuring: the Sidama region was established in 2019, followed by the South-West Ethiopia region in 2021. In a landmark move, a February 2023 referendum in six zones and five special districts of the former SNNPR saw overwhelming voter support for decentralization. Ratified by the House of Federation in August 2023, this led to the dissolution of the SNNPR and the creation of two new regions—Southern Ethiopia and Central Ethiopia—expanding Ethiopia's federal structure to twelve regions. This historic evolution underscores the constitutional commitment to ethnic self-rule while highlighting the dynamic, contested nature of Ethiopia's federalism as regions assert their autonomy to address political, cultural, and developmental aspirations.

enshrined the right to self-determination, including secession, emphasized cultural and linguistic rights, allowing regions to adopt their own languages and promote local heritage. [73] This system empowered historically marginalized groups by decentralizing power and enabling participation in governance.[74] While praised for recognizing Ethiopia's diversity, fostering cultural pride and addressing historical inequalities, the ethnic-based federal system has also faced criticism for exacerbating ethnic tensions, creating disparities in resource distribution and maintaining centralized control, which undermines regional autonomy.[75]

As per Article 46 (1) of the Constitution, identity can be manifested by language and similar psychological makeup. However, it is an area of debate because the Constitution fails to give an explicit meaning or definition for the concept of identity.[76] Importantly, the Constitution is open to different perspectives regarding the meaning of identity. The case of ethnic identity in general and mixed ethnic identity in particular is controversial for different reasons.[77] The contentious nature of the issue emanates from article 39 (5), that defined nations, nationalities, and people as follows:

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

The provision describes nations, nationalities, and peoples based on shared cultural, linguistic and psychological characteristics, as well as common territory. This approach aligns most closely with social primordialism. Practically, this definition of identity seems predominantly primordial, which means identity is natural, inborn and fixed. It assumes ethnicity is static and unchangeable and overlooks the fluidity of human experience, as individuals often navigate multiple ethnic affiliations influenced by cultural exposure, personal choices and life circumstances. In this respect, the practical implementation of the Constitution has created significant challenges for people with mixed-ethnic identities. The practice requires individuals to identify with a single ethnic group, often based on paternal lineage[78], which marginalizes those who do not fit neatly into one category.[79] The lived

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[73] Teka, T., 1998. Amhara ethnicity in the making. In: M. A. Salih and J. Markakis (Eds.) Ethnicity and the state in eastern Africa (pp. 116-126); Stockholm; Elanders Gotab. Baye,T. (2016). Gojjam (Ethiopia): peopling, Christianization, and identity. African Identities, 14(3), 255–272. https://doi.org/10.1080/14725843.2015.1128805 Mehretu, A. (2019). Kifle Hagers vs. Killils, Citizen vs. Subject: The Case for Restoring the 1974 Non-Tribal Provincial Administrative Areas in Ethiopia. Retrieved August 18, 2018, https://globalafrica.isp.msu.edu/files/4015/5916/5007/AssefaMehretu.pdf Tache, B. & Oba, G. (2009). Policy-Driven Inter-Ethnic Conflicts in Southern Ethiopia. Review of African Political Economy, 36, (121), 409-426 Debelo, A. R. (2012). Emerging Ethnic Identities and Inter-Ethnic Conflict: The Guji-Burji Conflict in South Ethiopia. Studies in Ethnicity and Nationalism, 12 (3), 517-533

[74] Fessha, Y. T. and Van der Beken, C.. (2013). Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia. *African Journal of International and Comparative Law*, 21(1): 32-49 http://dx.doi.org/10.3366/ajicl.2013.0051.

[75] Mengistu, M. (2015). Ethnic Federalism: A Means for Managing or a Triggering Factor for Ethnic Conflicts in Ethiopia. *Social Science,* , 4(4), 94–105. https://doi.org/10.11648/j.ss.20150404 15

[76] Wondwosen, T. (2008). Federalism in Africa: The Case of Ethnic Based Federalism in Ethiopia. *International Journal of Human Science*, 5(2).

[77] Messay, K. (2019). The nature and challenges of Ethnicity: The Case of Ethiopia. *Ethiopian Forum.* Berhanu, B. (2008). *Ethnicity and Restructuring of the State in Ethiopia.* Aalborg University.

[78] Erk, J., & Erk, J. A. N. (2017) Nations, Nationalities, and Peoples': The Ethnopolitics of Ethnofederalism in Ethiopia 'Nations, Nationalities, and Peoples, 16(2), 1–13. https://doi.org/10.1080/17449057.2016.1254409

experiences of many Ethiopians reveal significant gaps between the constitutional protection of equality and reality, particularly regarding gender equality and ethnic identity. This rigidity forced individuals to stick on the paternal lineage and/or excludes people with mixed-ethnic identities from political and economic opportunities, failing to account for the fluid and dynamic nature of the existing society.[80] For instance, political representation in Ethiopia is often based on ethnic affiliation, making it challenging for people with mixed-ethnic identities to be elected or appointed to political positions if they cannot align themselves with a single and recognized ethnic group. Research indicates political parties and electoral systems in Ethiopia are structured around ethnic lines, limiting the political participation of those people with mixed-ethnic identities.[81] Personal narratives and case studies provide concrete examples of how people with mixed-ethnic identities navigate these challenges, illustrating the real-life impact of constitutional rigidity on their political and economic opportunities.[82]

One may argue the Constitution does not explicitly address the rights of individuals with mixed ethnic identities, creating significant challenges for their recognition and inclusion. Firstly, the FDRE Constitution emphasizes the rights of "nations, nationalities, and peoples" to self-determination, focusing on collective ethnic identities rather than individual ones, which can marginalize those who do not fit neatly into a single ethnic category. Secondly, while the Constitution states all individuals are equal before the law, the practical implementation of these rights can be influenced by ethnic federalism, often requiring individuals to identify with a single ethnic group to access certain rights and opportunities, thereby excluding mixed-heritage individuals. Additionally, the Constitution lacks specific provisions addressing the unique challenges faced by people with mixed ethnic identity, leading to systemic exclusion and marginalization. Furthermore, people with mixed ethnic identity often face social and institutional discrimination, which can hinder their access to political and economic opportunities, perpetuated by societal norms and institutional practices that favour monoethnic identities.

Ethiopia's ethnic federalism emphasizes singular ethnic identities tied to specific territories, which can marginalize people with mixed ethnic identity. People with mixed ethnic identity often face practical challenges such as lack of recognition for their complex identities, limited political representation, social exclusion and restricted access to resources due to rigid ethnic categorization. For instance, previously, every Addis Ababa resident applying for a Kebele ID card had to disclose various personal details, including their ethnic identity, which was recorded on the ID card as part of the official documentation process.[83] The customarily

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[79] Kefale, A. (2013). *Federalism and ethnic conflict in Ethiopia: A comparative regional study*. Routledge.
[80] Aalen, L. (2002). Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991–2000. *Institute Development Studies and Human Rights*.
[81] Ross, M. L., & DeVoss, D. (1996). *Ethiopia: Ethnic lines and political participation*. United States Department of State. Retrieved from https://1997-2001.state.gov/global/human_rights/1996_hrp_report/ethiopia.html
[82] Rockquemore, K. A. (2009). *Racing to theory or retheorizing race? Understanding the struggle to build a multiracial identity theory*. Journal of Social Issues. Retrieved from https://www.academia.edu/285497/Racing_to_Theory_or_Retheorizing_Race_Understanding_the_Struggle_to_Build_a_Multiracial_Identity_Theory
[83] However, the Addis Ababa city administration is now making significant changes to the ID card system. The new residence ID will no longer require residents to disclose their ethnicity, addressing major concerns about unity and division

preference for paternal lineage over maternal lineage in determining ethnic identity in Ethiopia perpetuates patriarchal norms and subjects individuals who prefer their mother's identity to derogatory terms and social stigma.[84] This practice reflects deeply entrenched cultural biases prioritizing paternal heritage, often dismissing maternal lineage as secondary or insignificant.[85] In some cases, individuals who assert their maternal identity may be labelled with derogatory terms or compared to a "mule," a term implying hybridity or illegitimacy.[86]

In a society where ethnic identity is crucial for accessing resources and opportunities, practical considerations often outweigh accurate self-identification.[87] Someone with mixed ethnic identity might choose to identify with the ethnic group offering better social or economic advantages.[88] For instance, some government organizations may consider ethnic proportions when hiring employees to ensure representation from various ethnic groups. However, they will not consider people with mixed ethnic identities as under-represented, as a result, individuals seeking employment in such organizations might feel compelled to identify with a particular ethnic group currently under-represented to increase their chances of being hired.

The constitutional framework's focus on collective ethnic rights renders individual equality provisions, such as Article 25, ineffective for those with mixed identities. While Article 25 guarantees equality before the law and prohibits discrimination, its application is constrained by the prioritization of group-based entitlements over individual identity claims. The House of Federation stands as the highest and most pivotal branch of Ethiopia's government. The inclusion or exclusion of a representative within this body is essential for protecting the rights of ethnic groups.[89] In this respect, the absence of a mixed ethnic representative underscores a neglect of Article 62 (4) by the House of Federation, reflecting a lack of constitutional dedication to upholding the rights of all ethnic groups including people with mixed ethnic identities. For instance, the House of Federation allocates seats based on ethnic demographics, excluding people with mixed ethnic identities from direct representation as they lack a distinct "group" to advocate for their interests.[90]

Similarly, the territorialization of ethnicity under the framework of ethnic federalism, exemplified by the establishment of ethnically-defined regional states as articulated in Article 47, inadequately reflects the complex socio-cultural realities of the nation. This approach fails to account for the lived experiences and dispersed geographical distribution of individuals with mixed ethnic identities, thereby overlooking the multifaceted nature of their existence

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among different ethnic groups. Additionally, the process is being digitized, with the new IDs being issued using fingerprints to combat identity fraud. No More Ethnicity Tag On Addis Ababaian's Kebelle ID - Addis Insight

[84] Gebreegziabher-Asfaw, T. H.-Z. (2022). The plight of mixed ethnic people in Ethiopia: Exclusion, fragmentation, and double consciousness [Doctoral dissertation, York University]. Page 91

[85] Ibid

[86] Ibid

[87] Ibid

[88] Belachew, A. (2021). *Where are the children of mixed unions in Ethiopia?* Retrieved from https://borkena.com/wp-content/uploads/2021/01/Where-are-the-Children-of-Mixed-Unions1-Revised.pdf

[89] Gebreegziabher-Asfaw, T. H.-Z. (2022). The plight of mixed ethnic people in Ethiopia: Exclusion, fragmentation, and double consciousness [Doctoral dissertation, York University]. Page 94

[90] The parliament consists of 547 seats, yet not one is held by a representative of mixed ethnic identity.

and marginalizing their voices within the broader federal arrangement. According to Article 39 of the Ethiopian Constitution, a 'nation, nationality, or people' is defined as a group of people who share a large measure of common culture, customs, language and who predominantly inhabit an identifiable, contiguous territory. The current framework, while designed to empower marginalized ethnic groups, inadvertently marginalizes those who transcend rigid ethnic boundaries, creating a paradox that undermines the constitution's promise of equality and inclusivity.

Although people with mixed ethnic identities are not homogenious, addressing the identity question and attaining the legal status of self-hood for their distinct identities requires meeting established criteria. Without achieving the status of self-hood, they are unable to claim the right to self-determination including participation and representation. Consequently, recognition of their distinct identity must be secured as a prerequisite to asserting broader constitutional group rights, including the right to self-determination. This process is referred to as the identity question.

The FDRE Constitution includes the constituent elements of an ethnic group (Article 39(5)) and provides the procedure through which ethnic groups can establish a new regional state (Article 47(3)) or even an independent sovereign state (Article 39(4)). However, it does not explicitly address the recognition of people with mixed ethnic identities as distinct ethnic groups. The core issue is whether these individuals can be acknowledged as a separate ethnic group, given their unique and hybrid cultural, linguistic and historical identity.

The Council of Constitutional Inquiry (CCI) argued that identity issues pertain to the rights of nations, nationalities, and peoples to self-determination, as decided by the House of Federation (HoF) under Article 62(3) of the Constitution. The HoF has stated that Article 39(5) provides the criteria for ethnic identity recognition, requiring communities to demonstrate their own language, culture, common identity, distinct psychological makeup and territorial contiguity. [91] Accordingly, the current constitutional framework is inadequate for people with mixed ethnic identities residing in various parts of the country, leaving their distinct identity claims unaddressed.

In conclusion, the Constitution's focus on collective ethnic rights and self-determination has led to the exclusion and marginalization of people with mixed-ethnic identities, limiting their access to rights, services and opportunities. The preference for paternal lineage perpetuates patriarchal norms, undermining gender equality and maternal heritage. The current framework, while empowering ethnic groups, marginalizes those with complex identities, contradicting the principles of equality and non-discrimination. Constitutional reform is needed to recognize the fluid nature of identity, ensure gender equality, and protect people with mixed-ethnic identities, creating a more inclusive and equitable Ethiopian society.

Ethiopia is a signatory to numerous international human rights instruments, it bears an international obligation to ensure the protection and promotion of the rights of all individuals

[91] Mulu, A. S. (2019). *The jurisprudence and approaches of constitutional interpretation by the House of Federation in Ethiopia*. Mizan Law Review, 13(3), 419–441. https://doi.org/10.4314/mlr.v13i3.4

within its jurisdiction, including those people with mixed ethnic identities. These obligations are not merely theoretical, they require concrete actions to safeguard the dignity, equality and rights of every person. The Ethiopian constitution reinforces this commitment by explicitly stating international human rights treaties ratified by Ethiopia are integral parts of the law of the land. This means the principles and standards set forth in these international instruments are directly applicable and enforceable within the country.

Furthermore, Chapter Three of the Ethiopian constitution, which encompasses fundamental rights and freedoms, including the right to self-determination, must be interpreted and applied in a manner consistent with international human rights standards. Article 13(2) of the constitution mandates the interpretation of these rights shall be guided by international human rights conventions and the decisions of international human rights bodies. This ensures Ethiopia's domestic laws and practices align with its international commitments, providing a robust legal foundation for the protection of human rights, including the rights of people with mixed ethnic identities.

3. UNRAVELLING THE LIVED EXPERIENCES OF PEOPLE WITH MIXED-ETHNIC IDENTITIES IN ETHIOPIA

3.1 Dimensions of Identification: Self-Identification on Ethnic Basis

This section presents the results from qualitative interviews, divided into two parts: identification dimensions and the circumstances influencing self-identification. Each identification reveals different attributes of mixed ethnic identity. The themes that emerged from the interviews illustrate how individuals of mixed ethnic heritage identify or categorize themselves based on ethnicity. A distinctive aspect of this section is the experience of negotiating mixed ethnic identity to establish a defining ethnic identity. Participants identified themselves as belonging to either of their parents' ethnic groups, as having a mixed ethnicity, or as having 'neither nor' ethnicity.

Alongside each theme of dimensions of identification, the influences of identification on either of the groups are also presented. Participants were asked how they came to understand or define their own identity. They discussed the circumstances driving their identification. In further probing, participants were asked about which side of their parents' ethnic groups is manifested in their lives, and they tried to figure out why that is so. This has helped to elicit details about their ethnic identification and influencing factors related to socialization and specific attachment to cultural groups.

3.2 Identification with Either Side of Parents' Heritage

Some participants considered themselves members of either of their parents' ethnic groups. They define themselves as having a single ethnic identity. Participants in this group did not deny their heritage of descending from parents of different ethnic groups. However, they stated there is a role difference on either side of their parents' descent in defining who they are. Although they enjoyed the fortunes of descending from parents of different ethnic

backgrounds, lack of exposure to learn the culture of either side or one of the two sides of their descent has influenced their identity development.

A participant who classified himself as belonging to a single ethnic group of his heritage discussed the influence of the cultural group he was born and raised in defining his identification. When asked about how he identifies himself, participant T stated,

> I was born and raised in X (father's side ethnic group) culture, and I mean, I am happy that my parents belong to different ethnic groups, but I do not know that much about my mother's culture…even I visited her family when I was 26 years old. And I can say I am X (father's ethnicity).

A connection to the culture of an ethnic group appears to influence one's identification and identity development. Thus, according to the above quote, when one is attached to either of the parents' ethnic groups, one tends to learn the culture of that ethnic group, which will also be taken as one's ethnic identification.

Another participant (B) stated that:

> I wish I could learn both my parents' languages and cultures, as well as other things. It is good to know that I think… I can say I am Y (mother's ethnicity) rather than X (father's ethnicity) because I only know a little about my father's side. It is easier to say I am Y (mother's ethnic group than X (father's).

Regardless of having mixed heritage, the informant identified with a single ethnic group dominant in their life. This suggests that despite their diverse background, they feel a stronger connection to one particular ethnic group, which plays a significant role in their identity. Another respondent elaborated this by stating, "If you know where I was born and raised, and if you know the language I speak, which is my mother tongue, it clearly indicates my father's ethnic group." This statement highlights the importance of birthplace and language in shaping ethnic identity. The participant's ethnic identification is influenced by his father's ethnic group, as indicated by his mother tongue and the region where he was born and raised. This example underscores how factors such as language and place of upbringing can play a crucial role in determining which ethnic group an individual identifies with, even in the context of a mixed heritage.

The level of attachment to either of the parents was also raised as a factor influencing self-identification. Respondent M stated, "I see myself in my mother's ethnic group; I don't know my father, he died when I was a child. I am more connected to my mother. I identify myself this way."

Furthermore, a respondent (T) also raised the lineage tracing tradition of his area as a reference component to identify himself with his father's ethnic group. He stated:

> In our culture (the culture of his identification), a child belongs to the father's ethnic group. Even though I am different on my mother's side, I have to identify as X (my father's ethnic group); that is how it works in our tradition.

From the respondent's perspective, such traditions of lineage tracing closed the opportunity to identify oneself with two ethnic groups simultaneously. Participant W stated, "In our community, children are known to their fathers' side; whatever ethnic group a mother belongs, a child belongs to the father's ethnic group." Because of those circumstances, individuals of mixed ethnic heritage tend to affiliate with a single ethnic group (either of their parents). However, to the contrary another participant identified himself with a 'neither nor' (ambiguous) category for his reason.

3.3 Mixed Ethnic Identification

Participants in this category identify as of mixed ethnicity rather than emphasizing one part of their heritage. They tend to view themselves as having inherited a mixture of two different ethnic groups. Both ethnic heritages of their parents appeared equally crucial to these respondents. A participant (H) who identified herself as of mixed ethnic identity stated:

> I identify myself on two sides; I am the result of my parents…I can't say, 'I am only one ethnic group'. I feel like I am losing one of my parents and their ethnic group.

Identifying oneself with a mixed ethnic group can be seen as a way to acknowledge and manage the complexities of having multiple heritages. This approach helps individuals avoid the consequences of denying either part of their heritage. For example, one respondent mentioned, "I am mixed…I can speak the languages of my parents…it helps me when it is needed. I use both of my heritages based on situations." This statement illustrates how a mixed ethnic identity can be flexible and situational, allowing individuals to draw from both sides of their heritage as needed.

In this context, a mixed ethnic category is understood as something to be seen separately, where both sides of one's heritage are essential for ethnic identification and can stand independently. This perspective highlights ethnicity can be a conditional instrument, used strategically based on the circumstances. Additionally, respondents noted language as a crucial attribute of ethnic identification, further emphasizing the role of cultural and linguistic factors in shaping one's identity.

Overall, this understanding of mixed ethnic identity shows it is not a fixed or singular concept but rather a dynamic and adaptable one, influenced by various factors such as language, culture and situational needs.

Another participant (G) identifying with a mixed ethnic heritage associated ethnic definition with blood relationship. He stated, "I have the blood of my parents. I have it equally. I am a mixture of their ethnic groups." This position of identifying with mixed ethnic heritage is also supported by one's connection to relatives of both sides. A participant (H) stated:

> I have many relatives, uncles, aunts and their children from my mother's and father's sides. It is good to grow around them. I am pleased about that. Because they are around, it makes me what I am now.

Thus, participants in this category had mixed ethnic pride. Their connection to their relatives is also a source of their ethnic makeup. For this reason, the respondent indicated that "identifying with either of my parents' ethnic groups is difficult."

