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Mohammed Ibrahim

REFORMING THE ETHIOPIAN ELECTORAL SYSTEM: LOOKING FOR THE BEST ALTERNATIVE*

Gebremeskel Hailu Tesfay**

ABSTRACT

Electoral systems are set of rules and procedures which determine how voters cast their votes and how the votes are converted into representative seats.¹ Beyond this, each electoral system has its own impact on how the political system functions. From this perspective, the author has tested the discontents of the Ethiopian electoral system, the first-past-the-post (FPTP) taking the election data of 2005, 2010 and 2015. The research finding showed that the FPTP electoral system is ill devised to the Ethiopian current needs and realities.² In view of such discontents, there should be a genuine concern of reforming the Ethiopian electoral system. The question remains, however, which electoral system best suits the Ethiopian situation from the bulk of alternatives? In choosing the best alternative electoral system, first, a list of criteria are set which sum up what we want to achieve and what we want to avoid or in a broader sense what we want our political system to look like. The possible alternative electoral systems are evaluated against the specific criteria designed. Finally, the evaluation revealed decisively that the mixed electoral system with compensatory seats which maintains the strong attributes of FPTP and PR electoral systems while avoiding at the same time their negative sides is found to be the best to the Ethiopian multicultural federation. This system which combines FPTP and PR systems would produce proportional results, encourage inter-party conciliation, reduce the number of ignored votes, enable geographic representation, ensure fair results for all political parties and the voters behind them, and above all creates cohesive government than the PR system would do alone.

Key words: *electoral system, the FPTP, the mixed electoral system, proportional electoral system, and Ethiopia.*

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¹Michael Gallagher and Paul Mitchell, *Introduction to Electoral Systems* (ed.) (*The Politics of Electoral Systems*, Oxford University Press Inc., 2005), P.3.

²Gebremeskel Hailu, *The Ethiopian Electoral System: Issues and Realities, a Reflection of Problems*, pending for publication at Gonder University International Law Journal (2016).

1. INTRODUCTORY REMARKS

Modern democratic societies are governed by a smaller set of public officials whom the people delegate them the task of political decision-making. These representatives are chosen through elections. The question of how votes are casted in an election and how the votes are converted into representative seats are governed by electoral systems.³ Electoral systems, other than translating votes to seats, have vital effects on a political system as a whole. They determine the number of parties, the ease of forming a stable government, the degree of representation of political parties and the extent of citizens' interest in politics.⁴ Hence, electoral systems are powerful instruments for shaping the content and practice of politics. In this regard, many scholars, including Donald Horowitz and Arend Lijphart argued; “within the range of democratic institutions, there is no more important choice than which electoral system to be used”⁵.

However, each electoral system has its own advantages and disadvantages. No system is perfect, either theoretically or practically. Some electoral systems are preferable to some legal systems while others are not and the vice versa.⁶ Therefore, what matters most is, whether the net disadvantages of any system is more tolerable than the net disadvantages of other alternative systems taking into account the context where the electoral system works.

From this vantage point, unlike proportional representation (hereafter PR) electoral systems, majoritarian systems to which the Ethiopian electoral system, first-past-the-post (here after FPTP) belongs is strong in creating cohesive government and ensuring accountability of members at constituency level, among others, but is blamed for misrepresenting smaller parties, failing to create interethnic or intercultural conciliation and affecting multiparty democracy. The author has previously tested this assertion by an empirical research exploring the discontents of the Ethiopian electoral system in light of the nation's political experience, social plurality and

³Michael and Paul, *Supra* note 1, p. 3.

⁴Andrew Reynolds et al., *Electoral System Design* (the New International Idea Handbook, International Institute for Democracy and Electoral Assistance, 2005), Pp. 5-6.

⁵*Ibid.*

⁶*Ibid.*

constitutional frameworks.⁷ The research finding showed with a lot of evidence that the FPTP is ill devised to the Ethiopian needs and realities. Particularly, it has distorted the level of representation and has produced *manufactured majority* rewarding bigger parties with bonus seats while punishing the smaller ones.⁸ This in turn has obstructed the legitimacy of the government.⁹ It has affected the behavior of political parties fostering ‘me or never’ or fear mongering political campaigns exacerbating intolerance between the opposition and the incumbent parties and the supporters behind them instead of conciliation and cooperation.¹⁰ It has also affected the multiparty system by denying smaller political parties seats proportionate to their votes.¹¹

In the existence of all these problems, there should be a genuine concern of reforming the Ethiopian electoral system.¹² The question remains, however, whether it is possible to devise an alternative electoral system which mitigates the problems of the FPTP? Vast of the literature long established this question positively. In 1990s several democratic states have answered that question in the affirmative. For instance, Japan, Italy, New Zealand, Russia, Hungary and Chile replaced their electoral systems by new ones in response to achieving some objectives which they had missed in the FPTP.¹³

In light of such experiences, this article is intended to investigate whether Ethiopia can do the same? If so, which alternative is best? And what should be the mechanisms employed to select the best alternative? Accordingly, the central focus of this research is searching a viable alternative electoral system which alleviates the problems of the existing electoral system without avoiding its existing virtues.

⁷Gebremeskel, *Supra* note 2.

⁸Bigger party in the Ethiopian context refers to the EPRDF, while small parties refer to the other parties who are unable to find parliamentary seats in the parliament.

⁹*Ibid.*

¹⁰*Ibid.*

¹¹*Ibid.*

¹²Getachew Assefa, *Electoral System and Political Pluralism in Ethiopia: A Case for Reform*, Ethiopian Constitutional Law Series (2015), Vol. VI (AAU Printing Press).

¹³Michael Gallagher and Paul Mitchell (ed.), *the Politics of Electoral Systems*, Oxford University Press Inc., 2005, p. X. See also, Murray Faure and Albert Venter, *Electoral Systems and Accountability: A Proposal for Electoral Reform in South Africa*, retrieved from <http://www.eisa.org.za/PDF/faure.pdf> <as accessed on October 4, 2016>.

To meet this objective, the results of the previous general elections, the nature and basis of formation of the political parties together with the available literatures and the experiences of other countries are duly considered. Moreover, interviews are conducted with key informants from the opposition and the incumbent political parties and the author's own observation is contemplated. However, it is good to note that the article is short of analyzing whether or not the existing FPTP electoral system in Ethiopia is practically conducted genuinely, i.e., the process is free, fair, and inclusive. The article rather examines the practical consequences of FPTP even when it is genuinely implemented in Ethiopia.

The structure of this article goes in the following manner. Following this first part, the second part of the discussion tries to review the practical pitfalls of the Ethiopian electoral system to underscore the need for reforming it. The forth part makes a thorough analysis on each of the possible alternatives of electoral systems by setting up established criteria. Finally, in the fourth part conclusions are drawn.

2. BRIEF HIGHLIGHT ON THE DISCONTENTS OF THE ETHIOPIAN ELECTORAL SYSTEM, THE FPTP

As a matter of fact, the FPTP electoral system does have its own strong and weak sides subject to conditions where the system is implemented. The ACE Newsletter¹⁴, however, underscored the importance to realize that a given electoral system will not necessarily work in the same way in different countries. Although there are some common experiences in different regions of the world, the effects of a particular type of electoral system depend to a great extent on the socio-political context in which it is used. What matters most is, therefore, the context where the electoral system is supposed to work. Regarding the Ethiopian context, save its positive results, the following discussion tends to show the problems of this electoral system.

¹⁴ACE Newsletter, Electoral Systems, P7, available at: <https://aceproject.org/ace-en/topics/es/onePage> <as accessed on December 15, 2016>.

2.1. THE EFFECT OF FPTP ON REPRESENTATION PARTIES

Pursuant to the FPTP, a party who won in each electoral constituency is returned to the parliament. The literature widely blames this system for hampering fair representation of parties and the views behind the parties. In this regard, let's test this assertion by taking the 2005 and 2010 Ethiopian general elections.

Table 1: Results of the 2005 Ethiopian general election

No.	Party	Popular vote	Seats on the basis of		Discrepancy
			FPTP	PR	
1	EPRDF	10,260,413	327	274	+53
2	CUD	4,594,668	109	123	-14
3	UEDF	1,741,670	52	47	+5
4	OFDM	454,435	11	12	-1

Source: Abrha Kahsay cited at *infra* foot note No. 24.

In the 2005 Ethiopian competitive general election, 35 political parties took part. Of which 4 parties from the opposition and one independent have managed to get parliamentary seats. EPRDF won 327 seats using the FPTP electoral system. If we make electoral simulation using PR instead of the FPTP, the EPRDF would have won 274 seats which reduce its share by 53 seats. The Coalition for Unity and Democracy (CUD) would have had secured additional fourteen seats from 109 seats it secured using FPTP had the system in use been PR electoral system. The Oromo Federalist Democratic Movement (OFDM) which got 11 seats would have had secured one additional seat. On the contrary, United Ethiopian Democratic Forces (UEDF) would have lost five seats from the 52 seats it achieved using FPTP had the system in use been PR electoral system.

On balance 43 seats would have been distributed to other parties who failed to get any seat on the basis of FPTP electoral system. That shows, the votes which had been polled to the smaller parties and which could have earned 43 seats are wasted and the smaller parties are left misrepresented.

One more instance; let's examine the results of the 2010 general election for Addis Ababa City Administration which is represented by 23 seats at the national parliament.

Table 2: Results of the 2010 Ethiopian general election

No	Party	Popular vote	Seats on the basis of		Discrepancy
			FPTP	PR	
1	EPRDF	564,821	22	13	+9
2	Medrek	380,329	1	8	-7
3	EDP	39,786	0	1	-1
4	AEUP	19,622	0	1	-1
5	CUD	14,108	0	0	0

Source: The ENEB General Election Report 2010, available at its library, Sep 2010.

Out of total 1,041,180¹⁵ (one million forty one thousand and one hundred eighty) votes, EPRDF received 564,821(five hundred sixty four thousand and eight hundred twenty one) votes¹⁶ which accounts 54.2% of the total votes. However, using the FPTP electoral system, it won 95.6% of the seats (22 out of 23 seats). But, had the system in place been PR electoral system, it would have had entitled to 54.2% of the seats (13 out of the 23 seats). Hence, in actual terms 41.4% of the votes casted against EPRDF are wasted or are

¹⁵The Ethiopian National Electoral Board (ENEB) Report for the 2010 General Election, available at the library of the ENEB, September 2010.

¹⁶*Ibid.*

left unrepresented. Instead, as a result of the FPTP electoral system, EPRDF got additional 9 more seats (41.4% of the total seats).

Medrek, a coalition of different parties, got 380,329 out of the 1,041,180¹⁷ votes which amounts to 36.5% of the total votes but received only a single seat (4.4% of the seats). Nevertheless, had it been a PR electoral system, it would have been entitled to 36.5% or 8 seats and it actually lost 7 seats (32.1% of seats). In other words, 32.1% of votes which are casted to Medrek are left unrepresented.

In the same manner, Ethiopian Democratic Party (EDP) and All Ethiopian Unity Party (AEUP) would have been entitled each to a single seat, had the system been proportional representation but owing to the FPTP electoral system they got nothing.

Overall, the above discussion reveals that the existing electoral system is distorting the allocation of votes to seats thereby misrepresenting the minor parties. The FPTP greatly benefited the EPRDF compared to others and this substantiated the theory which states FPTP inherently benefits bigger parties and puts the smaller ones and the voting population behind them disadvantaged.

2.2.THE EFFECT OF FPTP ON MULTIPARTISM

Ethiopia is experiencing an infant democracy striving to bring about multiparty democracy only since barely a couple of decades ago. The country had been characterized by absence of accommodation for almost all of its history.¹⁸ As a result of that gloomy reality, the country was in prolonged civil wars, which were basically the off-shoots of the different views that could have been peacefully resolved had there been multiparty system in the country.¹⁹

For multipartism to triumph, the electoral system should be accommodative, representative, and fair to all. However, it is an established fact that FPTP

¹⁷*Ibid.*

¹⁸Mohamed Abdurahman et al., Election (Office of the National Electoral Board of Ethiopian Bulletin, Addis Ababa, 2010), P 9.

¹⁹*Ibid.*

electoral system is against multiparty democracy in diversified societies.²⁰ It rather encourages larger parties to the disadvantage of the smaller ones leading to two party systems in most cases.²¹

From the election data presented by Ethiopian National Electoral Board (herein after ENEB) from 1995-2015, the number of contending parties is increasing.²² Nevertheless, in the last two elections, the ruling party and its allies won 99.9 % and 100 % of the seats in the House of Peoples' Representatives (HPR). This result left substantial number of votes given to the opposition parties unrepresented in the HPR.²³ Obviously, this trend ultimately affects the multiparty democracy for parties are losing hope of receiving parliamentary seats let alone winning government positions. The lion's share of this problem goes to the existing electoral system which rewards larger political parties at the expense of smaller ones.

2.3. THE EFFECT OF FPTP FOR OR AGAINST CONCILIATION

In Ethiopia, the aforementioned analysis reveals the existence of serious misrepresentation in the parliament. The opposition is left unrepresented despite receiving substantial votes. Because of the winner take all nature of the FPTP electoral system, political parties consider each other as enemies and not allies. They each preach themselves as 'good' and their competitors as 'evil' in their election campaigns. The author's observation from the previous elections reveals pre-election campaigns were not held among programs but rather were inclined to hate mongering propagandas. The

²⁰Andrew Reynolds *et al*, *supra* note 4.

²¹To illustrate this by way of example, let's take the case of New Zealand; New Zealand had long experienced a two party system until it switched to a MMP from the FPTP. Despite its two party experiences, the first contest under MMP has involved 34 parties resulting in the election of six and a coalition government. See, Pippa Norris, *Choosing Electoral Systems: Proportional, Majoritarian, and Mixed Systems*, International Political Science Review (1997), Vol. 18, No. 3, Sage Publications Ltd.P. 299, available at: <http://www.hks.harvard.edu/fs/pnorris/Acrobat/Political%20Studies%20Twilight.pdf> <as accessed on October 10, 2016>.

²²In the electoral periods from 1995-2015, it was 57, 49, 35, 63 and 58 respectively, see NEBE Bulletin of the 2010 Election, *supra* note 18.

²³Solomon Goshu, Electoral Reform on the Horizon, *the Reporter Newspaper*, 22 Oct. 2016.

incumbent and the opposition parties blame each other for every political failure even arising from their own internal affairs.

During the eves of election campaigns, especially at the later three elections (2005, 2010 and 2015) both the ruling and the opposition parties tried to use scare-mongering campaigns rather than their alternative policies.²⁴ Their content of campaigning is ‘me’ or ‘never’ which resulted from the desire to take the single seat available in a constituency contemplating the ‘*winner takes all*’ scenario. If this is taken back to the political history of the state, it is adding fuel to the already polarized political culture.

The opposition parties further blame one another tagging some of their members as ‘weyanie’ or otherwise allies of the ruling party. They deny legitimacy to the government and the institutions created by the latter. Understandably, the weak political culture of tolerance and compromise is one of the causes for such behavior.²⁵ However, such problems might have been dealt by a properly designed electoral system. To say the least, the plurality electoral system is escalating the mistrust among political parties. So, we can say, the existing electoral system does not help the political parties to negotiate and make political compromise or consensus on Grand National issues and interests.

2.4. THE EFFECT OF FPTP ON GOVERNMENT LEGITIMACY²⁶

Legitimacy requires the broadening of representation of social groups in governmental decision making roles.²⁷ In this regard, it would be compelling to ask whether FPTP in Ethiopia enhanced representation of diverse views

²⁴Abrha Kahsay, Alternative Mechanisms of Electoral Systems for Vibrant Democracy and All Inclusive Representation in Ethiopia (Unpublished Master’s Thesis in the Public Administration and Development Management, Addis Ababa University 2008), P. 70.

²⁵*Ibid.*

²⁶In his *Second Treatise of Government*, John Locke (1632-1704) argues that legitimate government is a limited government based on consent, in which the majority rules but may not violate people’s fundamental rights. Furthermore, John Rawls, in *Political Liberalism* (1993), accessible on <http://plato.stanford.edu/entries/legitimacy/> presents legitimacy in this way: On the broadest view, legitimacy both explains why the use of political power by a particular body—a state, a government, or a democratic collective, for example—is permissible and why there is a *pro tanto* moral duty to obey its commands.

²⁷William P. Irvine, Does Canada Need A New Electoral System, 1979, P.4.

and interests. As we have seen from the election data discussed above, FPTP created '*manufactured majority*' in which a single party received more seats than its popular votes. The more votes are wasted the more illegitimate the elected government would be.

To make the discussion practical, some instances from the general election of 2005 and 2015 should be presented. In the 2005 election, EPRDF undeservedly got 53 additional seats because of the FPTP. The post-election violence of 2005 is one signal questioning the legitimacy of the elected government as huge numbers of people are left unrepresented.²⁸

When it comes to the 2015 general election, EPRDF and its affiliates had won the parliament without any opposition. However, months after the victory, wide spread opposition protests were seen which triggered the government to declare a state of emergency. The same situation had arisen after the 2005 election. The EPRDF understood them as a 'protest votes' for there was problems of good governance and the issue of justice and high expectation of development.²⁹ But in the 2016 protest, EPRDF higher officials openly admitted the non-representation of the opposition in the parliament to be reconsidered by reforming the existing electoral system.³⁰

Because of these facts, there seems a consensus to reforming the Ethiopia electoral system. The upcoming discussion is interested to search for alternative electoral system to the Ethiopian multiethnic federation.

3. CHOOSING AN ALTERNATIVE ELECTORAL SYSTEM

TO THE ETHIOPIAN MULTIETHNIC FEDERATION

In the preceding discussion, the author tried to show the discontents of the Ethiopian electoral system, FPTP. Cognizant of such problems, the author is

²⁸The same thing was witnessed in many countries. For example, the exceedingly disproportionate nature of the FPTP caused popular frustrations in Lesotho after the May 1998 elections, resulting in violent demonstrations by supporters of the losing parties a few days after the announcement of the results, Denis K. Kedima, *Choosing an Electoral System, Alternatives for the Post-war Democratic Republic of Congo*, Journal of African Elections Vol. 2, No. 1, P.40.

²⁹Interview with Bereket Simon, Member of the Executive Committee of the EPRDF, Addis Ababa, 12 April 2008, as cited in Abrha Kahsay, *supra* note 24.

³⁰Bereket Simon, an EPRDF key man, addressing on live broadcasting on EBC concerning the mass protests and oppositions, August 2016.

convinced that this system needs to be reformed. The question, however, is what other alternatives do we have? To address this question, like most electoral system designers do, we have to set criteria relevant to the Ethiopian reality on the basis of which the possible alternative systems are going to be evaluated.

The choice of an electoral system is considered useful if it is evaluated with reference to some criteria which the political system can employ through a sensible decision-making process.³¹ Among other things, the choice must be simple and easy both to implement and understand. However, if it is cumbersome, to the point that the political system cannot reasonably manage it, the solution is not considered to be viable.³²

To this end, the choice of a workable alternative electoral system to the Ethiopian multi ethnic federation should start with a list of criteria which sum up what we want to achieve and what we want to avoid as a political system.³³ The following discussion is interested to identify such criteria before heading to the actual evaluation.

³¹Guido Ortona, *Choosing the Electoral System: Why Not Simply the Best One?* Retrieved from <http://www.al.unipmn.it> <as accessed on September 10, 2015>, P.2.

³²*Ibid.*

³³For instance, one may want to encourage the growth of strong political parties and at the same time to provide opportunity for independent candidates to be elected. A system which gives value to both desires may result in a highly complicated ballot paper which causes difficulties for less educated voters. Hence, the task in choosing electoral system is to prioritize the criteria that are most important and then assess which electoral system or combination of systems best maximizes the attainment of these objectives. See, Andrew Ellis, Head of Electoral Processes International IDEA Stockholm, Sweden, *Principles of Electoral System Choice*, Presented at Workshop VI: Representative Democracy, Participatory Methods and Capacity Development for Responsible Politics Sixth Global Forum on Reinventing Government Seoul, Republic of Korea 24-27 May 2005, retrieved from <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan020458.pdf> <as accessed on June 2, 2015>. In almost all cases the choice of a particular electoral system has a profound effect on the future political life of the country concerned, and electoral systems, once chosen, often remain fairly constant as political interests solidify around and respond to the incentives presented by them. The choices that are made may have consequences that were unforeseen as well as predicted effects. Electoral system choice is a fundamentally political process, rather than a question to which independent technical experts can produce a single ‘correct answer’. The consideration of political advantage is almost always a factor in the choice of electoral systems. However, calculations of short-term political interest can often obscure the longer-term consequences of a particular electoral system.

3.1. NORMATIVE CRITERIA FOR EVALUATING ALTERNATIVE ELECTORAL SYSTEMS

Technocrats of electoral systems use different criteria for choosing alternative electoral systems based on the goals that electoral systems tend to achieve.³⁴ Some of these are mutually compatible, but some others are mutually incompatible, which is why it is so important to be clear about what one is choosing. Here are the possible goals of electoral systems which are employed as evaluating criteria for choosing the best alternative systems:³⁵

1. Easy to understand and administer
2. Accountability to constituents
3. Proportionality of seats to votes
4. Interethnic or intercultural conciliation
5. Effective parliament/opposition oversight
6. Stable and efficient government
7. Minimize wastage of votes

Before making the actual evaluation on the basis of these criteria, it would be important to conceptually clarify each of them in the following manner.

3.1.1. Easy to Understand and Administer

All features of an electoral system should be easily comprehended by those citizens who will be using it to elect a representative assembly.³⁶ Elections are meant little if they are difficult to vote. The ease of voting is determined by factors such as how complex the ballot paper is, and how easy to cast a vote is.³⁷ Moreover, the choice of any electoral system is dependent on cost

³⁴Donald L. Horowitz et.al, *Electoral Systems and Their Goals: a Primer for Decision-Makers* (Duke University, 2003), P.3.

³⁵*Ibid.*

³⁶Kenneth Benoit, *Models of Electoral System Change*, University of Dublin, 2004, Pp. 371, retrieved from <http://www.elsevier.com/locate/electsud><as accessed on October 2, 2015>.

³⁷*Ibid*

and administrative capacities. A sustainable political framework takes into account the resources of the country both in terms of the availability of people with the skills to be election administrators and in terms of the financial demands on the national budget³⁸. In any account, electoral systems should not be more complex to understand and administer. In this regard, while FPTP and the closed list PR systems are simple to vote and administer, the Single Transferable Vote and the Alternative Vote systems are more complex, requiring high level of literacy and numeracy.³⁹

3.1.2. Accountability to Constituents

Under most electoral systems, legislatures are elected as representatives of particular segments of the territory. Members of parliament (MPs) are seen as having important roles representing the views of local constituency and promoting their interests as well as acting as local ombudsman for individual and group issues and concerns.⁴⁰ Territorial representation reinforces accountability, one of the basic principles of democracy.⁴¹ For instance, if a

³⁸Ibid.

³⁹Ibid.

⁴⁰Simon Hix et al., Choosing an Electoral System, British Academy Policy Center, 2010, P.108, see also, Joseph F. Zimmerman (ed.) *Representation and Electoral Systems* the American Political Science Association Rockefeller College State University of New York at Albany 135 Western Avenue Albany, New York 12222 Vol. XXII, No. 2 2007 retrieved from <http://www.apsanet.org/~res/newsletters/0704.pdf><as accessed on October 4,2016>, Detlef Nolte and Francisco Sanchez, *Representing Different Constituencies: Electoral Rules in Bicameral Systems in Latin America and Their Impact on Political Representation*, retrieved from http://se2.isn.ch/_serviceengine/_Files/EINIRAS/_47002/_ipublication_document_singledocument/BC603966-EC79-44BB-AD05-68E84F9A7B32/en/wp11.pdf<as accessed on October 4, 2016>.

⁴¹In the late 1980s and early 1990s, popular discontent with politics led to a push for major political reform in Italy, New Zealand, and Japan. In each country, there was agreement that the government lacked accountability, and reformers promoted electoral system change to address the problem. All three countries enacted variants of “mixed member” electoral systems, and all three included systems in which voters cast two ballots: one for a candidate in a single-member district (SMD) and one for a party in proportional representation (PR). There was hope that reform would create tighter links between the wishes of voters and the government elected to office. In all three cases, the public was disappointed by the results of the first elections under reform, but now that more than a decade has passed, it is easier to offer a more measured analysis of the new systems. Overall, these reforms instituted a major improvement in the level of government accountability, Ethan Scheiner, *Does Electoral System Reform Work? Electoral System Lessons from Reforms of the 1990s*, Annual Review of Political Science, Vol.11, P162.

MP of certain territory failed to perform the promises he made during an election campaign or demonstrates incompetence, the electorate reacts to that failure by denying votes in the next election or the latter can use the right to recall him.

The issues of size of the constituency and the population have their own effects on representation and accountability. The larger the constituency in area or population, the greater its heterogeneity and therefore, the greater the problem of identifying local views and a legislature faces difficulties being made aware of the wide range of issues and interests contained within it.⁴²

Electoral systems like the FPTP are praised for ensuring effective constituency representation and thereby accountability of members of the parliament. But PR electoral systems fail to do this for candidates will not be elected on the basis of constituency. PR uses the nation as a whole or sometimes the regions as a constituency. As a result, there are neither local representatives nor local accountability.

3.1.3. Proportionality of Seats to Votes

The proportionality of election results measures the degree to which the parties' share of seats corresponds to their share of votes. Legislatures are supposed to mirror the composition of the society represented through different political parties or independent candidates.⁴³ The political parties which represent the various segments of the electorate should be entitled to fair representation of seats proportionate to the votes they received.

Majoritarian systems provide disproportionately exaggerated seats to a winner party or a party in first place, while penalizing others at the same time.⁴⁴ The results of this measure suggest that the average winner's bonus under majoritarian systems is 12.5 percentage points, compared with 7.4 under mixed systems, and 5.7 under proportional representation. Hence under

⁴²Simon Hix et al., *Supra note 40*.

⁴³Gerard Newman, as Revised by Scott Bennett, *Electoral Systems*, Commonwealth of Australia, 2006 p. 8, See also, Andrew Reynolds et al., *Electoral System Design*, the New International Idea Handbook, International Institute for Democracy and Electoral Assistance, 2005 p. 5, all voices and multiple interests shall be brought to the policymaking process, and in this regard the need for diversity in the composition of parliaments is emphasized.

⁴⁴Pippa Norris, *supra note 21*, Pp. 307.

majoritarian electoral systems a party which won 37.5% of the vote or more could usually be assured of a parliamentary majority in seats, whereas under PR systems a party would normally require 46.3% of the vote or more to achieve an equivalent result.⁴⁵

For this reason, minorities in diversified societies are underrepresented if majoritarian electoral systems are employed while PR electoral systems generally foster the election of parties who might otherwise be underrepresented in majoritarian electoral systems.⁴⁶ Failing to grant proportional seats cause alienation and exclusion from the political system which in turn causes anti-system movements.

3.1.4. Interethnic or Intercultural Conciliation

Electoral systems can be seen not only as ways to constitute governing bodies but also as a tool of conflict management within a society.⁴⁷ In

⁴⁵Ibid.

⁴⁶Pippa Norris, *Electoral Engineering*, retrieved from http://www.hks.harvard.edu/fs/pnorris/Acrobat_Institutions/Chapter%203.pdf<as accessed on October 10, 2016>, P 6. This author also noticed the following “It is well established that certain social groups are over-represented in elected office, with parliamentary elites commonly drawn from predominant ethnic groups, men, and those of higher occupational status. While there are substantial variations worldwide, overall women constitute only one sixth (14.4 percent) of national legislators worldwide, with women usually lagging furthest behind in national parliaments using majoritarian electoral systems. Reformers have considered various strategies designed to widen opportunities for women and minorities, including legally binding candidate quotas, dual-member constituencies designated by minority group or gender, and affirmative action for candidacies and official positions within party organizations. Some of these mechanisms can be adopted in single-member districts, for example in the mid-nineties the British Labor Party adopted all-women shortlists for nomination in half its target seats. But, advocates argue that affirmative action can be implemented most easily when applied to balancing the social composition of party lists, for example by designating every other position on the candidate list for women. These mechanisms, proponents suggest, can also increase the number of regional, linguistic, ethnic or religious minorities in parliament, although their effects depend upon the spatial concentration of each group. Socially diverse representation can be regarded as intrinsically valuable for consensus democracy, by improving the range of voices and experience brought to policy discussions, and also because the entry of minority representatives into public office can increase a sense of democratic legitimacy and develop leadership capacity. Proponents argue that it is important to maximize the number of ‘winners’ in elections, particularly in divided or heterogeneous societies, so that separate communities can peacefully coexist within the common borders of a single nation-state”.

⁴⁷Sonia Alonso and Rubén Ruiz, *Political Representation and Ethnic Conflict in New Democracies*, European Journal of Political Science (January 2005), P.1. “Democratization,

heterogeneous societies where citizens are divided by socio-cultural basis such as race, ethnicity, language, religion, or region, there remains a question as to how the electoral system may contribute to the peaceful coexistence of different social groups within the same democratic polity. Some systems encourage political parties to make inclusive appeals for electoral support outside their own core vote base.⁴⁸ For instance, even if a party draws its support primarily from region one voters, a particular electoral system may give it the incentive to appeal to region two or other regional voters. Thus, the party's policy platform would become less troublesome and less exclusionary and more unifying and inclusive.

Similar electoral systems might give the incentive for the formation of national parties which will be less ethnically, regionally, linguistically or ideologically exclusive.⁴⁹ Such electoral systems can encourage voters to look outside their own group and think of voting for parties which traditionally have represented a different group. Hence, such voting behavior breeds accommodation and community building.⁵⁰ The PR electoral systems particularly the STV are good at attracting such incentives while the majoritarian electoral systems specifically, the FPTP works for the formation of parties on the basis of the cleavages. The Ethiopian experience is a good example for the latter.

by definition, entails devolution of power from the state to society. As such it opens a window of opportunity for the expression and mobilization of old and new grievances. Democratization and ethnic conflict are in fact empirically correlated phenomena. Periods of democratization are usually accompanied by an increase in the levels of ethnic conflict. Managing ethnic conflict is, therefore, a fundamental aspect of a successful transition to democracy and a subject of heated academic debate”.

⁴⁸Ibid, creatively crafted electoral systems, such as the alternative vote, have gigantic effects on making compromises and conciliation among diverse political parties. One core strategy as advocated by Donald Horowitz is to design electoral rules that make politicians reciprocally dependent on the vote of members of groups other than their own. To build support from other groups, candidates must behave moderately and accommodatively on core issues of concern. Hence, designing electoral rules that enable politicians to campaign for the ‘second choice’ votes of electors are crucial as they will enable the creation of parties with conciliatory policy positions so as to pick up such second votes than parties who choose to maintain a narrowly focused, sectarian approach. See, <http://books.google.com.et/books?id=CHLvGawRmEwC&printsec=frontcover&dq=electoral+engineering+pdf&hl=en#v=onepage&q=electoral%20engineering%20pdf&f=false> accessed on December 18, 2015>.