3.4 'Neither Nor' (Ambiguous) Identification

This category includes persons of mixed ethnic background who have expressed their wish to describe their entire ethnicity but are constrained by other factors. Their interest involves describing details of their ethnic background and belonging to both ~~a~~ mother's and father's side: *"I wish I could say 'I am this on my mother's side and I am that on my father's' side."* However, participants have noted that such expressions are challenging. *"I can't say 'I am both' or 'I am mixed'...Or I am a hybrid of this and that ethnic group. I have to look at the available options, then choose one."* The reason for their hesitation stems from the lack of institutional recognition for mixed ethnic identities. Official forms, ID cards and ethnic categories typically require a singular ethnic identification, offering no space to reflect complex backgrounds. As a result, participants are often compelled to choose one identity over the other, even when that choice does not fully represent their lived experience. A respondent mentioned the lack of either 'mixed ethnic' or identification into two ethnic categories in the official or standard ethnic category of Ethiopia. Participant W stated,

> ... I mean, I know I am mixed, I mean, my parents are different in ethnic group…but, identifying myself with either of the ethnic groups, I wouldn't say I like that…for a different reason...I don't feel comfortable about the so-called ethnicity or identifying myself with either ethnic group, and I feel like I am playing politics; I'm not too fond of that.

Participants' contention is related to their perception of ethnicity in association with the country's political situation. Participant N also stated,

> For me, ethnicity is a matter of culture. So, I grew up in a city culture, and it is difficult to identify which ethnic group culture is in the city. There are many ethnic groups around. Neighbors and friends speak different languages and have different religions…that is how I grew up. Home is similar. It is difficult to say I am this… I'd better say I am Ethiopian.

The above statement echoed the respondent also has a sense of transcending ethnic categories to come up with an identification of oneself. So, while some respondents try to find an inclusion in an existing ethnic category, others shift an existing ethnic boundary indicating ethnic boundaries are blurred because of special factors. However, participants also noted the obligatory conditions to choose an ethnic belonging and admitted their choice as a "default ethnicity." For the respondent, this ethnicity is an imposed identity that others assign when necessary for a particular condition. This aligns with Friedrich Hegel's argument in "Phenomenology of Spirit," where he indicates that power relations shape identities.[92] Hegel's theory suggests that identities are not static but are formed and

[92] Hegel, G. W. F. (1910). *The phenomenology of spirit* (J. B. Baillie, Trans.). Swan Sonnenschein & Co., Ltd. (Original work published 1807)

transformed through mutual recognition and struggle.[93] In this context, the respondent's ethnic identity is shaped by external power dynamics and the need for recognition within specific social conditions. This imposed identity reflects the influence of dominant groups in defining and categorizing individuals, demonstrating how power relations can lead to the evolution and transformation of personal and social identities over time. Thus, the respondent's experience exemplifies Hegel's concept of identity formation through power struggles and mutual recognition.

Participant N also mentioned the unavailability of an ethnic group important in self-identification and developing a sense of belonging. He rationalized his identification into 'neither nor' ethnic identification:

> I can't find a place to put myself in a classification of ethnicity. When I see people, my friends, running to their ethnic group for a particular purpose, I used to bother myself about where to go and find a member (i.e., someone from 'my group' I could relate to or belong to). You know that we don't have an ethnic group called mixed, that would have been the right group…it is better to be nothing (avoid ethnic identification). It is not clear. It is confusing whether I am an X (fathers' ethnic group) or Y (mothers' ethnic group) …both are good, and I am comfortable with that…it is confusing to say I am this. But when people want to know who I am, I usually tell them the whole story. I will say, 'My father is this, and my mother is this.' That is to mean mixed.

The quote demonstrates the participant's experience of ethnic identity confusion and the challenges of belonging to a mixed ethnic background. The participant feels torn between two ethnic identities, both of which they find valid and comfortable. However, the lack of an official "mixed" ethnic category in their society makes it difficult for them to express this duality. When asked about their identity, they resort to explaining both sides of their background, but they acknowledge that this doesn't fully resolve the confusion of their self-identification. This highlights the issue of ethnic categories being rigid, leaving people with mixed backgrounds without an easily recognizable label. The participant's use of the term "mixed" is a way of dealing with the ambiguity of their identity.

[93] Ibid

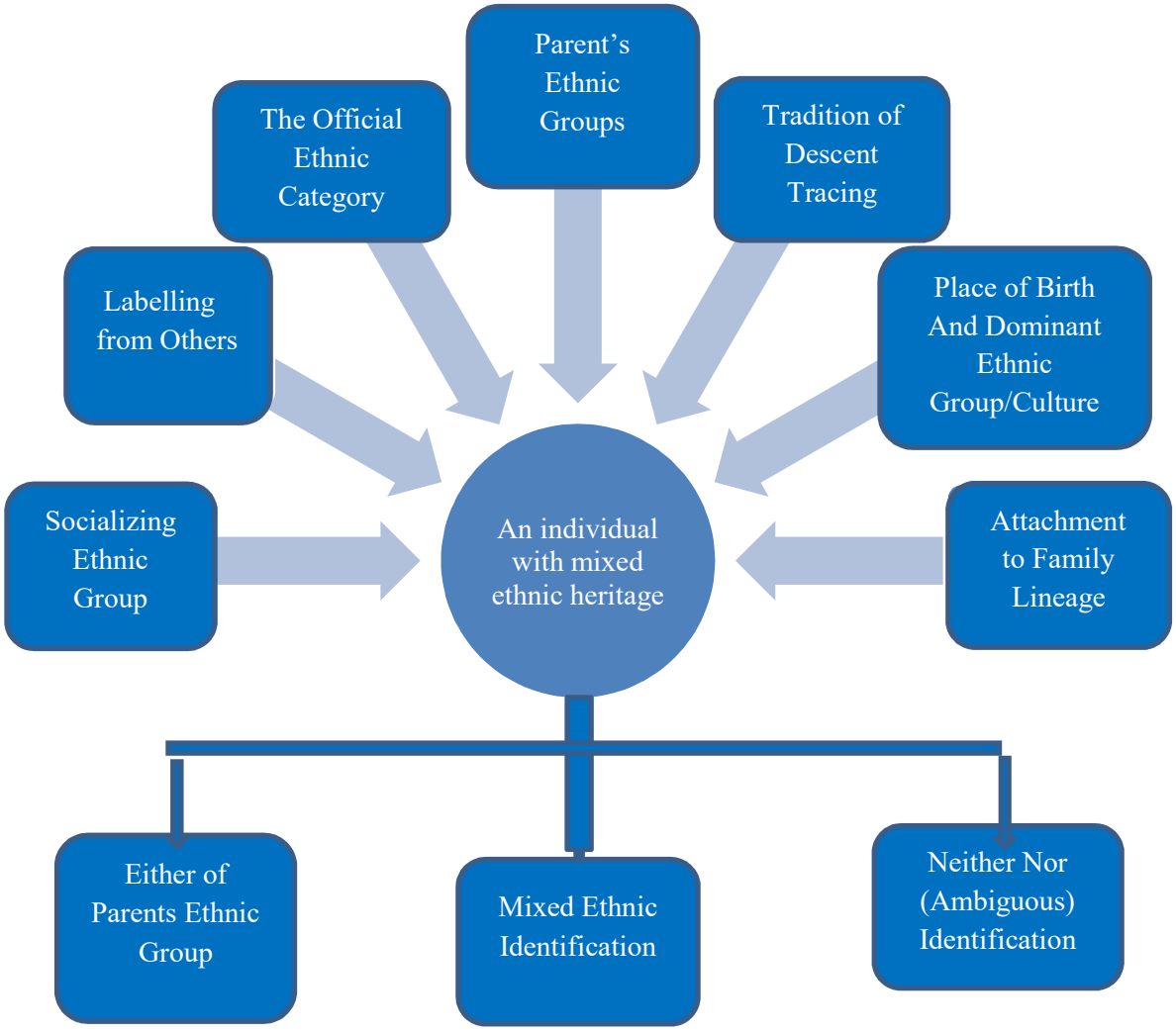

Figure 1. Ethnic Identification and circumstances prompting it

Self-identification into either of the defined dimensions is bound by those circumstances mentioned in the figure. Hence, one of the parents' ethnic groups is a base group, accompanied by attachment to family lineage and the tradition of descent tracing. Other considerable circumstances are the official ethnic category determined in the country context, other people's recognition of mixed ethnic individuals (labeling), socialization and

attachment to the culture of an ethnic group, or a particular birthplace associated with it. However, it is noted that each of the mentioned circumstances affecting one's ethnic identification is not an independent match either.

In summary, three dimensions of self-identification emerged from the interviews. Participants with mixed ethnic heritage, based on ethnicity, identify themselves with either of the three categories or identity types. A person with a single ethnic identity defines oneself as either an X (father's ethnic group) or Y (Mother's ethnic group). On the other hand, there is an identification of mixed ethnicity. An individual identifying with a mixed ethnic identity stresses being a member of a mixed ethnic group, which can be seen separately. Participants in this category can be grouped into two subcategories: those who consider mixed heritage a double-independent background and those who consider mixed heritage a single entity. The third category is the ambiguous or 'neither nor' category. Participants in this category are unsure to what extent their identity fits with the available ethnic categories. Thus, they find an alternative group identity that transcends ethnic identity.

Influences on these categories are also identified. The leading influences on participants' identification include exposure to culture, attachment to either parent's lineage, the tradition of lineage tracing, place of birth and dominant culture of socialization. It is also noted that each of the influences is not an independent factor to either of the categories in the dimensions of identification. Personal experiences concerning connection to relatives on either side of one's parents and labelling by other individuals are also noted as influences on defining who one is based on ethnicity.

CONCLUSION

This article underscores the systemic gaps in Ethiopia's constitutional framework, which prioritizes rigid, collective ethnic identities while neglecting the nuanced realities of individuals with mixed ethnic heritage. Through doctrinal analysis and qualitative insights from interviews with mixed-heritage students at the University of Gondar, the study exposes how legal structures fail to accommodate fluid identities, perpetuating exclusion in political and socio-economic spheres. Ethiopia's constitutional framework, rooted in ethnic federalism, inadvertently perpetuates systemic exclusion by prioritizing rigid, collective ethnic identities over the fluid realities of mixed-heritage individuals. The legal system's reliance on primordial criteria - territory, language and paternal lineage - fails to accommodate mixed ethnic identities, undermining individuals in political representation, resource access and social recognition. This rigidity contradicts constitutional guarantees of equality and international human rights obligations, which demand inclusive protections for all individuals. Addressing this paradox requires transformative reforms: redefining legal identity categories to embrace fluidity and aligning policies with Ethiopia's international commitments to dignity and non-discrimination. Only through such measures can the nation transition from exclusionary ethnic categorization toward a pluralistic society truly reflecting its diverse tapestry.

The article also examined the dimensions of identification related to ethnic identity development and its associated circumstances. The study takes ethnic origin as a base for

exploring experiences of ethnic identity development and related phenomena. Three distinct patterns of ethnic identification emerged: *singular affiliation* (aligning with one parent's ethnicity), *blended identity* (embracing dual heritage), and *categorical rejection* (resisting ethnic labels altogether). These findings reveal the tension between rigid legal categories and the lived experiences of individuals navigating mixed ethnic heritage.

Understanding the dimensions of identification was one of the research objectives. The dimensions of identification are positions illustrating how people may identify themselves with significant others, groups or social categories. This is not intended to be an exhaustive list or a categorical system but rather an illustration of how people of mixed ethnicity consider their ethnic identity. In understanding the aspects of participants' self-identification, the study found three dimensions of identification. The first is identifying oneself with a single (either of the parents') ethnic group, another identification involves taking mixed ethnicity as a defining ethnic group of self, the last category takes a 'neither nor' ethnic identification. Identification in this category is about total avoidance of ethnic identification.

KEY FACTORS FOR UNQUALIFIED ADJUDICATIONS IN CENTRAL GONDAR ZONE HIGH COURT

Mequanint Dubie Getu*

Abstract

The principal aim of this study is to critically examine the underlying factors that led to the delivery of substandard or unqualified adjudications by judges of the Central Gondar Zone High Court during the period spanning from July 8, 2017, to July 7, 2019. In pursuit of methodologically sound and empirically grounded conclusions, the researcher employed a mixed research methodology, integrating both qualitative and quantitative data collection and analysis techniques. Jurisprudentially, the determinants of unqualified adjudication bifurcate into extrinsic and intrinsic motives. Similar to the general jurisprudence the findings under study area reveal that the root causes of why judges were bestowed unqualified adjudication in the study area are due to the result of internal and external factors. Externally, the quality of adjudication was significantly undermined because of improper meddling of other arms of government, undue public pressures, and individual ignorance of the court's clients, corruption, and counterfeit testimony. At the same time, internally, the quality of adjudication was impaired by a combination of personal misconduct among judges, such as ethical lapses, professional negligence, and insufficient legal expertise, as well as institutional failures on the part of court administration. These institutional shortcomings included the imposition of unreasonable workloads, the use of implausible performance standards, and a lack of infrastructural and resource-based support necessary to uphold adjudicative quality. Collectively, these internal and external factors obstructed the court's capacity to deliver qualified and legally sound adjudication. Therefore, to foster a judicial environment conducive to the delivery of high-quality adjudications, it is imperative that the judiciary and the broader institutional ecosystem within which it operates take concerted steps to insulate judges from undue influence, invest in continuous professional development, and levy reasonable workloads and utilize seamless performance standards.

Keywords: Cause, unqualified adjudication, internal motives, external cause, institutional cause, personal cause and systemic determinants

INTRODUCTION

In an era marked by heightened social unrest, complex human interactions, and fragile political institutions, the law remains the principal mechanism for preserving societal cohesion and long-term collective order. At the heart of this mechanism lie the judiciary, and more specifically, the judge tasked with translating abstract legal norms into concrete judicial decisions. Judges serve as the conduits through which the ideals of justice, fairness, and legality are operationalized. Their role is not merely administrative; it is normative and constitutive. By interpreting and applying both man-made and natural laws, judges become the lifeblood of the legal system,

breathing meaning into statutes while serving as instruments for resolving conflicts and restoring normative harmony in fractured societies.[1]

In modern legal systems, many judges endeavor to uphold these weighty responsibilities with integrity, professional competence, and fidelity to the law.[2] Nevertheless, this ideal is not uniformly realized. In some instances, judges depart from the ethical imperatives, evidential and legal standards expected of their office. This heretical doctrine is called unqualified adjudication. It is the result of deliberate misconduct, negligent behavior, external interference, or internal institutional deficiencies.[3] Whether arising from personal failings such as lack of competence or ethical lapses or systemic and structural challenges such as political pressure or administrative inefficiencies such adjudicative failures erode public trust and compromise the judiciary's legitimacy.[4]

This study investigates instances of unqualified adjudication rendered by the Central Gondar Zone High Court during the Ethiopian fiscal years 2010 E.C. and 2011 E.C. (corresponding to July 8, 2017, through July 7, 2019). Over these two fiscal years, the court finalized a total of 4,879 case files in 2010 E.C. and 5,421 in 2011 E.C., covering both civil and criminal matters. Altogether, 10,300 closed (dead) files were recorded during the period under review. From this body of adjudicated cases, the researcher employed a random sampling method to select 1,030 closed files for in-depth examination aimed at identifying the presence of judicial errors. The analysis revealed that 201 of the 1,030 sampled files constituting approximately 19.5% contained adjudications marred by substantive, evidentiary, and/or procedural deficiencies. These findings are evaluated against the relevant standards set forth under both federal and regional laws. To comprehensively investigate the underlying causes of this phenomenon, the researcher employed a mixed-methods research design that integrated both quantitative and qualitative methodologies. Quantitative data were derived from an extensive review of 1,030 closed case files and 23 disciplinary records handled by the Regional and Zonal Judicial Administration Commissions. Supplementary statistical surveys were also administered to judicial staff to gauge procedural and institutional challenges. Qualitatively, the research drew on 25 in-depth interviews, 3 focus group discussions, courtroom observations, and narratives from key stakeholders including judges, court clerks, prosecutors, police investigators, attorneys, petition writers, litigants, and members of the public within the Central Gondar administrative zone.

This study is thematically organized into two principal parts. The first part explores the conceptual and jurisprudential underpinnings of unqualified adjudication, focusing on its theoretical foundations and the broad factors that determine its occurrence. The second section examines the root causes of unqualified adjudication within the Central Gondar Zone High

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[1] Mátyás Bencze & Gar Yein Ng, *Measuring the Immeasurable*, *in How to Measure the Quality of Judicial Reasoning* 1, 5 (Mátyás Bencze & Gar Yein Ng eds., Springer Int'l Publ'g 2018.

[2] Aba Model Code of Judicial Conduct R. 1.2 (2020); Lon L. Fuller, *the Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 364–68 (1978).

[3] Lon L. Fuller, *Id*.

[4] Shimon Shetreet & Sophie Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary* 13–17 (2d ed. 2013); Rebecca L. Brown, *Accountability, Liberty, and the Constitution*, 98 Colum. L. REV. 531, 541–44 (1998).

Court, analyzing both external and internal determinants. Finally, the study presents concluding remarks on the factors contributing to unqualified adjudication within the study area.

1. THEORETICAL ANALYSIS OF UNQUALIFIED ADJUDICATION: MAPPING ITS THEORETICAL FOUNDATIONS AND DETERMINANT FACTORS

In contemporary legal systems, the judiciary is unanimously accredited as the cornerstone of the rule of law and the custodian of constitutionalism, tasked with the impartial interpretation and application of legal norms.[5] Its adjudicative function must therefore be characterized by procedural regularity, evidentiary integrity, and normative fidelity. However, in various jurisdictions, including the Ethiopian legal context, it exist persistent and troubling phenomenon known as unqualified adjudication.[6] The occurrence of unqualified adjudication is not incidental but rather the aggregate upshot of a constellation of contributing factors, each exerting varying degrees of impact on the adjudicative process[7]. Accordingly, this section endeavors to undertake a systematic and disaggregated analysis of the theoretical foundation of unqualified adjudication and its determinants.

1.1 Unqualified Adjudication: A Doctrinal Inquiry into Its Definition and Theoretical Architecture

With respect to the concept of unqualified adjudication, while the term is frequently alluded to in both academic and judicial discourse, it notably lacks a universally codified or doctrinally entrenched definition. Among the more authoritative articulations, however, is that offered by Professor Lon L. Fuller, who characterizes:

> *Unqualified adjudication is a judicial determination or decision rendered by a court or a presiding judge or anybody duly authorized to adjudicate, that substantively or procedurally deviates from the established legal, evidentiary, and institutional standards required for delivering justice. This concept encompasses judicial acts that fall short of the minimum threshold of legal correctness, impartiality, procedural regularity, or ethical soundness expected of an adjudicative body within a rule-of-law-based legal system*.[8]

Drawing from the above Professor Lon L. Fuller's analytical framework, one may infer that unqualified adjudication will be occurred in judicial or anybody duly authorized to adjudicate determinations when the adjudication is suffered by critical deficiencies of deviation from or contradiction of applicable substantive legal norms; a breach of procedural due process guarantees enshrined within the legal system; and a failure to meet the requisite standard of reasoned and legally grounded justification that legitimizes the exercise of judicial discretion and authority.

As of the global trend, the concept of unqualified adjudication does not have a singular, codified legal definition under Ethiopian statutory law. However, it can be comprehensively understood through the lens of judicial ethics, constitutional obligations, case law standards, and

[5] Aharon Barak, *The Judge in a Democracy* 55 (Princeton Univ. Press 2006).
[6] Lon L. Fuller, Supra note 2 at 365.
[7] Steven Wisotsky, *Miscarriages of Justice: Their Causes and Curses*, 9 St. Thomas L. Rev. 547 (1997).
[8] Lon L. Fuller, Supra note 2 at 394.

administrative oversight mechanisms such as those provided by the Federal and Regional Judicial Administration Commissions. Unqualified adjudication refers to the rendering of judicial decisions that are substantively or procedurally defective due to deviations from established legal norms, ethical standards, or evidentiary principles. These decisions fail to meet the standards of fairness, impartiality, legal reasoning, or procedural correctness as required by law and the Constitution of the Federal Democratic Republic of Ethiopia (FDRE).[9]

Hence, if any of the aforementioned deviation is substantive, procedural, ethical, or evidentiary manifest in the course of adjudication rendered by the Central Gondar Zone High Court to those seeking judicial redress, such an outcome may be rightfully classified as unqualified adjudication. Consequently, the logical and analytical progression necessitates an inquiry into the underlying determinants or contributing factors that give rise to such unqualified judicial outcomes an issue that will form the focus of the subsequent discussion.

1.2 Factors for Unqualified Adjudication

When addressing the determinant factors that contribute to the dispensation of unqualified adjudication, copious jurists, legal philosophers, and judicial scholars have offered nuanced perspectives grounded in both theory and empirical observation.

Among these, Professor E.V. Vaskovskyy provides a comprehensive, albeit technical, enumeration of the multifaceted causes leading to judicial error and unqualified adjudication. His catalogue includes, inter alia: undue external pressure on judges; instability and inconsistency in the application of law within judicial practice; the continuous amendment and renewal of legislative instruments; the absence of updated legal information concerning newly enacted statutes; outdated procedural frameworks; insufficient access to advanced legal training and continuing education for judges; a general lack of awareness or dissemination of legal developments among the judiciary; disparities in legal interpretation and application; structurally deficient procedural legislation; inadequate financial and logistical support for the judiciary; frequent reshuffling of judicial panels; insufficient mentorship and experience-building for novice judges.[10]

Parallel to this, Professor Nelia Savchyn presents an alternative though complementary list of causative factors grounded in the personal and professional deficiencies of individual judges. Her findings point to: substandard levels of judicial education and professional training; the absence of requisite ethical and moral integrity; a lack of mastery in both substantive and procedural law; dishonest, perfunctory, or negligent attitudes towards judicial responsibilities; organizational inefficiencies in case management; poor drafting and making of procedural laws; insufficient experience in adjudicatory functions; ignorance or disregard of higher court interpretations and authoritative legal clarifications; the intrusion of subjective preferences or personal biases into

[9] See Constitutions of the Federal Democratic Republic of Ethiopia Art. 79(3) (1995), Revised Judges' Code of Conduct and Regulation, Regulation No. 14/2015, Amhara Nat'l Reg'l State (Eth.) Judges' Code of Conduct and Regulation, Regulation No. 1/2021.

[10] E.V. Vas'kovskij, *Uchebnik grazhdanskogo processa* [Textbook of Civil Process] 33n (2d ed. rev. 1917), *as cited in* Nelia Savchy, Judicial Errors in Civil Proceedings: Concept, Causes and Procedural Methods of Their Prevention, 21 *Jurisprudence*, 489 (2014).

judicial reasoning; indiscipline; overt partiality; and consistent violations of procedural timelines mandated by law.[11]

Although both scholars made valuable contributions in identifying these determinants, their respective typologies remain limited in terms of technical coherence**,** academic precision, and systematic classification**.** What is lacking is a unified analytical framework that categorizes these determinants into internal (institutional and personal) and external (systemic, governmental and societal) factors**.** Such taxonomy would not only enhance conceptual clarity but also provide a structured foundation for diagnosing and remedying the root causes of unqualified adjudication within the judicial systems.

1.2.1 External Factors

These contributing factors are exogenous to the judiciary, stemming from outside the institutional boundaries of the court. They represent external interferences whether overt or covert imposed upon the judicial apparatus by political authorities, societal groups, or private individuals and by systemic deformity.[12] Such intrusions compromise the structural and functional autonomy of the judiciary, thereby undermining its capacity to render impartial, procedurally sound, and legally qualified adjudications. These factors not only corrode the perceived and actual independence of judicial actors but also distort the integrity of adjudicative processes, ultimately weakening the rule of law and public confidence in the justice system.[13]

1.2.1.1 *Political and Institutional Pressures*

Political and institutional encroachments on judicial performance are often expressed through two interrelated phenomena: institutional fragmentation and dysfunctional inter-organ coordination, and executive interference with judicial autonomy.[14] These systemic dysfunctions collectively erode the quality, impartiality, and independence of adjudicative processes.

Firstly, institutional fragmentation characterized by the lack of coherent collaboration between critical actors in the justice sector such as courts, prosecutorial bodies, police departments, and administrative organs; leads to a fragmented legal ecosystem.[15] Poor communication channels, procedural incongruities, and inconsistent case-handling practices between these organs not only delay justice but also compromise the evidentiary and procedural integrity of adjudication. For instance, improperly investigated cases, inadequately formulated charges, or the absence of

[11] Nelia Savchyn, *Judicial Errors in Civil Proceedings: Concept, Causes and Procedural Methods of Their Prevention,* 21 Jurisprudence 491 (2014).
[12] Vasilisa Muntean, *Theoretical Explanations and Practices Regarding the Distinction between the Concepts: Judicial Error, Error of Law and Fundamental Vice in the Legislation of the Republic of Moldova*, 7 Jurid. Trib. (Special Issue) 72 (2017).
[13] George Mara, *Judicial Error: Notions of Comparative Law*, 7 Persp. L. & Pub. Admin**.** 172 (2018).
[14] Nathaniel T. Dreyfuss, *Political Pressure and Political Interference in the Function of the Judiciary*, War Crimes Memoranda No. 302, at 41 (2013).
[15] Alexandra Hodson, *The American Injustice System: The Inherent Conflict of Interest in Police-Prosecutor Relationships & How Immunity Lets Them 'Get Away with Murder'*, 54 Idaho L. Rev. 563 (2018). https://digitalcommons.law.uidaho.edu/idaho-law-review/vol54/iss3/1.

responsive legal support mechanisms often force judges to adjudicate under informational and procedural deficits, thereby increasing the likelihood of error or compromise.[16]

Secondly, executive interference: whether overt or subtle poses a direct threat to judicial independence. Politically motivated interventions in sensitive or high-stakes cases, pressure exerted by administrative officials, and non-compliance with judicial orders by law enforcement institutions collectively represent forms of unconstitutional intrusion.[17] These practices blur the separation of powers, dilute the legitimacy of judicial rulings, and compel judges to weigh extrajudicial consequences over legal reasoning. As a result, the judiciary's role as a neutral arbiter of justice is subordinated to political expediency, thereby facilitating the proliferation of unqualified adjudication.[18]

In such an environment, where inter-institutional synergy is lacking and political overreach is normalized, the adjudicative function ceases to operate within the confines of legal objectivity and procedural fairness. Instead, it becomes vulnerable to manipulation, systemic error, and public distrust; undermining both the rule of law and the social legitimacy of judicial institutions.

1.2.1.2 *Public Pressure*

The quality and impartiality of judicial adjudication are not influenced solely by institutional dynamics; they are equally vulnerable to systemic and episodic pressures exerted by the broader society. These societal influences manifest either through collective community behavior or through the actions of individuals acting in their personal or influential capacities.[19]

At the collective level, communities may exert direct or indirect pressure on the judiciary, especially in cases perceived as having significant social, political, or cultural implications. Organized public demonstrations, civil unrest, or even the looming threat of mass protest in response to unpopular legal decisions can compromise judicial neutrality.[20] In such contexts, judges may feel compelled whether consciously or subconsciously to align their verdicts with prevailing public sentiment rather than with the requirements of the law and evidence. The fear of social backlash, reputational damage, or physical insecurity may thus deter judges from rendering decisions that, while legally correct, are unpopular with the community at large.[21]

Beyond collective societal behavior, individual litigants or community members often interfere with the judicial process in ways that degrade the quality of adjudication. A common form of interference involves litigants' limited legal literacy, particularly regarding procedural norms, rules of evidence, and the proper framing of legal arguments. This lack of understanding frequently, results in poorly articulated claims or defenses, misfiled pleadings, or inadequate evidentiary submissions; conditions that place undue strain on the court and increase the risk of adjudicative error.[22]

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[16] *Id*.
[17] Supra note 14 at 42
[18] Supra note14 at 43
[19] National Center for Court, *A Guide to Court and Community Collaboratio*n 29 (1998).
[20] *Id*.
[21] *Id*, at 30.
[22] Supra note 11 at 490.

Moreover, individual misconduct is also observed in the form of deliberate submission of falsified documents or perjured testimony. Such acts of deceit distort the factual matrix upon which judicial determinations are made.[23] More gravely, attempts to influence court officers whether through bribery, coercion, or patronage represent a significant ethical and procedural breach. These manipulations are often carried out by litigants, intermediaries, or influential local actors such as religious leaders, clan elders, or political elites who seek to secure favorable outcomes by undermining judicial independence and due process guarantees.[24]

1.2.1.3 *Systemic Determinants*

Systemic factors refer to the broader structural, institutional, and socio-legal foundations upon which judicial processes are built and within which they operate. These are not limited to episodic or localized failures but are entrenched patterns that shape both internal court dynamics and external interactions with political and societal actors.[25] Systemic deficiencies often generate conditions conducive to recurrent procedural and substantive judicial errors. For analytical clarity, these factors can be categorized into three interrelated domains: legal culture, transitional justice contexts, and constitutional or legal framework gaps.[26]

1.2.1.3.1 *Legal Culture and Normative Foundations*

The prevailing legal culture of a polity: defined as the collective attitudes, beliefs, and expectations toward the law, the judiciary, and its role in public life plays a foundational role in shaping judicial performance. [27]In contexts where the rule of law is weakly internalized or judicial independence is not culturally valorized, courts are more likely to succumb to non-legal considerations. Judicial actors operating within such cultures may demonstrate an implicit or explicit deference to political elites, prioritize social conformity over legal principle, or interpret legal norms through the lens of prevailing informal power hierarchies rather than codified statutes or constitutional mandates.[28] This erosion of autonomous legal reasoning opens the door to unqualified adjudication as decisions reflect extrajudicial pressures rather than objective adjudicative standards.

1.2.1.3.2 *Transitional Justice and Fragile Institutional Landscapes*

In post-conflict societies or states undergoing democratic transitions, the judicial apparatus often inherits structural weaknesses and legitimacy deficits that compromise its adjudicative competence. Fragile political settlements, ongoing contestations over authority, or incomplete institutional reform efforts can create environments where courts lack the independence, resources, or public confidence necessary to dispense justice in accordance with constitutional norms.[29] In such contexts, judges may face implicit coercion, resource starvation, or conflicting

[23] Bedner, A.W. *Judicial Corruption: Some Consequences, Causes and Remedies.* Leiden, 34 (2002).
[24] *Id*.
[25]Tom, Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge University Press, 106, (2003).
[26] *Id*.
[27] *Id*, at 158.
[28] *Id*, at 126.
[29] Carothers, Thomas, *Promoting the Rule of Law Abroad: In Search of Knowledge*. Carnegie Endowment for International Peace, 34 (2006).

legal signals, all of which undermine their capacity to issue qualified rulings. The judiciary, rather than serving as a neutral arbiter of law, may become an instrument of political expediency or a casualty of institutional incoherence.[30]

1.2.1.3.3 Constitutional and or legal framework gaps

A third dimension of systemic failure arises from structural ambiguities or omissions within the constitutional and legal frameworks themselves.[31] For instance, unclear constitutional delineations of judicial power particularly in federal systems like Ethiopia can result in overlapping or contested authority between regional and federal courts. In the absence of well-articulated regional human rights protections or procedural safeguards that go beyond minimal federal guarantees, subnational judiciaries may lack the normative tools to ensure consistent and rights-compliant adjudication.[32] Furthermore, outdated procedural codes, lacunae in appellate mechanisms, and incoherence between statutory laws and judicial practice exacerbate the risk of judicial error and unqualified decisions.[33]

Together, these systemic deficiencies do not merely create occasional adjudicative lapses they institutionalize a structural vulnerability within the judiciary, making errors in law, process, or judgment not only possible but, in many cases, likely. Addressing unqualified adjudication thus requires more than disciplinary reform or training; it necessitates a foundational transformation in legal culture, institutional coherence, and constitutional clarity

1.2.2 Internal Factors

Internal contributing factors also referred to as endogenous determinants originate from within the judiciary itself and are rooted in the institutional and personal inadequacies that undermine the capacity of courts to dispense justice in a competent, impartial, and procedurally sound manner.

1.2.2.1 Institutional-Level Factors

Although the judiciary is institutionally vested with the fundamental mandate to render qualified, impartial, and procedurally sound adjudication to those who seek justice, its institutional functioning may paradoxically contribute to the delivery of unqualified adjudication.[34] This contradiction arises when there is chronic resource scarcity, the institutional misuse of administrative authority and the imposition of excessive and often unattainable workloads, coupled with rigid and unrealistic performance evaluation metrics.

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[30] Elin, Skaar, *Judicial Independence and Human Rights in Latin America: Violations, Politics, and Prosecution.* Palgrave Macmillan, 23, (2011).
[31] Anatoliy Kostruba et al., *Legal Gaps: Concept, Content, Problems of the Role of Legal Doctrine in Overcoming Them,* Statute L. Rev. 5 (2022).
[32] Mehari Taddele Maru, *Devolution of Power in Ethiopia: The Legal and Political Aspects, in An Abridgment of Papers on Federalism, Diversity, Migration and Devolution of Power,* Submitted to the University of Oxford and Harvard University 35 b (Mar. 2008, United Nations Conference Center, Addis Ababa).
[33] Simeneh Kiros Assefa, *Binding Interpretation of Law in Ethiopia: Observations in Federal Supreme Court Cassation Decisions*, 18(1) Mizan L. Rev. 1, 20 (2024), http://dx.doi.org/10.4314/mlr.v18i1.1.
[34] Rachel Bayefsky, *Judicial Institutionalism*, 109 Cornell L. Rev. 1297, 1298 (2024)

When resource constraints are identified as contributing factors to the rendering of unqualified adjudication, this denotes a systemic deprivation of the essential material and financial means required to ensure the effective and lawful administration of justice. A principal manifestation of this constraint lies in the judiciary's lack of financial autonomy, wherein courts are institutionally subordinated to executive-controlled budgetary mechanisms.[35] Furthermore, the physical infrastructure of many court premises remains dilapidated and ill-equipped to facilitate professional adjudication marked by unsanitary environments, overcrowded dockets, and poor access to essential digital legal databases or research materials. This infrastructural and technological deficit not only delays judicial processes but also compromises the accuracy, procedural regularity, and overall quality of decisions rendered.[36]

The second institutional determinant contributing to the prevalence of unqualified adjudication lies in the misuse or abuse of judicial and administrative authority within the court system. This includes acts of overreach or undue influence exerted by judicial administrators such as court presidents (chief justices), decision examiners, or members of Judicial Administration Commissions.[37] Such actors, rather than preserving the integrity and autonomy of the bench, may either overtly or covertly intervene in the decision-making processes of presiding judges. This interference may manifest through informal directives, manipulative oversight, or hierarchical pressure that compromises the impartial application of legal reasoning. When institutional actors depart from their administrative or supervisory mandate and encroach upon judicial discretion, the adjudicative process becomes tainted, undermining both the substantive and procedural legitimacy of court decisions.[38]

The final, though by no means insignificant, institutional determinant contributing to the proliferation of unqualified adjudication lies in the imposition of disproportionately burdensome caseloads on judges, compounded by inflexible and oftentimes unattainable performance evaluation standards. [39]These systemic pressures, rooted in administrative efficiency metrics rather than qualitative adjudicative outcomes, tend to incentivize expeditious case disposal at the expense of thorough legal reasoning, procedural rigor, and doctrinal coherence. As a result, the judicial function becomes susceptible to superficial deliberation and increased susceptibility to error, undermining the integrity and credibility of judicial determinations.[40]

1.2.2.2 *Individual-Level Factors*

The mandate of courts to render qualified adjudication is not solely compromised by institutional shortcomings; rather, the individual conduct and capacity of judges play a determinative role in shaping the quality of judicial outcomes. This individual-level impact is primarily manifested through three interrelated dimensions: deficiencies in professional competence, ethical and behavioral inadequacies, and the prevalence of attitudinal or cognitive biases.

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[35] Crystal S. Yang, *Resource Constraints and the Criminal Justice System: Evidence from Judicial Vacancies*, 8 Am. Econ. J.: Econ. Pol'y 289, 289–332 (2016).
[36] *Id*, at 291.
[37] Gabrielle Appleby & Heather Roberts, *Studying Judges: The Role of the Chief Justice, and Other Institutional Actors*, Oñati Socio-Legal Series, at 5 (2023).
[38] *Id*.
[39] Paula Casaleiro, Ana Paula Relvas & João Paulo Dias, *A Critical Review of Judicial Professionals' Working Conditions Studies*, 12 Int'l J. Ct. Admin. 1 (2021).
[40] *Id*.

Specifically, when adjudicative quality is impaired due to a lack of professional competence, it denotes a judge's insufficient mastery of applicable legal doctrines, statutory frameworks, and constitutional mandates. This deficit may include limited familiarity with evolving jurisprudential standards, especially in the realm of comparative or international human rights law.[41] Moreover, inadequate comprehension of procedural rules and evidentiary thresholds further undermines the integrity of judicial reasoning. The absence of pragmatic experience and continuous legal education exacerbates these challenges, rendering judicial decisions vulnerable to error, inconsistency, or superficiality thus detracting from the standards of fairness, legal soundness, and procedural rigor that characterize qualified adjudication.[42]

Conversely, ethical and behavioral deficiencies exhibited by individual judges exert a similarly detrimental impact on the quality of adjudication as do deficiencies in academic and professional competence. A judge is not merely required to deliver justice in substance but must also be perceived to embody the ideals of impartiality, integrity, and judicial decorum. In this regard, public trust in the judiciary hinges as much on appearance as it does on actual performance.[43] Instances of judicial misconduct such as corruption, favoritism, or partiality erode the normative legitimacy of the court.[44] Likewise, negligent or perfunctory evaluation of facts, coupled with improper application of legal principles, compromises the adjudicative process.[45] These behavioral infirmities, if left unchecked, create a fertile ground for unqualified adjudication and erode both institutional and public confidence in the rule of law.

In the same way, judges' personal attitudes and mental biases can also play a major role in causing rendering unqualified adjudication. A judges' attitude might be shaped by past experiences or personal belief such as their ethnic background, political views, or religious beliefs; which may affect their fairness.[46] Judges can also be mentally biased due to stress, exhaustion, or burnout, which can affect how they think and make decisions.[47] These personal and mental issues can reduce the quality of judgments and lead to unfair or legally incorrect decisions in court.

2. ROOT CAUSES OF UNQUALIFIED ADJUDICATION IN THE CENTRAL GONDAR ZONE HIGH COURT

In the foregoing sections of this study, an in-depth conceptual elucidation was offered concerning the notion of unqualified adjudication, encompassing both its definitional delineations and its jurisprudential underpinnings. This foundational inquiry further extended to an exploration of the multifaceted determinant factors ranging from systemic and institutional dynamics to individual-level judicial behaviors that contribute to the phenomenon in broader terms. Establishing such a theoretical framework is not merely an academic exercise; rather, it

[41] E. W. Thomas, *The Judicial Process* 8 (Cambridge Univ. Press 2015).
[42] *Id*.
[43] *Bangalore Principles of Judicial Conduct,* Value 2 (impartiality) (2002), endorsed by ECOSOC Res. 2006/23, July 27, 2006
[44] *Id*, at value 5(equality).
[45] *Id*, at value 6(Competence and diligence)
[46] Bradley D. McAuliff & Brian H. Bornstein, *Beliefs and Expectancies in Legal Decision Making: An Introduction to the Special Issue*, 18 Psychol. Crime & L**.** 1, 3 (2012).
[47] Brian H. Bornstein & Richard L. Wiener, *Emotion and the Law: Psychological Perspectives*, 30 Law & Hum. Behav**.** , 234 (2006).

serves as a critical analytical lens through which the specific causal dynamics operating within the Central Gondar Zone High Court can be meaningfully questioned.

Upon a close examination of the adjudicatory outputs rendered by the Central Gondar Zone High Court over the course of two successive fiscal years specifically, the Ethiopian calendar years 2010 and 2011 (corresponding to the period between July 8, 2017, and July 7, 2019) empirical irregularities were observed in a significant subset of the cases. The evaluative framework for this analysis was grounded in a rigorous documentary review of so-called "closed files," i.e., case files that had been officially closed during the referenced budgetary periods.

The analysis demonstrated that 201 out of the 1,030 randomly selected case files representing approximately 19.5% of the sample exhibited adjudicative deficiencies characterized by substantive, evidentiary, and/or procedural flaws. This assessment was conducted in reference to the legal standards established under both regional and federal law. Notably, these deficiencies were not limited to one specific aspect of adjudication but instead extended across multiple dimensions. Procedural irregularities included breaches of procedural norms and rules enacted by both the federal and regional legal frameworks. Evidentiary failings involved either the improper application of evidentiary rules or the failure to accurately evaluate the admissibility and probative value of the evidence presented. Substantive errors, on the other hand, were observed in the incorrect interpretation or application of statutory mandates, constitutional norms, or authoritative precedents, particularly those issued by the Cassation Division of the Federal Supreme Court.