⁴⁹Ibid.

⁵⁰Ibid.

3.1.5. Effective Parliamentary Oversight

The weight of evidence from both established and new democracies suggest that long term democratic consolidation requires the growth and maintenance of strong and effective political parties and the electoral system should not promote party fragmentation.⁵¹ Meanwhile, the development of strong parties helps strong opposition in the parliament to help oversee the activities of the executive.

Effective governance relies not only on those in powers but almost as much, on those who oppose and oversee them.⁵² Hence, the electoral system should help ensure the presence of available opposition critically assessing legislation, questioning the performance of the executive, safeguarding minority rights and representing its constituency effectively. The opposition should have enough representatives to be effective and be able to present a realistic alternative to the existing government. While the strength of the opposition depends on many other factors, the choice of electoral system is one important consideration. If the system itself makes the opposition impotent, democratic governance is inherently weakened. Therefore, in a plural society, a consensus blows towards avoiding a FPTP system which limits the representation of the opposition in the parliament which further leaves the government blind to others views, needs, and desires.

3.1.6. Stable and Effective Government

The prospects for stable and efficient government are not determined by the electoral system alone, but the results of a system can contribute to stability in a number of important aspects. The key question is whether voters perceive the system to be fair, whether government can efficiently enact legislation and govern and whether the system avoids discriminating against particular parties or interest groups.⁵³

The question whether the government can enact legislation efficiently is partly linked to whether it can assemble a working majority in the legislature, and this in turn is linked to the electoral system. The system

⁵¹*Ibid.*

⁵²Gerard Newman,*Supra* note 43, P. 6

⁵³*Ibid.*

should, as far as possible, act in an electorally neutral manner towards all parties and candidates; it should not openly discriminate against any political groupings.

As a general but not universal rule of thumb, majoritarian electoral systems are more likely to produce legislatures where one party can outvote the combined opposition, while PR systems are more likely to give rise to coalition governments.⁵⁴ Even though, plurality electoral system is assumed to give rise to stable and effective government, it may not always bring about this result if some segment of the society perceived it as unfair and feel misrepresented.

3.1.7. Minimize Wastage of Votes

Voters who cast their ballots to a losing candidate are considered to have their votes disregarded or wasted.⁵⁵ Though it is difficult to avoid disregarded votes, it's important to minimize this problem to the greatest extent possible. The phenomenon of disregarded votes has contributed to strategic voting in which voters cast their ballots for a party that they do not prefer, simply to prevent a more disliked alternative from winning a seat.⁵⁶ Some other voters may not get the incentive to go to vote if they consider their preferred candidate does not have the chance to win or it is unlikely to lose. This ultimately reduces the level of turnouts⁵⁷ and also affects popular participation, a cardinal aspect of democracy. On the basis of this element, FPTP is poor in minimizing wastage of votes. But, PR effectively manages wastage of votes.⁵⁸

⁵⁴Ibid.

⁵⁵Law Commission of Canada, *Voting Counts: Electoral Reform for Canada*, retrieved from <http://dsp-psd.pwgsc.gc.ca/collection/J31-61-2004E-pdf> <as accessed on September 5, 2016>, P.67.

⁵⁶Ibid.

⁵⁷Henry Milner, *Electoral Systems, Integrated Institutions and Turnout in Local and National Elections Canada in Comparative Perspective*, Canadian Journal of Political Science(1997), Vol. 30, No. 1, Pp. 89-106, retrieved from: <http://www.jstor.org/stable/3232168> <Accessed on January 27, 2015>.

⁵⁸Ibid.

3.2. EVALUATING THE ALTERNATIVE ELECTORAL SYSTEMS

The previous discussion has established criteria distinguishing the important goals to be achieved and the important pitfalls to be avoided in designing electoral systems. The next task tries to evaluate the potential alternative systems against these criteria. Nonetheless, the evaluation is not extended to those majoritarian electoral families for the very reason that our previous conclusion proved that majoritarian electoral systems including FPTP are not healthy choices to diversified societies, like ours.⁵⁹ Hence, the evaluation is going to be made against those electoral systems which are deemed workable in diversified societies.

In this regard, as far as which electoral system is best to Ethiopia, most academicians⁶⁰ and the opposition parties⁶¹ prefer the PR electoral system. Ethiopian academic writings propose the PR electoral system. However, this author is interested to investigate the PR and the mixed electoral systems on the basis of the above criteria. This is because in the recent academic discourses there are arguments and controversies as to whether PR electoral system or the mixed ones are best in diversified societies, like Ethiopia.⁶² Furthermore, the conclusions in either way are not straightforward by themselves but rather have to be tested regard to the context where they are

⁵⁹The pros and cons of different types of electoral systems have been widely discussed in our previous Section. There is no one-size-fits-all solution regarding electoral systems, neither for Africa nor for any other region. Yet, there are some general insights which should guide any decision about electoral law: the so-called winner takes all or first past the post systems, popular in Anglo-Saxon countries, are highly problematic for segmented societies; they will easily turn ethnic and religious divisions into a zero-sum competition; those groups that loose will feel excluded from the political process and all the benefits it offers; the risk of violence and even civil war will be high. See, Winrich Kuhne, the Role of Elections in Emerging Democracies and Post-Conflict Countries, Key Issues, Lessons Learned and Dilemmas, retrieved from <http://library.fes.de/pdf-files/iez/07416.pdf><as accessed on September 10, 2015>, P. 5.

⁶⁰Among others the following authors propose PR electoral system: Getachew Assefa, *supra* note 12 and Beza Dessalegn, *the Right of Minorities to Political Participation under the Ethiopian Electoral System*, Mizan Law Review (September 2013), Vol. 7, No.1,P.100.

⁶¹Ishiyama, John, "Examining the 2005 Ethiopian Parliamentary Election Results under Alternative Electoral Rules"International Conference on African Development Archives,Paper 110, 2007, P.11,. Online Available at: http://scholarworks.wmich.edu/africancenter_icad_archive/110<visited on December 2016>.

⁶² In this regard Solomon Goshu has extensively reviewed the views of various Ethiopian constitutional law authors on whether the existing electoral system should be revisited or not. For further reading see Solomon Gosh, *Supra* note 23.

supposed to work. Hence, the following evaluation tries to concentrate on the PR and mixed electoral systems and the systems which fulfills most of the criteria compared to one another is said to be the best alternative to the Ethiopian federation.

3.2.1. The PR Electoral System

The PR electoral system has two variants-the list PR and the Single Transferable Vote (STV).⁶³ Unlike the list PR, the STV is the most complex electoral system both to understand and administer requiring high level of literacy and numeracy. Therefore, from the outset, it is not feasible to the Ethiopian situation where the level of literacy and numeracy is low⁶⁴. So, the following evaluation shall emphasize on the list PR electoral system.

Under a list PR system each party or grouping presents a list of candidates for multi-member electoral districts. The voters vote for a party and parties receive seats in proportion to their overall share of votes.⁶⁵ The PR electoral system can be employed either in the form of closed list or open list. In closed list PR, the winning candidates are taken from the list in order of their position on the party lists. If the lists are open, the voters can influence the order of the candidates by making individual preferences.⁶⁶

Under this system, all major groups and their leaders will continue to have a stake in the system and the risk of groups feeling excluded is much lower as it ensures proportionality of seats to votes and minimizes the wastage of votes common under FPTP. Depending on the available threshold, all major parties would be fairly represented in the parliament. For this reason, effective opposition oversight is highly likely.

On whether PR electoral system creates stable and effective government, there is a large body of both theoretical and empirical research suggesting that, the more fragmented and dispersed a legislature, the less its government

⁶³ Andrew Reynolds, *Supra* note 4, P.57.

⁶⁴ According to *country meters* estimates 48.93% of adult population (aged 15 years and above) in Ethiopia are able to read and write and 51.07% adults are illiterate, available from <http://countrymeters.info/en/Ethiopia>, visited on December 12, 2016.

⁶⁵*Ibid.*

⁶⁶*Id.*, P.60.

is likely to be effective.⁶⁷ The question of whether a given government can enact legislation effectively is linked to whether it can assemble a working majority in the legislature. The conventional wisdom in this regards goes to state that plurality electoral systems are more effective than PR systems because they are supposed to be less fragmented and therefore more decisive.⁶⁸ Proportional systems, on the other hand, are supposed to encourage the multiplication of parties, and, as a result, they are more prone to give rise to coalition governments and to be less effective in a country where the level of political tolerance and compromise is not yet developed.⁶⁹

Scholars argue that some form of proportional representation is needed in divided societies.⁷⁰ For this and other reasons, most major transitional and post-conflict elections in recent years have utilized some form of PR.⁷¹ Nonetheless, PR systems provide tiny geographic connection between voters and their representatives and thus create difficulties in terms of accountability and responsiveness of elected politicians to the voters.⁷² Nevertheless, many new democracies particularly those in agrarian societies have much higher demands for constituency service at the local level than they do for representation of all shades of ideological opinions in the legislature.⁷³ For this reason, it has increasingly been argued in South Africa, Cambodia and elsewhere that the proportional systems used at the first elections should be modified to encourage a higher degree of territorial

⁶⁷Alina Rocha, *Why Electoral Systems Matter:An Analysis of Their Incentives and Effects on Key Areas of Governance*,available at: <http://www.gsdrc.org/document-library/why-electoral-systems-matter-an-analysis-of-their-incentives-and-effects-on-key-areas-of-governance/><accessed on October 8, 2016>.

⁶⁸*Ibid.*

⁶⁹*Ibid.*

⁷⁰*Ibid.*

⁷¹Joel D. Barkan, et al. *Space Matters: Designing Better Electoral Systems for Emerging Democracies*, American Journal of Political Science (2006), Vol. 50, No. 4, P. 927, retrieved from <http://www.Jstor.org/stable/4122924><as accessed on October 10, 2016>.

⁷²*Ibid.*

⁷³*Ibid*, a more serious problem is that in the context of societies with large rural populations, PR reduces the opportunities for face to face dialogue and linkage between legislatures and citizens and especially the accountability by the former to the latter. In Namibia for instance, where nearly 90% of the population resides in the Northern fifth of the country, 300 miles north of the capital, few citizens ever see a member of parliament because MPs have no geographic constituency to which they are accountable. A similar situation exists in South Africa.In such countries, there appears to be clear tradeoff between achieving proportionality and the loss of accountability.

accountability by having members of parliament represent territorially defined districts and service the needs of a constituency.⁷⁴

The party list PR usually reposes great power in party leaders to decide which candidate will have better chances of being elected from the already set list and the sovereignty of the voter is thought to be impaired. Even though the list PR uses open list where the voter influences which candidate is to be elected, there are no usually geographic or territorial representatives. Therefore, as the PR electoral system fails to link MPs to the constituent territory which in turn affects accountability to the electorate, it would not be suitable choice to the Ethiopian federation in which 80% of its population lead an agrarian life.

Electoral systems that produce proportional results or accountability to constituents or effective governments may or may not foster interethnic or intercultural conciliation. One way to think about electoral systems and interethnic conciliation is to ask whether a given system provides politicians an incentive to hold moderate behavior or moderate policy platforms for an electoral success. The PR electoral systems and specifically the STV are good at crafting moderate policy platforms which will be inclusive to different ethnic or cultural groups. However, the FPTP is poor at creating such conciliatory schemes because moderate policies may not help parties for an electoral success if the diversities are territorially concentrated, similar to the Ethiopian situation.

3.2.2. Mixed Electoral Systems

Mixed electoral systems provide voters two votes-one for the legislature from the party in a list PR tier and the other for a candidate representing a constituency in FPTP tier.⁷⁵ All mixed electoral systems share one defining common attribute, a portion of the seats in parliament are assigned on the basis of some plurality method, usually, FPTP in single member

⁷⁴Ibid.

⁷⁵Robert G. Moser and Ethan Scheiner, *Mixed Electoral Systems and Electoral System Effects: Controlled Comparison and Cross-national Analysis* (Elsevier, 2004), P.576.

constituencies and the other seats are determined by a party's share of the popular votes (regionally or nationally) on the basis of PR.⁷⁶

However, on how the two electoral systems function, there are two types of mixed electoral systems; the Mixed Member Majoritarian (MMM) and the Mixed Member Proportional (MMP). In the MMM system, the two tiers of seats, each determined by its own electoral formula, are independent of each other.⁷⁷ That is, no attempt is made to use the PR component to balance for distortions in the constituency vote. The two electoral systems, the PR and FPTP, operate independently.

But, when it comes to MMP, the two tiers of electoral systems are linked. It provides compensatory list seats from the PR component to parties that are underrepresented in the constituency based FPTP contest.⁷⁸ A political party that passes certain threshold of the votes gets a share of the seats in parliament that is about the same as its share of the party vote. For example, in total parliamentary 100 seats, if a party gets 25% of the party votes, it will get roughly 25 MPs in Parliament. If that party wins 15 electorate seats in the constituency, it will have ten (10) list MPs in addition to its constituency MPs. On the other hand, if a party does not win a seat in the constituency but got 20% of the party votes, it will be entitled to 20 parliamentary seats on the basis of the list PR.

Let's take an example to illustrate how the MMP works: People cast votes on a double ballot. First, they vote for a district representative. This part of the ballot is a single-member district FPTP contest to see which person will represent the district in the legislature where the person with the most votes wins. The list PR votes are counted on a national or regional basis to determine the total portion of seats that each party deserves.

The following table illustrates how this process works for a hypothetical election. Assume party-A won 40% of the party list votes in the 100-member state legislature, so they would be entitled to a total of 40 of the 100 seats. Since they already get 28 seats in the district elections, they would then add

⁷⁶Law Commissions of Canada, *Supra* note 55, Pp. 90-92.

⁷⁷*Id.*, P.85.

⁷⁸Mary Anne Griffith-Traversy (ed.), *Democracy, Parliament, and Electoral Systems* (Common wealth of Parliamentary Association, Pluto Press, 2002), P.202.

12 more from their national or regional party lists to come up to their quota of 40 legislative seats.

Allocation of Seats in MMP Electoral System with 100 Parliamentary Seats (50 members elected using FPTP and the other using list PR)

Political parties	Number of districts won	Percentage of the national party vote	Total number of seats deserved by party	Number of seats added from party list
Party-A	28	40%	40	12 (40-28)
Party-B	18	36%	36	18 (36-18)
Party-C	4	18%	18	14 (18-4)
Party-D	0	6%	6	6 (6-0)
Total	50	100%	100	50 (100-50)

Source:-https://www.mtholyoke.edu/acad/polit/damy/BeginnningReading/how_prwor.htm with some modification.

As you can see from the above table, the election results in MMP electoral systems are proportional and fair.⁷⁹ As a result of this, most nations that have reformed their electoral systems in the past decade have opted for some version of mixed electoral systems.⁸⁰ These systems are thought to combine the “best of both worlds” the accountability and geographic representation that is one of the strengths of FPTP, along with demographic representation

⁷⁹*Id.*, Pp. 79-80; 141-146.

⁸⁰Daniel Bochsler, *Are Mixed Electoral Systems the Best Choice for Central and Eastern Europe or the Reason for Defective Party System?* Prepared for Presentation at the APSA Annual Meeting, Toronto, 3-6 September 2009, P.1, retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1456829 <as accessed on October 7, 2015>.

and the fairness of proportional systems.⁸¹ Examples of these systems are found in Germany, Scotland, and New Zealand.⁸²

The German style electoral system has become a best seller in the charts of the electoral reforms since 1990s.⁸³ Mixed systems are introduced as a compromise between the two extreme forms of PR and plurality vote and they are best in situations where the contending elites could fail to agree on choosing one of them.⁸⁴ They are perceived to allow modest and better outcomes in many varied dimensions of political representation and party system moderation.

Lessons taken from the above stated countries reveal that the MMP is superior. It is fair to supporters of significant political parties and likely to provide more effective representation of minorities. It is likely to provide a more effective parliament and opposition and also has advantages in terms of voter participation and reducing wastage of votes through the compensatory seats. It encourages plurality of ideas in the parliament. Moreover, it inspires a fair level of geographic representation and enhances accountability of individual candidates and the government to a certain degree.⁸⁵

When it comes to the Ethiopian context, Ethiopia is composed of a diversity of ethnic groups, languages, cultures and religions. Its history has been characterized by political disturbance, massive violations of human rights, civil wars, lack of tolerance and concession. Such a diverse and divided

⁸¹The Law Commission Canada, *Supra* note 55, Pp.90-93.

⁸²In Germany 50% of the seats in the *Bundstage* are based on constituency elections and the other 50% are list seats. In New Zealand, 58% of the seats are single member constituencies elected by means of FPTP and the remaining 42% are list seats. In Scottish parliament, which consists of 129 members 57% is elected in constituencies by means of FPTP and the remaining 43% are awarded to regional lists, *ibid*.

⁸³Daniel Bochsler, *supra* note 80.

⁸⁴This was the case in Bulgaria, Hungary and Croatia, where the contending elites hold two extreme options; mixed electoral system has served as a mid-solution thereby flourished the praised virtues of this system. That it fostered the democratic principles of representation and accountability. Moreover, it hampered the excesses of the two extreme systems. See, Daniel Bochsler, *Supra* note 80.

⁸⁵Commission on Legislative Democracy, *Facts on Mixed Member Proportional Electoral Systems*, retrieved from <http://www.gnb.ca/0100/Doc/fact7mixed-e.pdf,P1> <as accessed on October 4, 2016>, see also, http://www.Petershirtcliffe.co.nz/upload/download_files/MMP%20vs%20SM%20Essay.pdf <as accessed on October 4, 2016>, Miguel Centellas, *Mixed-Member Proportional Electoral Systems in New Democracies: the Bolivian Experience*, retrieved from: <http://www.centellas.org/politics/papers/mpsa2005.pdf> <as accessed on October 4, 2010>.

society needs an electoral system which would ensure a fair representation of political and ethnic groups, political stability, and conciliation for nation building without still overstating the virtues of the existing electoral system.

In a country like ours, where there are regionally concentrated ethnic or cultural groups, opting for plurality electoral system would stimulate the emergence of regionally based parties⁸⁶ and this encourages the parties to craft policy platforms which only appeal to such ethnic groups and may become hostile to others.

However, the inclusion of PR type electoral system to the status quo would encourage political parties to seek voters and membership across different communities. This limits the attractiveness of mono-ethnic politics and therefore prevents political instability which would have resulted from feelings of exclusion. Furthermore, the inclusion of PR enables the representation of widely dispersed ethnic groups for their votes would not be disregarded as it happens in the FPTP electoral system. Hence, the inclusion of PR would foster issue based campaigning and voting rather than lining up to ethnically or regionally organized parties.

The MMP electoral system gives voters maximum choice and flexibility; it frees them from the prison of having to suffer an unwanted candidate for the constituency in order to get desired government.⁸⁷ It helps minimize the disregarded vote phenomenon that is characteristic of the FPTP system.⁸⁸ In view of this, the MMP is best alternative to the Ethiopian federation.

To sum up, the subsequent table shall be closely observed which tries to simplify the argument as to which electoral system is the best alternative to Ethiopia.

⁸⁶To substantiate our argument, look at the following political parties which are created regionally or ethnically: Tigray Peoples' Liberation Front (TPLF), Amhara National Democratic Movement (ANDM), Oromo Peoples' Democratic Organization (OPDO), Southern Ethiopian Peoples' Democratic Movement (SEPDM), Oromo Federalist Democratic Movement (OFDM), Benshangul-Gumuz Peoples Democratic Unity Front (BGPDUF), Afar National Democratic Party (ANDP), Gambela Peoples Democratic Movement (GPDM), Argoba National Democratic Organization (ANDO), Harrari National League (HNL) and ShekoMejenger Peoples Democratic Unity Organization (SMPDUO)

⁸⁷*Ibid*, interestingly, in the first mixed member proportional election held in New Zealand in 1996, 37% of the voters split their ticket a high level by international standards.

⁸⁸*Ibid*.

Table 3: Comparative assessment of electoral systems vis-à-vis some electoral goals⁸⁹:

No	Electoral system goals	FPTP	PR Systems			Mixed Systems	
			STV	SNTV	PR	MMM	MMP
1	Accountability to constituency	✓				✓	✓
2	Easily understood and administered	✓		✓	✓	✓	✓
3	Proportionality of seats to votes		✓	✓	✓		✓
4	Interethnic/intercultural conciliation		✓	✓	✓	✓	✓
5	Effective parliamentary oversight		✓	✓	✓	✓	
6	Stable and effective government	✓				✓	✓
7	Minimize wastage of votes		✓	✓	✓	✓	✓

From the table, it is vivid that the MMP will perform well in all the criteria. Therefore, the author is convinced that this system is best to the Ethiopian multi-ethnic federation. However, since electoral systems need to be tested on the ground, we should not expect that the new system will cure all the democratic problems rather it is the best compared to others. On the other

⁸⁹ Note: the arrow shows strengths or potential strengths. The absence of it, however, does not suggest a total lack of it but rather the experience of countries with such systems to conform to it widely.

side of the coin, it is clear from the table that the first-past-the-post electoral system is the least in achieving some of the democratic values we need most as a nation.

Nonetheless, despite all these advantages, there are also arguments forwarded against the MMP electoral system. There is fear that under MMP coalition governments may instable a system, increase in administrative costs, and create two warrior classes of parliaments. But, empirical studies have been made by different researchers and electoral reform commissions and their conclusion found little or no connection between the alleged impacts and the MMP.⁹⁰

4. CONCLUSIONS

This article has tried to evaluate the electoral options to the Ethiopian multi ethnic federation on the premises that the existing electoral system is no more desired. In doing this, certain criteria against which the choices are going to be evaluated are selected. Evaluation is made against these criteria. Accordingly, we concluded that adding an element of proportionality to our electoral system, as inspired by some systems like Germany, New Zealand, and Scotland would be the most appropriate model for adoption. MMP, while it retains the proportionality benefits of proportional representation systems, it also ensures that voters have geographical representation. They also have the luxury of two votes, one for the party and one for their local MP. This system would produce satisfactory results when compared to the other alternative systems. MMP which adds PR tier to the existing system is expected to produce proportional election results, to reduce the number of wasted votes, to encourage interethnic or intercultural conciliation and to increase the representation of the opposition thereby giving us a strong parliamentary oversight over the actions of the executive.

⁹⁰The Law Commission of Canada, *Supra* note 55.

DALDALA SEERAALAA TO'ACHUU: RAKKOOWWAN SEERAALAA FI HOJIMAATA QAAMOLEE HAQAA NAANNOO OROMIYAA KEESSATTI MUL'ATAN*

*Habtaamuu Bultii***

*Abdusalaam Aabee****

ABSTRACT

Illicit trade adversely affects socio-economy of a nation. Particularly, it shrinks government revenue, distorts market, collapses local industries, and endangers health, safety and security. Ethiopia is one of the nations that are challenged by illicit trade for which it has devised controlling mechanisms such as enacting appropriate laws and establishing law enforcement agencies. Justice sectors (the judiciary, the prosecutors, and the police) are the chief law enforcement agencies that interpret the laws, render decisions, and enforce the same. They are principally empowered to seize, prosecute and adjudicate illicit trade activities and control illicit trade and its effects. However, the Oromia Regional National Government Justice Sectors are, as the situation demands, not controlling, prosecuting, and adjudicating illicit trade activities for different reasons. For instance, inadequate awareness of justice sector professionals of the region on trade regulations, customs and standards, the absurdity and uncertainty of the federal and regional laws, underperformance of criminal investigations, imprecision and incompleteness of prosecutions, delay and unfairness of court decisions, and wanting cooperation and undetermined efforts of the pertinent government agencies have made some contribution to the escalation of illicit trade undertakings. It is certainly known that without the effort required to be made by the justice sectors the attempt to control illicit trade could not be made possible. Therefore, it is mainly important to enable the justice sectors render services that combat illicit trade. Accordingly, among other things, it is advisable to raise the justice sectors professionals' awareness of the relevant laws specifically of the trade competition and consumers protection, coffee quality control and marketing, and customs proclamations as to jurisdiction, to clarify the discrepancy between the federal and regional laws, to improve investigations, prosecutions and adjudications, and to advance professional and ethical behaviors of the professionals.

* Barruun kun qorannoo bara 2008 keessa mata-duree ‘Daldala Seeraa Alaa To’achuu: Rakkoowwan Seeraa fi Hojimaata Qaamolee Haqaa Naanwoo Oromiyaa Keessatti Mul’atan’ jedhu irraa gabaabbatee fi fooyya’ee kan dhiyaatee dha. Qorannichi mala iddattoo fayyadamuun kan gaggeeffame yommuu ta’u daataan godinaalee saddeettii (Arsii Lixaa, Baalee, Boorana, Godina addaa O/N/F, Harargee Bahaa, Jimmaa, Wallagga Bahaa fi Wallagga Lixaa) keessaa walitti qabamee mala qorannoo hammamtaa fi akkamtaan xiinxalamee abbootii hirtaaf dhiyaachuun yaada isaaniittii akka gabbaatu ta’ee jira.

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1. SEENSA

Hojiin daldala guddina dinagdee biyya tokkoo dhugoomsuu keessatti gahee olaanaa taphata. Sekteerri dinagdee kun akka misoomu taasisuuf gochoota hojichatti gufuu ta'an adda baasanii irratti hojjechaa deemuun barbaachisaa dha. Gochoota misooma hojii daldala quucarsan keessaa tokko gocha daldala seeraa alaa dha. Daldala seeraa alaa jechuun meeshaa yookaan tajaajila akka ittiin hin daldalamne daangeffaman/dhorkaman daldaluu akkasumas meeshaa yookaan tajaajilaittiin daldaluun hin dhorkamne ulaagaalee yookaan adeemsa seerri teechisee jiru cabsanii daldaluu dha. Daldalli seeraa alaa dinagdee biyyaa, fayyaa, nageenyaa fi duudhaa uummataa irratti miidhaa hedduu dhaqqabsiisa.¹

Tooftaaleen daldala seeraa alaa hambisuuf hojiirra oolan baay'ee dha. Isaanis, miidhaa daldalli seeraa alaa dinagdee, hawaasummaa fi siyaasa irratti dhaqqabsiisan uummata bal'aa hubachiisuu, sirna sassaabbii galii gibiraa cimsuu, mootummaalee ollaa wajjiin hariiroo fi qindoomina gaarii uumuu, dhimmoota daldala seeraa alaa gaggeessuuf sababa ta'an adda baasuu, fi seerota seerummaa daldala bitan cimsuu fi hojiirra oolmaa isaanii mirkaneessaa deemuun isaan ijoodha. Tooftaalee caqasaman kanneen keessaa seerota gochoota daldala seeraa to'atan baasuu fi hojiirra oolmaa isaanii mirkaneessaa adeemuun murteessaa waan ta'eef, Mootummaan Federaalaa fi Naannoo Oromiyaa seerota seerummaa hojii daldala mirkaneessanii fi gocha daldala seeraa alaa to'atan hedduu tumuun hojiirra oolchaniiru.² Hojiirra oolmaa isaanii mirkaneessuufis hojjechaa jiru.

Qaamolee mootummaa adda durummaan seerota gochoota daldala seeraa alaa to'atan hojiirra oolchan keessaa tokko qaamolee haqaa ti.³ Qaamoleen haqaa gocha daldala seeraa alaa to'anno jala oolchuu fi seerummaa gochichaa qulqulleessuun, himannaa mana murtiitti dhiyeessuu fi murtii saffinaa fi qulqullina qabu kenuun gocha daldala seeraa alaa to'atu.

¹Labsii Galiiwanii fi Gumuruukaa lak.622/2001, seensa; Magalata Federaalaa bara 15^{ffa} Lak 27; Labsii Dorgommii Daldala fi Eegumsa Fayyadatootaa, lak.813/2006, seensa, Magalata Federaalaa, bara 20^{ffa}.

² MoFED, Annual Progress Report For Fiscal Year of 2011/12, on Growth and Transformation Plan of Ethiopia, March 2013, F37

³ Douglass North (1990), Institutional Changes: A Framework of Analysis, (unpublished essay), F4; Fitih Jihad, Haala Waliigaltee Raawwanna Dhaabbilee Daldala, Manneen Murtii Federaalaa fi Dhaabbilee Aangoo Abbaa Seerummaa Qaban Keessatti, Inistiitiuyutii Qurannoo Sirna Seeraa fi Haqaa, Finfinnee, 2006, F12.

Qaamoleen kanneen gocha daldala haqa-qabeessa faallessu, mirga fayyadamtootaa miidhuu fi galii mootummaa xiqqeessu seeratti dhiyeessanii adabuun, dinagdee fi nageenya biyyaa akkasumas fayyaa fi eegumsa mirga fayyadamtootaa kabachiisu.

Haa ta'u malee, hojiin to'anno gocha daldala seeraa alaa irratti qaamolee haqaatiin taasifamu bu'aa barbaadamu argamsiisurratti hanqina qaba. Hanqinni gama kanaan jiru akka uumamu wantootni taasisan hedduu dha. Fakkeenyaaaf, ulaagaalee hojii daldala tokko seeraa ala taasisan irratti ogeessotni hubannoo waliigalaa dhabuu, tumaaleen seeraa dhimmi ilaalu iftoomina gahaa dhabuu, murtii barsiisaa ta'ee fi si'oomina qabu kennuurratti hanqinni jiraachuu, fi qindoominaa fi wal-hubannoon qaamolee haqaa fi sekteroota biroo gidduu jiru laafaa ta'uu akka fakkeenyatti eeruun ni danda'ama. Gabaabaatti, raawwiin hojii qaamolee haqaa gama kanaan jiru akka laafu sababootni taasisan lama: hanqina seeraa fi hanqina hoj-maata qaamolee haqaa keessatti mul'atani dha. Haaluma kanaan, barruun kun aangoo qaamolee haqaa naannoo bifa yaada keessa galcheen, gocha daldala seeraa alaa to'achuu keessatti hanqinaalee gama seeraatiin jiranii fi raawwii hojii gocha daldala seeraa qabuu, qorachuu, himachuu fi murtii kennuu irratti mul'atan sakatta'uun kallattii furmaataa akeeka.