If such a remarkable proportion of adjudicatory flaws are observed between July 8, 2017, and July 7, 2019; it is empirically evident that, the ensuing inquiry necessarily concerns the root causes of these deficiencies. A handy investigation of the defects reveals that the unqualified adjudications rendered during this period were because of the cumulative or individual result of both external and internal determinants. And the reader should be noted that a single judicial decision may be flawed due to one or more contributing factors; therefore, the cumulative impact of these individual factors does not necessarily equate to the overall degree of the defect in the adjudication.

2.1 External Causes

The judges on the bench may render adjudication against the pre-set standards because of inward or outward reasons. Outward (external) reasons are caused by political, systemic and public pressure, which will have negative impacts on the quality of adjudication rendered by courts.[48] These negative impacts may have varying degrees of influence on the quality of adjudication bestowed by courts. Some external causes merely create a slight ripple in the intricate mosaic of judicial decisions, exerting only an insignificant influence on the outcomes. However, others can transcend minor flaws and orchestrate a complete collapse, turning the adjudication into a labyrinth of errors and leaving it in total ruin.[49]

An examination of the external factors that contributed to the issuance of unqualified adjudications by the Central Gondar Zone High Court over two consecutive fiscal years reveals

[48] Meneberetsehay Taddese, *Ethiopian Law and Justice Appearances* (የኢትዮጵያ ህግና ፍትህ ገጽታዎች) 11–20 (2006).
[49] *Id*.

the pervasive influence of both governmental and non-governmental actors. In effect, interference emanated not only from organs of state authority but also from individuals and groups within society. Both dimensions state institutions and societal actors exerted pressure on the court as an institution and on judges as individuals. This occurred through the distortion of legal proceedings, the application of mob justice, and other forms of undue influence, ultimately compelling judges to render adjudications that failed to meet the required standard of impartiality and competence.

For a more precise and structured understanding of these detrimental external pressures, it is useful to categorize them into three interrelated domains: governmental interference, which reflects direct or indirect manipulation by state authorities; societal interference, manifested in pressures from individuals, communities, and organized groups; and systemic interference, which encompasses the structural and institutional weaknesses that render the judiciary vulnerable to such intrusions.

2.1.1 Governmental Causes

In countries that have adopted democratic systems of governance, the separation of powers among the three arms of the government is common. Separation of powers means it is the doctrine and practice of dividing the powers of a government among different branches to guard against abuse of power.[50] The law distributes powers among the three branches of government legislative, executive and judicial granting them the respective powers to enact, enforces, and interprets the law.[51]

When scholars say each tier of government has the aforementioned powers and they are separate, it does not mean they do not have any relation; rather, one tier of government may cause the other wings of the government to provide unqualified service to the community. This may be due to failure to perform its assigned duty, absence of coherent collaboration the other arms of government with the court or because of undue snooping in the power and functions of the other offshoot of government.[52]

This kind of problem is common in Ethiopia's still-developing legal system. For example, poor coordination and misunderstanding among key justice institutions like the police, public prosecutors, and courts can lead to unqualified adjudication. If the police or prosecutors fail to do their jobs properly, or if other government bodies interfere with the court's work, the quality of decisions made by judges may suffer. Likewise, when lawmakers or executive officials unlawfully interfere in the courts' powers, the rulings given may be weak or unfair.

Since the Central Gondar Zone High Court is one of the courts operating within Ethiopia, it is also affected by the problems mentioned earlier. In this court, during the two consecutive fiscal years, about 0.1% of the judicial errors happened due to illegal interference by the Zonal Justice

[50] Arnold I. Burns and Stephen J. Markman, *Understanding Separation of Powers*, 7 Pace L. Rev. 575 (1987)
[51] Aharon Barak, *The Judge in a Democracy* 35 (Princeton Univ. Press 2006).
[52] *Id*, at 219.

Reform Committee[53] and direct pressure from higher zonal officials, such as calling the presiding judges or the president of the High Court to influence decisions.

Furthermore, an additional 8.1% of adjudicatory deficiencies acknowledged during the study period within the study area were attributable to the substandard and inadequate execution of responsibilities by executive organs operating at the zonal, city administration, and woreda (district) levels. These institutional limitations are demonstrated in both criminal and civil proceedings, significantly undermining the quality of adjudication. In criminal cases, the deficiencies included unlawful and procedurally flawed investigations conducted by detective police officers, the drafting of defective charge sheets, and the pursuit of weak litigation strategies by public prosecutors. Further, the presentation of misleading or counterfeit evidence by various executive entities worsened the quality of adjudication. In the civil justice context, a substantial portion of the problematic inputs originated from the Rural Land Administration and Use offices at the zonal and woreda levels, as well as from municipal branches of city administrations. These bodies frequently submitted erroneous or counterfeit evidentiary materials to the courts, thereby contributing directly to the issuance of unqualified and flawed judicial decisions by the High Court.

Even though the High Court is institutionally authorized to reject erroneous or forged evidentiary submissions, in practice, the judges presiding over the bench often fail to exercise due meticulousness in verifying the procedural integrity of police investigations or in scrutinizing the authenticity and reliability of evidentiary materials presented by executive organs at various stages of litigation. In many instances, the bench did not undertake a rigorous examination to determine whether the investigative process conducted by the detective police officers did not conform to legally mandated procedures, nor did they probe whether the evidence introduced by administrative bodies was inaccurate or fabricated. These procedural and evidentiary flaws typically came to light only after the initial adjudication had been finalized either through post-judgment review mechanisms such as, review of judgment court of rendition, appeals and cassation, and/or through an exhaustive case analysis conducted by the present researcher, tracing the matter from the investigative phase through to the High Court's final decision.

2.1.2 Public Causes

The local community can negatively affect the quality of court decisions, either as a group or through individual actions.

2.1.2.1 *Collective Societal Pressure and Public Sentiment*

Jurisprudentially, the community functions as an indirect beneficiary when adjudication is fair and effective, but becomes the ultimate victim when adjudication is flawed, thereby directly influence the perceived legitimacy of the judicial system. The impact of adjudication quality on the community can be both positive and negative: positively, it enhances public confidence and social cohesion by ensuring impartial dispute resolution; negatively, it may generate disillusionment, fear, and resistance when judges are intimidated at the bench or when citizens

[53] Members are except the president of the high court is from the executive branch of the government; Amhara National regional state justice reform committees establishment directive No.1/2012.

resort to civil disobedience and demonstrations forms of "mob justice" that reflect broader societal distrust in judicial institutions.[54]

In the context of the Central Gondar Zone High Court, empirical evidence reveals that, during the 2010 and 2011 Ethiopian fiscal years (spanning from July 8, 2017, to July 7, 2019), two notable cases were adjudicated in a manner inconsistent pre-exited laws due to intimidation, public demonstrations, or acts of civil disobedience, public unrest and extrajudicial coercion originating from the surrounding community. Significantly, the present researcher served as the presiding judge in one of these cases, offering firsthand insight into the detrimental effect of such public interference.[55] Unless proactive and robust measures are undertaken by governmental authorities to curb these forms of undue societal influence, there is a palpable risk that similar patterns of community-induced judicial distortion will proliferate in the future.

2.1.2.2 *Public Causes on Individual Capacity*

Similar to the general public, individuals who have a case in court may have some negative impact on the quality of adjudication bestowed by courts. This may be because of their ignorance about how to prepare pleadings and the litigation process, or maybe by providing bribery, or by way of providing counterfeit testimony.[56] An examination of individual-level causes on adjudication process in the Central Gondar Zone High Court reveals that certain factors had a notable adverse impact on the quality of adjudication during the two fiscal years under review. Specifically, 7.1% of the adjudicative errors were attributed to individual influences such as the presentation of falsified testimony before the court, the legal ignorance of court users, or providing bribery and corruption to presiding judges.

2.1.3 Systemic Causes: When the System Limped, Justice Stumbled

Systemic causes of unqualified adjudication in the Central Gondar Zone High Court is rooted in long-term structural shortcomings entrenched in Ethiopia's broader legal, institutional, and political architecture. A significant portion of the Ethiopian judiciary still operates under long-aged procedural codes.[57] Many of which were enacted decades ago without revision to reflect progressing legal standards, human rights norms, or advancements in legal technology. Compounding this issue is the lack of coherence between federal, regional, and customary legal regimes, which fosters inconsistent interpretations and application of the law, particularly in areas where jurisdictions overlap.

Moreover, entrenched legal culture and institutional norms contribute to the problem. The judiciary in Central Gondar, as in many parts of the country, functions in an environment where the formal rule of law is often subordinated to traditional practices, social hierarchy, or political

[54] Hany Skaik, John Coggins & Garry Mills, *Investigating the Factors Influencing the Quality of Adjudication of Complex Payment Disputes in Australia* 84 (School of Architectural and Built Environment, Deakin University 2015); *Ronald Dworkin, Law's Empire* 176–80 (1986); Lon L. Fuller, *The Morality of Law* 39–41 (1964); Richard H. Fallon, "Legitimacy and the Constitution," 118 Harv. L. Rev. 1787, 1792–97 (2005).
[55] *Colonel Demeke Zewudu Remand Case, File No. 02-2234 (Central Gondar Zone High Ct. [Ethiopia] 2010 E.C.).*
[56] Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland, *Evaluation of the Quality of Adjudication in Court of Law* (Painotalo Suomenmaa 2006).
[57] Civil Procedure Code enacted in 1965 And Criminal Procedure Codes enacted in1961 During the Imperial regime after that there no revision or update.

allegiance.[58] This weak legal culture leads judges to defer to powerful administrative actors or local elites rather than adhering strictly to the legal framework. As a result, judicial impartiality becomes compromised, and decisions may reflect external pressures rather than principled reasoning grounded in law.

The effects of transitional political instability further aggravate these systemic flaws. In recent years, Ethiopia has undergone significant political and social upheaval and central Gondar zone was the center of this political upheaval, placing a considerable burden on courts to resolve politically sensitive or high-stakes cases without sufficient institutional support.[59]At the same time, judicial reform efforts remain fragmented, with limited progress on key areas such as legal education, case management modernization, or the establishment of robust oversight mechanisms. In the absence of a clear and coherent national reform strategy, these unresolved issues leave the judiciary exposed to systemic inefficiencies and vulnerabilities.

Farther more, the systemic causes are compounded by deficiencies in judicial capacity and infrastructure. Since legal resources and some recent precedents are not duly uploaded to the internet, Judges in Central Gondar often lack access to updated legal resources or recent precedents,[60] making it difficult for them to render decisions that align with modern legal expectations. The absence of institutional platforms for doctrinal dialogue and continuing legal education further isolates judicial actors and impedes the development of a unified jurisprudence. When combined with inefficient administrative structures, limited digital tools, and inadequate regional legal development, these educational and doctrinal gaps solidify the systemic conditions that perpetuate unqualified adjudication in the court.

In conclusion, the researcher's inquiry into the causes of unqualified adjudication rendered by the Central Gondar Zone High Court during the 2010 and 2011 fiscal years (July 8, 2017–July 7, 2019) reveals that 4% of the identified errors stemmed from a confluence of systemic deficiencies namely, obsolete legal frameworks, weak legal culture, transitional political turbulence, and persistent deficits in access to contemporary legal resources and jurisprudence.

2.2 Internal Causes: When the Gavel Misses the Mark

As the researcher tried to indicate on the preceding part of this work, internal causes denote those challenges and deficiencies that stem from within the judicial system itself, emanating either from the institutional structure of the courts or from the conduct and disposition of individual actors within the judiciary. These internal causes are rooted in the misapplication, neglect, or abuse of the powers, responsibilities, and privileges that are inherently conferred upon judicial institutions and personnel to enable impartial, lawful, and evidence-based adjudication. Although these powers are vested with the intent to facilitate for rendering of qualified adjudication, their distortion, whether by institutional inertia or personal misconduct, can seriously compromise the quality of adjudication some said this "when the gavel misses the mark". Broadly speaking, these

[58] Menberetshai Tadesse, *Judicial Reform in Ethiopia* (Ph.D. dissertation, Univ. of Birmingham School of Law, 2010) P. 44 (unpublished), https://etheses.bham.ac.uk/id/eprint/1429/.

[59] See Colonel Demeke Zewudu Remand Case, File No. 02-2234 (Central Gondar Zone High Ct. [Ethiopia] 2010 E.C.).

[60] The decision of Federal Supreme Court Cassation Division, the decision of House of Federation on Constitutional matters.

internal impediments can be classified into two interrelated but analytically distinct categories.[61] These are institutional causes and personal (individual) causes.

2.2.1 Institutional Causes

The judiciary, as a branch of government, carries the responsibility of ensuring both the independence and accountability of courts as institutions and judges as individuals. However, this is not always achieved. In some cases, institutions themselves contribute to the delivery of unqualified adjudications, either by misusing their institutional powers, imposing excessive workloads, and utilizing inappropriate performance evaluation standards on judges, or failing to provide the necessary resources and tools required for delivering high-quality adjudication.[62]

2.2.1.1 *Misuses of power*

In Amhara National Regional State, judges who work within the institutions are always accountable to the judicial administration commission in one way or another.[63]There are two tiers of judicial administration commissions, such as the Regional Judicial Administration Commission and the Zonal Sub-judicial Administration Commission. Each commission is chaired by the president of the respective court. Both the commission at the regional level and the sub-commission at the zonal level have head of the office of the commissions, decision investigators, other assistance workers, and other ordinary members whose onus is securing the independence and accountability of individual judges.[64]

At the regional level, the commission holds the authority to nominate judges, decide on issues related to their transfer between zones, and determine allowances, promotions, health benefits, and other similar incentives for judges and other commission appointees. It is also tasked with preparing and presenting to the state council regulations regarding judges' conduct and discipline, which, once approved, are executed by the commission. Additionally, the commission is responsible for issuing regulations concerning judges and commission appointees, overseeing their implementation, and issuing directives to govern the operations of the commission office.[65] Similarly, Sub-Judicial Commissions at the zonal level have the power to take the necessary disciplinary measures against Zonal High Court, district, and sub-district Judges; the chairperson of the sub-commission to select and assign the process owners of the high court, district, and sub-district courts, chairperson of judges, and the president of district and sub-district courts.[66]

The aforementioned authority is an institutional power vested in both regional and zonal commissions, extending beyond the individuals who serve as chairpersons, office heads, decision reviewers, and other experts at each tier of the Judicial Administration Commission. In addition, the process owners of the Regional Supreme Court, High Courts, district, and sub-district courts

[61] United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct* 29 (2007).
[62] Menberetshai Tadesse, supra note 58 at 248; An interview from the Head of Central Gondar Zone High Court Sub-judicial Administration Commission Office
[63] Revised Constitution of the Amhara National Regional State, Proclamation No. 59/2001, Art. 69 (2001) (Eth.).
[64] Amhara National Regional State Judicial Administration Commission Establishment Re-Amendment Proclamation No. 209/2014, arts. 5(1)(A), 10(1)(A).
[65] *Id*, at Art.7.
[66] *Id*, At Art.12.

are likewise endowed with the necessary power. This institutional empowerment enables them to effectively regulate and discharge their respective mandates.[67]

Thus, the aforesaid commissions as institutions and individuals who have institutional leadership power may manipulate the power assigned to them legally. And this may cause rendering an unqualified adjudication by each tier of courts.[68] If we see the pragmatic operation of these powers either by individual leaders or institutions such as Judicial Administration Commission in Central Gondar Zone High Court within the two subsequent fiscal year under review as they responded when researcher interviewed ordinary judges, all most all of them said there were some meddling from Regional Supreme Court leaders and Judicial Administration Commission Officials and Central Gondar Zone High Court leaders and Sub Judicial Administration Officials. They said that there is interference, but the interference does not exceeding up to enforcing to change in an individual or panel of judges' decision. In the future, unless there is some improvement, it will cause for rendering unqualified adjudication.

2.2.1.2 *Levied Excessive Workload and Utilized of Far-Fetched Performance Standards*

Judicial workload and judicial performance evaluations have a sequential relationship. This means judicial workload is the onus of the judges that has to be performed within a given time with specified resources, and judicial performance evaluations are means that will weigh those judicial activities performed within a given time and resources by the judges.[69] To make visible to judges what their judicial onuses are and by what means their judicial activities shall be measured, the government in general and the judicial as institution in particular always fix the workloads of the judges in advance by law.[70] Similarly, it will regulate their judicial performance evaluation mechanisms in advance by law.[71]

At a time when the government or the court sets judicial workload and means for evaluations of judicial performance, a judge's responsibility to his or her family has to be taken into consideration. In addition to this, having sufficient time for maintenance of physical and mental well-being and reasonable opportunities to enhance the skills and knowledge necessary for the effective performance of judicial functions have to be recognized.[72] The byzantine and dense nature of judicial activities shall be cherished in the process of formulating laws. As a result of the convoluted nature of judicial activities, counseling and therapy may be afforded to a judge suffering from stress. In the past, judges and legal professionals tended to disparage or dismiss these considerations. In recent times, empirical research and notorious cases of judicial breakdown have brought such matters to general attention, thus, this shall be considered when the government and judicial institutions formulate laws.[73]

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[67] *Id*, at Art.7,12.
[68] Supra not 59 at 23; Menberetshai Tadesse, supra note 56 at 129.
[69] Silvio Roberto Vinceti, *Innovating Judicial Performance Evaluations: Toward Academic-Style Peer Review?*, 12 Int'l J. for Ct. Admin. 3 (2023).
[70] *Id* at 4.
[71] *Id,* at 5.
[72] Joe McIntyre, *Evaluating Judicial Performance Evaluation: A Conceptual Analysis*, 4 Oñati Socio-Legal Series 865 (2014).
[73] M.D. Kirby*, Judicial Stress and Judicial Bullying,* 14 QUT L. Rev. 1, 2 (2014*).*

When the researcher examined the laws enacted by the Amhara National Regional State government and its judiciary branch to regulate the workloads and mechanisms used to weigh judicial performance, its objective seems to crash, and rash justice rather than adjusting justice, which means it focuses more on rapid case resolution than delivering well-balanced justice. According to Amhara National Regional State Supreme Court Judges Performance Evaluation Directive No.1/2016, a High Court judge is required to resolve 30 cases per month. These may be finalized through a decision, Beyine (ብይን)[74], or order, regardless of whether the case was filed as a first instance or via appeal. Furthermore, under this directive, performance evaluation assigns 12 points for a full decision, 8 points for a beyine (ብይን), and 4 points for an order, which reflects an emphasis on quantity over qualitative adjudication. The reversal of decision by ways of appeal and cassation is not taken in to consideration.[75]

When the researcher examined this directive, which is made to levy workload and to gauge individual judges' performance, from the very beginning, the workload and the best performance of each judge are untenable. And it does not take into consideration the byzantine nature of each file submitted to the court. In a sense, the intricate files that will utilize excessive resources, time, and effort, and simple cases that will be resolved through spending a few resources, time, and effort will count in the same degree of performance. The performance evaluation mechanisms that were set under the above directive did not consider the quality of adjudication; rather, the number of files that the judges closed played a significant role in awarding and taking any disciplinary measures against judges.

Those overdosing workloads and utilizing untenable performance evaluation mechanisms make the judges remiss and slack; they do not always care about the quality of adjudication that they bestow, but only about the number that they count through dismissal or struck-off files.[76] Based on the researcher's analysis of closed case files and interviews with a wide range of stakeholders including judges, public prosecutors, court users, roadside petition writers, zonal detective police officers, private attorneys, legal experts from both public and private institutions, as well as officials from the Regional Supreme Court, the Head of the Zonal Sub-Judicial Administration Commission, and the Decision Examiner it was found that 17 closed cases, accounting for 8% of judicial mistakes identified within two subsequent fiscal year under review, in the Central Gondar Zone High Court, were the result of untenable workloads and implausible performance benchmarks imposed by the Supreme Court.

2.2.1.3 *Resource Deficits and its Impact on Quality of Adjudication*

For judicial institutions, the availability of essential infrastructure and technological resources is not a discretionary luxury but rather a foundational prerequisite for ensuring the consistent delivery of qualified, procedurally sound, and substantively just adjudication. This includes the provision of basic yet indispensable supplies such as stationery (paper and pens), office furniture,

[74] It is the means of rendering adjudication like order, decree and judgment commonly known for Ethiopian courts its Amharic Name is Beyin(ብይን). Civil Procedure Code of the Empire of Ethiopia, art. 3 (Eth. 1965) (Amharic). Draft Criminal Procedure and Evidence Code of Ethiopia, art. 2(21) (2020).

[75] *Amhara Nat'l Reg'l State Supreme Court Judges Performance Evaluation Directive* No. 1/2016 (Eth.).

[76] Interview from Judges, Public prosecutors, Court users, roadside petition writers, Zonal detective police officers, private attorneys, legal experts from both public and private institutions, as well as officials from the Regional Supreme Court, the Head of the Zonal Sub-Judicial Administration Commission, and the Decision Examiner.

and secure, and hygienic working environment as well as more sophisticated tools like computers, service vehicles for logistical mobility, and digital technologies such as Electronic Court Recorders (ECRs) or integrated courtroom audio-visual recording systems capable of accurately capturing testimony and procedural exchanges.[77]

However, the procurement and sustainable operation of such resources are contingent upon the financial capacity of the judicial system as a whole, which in turn depends on the sufficiency and prioritization of budgetary allocations. Without an adequate fiscal framework that recognizes the operational complexity of modern judicial functions, courts are likely to suffer from material deprivation, ultimately impairing their ability to render high-quality, error-free decisions. In this context, the institutional budget becomes not merely a financial instrument but a determinant of the judiciary's functional independence, procedural efficiency, and overall effectiveness in safeguarding the rule of law.

In general, the Ethiopian judicial system, and more specifically, the Amhara National Regional State Supreme Court has long been characterized by chronic underfunding and limited accessibility to justice for the broader public. The Central Gondar Zone High Court, as one of the high-level courts structurally subordinates to and legally constituted under the Supreme Court, is no exception to this systemic fiscal constraint.[78] During this study, interviews conducted with nearly all serving judges at the Central Gondar Zone High Court revealed a consistent and widespread concern: the institution persistently grapples with substantial budgetary deficiencies.

This sustained shortage of financial resources severely undermines the court's operational capacity by impeding its ability to procure and maintain essential infrastructure and equipment ranging from service vehicles for judicial outreach and logistical functions to basic office supplies and modern courtroom technologies such as digital recording systems. While the causal link between budget scarcity and flawed adjudication is not always directly observable or quantifiable, the indirect consequences are both palpable and far-reaching. The absence of adequate material support creates structural inefficiencies that compromise the effectiveness of judicial processes, delay case disposition, and may result in adjudicative errors or procedural lapses.

Though it is methodologically challenging to attribute a precise number of judicial missteps solely to fiscal insufficiency, the correlation between budget constraints and diminished adjudicative quality is evident in practice. The inability of the court to meet even its most fundamental logistical and technological needs reflects a deeper institutional vulnerability, one that detracts from its capacity to uphold the rule of law, ensure fairness, and meet the constitutional standards of judicial excellence.

2.2.2 Internal Individual Causes: Justice Blinded by Its Keepers

As for the institutions, individual judges, court clerks, and other court personnel play a critical role in delivering quality adjudication to the public. However, their gross negligence, fraudulent behavior, lack of experience, exposure to corrupt practices, dearth of qualified theoretical

[77] Supra note 1, at 145.

[78] Interview with Plan & Budget Officers, Amhara Reg'l State Sup. Ct. & Cent. Gondar Zone High Ct. (Aug. 2019) (on file with author).

knowledge of the legal system, and the living fashion that they have with society may contribute significantly to the issuance of flawed or substandard adjudication.[79] When we see the individual motives, which have a negative impact on the quality of adjudication, we can pigeonhole them into individual negligence, dearth of expected theoretical knowledge and pragmatic experiences, undeserving living conditions, and corrupted conduct of judges, registrars, and court clerks.

2.2.2.1 *The Dearth of Expected Pragmatic Experiences and Theoretical Academic Knowledge*

Some judicial skills and features are primarily born with but can be developed or improved via the service of clients by the practicing lawyer in the law firm or by rendering adjudication services as assistant judge and junior judge with senior judges, by serving as public prosecutors, and finally elevated to an art form by those who ascend the bench and are required to make a final determination.[80] The practical skills of judges developed via the aforementioned means include charisma, moral stability, analytical and problem-solving skills, decisiveness, empathy, creativity, and courage. These skills will be utilized to resolve and stabilize the facts of the case, to analyze and identify the question in issue, to decide on that issue, and then to justify with reasons the decision that has been reached.[81]

But practical skills alone are not enough. Those skills must be anchored in a conception of the judicial role. Legal theory is fundamental to that conception. "Without a thought-out conception of the judicial role, a judge is in no better position than a mariner at sea without a compass or, perhaps, a mariner at sea with a defective compass".[82] But we are not suggesting that judges should become philosophers or, worse, that philosophers should become judges, but merely contending that a basic understanding of legal theory is essential for the complete performance of the judicial function.[83]

In some legal systems, especially in a legal system that is found at the infant stage, a dearth of the expected practical skill and having a limited understanding of the laws that the government has made and opted to follow is more palpable. Being the Ethiopian legal system is still immature, we have many inexperienced and academically (theoretically) unequipped judges and registrars. Since the study area that is Central Gondar Zone is a part and parcel of the Ethiopian legal system some adjudication that was rendered during the study period was not qualified; this is because of the dearth of experience and theoretical knowledge on behalf of the judges.

As we investigate dead files, which were done within the two fiscal years under review interviewed judges, officials of the High Court, lawyers, and zonal public prosecutors it was found that on 11 closed cases, accounting for 5% of mistakes identified within the two subsequent fiscal year under review, in the Central Gondar Zone High Court, were done because of dearth of experience and theoretical knowledge about the laws what the government set.

[79] Supra note 61, at 50.
[80] E. W. Thomas, *The Judicial Process* 5 (Cambridge Univ. Press 2015).
[81] *Id*., at 6
[82] Richard A. Posner, *The Role of the Judge in the Twenty-First Century*, 86 B.U. L. Rev. 1049, 1049 (2006).
[83] Supra note 50, at 5.

2.2.2.2 Negligence and laxity of the Judges and Registrars

To consider thoroughly, to decide impartially, and to act expeditiously are all features of judicial diligence. Diligence also embraces ambition for the impartial and even-handed application of the law and the deterrence of the abuse of procedure. The ability to unveil assiduousness in the performance of judicial duties may depend on the burden of work, the adequacy of resources, and time for research, deliberation, writing, and judicial duties other than sitting in court.[84]

But pragmatically, judges do not perform their judicial duties diligently as society expects them to be industrious. Especially these types of snags are common in countries whose legal systems are found to be unripe. Being that the Ethiopian legal system is an unorganized and unformed legal system; the laxity of judges in performing their judicial duties is an obvious problem.[85] When we see the diligence of the judges in performing their judicial onus within the two subsequent fiscal year under study, in Central Gondar Zone High Court, there was some progress in compared with the diligence of judges had in 1990th but there is some laxity as compared with other counties experiences and with the expectation of the societies that their judges to be assiduous.[86] This results in making many oversights when they bestowed adjudication to the needy. During the above budgetary years in Central Gondar Zone High Court, it was found that on 13 closed cases, accounting for 6% of judicial mistakes identified within the study period , in the Central Gondar Zone High Court, were made as a result of judges' and sometimes registrars' negligence and laxity.

2.2.2.3 Besmirched Behaviors and Contemptible Living Conditions of Judges

Judges' behavior should not be besmirched, and they should not be found at the place, time, and with the man who does not deserve to them. Not only this, they should be seen by the minds of A reasonable observer s/he has non-besmirched behavior and s/he does not find in the place, in time, and with the man who does not deserve him/her. That means judges shall have propriety and integrative behaviors.[87]

Chief Justice Malaba defined integrity as the attribute of rectitude and righteousness, and its components of integrity are honesty and judicial morality.[88] A judge should always, not only in the discharge of official duties, act honorably and in a manner befitting the judicial office; be free from fraud, deceit, and falsehood; and be good and virtuous in behavior and character. There are no degrees of integrity as so defined. Integrity is absolute. In the judiciary, integrity is more than a virtue; it is a necessity. Similarly, Bangalore principles of judicial conduct 2002 under value (3) state that a judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer, and the behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. That means judges are not only integrative but also should seem to be integrative in the eyes of

[84] James Ogoola, *Applicability of the Bangalore Principles to the Ugandan Judiciary as a Tool for Improving Judicial Ethics and Accountability*, Paper presented at the 21st Annual Judges Conference, Serena Hotel, Kampala, Uganda, Jan. 28–31, 2019.
[85] Menberetshai Tadesse, supra note 58 at 250.
[86] *Id.*
[87] Supra note 54 at 129.
[88] Luke Malaba, *Revisiting the Judicial Code of Ethics, Presentation at the Second Term Judges Symposium*, Nyanga, Zimbabwe, Aug. 4, 2017.

reasonable observers, and they are not only doing justice but they have to appear as if they have done justice to the needy.[89]

Propriety, and the appearance of propriety, is essential to the performance of all of the activities of a judge in the sense that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.[90] These proprietary behaviors of the judges include accepting personal restrictions that might be viewed as burdensome by the ordinary citizen and doing it freely and willingly; conducting himself or herself in a way that is consistent with the dignity of the judicial office; avoiding situations that might reasonably give rise to the suspicion or appearance of favoritism or partiality and conducting his freedom of expression, belief, association and assembly in the manner of preserving the dignity of the judicial office and the impartiality and independence of the judiciary.[91]

In addition to this, A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family; disallowing the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge; not using or lending the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else; not use or disclose information acquired by a judge in the judge's judicial capacity; not appear at a public hearing those may affect his/her impartiality and political neutrality of a judge; not practicing law whilst the holder of a judicial office; neither ask for nor accept, any gift, bequest, loan or favor concerning anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.[92]

This is what everybody expects a judge to do and to be, but practically; some judges do not do and be what they deserve to. These types of flaws are more anticipated in the judicial system, which is found at the infant stage, like Ethiopian legal practice. If we look at the behavior and living modes of judges, who were working at the judge at Central Gondar Zone High Court for the two subsequent fiscal years under study, most of them performed their judicial onus in line with the legal and moral values of the societies. We interviewed ordinary clients of the court, Zonal public prosecutors, Zonal detective police officers, private lawyers, private and public institution legal expertise, and even regional supreme court officials, the head of the zonal sub-judicial administration commission, and the examiner of decisions, they all agreed some members of the judges have besmirched behaviors and they are living in contemptible living conditions.

Besmirched behaviors and contemptible living conditions of some Central Gondar Zone High Court judges include having regular visits to public venues such as bars and pubs, regular presence in khat-house (Catha-edulis also known as Bushman's tea); creating an intimate social relationship with a lawyer who regularly appears before a judge, talking and supporting some political, and ethnic and religious groups, having unrestricted social relation with the surrounding

[89] Supra note 54 at 130.
[90] Jon P. McClanahan, *Safeguarding the Propriety of the Judiciary*, 91 N.C. L. Rev. 1951, 1951 (2013).
[91] *Bangalore Principles of Judicial Conduct,* Value 4 (Competence and Diligence) (2002), endorsed by ECOSOC Res. 2006/23, July 27, 2006.
[92] *Id*.

communities, accepting corruptions and bribery and having unofficial relationship with some clients of the court.

When we see the impacts of the above-besmirched behaviors and contemptible living conditions of judges in Central Gondar Zone High Court within the study period, on the quality of adjudication, it is intricate to reckon in percent. But when we summarized and took the average of what the respondents responded about the impacts on the quality of adjudication analyzed closed files, it was found that on 9 closed cases, accounting for 4% of judicial mistakes identified with in the study period, in the Central Gondar Zone High Court, were made as a result of besmirched behaviors and contemptible living conditions of judges.

CONCLUSION

Wrangling among members of a living society is inevitable. To maintain social cohesion, peaceful dispute resolution through an independent and impartial judiciary is an indispensable remedy. The judiciary expected to settle the dispute in line with the pre-set legal standards and based on the evidence that is submitted to them. However, the judiciary as an institution and the judges as individuals are not as perfect as they were expected by society. Sometimes judges may render adjudications against the pre-set legal standards or/in opposition to the evidence that is submitted to them that is called unqualified adjudication. Empirical data gathered from the Central Gondar Zone High Court during the study period reveal that approximately 19.5% of the adjudications rendered during this period were tainted by substantive, evidential and/or procedural deficiencies. A closer analysis indicates that these deficiencies stemmed from a constellation of both external and internal factors. The external causes embraced governmental meddling or failure to perform its duty; the public bulldozed and terrified the presiding judges or public civil disobedience and demonstrations, and ignorance of individual court's clients about how to prepare pleadings and how to present their litigation before the court or individual court's client providing corruption and bribery to the presiding judge or providing counterfeit testimony by individual and systemic deformity. Internally, shortcomings were traced to both institutional and individual dimensions. Institutionally, both the Amhara National Regional State Supreme Court and the Central Gondar Zone High Court bore responsibility due to mismanagement, including the imposition of excessive workloads, the use of flawed performance metrics, and chronic budgetary deficiencies that resulted in the failure to provide judges with essential tools such as transportation, office supplies, and digital court recording systems. On the individual level, judges and registrars were found to contribute to the deterioration in adjudicatory quality due to a combination of factors. These included insufficient legal training and practical experience, professional negligence, complacency, and in some instances, ethical lapses stemming from socio-economic hardships and poor living conditions. In conclusion, the prevalence of flawed adjudications during the stated fiscal years underscores a structural and systemic challenge that calls for multi-dimensional reforms. Addressing both internal inefficiencies and external pressures is essential to improve the quality of adjudication. Without such intervention, the judiciary will remain vulnerable to factors that compromise its core function, delivering impartial, lawful, and reasoned decisions that sustain public trust and uphold the rule of law.

LEARNING FROM THE PAST: THE LEGISLATIVE PROCESS OF ETHIOPIA'S SNNPR AND LESSONS FOR ITS SUCCESSOR STATES

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Abstract

This study evaluates the legislative process of Southern Nations, Nationalities and Peoples' (SNNP) Regional State - a region devolved into Sidama, South-Western Ethiopia, Central Ethiopia and South Ethiopia - the new members of the Ethiopian federation. By using focus group discussions with Standing Committee leaders and legal experts from both the State Council and Executive Council the study uncovered how executive dominance undermined participatory law-making despite constitutional safeguards for shared legislative authority. The findings demonstrate how rushed enactments, limited public consultation and weak oversight mechanisms compromised the quality of enactment requiring attention. This research highlighted how structural deficiencies in the law-making processes - including excessive executive control over initiation, inconsistent public participation and poor law dissemination - will continue to affect law-making in the successor states if not adequately addressed. The study contributes to broader debates concerning balancing efficiency with democratic law-making in federal states undergoing territorial reorganization.

Keywords: legislative process, Standing Committees, SNNP State Council, public participation

INTRODUCTION

In May 1992, the Southern Nations, Nationalities and Peoples Region (SNNPR) was established by the merger of five regions (regions 7 to 11), thereby amalgamating approximately 54 ethno-linguistic groups.[1] Subsequently, in June 1995[2] this reconstitution was given a constitutional foundation. The adoption of this regional constitution was the result of Arts. 50 and 52 (2) (e) of the Federal Constitution and remained in effect until superseded by the revised constitution of 2001.[3] Notably, the Revised Constitution was designed to "ensure accountability, transparency,

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[1] Logan Cochrane & Yeshtila Bekele (2019): Politics and Power in Southern Ethiopia: Imposing, Opposing and Calling for Linguistic Unity, Language Matters, DOI: 10.1080/10228195.2018.1553993 To link

[2] The Constitution of the Southern Nations, Nationalities and Peoples' Regional State Proclamation No. 1/1995.

[3] The Revised Constitution of the Southern Nations Nationalities and Peoples Regional State, Proclamation No. 35/ 2001, 12th of November 2001.

efficient organizational structure of state organs clearly and […] to bring fast socio-economic development."[4] From its establishment in 1995 until its final disintegration in 2021, the SNNPR State Council enacted numerous laws. This period concluded with the state's breakup into four new regional states: Sidama,[5] South-West Ethiopia Peoples' Regional State,[6] Central Ethiopia Regional State[7] and South Ethiopia Peoples Regional State.[8]

This article examines the legislative process of the SNNPR by analyzing its State Council's Rules of Procedure and Member's Code of Conduct Regulation. The study aims to identify best practices and challenges to inform the development of accountable and participatory legislative processes in Ethiopia's newly formed regional states.

This research is particularly relevant as most members of the new State Councils and the ruling Prosperity Party (the successor to the Southern Ethiopian People's Democratic Movement), are holdovers from the dissolved SNNPR. These new states have largely adopted the legal framework of the SNNPR. By examining officials who now occupy the same roles in a new political structure this study offers unique insights into institutional continuity and change.

To inform this study, we gathered the views of members of standing committees of State and Executive Councils through five focus group discussions. Our participant selection employed purposive sampling method, which "relies on the ability and capacity of participants to provide relevant information."[9] Specifically, the cohort included one Member from each of the five Standing Committees of the State Council, two participants from the Legal Drafting and Consulting Services Directorate of the State Council and five participants from the Executive Council's advisory team. These participants were recruited based on their particular knowledge and relevant experience in the subject matter.

We developed twenty-seven questions to collect the views and experiences of the participants, structured around the following themes: initiation, preparation of draft laws, public participation on the draft laws, publicity and accessibility of the laws and parliamentary oversight.

Following this introduction, the analysis proceeds in several parts. First, we establish the context of legislative power within the State Council. Next, we examine the normative framework for legislative initiation and its practical application. Subsequent sections analyze the legislative process itself, the role of public participation and issues of accessibility and parliamentary oversight. The article concludes with a summary of key findings and concluding remarks.

[4] The Revised Constitution of the State of Southern Nations, Nationalities and Peoples, 2001, the preamble, para. 5.
[5] Constitution of the Sidama National Regional State Proclamation No.1/2020.
[6] Constitution of South-Wets Ethiopia Peoples Regional State, South-west Negarit Gazeta, Proclamation No. 1, Year 1, November 23 2021.
[7] Constitution of Central Ethiopia Regional State, Central Negarit Gazeta, Proclamation No. 197/2023.
[8] Constitution of South Ethiopia Regional State, Proclamation No. 1, August 17 2023.
[9] Lisa Webley. Qualitative Approaches to Empirical Legal Research. The Oxford Handbook of Empirical Legal Research, Peter Cane and Herbert M. Kritzer (eds.) 2010 (Online Publication Date: Sep 2012).

1. LEGISLATIVE POWER AND ITS EXERCISE

The law-making power is an inherent power of a legislature guaranteed under their constitutions. This power is effectively exercised through committees.[10] However, the roles of each committee is not similar, its varying nature depends upon "the governing system, strength and organization of political parties, available resources and other political factors".[11] In most cases their role includes initiating and amending laws, budgetary review and reviewing of administrative actions.[12] In some jurisdictions, the committees inspect issues presented for them more closely than could the full chamber.[13] Additionally, "Some committees create subcommittees with staff and budgets; routinely refer measures to subcommittees for initial consideration; and allow subcommittees to take the lead in framing issues, drafting measures and reports."[14]

The Revised Constitution of the SNNPR provided for legislative authority within the State Council under Article 46. To discharge its "powers and duties as well as the responsibilities vested in it, the State Council enacted the Rules of Procedure and Member´s Code of Conduct Regulation.[15] The main objective of Regulation was to determine the content of the power, duties and responsibilities and the role of the committee to exercise their rights and the rules of procedure and conduct that need to be followed at the time of discharging their functions.[16] The State Council is entitled to form four different categories of committees, namely: the coordinating committee; standing committees; sub-committee and ad hoc committees.[17] The term of the committees is considered to be that of the council.[18] These committees are formed with various roles and responsibilities.

The Rules of Procedure and Member´s Code of Conduct Regulation provided empowered the council to establish six standing committees - Agriculture and Rural Development Affairs, Urban and Infrastructure Affairs, Social Affairs, Legal; Justice and Good Governance Affairs; Women, Children and Youths' Affairs and Budget, Finance and Audit Affairs.[19] However, as we have learned from the focus group discussion, the standing committees were

[10] National Democratic Institute for International Affairs, Committees in Legislatures: A Division of Labor, Legislative Research Series, Paper No. 2, (1996), p. 3, available at https://www.ndi.org/sites/default/files/030_ww_committees.pdf.