Barruun kun mata-dureewwan gurguddoo shan jalatti qoodamee jira. Mata-duree kanatti aansee mata-dureen lammaffaa, maalummaa fi miidhaa daldala seeraa alaa ibsuu irratti xiyyeffata. Hojiin daldala fi ulaagaaleen seerummaa hojii daldala mirkaneessan mata-duree sadeffaa jalatti haguuggii argatanii jiru. Yakka daldala seeraa alaa qabuu, qorachuu fi himachuu akkasumas kenniinsa murtii dhimma daldala seeraa alaa mata-dureewwan itti aananii jiran jalatti ibsamaniiru. Dhuma irratti, yaadotni gudunfaa fi furmaataa teechifamaniiru.

2. MAALUMMAA FI MIIDHAA HOJII DALDALA SEERAALAA

2.1. MAALUMMAA DALDALA SEERAALAA

Daldali seeraa alaa yaadrimee dhimmoota hedduu of keessatti hammate waan ta'eef hiikkoo tokkoon gaalee kana ibsuun ulfaataa dha. Hiikkoon Dhaabbanni Fayyaa Addunyaay jecha daldala seeraa alaajedhuuf kenne

hiikkoo qaamoleen biroo kennan caalaa simatamaa dha. Dhaabbatni kun *daldala seeraa alaa jechuun*,

Any practice or conduct prohibited by law and which relates to production, shipment, possession, distribution, sales or purchase including any practice or conduct intended to facilitate such activity⁴ jechuu akka ta'etti hiikee jira.

Hiikkoo kana irraa hubachuun kan danda'amu daldalli seeraa alaa gocha ykn amala seeraan dhorkame tokko oomishuu, geejibsiisuu, qabachuu, raabsuu, gurguruu ykn bituu akkasumas gochaa fi haala hojiiakkanaa mijeessuuf yaadaman hunda kan dabalatu dha.

Gama biraatiin,barreeffamni tokko daldala seeraa alaa yammuu ibsu,daldalli seeraa alaa sochii daldalaa gosa kamiiyyuu ta'ee seera, dambii fi qajeelfamoota hayyamaa, sirna taaksii fi sirna biyyi tokko daldala ittiin gaggeessitu, lammileef eegumsa taasiftu, haala jirenya hawaasa fi duudhaa naamusa ittiin hooggantu kamuu kan faallessu jechuun kaasuun ni danda'ama jechuun ibsee jira.⁵ Akka waliigalaatti, daldalli seeraa alaa, gocha oomishaalee fi tajaajiloota seeraan dhorkaman daldaluu akkasumas oomishaalee seera qabeessa ta'an tumaalee seera daldalaa cabsanii daldaluu of keessatti kan hammatuu dha.⁶ Dabalataan, daldalli seeraa alaa maallaqa, meeshaa akkasumas bu'aa gocha seeraa alaa fi al-naamusawaa ta'an dabalata. Hima biraan, gochi kun namoota seeraa ala dadabarsuu,yakkota eegumsa naannoo raawwachuu, seeraa ala qabeenya uumamaan daldaluu, mirgoota kalaqa sammuu sarbuu, oomishaalee fayyaa fi nageenya hawaasaa miidhaniin daldaluu,qorichoota dhorkamaniin akkasumas sochiiwwan maallaqaa seeraa alaa kan of-keessatti dabalatu dha.⁷

⁴National Council for the Administration of Justice, Enforcement Manual to Combat Illicit Trade in Kenya (2014), www.judiciary.go.ke/_portal/assets/_filemanager_uploads/download/enforcement-manual%202.compressed.pdf toora intarneetii <gaafa 10-02-2008 ilaalam>

⁵www3.Weforum.org/docs/AM12/WEF-AM12-GAC-illicitTrade.pdf <gaafa 04-02-2008 ilaalam>.

⁶Akkuma yaadannoo Lak.5^{ffaa}, F 8.

⁷Akkuma 6^{ffaa}.

2.2. MIIDHAAWWAN DALDALA SEERAALAAA

Daldalli seeraa alaa miidhaalee hedduu biyya irratti dhaqqabsiisa. Miidhaaleen kanneen bakka gurguddaa afuritti qoodamuu danda'u.⁸ Isaanis,

- Miidhaa dinagdee
- Miidhaa fayyaa
- Miidhaa nageenyaa
- Miidhaa eegumsa naannoo

2.2.1. Miidhaa Daldalli Seeraa Alaa Dinagdee Irratti Dhaqqabsiisu

Daldalli seeraa alaa sochii daldala al-ergii (export), ol-galchii (import) fi biyya keessaa (inland) irraa galii mootummaan argachuu qabu dhabsiisa. Xiqqaachuun/dhabamuun galii gama kanaan argamuu, ijaarsa bu'uuraalee misoomaa mootummaan gaggeessu irratti dhiibba mata isaa qabaata; kun ammoo sochiin guddina dinagdee akka hin saffisne gufuu ta'a.

Daldalootni seeraa alaa gibira mootummaa waan hin kaffalleef akkasumas baasii kan biroollee waan hin baafneef, daldaloota seera qabeessaa caalaa carraa gabaa ofitti harkisuu qabu.Kanaaf, daldalli seeraa alaa daldalootni bu'uura seeraatiin hojjetan akka kasaaran gochuun gabaa keessaa akka bahan taasisuu danda'a.⁹ Gabaa keessaa bahuun dhaabbilee daldalaa ammoo invastimantiin akka hin jajjabaanne akkasumas carraan hojji bal'inaan akka hin uumamne kan taasisu waan ta'eef, miidhaa dinagdee guddaa biyyarratti dhaqqabsiisa.¹⁰ Dabalataanis, oomishaaleen kalaqa sammuu salphumatti waraabamanii karaa seeraa alaatiin waan daldalamaniif kalaqtootni bu'aa argachuu malan akka hin arganne gochuun fedhiinkalaqummaa akka hin gabbanne taasisa.¹¹

⁸Akkuma 7^{ffaa}.

⁹ Olitti yaadannoo lak.5, FF 11-12.

¹⁰ Grant Thornton, Illicit Trade in Ireland: Uncovering the Cost to the Irish Economy (2013), F24 (www.oireachtas.ie/parliament/media/illicit-trade-in-ireland-report.pdf) <gaafa 4-2-2008 ilaalame>.

¹¹ Akkuma 10^{ffaa}.

2.2.2. Miidhaa Daldalli Seeraa Alaa Fayyaa Irratti Dhaqqabiisu

Oomishaalee qulqullinni isaanii hin eegamnee fi faayidaa irra ooluu hin qabne uummataaf akka dhiyaatan waan taasisuuf, daldalli seeraa alaa fayyaa hawaasaa balaaf saaxila. Keessattuu, qorichoонни караа сееран алатиин оомишаман макаа dogoggora ta'e (wrong dose of active ingredient) ykn макаа barbaachisu kan hin qabne ykn макаа addaa kan hammatan akka faayidaa irra oolan waan taasisuuf miidhaa fayyaa daldalli seeraa alaa dhaqqabiisu olaanaa dha.¹²

2.2.3. Miidhaa Daldalli Seeraa Alaa Nageenya Biyyattii Irratti Qabu

Daldaltoonni seeraa alaa gocha daldala seeraa alaa raawwatan babal'isuuf jecha garee namoota meeshaa waraanaa hidhatanii hojii seeraa alaa sanaaf haala mijeessanuumuun, nagaa fi tasgabbii biyyaa akka jeeqamu taasisu.¹³ Gama biraatinis, daldalli seeraa alaa daddabarsa meeshaalee waraanaa kan dabalatu waan ta'eef, yakkoonni akka raawwatamaniiif haala mijataauumuun nageenya biyyaa irratti dhiibba dhaqqabiisa.¹⁴

2.2.4. Miidhaa Daldalli Seeraa Alaa Eegumsa Naannoo Irratti Qabu

Oomishaaleen karaa seeraa alaatiin oomishaman qajeelfamoota seeraan taa'an kan hin kabajne ta'uu waan danda'uuf, haalli oomishaa fi balfa ittiin dhabamsiisan naannoo irratti dhiibbaa guddaa qabaata. Balfii fi keemikaalli gadi lakkifaman faalama qilleensaaf gumaacha guddaa qabaatu. Fakkeenyaaaf, daldalootni seeraa alaa balfii fi keemikaalli miidhaa guddaa naannoo irratti geessisuu danda'anii fi of-eegganno addaatiin dhabamsiifamuu qaban of-eegganno barbaachisu osoo hin taasisiin naannootti gadi akka lakkifaman taasisuun naannoont akka faalamu godhu.¹⁵ Dabalataanis, gochi kun qaabeenya uumamaan seeraa ala daldaluu kan

¹² Olitti yaadannoo Lak^{5^{ffaa}}, F23.

¹³ Akkuma 12^{ffaa}.

¹⁴ Olitti yaadannoo Lak 4^{ffaa}.

¹⁵ Akkuma 14^{ffaa}.

dabalatu ta'uun daldala seeraa alaa rakkolee akka manca'iinsi bosonaa akka uumamu gochuun naannoonaan akka miidhamu taasisa.

3. HOJII DALDALAA FI ULAAGAALLEE SEERUMMAA HOJII DALDALAA MIRKANEESSAN

3.1. HOJII DALDALAA (COMMERCIAL ACTIVITIES)

Seerri daldalaa keenya nama hojii daldalaa hojjetu bituurratti waan fuuleffatuuf hojiin daldalaa maal akka ta'e hin ibsu.¹⁶ Seerichi daldalaa (nama hojii daldalaa hojjetu) irratti xiyyeffata. Bu'uura Seera Daldalaa 1952 kwt 5tti, daldalaan nama hojii daldalaa akka hojii ogummaa tokkootti fudhachuun galii argachuuf jecha hojiwwan seericha kwt 5 jalatti tarreeffamanii jiran hojjetuu dha. Labsiin Galmee fi Hayyama Daldalaa Lakk. 980/2008 kwt.2 (2) irratti bifa gocha daldala seeraa alaa to'achuutiin daldalaa hiikeera. Akka tumaa keewwata kanaatti, daldalaa jechuun nama hojiwwaan seera daldalaa keessatti ibsaman akka hojii ogummaa tokkootti fudhachuun galii madaalawaa argachuuf jecha hojjetuudha.

Wixineessaan Seera Daldala Itoophiyaa (Ethiopian Commercial Code of 1960) ulaagaalee maalummaa daldalaa ibsan kanneen armaan olitti ibsaman lamaan qofa hin teechifne. Ibsituu sadaffaa: *enterprise* (dhaabbata daldalaa) akka ulaagaa tokkootti kaa'anii turan.¹⁷ Bu'uura yaada kanaatiin, daldalaan galii argachuuf jecha dhaabbata daldala beekamtii argatanitti fayyadamee akka ogummaa tokkootti hojiwwan Seera Daldalaa kwt 5 jalatti tarreeffamanii jiran nama hojjetuu dha.

Seerri daldalaa keenya hojii daldalaa alkallattiin daldalaatti fayyadamee ibsuu yaala. Fakkeenyaaaf, labsiin lakk. 980/2008, kwt 2(3) hojiin daldalaa hojii daldalaan hojjetu ta'uu ibsa. Seerri daldalaa kwt 5 hojiwwan daldalaan hojjetu tarreessee kan jiru yoo ta'u, al-kallattiin hojiwwan keewwata kana jalatti ibsamanii jiran hojii daldala ta'uu isaanii akeeku. Seera keenya keessatti hojiwwan daldala ibsuu ilaalchisee dhimmi akka ijoo falmiitti

¹⁶Peter Winship, Background Document of the Ethiopian Commercial Code of 1960, F 34.

¹⁷Yaadni qopheessaa seerichaa tuutota ijoo lamaan caqafaman kanneen qofarratti kan daanga'e hin turre; tuuta sadaffaa ni qaba ture: jiraachuu interpiraayizii. Seerichi gara Afaan Amaaraas ta'e Afaan Ingiliziitti yeroo hiikamu jechi interpiraayizii jedhu biraahafeera. Yaadni jechi interpiraayizii jedhu jiraachuu qaba jedhu yaadrimee Sirna Seeraa Ardiin Auurooppaa (Continental Legal System) keessatti baay'ee barbaachisaa dha.

ka'u tokko hojiin daldalaan hojiawan Seera Daldalaan kwt 5 jalatti tarreeffamanii jiran qofa ta'uu yookaan ta'uu dhabuu isaaniiti. Tumaan seera kanaa akka agarsiisutti, namootni hojiawan keewwaticha jalatti tarreeffamanii jiran akka ogummaatti fudhatanii galii argachuuf hojjetan daldaltoota jedhamu waan jedhuuf, ogeessotni baay'een hojiawan keewwaticha jalatti tarreeffamanii jiran qofatu bu'uura seera keenyaatiin hojii daldalaan ta'anii fudhatamu jedhu.

Haa ta'u malee, gama biraatiin, akka hiikkoo lammaffaatti yaadni dhiyaatu akka jedhutti, hojiin tokko tarree kwt 5 keessatti kan hin ibsamne yoo ta'el ee seerota daldalaan boodarra bahan keessatti ibsamnaan hojii daldalaan ta'ee fudhatama. Wixineessaan seerichaa ibsa kwt 5 irratti akka kennanitti, ulaagaalee sadiitu qindoomanii daldalaan tokko ibsu. Isaanis, ogummaan hojjechuu, galii argachuuf hojjechuu fi dhaabbata daldalaan beekamtii argatan keessaa tokkotti fayyadamani hojjechuu yoo ta'an hojiawan daldalaan tarreeffaman ammoo akka agarsiisutti qofatti kan barreeffaman ta'uu dubbatu.¹⁸ Labsiileen boodarra bahan kan akka Labsi Galmee fi Hayyama Hojii Daldalaan Lakk.980, kwt 2(2) akka tumanitti hojiin tokko hojii daldalaati jedhamee seeraan yoo ibsame hojiawan kwt 5 jalatti ibsamanitti dabalamuun hojii daldalaan ta'ee fudhatama. Haaluma kanaan, hojiin daldalaan hojiawan seera daldalaan kwt 5 jalatti tarreeffamanii jiran qofa soo hin taane hojiin tokko seera boodarra bahuun akka hojii daldalaatti kan ibsame taanaan hojii daldalaan ta'anii fudhatamuun seerri daldalaan kan irratti raawwataman keessaa tokko ta'a jechuu dha. Barruun kun bu'uura hiikkoo lammaaffaa kanaatiin hojii daldalaan hubachuu fi ibsuun gochi daldala seeraa alaa haala kamiin to'atamuu akka qabu kallattii agarsiisuu yaala.

3.2. ULAAGAALEE SEERUMMAA HOJII DALDALAA MIRKANEESSAN

Sirni dingadee gabaa bilisaa biyyi keenya hordoftu, mootummaan ulaagaalee dhaabbileen daldalaan fi hojiin daldalaan ittiin gaggeeffaman seera tumuun hojiirra akka oolchu kan gaafatu yoo ta'u, seerummaa/seeraalummaa hojii daldalaan tokko adda baasuuf ulaagaalee seeraa tumaman hubachuu gaafata.¹⁹

¹⁸ Olitti yaadannoo lak 4, F50.

¹⁹ Mulu gebreyesus, Industrial Policy and Development in Ethiopia: Evolution and Present Experiment, F8.

Biyyi keenyas ulaagaalee seerummaa hojii daldalaa mirkaneessan hedduu tumuun hojiirra akka oolan taasiftee jirti. Kanaafuu, biyya keenya keessattis seerummaa hojii daldalaa mirkaneessuu keessatti ulaagaalee tajaajilan hubachuu fi hojiirra oolchuun hedduu barbaachisaa dha. Ulaagaaleen kanneen gabaabinaan akka armaan gadiitti ibsamaniiru.

- Ulaagaalee seerummaa hojii daldalaa mirkaneessan keessaa tokko gal mee daldalaarratti galmaa'uu dha. Labsiin Galmee fi Hayyama Hojii Daldalaa lakk.980/2008 kwt 5(1) irratti namni kamiyyuu gal mee daldalaarratti osoo hin galmaa'iin hayyama hojii daldalaa argachuu akka hin dandeenye tuma. Hayyama hojii daldalaa fudhatama qabu osoo hin qabaatiin ammoo hojii daldalaa hojjechuun waan hin danda'amneef,²⁰ gal mee daldalaarratti osoo hin galmaa'iin hojii daldalaa hojjechuun seeraa ala jechuu dha.
- Namni kamiyyuu hayyama hojii daldalaa seera duratti fudhatama qabu osoo hin qabaatiin hojii daldalaa hojjechuu akka hin dandeenye seerri ni ibsa.²¹ Hayyama hojii daldalaa seera duratti fudhatama qabu jechuu hayyama bara baajataa sana keessatti kennname, haareffame, ykn bu'uura labsichaatiin adabbii malee haareffamuu danda'u jechuu dha.²² Hayyamni hojii daldalaa bu'uura Gulantaa Ibsituu Hayyama Hojii Daldalaa Itophiyaatiin kan kennamu yoo ta'u, sadarkaa qinxaabotti hojiin baay'ee of-danda'anii hayyama mata mataatti barbaadu. Namni hayyama hojii daldalaa baafate tokko mirga daangaa hayyama kennameef keessatti hojjechuu, odeeffannoo argachuu, maqaa daldalaa fi hayyamicha jijiiruu kan qabu yoo ta'u dirqamoota akka hayyamaa, gatii meeshaalee fi akaakuu tajaajila kennu tarree barreessuun bakka ifa ta'eetti rarraasuu, yeroo hunda tajaajila kennuu, odeeffannoo rogummaa qabu qaama dhimmi ilaaluuf kennuu fi kkf bahuutu irraa eegama.

²⁰ Labsii Galmee fi Hayyama Hojii Daldalaa, Lak.980/2008, Magalaataa Federaalaa, Bara 22^{ffaa}, Lakk. 101, kwt 22(1).

²¹ Labsii Galmee fi Hayyama Hojii Daldalaa, Kwt 22(1).

²² Labsii Galmee fi Hayyama Hojii Daldalaa, Kwt 2(12).

- Ulaagaan biraa hayyama ogummaa hojii daldala dha. Hayyamni ogummaa hojii daldala ulaagaalee seerummaa hojii daldala kan akka kenniinsa tajaajila ogummaa fayyaa, seeraa, injinariingii fi barnootaa hojjechuuf dabalataan hayyama barbaachisuu dha.²³ Namni tokko hojiwwan daldala caqasaman kanneen hojjechuuf dursa hayyama ogummaa erga argatee booda, hayyama hojii daldala baafachuun gara hojiitti seena.
- Hayyama hojii daldala baafachuuf dursa hayyama gahumsa hojii baafachuun barbaachisaa dha. Fakkeenyaaaf, namni buna dhiyeessu, alatti argu, jiimlaa gurguru, qopheessuu fi kuusu hayyama hojiwwan kanneen hojjechuu baafachuu dura hayyama gahumsa hojiwwan kanneen hojjechuu isa dandeessisu qabaachuu kan agarsiisu hayyama baafachuu qaba.²⁴
- Hojiwwan daldala hayyama gahumsa barbaadan ilaachisee hayyama daldala baafachuun dura qaama dhimmi ilaalu irraa hayyama gahumsa argachuun akka barbaachisu labsiileen adda addaa tumanii jiran. Fakkeenyaaaf, namni dhaabbata tajaajila fayyaa kennuu ykn dawwaa daldaluu barbaadu kamiyuu hayyama gahumsa hojii qaama aangoo qabu irraa baafachuu qaba.²⁵ Namni buna dhiyeessuu fi biyya alaatti ergu hojii kana osoo hin eegaliin dura, hayyama gahumsa hojii baafachuu qaba.²⁶ Seerri dhimmi ilaallatu hayyama gahumsa hojii baafachuun barbaachisaa dha yammuu jedhu hayyama kana osoo hin baafatiin hojii daldala kana hojjechuun seeraa ala; itti-gaafatamummaa yakkaa kan hordofsiisu ta'a jechuu dha.²⁷
- Seerummaa hojii daldala mirkaneessuu keessatti ulaagaa seerri teechisu keessaa tokko ragaa hayyama darbiinsaa (waraqaa fe'umsaa) dha. Seerummaa sochii meeshaalee daldala al-ergii ta'anii fi

²³Labsii To'annoo Dawwaa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, Lak. 661/2002, Magalata Federaalaa, Bara 16^{ffaa} Lak 9, kwt. 33.

²⁴Dambii To'annoo Qulqullinaa fi Daldala Buna Federaalaa, Lak. 161/2000, kwt 8

²⁵Labsii To'annoo Dawwaa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, kwt 42(1)

²⁶Labsii To'annoo Qulqullinaa fi Daldala Buna Federaalaa, Lak 602/2000, Magalata Federaalaa, Bara 14^{ffaa}, Lak 61, kwt 6, 7 fi 8.

²⁷Fakkeenyaaaf, Labsii To'annoo Dawwaa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, Lak 661/2002, kwt .33, hidha kwt 53(1m).

meeshaalee daldalaan bu'uuraa faayidaa uummataa guyyaa guyyaatiif oolan mirkaneessuu keessatti ragaan hayyama darbiinsaa murteessaa dha. Ragaan kun hayyamoota biroo irraa adda bahee kan ilaalamuu fi of-danda'ee kan dhaabatu yoo ta'u, hanga, bakka fi yoom meeshaan daldalaan fe'amee deemaa jiru kan ibsu; akkasumas, meeshichi garamitti akka adeemu kan agarsiisuu dha.²⁸

- Oomishaalee daldalaan biyya keessatti oomishamanis ta'ee alaa gara biyyaa seenaan galmeessisuun tooftaalee seerummaa hojji daldalaan ittiin to'atan keessatti ramadama. Galmeessi oomishaalee, qulqullina oomishaalee sakatta'uu fi oomishaaleen karaa seeraa alaatiin gabaa keessa akka hin galle ittisuuf kan tajaajiluu dha. Fakkeenyaaaf, dawwaan/qorichi biyya keessatti oomishaman yookaan biyya alaa gara biyya keessatti galan osoo hin galmeessiin uummatni akka itti fayyadamuuuf dhiyeessuun dhorkaa dha.²⁹
- Sadarkaa gabaa hayyamame keessatti hojjechuun ulaagaa seerummaa hojji daldalaan tokko tokko adda baasuuf tajaajiluu dha. Fakkeenyaaaf, bu'uura Labsii Beeyiladaa Lakk. 819/2006 fi Labsii To'annoo Qulqullinaa fi Gabaa Buna Lakk. 602/2000tiin daldalootni gabaa sadarkaa tokkoffaa fi lammaaffaa keessatti hirmaatan adda bahaniiru. Akaakuun beeyiladotaa fi bunaan gabaawan sanatti dhiyaatanis adda fo'amaniiru.
- Seerummaa hojji daldalaan mirkaneessuu keessatti haalli qabiinsa qulqullina meeshaalee daldalaan akka ulaagaa tokkotti bakka itti dhiyaatu jira. Fakkeenyaaaf, qulqullina gogaa fi kalloo akkasumas bunaan gochoota miidhuu danda'an raawwachuu fi haala qulqullina isaanii miidhuu danda'uun geejibuuun seerummaa daldala meeshaalee sanaa adda baasuu keessatti kan gargaaruu dha.³⁰

²⁸ Fakkeenyaaaf, Labsii Beeyiladaa Lak.819/2006, *Magalata Federaalaa*, Bara 20^{ffaa}, Lak 30, kwt.17 (9); Dambii Beeyiladootaa, Lak. 341, kwt.12 (6).

²⁹ Labsii To'annoo Dawwa, Nyaata, fi Bulchiinsa Eegumsa Fayyaa, kwt. 7 fi 14.

³⁰ Labsii Gogaa fi Kalloo Lak. 814/2006, *Magalata Federaalaa*, Bara 20^{ffaa}, Lak. 29, kwt 9(9), Labsii To'annoo Qulqullinaa fi Daldala Buna Oromiyaa lak 160/2002, kwt. 22 (1) (3).

- Dandeettiin seeraa (legal capacity) ulaagaalee seerummaa hojii daldalaan mirkaneessuuf gargaaran keessatti ramadama. Fakkeenyaaaf, namni umuriin gaheessa hin taane hojii daldalaan hojjechuu hin danda'u.³¹ Haaluma wal-fakkaatuun, namni sababa rakkina sammuutiin yookaan murtii yakkaatiin hojii hawaasummaa hojjechuu hin danda'u jedhamee itti murtaa'e, akka dhimma isaatti, hojii daldalaan hojjechuu irraa seeraa daangeffameera. Akka seera daldalaatti, namootni utuu umuriin 18 hin guutiin gahoomanillee, qaamni dhimmi ilaalu waa'ee daldala hojjechuu isaanii yoo mirkaneesse malee hojii daldalaan hojjechuu hin danda'an³². Namootni gaheessa hin ta'iin tumaa seeraa kana darbanii hojii daldalaan kan gaggeessan yoo ta'e, hojii isaan raawwatan diigamuu akka danda'u seerri teechisee waan jiruuf³³, hojiwwan daldalaan namootni kanneen hojjetan, yakka ta'uu yoo baatellee, seeraa ala jechuun ni danda'ama. Haa ta'u malee, namni lammii Itophiyaa hin taane biyya keessatti hojii daldalaan beeyilada bitanii gurguruu irratti osoo hirmaatuu yoo qabame yakkaan akka adabamu labsiin Beeyiladaa Lakk. 819/2013 kwt 17(5) ni tuma.
- Karaa hayyamameen biyya seenuu yookaan biyyaa bahuu akkasumas daandii hayyamamee qofarra geejjibamuu meeshaaleerratti hundaa'uun daldalli tokko seera qabeessa ta'uu yookan ta'uu dhabuunsaan kan adda bahuu ta'a. Labsiin Gumuruukaa kwt 6(1) akka tumutti meeshaaleen al-ergii (export), as-galii (import) fi daddarbii (transit) karaa buufata doonii hayyamamee yookaan daandii gumuruukaan biyya alaa gara keessatti galuu akkasumas biyya keessaa gara biyya alaatti bahuu qabu; meeshaaleen kanneen yeroo biyya seenaa jiranis ta'e biyyaa bahaan jiran daandii hayyamame qofa irra geejjibamuu qabu. Kanaafuu, namni kamiyyuu meeshaalee al-ergii, as-galii fi daddarbii bakkaa fi karaa hayyamame malee yoo seensise yookaan yoo baase akkasumas yoo geejjibe daldala seeraa alaa gaggeessaa jira jechuun ni danda'ama.

³¹ Seera Daldalaan Bara 1952, kwt 11(1) fi Seera Hariiroo Hawaasaa, kwt 199(3).

³² Seera Daldalaan Bara 1952, Kwt 13.

³³ Seera Daldalaan Bara 1952, Kwt 11(2)).

- Meeshaalee dhorkaman yookaan daangaan irra kaa'ame biyya alaa galchuu yookaan daldaluun gocha daldala seeraa alaa raawwachuu dha. Kaffaltii barbaachisaa ta'e utuu hin kaffaliin meeshaa daldala tokko miliqsanii gabaa keessa galchuun gocha daldala seeraa alaati. Fakkeenyaaf, meeshaalee gara biyya keessaatti akka hin galle dhorkamani fi meeshaalee daangaan irra kaa'ame akkasumas kaffaltii barbaachisaa ta'e utuu hin raawwatiin meeshaa biyya keessa galchanii daldaluun seera cabsanii hojii daldala raawwachuu waan ta'uuf, daldala seeraa alaati jechuun ni danda'ama.³⁴

4. YAKKA DALDALA SEERAALAA QABUU, QULQULLEESSUU FI HIMACHUU

4.1.YAKKA DALDALA SEERAALAA QABUU

Daldalli damee bal'ina qabu ta'uu irraa kan ka'e to'annoон gocha daldala seeraa alaa qaamoolee adda addaatif kennamee jira.Fakkeenyaaf, daldala bunaan fi qulqullina isaa ilaachisee Waajjira Qonnaa, daldala ol-galchii fi alergii ilaachisee Abbaa Taayitaa Galiiwanii fi Gumruukaa, daldala akka waliigalaatti Biirroo Daldala fi Misooma Gabaa, kenna tajaajila fayyaan walqabatee Biirroo Eegumsa Fayyaaf kennamee jira. Haaluma kanaan, bifa bu'a-qabeessa ta'een daldala seeraa alaa to'achuuf qindoomina ol'aanaa qaamoolee adda addaa kan barbaaduu dha.Haa ta'uu malee, to'annoон gocha daldala seeraa alaa irratti taasifamu laafaa akka ta'u sababootni taasisaa jiran hedduu dha. Isaanis, seerota daldala to'achuuf bahan irratti hubannoo gahaan jiraachuu dhabuu, waajjirraaleen dhimmi ilaalu tarkaanfii seeraa yerootti fudhachuu dhabuu, ragaa barbaachisu kennuu irratti keessumaa ragaa ogummaa bahuu ilaachisee qaawwi hedduu mul'achuu, rakkoo iftoominaa, wal-amantaa dhabuu, hanqina qindoominaa, hanga dhumaatti ciminaan itti deemuu dhabuu, qaamolee mootummaa xalayaa adda addaa barreessuun dhimmichi lafarra akka harkifatu taasisuu, sekterootni biroo tokko tokko ragaa kennuu irratti saffisoo ta'uu dhabuu, fi gocha daldala seeraa alaa qabuu dhiisuu akka fakkeenyaatti caqasuun ni dana'ama.³⁵

³⁴ Labsii Gumuruka Federaalaa Lak.859/2007, *Magalata Federaalaa*, Bara 20^{ffaa} Lak. 82.

³⁵ Yaada cuunfa bar-gaafii irraa fudhatame.

Gocha daldala seeraa alaa qabuu keessatti dhimmi gufuu ta'aa jiru tokko kaffaltiin komiishinii miseensota poolisiitiif akka hin kaffalamne Komishinii Poolisii Oromiyaan ajajni darbuu isaati.³⁶ Miseensotni poolisii yoo meeshaa daldalli seeraa alaa irratti gaggeeffamaa jiru qaban kaffaltiin komishinii isaaniif kaffalamuu akka qabuu fi ajajni kara Komishinii kennname seeraa ala jedhanii komatu. Komiin kun ammoo giddutti hojii miidhaa jira. Kaffaltiin komishinii namoota daldala seeraa alaa kan akka koontiroobaandii, bunaa, boloqqee, saliixaa, gogaa fi kalloo, fi beeyiladaa irratti gaggeeffaaa jiru ilaalconganii eeruu kenuun meeshicha qabsiisaniiif raawwatama. Kaayyoon kaffaltii kanaa hawaasni bal'aan dammaqee gocha daldala seeraa alaa akka to'atu gochuu malee miseensota poolisii gaheen hojii isaanii gocha seeraa alaa to'achuu ta'e badhaasuu akka hin taane tumaaleen seeraa rogummaa qaban ni akeku. Fakkeenyaaaf, tumaan Labsii Bunaa lakk 160/2002 kwt 21, Labsii Gogaa fi Kalloo lakk 814/2006 kwt 12(6), fi Lasii Beeyiladaa lakk 819/2006 kwt 15(9) komishiniin *nama eeruu kenuun* meeshaa daldala seeraa alaa qabsiisaniiif kaffalama jedhu. Gaaleen nama eeruu kenuun meeshicha akka qabsiisu taasiseef jedhu kunis kaffaltiin kun miseensa poolisii gocha seeraa alaa akkuma argeen qabuuf kan raawwatu akka hin taane akeeka. Dabalataanis, Dambii Daldala Beeyiladoota Lakk 341/2007 kwt 19(5b), Dambii Daldala Gogaa fi Kalloo Lakk 339/2007 kwt 16(6b) akka ibsanitti meeshaaleen daldala kanneen eeruu malee kan qabaman yoo ta'e kaffaltiin komishinii waajjira nageenyaa qabeef kan kaffalamu ta'a malee miseensa poolisii qabeef akka hin kaffalamne mul'isu.