[11] Lawrence D Longley. and Roger H. Davidson, eds., The New Roles of Parliamentary Committees, The Journal of Legislative Studies, Frank Cass Publishers, Issue 4.1, (1998); see also David B. Ogle, Management and Organization of Representative Assemblies, National Council of State Legislatures, 1997.

[12] *Id*.

[13] National Democratic Institute for International Affairs, Committees in Legislatures: A Division of Labor, Legislative Research Series, Paper No. 2, (1996), p. 3, available at https://www.ndi.org/sites/default/files/030_ww_committees.pdf.

[14] Valerie Heitshusen, Committee Types and Roles, CRS Report Prepared for Members and Committees of Congress, Congressional Research Service 7-5700, p. 2. Available at https://www.senate.gov/CRSpubs/312b4df4-9797-41bf-b623-a8087cc91d74.pdf accessed on 25 July 2020

[15] The South Nations Nationalities and People's Regional State Council Rules of Procedure and Member´s Code of Conduct, Regulation No 16/2015, Debub Negarit Gazeta of The Southern Nations, Nationalities and People's Regional State, Year 14, No 7, see the detailed objectives on the preamble of the regulation (Rules of Procedure and Member´s Code of Conduct Regulation hereinafter).

[16] Rules of Procedure and Member´s Code of Conduct, Regulation, the preamble, para. 2.

[17] *Id*. Art. 134 cum 5(1)(c).

[18] *Id*. Art. 137.

[19] *Id*. Art. 145.

reshuffled and the social affairs standing committee was merged with Women, Children and Youths' Affairs standing committee. These committees are allowed to form a sub-committee to ensure the effective performance of their tasks.[20] The committees have the powers and duties to: submit reports and proposals after examining draft laws referred to them; follow up and supervise government bodies; initiate laws; present their suggestion; undertake studies relating to the objective for which they are organized; prepare various seminars and forums; exchange ideas acquired through experiences and perform other duties assigned to them by the council or the Speaker.[21] The committees are also empowered to inspect a draft law referred to them for scrutiny. The committees are expected to ensure whether the suggestions submitted to them falls under their jurisdiction.[22]

The committees' role may involve three stages: at the "First Reading" the draft law might be referred to a pertinent standing committee for detailed investigation and consideration;[23] at the "Second Reading" the committee conducts a detailed discussion upon the draft law and then it will present a report and recommendation to the council.[24] If the council introduced an amendment motion on the draft law, it will be referred back to the committee/s for reconsideration.[25] On the "third Reading", the council will conduct discussions and make decisions after the submitted reports and recommendations from the committee/s.[26] Finally, the permanent committees are duty bound to oversee and follow-up the distribution of enacted laws by the executive body concerned.[27] The Legal, Justice and Good Governance Affairs standing committee shall investigate, in addition to the tasks mentioned above, *"the legal content of draft laws and agreements referred by the council to any standing committee"*.[28]

2. THE LAW-MAKING PROCESS OF THE REGION IN PRACTICE

2.1 Executive Dominance and Legislative Inconsistency in SNNPR's Law-making Process

The law must serve as an agent to facilitate development, social change and social transformation especially in the face of such powerfully overwhelming new forms of potential disempowerment as globalization.[29] An effective legislative process incorporates "safeguards to ensure that the end product meets with standards used in that particular jurisdiction and that it has taken on board all the instructions given to the drafter as well as views of the people consulted."[30] Furthermore, transparency and accountability in the draft legislation being

[20] *Id*. Art. 140.
[21] *Id*. Art. 146 cum 50(2)(b) and 52.
[22] *Id*. Art. 153.
[23] *Id*. Art. 2(18) cum 52(1)(a).
[24] *Id*. Art. 2(19) cum 53(1) & (2).
[25] *Id*. Art. 53(4) & (6).
[26] *Id*. Art. 2(20) cum 54(1).
[27] *Id*. Art. 59(1) & (3).
[28] *Id*. Art. 163.
[29] Richard C. Nzerem 'The Role of the Legislative Drafter in Promoting Social Transformation' in CONSTANTIN STEFANOU and HELEN XANTHAKI (eds.) *Drafting Legislation: A Modern Approach* (Ashgate, Oldershot 2008) 132, 134.
[30] Zione Ntaba 'Pre-legislative Scrutiny' In CONSTANTIN STEFANOU and HELEN XANTHAKI (eds.) *Drafting Legislation: A Modern Approach* (Ashgate, Oldershot 2008) 119, 124.

promulgated must fulfil democratic principles either by promoting or protecting constitutional principles and values.[31] Ultimately, the thrust to make a new legislation or to rescind an existing legislation come forth to realize the intention of the members of the parliament, the government or various interest groups, including the national interest.

In the SNNPR, the legal framework for legislative initiation was established by The Rules of Procedure and Member´s Code of Conduct Regulation. This framework explicitly prioritizes the Executive Council in legislative initiation stating that "initiating laws shall be mainly the duty of the regional government."[32] Notwithstanding this rule, the Regulation also vests the power to initiate in 'members of the council,' 'committees,' 'parliament groups' and 'other bodies authorized by law'.[33] However, this power is sharply curtailed by sub-article (3), which stipulates that "Without prejudice to the provision under sub article 2 above, only the regional government can initiate financial draft laws." Art. 152 further provides that "[e]ach Standing Committee may initiate laws on the basis of an instruction by the council or by the general functions it carries out or the proposal submitted to it by the government body it supervises or follows up."

A close perusal of these provisions reveals significant inconsistencies. Firstly, a marked difference of language is evident: the Executive Council has the "duty to initiate" as indicated under sub-article (1), while other bodies have the "power to initiate" as indicated under sub-article (2). Second and more critically, a conjoint reading of sub-articles (2) and (8) reveals an internal inconsistency. While sub-article (2) provides an exhaustive list of bodies with the "power of initiation", sub-art. (8) allows for the possibility of granting this power other unspecified bodies.

In practice, the theoretical power of the State Council to initiate legislation was seldom exercised. Only four of the twelve discussants reported any experience with member-led initiation, underscoring the council's minimal role in this phase. The reasons for this limitation were debated. Mr. Gidane Geremew[34] attributed it to the markedly different social and educational backgrounds of council members, which he argued created disparities in their capacity to formulate legislation. Conversely, Mr. Melese Tona[35] attributed the gap to the overwhelming dominance of the Executive Council, which routinely submitted draft laws to address immediate practical challenges. He contended the State Council "by no means, will decline" these executive proposals and reported a complete absence of need assessments, resulting in laws that may not effectively address the region's socio-economic and political issues. This practice fundamentally undermines the very purpose of legislation which is the purpose of bringing social, economic and political change and advancement. In fact, if not addressed quickly and efficiently, it will result in legislations not responsive to the existing social, economic and political ailments of the State.

Despite the general trend, there were few instances of successful legislative initiation from within the State Council. Mrs. Kelemework cited the creation of four new zones and 45 woredas as an example born from members identifying problems within their electorates, though she

[31] *Id*. PP, 119 and 122.
[32] Rules of Procedure and Member´s Code of Conduct Regulation, art. 50 (1).
[33] *Id*. Art.50 (2) (A-D).
[34] Leader of the Budget, Audit and Finance Affairs Permanent Standing Committee, Tahisas 23, 2012 E.C.
[35] Lawyer in the State Council, Tahisas 23, 2012 E.C.).

noted the practical difficulty of gathering the required number of signatures. Similarly, Mrs. Etsegenet Mengistu[36] referred to the experience of her committee that "brought to the attention of the State Council the need to regulate health and health related issues by indicating the limitations and lacunae in resource mobilization, identification, support and rehabilitation of citizens and selection of citizens for works available in foreign markets."

Regardless of the reasons for its limitations, empowering Council members is crucial. As the primary manifestations of the sovereignty of the general populace, members of the Council must be equipped with the necessary knowledge to collate ideas that require immediate attention, thereby addressing acute disasters that may result from ill regulation. As Caroline Moris argues "[r]epresentation, therefore, was not only about being, it was also about doing."[37]

2.2 A step-by-step legislative process

The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual, a dignity [which] requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality.[38] This section assesses whether the legislative process - from the filing of draft laws to their treatment in the Permanent Standing Committees, the intersection between the Permanent Standing Committees and the legal drafting and counselling Directorate of the State Council - conforms to the standards set by the State's law-making policies and manuals. The following assessment shows the existence of defects looming within both Councils.

The process of law-making commences with the presentation of a draft law to the Speaker of the Council. According to Mr. Yosef Yosa,[39] "draft proclamations submitted by the executive are directed towards the concerned Standing Committee, which examines them in light of the existing State and Federal sectoral laws." While Mr. Gidane partly concurs with Mr. Yoseph Yosa on the initial step, he differs in who checks the content of the draft. He stated that "he clarifies that the Committee delegates the substantive legal review to its employed lawyers, who cross-check the draft against prior legislation and the constitution". Similarly, Mr. Amaru[40] and Mrs. Etsegenet Mengistu[41] concur with the foregoing position stating that "the drafting process within the Council starts with the submission of the draft to the concerned Standing Committee, which examines the draft with the professional support of the legislative drafting and consulting directorate."

A further step involves the Standing Committee sending a draft back to its originating institution to seek explanations before a public hearing. Once corrections are made and the draft is resubmitted, the State's Attorney General is often invited to address questions from Committee

[36] Leader of the women, Children, Youth and Social Affairs Permanent Standing Committee, Tahisas 23, 2012 E.C.
[37] Caroline Morris, Parliamentary Elections, Representation and the Law (Hart Publishing, London 2012) 10.
[38] The report of Committee I of the International Congress of Jurists, 1959 quoted in Joseph Raz, *The Authority of Law (*Oxford University Press, USA 1983) 210-211.
[39] Mr. Yosef Yosa, Leader of the Law, Justice and Good Governance Permanaent Standing Committee, Tahisas 23, 2012 E.C (Mr. Yoseph Yosa hereinafter).
[40] Director of the Legal Drafting and Consulting Services Directorate of the State Council.
[41] Etsegenet Mengistu (N66 above).

members. Discussants from the State Council indicated this involvement is a last resort to resolve drafting irregularities and language issues before the draft proceeds to the next stage.

However, officials from the Executive Council presented a different view suggesting the Attorney General is involved earlier. For instance, Mr. Adane Gebeyehu[42] stated "the Executive Council, following a submission of a draft from any Bureaus, sends the draft proclamation to the Attorney General primarily for wording corrections." Mr. Girum[43] reinforced this, noting "the Executive Council sends the draft proclamations to the Attorney General before submitting the State Council, albeit rare cases because of the vicissitudes within politics and other issues, that may require excepting the regular legislative procedures". In essence, all discussants agreed that a draft must undergo multiple layers of scrutiny from the Permanent Standing Committee, the Council's lawyers, the originating Bureau's professionals and the State's Attorney General to ensure language quality and consistency with existing laws, constitutions and international human rights instruments.

A review of Arts. 52-54 of the Regulation confirms this general procedure: the speaker refers a draft to a concerned committee,[44] which then plans debates with source persons, organizes public forums, gathers stakeholder opinions and collects comparative information. Following deliberation, the committee submits a report to the Speaker.[45] If a fundamental problem is identified, the committee can return the draft to the initiator for correction."[46] Finally, after rectifying the loopholes within the draft, the committee "shall submit to the council its final report and recommendation" as per Art. 54 (1).

Despite the structured framework indicated above, the discussants identified various irregularities. The first major issue was the coexistence of two conflicting working procedures: one passed by the State Council and a separate draft law submission policy issued by the Executive Council. According to Mr. Adane Gebeyehu, he opposed to the "15 days requirement of the code of Conduct and Procedure of the State Council, the policy of the Executive Council demands an initiator to submit the study reports, other supportive documents, the draft and its explanatory notes to be submitted before a month." Admittedly, the existence of two working procedures will create confusion among the stakeholders involved in the drafting process.

The second, more prevalent irregularity is the consistent non-observance of these time limits. Discussants from the State Council reported that drafts are routinely submitted far later than required. Mr. Yoseph Yosa and Mr. Amaru noted that drafts are often tabled a week or even days before Council meetings, contravening the 15-day rule. Mr. Asrat[47] provided a concrete example: the City Administration Proclamation of 2010 E.C. was distributed to MPs only as they assembled, forcing a public hearing to be squeezed between council sessions and resulting in enactment without effective public hearing.

[42] Special advisor of the Chief Executive on issues of democracy and good governance, Tahisss 23, 2012 E.C.
[43] Professional in the cabinet section of the Chief Executive, Tahisas 23, 2012 E.C.
[44] Rules of Procedure and Member´s Code of Conduct Regulation, Art.52 (1) (a).
[45] *Id*. Arts.53 (2) and 54 (1).
[46] *Id*. Art.149 (9).
[47] Leader of the Urban and Infrastructure Development Permanent Standing Committee, Tahisas 23, 2012 E.C.

Several reasons were adduced for this haste. Mr. Yoseph Yosa cited exigencies of "urgent" problems requiring immediate adoption. Mrs. Etsegenet imputed the rush to a lack of capacity among Council members to identify defects, a problem she believes training could remedy. Mr. Asrat and Mr. Nigussie[48] pointed to political pressure, noting that the governing party-dominated Council rarely declines legislation submitted by the Executive. According to them, this lack of technical and political capacity was blamed for the rapid passage and subsequent repeal of conflicting proclamations, such as those redefining the Bureau of Pastoral Affairs multiple times within a few years.[49]

The other issue which forced the executive to omit the time-limit set in the working procedures was "the nature of the issue that needs legal regulation." In support of this, Mrs. Etsegenet and Mr. Asrat cited laws defining the powers of the executive branch of the government. Mr. Girum agreed, providing an example: "Proclamation No. 161/08 defined the Council's powers, but it was shortly repealed by No. 178/11, which was itself quickly repealed by No. 180/12." His prime example was the Bureau of Pastoral Affairs, which was made a Bureau, then a Commission and then a Bureau again, causing disruptive relocations and jurisdictional conflicts due to political changes. Echoing this, Mr. Asrat argued that laws passed without proper consultation or public hearing create governance problems and are typically replaced after unnecessary squabble. He argues this haste to enact and quickly repeal laws compromises legislative quality and denies the public the right to question draft legislation. Furthermore, Mr. Amaru claims that ignoring the time limit causes procedural issues: there is often insufficient time to organize public hearings or even to prepare final copies for Council members.

When questioned about the research underpinning draft laws, responses were concerning. Mr. Adane Gebeyehu stated that most drafts are not research-based, technical drafting capacity outside the Attorney General is scarce. Likewise, Mr. Melese Tona confirmed no studies on potential conflicts with customary norms are conducted, the sole executive intention is often swift approval exemplified by 12 proclamations being approved in a single three-day meeting. Conversely, Mr. Nigussie contested the claims of the foregoing discussants by citing the income tax proclamation of the Region drafted by considering the views of the Chamber of Commerce, professional recommendation from the lower administrations, sector Bureaus and even the experience of other Regional States. He argued the rapid change of laws is due to outdated policies and manuals that cannot address contemporary executive challenges.

On the whole, the untimely and repeated changes defeated the rule-of-law principle espoused by the State Constitution. It is clear stability in laws is one of the cardinal principles of rule-of-law. In fact, Lon L. Fuller had incorporated relative constancy of laws among the eight excellences of any law. In tune to the authoritative statement of Lon L. Fuller, Joseph Raz wrote:

> Laws should be relatively stable. They should not be changed too often. If they are frequently changed people will find it difficult to find out what the law is at

[48] Special advisor of the Chief Executive, Tahisas 23, 2012 E.C.

[49] Mr. Nigussie clarified his stand as follows: "this incapacity has resulted in the passing of Proclamation No. 178/11 that has invested a conflicting authority within one sector Bureaus. Later the proclamation was repealed and replaced by Proclamation No. 180/12. This proclamation has transgressed the usual process of law-making in the Region." The transgression is justified by the interest of the public that will be served by the urgent enactment of the law.

> any given moment and will be constantly in fear that the law has been changed since they last learnt what it was. But more important still is the fact that people need to know the law not only for short-term decisions (where to park one's car, how much alcohol is allowed duty free, etc.) but also for long-term planning. Knowledge of at least the general outlines and sometimes even of details of tax law and company law are often important for business plans which will bear fruit only years later. Stability is essential if people are to be guided by law in their long-term decisions.[50]

3. PUBLIC PARTICIPATION

Democracy hinges on the notion that people ought to have the opportunity to participate in shaping the decisions and actions of State authorities.[51] As Andrew Kuper emphasizes, "the public must be able to have an impact on government - and thereby on policies impacting on them - through their own judgments and actions. It is not enough for that impact to be accidental, transitory and insignificant: it must be regularized, unavoidable, ongoing and significant."[52] The basic question is how the public are enabled to influence the decisions of the authorities regularly, unavoidably, continuously and significantly. This raises a key question: how does a government invite the public to express its views on any proposed laws and policies?

Focus group discussions revealed a generally weak link between government transparency and regularity, unavoidability, continuity and significance of public participation in the law-making process. Nonetheless, some participants have highlighted existing consultative processes. Mrs. Kelemework, said "participants do primarily come from the lower administrative levels of the State, civil societies and other stakeholders." She argued "the participation of civil societies will guarantee the realization of the 'public participation right' of their active members." If well-taken, effective public participation will reduce the possibility of after-enactment criticisms and roars by interest groups.

Mr. Gidane pointed to the efforts of the Executive branch to solicit views on drafts, citing public hearings on labour law by the Public Service Bureau as an example - he stressed that single consultations are insufficient. Similarly, Mrs. Etsegenet concurring said "it is only 1 or 2 public hearings we conduct. We cross check the inclusion or exclusion of the comments of the public when the draft is resubmitted for enactment."

Mr. Amaru added that even when stakeholders are invited, attendance is often poor. For example, few advocates attended a public hearing on income tax legislation, yet objected strongly upon the publication of the law in the Debub Negarit Gazeta. Mr. Yoseph Yosa concluded that participation levels fall short of expectations - even among directly affected groups.

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[50] Joseph Raz (N39 above) , 214-215.

[51] Andrew Le Sueur and others, *Principles of Public Law* (Cavendish Publishing Limited, London and Sydney, 1999) 11.

[52] Andrew Kuper, *Democracy beyond borders: justice and representation in global institutions (*Oxford University Press, New York 2004) 79.

As a matter of rule, the public has the right to dictate to the authorities. In essence, the majority, as shown above, do not exercise this authority. This failing will give the authorities unhobbled power to inject legal thoughts on the public at large. If oppositions come after the legislations, the State Council will be forced to repeal the law within a short period of time thereby defeating the long-standing excellence of law, i.e., stability. As a final note, the law makers in any area should work towards the effective participation of the public at large.

4. PUBLICITY AND ACCESSIBILITY OF LAWS TO THE PUBLIC

The utopian ideal of legality, as fervently asserted by Lon L. Fuller, requires "all rules are perfectly clear, consistent with one another, known to every citizen, and never retroactive. In this utopia, the rules remain constant through time, demand only what is possible, and are scrupulously observed by courts, police, and everyone else charged with their administration.[53] This relates to the desideratum of making the laws known, or at least making them available to those affected by them.[54] In essence, "[a] formalized standard of promulgation not only tells the lawmaker where to publish his laws; it also lets the subject - or a lawyer representing his interests - know where to go to learn what the law is."[55] Therefore, the law must be open and adequately publicized to guide behaviour. If it is to guide people they must be able to find out what it is. When it is required that the laws should be public, what should be meant by this is not only that each one of the law's addressees should know what the law is, but also that everybody should know that everybody knows what the law is, that everybody should know that everybody knows that everybody knows what the law is, and so on.[56]

In practice, though, discussions with participants revealed that ensuring the publicity and accessibility of laws in the region remains a major challenge. Mr. Adane Gebeyehu noted a retrospective effort made by the Bureau of Justice to collect proclamations and regulations from sector bureaus, albeit without creating a comprehensive catalogue allowing citizens to easily find and reconcile laws. This limitation was further emphasized by Mr. Gidane, who reported "zonal and woreda administrative offices often lack current legislation, possessing only obsolete texts. "[57] He squarely placed the responsibility for dissemination on the State Council.

In contrast, Mr. Amaru presented a dissonant view, arguing that ensuring accessibility is not the Council's duty but rather the responsibility of the executive organ that requested the law in the first place and such responsibility ranges from creating awareness about the law to the extent of the distribution of the legislation. This position found a converse view in some institutions, including the Attorney General's office, which held the State Council responsible for publication and distribution. Similarly, while partly sharing previous stands, Mr. Girum proposed a model of shared responsibility, suggesting proclamations fall to the State Council and regulations to the Executive Council. Mrs. Kelemework recalled a formal agreement between the two Councils on this matter but lamented that no practical steps had been taken.