Daldala seeraa alaa qabuu keessatti rakkoon inni biraq qindoominni qaamolee hirtaa jidduu jiru laafaa ta'uu isaati. Gama kanaan, ogeessoota bar-gaaffii guutan qindoominni qaamolee hirtaa gidduu jiru yoo madaalan namoota 69 keessaa namoonni 7 ol'aanaa (9.86%) yammuu jedhan, namoonni 40 (56.34%) jiddu galeessa, namoonni 22 (30.99%) gad-aanaa jedhaniiru. Ogeeyyiin kunniin yaadota bar-gaaffii keessatti ibsan keessatti rakkoleen wal amantaa kan hin jirreef seektaroota hirtaa keessatti hanqinni qindoominaa jiraachuu ibsanii jiru. Qabxiin biraq daldala seeraa alaa walqabatee akka rakkotti ibsamuu, miseensonni poolisii tokko tokko

³⁶Fakeenyaaaf, af-gaaffii obbo Gaarummaa Adabaa raawwataa hojii too'annoo qulqulina bunaa BDMGO, obbo Kadiir Hammuu ogeessa seeraa BDMGO waliin gaafa guyyaa 04/05/08 taasifame, Adde Tsiyoon Admaasuu Abbaa Taayitaa Galiiwanii fi Gumruukatti I/A/abba alangaa muummee, obbo kabbadaa dhaabaa A/Alangaa Abbaa Taayita Galiiwanii fi Gumruukaa Itoophiyaa wajjiin gaggeeffame kaasuun ni danda'ama.

yammuu meeshaa daldala seeraa alaa qabanitti namoota shakkaman waliin dhiyeessuu dhabuudha.³⁷ Dhiibbaan hooggansaa sadarkaan jiru daldala seeraa alaa too'achuu keessatti hudhaa mataa isaa uumee jira.³⁸

4.2.YAKKA DALDALA SEERAALAA QULQULLEESSUU

Gochi daldala seeraa alaa miidhaa hedduu biyya irratti kan dhaqqabsiisu ta'uu fi mootummaan xiyyeffannoo guddaa kan itti kenu ta'uu irraa kan ka'e haala qulqullinaa fi saffina qabuun qoratamee seeratti dhiyaachuu qaba.Haa ta'u malee, qabatamaatti gocha daldala seeraa alaa qorachuun wal-qabatee hanqinaaleen hojii keessatti mul'atan hedduu dha. Fakkeenyaaaf, namoota itti gaafatamummaa qaban hunda irratti qoranno gaggeessuu dhabuu³⁹ fi eeruu ragaan deeggarame dhiyatetti xiyyeffannoo kenuun qoratanii furmaata seeraa akka argatu gochuu dhabuu akka rakkoo guddaa tokkootti kan caqasamuu dha.⁴⁰ Ijoo kana irratti dhimma qabatamaa tokko akka fakkeenyaaatti haa ilaallu. Galmee shakkamaa Amiin Saadiq Raabsaa irratti banamee jiru haa ilaallu. Namni kun sukkaara Aanaa Madda Walaabuuf ramadame waraqaan qulqullinaa waajjira irraa osoo hin barra'iiniif ofii isaattii fakkeesee barreesisuun zayita nyaataa qarshii 1,017,020.36gaafa 08-08-2007, 09-08-2007 fi 29-08-2007 JINAD Shashamannee irra baafate. JINAD Dodolaa irraa ammoo zayitii qarshii 1,119,998.80baasee seeraa ala daldalaa jira jechuun qorannoon irratti gaggeeffamee seeratti akka dhiyaatuuf xalaya lakk DMG/HHD-3/98 gaafa

³⁷Af-gaaffii obbo Tafarraa Wondee, I/G/Waj Haqaa G/A/O/N/F; obbo Ijennaa Gizaw, Ab/Ad/Qor/Yakka fi Murtii Haqaa Kennisiisaa Waj.haqaa G/A/O/N/F waliin gaafa guyyaa 10/05/08; obbo Isheetuu Asaffaa, I/Gaafatama Wajjira Haqaa Magaala Sabbataa waliin gaafa guyyaa 12/05/08 gaggeeffame.

³⁸Af-gaaffii obbo Kabbadaa Yaa'ii, I/Gaafatama Waajjira Waqaa Godina Baalee waliin gaafa guyyyaa 25/05/08; Ins. Ol.Taarikuu Laggasaa, Ab/Ad/Qo/Yakka fi Murtii Haqaa Kennisiisa Qajeelcha Poolisii Magaala Shashamannee waliin gaafa guyyaa 20/05/08 fi obboo Hedatoo Fayyisaa, I/Gaafatamaa, Wajjira Haqaa Aanaa Shashamannee waliin gaafa guyyaa 19/05/08 gaggeeffame.

³⁹Fakkeenyaaaf, af-gaaffii Gammachiis Geetahun, Abbaa Alangaa, Aanaa Gimbi, Amajji 9, 2008 fi Kom. Abbabaa Tashoomaa, Qajeelcha Poolisii Godina Adda Oromiyaa Naannawa Finfineetti Ab/Ad/qo/yakkaa fi Murtii Haqaa Kennisiisa waliin gaafa guyyaa 06/05/08 gaggeeffame

⁴⁰Fakkeenyaaaf, af-gaaffii Obbo Hirkisaa Dhinsaa, Ogeessa kabachiisa mirga fayyadamtoota BDMGO;obbo Kadiir Hammuu ogeessa seeraa BDMGO;obbo Masaratuu Lammaa Ab/Ad/Hojii Too'anno fi Itti Fayyadama Calla Guddistuu Biiroo Qonnaa Oromiyaa waliin gaafa guyyaa 04/05/08 taasifame ilaluun ni danda'ama.

30-08-2007 fi xalayaa lakk.DMG/HHD-24/99 gaafa guyyaa 04/09/07 Qajeelcha Poolisii Godina Baalee fi Waajjira Haqaa Godina Baaleef kan barreffame yoo ta'el ee hanga gaafa daataan qorannoo kanaa walitti qabameetti (gaafa 25-05-2008) qulqullaa'ee seeratti hin dhiyaanne.

Rakkoon qorannoo gocha daldala seeraa alaa keessatti mul'atu kan biraan eeruu dhiyaatanii fi meeshaa daldala seeraa alaa qabaman seera rogummaa qabuu wajjiin wal-bira qabanii ilaalu dhabuu dha. Rakkoo gama kanaan jiru dhimma qabatamaa tokko kaafnee haa ilaallu. Godina Booranaa Aanaa Yaabeeloo keessattii gaafa 30-11-2006 gogaan lakkofsi isaa 750 ta'e osoo geejjibamu qabame. Waajjirri Daldalaa fi Misooma Gabaa qulqullaa'ee seeratti akka dhiyaatuuf eeruu dhiyeese. Ragaa hayyama darbinsaa gaafa 11-10-2006 kenname gaafa 13-10-2006 booda hin fayyadu jedhu shakkamaan dhiyeesse. Poolisiin Aanaa Yaabeeloo xalayaa lakk PAY/21/61/7/2006 gaafa guyyaa 09/12/2006 barreffameen meeshaan qabame yoo ture baduu waan danda'uuf abbaa qabeenyaaf akka deebi'u jechuun ajaja kenne. Poolisiin gogaan qabame baduu waan danda'uuf abbaa qabeenyaatiif haa deebi'u jechuun ala kallatti seeraatiin wantoota jiran akkasumas ragaaleen jiran dhimmicha seeratti dhiyeessuuf gahaa ta'uu ykn dhabuu isaanii hin ilaalle. Labsiin Gogaa fi Kalloo lakk 814/2006 daddarbiinsi gogaa fi kalloo hayyama darbiinsaa qaama aangoo qabu irraa kennamuun ta'uu akka qabu tuma. Hayyama darbiinsaa malee geejjibamaa kan jiru yoo ta'e, gogaan akka dhaalamu labsicha kwt 14(6) irratti ifaan kaa'ee jira. Waraqaa darbiinsa shakkamaan harkaa qabu waraqaa guyyaa sadu booda tajaajiluu hin dandeenye akka ta'e ragaa barreffamaa dhiyaate irraa ni hubatama. Shakkamaan erga guyyaan waraqaa darbiinsaa kennameef torbaan lamaa darbee booda qabame. Gogaan qabame yeroo gabaaba keessatti kan badu waan ta'eef, gurguranii qarshii isaa baankii akkaawuntii cufamaan kaa'uun akka barbaachisu labsichi kwt 12(5) tumee jira.

Yakki daldala seeraa alaa namoota qabeenya qabaniin akkasumas gareedhaan kan raawwatamu ta'uun isaa dabalataanis abbootii taayitaa waliin walitti hidhamiinsa kan qabu ta'uun isaa namoota kana haala salphaa ta'een to'achuun ergasii illee qorannoo gaggeessuu irratti dhiibbaan guddaan jiraachuun isaa yakoonni kunniin haala barbaadamuun akka hin qoratamne

taasisee jira.⁴¹ Kana malees, daldala seeraa alaa harkaa fi harkatti yammuu qaban ragaa jiru si'oominaan qoratanii dhiyeessuu irra yeroo beellamaa gaafachuun dhimmicha lafa irra harkisuun ni mul'ata.⁴² Gama biraatiin, qaamolee nageenyaatiin meeshalee qofa qabanii dhiyeessuun waan hedduummatuuf galmeewwan qoratanii hanga dhumaatti geessuu irratti hanqinni jiru bal'aa dha.⁴³ Dabalataanis, ragaa sobaa qaamolee adda addaa irraa dhiyaatu galmeewwan daldala seeraa alaa qorachuu irratti danqaa guddaa ta'eera.⁴⁴

Rakkoon gama biraatiin mul'atu rakkolee seerota keessatti mul'atanii dha.⁴⁵ Innis Labsii To'annoo Qulqulinaa fi Daldala Bunaatiin wal-qabatee labsii mootummaa Federaalaa fi Naannoo Oromiyaa keessatti garaagarummaan jiraachuu dha. Labsii Federaalaa lakk.602/2000 kwt 15(6) jalatti abbaan konkolaataa konkolaataa buna seeraan alaa fe'ee osoo socho'uu qabamee itti gaafatamummaa yakkaa akka qabaatu tumee jira. Labsii lakk.160/2002 Mootummaa Naannoo Oromiyaan bahe kwt 23(6) keessatti abbaan konkolaataa buna seeraan ala geejjibamu keessatti hirmannaa yoo qabaate qofa akka itti gaafatamu ni ibsa. Kanaan wal-qabatee ogeeyyi seeraa jidduu yeroo bunni seeraan alaa konkolaataa waliin qabamu seera kamtu

⁴¹Af-gaaffii Insp. Fayyisaa Hojisaa, Qajeelcha Poolisii Godina Adda Oromiyaa Naannawa Finfineetti qorataa yakkaa waliin gaafa guyyaa 06/05/08; obbo Ibsaa Camadaa A/Alangaa Wajjira Haqaa G/A/O/N/F waliin gaafa guyyaa 10/05/08 gaggeeffame.

⁴²Af-gaaffii obbo Alamayyoo Uumaa, A/seeraa fi B/B Pireezidaantii Mana Murtii Aanaa Sabbataa Hawwaas waliin gaafa guyyaa 12/05/08; Obbo Abdiisaa Ganamoo A/seeraa fi Qindeessaa Garee Yakkaa Mana Murtii Aanaa Arsii Nageellee waliin gaafa guyyaa 15/05/08, obboo Ismaa'eel Muhammed, A/seeraa fi Qindeessaa Garee Yakkaa Mana Murtii Aanaa Shaashamannee waliin gaafa guyyaa 20/05/08 taasifame.

⁴³Af-gaaffii obbo Amiin Aadam, I/Gaafatama Waajjira Haqaa Godina Arsii Lixaa waliin gaafa guyyaa 18/05/08; obboo Hedatoo Fayyisaa, I/Gaafatamaa Wajjira Haqaa Aanaa Shashamannee waliin gaafa guyyaa 19/05/08 taasifame.

⁴⁴Af-gaaffii obboo Mulugeetaa Geetaachoo,A/Alangaa fi A/Adeemsa Hojji Qorannoo Yakkaa fi Murtii Haqaa Kennisiisaa, Waajjira Haqaa Aanaa Gommaa waliin gaafa 19-5-2008; obbo Barreessaa Baqqalaa, I/Gaafatamaa Waajjira Haqaa Godina Wallagga Lixaa waliin Amajji 16, 2008 taasifame.

⁴⁵Haaluma wal-fakkaatuun Labsiin Oomishaa fi Daldala Xaa'oo lakk.137/1991 keessatti dhimmoota dhoorkaman tarreessuun itti gaafatamuumma hordofsiisan bira darbuun, adeemsi daldala dhiyeessii labsii keessatti hayyamamee ture hojmaata haarawa kanaan faalla (dhiyeessiin xaa'oo waldaa hojji gamtaan ta'uun) daldala xaa'oon wal-qabatee naannoo Oromiyaa keessatti xaa'oo seeraan alaati jechaa qabuun ala qorannoo yakkaa gaggeessanii bu'uura labsichaan himachuun baay'ee rakkoo uumee jira.

raawwatiinsa qabaata kan jedhu irratti wal-falmiin yeroo uumamu ni mul'ata.⁴⁶

Dhimmicha kallattii aangoo seera baasuutiin yoo ilaalle Heera Mootummaa Federaala kwt 55(5) mootummooni naannoo dhimma Mootummaan Federaala irratti seera yakkaa hin baafne qofa irratti baasuu akka danda'an tumee jira. Badiiwan qulqullinaa fi daldala bunaa irratti raawwataman yakka akka ta'an Mootummaan Federaala yakka ta'uu isaanii labsii lakk.602/2000 keessatti teechisee jira. Kana malees, labsicha kwt. 19 aangoo dambii fi qajeelfama baasuu jedhu jalatti naannooleen seera barbaachisaa ta'an baasuu akka aangoo qabaatan kaa'ee jira. Bu'uura kanaan naannooleen dhimma bunaatiin walqabatee aangoo dambii fi qajeelfama baasuu kennameefi jira. Kanaafuu, dhimmaa qulqullinaa fi daldala bunaatiin wal qabatee labsiin Naannoorn Oromiyaa baase aangoo seera baasuu naannoolee Heera Mootummaa Federaalaa keessatti caqasame kan hin kabajiini dha. Ragaa walitti qabuu fi madaaluu irratti hanqinni jiraachuu sakatta'uuf bargaaffiin ogeessota qaamolee haqaa namoota 192 kan dhiyaate yoo ta'u namoota deebii kennan keessaa namoonni 136(70. 83%) ta'an hanqinni ni jira yammuu jedhan namoonni 56 (29.17%) ta'an ammoo hanqinni hin jiru jedhaniiru. Gama kanaan namootni hanqinni jira jedhan rakkoo jiru yoo ibsan saffisaan qorachuu dhabuu, hanqinni hubanno seeroota daldalaa irratti qaamolee kanneen biratti kan mul'atu ta'uu fi kkf eeruun ni danda'ama.

4.3. YAKKA DALDALA SEERRAA ALAA HIMACHUU

Hojiin daldalaa ulaagaalee adda addaa bu'uureffatee kan gaggeeffamuu fi ulaagaalee sana cabsanii hojii daldalaa hojjechuun yeroo baay'ee itti gaaafatamummaa yakkaa kan hordofsiisu waan ta'eef, himannaan yakkaa gama kanaan dhiyaatu ulaagaalee cabsan ifa baasee agarsiisuu kan danda'u ta'uu qaba. Itti dabalees, ulaagaaleen kanneen akka dhimma isaatti labsiilee adda addaatiin ragga'anii kan jiran waan ta'eef gocha raawwatamee fi seera rogummaa qabu xiyyeefannoon wal-simsiisuun barbaachisaa dha.

Haa ta'u malee, gama kanaan hanqinni raawwii keessatti mul'atu hedduu dha. Hanqinni tokkoffaan, ulaagaalee seerummaa hojii daldalaa

⁴⁶Af-gaaffii kom.Dastaa Mokonnin, Hoogganaa Qajeelcha Poolisii Magaalaa Sabbataa waliin gaafa guyyaa 13/05/08 taasifame.

mirkaneessan hubachuu fi seera rogummaa qabu adda baasanii himachuu dhabuu wajjiin kan wal-qabatuu dha. Akka fakkeenyaatti, himata Abbaa Alangaa fi Sheek Abdalla Ismaa'eel gidduu ture caqasuu ni danda'ama. Himatni kun akka jedhutti, himatamaan seera yakkaa bara 1996 bahe kwt 535(1) irra darbuun *hayyama seeraan to'annoon irratti taasifamu osoo hin qabaatiin* tajaajila fayyaa waan kenneef, himatameera jechuun himatni dhiyaateera. Dhimma kana irratti ajaja mana murtiitiin mana himatamaa qorichoонни aadaa fi ammayyaa qabamanii akka ciraatti dhiyaatanii jiru.⁴⁷ Himatni kun hanqinaalee adda addaa qaba. Tokkoffaan, hayyama himatamaan osoo hin qabaatiin daldala raawwate isa kami? Hayyama ogummaa, hayyama gahumsaa ykn hayyama hojii daldalaa akka ta'e adda hin baafamne. Akkuma armaan olitti ibsame, hayyamoonni kunniin of danda'anii kan ilaalamani fi itti gaafatamummaa yakkaa adda addaa kan hordofsiisani dha. Lammaffaan, himanni kun seera yakkaa idilee bu'uura godhatee dhiyaate. Dhimma fayyaa fi nyaataan wal-qabatee Labsiin Nyaata, Qorichaa fi Bulchiinsa fi Too'anno Eegumsa Fayyaa lakk 661/2002 jalatti kan dhiyaachuu qabuu dha. Hayyama ogummaa osoo hin qabaatiin tajaajila fayyaa kennuun labsicha kwt 53(1m) jalatti kan adabsiisu yoo ta'u, hayyama gahumsaa osoo hin qabaatiin hojjechuun ammoo labsicha kwt 53(1c) jalatti adabsiisa. Dabalataanis, hayyama hojii daldalaa waajjira daldalaa fi misooma gabaa irraa osoo hin baafatiin hojii daldalaa hojjechuun Labsiin Galmee fi Kennaa Hayyamaa lakk 980/2008 kwt 48(2) jalatti adabsiisa. Kanaaf, duuchaatti namni tokko hayyama osoo hin qabaatiin hojii daldalaa raawwate jedhanii himachuu osoo hin taane akaakuwwan hayyamaa namni sun qabaachuu qabu adda baasanii agarsiisuu fi haaluma sanaan himannaa dhiyeessuu barbaachisaa dha.

Ragaalee fi seera wal-simsiisanii himannaa sirrii hundeessuu irratti hanqinajiru sakatta'uuf bar-gaaffii poolisoota fi A/Alangaaf dhiyaate irratti namoota 130 deebii kennan keessaa, namootni 63(48.77%) hanqinni akka jiru yammuu ibsan, namootni 67(51.33%) rakkoon hin jiru jedhanii deebisaniiru. Namootni hanqinni jira jedhan A/Alangaa seeraa fi ragaa dhiyaate irratti hundaa'anii himata dhiyeessuu irra dhiibbaa adda addaatiin himata qulqullina hin qabne hundeessuu, namoota himatamuu qaban hunda himachuu dhabuu, ragaalee hunda duguuganii fayyadamuu dhabuu,

⁴⁷A/Alangaa Aanaa Seeruu fi Sheek Abdalla Ismaael, Mana Murtii Aanaa Seeruu, Galmee Lak. 07978

dhimmoota hunda duguuganii himachuu dhabuu fi seera rogummaa hin qabne jalatti himata hundeessuu akka rakkotti kaasanii jiru.

Ragaalee fi seera wal-simsiisanii himata gocha daldala seeraa alaa dhiyeessuu irratti gahumsi A/Alangaa maal akka fakkaatu sakatta'uuf bar-gaaffii abbootii seeraa waliin taasifameennamoota 58 keessaa namootni 8 (13.79%) ol'aanaa, namootni 38 (65.51%) jiddu galeessa, namootni 12(20.69%) ammoo gad-aanaa jedhanii jiru. Namootni kanneen hanqina himanna iratti gama kanaan jiru akka ibsanitti keewwata rogumma hin qabne caqasuun himachuu,ragaa hunda duguuganii fayyadamuu dhabuu, seera adabbii gad-aanaa qabu filachuu, dhimmoota himachuu qaban adda baasanii himachuu dhabuu, dhimma ijoo tokkoo irratti himata adda addaa hundeessuu fi kkf himanna iratti akka calaqqisu kaasaniiru. Akka waliigalaattii, yaadota bar-gaaffii fi af-gaaffii; akkasumas, dhimma armaan olii dhiyaate irraa akka hubatamutti, himatni gocha daldala seeraa alaa iratti dhiyaataa jiru hanqinaalee akka seera adabbii gad-aanaa qabu filachuu, himata keessattii ijoowwan seeraa fi firriwwan dubbii guutamanii dhiyaachuu qaban hunda guutanii dhiyeessuu dhabuu, seera rogumaa hin qabne fayyadamuu fi ragaalee duguuganii fayyadamuu dhabuun bal'inaan kan mul'atu ta'uu agarsiisa.⁴⁸

5. KENNIINSA MURTII DHIMMA DALDALA SEERAA ALAA

5.1. DHIMMOOTA DALDALA SEERAA ALAA

IRRATTI MURTII KENNUU

Manni murtii adeemsa murtii kennuu keessatti, to'annoo gocha daldala seeraa alaa mirkaneessuuf seerota kallattii sirrii ta'een hiikee dhimmoota irratti raawwachiisuu qaba.⁴⁹

⁴⁸Af-gaaffii obbo Hirphoo Irreessoo, Pirezidaantii Mana Murtii Aanaa Shashamannee waliin gaafa guyyaa 18/05/2008 taasifame.

⁴⁹Labsii Manneen Murtii Naannoo Oromiyaa Irra Deebi'anii Hundeessuuf Bahe,Lak 141/2000, Magalata Oromiyaa Bara 16^{ffaa} Lak 10, kwt 3(c); Qajeelfama Koree Deeggarsa Misooma Oomishaalee Eksipoortii Naannoo Ormiyyaa, Waxabajji 2006, Lakk. 6.1.4, F12.

5.1.1. Aangoo Mana Murtii Idilee fi Qaamolee Biroo Adda Baasuu

Labsiilee gocha daldala seeraa alaa to'achuuf bahan tokko tokko keessatti aangoo mana murtii irratti ogeeyyii seeraa biratti yeroo falmiin ka'u ni mul'ata. Gama kanaan, labsiilee lama kaafnee ilaaluu yaalla: Labsii Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa Lakk 813/2006, fi Labsii Qulqullinaa fi Daldala Bunaa Lakk 602/2000. Labsii dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa fi Labsii Qulqullinaa fi Daldala Bunaa walqabatee manni murtii aanaa dhimmoota kanneen keessumessuu aangoo kan qabu ta'uu isaa sakattaana. Itti dabalees, gochoota daldala seeraa alaa to'achuun wal-qabatee garaagarummaa aangoo mana murtii idilee fi koreewan adda addaa jidduu jiru adda baasuu yaalla.

5.1.2. Labsii Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa

Labsiin Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa Lak.813/2006 kwt. 32 jalatti dhaddacha A/Taayitaa Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa sadarkaa Federaalaatti hundeesseera. Dhaddachi kun falmii dorgommii daldala, dhimma eegumsa mirga fayyadamtootaa, fi sababa dorgommii daldala seeraa alaatiin miidhaa daldaltoota irra gahu ilaala. Miidhaa fayyadamaarra gama maallaqaa fi hamileen Magaala Finfinnee fi Dirre Dawwaa keessatti gahu ilaachisee murtii kenna. Gocha yakkaa tumaalee eegumsa mirga fayyadamtootaa irratti raawwataman ilaaluuf aangoo hin qabu.⁵⁰

Labsichi kwt. 34 jalatti tokkoo tokkoon naannolee akka barbaachisummaa isaatti qaama abbaa seerummaa fi mana murtii dhimmoota bulchiinsa eegumsa mirga fayyadamtootaa irratti ol'iyanno dhaga'u hundeessuu akka danda'an aangessee jira. Dhaddachi hundeeffamuu danda'u kun aangoo dhaddachi dorgommii daldala fi eegumsa mirga fayyadamtootaa Federaala dhimma eegumsa mirga fayyadamtootaa irratti qabu wajjiin wal-qixa waan ta'uuf, dhimma eegumsa mirga fayyadamtootaa ilaachisee

⁵⁰Labsii Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa lakk.813/2006, kwt 32(1 a & b, fi c), *Magalata Federaala*, Bara 20^{ffaa} Lak 28 wal-bira qabaa ilaalaa.

falmii beenyaa irratti murtii kennuu danda'a. Haa ta'u malee, adabbii yakkaa murteessuuf aangoo hin qabu.

Labsicha kwt 36 jalatti Abbaan Taayitaa Dorgommii Daldala fi Eegumsa Mirga Fayyadamtootaa dhimma dorgommii daldala guutuu biyyattii keessatti raawwatamee fi dhimmoota eegumsa mirga fayyadamtootaan wal-qabatee magaala Dirree Dawaa fi Finfinnee keessatti raawwatame qorachuuf akka aangeefame ni tuma. Kana jechuun immoo dhimmoota eegumsa mirga fayyadamtootaa wal-qabatee naannoolee keessatti raawwataman qaamolee haqaa naannootiin kan ilaalamuu danda'ani dha.

5.1.3. Labsiilee Sirna To'anno Qulqullinaa fi Daldala Bunaa

Eegumsi qulqullinaa fi daldala bunaa haala dinagdee biyyaa deeggaruu danda'uun akka gaggeeffamuuf Mootummaan Federaalaa Labsii lak 602/2000 baasuun hojii irra oolchee jira. Labsiin kun kwt 16 jalatti yakkootni qulqullinaa fi daldala bunaa irratti raawwataman mana murtii Federaalaa Sadarkaa Jalqabaatti akka ilaalaman ibsa. Tumaa seeraa kana irraa ka'uun aangoo himanna yakkoota qulqullinaa fi daldala bunaa irratti ogeessotni seeraa ejjennoo lama yammuu tarkaanfachiisan ni mul'atu. Heerri Mootummaa RDFI kwt 80(4) manni murtii olaanaa naannoolee aangoo dhimmoota naanno irratti qabutti ida'ee aangoo Mana Murtii Federaalaa Sadarkaa Jalqabaa akka qabaatu tuma. Bu'uura kanaatiin dhimmootni yakkaa Labsii Bunaa Lak. 602/2000 irratti hundaa'anii dhiyaatan Mana Murtii Olaanaa Oromiyaatti malee mana murtii aanaatti keessummeeffamuu hin qabu jechuun dhimmootni akkasi manna murtii olaanaatti dhiyaachaa turaniiru. Manni murtiis simatee keessummeessaa tureera.⁵¹

Gama biraatiin, bu'uuruma tumaa seeraa kanaatiin gocha yakkaa qulqullinaa fi daldala bunaa irratti raawwatamu manni murtii aanaa (naanno) ilaaluuf aangoo qaba jechuun kan hojiirra oolchan jiru. Labsiin Manneen Murtii Federaalaa Lak 25/88 aangoo manneen murtii Federaalaa adda baaseera. Labsichi kwt 4 jalatti dhimmoota yakkaa aangoo Manneen Murtii Fedeeraalaa ta'an adda baasee tarreessee kan jiru yoo ta'u yakkoota qulqullinaa fi daldala bunaa irratti raawwataman garuu tarree sana keessatti

⁵¹Fakkeenyaaaf, falmiilee A/Alangaa fi Meerii W/Yohaanisfaa(No 3), M/Murtii Ol'aanaa Godina Wallagga Lixaa, lakkooftsa galmeed 16360, A/Alangaa fi Muhamad Sule faa, Mana Murtii O'aanaa Godina Arsii, gamee lakk.40087 gaggeeffame ilaaluun ni danda'ama.

hin hammachiifne. Kanaafuu, gochi yakkaa qulqullinaa fi daldala bunaa irratti raawwatamu aangoo mana murtii federaalaa miti. Gochi yakkaa kun aangoo mana murtii federaalaa waan hin taaneef, Mana Murtii Sadarkaa Jalqabaa Federaalaatti dhimmichi ilaalamu waan jedhame qofaaf bu'uura Heeera Mootummaa kwt 80 (4) tiin naannotti mana murtii olaanaatti kan ilaalamu hin ta'u. Haala hiikkoo kanaatiin, Labsii Bunaa Federaalaa irratti hundaa'uun himannaan Mana murtii aanaatti dhiyaachaa tures jira.⁵²

Gama biraatiin, sadarkaa naannootti Labsiin Lakk.160/2002 bahe kwt.24 dhimma yakkaa daldala fi qulqullina bunaa wajjiin walqabatu ilaalchisee manneen murtii Oromiyaa sadarkaa sadarkaan jiran keessummeessuuf aangoo akka qaban tumee jira. Tumaan keewwata kanaa iftoomina gahaa waan hin qabneef kallattii adda addaatiin yoo hiikamu ni mul'ata. Hiikkoon tokko keewwatni kun haala tumaa Labsii Sirna To'annoo Qulqullinaa fi Daldala Bunaa Federaalaa kwt 16tti (haala ibsa tokkoffaa armaan oliin) manni murtii sadarkaa godinaa fi waliigala irra jiran dhimmicha ilaaluuf aangoo qabu kan jedhuu fi manni murtii aanaa aangoo hin qabu kan jedhuu dha. Hiikkoon biroon ammoo bu'uura Labsii Manneen Murtii Oromiyaa Irra Deebi'anii Hundeessuuf Bahe Labsi Lak. 141/2000 tiin Manni Murtii Aanaa, Manni Murtii Olaanaa fi Manni Murtii Waliigala Oromiyaa aangoo kan qabaatan ta'uu akeeka. Akkuma hiikkoon lammaffaa ibsutti labsiin gocha yakkaa tumu tokko aangoo mana murtii dhimmicha keessummeessu tumee hin jiru yoo ta'e, aangoon mana murtii labsii aangoo mana murtii tumu irratti hundaa'uun adda kan bahu ta'a. Bu'uruma kanaan, yakkootni sirna to'annoo qulqullinaa fi gabaa bunaa irratti raawwataman hundi isaanii waggaan kudhanii gadi adabsiisu.⁵³ Dhimmootni kanneen bu'uura labsii 141/2000 kwt 27(2) fi 28(1a) mannea murtii aanaa Oromiyaatti kan keessummeeffamani dha.

⁵²Fakkeenyaaaf, falmii Abbaa alangaa fi Kariim Seefuu, Waajjira Haqaa Aanaa Gimbi, galmeek lakk.11577, galmeek lakk.poolisii 09/2008 , fi Abbaa alangaa fi Yirgaalam kidaanee, Mana Murtii Aanaa Maannaa, galmeek lakk.10688 giddutti gaggeeffame murtii argatan ilaaluun ni danda'ama.

⁵³Labsii Sirna To'annoo Qulqullinaa fi Gabaa Bunaa Oromiyaa Lak.160/2002, kwt 23 (1-8), Magalata Oromiyaa Bara 18^{ffa} lak 7, fi Labsii Sirna To'annoo Qulqullinaa fi Gabaa Bunaa Federaalaa lakk.602/2000 kwt 15 (1-8) ilaala.

5.2. AANGOO KOREEWAN ADDA ADDAA FI MANA MURTII IDILEE: MEESHAA DALDALAA QABAME IRRATTI MURTII KENNUU

Gochoota daldala seeraa alaa to'achuu keessatti dhimmi akka ijootti ilaalamu tokko aangoor qaamolee raawwachiiftuu fi mana murtii idilee addda baasuudha. Aangoor qaamolee raawwachiiftuu ilaachisee qaamoleen murtii akka kennaniif aangeffaman hedduu dha. Seera qabeessummaa meeshaalee daldala qabaman irratti murtii akka kennaniif aangeffaman qaamolee raawwachiiftuu sadarkaa waajjiraa fi koreetti hundeffamanii jiru. Fakkeenyaaaf, Biirroo Qonna Oromiyaa seera qabeessummaa saliixaa fi boloqqee qabamee; akkasumas, seera qabeessummaa buna qabamee irratti murtii akka kennuuf Dambii Lakk.178/2002 kwt 2(9) fi 23(1) akkasumas seera qabeessummaa buna abamee irratti murtii akka kennuuf Labsii Buna Oromiyaa lak 160/2002 kwt 2(1) fi Dambii buna Federaalaa lakk.161/2000 kwt 22(2) aangeffamee jira. Biirroon Dalalaa fi Misooma Gabaa Oromiyaa seera qabeessummaa meeshaalee daldala bu'uuraa qabaman irratti murtii akka kennuuf Labsii Dorgommii Daldala fi Eegumsa Mirga Fayyadamtootaa lakk 813/2006 kwt 2(15) fi kwt 23 jalatti aangeffameera.

Aangoon waajjiraalee olitti eeramaniif kennname akkuma jirutti ta'ee, qaamoleen adda addaa walitti dhufanii koree uumuun bakka tokkotti dhimmoota olitti eeramaniirratti murtii akka kennan ta'ee jira. Haaluma kanaan, meeshaalee daldala bu'uuraa ta'an ilaachisee hordoffii fi to'annoo akka taasisuu fi gochoota eegumsa mirga fayyadamtootaa sarban irratti murtii akka kennuuf Koreen Gabaa Tasgabbeessituu sadarkaa Biirroo, Godinaa fi Aanaatti hundeffameera.⁵⁴ Bifuma walfakkaatuun waajjiraaleen mootummaa qaama raawaachiiftuu ta'an 15 bakka tokkotti walitti qabamanii Koree Deeggarsa Misooma Oomishaalee Eksipoortii ta'anii hundeffamuun oomishaalee madda sharafa biyya alaa ta'an yeroo qabaman seera qabeessummaa isaanii waliin akka murteessaniif ijaaramaniiru.⁵⁵

Meeshaan daldala seeraa ala jedhame tokko gaafa qabamee kaasee hanga guyyaa shaniitti abbaan qabeenyichaa gocha daldala seeraa alaa hin raawwanne kan jedhu yoo ta'e komii isaa koree yookaan waajjira

⁵⁴Qajeelfama Sirna Raabsaa Meeshaalee Bu'uuraa Lak. 1/2004, kwt 11(1g).

⁵⁵Qajeelfama Koree Deeggarsa Misooma Oomishaalee Eksipoortii Naannoo Oromiyaa, Waxabajji 2006, lakk.2 fi 3 wal-bira qabuun dubbisaa.

rogummaa qabutti dhiyeeffata. Koreen ragaa dhiyaatu irratti hundaa'uun guyyaa torba keessatti abbaaf deebi'uu yookaan dhaalamuu meeshaa qabamee ilaachisee murtii kenna. Namni murtii kennname irratti komii qabu guyyaa murtichi kennnamee kaasee guyyaa 30 keessatti komii isaa mana murtii rogummaa qabutti bifa ol'iyyannoон dhiyeeffata. Koreen guyyaa jedhame keessatti komii dhiyaate irratti murtii hin kenu yoo ta'e, seerummaa qabiinsa meeshaa irratti manni murtii, murtii akka itti kennuf himanna kallatii dhiyeeffachuu danda'a.

Akka waliigalaatti, manni murtii himanna jalqabaan falmii seerummaa meeshaa daldalaa qabame irratti murtii akka kennu seerri hin aangessu. Seerummaa murtii koreen kennname ol'iyyannoон ilaalee murteessa.⁵⁶ Hojmaatni bal'inaan mul'atu garuu manni murtii tumaaleen seeraa kanneen osoo hin eegin kallattiin himanna seerummaa qabiinsa meeshaalee daldalaa simatee keessummeessa. Akka fakkeenyatti caqasuuf, falmii hariiroo Isheetuu Kabbadaa fi Waajjira Daldalaa fi Misooma Gabaa Aanaa Gimbichuu N-2⁵⁷ fi Mahaammad Musaa fi Waajjira Poolisii Aanaa Guutoo Giddaa gidduutti gaggeeffame akka fakkeenyatti kaasuu dandeanya.⁵⁸ Dhimmoota lamaan kanneen manni murtii osoo aangoor hin qabaatiin falmii seerummaa qabiinsa meeshaalee daldalaa simatee kan keessummeesse yoo ta'u, dhimma jalqabaa irratti murtiin xumuraa kennameera; dhimma lammaffaa irratti ammoo aangoor mana murtii irratti mormii sadarkaa duraatiin jala-murtiin galmicha cufee jira.

Mana murtii idileetiif aangoon adda durummaan kennname gochi raawwatame yakka moo miti jedhee murteessuu fi adabbii kennuu dha.⁵⁹ Murtiin kun murtii gocha daldala seeraa alaa irratti kennamu yoo ta'u, namni gochicha raawwate hidhaan akka adabamu, meeshaan gochi daldala

⁵⁶Dambii Saliixaa fi Boloqqee 178/2000, kwt 23(3), fi Dambii Bunaa, kwt 22(3) ilaala; Labasii fi Dambiin Beeyiladaa Lakk.819/2006 kwt.16(8) fi 17 akka akeekanitti namni meeshaan daldalaa isaa jalaa qabame murtii biirroo daldalaa fi misooma gabaa ykn koree deeggarsa misoomaa oomishaalee eksipoortii irratti ol'iyyaanoo mana murtiitti fudhachuura hanga dhimmichi yakkaan himatamee murtii argatutti eegachuutu irraa eegama.

⁵⁷Isheetuu Kabbadda fi Waajjira Daldalaa fi Misooma Gabaa Aanaa Gimbichuu faa (N 2), Mana Murtii Waliigala Oromiyaa, Dhaddacha Bahaa, Galmee Lak. 151226

⁵⁸Mahaammad Musaa fi Waajjira Poolisii Aanaa Guutoo Giddaa, Mana Murtii Olaanaa Godina Wallagga Bahaa, Galmee lakk.35957.

⁵⁹Akka fakkeenyatti agarsiisuuf, Labsiin Sirna To'annoo Qulqullinaa fi Gabaa Buna Oromiyaa kwt 24 gocha yakkaa daldalaa fi qulqullina bunaarratti raawwatu himata sadarkaa jalqabaarraa kaasee ilaaluu kan danda'u mana murtii idlee akka ta'etti akeekee jira.

seeraa alaa irratti raawwate akka dhaalamuu fi kkf taasisa. Meeshaalee daldala seeraa alaa qabaman irratti murtii koreewwan kennanii fi manni murtii kenu bakka tokko tokkotti gargar yoo ta'an ni mul'atu. Fakkeenyaaaf, koreen meeshaan qabame seera qabeessa jedhee yoo murteessu manni murtii himannaayakkaa meeshaa qabame kanarratti hundaa'ee dhiyaate irratti gochi yakkaa raawwatameera jedhee yeroo murtii itti kenu jira. Fakkeenyaaaf, falmii Abbaa Alangaa Aanaa Gimbi fi Tufaa Ayyalaa gidduu ture ilaachisee himatamaan zayitii nyaataa Magaala Naqamtee seeraa ala fe'ee Gimbi gara Calliyatti osoo socho'aa jiru waan qabameef Labsii Lakk 813/2006 kwt 43(4) jalatti himatameera. Himatamaan jecha amantaa fi waakkii isaa bu'uura s/d/f/y kwt 35 kan kennee fi ragaan abbaa alangaa irratti waan mirkaneessef manni murtii aanaa hidhaa waggaasadii fi qarshii 1000 adabeera.⁶⁰ Koreen gabaa tasgabbeessituu magaalaa Gimbi ammoo gocha himatamaan raawwate seeraa ala miti jedhe murteesse. Manni murtii Olaanaa Godinichaa gama isaatiin manni murtii idilee aangoo hin qabu jechuun murtii jalaa diigee himatamaa bilisa gaggeesseera.⁶¹

Armaan olitti akka ilaalle manni murtii himannaayakkaa dalaalaa seeraa alaa irratti dhiyaate simatee kan keessummeessu yoo ta'u, koreewwan adda addaa ammoo meeshaan daldala qabame bu'uura qajeelfama jiruutiin qabamuu qulqulleessee akka dhaalamu yookaan abbaaf akka deebi'u murteessa. Haaluma kanaan, yeroo tokko tokko koreen seerummaa meeshaa qabame qulqulleessee osoo hin murteessin meeshaa qabame irratti gochi daldala seeraa alaa raawwatameera jedhamee himannaayakkaa mana murtiitti dhiyaata. Meeshaan qabame seera ala, haa dhaalamu jedhee koreen yoo murteesse murtii manni murtii gama lamaanittuu kennamu rakkoo hin uumu. Manni murtii gochi himatamaan raawwate yakka kan jedhu yoo ta'e murtii kana irratti hundaa'amee meeshaan qabames battalumatti dhaalama waan ta'eef murtii koree wajjiin wal sima.⁶² Koreen meeshaan qabame seera qabeessa kan jedhu yoo ta'e fi manni murtii ammoo gochi himatamaa yakka kan jedhu yoo ta'e murtiileen lamaan gargar bahan jechuu dha. Murtiwwan kanneen keessaa isa kamtu olaantummaa argachuu qaba?

⁶⁰Abbaa alangaa fi Tufaa Ayyalaa, Mana Murtii Aanaa Gimbi, galmeekakkofsa 11670.

⁶¹Afgaaffii obbo Waaqgaarii Sanbataa, Abbaa Adeemsaa Hojji Qorannoo Yakkaa fi Murtii Haqaa Kennisiisuu, Af-gaaffii gaafa 9, 2008 taasifame.

⁶²Labsii Dorgommii Daldala fi Eegumsa Mirga Fayyadatootaa, kwt 43(4), Labsii Sirna To'annoo Qulqullinaa fi Daldala Bunaa Oromiyaa, kwt 23 (4), fi kkf

Gaaffiin jedhu dhimma xiyyeffannoo barbaaduu dha. Murtii manni murtii kenuu al-takkaatti meeshaa qabamee fi nama gochicha raawwate irratti raawwatiinsa kan qabaatuu dha. Murtii kana kennuu kan danda'u mana murtii qofa yoo ta'u, murtichis qaama hunda irratti raawwatiinsa kan qabu dha. Murtiiin kun murtii himannaayakkaa irratti kennname waan ta'eef, madaallii ragaa cimaa fi xiyyeffannoo olaanaan kan murtaa'e dha. Kanaafuu, murtiin himannaayakkaa irratti kennname murtii olaantummaa argachuu qabu dha.

5.3.MURTII ATATTAMAA KENNUU: MIRGA WABII EEGUU KEESSATTI XIYYEFFANNOO BARBAACHISAA KENNUU

Dhimmootni daldala seeraa alaa gara mana murtii dhufan akkuma dhimmoota biroo haqa kan barbaadan waan ta'eef, yerootti murtii argachuu qabu. Haala addaan ammoo dhimmootni daldala seeraa alaa dhimmoota atattamaan murtii argachuu qaban keessaa isaan ijoo akka ta'e qajeelfamni koree deeggarsa misooma al-ergii ni tuma.⁶³ Itti dabalees, dhimmootni kanneen dhimma sharafa alaa argamsiisuu,⁶⁴ qabeenya jiru qixa bu'a-qabeessa ta'een hojiirra oolchuu, misooma industirii babal'isuu, meeshaalee fi tajaajilota fayyaa uummataa miidhuu danda'an irraa baraaruu, fi galii mootummaa guddisuu wajjiin kallattiin walitti hidhata guddaa kan qaban sababa ta'aniif xiyyeffannoo addaan yeroo gabaabaa keessatti keessummeeffamanii furmaata argachuu qabu.⁶⁵ Keessumaa, gufuwwan sharafa ala xiqqeessan kamiyyuu (gocha daldala seeraa alaa) irratti haala qulqullinaa fi saffina qabuun hojjechuun baay'ee barbaachisaa dha.⁶⁶

⁶³Qajeelfama Koree Deeggarsa Misooma Oomishaalee Eksipoortii Naannoo Ormiyaa, Waxabajiji 2006, Lak.6.1.4.

⁶⁴ Mootummaan dhimmoota GTP II keessatti xiyyeffannoo guddaa kenneef keessaa tokkoo qulqullinaa fi baay'ina meeshaalee al-ergii dabaluun galii sharafa alaarraa argamu waggaatti gara doolaara biliyoona 16tti ol guddisuu dha. Haalotni qulqullinaa fi baay'ina meeshaalee al-ergii miidhan baay'een isaanii gochoota seerota sirna to'anno daldala cabsanii cabsanii wajjiin kan wal-qabatanii dha(Muluken Yewondwossen, High Expectations Set for GTP II, Capital Gazette, Monday, 06 July 2015).

⁶⁵Qajeelfama Koree Deeggarsa Misooma Oomishaalee Eksipoortii Naannoo Oromiyaa, Waxabajiji 2006, seensa.

⁶⁶Ethiopia: Curbing the Foreign Trade Barriers, the Ethiopian Herald, 20 March 2016.

Haalli qabatama saffina keessummeessa dhimmoota gocha daldala seeraa alaa mana murtii sadarkaa barbaadamuu gadi. Raawwiin saffina keessummeessa falmii kanaa akka hin ariifanne sababootni taasisan hedduu dha. Fakkeenyaaaf, manni murtii yerootti murtii atattamaa kennuun rakkoo jiru dhabamsiisuu irra sababa mirga wabiitiin shakkamaa gad-lakkisuun adeemsi falmii dafee furmaata akka hin arganne gochuu, sababoota adda addaa uumanii galmee beellamuu fi ragaa deddeebisuun sababoota gurguddoo eeramanii dha. Sababoota kanneen keessaa xiyyeffannoo gahaa osoo hin kenniin shakkamaa mirga wabiitiin baasuun murtiin kennamu akka harkifatu taasisaa jira. Manni murtii mirga wabii namoota gocha daldala seeraa alaatiin shakkaman eeguu keessatti xiyyeffannoo dhimmichi barbaadu kennuu dhabuun namoota mirga wabiitiin gadi lakkisuun falmiileen hedduu rarra'anii akka hafan yookaan akka gufatan taasisuu irratti argama.⁶⁷

Manni murtii nama qabame tokko wabii waamsisee gad-lakkisuuf, gochi raawwatame mirga wabii kan hin daangessine ta'uu qulqulleessuutti dabalee namni sun yeroo barbaadamutti akka dhiyaatu kan taasisu wabii gahaa dhiyeessuu isaa mirkaneeffachuu qaba.⁶⁸ Hangi wabii qabsiifamu gahaa yookaan gahaa ta'uu dhabuu isaa mirkaneessuuf cimina yakka raawwaatamee, qabeenya himatamaan qabu, fi mana murtiitti dhiyaachuu danda'uu himatamaa manni murtii madaaluu qaba.⁶⁹ Hima biraan, maallaqni qabsiifamu yookaan hangi maallaqa wabummaan ibsamu himatamaan yeroo barbaadamutti akka dhiyaatu wabii isa taasisuu danda'u ta'uu qaba.

Haa ta'u malee, hoj-maatni mana murtii tokko tokko akka agarsiisutti haalaa fi amala namoota gocha daldala seeraa alaa keessatti hirmaatan giddu-galeessa godhachuun wabii gahaa waamsisuu dhabuu irraa kan ka'e, namootni gocha daldala seeraa alaatiin himatamanii wabiin bahan deebi'anii guyyaa beellamaatti akka hin dhiyaanne taasisaa jira.⁷⁰

⁶⁷ Cuunfaa yaada bargaaffii.

⁶⁸ Seera Adeemsa Falmii Yakkaa Itoophiyaa, kwt. 63(2).

⁶⁹ Seera Adeemsa Falmii Yakkaa Itoophiyaa, kwt 69(2a, b, fi c).

⁷⁰ Af-gaaffii I/A/Insp.Ballaxaa Isheetuu,I/Gaafatama Wajjira Poolisii Magaala Arsii Nageellee, fi Saj.ol Antanah Ingidaa, Ab/ad/Qo/Yakka fi Murtii Haqaa Kennisiisaa Wajjira Poolisii Magaala Arsi Nageellee waliin gaafa guyyaa 15/05/08 taasifame.

Dabalataanis, manni murtii mirga wabii irratti murtii yoo kenu gochi raawwatame mirga wabii kan hin dhorkisiifne ta'uu qulqulleessuu cinatti dirqama wabummaa seene kan guutu, yakka biroo kan hin raawwannee, fi ragaa kan hin balleessine ta'uu shakkamaa adda baafachuu qaba.⁷¹ Hima biraatiin, namni mirga wabii gaafachaa jiru qajeelfama manni murtii kenu kan kabaju ta'uunsa shakkisiisaa yoo ta'e; akkasumas, ragaa isa irratti dhiyaachuuf jedhu ni balleessa jedhamee kan shakkamu taanaan wabii gahaallee yoo dhiyeesse manni murtii mirga wabii isaa daangessuun irra jiraata.⁷²

5.4. SEEROTA HOJIMAATA DALDALAA BITAN KALLATTII SIRRIIN HIIKUUN HOJIIRRA OOLCHUU

Seerota to'annoo fi qulqullina daldala bitan hiikanii hojiirra oolchuu irratti hanqinni manneen murtii keessatti mul'atan bal'aa dha. Hanqinni kunis seera iftoomina guutuu qabu jallisuu (micciiruu) fi kanneen iftoomina gahaa hin qabne ammoo haala kaayyoo waliigala seerichaa galmaan gahuu danda'uun hiikanii raawwachiisuu dhabuun calaqqisuu kan danda'uu dha.⁷³ Bu'uruma kanaan, rakkoon gama kanaan jiran bakka lamatti qoodnee ilaalu yaalla. Rakkoon gama kanaan jiru inni jalqabaa rakkoo tumaaleen seeraa ifagalaa ta'an hiikanii hojiirra oolchuu dhabuu dha. Ergaa keewwatni seeraa tokko dabarsu ifaa fi guutuu yoo ta'e (hanga heera mootummaa hin faallessinetti), abbaan seeraa tumaa seerichaa akkuma jirutti raawwachiisuu qaba.⁷⁴

Manneen murtii keenya biratti garuu yaada bu'uura seera hiikuu kana hojiirra oolchuu dhabuun tumaa seeraa ifa-galaa ta'an kallattii barbaadamuun hojiirra oolchuu irratti hanqinni jiru guddaa dha. Akka fakkeenyaatti caqasuuuf, Manni murtii falmii nagahee dabalataa kenuu dhabuu irratti

⁷¹Seera Adeemsa Falmii Yakkaa Itoophiyaa, kwt 67.

⁷² Seera Adeemsa Falmii Yakkaa Itoophiyaa, kwt.67.

⁷³Cuunfaa yaada bar-gaaffii

⁷⁴Johnstone Quintin, "An Evaluation of the Rules of Statutory Interpretation" (1954), Faculty Scholarship Series. Paper 1908, F8 (http://digitalcommons.law.yale.edu/fss_papers/1908).

xiinxala seeraa akka kennetti⁷⁵, Labsiilee Lak. 285/94 kwt 22(1) fi Labsii Lak. 609/2001 kwt 2(10) jalatti namni nagahee gibira dabalataa kennuu qabu tokko *akkuma namni meeshaa ykn tajaajila bituuf waliigale bitatee fudhateen nagaheen gibiraa dabalataa muramee kennamuu qaba*. Haa ta'u malee, manni murtii *tajaajilli kenna ciisicha siree kennameera kan jedhamu namni tajaajilicha barbaadu qarshii kaffalee furtuu kutaa siree fudhachuuun mana ciisichaa banatee seenuun yeroof ciise tajaajilicha argateera jechuun hin danda'amu: tajaajila argateera kan jedhamu yoo siricharra bule qofa jechuun bu'uura s/d/f/y kwt 141 himatama bilisa godheera.*

Tumaan seerichaa akka ibsutti, namni gibira dabalataa kaffaluuf galmaa'e akkuma meeshaa ykn tajaajila gurgureen nagahee galii dabalataa kennuu qaba. Hiikkoon keewwatichaa afaan Amaaraa *wodiyaawu* yoo jedhu hiikkoon afaan Ingilizii ammoo *simultaneously* jedhee jira. Hima biraatiin, nagaheen galii dabalataa yoo xiqaate meeshaa ykn tajaajila gurguramuu wajjiin nama bitateef kennamuu qaba jechuu dha. Dhimma armaan olitti ibsameetti yoo deebinu, himatamaan waliigaltee gurgurtaa tajaajila ciisichaa raawwachuun maallaqa ittiin gurgure fudhatee nama tajaajilicha biteef furtuu kutaa ciisichaa kenneera; kun ammoo tajaajilicha gurgureera jechuu dha. Tajaajila ciisichaa bitametti fayyadamuu fi dhiisuun qooda nama tajaajilicha bitateeti. Kanaafuu, himatamaan bu'uura seerichi tumee jiruu akkuma maallaqa tajaajilicha ittiin gurgure fudhateen nagahee galii dabalataa muree kennuu qaba ture. Manni murtii seera ifa ta'e kanaa kallattiin raawwachiisuu dhiisuun hiikkoo sirii hin taane kenneera.

Daldalaan nagahee galii dabalataa kennuu qabu tokko akkuma meeshaa ykn tajaajila gurgureen nagahee galii dabalataa kennuu akka qabu seerri bifaa ifaan tumee osoo jiruu sababoota adda addaatti hirkisuun daldaltoota badii raawwatan itti-gaafatamummaa seeraa jalaa baasuun manneen murtii keenya biratti ni mul'ata. Fakkeenyaaf, falmiiwan Abbaan Alangaa A/Taayitaa Galiiwwanii fi Indiriis Mummad Adam gidduutti gaggeeffamee⁷⁶ fi Abbaan Alangaa A/Taayitaa Galiiwwanii fi Gumuruukaa fi Fadiluu Nuurii gidduu

⁷⁵Falmii Abbaa Alangaa Galiiwwanii fi Gumuruukaa Itoophiyaa, Damee Kibba Lixaa fi Baroon Bizinas Waldaa Dhuunfaa I/G/Mu, Mana Murtii Olaanaa Godina Jimmaa, Galmee Lak 30682.

⁷⁶Falmii Abbaa Alangaa Waajjira Abbaa Taayitaa Galiiwwanii fi Indiriis Muummad Adam, Mana Murtii Olaanaa Godina Harargee Bahaa, Galmee Lak.30955.

ture irratti⁷⁷, gurgurtaa fi nagahee galii dabalataa kenuun dhimma al-takkaa (wal-faanaa) raawwatamuu qabu ta'uusaa hubatanii raawwachiisuu irratti gama mana murtii keenyaan hanqinni akka jiru akeeku.

Gama biraatiin, tumaalee Seeraa iftoomina gahaa hin qabne guutummaa seerichaa dubbisuun bifaa kaayyoo waliigala seerichaa galmaan gahuu danda'uun keewwattoota hiikanii raawwachiisuu dha.⁷⁸ Haa ta'u malee, manneen murtii Oromiyaa tumaalee seera daldala iftoomina gahaa hin qabne tokko tokko haala kaayyoo waliigala seerichaa galmaan gahuu danda'uun hiikanii hojjirra oolchuu irratti hanqinini mul'ata.

Falmii tokko irratti⁷⁹ himataan boloqqee kuntaala 100 osoo geejibsisaasaa jiruu himatamtootni seeraa alaa na jalaa qabanii gurguran waan ta'eef gatii isaa akka naaf kaffalan jedhee himate. Himatamtootni akka deebii kennanitti himataan ragaa hayyama darbiinsaa fi hayyama hojii daldala osoo hin qabaatiin boloqqee seeraa alaa geejibsisaasaa osoo jiruu waan qabameef daldala seeraa alaa raawwateera jedhan. Manni murtii akka xinxaletti, *bu'uura dambii bittaa-gurgurtaa saliixii fi boloqqee adii lakk 178/2002 kwt 23(1) namni boloqqeen isaa jalaa qabame guyyoota hojii shan keessatti komii isaa qaama dhimmi ilaallatutti dhiyeeffachuu akka qabu tuma; himatamtootni ammoo guyyoota hojii lama qofa eeguun boloqqicha gurguruun isaanii seeraa alaa waan ta'eef boloqqeen qabame akka deebi'uu ykn tilmaamni isaa akka kanfalamu murteesse.*

Bu'uura Dambii Lakk.178/2002 kwt 13(6)tti namni hojii daldala saliixii fi boloqqee adiirratti bobba'u kamiyyuu hayyama hojii daldala fi ragaa gahumsa hojii qabaachuu cinatti meeshaalee daldala kana seeraan fe'ee bakka tokkoo gara bakka biraad deemaa jiraachuu isaa kan agarsiisu waraqaan darbiinsaa qabachuu qaba. Haaluma kanaan, himataan ragaa hayyama darbiinsaa soo hin qabaatiin fe'ee deemuun isaa daldala seeraan alaa gaggeessuu isaa waan ta'eef qabamuun isaa seera qabeessa. Haa ta'u malee, himataan komii qabu akka dhiyeeffatuuf guyyoota hojii shaniif qaamni dhimmi ilaalu komii isaa eeguu qaba. Hima biraan, boloqqee fi saliixiin

⁷⁷ Falmii Abbaan Alangaa A/Taayitaa Galiiwwanii fi Gumuruukaa fi Fadiluu Nuurii, Mana Murtii Olaanaa Godina Jimmaa, Galmee Lakk.30460.

⁷⁸Government of Western Australia, Department of the Attorney General, How to Read Registration: A Beginners' Guide, May 2011, F15.

⁷⁹ Isheetuu Kabbaddaa fi Waajjira Daldala fi Misooma Gabaa Aanaa Gimbichuu fa'a (N-2) Mana Murtii Waliigala Oromiyaa Dhaddacha Bahaa, Lak. Gal.151226.

qabame guyyoota hojii shaniin booda malee gurguramuu hin qabu jechuun akka danda'amu dambichi kwt 23(1) fi (2b) irraa ni hubatama. Hiikoon kwt 23(1)tti kennamu garuu ergaa guutuu kwt 23 haala galmaan gahuun ta'u qaba. Falmii kana keessatti dhimmi ijoo ta'ee ilaalamuu qabu meeshaan qabame seera qabeessaan geejjibamaa jira moo hin jiruu malee himatamtootni adeemsa jiru eeguu dhabuusaanii miti. Keessumattuu, kwt 23(3), namni meeshaan isaa jalaa qabame mana murtiitti himata dhiyeeffachuu kan danda'u kallattiin osoo hin ta'in murtii koreen kenne irratti hundaa'ee ol'iyyannoo dhiyeeffata. Kanaaf, turtii yeroo seeraan kaa'ame cabsuun meeshaa seeraa ala daldalamaa jiru tokko gurguruun qaama dhimmi ilaalu gochicha seera qabeessa hin taasisu. Kanaafuu, manni murtii tumaa keewwata tokko yeroo hiiku guutummaa kaayyoo seerichaa wajjiin bifa deemuu danda'uun ta'u osoo qabuu keewwata tokko luqqisanii ilaaluun sirrii miti.

5.5. MURTIILEE GOCHA DALDALA SEERAALAA IRRATTI KENNAMAN DAANGESSUU

Manni murtii murtiin adabbii (murtii adabbii fi raawwiin isaa) kenuu yakkamaa irratti yeroo hunda raawwachuu dhabuu danda'a. Murtiin murtaa'e tokko kan daangeffamu ulaagaalee seerri yakkaa tumee jiru galmaan kan gahu yoo ta'u qofa. Qajeeltoowwan murtii adabbii irratti hundaa'anii daangessan seera yakkaa kwt 190 hanga kwt 202tti tumamanii jiru. Isaanis, sababoota yakka raawwatameef ka'umsa ta'an hunda ilaaluu, fi amalaa fi seenaa yakkamaa madaaluun murtii adabbii kennname bu'uura kwt 191 akkasumas raawwiin murtii adabbii kennname bu'uura kwt 192, 193 fi 194 raawwatiinsa kan qabaatan ta'a. Murtiin adabbii ykn raawwiin isaa daangeffamuu kan danda'u haal-dureewan seerri gaafatu yakkamaan kan guutu yoo ta'e qofa; yeroo qormaataa kennamu keessatti qajeelfama naamusaa yakkamaan raawwachuu qabu ibsuu fi qajeelfama naamusaa sana kan kabaju ta'u isaa manni murtii adda baafachuu qaba. Itti dabalees, yakkamaan miidhaa qaqqabsiisee ilaachisee miidhamaaf beenyaa kan kaffalu ta'u, baasii mana murtii kan aguugu ta'u fi qajeelfama naamusaa kennname kan raawwatu ta'u isaa mana murtiif kan ittiin mirkaneessu wabii gahaa dhiyeessuutu irraa eegama.