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[53] Lon L. Fuller, *The Morality of Law (*Rev. Ed., The Storrs Lectures Series) (Oxford University Press, Oxford 1969) 41.
[54] *Id*.
[55] *Id*.
[56] Joseph Raz (N39 above) 214.
[57] Mr. Gidane Geremew.

Given this clear impasse, a solution is necessary. Mr. Melese Tona proposed reviving past successful practices such as distributing laws through private newspaper vendors and selling them directly from a shop at the Council, this had once ensured accessibility down to the lowest administrative levels.

Alongside the practice, an investigation into the pertinent legal framework reveals three key laws: the Regulation on the Rules and Procedure of the State Council No. 16/2015, the Attorney General Establishment Proclamation No. 177/2018 and the Executive Council Establishment Proclamation No. 178/2018. While Article 58 of the Council's Regulation places the duty of publication in the Debub Negarit Gazeta on the State Council, the Attorney General is empowered to "carry out codification, compilation and consolidation of laws; [and] hold and dispense regional laws" under both Proclamation No. 177/2018 and the Executive Council Establishment Proclamation No. 178/2018.[58]

Consequently, the legal duty of publication resides unambiguously with the State Council - a fact confirmed by Mr. Galatias, the Director of the Legal Drafting and Training Directorate of the Attorney General. When it comes to accessibility, however, the laws create some confusion. Article 59 of the Regulation anticipates distribution by the "executive body concerned," yet Article 12(6) states the Office of the Council shall "distribute" laws. The researcher argues that the latter should be interpreted as "handing over" laws to the requesting body, not undertaking public distribution itself, otherwise, the Council's mandated oversight power to "supervise and follow up the proper distribution" would be redundant.

5. LEGISLATIVE FOLLOW UP AND OVERSIGHT ON IMPLEMENTATION OF LAWS

The practice of a government being accountable to a parliament became a model for numerous democratic constitutional states.[59] A glance into the nature of the functions of the executive branch of the government reveals it executes decisions passed by the parliament or even the courts. Its accountability to both institutions creates ambivalence. A truth that features while considering the executive branch is its two-track nature: on the one hand there is the head of the government and the cabinet: acting politically, initiating legislation and leading foreign affairs. On the other hand, there is the multitude of low-ranking officials making insulated decisions on defined questions without much (if any) discretion.[60] This analysis explores the power of parliamentary oversight through five lenses: its source of authority, its objectives, the matters it covers, the mechanisms used and the necessary resources.

The first point relates to oversight authority of the parliament. The authority of the Parliament to oversee the enforcement of the enacted laws and the follow up of the discharge of the tasks

[58] Article 7 (c) of the Attorney General establishment Proclamation No. 177/2018 empowers it to "carry out codification, compilation and consolidation of laws; hold and dispense regional laws as a title holder." This empowerment is reiterated under the Executive Council establishment Proclamation No. 178/2018. Art. 13(3) (c) of this proclamation authorizes the Attorney General to codify, compile and consolidate the laws of the State. In furtherance, the Attorney General is authorized to hold the laws as a person with a good title on property.

[59] Christoph Mollers. *The Three Branches:* A Comparative Model of Separation of Powers (Oxford University Press, Oxford, 2013) 25.

[60] Christoph Mollers (n59 above) 96.

within those laws fits within the accountability of the executive to the parliament. These powers and mandates mainly derive from constitutions, while the mechanisms for exercising them are usually defined by other legislative sources, such as parliamentary rules of procedure.[61] In this context, the Rules of Procedure and Member´s Code of Conduct Regulation vests in the State Council the power of overseeing the manner of execution of the responsibilities as enshrined within each proclamation. Article 146 (1) (b) grants each Standing Committee the general powers and duties to follow up and supervise government bodies.

The second point relates to the objectives of parliamentary oversight. Article 73 of the Regulation explicitly lays down the objectives of State Council's oversight, which include ensuring *(1) the proper usage of the resources and property of the government, (2) the performance of tasks in accordance with law and order, (3) the existence of fair and rapid development directions, (4) the prevalence of democracy and good governance, (5) respect for citizens' rights and the maintenance of peace and security as well as (6) the existence of coordinated working process among government bodies.* A closer examination of these objectives reveals a primary purpose: controlling the executive. Christoph Mollers argues:

> Parliament does not control the implementation of a statute because it does a better implementation job than the executive - it does not - but rather to learn from this control for the purposes of future political processes in and outside parliament. The central function of parliamentary control is the preparation of future democratic decision-making by informing itself and the public. Control mechanisms address the public, which responds to the informing and educative effects of the control process in one way or another.[62]

Actually, the reason behind any oversight is the amelioration of the defects for the future through the enactment of a new law or amendment of the existing one. In effect, "parliamentary control has to aim at improving existing legislation and the performance of the government with a view to future elections."[63] Any mishandling by the executive will have a negative impact on the probability of re-election.

The third point concerns the scope of the State Council's oversight authority. Article 74 of the Regulation specifies the "Matters and Bodies" subject to this supervision and follow-up. The pertinent matters to be supervised include: (a) the implementation and direction of the region's policies, strategies, programmes, plans, laws and operations in advancing regional development; (b) the observance of citizens' fundamental rights and freedoms and (c) the proper implementation of the regional government's budget and resources. Notably, these same matters are listed under Article 73, which defines the objectives of oversight, focusing on ensuring "development," "fundamental rights of citizens" and "appropriate use of the budget and resources of the State." This duplication researcher' find problematic, it leaves other objectives from Article 73, such as the maintenance of peace and security, unaddressed in the operational article. Therefore, to understand the full scope of Article 74, it must be read in conjunction with Article 73.

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[61] PARLIAMENTARY OVERSIGHT: A self-assessment toolkit, available at http:// www.ipu.org › files › documents › toolkit-12-10-2018-e (accessed on May 24, 2020) p. 18.
[62] Christoph Mollers (N59 above) 119.
[63] *Ibid*.

In addition to the matters justifying oversight, Article 74(2) grants the State Council the power to supervise and follow up on "government bodies," defined as any regional state organ financed wholly or partly by the regional government. Consequently, bodies established by Proclamation No. 178, such as bureaus, commissions, agencies or authorities, fall within the Council's purview. It is important to note the initial supervision of a government body is conducted by the pertinent Standing Committee. According to Article 151(1), each Standing Committee must: (a) develop a satisfactory awareness by inspecting the law establishing its assigned government body, along with relevant regulations, directives and documents; (b) inspect the body's annual plans once they are made available and (c) receive and examine quarterly performance reports. While the second and third tasks are clear, the first is somewhat confusing. It appears to mandate the self-evident task of acquiring basic knowledge which seems an inherent prerequisite for any parliamentarian's duties rather than a point requiring explicit legislation.

Conversely, Standing Committees are not limited to mere supervision and reporting, they may also take corrective measures. Article 151(3) proposes five alternative actions: a committee may require a governmental body to rectify its weaknesses or it may submit a draft law to address legal gaps uncovered during oversight. The researchers opine this should explicitly include amending existing laws. The remaining three alternatives involve escalating the issue to the full State Council, such as demanding a financial inspection, requesting a budgetary decision or, for fundamental problems, recommending the Council take a severe legal measure, which could potentially include disestablishing the body or proposing judicial intervention.

The fourth point alludes to the mechanism of oversight.

With respect to the mechanisms contained within the Regulation that establishes the Rules and Procedures of the State Council, Article 75 is of prime importance. The provision has two features; the first deals with the nature of mechanisms of overall oversight while the second deals with the remedial measures to be forwarded by the Council.

In relation to the mechanisms to be adopted by the Council, the submission of reports by the Executive Council takes preponderance. For instance, sub-article (1) provides that the Council may "cause the government organs to submit a report to committee's concerned at least twice a year." Conversely, Article 151 (1) (c) confers on Standing Committees to receive and examine performance report quarterly. The use of the word "shall" in both sub-articles transmits confusing facts: the first provides for "at least twice" while the latter provides for "quarterly." In any case, a report may be sought between two and four times. So long as the report is a mechanism of oversight, the submission by the government body is mandatory. In addition, sub-article (2) of Article 75 stipulates the "President of the regional state shall present the annual plan of the budget year and performance reports in the mid and end of the budget at least twice a year to the council." The President is deemed to submit an overall report to the Council.

Finally, Article 75 (6) empower the State Council to give remedies for problems that may be uncovered through the oversight process. In consequence, in relation to problems, it realized during the process of conducting follow-up and supervision of government bodies, the council may take the following remedial measures: if the problem emanates from the law, it shall provide

legal support or complement the loophole in the law through legislation.[64] In furtherance, if the problems have arisen as a result of budgetary shortcomings and this is verified by the competent body (the body being the Standing Committee), the Council shall make good the problem. In penultimate sub-article (c) provides that the Council "shall cause a given governmental office to recognize its problem and give it directives to correct its weakness." Where the problem is not rectified and where it is serious, the Council shall cause a measure to be taken through the president on the body responsible for the problem and shall follow up the implementation of the measure taken (sub-article (d)).

CONCLUDING REMARKS

In the long run for a new legislation or repeal, various overwhelming tasks should be undertaken. Commencing with initiation, any law passes through the rugged road of the preparation of drafts, polishing of the draft laws and invitation of the public and other stakeholders to contribute their views and the publication and assurance of accessibility of the laws.

This study uncovered critical institutional weaknesses in legislative processes that demand adequate attention from the newly created successor states. Three fundamental lessons emerge from the SNNP's experience. First, the study lays bare how executive dominance undermined constitutional safeguards for shared law-making authority. The successor states must establish clear procedural rules limiting executive control over legislative initiation, strengthen standing committees' capacity to independently scrutinize draft laws and implement the fixed timelines for legislative review to prevent rushed enactments.

Second, SNNP's failure to ensure meaningful public participation resulted in laws that lacked legitimacy and required frequent amendments. Accordingly, the new states should mandate multiple rounds of public consultations for all major laws, develop accessible platforms (including digital tools) for public hearings and provide training for State Council members around in participatory law-making techniques.

Finally, weak oversight allowed poor-quality legislation to pass unchecked. Successor states must empower standing committees with adequate resources and research capacity, establish clear accountability mechanisms for implementation monitoring and work with research institutions to review laws' practical impacts.

Ultimately, this case study contributes a cautionary tale to broader debates on federalism and legislative design. It demonstrates the formal structures of federalism are insufficient without a concomitant commitment to democratic culture and process. The success of Ethiopia's newest regional states will depend not just on their geographic boundaries, but on their ability to build legislative processes that are truly accountable, participatory and transparent.

[64] Rules of Procedure and Member´s Code of Conduct Regulation Art.75 (6) (a).

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የሰበር አቤቱታዉ የቀረበዉ የጠቅላይ ፍ/ቤት መደበኛ ባህር ዳር ችሎት የሰጠዉን ዉሳኔ በመቃወም አመልካች የሰበር ቅሬታ ስላቀረበች ነዉ፡፡ ክርክሩ የመኪና ሽያጭ ዉልን የተመለከተ ሲሆን የተጀመረዉ በደቡብ ወሎ ዞን ከፍተኛ ፍ/ቤት በአመልካች ከሳሽነት ሁኖ ተጠሪ ተከሳሽ በመሆን ተከራክረዋል፡፡

የክርክሩ ይዘት፡- አመልካች ባቀረበቸችዉ ክስ ሁለታችንም እህተማማች በመሆናችን ለእህታችን ወሰን ጥላሁን የህዝብ መኪና ለመግዛት ተስማምተን ተጠሪ በትራንስፖርት ዘርፍ ፈቃድ ያላት በመሆኑ በስሟ መኪናዉ እንዲገዛ ተጠሪ በባንክ ብድር 60% በመበደርና አመልካች ደግሞ ብር 1,181,500.00 ወደ ተጠሪ በዳሽን ባንክ ሂሳብ በማስተላለፍ የሰሌዳ ቁጥር 03-04954ኢት የሆነ 60 ሰዉ የመጫን አቅም ያለዉ ህንድ ሰራሽ መኪና ገዝተን ስመ ንብረቱን እንደታዞርላት ስትጠይቃት ፈቃደኛ ባለመሆኗ መኪናዉን ለአመልካች ልትሸጥ ተስማምተን በቀን 12-05-2013 ዓ.ም በብር 3,800,000.00 ሽጣልኝ ቀደም ካስተላለፍኩት ገንዘብ በተጨማሪ ብር 800,000.00 በተለያዬ ጊዜ የሰጠኋት ስለነበር በድምሩ ብር 2,000,000.00 መቀበሏን አምና

ቀሪ ዋጋዉን የባንኩን ብድር አመልካች ልከፍል ተስማምተን ሽጣልኛለች፣ ሊብሬዉንና የተለያዩ ሰነዶችንም ካስረከበችኝ በኋላ ስመ ንብረት እንድታዞርልኝ ስጠይቃት ፈቃደኛ ባለመሆኗ ስመ ንብረቱን እንድታዞርልኝ እንዲወሰንልኝ፤ ይህ ካልሆነ የወሰደችዉን ብር 2,000,000.00፣ መቀጫ ብር 50,000.00 ከወለድ ጋር እንዲሁም የጠበቃ አበል ብር 100,000.00 እንድትከፍለኝ ይወሰንልኝ የሚል ክስ አቅርባለች፡፡

ተጠሪም ባቀረበችዉ መከራከሪያ መሰረት የተገዛዉ በእኔ ገንዘብ እንጅ በአመልካች ባለመሆኑ ልትጠይቀኝ አይገባም፤ የሽያጭ ዉል በሚል ያቀረበችዉ እኔ የማላዉቀዉ የሀሰት ዉል ነዉ፣ ዉል አለ ከተባለም በሚመለከተዉ አካል ያልተመዘገበና ያልተረጋገጠ ስለሆነ ፈራሽ ነዉ፡፡ ዉሉ አስገዳጅ ባለመሆኑ የዉል መቀጫ ልከፍል አይገባም፣ አመልካች የከፈለችኝ ገንዘብ የለም ልመልስ አይገባም፤ በዳሸን ባንክ ልኬላታለሁ የምትለዉ ለመኪና ሽያጭ የላከችዉ ሳይሆን ቀደም ለተበደረችዉ ብድር ብር 1,162,000.00 መክፈያነት የተላከ ነዉ፤ በባንክ ብድር በተገዛ መኪና መሸጥ በህግ ፊት የሚፀና ሽያጭ ስለማይሆን ዉል የለም በማለት ተከራክራለች፡፡

በተከሳሽ ከሳሽነትም አመልካች በባንክ የላከችዉ ገንዘብ ለብድር መክፈያ ነዉ ካልተባለልኝ በቀን 05-10-2012 የተበደረችዉን ብር 1,162,000.00 እንድትከፍል ይወሰንልኝ የሚል ዳኝነት ጠይቃለች፡፡ አመልካችም በተከሳሽ ከሳሽነቱ ክስ ብድር የለብኝም፣ ብድርን የሚያረጋግጥ ሰነድ አላቀረበችም፣ ብድር የለም፤ ገንዘቡ ለመኪናዉ ሽያጭ የተላከ ነዉ በሚል ተከራክራለች፡፡

የከፍተኛ ፍ/ቤቱም አከራክሮ ዉል አለ ወይስ የለም የሚለዉን ነጥብ ለማጣራት ማስረጃዎችን በመስማት የመኪና ሽያጭ ዉል መኖሩ ተረጋግጧል፤ ፊርማ ያልተካደ ነዉ፤ ለመኪና ሽያጭ ዉል የዉል ምዝገባ አስገዳጅ አይደለም፤ የብድር ግንኙነት የለም፤ ተጠሪ የመኪናዉን ስመ ንብረት እንድታዞር ወስኗል፡፡ ተጠሪ በዚህ ዉሳኔ ይግባኝ ለጠቅላይ ፍ/ቤት አቅርባ ያስቀርባል በማለት አከራክሮ የተመዘገበ የሽያጭ ዉል አለ ወይስ የለም የሚል የተሻሻለ ጭብጥ በመያዝ የመኪና ሽያጭ ዉሉ ያልተመዘገበ በመሆኑ አስገዳጅ አይደለም በሚል ፈራሽ ነዉ በማለት ወደ ነበሩበት እንዲመለሱ ወስኗል፡፡

የሰበር ቅሬታዉ የቀረበዉ በዚህ ዉሳኔ ሲሆን ይዘቱም የመኪና ሽያጭ ዉል በአዋዋይ ፊት እንዲመዘገብ የህግ ግዴታ የለበትም፤ የፍ/ህ/ቁ. 1186፣ 1723 ስለ ንብረት ማስተላለፍ እና ስለ ማይንቀሳቀስ ንብረት ዉል ፎርም እንጅ ስለ ልዩ ተንቀሳቃሽ ንብረት ዉል ፎርም ወይም ስርዓት የማይደነግጉ ናቸዉ፡፡ የአዋጅ ቁጥር 681/2002 አንቀፅ 4 እና 6(3) እንዲሁም

የፌደራል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት በሰ.መ.ቁ.200948 የሰጠዉ ትርጉም ለክርክሩ አግባብነት የላቸዉም፡፡ የመኪና ባለቤትነት ስለ ሚረጋገጥበት ሁኔታ የሚደነግጉ እንጅ ስለ መኪና ሽያጭ ዉል ህጋዊነት የሚደነግጉ ባለመሆናቸዉ የጠቅላይ ፍ/ቤቱ ዉሳኔ እንድሻርልኝ፣ መቀጫና ወለድ ሳይወሰን መታለፉም ተገቢነት የለዉም የሚል ነዉ፡፡

የሰበር አጣሪ ችሎቱም የጠቅላይ ፍ/ቤቱ የመኪና ሽያጭ ዉል መመዝገብ አለበት ከሚል መደምደሚያ የደረሰበትን ተገቢነት ለማጣራት ተጠሪን ጠርቷል፡፡ ተጠሪም ቀርባ በጹሑፍ ባቀረበችዉ መከራከሪያ ለመኪናዉ ሽያጭ የተከፈለዉ ገንዘብ ቀብድ በመሆኑ ዉሉ እንዲፈፀም አመልካች መጠየቅ አትችልም፡፡ የመኪና ሽያጭ ዉል በሚመለከተዉ የትራንስፖርት ጽ/ቤት ካልተመዘገበና ካልተረጋገጠ ፈራሽ ስለመሆኑ የፌደራል ጠቅላይ ፍ/ቤት በሰ.መ.ቁ.81046 (ቅ-14)፣ በሰ.መ.ቁ. 200948፣ 72585፣ 74683(ያልታተሙ ዉሳኔዎች) ትርጉም የሰጠበት በመሆኑ ተገቢዉን የዉል ፎርም ያልተከተለ ስለሆነ ፈራሽ ነዉ መባሉ በአግባቡ ነዉ ሊፀና ይገባል በማለት ተከራክራለች፡፡

የክርክሩ ይዘትና አመጣጥ በአጭሩ ከዚህ በላይ የተገለፀዉ ሲሆን መዝገቡን እንደሚከተለዉ መርምረናል፡፡ እንደመረመርነዉም የመኪና ሽያጭ ዉል ስርዓት(ፎርም) ምን ሊሆን ይገባል የሚለዉ ነጥብ ከህጉ ጋር በማገናዘብ መመልከት ያስፈልጋል፡፡ በፍ/ህ/ቁ. 1186 የተንቀሳቃሽ ንብረቶች ባለሀብትነት የሚተላለፈዉ ንብረቱን በመግዛት ወይም በሌላ አኳኋን ያገኘዉ ወይም በነዛዜ የተሰጠዉ ሰዉ በእጁ ባደረገ ጊዜ የተላለፈ ይሆናል በማለት ይደነግጋል፡፡ ከዚህ ጋር በተያያዘም ልዩ የሆኑ አንዳንድ የሚንቀሳቀሱ ንብረቶችን የሚመለከቱ የህግ ድንጋጌዎች የተጠበቁ መሆናቸዉን ደንግጓል፡፡ የክርክሩ ጉዳይ ልዩ ተንቀሳቃሽ የሆነ ተሽከርካሪ እንደመሆኑ ልዩ የህግ ድንጋጌዎችን ማየት ይገባል፡፡ ለዚህም አግባብነት ያለዉ አዋጅ ቁጥር 681/2002 የተሽከርካሪ መለያ፣ መመርመሪያና መመዝገቢያ አዋጅ ሲሆን በአንቀጽ 6(3) (4) ድንጋጌዎች ሲሆኑ ተከራካሪዎች የዉሉን ህጋዊነት የሚከራከሩበትም በእነዚህ ድንጋጌዎች ይዘት መነሻ በማድረግ ነዉ፡፡ በንዑስ(3) እንደተመለከተዉ ተሽከርካሪ በግዥ፣ በስጦታ፣ በዉርስ ወይም በማናቸዉም ሁኔታ የተላለፈለት ማናቸዉም ሰዉ የባለንብረትነት መታወቂያ ደብተር በስሙ እንዲዛወርለት በስድስት ወራት ጊዜ ዉስጥ ለሚመለከተዉ አካል ማመልከት እንዳለበት የሚደነግግ ሲሆን ንዑስ(4) ድንጋጌ ደግሞ የሚቀርበዉ የስመ ንብረት ማመልከቻ ለተሽከርካሪዉ ቀደም ተሰጥቶ ከነበረዉ የባለንብረትነት መታወቂያ ደብተርና የዝዉዉሩን ህጋዊነት ለማስረዳት በሚመለከተዉ አካል ከተሰጠ ወይም ከተረጋገጠ ሰነድ ጋር ተያይዞ