Murtii adabbii ykn raawwii isaa daangessuuf tumaalee seeraa dhimma murtii adabbii daangessuu ilaachisee tumamanii jiran hunda ilaaluun hojiirra akka oolan taasisuun dirqama. Haa ta'u malee, murtiwwan adabbii fi raawwii isaa dhimma gocha daldala seeraa alaa irratti kennaman yeroo baay'ee kan daangeffaman yoo ta'an, haalli daangeffama isaanii tumaalee seera yakkaa waa'ee murtii adabbii daangeessuu tumanii jiran bifa yaada keessa galcheen miti.⁸⁰

5.6. RAGAA MADAALUU

Dhimma daldala seeraa alaa irratti murtii kenuun walqabatee gochi akka danqaa guddaatti ka'uu danda'u tokko dhiyeessa ragaa sobaati. Fakkeenyaaaf, buna seeraa alaa jedhamee qabame irratti qorannaan gaggeeffamee xumuramuun himatni mana murtiitti erga dhiyaatee booda himatamtootni ragaa amanamummaa hin qabne barreessisanii dhiyeessu. Ragaaleen barreeffamaa dhiyaatan kanneenis, fakkeenyaaaf, xalayaa bunni qaama dhimmi ilaallatu gahuusaa ibsu (Goods Received Notice), waraqaa gaggeessituu (waraqaa darbiinsaa), hayyama gahumsa hojii, fi kkf wajjiin kan wal-qabatanii dha⁸¹. Itti dabalees, yeroo tokko tokko ragaa seera qabeessa al tokkotti tokko qofaan kennamuu qabu lama yookaan sadii taasisanii kenuun daldalli seeraa alaa akka ittiin gaggeeffamu haalli itti taasisan ni mul'ata.⁸²

Gocha daldala seeraa alaa irratti murtii kenuun wal-qabatee rakkinni ragaa sobaa ballinaan kan jiru yoo ta'elée, amanamummaa ragaa dhiyaatanii madaaluun murtii haqa-qabeessa kenuu irratti hanqinni gama mana murtiin mul'atu guddaa dha. Dhimmoota qabatamaan rakkoo kana ibsan fakkeenyaaan kaasnee haa ilaallu. Falmii Abbaa Alangaa fi Shawwaan

⁸⁰ Fakkeenyaaaf, A/Alangaa Wajjira Haqaa Magaala Shashamannee fi Mulugeeta Mooshee fa'a (N-2) Lakk.Galmee himata A/Alangaa 02328; Falmii Abbaa Alangaa fi Yirgaalam Kidaanee, Mana Murtii Aanaa Maannaa, Galmee Lak. 10688; falmii Abbaa Alangaa fi Darajjee Abdiisaa, Mana Murtii Leeqaa Dullachaa, Galmee Lak 10801, Abbaa Alangaa fi Zakkaariyaas Fiqiree, Mana Murtii Aanaa Sokorruu, Galmee Lak.06882, Abbaa Alangaa fi Fiqaaduu Nuurii, Mana Murtii Olaanaa Godina Jimmaa, Galmee Lak. 30460.

⁸¹ Af-gaaffii Mulugeetaa Geetaachoo, A/Alangaa fi A/Adeemsa Murtii Haqaa Kennisiisaa, Waajjira Haqaa Aanaa Gommaa, af-gaaffii gaafa 19-5-2008;Barreessaa Baqqalaa, Hoogganaa Wajjira Haqaa Godina Wallagga Bahaa, Amajjii 16, 2008.

⁸² Af-gaaffii Umar Yoonis, Abbaa Alangaa Waajjira Haqaa Godina Jimmaa, Amajjii 19, 2008.

Bajawu gidduutti gaggeeffamaa ture irratti⁸³ himatamaan gaafa 9/2/2006 Godina Wallagga Lixaa Aanaa Baabboo Gambeel Magaalaa Baabboo Ganda 02 keessatti hayyama hojii daldala osoo hin qabaatiin sangoolee 11 konkolaataatti fe'ee osoo adeemaa jiruu waan qabameef Labsii Galmeessaa fi Hayyama Hojii Daldala Lakk 686/2002 kwt 60(1) irra darbeera jedhamee himatame. Himatamaan hayyama hojii daldala akka qabuu fi beellama itti aanutti akka dhiyeeffatu mana murtii gaafate. Haaluma sanaan, hayyama hojii daldala gaafa 8/2/2006 Waajjira Daldala fi Misooma Gabaa Loodee Heexosaatii kennaeefii kan jiru ta'uun ragaa dhiyeeffate. Manni murtii ragaa dhiyaate kana irratti hundaa'uun himatamaan hayyama hojii daldala qabu irratti hundaa'ee daldala jira jechuun himata dhiyaate kufaa taasiseera. Magaalan Loodee Heexosaa Magaalaa Baabboo Gambeel irraa km 800 ol fagaatee argama. Kanaafuu, haala qabatama biyyaa keenyaatiin fageenya hangana guyyaa tokko keessatti geejibuun hayyama Onkoloolessa 8/2008 hojii daldala baafatee Onkoloolessa 9/2008 Baabboo Gambel keessatti sangoota bituun kan danda'amuu miti. Amanamummaan ragaa kanaa baay'ee shakkisiisaa dha. Kanaaf, manni murtii ragaa kana akkuma dhufetti fudhachuun irratti hundaa'ee murtii kennuun isaa dogoggora. Amanamummaa ragaa kanaa sirriitti qulqulleessuun madaalee murtii haqa qabeessa kennuutu irraa eegama ture. Dabalataanis, yammuu ragaaleen lamaa walfakkaatan dhiyaatan dhugummaa ragaa qulqulleessuu irratti hanqinni ni jira.⁸⁴

6. YAADOTA GUDUNFAA FI FURMAATAA

6.1. YAADOTA GUDUNFAA

Daldalli sekteroota guddina dinagdee mirkaneessuu keessatti gahee olaanaa gumaachan keessaa isa tokkoo dha. Seektera kana cimsaa deemuuf, mootummaan seerota adda addaa tumuun daldala seeraa alaa fi miidhaa gama kanaan dinagdee, fayyaa, fi nageenya biyyaa irra gahuu danda'u

⁸³Abbaa alangaa fi shawwaa Bejawu mandafiroo, Mana Murtii Aanaa Baabboo Gambeel, Galmee Lakk.03403

⁸⁴ Fakkeenyaaaf, dhimma A/Alangaa Aanaa Shaashmnnee fi Zarihuun Abarraa fa'aa (N-2) jidduu ture irratti himatamtooni bu'a Bosonaa waraqaa darbiinsaa ossoo hin qabaatin seeraan ala geejibani jedhamanii himatamani himatamtoota irratti ragamee akka ofirra ittisan erga ajajameen booda ragaa waraqaa darbiinsa lama dhiyeessani bakka jiranitti manni murtii dhugummaa ragaalee ossoo hin qulqulleesin himatamtoota bilisaan gaggeessee jira.

xiqqeessuuf tattaaffii guddaa taasisaa jira. Seerotni gama kanaan bahani jiran ulaagaalee seerummaa hojii daldala mirkaneessuu danda'an kan akka gal mee daldala irratti galmaa'u, hayyama hojii daldala baafachuu, hayyama gahumsa hojii baafachuu, waraqaa darbiinsaa qabaachuu, sadarkaa qulqullina meeshaalee eeguu, gatii gurgurtaa meeshaalee bitattoota beeksisu, meeshaalee daldala bu'uuraa gatii itti gurguramuu qabanitti yookaan hanga hayyamame qofatti gurguruu, gibira mootummaa yerootti kaffaluu fi kkf jedhaman teechisanii jiru. Ulaagaalee seerummaa hojii daldala eeraman kanneen cabsanii hojii daldala hujjechuun gocha daldala seeraa alaa raawwachuu yoo ta'u, gochootni kanneen yeroo baay'ee tarkaanfii bulchiinsaa fi/ykn adabbii yaakkaatiin kan adabsiisanii dha.

Waajjiiraaleen mootummaa adda addaa gocha daldala seeraa alaa to'achuu keessatti hirmaanna garagaraa qabu. Fakkeenyaaaf, qaamoleen haqaa gocha daldala seeraa alaa qabuu, qorachuu, himachuu, adabuu fi murtii adabbii raawwachiisuun gochi daldala seeraa alaa akka hin raawwatamne ittisu; seerotni seerummaa hojii daldala eegsisuuf bahan akka hin cabne taasisuun hojiirra oolmaa seerota kanneenii mirkaneessu jechuu dha. Haa ta'u malee, hojii to'anno daldala seeraa alaa keessatti qaamoleen haqaa Oromiyaa hanqinaalee adda addaa qabu. Fakkeenyaaaf, daldala seeraa alaa qabuu keessatti hubannoon seerota daldala to'achuuf bahan irratti jiru laafaa ta'u, qindoominni poolisiin seektaroota daldala to'achuuf seeraan aangeeffaman waliin jiruu dadhabaa ta'uu; akkasumas, kanfaltii komishinii irratti hubannoon gahaa dhibuu dhimmoota to'anno daldala seeraa alaa irratti dhiibbaa uumaa jiranii dha.

Gama biraatiin rakkoon naamusaa poolisoota biratti calaqqisan gocha daldala seeraa alaa akka hin qabamnee fi qorannaa gahaa akka hin gaggeessine sababoota taasisan keessaa isa tokkoo dha. Kunis gocha daldala seeraa alaa raawwatamaa jiru osoo arganii qabuu dhabuu, qabanii seeratti osoo hin dhiyeessin gad-lakkisu, daldalli seeraa alaa miidhaa akka waliigalatti biyya irratti geessisu hubachuu dhabuu fi gochicha akka madda galii ta'eetti fudhachuu akka fakkeenyaaatti kaasuun ni danda'ama.

Yakkoota daldala seeraa alaa qorachuun wal-qabatee rakkooowan mul'atan baay'ee dha. Isaanis, eeruuwwan dhiyaatan irratti hanga dhumaatti deemanii ragaalee barbaachisoo ta'an walitti qabuu dhabuu, qaamoleen daldala seeraa alaa to'atan ragaa sobaa kennuu irratti hirmaachuu, ragaalee yerootti

qindeessanii dhiyeessuu dhabuu, namootni gocha daldala seeraa alaa erga qabanii booda ragaa barbaachisaa kennuu dhabuu isaa dhimmootaaf xiyyeefannoo barbaadamu akka hin kennamne sababa ta'ee jira. Himata bu'uureessuun walqabatee A/Alangaa himanna seeraa fi keewwata rogummaa hin qabneen himachuu, ragaa hunda duguuganii fayyadamuu dhabuu, seera adabbii gad-aanaa qabu filachuu, dhimmoota himachuu qaban hunda duguuganii adda baasanii himachuu dhabuu, dhimma ijoo tokkoo irratti himata adda addaa hundeessuu wantoota akka rakkotti ka'anii dha. Abbootiin seeraa seerota dhimmoota kanneen irratti heddummaan bahanii jiran haala barbaadamuun hiikanii raawwachiisuu ilaalchisee hubannoo isaan qaban gita barbaadamuu gadi akka ta'e abbootiin seeraa ni ibsu. Murtiileen dhimmoota daldala seeraa alaa irratti murteeffaman tokko tokkos abbootiin seeraa seerota daldalaa irratti hanqina hubannoo akka qaban ni akeeku.

Seerota to'anno hojii daldalaa irratti bahanii jiran tokko tokko hiikanii hojiirra oolchuu keessatti dhimmi akka rakkotti ilaalamu tokko dhimma aangoo mana murtii idilee adda baasuu fi raawwachiisuu dhabuu dha. Fakkeenyaaaf, Labsii Dorgommii Daldalaa fi Eegumsa Mirga Fayyadamtootaa lak 813/2006 hojiirra oolchuu ilaalchise manneen murtii idilee aangoo hin qabnu jechuun keessummeessuu yammuu didan mul'atu. Bifuma wal-fakkaatuun manneen murtii aanaa Labsii To'anno Qulqullinaa fi Gabaa Buna Federaalaa lakk.602/2000 aangoo hin qabnu jechuun dhimmoota labsii kana bu'uura godhachuun dhiyaatan hin keessummeessan. Gama biraan ammoo seera qabeessummaa meeshaalee daldalaa seeraa ala geejjibamaa jiru jedhamanii qabaman ilaalchisee tarkaanfii to'attootni taasisan seera qabeessa ta'uusaa sadarkaa duraan ilaaluuf manneen murtii aangoo hin qaban; dhimma kana keessummeessuuf aangoo kan qabu qaamolee raawwachiiftuu dhimmi ilaalu ykn koreewan dhimma kana akka ooggananiif aangeffamanii dha. Walumaagala, osoo aangoo qabanii aangoo hin qabu jechuu fi aangoo osoo hin qabaatiin qaba jechuun falmii gocha daldala seeraa alaa wajjiin wal-qabatanii jiran keessummeessuu dhabuu fi keessummeessuun, seerotni gama kanaan bahanii jiran haala barbaadamuun hojiirra akka hin oolle sababoota taasisan keessaa isa tokko dha.

Dhimmoontni gocha daldala seeraa alaa mana murtiitti dhiyaatan yeroo gabaabaa keessatti furmaata argachuu akka qaban seerri ni akeeka. Haa ta'u malee, dhimmoontni daldala seeraa alaa wajjin wal-qabatanii manneen murtii Oromiyaatti dhiyaachaa jiran atattama barbaadamuun furmaata argachaa hin

jiran. Dhimmoonni akka sababaatti dhiyaatan hedduu dha. Fakkeenyaaf, xiyyeefannoo gahaa osoo hin kenniin mirga wabiitiin shakkamtoota gad-lakkisuu fi ragaa bitaa-mirgaa deddeebisuu, fi shakkamtoota wabiin bahanii dhiyaachuu didan yerootti qabani dhiyeessuu dhabuu dha.

Seerota daldala hiikanii hojirra oolchuu irratti hanqaaleen manneen murtii Oromiyaa keessatti ni mul'atu. Hanqinni kunis seera iftoomina guutuu qabu jallisuu (micciiruu) fi kanneen iftoomina gahaa hin qabne ammoo haala kaayyoo waliigala seerichaa galmaan gahuu danda'uun hiikanii raawwachiisuu dhabuu dha. Dhimmoota gocha daldala seeraa alaa wajjiin wal-qabatanii mana murtiitti dhiyaatan irratti ragaalee dhiyaatan kallattii sirrii ta'een madaaluu fi ragaa sobaa adda baasu irratti manni murtii xiyyeefannoona hojjechuu qaba. Haa ta'u malee, bar-gaaffii abbootii seeraa fi abbootii alangaa irraa walitti qabame akka ibsutti ragaa qixa sirrii ta'een madaaluu fi ragaa sobaa dhiyaatan secca'anii adda baasuu irratti raawwii manneen murtii Oromiyaa dhimma daldala seeraa alaa irratti qaban sadarkaa barbaadamuu gadi akka ta'e ibsee jira. Dhimmootnis qabatamaan manneen murtii keessatti rakkoon kun jiraachuu agarsiisu.

Murtiileen gocha daldala seeraa alaarratti kennaman tumaalee seera yakkaa dhimmi isaa ilaallatu bu'uura osoo hin godhatiin daangeffamaa jiru. Murtiileen gama kanaan kennamanii daangeffaman namni gocha yakka daldala seeraa alaa hojjate badii raawwateef akka itti hin gaafatamne fi gochi daldala seeraa alaa akka hin xiqlaane taasisuu keesssatti gahee guddaa taphataa jira.

6.2. YAADOTA FURMAATAA

- Hanqina hubannoo seerota daldala irratti calaqqisu furuuf ogeessota qaamolee haqaatiif haala qindaa'een leenjii hubannoo gabbisu Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaa, Komishinii Poolisii Oromiyaa, Biiroo Haqaa Oromiyaa fi Mana Murtii Waliigalaatiin bifa qindoomina qabuun walitti fufinsaan kennaa adeemuun barbaachisaa dha. Fakkeenyaaf, dhimma aangoo mana murtii ilaachisee hanqina hubannoo fi hojimaata Labsii Dorgommii Daldala fi Eegumsa Mirga Fayyadamtootaa 813/2006, Labsii To'annoo Qulqullinaa fi Daldala Bunaa Federaalaa fi Oromiyaa 602/2000 fi

160/2002, irratti calaqqisan furuuf ogeeyyii qaamolee haqaatiif leenjii kenuun barbaachisaa dha.

- Daldala seeraa alaa qabuu, qulqulleessuu, himanna hundeessuu fi murtii kenuu keessatti rakkoo naamusaa ogeeyyii qaamolee haqaa biratti mul'atu hambisuuf Komishiniin Poolisii Oromiyaa, Biirroon Haqaa Oromiyaa fi Manni Murtii Waliigala Oromiyaa hordoffii fi to'annoo naamusaa taasisuun barbaachisaa dha.
- Hojiin qorannoo yakkaa daldala seeraa alaa irratti gaggeeffamaa jiru namoota gochicha keessatti hirmaatan hunda irratti gaggeeffamaa kan hin jirre, raagaaleen hundi funaanamaa fi haala barbaachisuun xinxalamaa waan hin jirreef, hojii qorannoo yakka daldala seeraa alaa irratti gaggeeffamu bifa hunda-galeessa fi qulqullina qabuun akka gaggeeffamu gochuu irratti hojjechuun barbaachisaa dha.
- Mirga wabii namoota gocha daldala seeraa alaan shakkaman/ himataman kabajuu dura namootni sun yeroo barbaadamanitti akka dhiyaatan kan isaan taasisu wabii gahaa waamsisuu isaa manni murtii mirkaneeffachuu qaba. Itti dabalees, dhimmoota daldala seeraa alaa yeroo gabaabaa keessatti ilaalanii furmaata kenuun gocha daldala seeraa alaa to'achuu keessatti gumaacha guddaa waan qabuuf shakkamaa mirga wabiin gad-lakkisuu dura yeroo gabaabaa keessatti dhimmichi akka furmaata argatu gochuu yaaluun barbaachisaa dha.
- Ragaalee falmii daldala seeraa alaa irratti dhiyaatan haala rogummaa qabuun madaaluu fi ragaa sobaa adda baasuu irratti raawwiin jiru hanqina kan qabu waan ta'eef dhimma kana irratti xiyyeffannoo barbaachisaa ta'e kenuun gaarii dha.
- Labsiileen To'annoo Qulqullina fi Daldala Bunaa Oromiyaa Lakk 160/2002 fi Federaala Lakk. 602/2000 dhimma itti gaafatamummaa yakkaa abbaa konkolaataa irratti garaagarummaa waan qabaniif, tumaa Labsii To'annoo Qulqullinaa fi Daldala Bunaa Oromiyaa kwt 23(6) haala tumaalee Heera Mootummaa Federaalaan walsimuu danda'uun fooyyessuun barbaachisaa dha.

VOLUNTARY INTEREST ARBITRATION IN THE ETHIOPIAN LABOR PROCLAMATION: THE PROBLEMS IN ITS DESIGN AND A WAY TO FIX THEM

Birhanu Beyene Birhanu*

ABSTRACT

Some of the objectives of the Ethiopian Labor Proclamation No.377/2003 are “to maintain industrial peace, to guarantee employers and workers’ right to engage in a collective bargaining and to lay down the procedure for the expeditious settlement of labor disputes, which arise between workers and employers”. These objectives can be attained if various types of labor conflicts get recognized and less costly dispute resolution methods are put in place to handle them. Recognizing interest dispute and allowing the submission of such dispute to arbitration has a benefit of avoiding costly measures such as strikes and lock-outs. Therefore, in this expository work, for any individual or policy maker’s use, it is shown how disputes of interest and interest arbitration are recognized by the Labor Proclamation No.377/2003. The work’s main thrust is actually describing the way interest arbitration is designed in the Proclamation and identifying the problems in the designs and proposing a way to fix the problems.

Key Terms: *Ethiopian Labor Law; Interest Arbitration; Labor Disputes; Interest Disputes.*

INTRODUCTION

The Ethiopian Labor Proclamation, enacted by the House of People’s Representative in 2003 with an official name “Labor Proclamation No. 377/2003” (henceforth shortly referred to as the Proclamation), is applicable on both the federal government and the states. Of course its applicability does not extend to all employment relations. Such employees as civil servants, policemen, judges, prosecutors and so on are excluded from its ambit.¹ Some of the objectives of the Proclamation are “to maintain industrial peace, to guarantee employers and workers’ right to engage in a

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¹ See, the Proclamation, Art. 3.

collective bargaining and to lay down the procedure for the expeditious settlement of labor disputes, which arise between workers and employers".²

To achieve these objectives, there is a need to extend recognitions to various labor conflicts and to set-up a mechanism whereby the conflicts can be handled in a less costly way. At a work place, a dispute arises not only because an existing collective agreement or law is violated or needs interpretation, but also because there could be a desire to change the existing rules. The latter kind of dispute is known as interest dispute. A labor law which fails to recognize interest disputes cannot achieve its objective of maintaining industrial peace or others. Recognizing a dispute often leads to setting up a mechanism by which it is handled. So, is interest dispute (a dispute about changing the existing rules or creating future rights) recognized in Ethiopia?³ Arbitration is considered as one of the dispute settlement mechanisms appropriate to handle labor disputes whenever there is willingness between the parties to make use of it.⁴ Then the question is: Does the Proclamation provide voluntary arbitration to resolve interest disputes as a dispute settlement mechanism? To put it differently, does the Proclamation, in its menu of labor dispute settlement mechanisms⁵, provide for voluntary interest arbitration? Hence, the objective of this work is to show how interest dispute and voluntary interest arbitration are recognized in the Proclamation and how voluntary interest arbitration is designed to work and how the design needs improvement.

Voluntary interest arbitration is used when employers and employees could not reach agreement but impasse after a long *bargaining process*⁶. Thus, it has the benefit of avoiding *strikes*⁷ or *lock-outs*⁸ which are usually very costly methods to break collective agreement impasse, because it allows, in the event of the impasse, neutral third parties (arbitrators) impose a binding

² See, the Proclamation, the preamble.

³ For more on interest disputes, see *infra* section (I) and accompanying discussion in text.

⁴ Arbitration is an alternative dispute resolution method in which disputants submit their dispute to neutral third parties (known as arbitrators) who are usually appointed by them and give a binding decision after examining disputants' arguments and evidences.

⁵The Proclamation provides for various dispute settlement methods such as conciliation (see, Arts, 136(1), 141-143), through courts (see, Arts.137-140) and labor relation board (see Arts.144-156).

⁶ For the definition of collective bargaining, See, the Proclamation, Art.124 (2).

⁷ See, the Proclamation, Art.136 (4).

⁸ See, the Proclamation, Art.136 (5).

decision on the matter. That decision is going to be complied by both sides-employers and employees. Despite such a benefit of voluntary interest arbitration, there are no scholarly works on the Proclamation regarding voluntary interest arbitration. This work will have a significance of bringing forth voluntary interest arbitration to the attention of lawyers, employees, employers, their respective associations and to whomever interested in labor disputes and labor dispute settlement mechanisms by describing how it is recognized in the Proclamation; how it is designed to work and by proposing a way by which its design can be improved and thus made usable.

In this work, the following questions are answered: is interest dispute recognized in the Proclamation? Is voluntary interest arbitration recognized in the Proclamation? How is it designed to work? Is there a problem in the design? How can it be fixed? Examination of the provisions of the Proclamation is not enough to get an answer for the questions, so the Ethiopian Arbitration Law, which means Arts.3325-3346, the Civil Code, 1960 (hereafter referred to as C.C); and Arts. 244(2(g)), 315-319 and 350-357, the Civil Procedure Code, 1965 (hereafter referred to as CPC.) and the design of interest arbitration in foreign jurisdiction (which are selected haphazardly) are also examined.

This work is organized into five sections. Section one shows the recognition of disputes of interest in the Proclamation. Section two deals with the recognition of voluntary interest arbitration. Section three describes the design of interest arbitration as laid down in the Proclamation and identifies the problems in the design. In section four, a way by which the problems can be fixed is suggested. Finally, there is a conclusion and recommendation in section five.

1. THE RECOGNITION OF DISPUTES OF INTEREST IN THE PROCLAMATION

Labor disputes are generally categorized as “individual” and “collective”. This categorization is recognized in the Proclamation.⁹ “[A] dispute is individual if it involves a single worker, or a number of workers as individuals (or the application of their individual employment contracts). It

⁹See, the Proclamation, Art 136(3), 138(1) and 142(1).

becomes a collective dispute if it involves a number of workers collectively.”¹⁰ Labor disputes are also classifiable as “disputes of right” and “disputes of interest”. A dispute of right concerns with “the violation of or interpretation of an existing right (or obligation) embodied in a law, collective agreement or individual contract of employment or custom and practice. At its core is an allegation that a worker, or group of workers, have not been afforded their proper entitlement(s).”¹¹ A dispute of interest “arises from differences over the determination of future rights and obligations, and is usually the result of a failure of collective bargaining. It does not have its origins in an existing right, but in the interest of one of the parties to create such a right through its embodiment in a collective agreement, and the opposition of the other party doing so.”¹² Does the Proclamation recognize this distinction and thereby disputes of interest?

The answer is “yes”. The Proclamation defines labor dispute as follows:

“[L]abour dispute” means any controversy arising between a worker and an employer or trade union and employers in respect of the application of law, collective agreement, work rules, employment contract or customary rules and *also any disagreement arising during collective bargaining or in connection with collective agreement.*¹³

(The emphasis is mine).

This definition obviously recognizes both disputes of right and disputes of interests. As explained in the above paragraph , disputes of interest(they are also known as “economic disputes”) are not based on the rights or entitlements already recognized in the labor laws, collective agreements, contracts, or customs and practices, rather they are about creating new rights or entitlements, about trying to get them in a collective agreement. For example, during a collective bargaining¹⁴, workers (or their unions) may

¹⁰See, International Labor Organization, Substantive Provisions of Labour Legislation: Settlement of collective Labour disputes, available at <http://www.ilo.org/legacy/english/dialogue/ifpdial/llg/noframes/ch4.htm#3> <last visited on 9th June 2016>.

¹¹Ibid.

¹²Ibid.

¹³.The Proclamation, Art. 136(3).

¹⁴ See, the Proclamation, Art. 124(2)(“Collective Bargaining” means a negotiation made between employers and workers’ organizations or their representatives concerning conditions of work or collective agreement or the renewal and modifications of the collective agreement).

negotiate with employers to have in a collective agreement a new entitlement or right to a paid leave, not provided in the Proclamation or other relevant laws. If employers refuse to agree for the inclusion of the new entitlement in the collective agreement in the face of workers' insistence on its inclusion, it means the collective bargaining is taking the employees and the workers nowhere near to a settlement agreement – that means the parties are thrown into a dispute. This dispute is going to be a dispute of interest and such a dispute is recognized in the Proclamation (please see again the italicized part of the definition of labor dispute in the Proclamation as reproduced above).

If a certain type of dispute is given recognition, then a dispute settlement mechanism which fits to handle the recognized dispute must be set-up. And arbitration is a dispute settlement mechanism. Now therefore the question is: in the menu of dispute settlement mechanisms set forth in the Proclamation, do we find arbitration among them for interest disputes? In other words, does the Proclamation recognize interest arbitration?

Remember, from the discussion on interest disputes in the above paragraphs and the fact that interest disputes usually result from a failure of collective bargaining, it must be noted that *Interest arbitration is, thus, an arbitration which happens when collective bargaining yields no result leading to a collective agreement.*

2. THE RECOGNITION OF VOLUNTARY INTEREST ARBITRATION IN THE PROCLAMATION

A cumulative reading of Arts.143 (1), 141(1) and 142(1) of the Proclamation leads us at the conclusion that interest arbitration (arbitration on a dispute of interest) is recognized in Ethiopia. Art.143 (1) of the Proclamation states that “Notwithstanding the provisions of Article 141 of this Proclamation parties to a dispute may agree to submit their case to *arbitrators* ... for settlement in accordance with the appropriate law”(the emphasis is mine). It means disputes referred under Art.141 (1) of the Proclamation can be submitted to arbitration if parties agree to that effect. Actually disputes referred under Art. 141(1) are those disputes enumerated under Art.142 (1) of the Proclamation and this enumeration includes disputes of interests such as disputes over “

new conditions of work”¹⁵ and “the conclusion, amendment, duration and invalidation of collective agreements”¹⁶. Therefore, disputes of interest are allowed to be submitted to arbitration upon the consent of parties – it means that interest arbitration (i.e., arbitration for the settlement of dispute of interest which usually arises from a failure of a collective bargaining) is recognized in the Proclamation.

Note that what is recognized under Art.143 (1) of the Proclamation is voluntary interest arbitration. Meaning, unless there is an agreement between employees and employers, when a collective bargaining leads to an impasse (to no mutual agreement), they are not forced to submit the interest dispute to arbitration. If they were forced, that would be compulsory interest arbitration.¹⁷ And compulsory interest arbitration is usually unfavorable. To point out one crucial point why it is usually unfavorable is that it goes against the right to strike. When employees bargain with employers for a new working conditions which is going to be a right in the future by making it a part of a collective agreement, and when the bargain leads them to no agreement or to an impasse, they may go on strike to force their employer accept their demand. This right to strike, which is guaranteed in the FDRE Constitution¹⁸ and in the Proclamation¹⁹, will be in jeopardy if employees are forced to submit themselves to arbitration whenever a collective bargaining breaks down (i.e. when a dispute of interest arises).

However, remember that compulsory interest arbitration is provided by laws of various countries including Ethiopia in relation to specific sectors where strikes are prohibited. The Proclamation prohibits employees of “essential

¹⁵ See, the Proclamation, Art. 142 (1) (b).

¹⁶ See, the Proclamation, Art.142 (1) (c) and see how interest disputes are described in section (1).

¹⁷ If the difference between voluntary and compulsory interest arbitration is not yet clear to a reader, remember that voluntary interest arbitration involves a joint agreement between the employer and the employees to submit specific collective bargaining issue on which they could not agree on to a third party (known as an arbitrator) for a binding decision. Voluntary arbitration is different from compulsory arbitration in that the respective parties are free to accept or reject this procedure as a means to resolving a collective bargaining dispute. In compulsory arbitration, when the collective bargaining fails to produce agreement on the issue, employers and employees do not have another option (such as strikes or lock-outs) but submit the issue to arbitration.

¹⁸See, the FDRE Constitution, Art.42 (1(a)).

¹⁹ See, the Proclamation, Art. 157 (1).

services” from striking.²⁰ If a dispute arises in these sectors, it must be submitted to conciliation and if the conciliation is not successful, it must be submitted to an *ad hoc* board.²¹ The *ad hoc* board cannot be understood to mean otherwise than compulsory arbitration. Since compulsory interest arbitration in the Proclamation is outside of the objective of this work, let us turn back our attention to the voluntary interest arbitration in the Proclamation.

The recognition of voluntary interest arbitration in the Proclamation is very commendable. Unlike, compulsory interest arbitration, it does not have an automatic corrosive effect on worker’s right to strike, yet it prevents employers and employees from very costly actions such as strikes and lock-outs. Because once they agree for arbitration, whenever a collective bargaining fails, they submit the issue for arbitration which is going to impose a binding decision on the issue, they will not need to resort to strike or lock-outs to resolve the issue which the collective bargaining has failed to resolve. “When both parties stand to lose too much through a strike or lock-out, they look to viable alternatives.”²² “Interest arbitration thus offers an alternative mechanism to break deadlock between parties engaged in collective bargaining.”²³ For providing and recognizing this option, the Proclamation is commendable. But, is it designed properly to be actually utilized by employers and employees who are parties to an interest dispute?

3. THE DESIGN FOR VOLUNTARY INTEREST ARBITRATION IN THE PROCLAMATION AND ITS PROBLEMS

In the Proclamation, interest arbitration is designed to work “in accordance with the appropriate law”²⁴. The question now is “which law is being cross-referred here?” There is no arbitration law in Ethiopia specifically designed for labor disputes. So it means what is cross-referred here is the Ethiopian Arbitration Law which consists of Arts.3325-3346, the C.C; and Arts.244

²⁰ See, the Proclamation, Art.157 (3).

²¹ See, the Proclamation, Arts.144 (2), 142(3), 152.

²²*The Enforceability of the No-Strike and Interest Arbitration Provisions of the Experimental Negotiating Agreement in Federal Courts*, 12 Vol. U. L. Rev. 57 (1977); available at: <http://scholar.valpo.edu/vulr/vol12/iss1/3>, P.74.

²³*Ibid.*

²⁴ See, the Proclamation, Art. 143 (1).

(2(g)), 315-319 and 350-357, the CPC. However, designing interest arbitration to work on the rules of the Ethiopian Arbitration Law without being selective is a poor design since the basic rules of this law are not suitable to the unique nature of interest arbitration. It is not surprising at all that as these rules are intended for arbitration in general, not specifically designed for interest arbitration, so some of the rules of this law are found to be incompatible or falling short of giving solutions to the unique problems of interest arbitration. In this work, three significant problems are identified which one can face when rules of the Ethiopian Arbitration Law are applied to interest arbitration. Let us discuss them turn by turn.

3.1. WHAT IS TO BE THE BASIS OF ARBITRATORS' DECISION IN INTEREST ARBITRATION?

Interest arbitration is on interest disputes and interest disputes, unlike right disputes, are not about applying or interpreting existing rules, they are about changing existing rules or creating new rules.²⁵ It means arbitrators in interest arbitration cannot find a solution in the existing law for the interest dispute before them. However, the Ethiopian Arbitration Law dictates arbitrators to render an award based on the law.²⁶ If arbitrators render an award applying other criteria than legal rules, they may be deemed to have exercised power in excess of their mandate and the award can get set aside.²⁷ In UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006(hereinafter referred to as the UNCITRAL Model Law)²⁸, it is stated that "... The arbitral tribunal shall decide *exaequo et bono* or as *amiable compositeur* only if the parties have

²⁵See, the discussion on section (I).

²⁶ See, CC, Art.3325 (1) (It reads: "The arbitral submission is the contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with *the principles of law*") and see, CPC, Art.317(2)(it reads: "The tribunal shall in particular hear the parties and their evidence respectively and decide *according to law* unless by the submission it has been exempted from doing so"-the emphasis is mine.)

²⁷ See, CPC, Art.356 (1).

²⁸ The UNCITRAL Model Law is "Designed to assist states in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration." For more, visit: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html.

expressly authorized it to do so.”²⁹ In Ethiopian Arbitration Law, no explicit provision like that of the UCITRAL Model Law authorizing arbitrators to use other criteria than the law as a basis for an award. Despite the fact that Art.317 (2), CPC seems to imply it,³⁰ writers questioned if arbitrators in Ethiopia can decide as *ex aequo et bono* even if an authorization by the disputants is there.³¹

Therefore, it is a poor design of the Proclamation for indiscriminately cross-referring the Ethiopian Arbitration Law to be applied for interest arbitrations without being selective of unfit rules such as Art.3325(1) of the C.C. which requires arbitrators to apply “the principles of law” for their decision. Even if the rule in the Ethiopian Arbitration Law dictating arbitrators to apply the “law” for their decision is considered as a default rule which can be avoided by the agreement of parties, it still is illogical. The law still falls short of providing a meaningful solution on interest disputes.³² How can we logically say that in Ethiopia, interest arbitrators are required to apply *the law* to resolve an *interest dispute* unless they are authorized by the parties to use other criteria? In general, the Ethiopian Arbitration Law, at best, does not provide the appropriate measure which arbitrators can apply for their decision; at worst it forces them to apply a wrong measure for their decision, *viz.*; the law. Either way proves the Proclamation’s indiscriminate cross-reference to the Ethiopian Arbitration Law for interest arbitration is a poor design.

²⁹See, UNCITRAL Model Law, Art.28 (3).

³⁰ CPC, Art.317 (2) reads: “The tribunal shall in particular hear the parties and their evidence respectively and decide according to law *unless by the submission it has been exempted from doing so*”-the emphasis is mine.)

³¹See Aschalew Ashagre, *Involvement of Courts in Arbitration Proceedings under Ethiopian Law*, Journal of Business and Development (2007), Vol.2, P2.

³²A law could have been considered as providing a meaningful solution if it had a provision which goes like: “Unless there is an otherwise agreement, arbitrators in interest arbitration shall adopt as their decisions the final offer of one of the parties as a total package. Arbitrators, among other things, shall consider such factors as *affordability* (employer’s ability to pay), *comparability* (award is comparable to like workplaces or sectors), *replication* (award is reasonably what could have been achieved had bargaining continued until an agreement was reached) and *demonstrated need* (party has made a case for its position) to adopt a final offer of the employees over that of the employers or vice versa.”

3.2. WHAT IS TO BE THE PROCEDURE OF INTEREST ARBITRATION?

Again the Proclamation prescribes for interest arbitration a procedure which is prescribed in the Ethiopian Arbitration Law. A rule in the Ethiopian Arbitration Law provides the procedure of arbitration to be the same as that of the civil court.³³ The rule is such a default one that parties, through agreement, can set a different procedure so long as basic principles of procedure like fairness are not violated.³⁴ Obviously, the stance of the Ethiopian Arbitration Law on the procedure for arbitrations in general does not squarely fit for interest arbitration. Interest arbitration is on disputes of interest and such disputes are on issues not covered by existing labor laws, contracts and rules, and thus inappropriate to be handled by courts which are supposed to resolve disputes by applying existing legal rules. Therefore, a typical procedure for civil courts cannot be a typical one for interest arbitration. In other words, it is illogical to prescribe as a default rule a court procedure for a dispute which is not suitable for a court process.

Note that courts, which are supposed to apply existing legal rules for their decision, are not appropriate forums of handling *interest disputes*,³⁵ which are not about the interpretation of existing rules rather about changing them. But, as discussed above under section (2), such disputes are made arbitrable by the Proclamation. This situation gives the Proclamation a special place for introducing to the Ethiopian legal system such an arbitration called interest arbitration.

3.3. WHAT IS TO BE COURT'S CONTROL ON INTEREST ARBITRATION?

In the Ethiopia Arbitration Law, there are four avenues by which courts can exercise control on arbitration; viz, appeal, cassation, setting aside and refusal. Of these avenues, appeal and cassation authorize courts to review an award on the merits and both are held to be too much intervention of the

³³See, CPC, Art.317 (1).

³⁴See, *Gebru Korre vs Amdeyo Fidreche* (Decisions of the Federal Supreme Court, Cassation Division, Vol.12, Federal Supreme Court, 303-305, 2011).

³⁵ See Section (1) for the description of interest disputes.

courts into arbitration.³⁶ Obviously for interest arbitrations, these avenues are not only too much but also bizarre. Regular courts can review and pass down decisions doing what they are good at- by interpreting the law, but interest arbitrations are not about interpreting existing rules rather creating a new one which are going to be the part of a collective agreement. Therefore, it is a poor design that the Proclamation, by its indiscriminate cross-referring of the Ethiopian Arbitration Law for interest arbitration, is allowing regular courts to review interest arbitrators decision on the merit by way of appeal (unless it is waived by agreement) and cassation.

4. A WAY TO FIX THE PROBLEM

In section three, it is shown that the Proclamation does indiscriminate cross-referencing to the Ethiopian Arbitration Law to be applied on interest arbitration- meaning interest arbitration is designed to operate only on the rules of the Ethiopian Arbitration Law. However, this design is flawed as discussed in section three. In three crucial areas, the rules of the Ethiopian Arbitration Law are found either providing a wrong solution or even forcing the wrong solution for interest arbitration. Therefore, to fix the problem in the design, what is needed is, not to indiscriminately cross- refer the Ethiopian Arbitration Law, rather to be selective and to weed out the unfit rules and substitute them with the appropriate ones for interest arbitration.

The first unfit rule identified in section (3.1) is the rule which requires arbitrators to apply the law for their decision. This rule is fit for what is called conventional arbitration (which on whether an existing right is violated or not), not for interest arbitration, which is on a dispute for creating a future right. This rule of the Ethiopia Arbitration Law is arguably not escapable even through the agreement of disputants.³⁷ Meaning arbitrators can not give a decision based on other consideration than the law whether or not the parties authorize them to do so. Thus arbitrator's decision which is based on other considerations than the law can be invalidated for the reason

³⁶Birhanu Beyene, *The Degree of Court's Control on Arbitration under the Ethiopian Law: Is It to the Right Amount?* Oromia Law Journal (2012), Vol.1, No.1 and Birhanu Beyene, *Cassation Review of Arbitral Awards: Does the Law Authorize It?* Oromia Law Journal (2013), Vol.2, No.1.

³⁷ See, Aschalew, *supra* note 31.

that arbitrators have exercised in excess of their power.³⁸ In interest disputes, the law does not have any solution-one example of interest dispute could be employee's demand for a higher salary and requiring arbitrators in interest arbitration to apply only the law for their decision is like forcing them to use a wrong apparatus which is incapable of solving the problem at hand. Therefore, this rule must be substituted by another one which is fit for interest arbitration.

In other jurisdictions, arbitrators in interest arbitration may decide the dispute at hand following either of such approaches as "final offer" or "the arbitrators own formulation" or "hybrid". In "final offer" interest arbitration, the arbitrators are required to adopt the final offer of one of the parties for their decision. The arbitrators have no any other discretion than that. In "the arbitrators own formulation" interest arbitration, arbitrators are required to evaluate the parties' proposals and render an award which they deem appropriate. In a "hybrid" approach, "depending on the characterization of a proposal or contract term as 'economic' or 'non-economic,' the above approaches can be combined and modified to create a 'hybrid' approach. For instance, final offer interest arbitration may be adopted for all economic items, while "the arbitrators own formulation" may be used for all non-economic items."³⁹

"Final offer" approach can also be further divided and in one document the sub-divisions of this approach are described as follows:⁴⁰

Final Offer – Issue By Issue: Allows the arbitrator the freedom to find in favor of one party on some of the issues and for the other party on the remaining issues. It may encourage parties to keep all issues on the table – even fairly nominal contractual terms – under the realization that they have nothing really to lose. This tends to keep the issues broad in number and may lead to costly and time consuming proceedings.

³⁸ See, CPC, Art.357.

³⁹ Amy Moor Gaylord, *Interest Arbitration –Pros, Cons and How Tos*, available at http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2010/am/gaylord.authcheckdam.pdf <last visited June 8, 2016>

⁴⁰ *Ibid.*

Final Offer – Total Package: The true “winner-take-all” approach to interest arbitration. Each party submits as a complete package its final offer on all issues in dispute, and the arbitrator must adopt one or the other package in its entirety. It may encourage parties to narrow the issues considerably and lead to shorter, more efficient proceedings.

“Nighttime Baseball”: A variation on final offer interest arbitration, in this type of proceeding, the arbitrator does not know the parties’ final offers. The arbitrator’s post-hearing decision that is closest to the undisclosed (to the arbitrator) party’s last offer will result in that offer being deemed the award of the arbitration.

Now the question is which approach will be appropriate to be adopted by the Proclamation to fix the unfit rule?⁴¹ When employer and employees want to create a new working condition or salary adjustment or something like that, they hold negotiation (collective bargaining). If the collective bargining ends up in a deadlock, rather than a settlement agreement, each side may engage in an economic warfare such as strike or lock-out. This option is costly, though. The less costly option is to put the matter to arbitrators who are going to give binding decisions on them. Here it must be noted that the ideal method of dealing with labor conflicts is settling them through a collective bargaining proceedings, because it allows employees and employers to look at issues in depth and to have a full rounded understanding of them and to reach a mutually acceptable solution- there is no a stranger third party imposing his will on them. Thus interest arbitration must not have a “chilling” effect on collective bargaining. It must work as an extension of the collective bargaining process.⁴²

⁴¹ See, *supra* section 3.1 about the unfit rule.

⁴²If you wonder what I mean by “It must work as a part of the collective bargaining process”, see Fisher, R., Ury, W. and Patton, B. Getting to Yes: Negotiating an Agreement without Giving in, London: Century Business (2nd edition, 1991), Pp.45-46.

However, what we have called “the arbitrators own formulation” approach has the potential of creating a “chilling” effect on collective bargaining. If employer and employees agree to submit a matter to interest arbitration at the event of impasse in a collective bargaining and if they know that arbitrators are required to give a decision using whatever criteria which they deem appropriate, the employers and employees, at the bargaining table, are going to offer each other extreme claims in the hope that arbitrators will finally simply split the differences of their respective offers. It means, rather than trying hard to search for a mutually acceptable agreement in the collective bargaining, both sides will simply hang on irrational position expecting that the bargaining will end in a deadlock and then the matter will be submitted to arbitration in which differences are to be split –up.

“Final offer” interest arbitration has, nonetheless, the potential to induce the two sides take a rational position, because they know that at the end of the day arbitrators will adopt as their decision the final offer of the party which is rational and reasonable, not the one with extreme offers. When each side tries hard to come up with a rational offer, then they may get closer and closer over the issues and then arrive at a mutually acceptable solution and thereby they may avoid the interest arbitration. Thus “final offer” approach is an incentive for honest bargaining and must be adopted by the Proclamation. It is also argued that “[t]he final offer approach seeks to increase the cost to the parties of failing to reach agreement by eliminating the arbitrator's ability to compromise issues, and substituting a winner-take-all outcome.”⁴³

As discussed above “final offer” interest arbitration has its own varieties and each variety has its own benefits and weaknesses. For this writer, “final offer- total package” is better as it relatively saves time.⁴⁴ But, parties may find the other varieties more fit to their particular situation, so the rule we need to adopt must be a default one. In other words, the way to fix the unfit rule of the Ethiopian Arbitration Law and make it suitable for interest arbitration, the Proclamation should include a provision which goes like

⁴³Richard W. Laner& Julia W. Manning, *Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees*, 60 Chi.-Kent. L. Rev. 839, P.843 (1984).Available at: <http://scholarship.kentlaw.iit.edu/cklawreview/vol60/iss4/4><last visited 8th June2016>.

⁴⁴*Id.*, Pp 843 -844.

“unless otherwise provided in parties’ agreement, arbitrators shall adopt the final offer of one of the parties as a total package for their decision.”

One important point that needs to be added here is that the Proclamation should also give instruction to arbitrators as to the factors that they need to take in to account to adopt a final offer of the employees over that of the employers or vice versa. Therefore, the Proclamation should explicitly provide that in addition to any other relevant factors, arbitrators must consider the following factors:

- Past collective agreement between the parties including the bargaining that led up to such collective agreements.
- Comparison of wages, hours and conditions of employment of the involved employees with those of other employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- The ability of the employer to finance economic adjustments and the effect of such adjustments on the consumers.
- The cost of living.⁴⁵

In other words, arbitrators must apply the criteria of *affordability* (employer’s ability to pay), *comparability* (award is comparable to like workplaces or sectors), *replication* (award is reasonably what could have been achieved had bargaining continued until an agreement was reached) and *demonstrated need* (party has made a case for its position).

The second unfit rule of the Ethiopian Arbitration Law identified in section (3.2) is the one on procedure. Unlike the rule for arbitration decisions, this rule can be fixed by parties’ agreement.⁴⁶ But an optimal rule of arbitration law would ensure parties’ autonomy and provides an optimal solution whenever parties’ agreement is silent on the issue. The rule of the Ethiopian Arbitration Law on procedure is good that it ensures parties’ autonomy by

⁴⁵This list is adapted from the "Public Employment Relations Act" of Iowa which is available: <https://coolice.legis.iowa.gov/cool-ice/default.asp?category=billinfo&service=iowacode&ga=83&input=20#20.22><last visited 8th June, 2016>.

⁴⁶A look at Art.317(1), CPC and *GebruKorre vs Amdeyo Fidreche* (Decisions of the Federal Supreme Court Cassation Division, Vol.12, Federal Supreme Court, 303-305, 2011) make this point clear.

allowing them to come up with their own if they want.⁴⁷ Unfortunately, the solution it provides when there is no agreement between the parties on the procedure is not optimal for interest arbitration. Thus to fix this problem, the Proclamation should provide an optimal solution for the procedure for interest arbitration maintaining parties' autonomy. The Proclamation should have a provision on the procedure of voluntary interest arbitration which goes like the following:

- The conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator.
- The appointed arbitrator may mediate or assist the parties in reaching a mutually agreeable settlement at any time throughout formal arbitration proceedings. However, mediation efforts shall not stay or extend the deadlines for issuance of an award.
- The arbitrator may administer oaths, conduct hearings, and require the attendance of such witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue summons. Any hearings conducted shall not be public unless all parties agree to have them public.
- The arbitrator, after appointment, shall communicate with the parties to arrange for a date, time, and place for hearing. In the absence of an agreement, the arbitrator shall have the authority to set the date, time, and place for hearing. The arbitrator shall submit a written notice containing arrangements for hearing within a reasonable time period before hearing. At least two days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and non-economic issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing.

⁴⁷Ibid.

- The arbitrator, after duly scheduling the hearing, shall have the authority to proceed in the absence of any party who, having failed to obtain an adjournment does not appear at the hearing. Such party shall be deemed to have waived its opportunity to provide argument and evidence.
- The parties, at the discretion of the arbitrator, may file post-hearing briefs. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.
- An arbitrator must issue an award within.... days from appointment or within such other period of time that may be set by agreement between parties.

The third flaw identified in the Labor Law's design of interest arbitration is that because of its indiscriminate cross-reference to the Ethiopia Arbitration Law, it allows courts' control on interest arbitration via the avenue of appeal and cassation- these avenues allow review of the award on the merit. Here, it must be noted that there is no an explicit rule allowing cassation review of award in the Ethiopia Arbitration Law- this review has come into existence by the decision of the Federal Supreme Court Cassation Division.⁴⁸ The writer hopes that the precedent set by the decision will be overruled by the Cassation division.⁴⁹ Obviously, it is absurd to authorize courts to review the merits of the awards of interest arbitration via appeal or *cassation*⁵⁰. Therefore, the Labor Law should fix this problem by clearly prohibiting the involvement of courts in reviewing the merits of awards and by minimizing their control to procedural matters.

⁴⁸ See,*National Mineral Corp. Pvt. Ltd. Co. v. Danni Drilling Pvt. Ltd. Co.* (Decisions of the Federal Supreme Court Cassation Division, Vol.10, Federal Supreme Court, 350-354, 2010).

⁴⁹ For the arguments against the decision see, Birhanu Beyene, *Cassation Review of Arbitral Awards: Does the Law Authorize It?* Oromia Law Journal (2013), Vol. 2, No.1.

⁵⁰ It is also possible to argue that the rules on cassation have already excluded cassation review of awards of interest arbitration. Since these rules authorize review for fundamental mistakes of law and awards of interest arbitration are not about interpreting the existing law, thus no way the cassation bench can review awards of interest arbitration on the merit.

Therefore, the Proclamation should limit court's involvement only to the avenues of setting aside (Arts 3555-357, CPC) and refusal (Art.319, CPC).⁵¹ It must state that the awards by arbitrators of interest arbitration must be final without prejudice to Arts 355-357, CPC and Art.319 (2), CPC. It must also state that the grounds of setting aside enumerated under Art.356, CPC should be deemed to have included "the absence of proper notice of the appointment of an arbitrator or of the arbitral proceedings; a party is not given a chance to present her case; and the award is in conflict with the public policy of State."⁵²

5. CONCLUSIONS AND RECOMMENDATIONS

Due to its highest cost, employees and employers may like to use other method than economic warfare such as strikes and lock-out to deal with collective bargaining impasse. The Proclamation is commendable for recognizing voluntary interest arbitration as a method in which a 3rd party gives a binding decision in the event of collective bargaining impasse. However, the Proclamation's design for the voluntary interest arbitration is so poor that it is almost impossible to put it into use. It is designed to work on the rules of the Ethiopian Arbitration Law, but in three important areas the rules provide either a wrong solution or non-optimal solution. Therefore, the design must be fixed in a meaningful way so that it can be put into use and its advantages reaped.

The Proclamation should not have simply cross-referenced "the appropriate law" (i.e, the Ethiopian Arbitration Law) indiscriminately to be applicable on interest arbitration. It should have identified the unfit rules and provided instead rules suitable for interest arbitration. The Proclamation, therefore, should state that the rules of the Ethiopian Arbitration Law shall be applicable to voluntary interest arbitration without prejudice to such rules that:

⁵¹On the grounds of refusal and the relationship between setting aside and refusal, see, Birhanu Beyene, *Homologation of Arbitral Awards in Ethiopia: Refining the Law*, Ethiopian Bar Review (2012), Vol.5, No 1.

⁵²To see why those grounds must be added under Art.356, CPC, see, Birhanu, *supra* note 36, Pp.52-53.

- Unless there is an otherwise agreement, arbitrators in interest arbitration shall adopt as their decisions the final offer of one of the parties as a total package. Arbitrators, among other things, shall consider such factors as *affordability* (employer's ability to pay), *comparability* (award is comparable to like workplaces or sectors), *replication* (award is reasonably what could have been achieved had bargaining continued until an agreement was reached) and *demonstrated need* (party has made a case for its position) to adopt a final offer of the employees over that of the employers or vice versa.
- Unless there is an otherwise agreement, the conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator. When it comes to issuing summons, calling and hearing witnesses, fixing hearing dates and places, they are deemed to have a power of a civil court judge.
- The awards of voluntary interest arbitration shall be final without prejudice to Arts 355-357, CPC and Art. 319(2), CPC. And Art.356 shall be deemed to include in its list of grounds of setting aside such ones as the absence of proper notice of the appointment of an arbitrator or of the arbitral proceedings or a party is not given a chance to present his/her case; and the award's conflict with the public policy of the State.

YAKKOOTA ULFA IRRATTI RAAWWATAMAN: XIINXALA SEERAALI FI RAAWWII SEERA YAKKAA RDFI

Muluqan Kaasahun Amid*

ABSTRACT

The FDRE Criminal Code has incorporated provisions that criminalize abortion except on those grounds permitted by the law. It also penalizes harmful traditional practices committed on pregnant women and publicity related to abortion. The provisions are designed for the dual purposes of ensuring the well-being of pregnant child and reproductive rights of women by preventing the perils that arise from pregnancy. This article examines the legal and practical problems that affect the effective application of the law. Accordingly, the paper addresses difficulties related to the issues of consent, ensuring criminal responsibility, snags derived from the nature of crime and the main limitations witnessed in the justice sectors in connection with the matter. The finding of the study divulges that, existence of legal gaps and problems, discrepancy of some provisions with the general principles of criminal law and sentencing, convolutions regarding its implementation and other related factors verges the apropos operation of the law. Finally, this article wraps up by recommending for further reforms.

SEENSA

Yeroo si'anaa yakkootni ulfa irratti raawwataman safuu hawaasaa, amantii, fayyaa, siyaasa, seeraa fi mirgoota namoomatiin walqabatanii kan ilaalamani dha.¹ Fakkeenyaaaf, gochi ulfa baasuu, safuu hawaasaa fi ilaalcha amantiiwan garaa garaa keessatti akka badii yookin cubbuu lubbuu namaan irratti raawwatamuutti kan fudhatamu dha.² Kanaaf, karaa fudhatama hin

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¹ Technical and Procedural Guidelines for Safe Abortion Service in Ethiopia, *FDRE Ministry of Health*, 2006, F.6

² Meselu Kebede, et al., “Tale of Heart: Deciding on Abortion in Ethiopia: Culture, Health and Sexuality”, An International Journal for Research, Intervention and Care, Vol.14. No.4 (2012), F. 393-405

qabneen (ga'ilaan ala) ulfaa'uu fi erga ulfi uumamee booda akka bahu taasisuun ni balaaleffatama. Akka fayyaatti yeroo ilaallus, akkaataa hin malleen ulfa baasuun sababa du'a haadholiitiif akka addunyaatti dhibbeentaa (%) 13, akka Gaanfa Afrikaatti immoo %18 kan gumaachu dha.³ Akka Itoophiyaattis seerri yakcaa bara 1996 bahe (kana booda, seera yakcaa) osoo hin bahiin dura barmaatilee miidhaa geessisaniin rakkoleen ulfa irratti raawwataman miidhaa olaanaa geessisaa turaniiru.⁴ Miidhaan du'a haadholii duraan %32 ture, erga seerri yakcaa tumaalee yakkota ulfa irratti raawwataman ilaalchisee qabiyyee fooyya'e qabatee bahee eegalee hanga bara 2006 A.L.I'tti gara %6.9'tti gadi bu'eera.⁵ Kun immoo, fooyya'iinsa argameef seerichi gumaacha olaanaa akka qabu mul'isa. Haa ta'uu malee, yeroo ammaas taanaan ulfa addaan citu keessaa %70 ol of egganno malee fi namoota ogummaa isaa hin qabneen raawwata.⁶ Kana irraa kan hubatamu, rakkoon kun ammallee kan hin maqfamne ta'uu kan agarsiisu dha.

Kallattii siyaasaan yeroo ilaallamus gochaan seeraan alaa ulfaan walqabatu imaammata fayyaa fi baay'ina uummataa biyyoota adda addaa keessatti dhimma uwvisni kennamuuf ta'uu danda'eera. Kunis gochaan seeraan alaa ulfaan walqabatu galma gahiinsa kabajaa mirgoota daa'immanii fi dubartootaa mirkaneessuu, hojiirra oolmaa karoora maatii, madaallii baay'ina uummataa fi diinagdee eeguu, sadarkaa qulqullina jireenyaa fooyyessuu fi k.k.f irratti dhiibbaa kan qabu ta'uu irraa kan maddu dha.⁷ Paartilee siyaasaa biyya tokko keessa jiran jidduutti ulfa addaan kutuu hayyamuu fi dhiisuun qabxii garaagarummaa uumu ta'ee yeroo dhiyaatu ni mul'ata.⁸ Kana irraa ka'uun biyyoota adda addaa keessatti, Itoophiyaa

³World Health Organization, Unsafe Abortion: Global and Regional Estimates of Incidence of Unsafe Abortion and associated Mortality in 2008, 6th ed, Geneva, 2011, F. 49.

⁴Gochaan ulfa baasuu of-eegganno hin qabne dubartoota hospitaala galuun ciisan (hospital admission) keessaa waantota sababa ta'an keessaa isa tokkoo fi sadarkaa 5^{ffaa} irratti kan argamu dha. Akkasumas haadholii du'an keessaa immoo %32 kan ta'aniif sababa akka ta'e qoraanno ni mul'isa. (የኢትዮጵያ ማኅበርች፡የሰነድ፡ተዋል& መስጠጥቅ፡ለመ-የምች፡ 1997, F.138).

⁵Revised Technical and Procedural Guidelines for Safe Abortion in Ethiopia, FDRE Ministry of Health, 2nd ed, F. i

⁶Dalia Mortada, Ethiopia's Game-Changing Abortion Law, IRIN news, 8 August 2014 <http://www.irinnews.org/report/100463/ethiopia-s-game-changing-abortion-law><yeroo dhumaaf gaafa 03/04/2007 ilaalame>

⁷Heather D. Boonstra,*The Impact of Government Programs on Reproductive Health Disparities: Three Case Studies*, Guttmacher Policy Review(2008), Vol. 11, No.3, FF. 6-12

⁸Fakkeenyaaaf, Ameerikaatti paartiin siyaasaa Dimokraat imaammata filannoo haadhaan ulfa baasuu hayyamu kan hordofan yoo ta'u, Paartiin Rippaablikaan immoo daa'imman ulfaa

dabalatee, haala seeraan hayyamameen ala ulfa baasuu fi ofirraa baasisuun yakka ta'uu danda'eera.

Haa ta'u malee, Itoophiyaa keessatti gochootni karaa seeraan alaa ulfa baasuu, garaa dubartii ulfaa sukkuumuu ykn urgufuu akka gochaa yakkaatti seeraan haalli itti dhorkaman yoo jiraatellee, qabatamaan namootni gochaa kana raawwatan adabamuuf carraan qaban baay'ee gadi aanaadha.⁹ Barruun kunis, yakkota ulfa irratti raawwatamaniin walqabatee tumaalee seera yakkaa keessa jiranii fi ijoowwan kanaan hidhata qaban bu'uureffachuun, hanqinaalee gama seeraa fi raawwii jiran irratti xiinxala gaggeessa. Kana gochuufis barreffamoota, seerotaa fi galmeewan mana murtii xiinxaluun akkasuams ogeessotaa fi namoota dhimmi kun ilaallatu waliin af-gaaffii taasisuuf yaalameera.

Barreffamichi kutaa afuritti kan gurmaa'edha. Kutaa 1^{ffaan}, ijoowwan waliigalaa ulfaan walqabatan; mirga daa'ima sadarkaa ulfaa irra jiranii ilaachisee ejjennoo sanadoota mirgoota dhala namaa gara garaa fi muuxannoo biyyoota tokko tokkoo, gosa yakkota ulfa irratti raawwatamani fi haalawan seera qabeessa ulfa addaan kutuuf dandeessisanii kan qabate dha. Kutaa 2ffaa fi 3ffaan immoo dhimmoota seeraa fi raawwii irratti qaawwota jiranii fi ijoowwan kanaan walqabatan kan xiinxalan yoo ta'u, kutaa 4ffaa fi inni dhumaayaada guduunfaa fi furmaataa agarsiisun goolabama. Hundayyuu, tokko tokkoon mee itti haa deemnu.