መቅረብ ያለበት መሆኑን ይደነግጋል፡፡ እስካሁን የጠቀስናቸዉ ድንጋጌዎች ስለ ተሽከርካሪ ሽያጭ ዉል ፎርም (ስርዓት) የሚደነግጉ ሳይሆኑ ስመ ንብረት ዝዉዉር የሚፈፀምበትን ስርዓት የተመለከቱ ናቸዉ፡፡ በእርግጥ እነዚህ ድንጋጌዎች የተሽከርካሪ ሽያጭ ዉል በጹሑፍ ሊሆን እንደሚገባ የሚያስገነዝቡ መሆኑን መረዳት ይቻላል፡፡

በተጨማሪም ስለ ተሽከርካሪ ሽያጭ ዉል በአዋዋይ ፊት እንዲፈፀም በአስገዳጅነት የተደነገገ መሆንና አለመሆኑን በአዋጅ ቁጥር 922/2008 የሰነዶች ማረጋገጥና ምዝገባ አዋጅ ድንጋጌዎችን መመልከት ተገቢ ያደርገዋል፡፡ በዚህ አዋጅ አንቀጽ 9 የተደነገገዉ ካልተረጋገጡና ካልተመዘገቡ ህጋዊ ዉጤት የላቸዉም ያላቸዉን ጉዳዮች የዘረዘረ ሲሆን አንደኛዉ አግባብ ባለዉ ህግ መሰረት መመዝገብና መረጋገጥ ያለባቸዉ ሰነዶች፣ ሁለተኛዉ የዉክልና መስጫና መሻሪያ ሰነድ፣ ሶስተኛዉ የንግድ ማህበራት መመስረቻና መተዳደሪ ደንቦችን የያዙ ጹሑፎች ሲሆኑ ከዚህ በተጨማሪ ባለጉዳዮች እንዲረጋገጡላቸዉና እንዲመዘገቡላቸዉ የሚጠይቋቸዉ ሌሎች ሰነዶች መሆናቸዉን ይደነግጋል፡፡ የተሽከርካሪ ሽያጭ ዉል እንዲመዘገብና እንዲረጋገጥ አግባብ ባለዉ ሌላ ህግ ያልታዘዘ በመሆኑ መመዝገብና መረጋገጥ ያለበት ስለመሆኑ አስገዳጅ ነዉ ማለት አንችልም፡፡ የዚሁ አዋጅ አንቀጽ 17 ድንጋጌ ይዘትም በተመሳሳይ ይህን ያስገነዝባል፡፡

ነገር ግን ባለጉዳዮች ዉሉ እንዲመዘገብላቸዉና እንዲረጋገጥላቸዉ ከጠየቁ የሚመዘገብላቸዉና የሚረጋገጥላቸዉ ሲሆን ይህ የተረጋገጠዉና የተመዘገበዉ ዉል በስመ ሀብት ዝዉዉር ጊዜ ሻጩን ይዞ መቅረብ ሳያስፈልግ የተረጋገጠዉን ሰነድ ይዞ በመቅረብ ስመ ሀብትን ለማዛወር ስለሚረዳ የዝዉዉሩን አስተዳደራዊ ተግባር ለገዥ ያቀልለታል ከሚባል በስተቀር ምዝገባና ማረጋገጥ አስገዳጅ የዉል ፎርም የተደረገበት ልዩ ህግ የለም፡፡ የአዋጅ ቁጥር 681/2002 አንቀጽ 6(4) ተሽከርካሪ ምዝገባና ባለንብረት መታወቂያ ደብተር በስሙ ለማሰራት የሚጠይቅ ማንኛዉም ሰዉ ይዞት ከሚቀርበዉ ማመልከቻ ጋር የዝዉዉሩን ህጋዊነት ለማስረዳት በሚመለከተዉ አካል ከተሰጠ ወይም ከተረጋገጠ ሰነድ ጋር ተያይዞ መቅረብ አለበት በሚል የደነገገዉ ይህን የሚያስረዳ ነዉ፡፡

በተጠሪ በኩል የፌዴራል ጠቅላይ ፍ/ቤት ትርጉም የሰጠባቸዉ በሚል የተጠቀሱት ዉሳኔዎች ስለ ተሽከርካሪ ሽያጭ ዉል ፎርም ስርዓት ምን መሆን እንዳለበት ጭብት ተደርጎ ትርጉም ያልተሰጠባቸዉ ዉሳኔዎች በመሆናቸዉ ለተያዘዉ ክርክር አግባብነት ያላቸዉ ሁነዉ አልተገኙም፡፡ በተጠሪ በኩል ዉሉ በቀብድ የታሰረ እንጅ ያለቀለት አይደለም በሚል በስር

ፍ/በት ሳይነሳ በአዲስ የቀረበዉ መከራከሪያ በፍ/ብ/ሥ/ሥ/ህ/ቁ.329 መሰረት ተቀባይነት ባይኖረዉም ክፍያዉ ያለቀለት ዉል መሆኑን ስለሚያሰገነዝብ ክርክሩ ተቀባይነት የለዉም፡፡

በመሆኑም ከዚህ በላይ በገለጽነዉ ምክንያት የፍ/ህ/ቁ 1723 የምዝገባና ማረጋገጥ የዉል ፎርም ግዴታን የጣለዉ የማይንቀሳቀስ ንብረትን በሚመለከት ሲሆን ለሚንቀሳቀስ ንብረት የፍ/ህ/ቁ 1186(2) የህጉ ልዩ ድንጋጌዎች ተፈጻሚ እንደሚደረጉ ቢደነግግም ለተሸከርካሪ ሽያጭ ዉል በሚመለከተዉ አካል ወይም በዉል አዋዋይ ፊት እንዲመዘገብም ሆነ እንዲረጋገጥ አስገዳጅ ሁኖ በህግ ባልተደነገገበት ሁኔታ የስር ፍ/ቤት የማይንቀሳቀስ ንብረት ዉል ፎርምን (ስርዓትን) በመከተል መፈጸም አለበት ማለቱ ህግን ያልተከተለ ትርጉም ሁኖ ስላገኘነዉ መሰረታዊ የህግ ስህተት የተፈፀመበት ነዉ ብለን ፍርድ ሰጥተናል፡፡ ተከታዩንም ወስነናል፡፡

<u>ዉሳኔ</u>

1. የጠቅላይ ፍ/ቤት መደበኛ ባ/ዳር ችሎት በመ/ቁ 61258 በቀን 27-11-2015 ዓ.ም በዋለዉ ችሎት የሰጠዉ ዉሳኔ በፍ/ቤቶች የተሻሻለ አዋጅ ቁጥር 281/2014 አነቀጽ 24(5) መሰረት በአብላጫ ድምጽ ተሽሯል፡፡
2. ደ/ወሎ ዞን ከፍተኛ ፍ/ቤት በመ/ቁ 50175 በቀን 17-04-2015 ዓ.ም የሰጠዉ ዉሳኔ ፀንቷል፡፡
3. ለዚህ ፍ/ቤት ወጪና ኪሳራ ግራቀኙ ይቻቻሉ፡፡

<u>ትዕዛዝ</u>

የከፍተኛ ፍ/ቤቱ በፀናዉ ዉሳኔ መሰረት እንዲያስፈጽም ታዟል፣ ከግልባጩ ጋር ይላፍለት ፡፡

መዝገቡ ተዘግቷል ወደ መዝገብ ቤት ይመለስ፡፡

የሰ/መ/ቁ. 185154

ቀን፡- ግንቦት 27 ቀን 2013 ዓ/ም

ዳኞች፡- ብርሃኑ አመነው

ተሾመ ሽፈራው

ሀብታሙ እርቅይሁን

ብርሃኑ መንግሥቱ

ነፃነት ተገኝ

አመልካች፡- ወ/ሮ አበባየሁ ብርሌ

ተጠሪ፡- 1. አቶ ሙሉአለም ፈንታ

2. ወ/ሮ እናታለም ፈንታ

መዝገቡ ተመርምሮ ተከታዩ ፍርድ ተሠጠ፡፡

ፍርድ

የሰበር አቤቱታው የቀረበው የአማራ ክልል ጠቅላይ ፍርድ ቤት ሰበር አጣሪ ችሎት በሠጠው ውሳኔ መሠረታዊ የሆነ የሕግ ስህተት ተፈጽሞበታል በሚል ነው፡፡ የክርክሩን አመጣጥ ከስር ፍርድ ቤት የመዝገብ ግልባጭ እንደተረዳነው አመልካች የአማራ ክልል ጠቅላይ ፍርድ ቤት ይግባኝ ሰሚ ችሎት በመዝገብ ቁጥር 50544 ግንቦት 22 ቀን 2011 ዓ/ም በሠጠው ውሳኔ የሰበር አቤቱታ ሰኔ 26 ቀን 2011 ዓ/ም በተጻፈ በመዝገብ ቁጥር 90087 ያቀረበ ቢሆንም ፍርድ ቤቱ ጥቅምት 04 ቀን 2012 ዓ/ም በዋለው ችልት ይግባኝ ሰሚ ችልት በክፉሌ በሠጠበት ጉዲይ ውሳኔ ከተሰጠ ከሦስት ወር ከ4 ቀን በኋላ የቀረበና ጊዜው ያለፈበት ነው በማለት መዝገቡን ዘግቷል፡፡ አመልካች በመዝገብ ቁጥር 92606 ያቀረቡትን የሠበር ማስፈቀጃ አቤቱታ ፍርድ ቤት በቂ ምክንያት ያላቀረበ በመሆኑና የዘገየውም በአመልካች ቸልተኝነት ስለሆነ በማለት ጥቅምት 10 ቀን 2012 ዓ/ም ውድቅ አድርጓል፡፡

የሠበር አቤቱታ የቀረበው በዚህ ውሳኔ ነው፡፡ የአመሌካች የሠበር አቤቱታ ይዘትም ይግባኝ ሰሚ ችሎት ይግባኙ መልሰ ሰጭን ያስቀርባል ሲል በከፊል ያጸናው ስለመሆኑ አላውቅም፡፡ ከተሰጠው መጥሪያ ላይም በከፊል የጸና ስለመሆኑ አይገልጽም፡፡ በፍርድ ቤቱ ችግር እንጂ በአመልካች ቸልተኝነት ባለመሆኑ የሠበር አቤቱታ እንዳቀርብ ሊቀበለኝ ይገባል የሚል ሲሆን የሠበር አጣሪ ችሎት ጉዳዩን ተመልክቶ ይግባኝ ሰሚ ችሎት ውሳኔ ላይ አመልካች

አጠቃለው የሠበር አቤቱታ ሲያቀርቡ ቀደም ሲል በከፊል የተሰረዘ ቅሬታ ላይ ጊዜው አልፎበታል መባሉ ተገቢነቱን ለማጣራት ለሰበር ሰሚ ችሎት ያስቀርባል በማለት ተጠሪዎች መልስ እንዲያቀርቡ አዟል። ተጠሪዎች መጥሪያ ደርሷቸው ባለመቅረባቸው ጉዳዩ በሌሉበት ታይቷል።

የክርክሩ ሂደት በአጭሩ ከላይ የተገለጸው ሲሆን እኛም አመልካች ያቀረቡት የሠበር አቤቱታ ጊዜው ያለፈበት ነው ወይስ አይደለም? የሚለውን በጭብጥነት በመያዝ መዝገቡን መርምረናል።

እንደመረመርነው በተሻሻለው የአማራ ክልል ፍርድ ቤቶች አዋጅ ቁጥር 223/2007 አንቀጽ 17(4) መሠረት የሠበር አቤቱታ ማቅረቢያ ጊዜ 90 ቀናት ነው። በዚህ ጊዜ ውስጥ ካልቀረበ የሠበር አቤቱታው ጊዜ ያለፈበትና የማይመረመር ነው። አመልካች የሠበር አቤቱታ ያቀረበበትን የመጨረሻ ፍርድ የሠጠው የአማራ ክልል ጠቅላይ ፍርድ ቤት ይግባኝ ሰሚ ችሎት ግንቦት 22 ቀን 2011 ዓ/ም ነው። አመልካች የሠበር አቤቱታ ያቀረቡት ደግሞ ሠኔ 26 ቀን 2011 ዓ/ም ነው። ይሔም 90 ቀናት ከመድረሱ በፊት መቅረቡን ያረጋግጣል። የሠበር አጣሪ ችሎቱ የአመልካች የሠበር አቤቱታ ጊዜ ያለፈበት ነው ያለው ይግባኝ ሰሚ ችሎቱ መልሰ ሰጭዎችን ያስቀርባል ያለው በተከሳሽ ከሳሽነት ክሱ ሲሆን የአመልካችን ክሰ በተመለከተ ውሳኔው በከፊሌ አጽንቷል፤ በከፊል የጸናው መጋቢት 12 ቀን 2011 ዓ/ም በመሆኑ የ90 ቀናት የሠበር አቤቱታ ማቅረቢያ ጊዜ አልፍበታል በሚል ነው።

የፍትሓ ብሔር ሥነ-ሥርዓት ሕጉ ክርክር ቀልጣፋ፣ ውጤታማና ወጭና ጊዜ ቆጣቢ እንዱሁም ፍተሃዊ በሆነ ሁኔታ እንዲመራ ዓላማ አድርጎ የተቀረጸ ነው። በፍብ/ሥ/ሥ/ሕ/ቁ. 234(1(ረ) መሠረት ክስ የቀረበበት ተከሳሽ የሆነ ወገንም በከሳሹ ላይ የተከሳሽ ከሳሽነት ክስ እንዲያቀርብ የቀረበበት ምክንያትም ወጭና ጊዜ ቆጣቢ በሆነ አግባብ እንዱመራ ካለው ሃሳብ ነው። ክርክሩ በአንድ ላይ ሲመራ የቆየ ክስ ሆነ የተከሳሽ ከሳሽነት ክስ የቀረበበት ክርክር በይግባኝ ሆነ በሰበር አቤቱታ በሚቀርብበት ጊዜ አንድ ላይ ተጠቃሎ ቢቀርብ በአንድ ጉዳይ ብዙ ፋይል እንዳይከፈት የሚያደርግና የፍርድ ቤቱን ሆነ የተከራካሪዎችን ጊዜ የሚቆጥብ ነው። በክርክር ሂደት ክርክሩ ተጠቃሎ ከመወሰኑ በፊት በግልጽ በከፊል የተወሰነ ካለና ከቀረበው ክርክር ጋር ተያያዥነት የሌለው እስከሆነ ድረስ መብቱን የማስከበር በጉዳዩ ላይ ይግባኝ ማቅረብ የፈለገ ተከራካሪን የሚከለክል የሥነ-ሥርዓት ሕግ ድንጋጌ የለም። በሌላ በኩል ተከራካሪው ክርክሩን አጠቃሎ ይግባኝ ወይም የሠበር አቤቱታ ከማቅረብ ግን ሊከለከል አይገባውም። በተያዘው ጉዳይም ይግባኝ ሰሚ ችሎት በከፊል የአመልካችን የይግባኝ ቅሬታ የሠረዘ ቢሆንም በከፊል የቀጠለው ክርክር ላይ

ተጠቃሎ ውሳኔ የተሰጠው ግንቦት 22 ቀን 2011 ዓ/ም በመሆኑ አመልካች ክርክሩ ተጠቃሎ ከተቋጨ በኋላ የሠበር አቤቱታ 90 ቀናት ሳያልፍ አቅርበው እያለ የሰበር አጣሪ ችሎት በመዝገብ ቁጥር 90087 ጥቅምት 04 ቀን 2012 ዓ/ም ጊዜው ያለፈበት አቤቱታ ነው በማለት መዝገቡን መዘጋቱ የአመልካችን ፍትሕ የማግኘት መብት አላግባብ የከለከለና መሠረታዊ የሆነ የክርክር አመራር ግድፈት ያለበት ሆኖ ስላገኘነው ሊታረም የሚገባ ነው ብለናል።

በሌላ በኩል አመልካች መብታቸውን ለማስከበር የሠበር ማስፈቀጃ አቤቱታ በመዝገብ ቁጥር 92606 ያቀረቡ ሲሆን ምንም እንኳን ከላይ እንደተመለከትነው የሰበር አቤቱታ ማቅረቢያ ጊዜው ያለፈበት ቢሆንም በይግባኝ ሰሚ ችሎት በከፊል የተሰረዘ ቅሬታ ቢኖርም አመልካች አጠቃለው የሠበር አቤቱታ ያቀረቡት በሥነ-ሥርዓት ሕጉ ክርክሮች ተጠቃለው ቀልጣፋ፣ ወጭና ጊዜ ቆጣቢ በሆነ አግባብ እንዲመሩ ያሰበውን ዓላማ ከግብ ለማድረስ በሚያስችል መልኩና ከአንድ ጉዳይ ለሚመነጭ የተለያየ ፋይል እንዳይከፈት ለመከላከል ሆኖ እያለ፤ በሕጉ የተዘረጋዉን ሥርዓት የተከተለን ተከራካሪ የሠበር አቤቱታ አቀራረብ ላይ ቸልተኝነት አለበት ተብሎ የሠበር ማስፈቀጃ አቤቱታው ውድቅ መደረጉ ስህተት ያለበት ሆኖ አግኝተነዋል።

<u>ውሳኔ</u>

1. የአማራ ክልል ጠቅላይ ፍርድ ቤት ሰበር አጣሪ ችሎት በመዝገብ ቁጥር 90087 ጥቅምት 04 ቀን 2012 ዓ/ም እና በመዝገብ ቁጥር 92606 ጥቅምት 10 ቀን 2012 ዓ/ም የሠጠው ውሳኔ በፍብ/ሥ/ሥ/ሕ/ቁ. 348(1) መሠረት ተሽሯል።

2. የአማራ ክልል ጠቅላይ ፍርድ ቤት ሰበር አጣሪ ችሎት አመልካች በመዝገብ ቁጥር 90087 ያቀረቡትን የሠበር አቤቱታ ተቀብሎ በመመርመር የመሰለውን እንዲወስን ጉዳዩን በፍብ/ሥ/ሥ/ሕ/ቁ. 341(1) መሠረት መልሠናል።

3. አመልካች በዚህ ችሎት ያወጡትን ወጭና ኪሣራ የራሳቸውን ይቻሉ ብለናል።

<u>ትዕዛዝ</u>

- ውሳኔው በሥር ፍርድ ቤት ይተላለፍ። የአማራ ክልል ጠቅላይ ፍርድ ቤት ሰበር አጣሪ ችሎት በውሳኔው መሠረት እንዲፈጽም አዘናል። ይጻፍ።
- መዝገቡ ተዘግቷል ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የአምስት ዳኞች ፊርማ አለበት።

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UNIVERSITY OF GONDAR

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All the text should be typeset in the 12-point *Times New Roman* font and justified with a margin left 1.5 inch and right 1.0 inch top 1 inch and bottom 1 inch. The first line of every paragraph should not be indented. The line spacing should be set at 1.5, including the paragraph breaks. All the headings should be typeset in the 12-point *Times New Roman* font and numbered with consecutive Arabic numbers (e.g. 1., 1.1., 1.2., 1.2.1., 1.2.2., 1.2.3., 2., 2.1. etc.), and may be written in bold.
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