1. YAADRIMEE WALIIGALAA

1.1. MIRGA DAA'IMMAN ULFAA ILAALCHISEE EJJENNOO SANADOOTA MIRGOOTA DHALA NAMAA FI MUUXANNOO BIYYOOTAA

Daa'imman sadarkaa ulfaarra jiran ilaachisee ijoon bu'uuraa deebii hin arganne daa'imman kunneen yoomii eegaluun mirga lubbuun jiraachuu qabu? gaaffii jedhu dha. Namootni yaada kennan gariin isaanii daa'imman yeroo ulfi uumame irraa eegalee mirga kana qabaachuu qabu jedhu. Gareen biraa immoo, mirga daa'ima ulfaa'ameef beekamtii kennuun mirga

mirga lubbuun jiraachu qabu jedhu (*Tsehai Weda, Abortion Law in Ethiopia: Comparative Perspective*, Mizan Law Review (2008), Vol.2, No.1 F. 10 ilaala).

⁹Mortada, *Olliya yaadanno lak.6*.

bilisummaa jirenya dhuunfaa, lubbuu fi nageenya qaamaa haadhaa, keessattu shamarran umuriin isaanii gaa'ilaaf osoo hin gahiin ulfaa'anii sarba jedhu.¹⁰ Ejjennoo waadaalee mirgoota dhala namaa gara garaa sadarkaa addunyaatti taasifamanii yeroo ilaallu mirga daa'ima ulfaa'ameef beekamtii kan hin kennine yoo ta'elée, mirga ulfa baasuus ifaan hayyamanii hin jirani.¹¹ Haa ta'u malee, waadaaleen tokko tokko daa'ima ulfaa'ameef haala ifa ta'een eegumsa seeraa kennaniiru.

Fakkeenyaaaf, Waadaaleen Idil-Addunyaay Mirgoota Siivilii fi Siyaasaa (ICCPR) keewwata 6(5) jalatti adabbiin du'aa dubartii ulfaa irratti akka hin raawwatamne dhorkeera. Kunis daa'imni ulfaa dhala namaa ta'uu kan mul'isuu fi haadha irraa of danda'ee balleessaa yakka haadhaan raawwatame irraa mirga bilisa ta'uu isaa eegsisuuf kan teechipamedha.¹² Waadaan Mirgoota Daa'immanii (CRC) immoo, eegumsi seeraa barbaachisaan da'uumsa duraa eegalee daa'ima ulfaa'ameef godhamuu akka qabu kutaa seensaa keessatti tumeera. Kana malees, kew. 24(2d) jalatti eegumsi da'uumsa duraa haadhaaf godhamu qabu kun dantaa haadhaa fi daa'ima ulfaa'amee eeguuf kan yaadame dha.¹³ Dabalataan, Koreen Mirgoota Daa'immanii Mootummoota Gamtoomanii ulfa baasuun maloota ittisa ulfaa keessatti haammatamu akka hin qabne dhorkeera.¹⁴ Kunis daa'imman sadarkaa ulfaarra jiraniif eegumsi godhamuufi akka qabu kan akeku dha.

Waadaalee Sadarkaa Ardiitti taasifaman yeroo ilaallu immoo Waadaan Mirgoota Dhala Namaa Ameerikaa keewwata 4 jalatti mirgi lubbuun jiraachu yeroo daa'imni ulfaa'ame irraa kaasee akka kabajamu tumeera.¹⁵

¹⁰Abby F. Janoff, *Rights of the Pregnant Child Vs. Rights of the Unborn Under the Convention on the Rights of the Child*, Boston University of International Law Journal (2004), Vol. 22, F.165.

¹¹Patrick J. Flood, *Does International Law Protect the Unborn Child?*, Life and Learning Journal (2008), vol.16, F.13

¹²Akkuma 11ffaa, F.7

¹³United Nations Committee on Rights of the Child, CRC General Comment No. 7, Implementing Child Rights in Early childhood, CRC/C/GC/7/Rev.1, 2005, Paragraph 10, 20(a) fi 27(b)

¹⁴Oltti yaadannoo lak.10, F. 188

¹⁵Koomishiniin Mirgoota Dhala Namaa Ameerikaa garuu hiikaa keewwata kana irratti kenneen mirgi lubbuun jiraachu mirga daangaa-maleessa waan hin taaneef, fayyaa fi lubbuu haadhaa eeguuf ulfa baasuun akka eyyamamu murteesseera (Whose Right to life? Women's Rights and Prenatal Protection under Human Rights and Comparative law, Center for Reproductive Rights www.reproductiverights.org, <yeroo dhumaaf gaafa 25-04-2009 ilaalam>)

Koomishiniin Mirgoota Dhala Namaa Awurooppaa immoo, Waadaa Mirgoota Dhala Namaa Awuropaa keewwata 2(1) irratti hiikcaa kenneen mirga daa'ima ulfaa'amee eegun mirga haadhaa waan daangessuuf, ulfa baasuun haala addaan hayyamamuu akka qabu murteesseera.¹⁶ Chaartarin Mirgoota Dhala Namaa fi Uummattoota Afrikaa immoo mirga daa'ima ulfaafis ta'e mirga ulfa baasutiif beekamtiin ifatti kenne hin jiru. Haa ta'u malee, Prootokooliin Mirgoota Dubartootaa Afrikaa (Maapputoo Protokool) haalawwan ulfa addaan kutuun eyyamamu kewt 14(2C) jalatti tumeera. Akka Chaartarii Mirgootaa fi Nageenya Daa'immanii Afrikaa kew. 30'tti immoo, kunuunsi addaa haadha ulfaaf godhamuu akka qabuu fi murtiin adabbii du'aa dubartii ulfaa irratti kennamuu akka hin qabne dhorkeera. Kun immoo, alkallatin dantaa daa'ima ulfaa'amee eeguuf kan saxaxame dha.

Gama biraatiin, waa'ee eegumsa mirgoota daa'ima ulfaa'amee ilaachisee biyyoota gidduutti muuxannoo gara garaatu jira. Biyyootni tokko tokko daa'imman yeroo ulfaa eegalee mirga lubbuun jiraachuu akka qaban seera isaanii keessatti haammachiisaniiru.¹⁷ Biyyootni biroo immoo mirga lubbuun jiraachu daa'ima ulfaa'ameef guutummaan beekamtiin yoo kenname mirga fayyaa fi bilisummaa jirenya dhuunfaa haadhaa sarba waan ta'eef ulfa addaan kutuun haala addaan hayyamamuu akka qabu teechisu.¹⁸ Heerri biyya Keeniya kew. 26 immoo, Mirgi lubbuun jiraachuu yeroo daa'imni ulfa'ame irraa kaasee akka eegalu tumuun akka hambifannootti garuu haala addaan ulfa baasuun akka danda'amu hayyameera. Heerri Mootummaa RDFI waa'ee mirga lubbuun jiraachuu daa'ima kew. 36(1a) jalatti kan tumee jiru yoo ta'el ee tumaan kun daa'ima ulfaa'ame dabalachuu fi dhiisuun isaa adda bahee hin beekamu. Waa'ee ulfa addaan kutuus heerichi ifatti waanti kaa'e hin jiru.¹⁹ Haa ta'u malee, tumaa heerichaa kew. 36(4)'tti "gaa'ilaan alatti

¹⁶Akkuma 15^{ffaa}.

¹⁷Fakkenyaaf, Heerri biyya Chiili kew. 19(1) fi kan Gu'aatemaala kew. 3 mirga lubbuun jiraachuu daa'ima ulfaa'ameef ifaan beekamti kenneaniiru. Heerri biyya Ayerlaand kew. 40(3/3) fi Filippiins kew. II(12) immoo, daa'imman ulfaa'aman mirga lubbuun jiraachuu qabaachuu qofa osoo hin ta'iin, mirgi daa'ima ulfaa'amee mirga haadhaan walqixa akka ta'e tumaniiru. Naannoleen biyya Federaalaa Meeksikoo 16 ta'anis, heera naannoo isaanii irratti daa'imman ulfaa mirga lubbuun jiraachuu akka qaban teechisaniiru (Akkuma 16^{ffaa}).

¹⁸ Fakkenyaaf, murtiin Manni Murtii Heeraa biyya Isloovakiyaa fi Manni Murtii Waliigalaa biyya Neepaal haala addaan ulfa addaan kutuun akka danda'amu murteessan yaada kana ni cimsa (Akkuma 17^{ffaa}).

¹⁹ Ijoo kana ilaachisee garuu, Heerichi kew. 35(9) irratti "dubartoonni sababa dahumsatiin miidhaa isaan irra gahu ittisu fi fayyummaa isaanii eegsisuuf kan dandeessisu ... odeeffanno fi 'humna argachuuf' mirga qabu" jedha. Kunis, haadholiin sababa ulfaatiin

ijoollen ‘*dhalatan*’, fuudhaa fi heeruma irraa kan ‘*dhalatan*’ wajjin, mirga walqixa qabu” yaadni jedhu daa’imman yeroo dhalatan irraa eegalee mirga akka qaban kan mul’isu dha. Seera Hariiroo Hawaasaa Itoophiyaa kew. 1 jalattis tumaan ‘namni guyyaa dhalate irraa eegalee mirga akka qabu’ tumee jiru yaada kana cimsa. Kana jechuun garuu daa’imman ulfaa’aman eegumsa seeraa hin qaban jechuu miti. Fakkeenyaaaf, Seera Hariiroo Hawaasaa Itoophiyaa kew. 834 jalatti haala daa’imni ulfaa’ame itti dhaaluu danda’u teechifmeera. Kana malees, seerri yakkaa kew. 119 jalatti dubartii ulfaa irratti adabbiin du’aa akka hin raawwatamne ni dhorka. Tumaaleen seera yakkaa kew. 545 hanga 552 jiranis gochi ulfa baasuu haala seeraan hayyamameen ala yoo raawwate yakkaan akka gaafachiiisu ni teechisu. Tumaaleen olitti caqasaman kunneen daa’imman ulfaatiif eegumsa seeraa kan taasisan akka ta’e ni hubatama.

Akka waliigalaatti, waadaalee fi waliigalteewan mirgoota dhala namaa irratti taasifamanii fi muuxannoo biyyoota tokko tokkoo keessatti mirga daa’ima ulfaa’ameef beekamtiin kennamuu fi eegumsi seeraa barbaachisaan daa’ima ulfaa’ameef godhamu akka qabu ni hubatama. Haa ta’u malee, dantaa daa’ima ulfaa’amee fi haadhaa gidduutti walitti bu’iinsi (conflict of interest) yoo uumame kan haadhaa dursuu akka qabu ni agarsiisu. Kanaaf, mirgootni ulfaan walqabatan qaama mirgoota walhormaata fi saalaa keessatti haguugamanii argamu.²⁰ Qabiyyeen mirgoota saalaa fi walhormaataa kun mirgoota kudha lama (12) ta’an of keessatti kan haammatu dha.²¹ Mirgoonni kunniin heeraa fi seerota Itoophiyaa keessatti haala sadiin haguugamanii

miidhaan fayyaa ykn lubbuu irra gahu danda’u ittisuuf tajaajila fayyaa ammayyaa argachu akka danda’anif beekamtii laachuuf akka ta’e ibsi Heeraa Mootumma RDFI ni mul’isa. (*የኢትዮጵያ ሆኖ መንግሥት ማስረጃዎች* kan hin maxxanfamne F.88-89 ilaala). Kun immoo alkallatin, haala addaan dubartootaaf mirga ulfa addaan kutuu eyyamu isaa akeeka(*የኢትዮጵያ የመንግሥት ክፍያዎች*: 88ኛ መሬት ስላለት, ብል 7-በታሪክ 2፡ ከዲስ አበባ, F. 247 ilaala)

²⁰Alyson G. Hyman, et al., Woman-Centered Abortion Care: Reference manual, Chapel Hill, Ipas, 2005, F.4-5.

²¹Isaanis;mirga lubbuun jiraachuu,mirga bilisummaa fi nageenya qaamaa,mirga walqixxumma fi loogii hunda irraa bilisa ta’uu, mirga kabajamuu fi eegamuu jireenya dhuunfaa, mirga ilaalchaa fi yaada ofii bilisummaan qabachuu, mirga odeeffannoo fi baruumsa, mirga filannoo gaa’ilaa, heerumuuy ykn dhiisuu murteessuu fi mirga maatii karoorfachuu, mirga daa’ima godhachuu ykn dhiisuu fi yeroo daa’ima itti godhatan bilisummaan murteessuu, mirga kunuunsaa fi eegumsa fayyaa, mirga argannoo saayinsii irraa fayyadamuu, mirga walgaluu fi hirmaanna siyaasaa, fi mirga gidiraa fi kunuunsa hin malle irraa eeggamuu haammata.(Akkuma 20^{ffua})

argamu.²² Mirgoota kaan isaaniitiif ifaan seerotaa fi heeraan beekamtiin kennameera. Kaan isaanii immoo waliigalteewwan addunyaa Itoophiyaan fudhatte qaama seera biyyattii godhatteen kan haammatamani dha.²³ Gama biraatiin immoo bu'uura heera RDFI kew. 13(2)'tiin tumaalee mirgootaa fi bilisummaawwan walhormaataa seera Itoophiyaa keessatti uwvisaman akkaataa tumaalee sanadoota mirgoota dhala namoomaa idil-addunyaa biyyattiin fudhatte wajjiin karaa walsimuun hiikkamuu kan qabani dha. Kanaaf, mirgootni walhormaataa, dhimma ulfaan walqabatu dabalatee, bu'uura sanadoota mirgoota dhala namaa biyyattiin fudhatteen kan hiikkoo argachuu qaban akka ta'e hubachuun barbaachisaa dha.

1.2. GOSOOTA YAKKOOTA ULFA IRRATTI RAAWWATAMAN

Seerri Adaba Yakkaa Itoophiyaa bara 1949 akka fooyya'uuf sababa kan ture keessaa tokko qabiyyeen seerichaa mirgaa fi dantaa dubartootaa fi daa'immanii eegsisuuf kan hin dandeessine ta'uu dha.²⁴ Seerri yakkaa yeroo ammaa hojii irra jiru yakkoota ulfa irratti raawwataman bakka tokkotti haala gurmaa'ina qabuun (compiled) kan tume yoo ta'uu baatellee, haala raawwii gochichaa irratti hundaa'un; yakkoota lubbuu daa'ima ulfaa'amee irratti raawwataman (Seera yakkaa kew. 545-552), gochoota barmaatilee miidhaa dhaqqabsiisan (kana booda, GBMQ) ulfa irratti raawwataman (kew. 561-563), fi badii dambii darbuu amala gaarii irratti raawwatamu(kew.848) jalatti dhimmoota mirgaa fi dantaa dubartootaa fi daa'imman ulfaa'aman ilaallatan uwwiseera.²⁵

²²Ibrahim Idris, The Structure of Human Rights Regime of the FDRE constitution: Fundamental Rights and Freedoms: Proceedings of the Symposium on the Role of courts in the Enforcement of the constitution, 2000, FF.55-57

²³ Fakkeenyaaaf, waliigaltee biyyattiin fudhatte keessaa mirga argannoo bu'aa saayinsii fayyadamuu ilaachisee, akka CEDAW kew. 11(3) tti argannoo saayinsii fi teeknoloji irratti hundaa'un seeronni mirga dubartootaa ilaallatan fooyya'uut akka qaban ni tuma. Mootummaan Itoophiyaas, akka Heera RDFI kew. 9(4) tiin tumaan kun qaama seera biyyatti waan ta'eef, kana raawwachuu dirqama qaba.

²⁴ Seera Yakkaa Rippaablika Dimokraataawaa Federalawaa Itoophiyaa, *Negaarit Gaazexaa Federaalaa*, Labsii Lakk. 414/1996, kutaa Seensaa, buufata 3^{ffaa}.

²⁵Yakkoota mata duree kana jalatti ibsaman irratti namootni hirmaatan akkaata tumaalee hirmaannaayakkaa kutaa waliigalaa seera yakkaa (kew. 32-41) jala jiranii fi akkaataa kutaa addaa seerichaa keessatti tumaman kan yakkoota ulfa baasuu kew. 546(2) fi 547(1) tiin

1.2.1. Yakkoota Ulfa Baasuu

Seerri yakkaa jecha ‘ulfa baasuu’ jedhuuf hiikaa hin kennine.²⁶ Seerichi kew. 545 jalatti akka teechisetti ulfa baasuun sadarkaa hunda irrattii fi maloota garagaraa fayyadamuun raawwatamuun danda’u, akkaataa seeraan tumameen alatti, dhorkaa dha. Gochootni ulfa baasuu akka yakkaatti tumamanis, gocha ulfa baasuu dubartiin tokko ta’e jettee ofirratti raawwattu (kew. 546/1) fi gochaa ulfa baasuu namoota biraan raawwatamu (kew.547) dha. Akkasumas, balleessaa yakkaa hundeessuuf haalli adabbiin itti cimuu fi salphatu tumameera. Kunis, sababa himatamaan yakka akka raawwatuuf isa kakaase, ogummaa fayyaa qabaachuu ykn dhiisuu isaa irratti hundaa’uun adabbiin yeroo cimu (kew. 548), haalotni adabbi salphisian immoo gocha ulfa baasuu dubartii ulfa hin qabne irratti raawwachuuf yaaluu (kew.549) fi ulfa dubartiin ofirraa baasistu sababa hiyyummaa garmaleen (kew. 550) yoo ta’e dha. Haalotni addaa adabbi salphisian kunneen yeroo jiran manni murtii bu’ura tumaa seera yakkaa kew. 180 tiin adabbi salphisuu akka qabu tumeera.

1.2.2. Gochoota Barmaatilee Miidhaa Qaqqabsiisun (GMBQ) Yakka Ulfa Irratti Raawwataman

Biyya kana keessatti GBMQ gara garaatu dubartii ulfa irratti raawwatama.²⁷ Yakkootni GBMQ ilaallatan seera adaba yakkaa bara 1949 jalatti of danda’anii hin tumamne. Yakkichi seera yakkaa ammaa keessatti of-danda’ee akka teechifamu kan barbaachiseef, miidhaa sababa gocha kanaan dhufan adda baasuun dhimmichi xiyyeffannoo gahaa akka argatuufi dha.²⁸ Seerri yakkaa kun akkaataa cimina miidhaa dhaqqabe irratti hundaa’uun

yroo gaafataman, yakkoota GBMQ ulfaa irratti raawwatamu immoo kew. 569 jalatti akkaata hirmaanna fi cimina miidhaa qaqqabee irratti hundaa’un yakkaan ni gaafatamu.

²⁶Haa ta’uu malee, jechoota ulfa baasuu (abortion), ulfa addaan kutuu (termination of pregnancy) fi yakkoota ‘lubbuu’ hin dhalanne irratti raawwatu (crime against ‘life’ unborn) jedhu wal keessa fayyadameera.

²⁷ Isaan keessaas; ulfaa’uu dubartii icciin qabuu fi yeroo dahuumsa ishee immoo laga biratti geessanii gatuun hojii dahuumsaa ofii isheetiin akka raawwattu gochuu, soorata ijaarsa qaamaaf barbaachisaa ta’an yeroo ulfaa dhoorkachuu, garaa dubartii ulfaa sukkuumuu fi hurgufuu fi k.k.f darbanii darbanii ni raawwatamu.(Olitti yaadannoo 4, FF. 165-167)

²⁸የኢትዮጵያ ፌዴራል የቅዱስኩርክክር ሪፖርት የተሰጠው የወንጀል ሆኖ አተቻ ስምከንያት, kan hin maxxanfamne, 1998, F.266.

miidhaan lubbuu dubartii ulfa taate irra yoo gahe kew. 561(1) (A) ykn (C) jalatti, miidhaan qaamaa yoo gahe immoo kew. 562(1) (A) ykn (C) jalatti gaafachiisuu danda'u. Kana malees, ciminaa fi gosa miidhaa qaqqabe irratti hundaa'un tumaan yakkoota daddabalamaa raawwatiinsa ni qabaatu.²⁹

1.2.3. Tooftaawwan Ulfa Baasuu Beeksisuu (kew. 848)

Seerri yakkaa kew.848 haala seeraan hayyamameen ala, malootaa fi oomishoota ulfa baasuuf hojjetaman beeksisuu ykn gurguruuf gaafachuu fi ifaan (publicly) tajaajila ulfaa baasuu kennuuf gaafachuun yakka akka ta'e tumeera.³⁰

1.3. HAALAWWAN ULFA ADDAAN KUTUUN SEERAAN HAYYAMAME

Akka Qajeelfama Ulfa Addaan Kutuu (kana booda, QUAK) Ministeera Eegumsa Fayyaatiin bara 1998 bahee fi bara 2006 fooyya'een, “*ulfa baasuu jechuun guyyaa dubartiin ulfaa laguu idilee dhumaa (last normal menstrual period) argitee kaasee, ulfa torban 28 gadii addaan kutuudha. Yeroon laguun dhumaa argame hin beekamne immoo daa'ima ulfaatina giraama kuma tokkoo gadiirratti kan raawwatudha*”³¹ jedheera. Ulaagaan daangaa yeroo

²⁹ Sababa GBMQ tiin lubbuu fi qaama dubartii ulfa irra miidhaa dhaqqabu ilaachisee haalli ulfaataa (aggravated cases) jedhamee tumame hin jiru. Haa ta'uun malee, cimina miidhaa dhaqqabuu bu'ureffachun; yakkichi lubbuu irratti miidhaa yoo qaqqabiise, seera yakka kew. 561(2) fi 543 jalatti, fi miidhaa qaama irratti yoo qaqqabiise immoo kew. 562(2) fi 559 jalatti, yakka daddabalamoonaan gaafachiisu danda'a. Gama biraan, haallan adabbii salphisan yemmuu ilaallu, yakkoota GBMQ'tiin lubbuu ykn qaama dubartii ulfaa irra miidhaan yoo gahe, manni murtii bu'uura seera yakkaa kew. 563'tiin akekkachisaan bira darbuu akka danda'u tumeera.

³⁰ Seerri yakkaa kun, tumaa seera adaba yakkaa duraanii kew. 802 (A) jalatti yakkummaa maloota ulfa ittisuu beeksisuu haqeera. Kew 802(A) seera adaba yakkaa bara 1949, gochaa maloota ittisa ulfaa maxxansuu, beeksisuu, uummataaf agarsiisuu, namootaaf erguu fi gochoota kana fakkaatan namni raawwate adabbii qarshii ykn hidhaa ji'a tokko hin caallen adabama ture. Yeroo ammaa garuu maloota ittisa ulfaa kana fayyadamuunis ta'e, beeksisuun qabiyyee mirga walhormaata dhugoomsuu keessaa tokko kan ta'e fi sagantaa tajaajila karoora maatii galmaan gahuu keessattis shoora olaanaa waan qabuuf qaamoolee mootummaanis ta'e miti mootummaan ni jajjabeeffama.

³¹ *Olitti yaadannoo lak.4, F.138; Olitti yaadannoo 5, F.3 ilaalaa (Hiikaan kan Barreessaati)*

dhumaa ulfa addaan kutuun itti hayyamamu kun muuxannoo biyyoota addunyaa keessatti garaagarummaa qaba.³²

Biyyootni addunyaa haala qabatamaa biyya isaanii keessa jiru bu'uureffachuun sababootni ulfa addaan kutuuf hayyaman; lubbuu haadhaa baraaruuf, fayyummaa haadhaaf, ulfa sababa dirqisiisanii gudeeduun ykn wal quunnamtii saalaa firoota gidduutti raawwatameen uumame, rakkoo hir'ina uumama ulfaa, rakkoo diinagdee ykn hawaasummaa fi fedhii ykn gaaffii dubartittii qofaan akka ta'edha.³³ Akka Seera Yakcaa RDFI'tti immoo, ulfa baasuun akka qajeeltootti yakkadha. Haa ta'u malee, haalotni addaa seera yakcaa kew. 551 jalatti teechifaman yoo jiraatan ulfa addaan kutuun ni danda'ama. Sirna raawwiiisaa fi adabbiin sirnicha cabsuun hordofsiisu kew.⁵⁵² jalatti tumameera.

A. Ulfa sababa dirqisiisanii gudeeduutiin ykn walquunnamtii saalaa firoota gidduutti raawwatamuun uumamu (Kew. 551(1) (A): Ulfi sababa dirqisiisanii gudeeduutiin ykn walquunnamtii saalaa firoota gidduutti raawwatamuun uumamu addaan kutuun haalawwan ulfa addaan kutuun itti hayyamamu keessaa tokko dha.³⁴ Ulfi gochoota armaan oliin uumamu jecha miidhamtuun kennitu qofaan mirkanaa'a. Kunis, akka ragaatti gal mee yaalaa miidhamtuu irratti galmeessama.³⁵ Yeroo kana, miidhamtuun akkaata raawwii gochichaa fi eenyummaa nama gochaa kana raawwatee ibsuun ishee hin barbaachisu.³⁶

³² Fakkeenyaaaf, guyyaan laguu idilee dhumaal mul'ate kaasee biyya Turkiitti torbee 10, Tuniiziyatti torbee 12, Jaappani fi Raashiyatti torbee 22, fi Inglizzitti hanga torbee 24'tti dha.(Tsehai, *Olitti yaadannoo 8, FF. 11-16*)

³³WHO, Safe Abortion: Technical and Policy Guidance For Health Systems, 2nd ed., 2012, F. 25.

³⁴Seerri yakcaa kun yeroo tumamu sababa bu'uureffatame sanadni agarsiisu (የወንጀል ህግ አቶ ዘመኑያት) akka jedhutti, sababiin haala kana hayyamuun barbaachiseef, gochaa dirqisisanii gudeedu raawwatamuun ulfa uumamu miidhamtuun dirqamaan baadhu jechuun dabalataan rakkoo biraaf ishee saaxiluu dha. Akkasumas, ulfi quunnamtii saalaa fira irraa uumame osoo hin barbaadamiin kan dhufu dha. Mucaan kun yoo guddates, gochi kun miidhaa sadarkaa 2^{ffaa} (secondary victimization) saaxiluu waan danda'uf fedhiin ulficha addaan kutuun akka danda'amu seerichi beekamtii kenneera (*Olitti yaadannoo 28, F.261*).

³⁵ *Olitti yaadannoo lak.5, F.8.*

³⁶ Akkuma 35^{ffaa}.

B. Fayyummaa Haadhaa ykn Daa'ima Ulfaa'amee (Kew. 551/1B):

ulfichi kan itti fufu yoo ta'e lubbuu haadhaa fi ulfichaa irratti ykn fayyaa haadhaa irratti balaa kan hordofsiisu yoo ta'e, ulficha addaan kutuun ni eyyamama. Fayyummaan haadhaa, fayyummaa qaamaa ykn sammuu ta'u danda'a. Miidhaan kun jiraachu ogeessa fayyaan mirkana'a. Ogeessi dubartii ulfaa kana qorannoo barbaachisaa akkaataa madaalli beekumsa fayyaa fi qajeelummaadhaan (good faith), itti fufuun ulfichaa haadha ykn daa'ima ulfaa'ame irratti miidhaa fiduu akka danda'u mirkaneessuu qaba.³⁷

C. Ulfichi Hanqina Qaamaa Fayyuu hin Dandeenye Qabaachuu (Kew. 551/1C):

Kunis ogeessa fayyaan, qorannoo barbaachisaan erga godhame booda ulfichi hir'ina qaamaa ykn rakkoo jeenetikii akka qabu yoo mul'ate, ulficha addaan kutuun ni danda'ama.

D. Dubartiin Ulfoofte Hir'ina Fayyaa Qabaachu ykn Ijoollee Ta'uu (Kew. 551/1D):

Dubartiin ulfoofte hir'ina qaamaa ykn sammuu qabaachuun, gaa'ilaaaf kan hin geeny'e ta'uun daa'ima dhalatu guddisuuf qophii sammuu ykn qaamaa kan hin qabne yoo taate, ulficha addaan kutuu dandeessi. Ulaagaan namni tokko hir'ina qaamaa ykn sammuu qabaachuu kan madaalamu hojii idilee guyyaa guyyaan raawwatamu dubartiin kun hojjechuu yoo dadhabdedha. Kunis, qorannoo ogeessa yaalatiin qulqulla'a.³⁸ Umuriin shamarree 18 gadi ta'u immoo, umurii kaardii yaala ishee irratti guutame qofaan mirkanaa'a.³⁹

E. Balaan ulfaataafi yeroo hin kenninee fi maqsamuu hin dandeenye yoo mudatu (hojii wal'aansa yaalaa ariifachiisaa osoo hin dabalatiin) (Kew. 551/2):

Tajaajilli yeroo kana kennamu akka haala dirqisiisaa humnaa olii (Necessity) kew. 75 tti kan fudhatamuu fi si'ayinaan akkuma dubartiin kun fedhii kenniteen raawwatamuu akka qabu QUAK tumeera.⁴⁰

³⁷Akkuma 36^{ffaa}.

³⁸Akkuma 37^{ffaa}, F.10

³⁹Akkuma 38^{ffaa}.

⁴⁰Akkuma 39^{ffaa}. Ibsa waa'ee haala dirqisiisaa ilaalchisee Dejene Girma Janka, *A Handbook on the Criminal Code of Ethiopia* (Printed by Far East P.L.C, 2012), FF.100-104 fi Philiphe

Sirna Qajeelfama Ulfa Addaan Kutuu Ministeerri Eegumsa Fayyaa baase armaan olii namni cabse kamiyyuu adabbii maallaqaa qarshii kuma tokko hin caalleen yookiin hidhaa salphaa ji'a sadii hin caalleen akka adabamu Seerri yakkaa kew.552 (3) tumeera.

2. YAKKOOTA ULFA IRRATTI RAAWWATAMANIIN WALQABATEEQAAWWAA SEERAFA FI RAKKOO RAAWWII MUL'ATU

Mata dureen kun dhimmoota gurguddaa lama irratti xiyyeeffata. Isaanis: ulfa ilaachisee qaawwa seeraa ulaagaa fedhii kennuu fi itti gaafatamummaa yakkaa mirkaneessuun walqabatanii mul'atan irratti xiinxala gaggeessa.

2.1. DHIMMOOTA ULAAGAA FEDHII YKN HAYYAMA BARBAADAN

Jecha fedhii jedhu kuusaan jechoota seeraa *Black Law* akka hiikeetti “*Consent;- agreement, approval, or permission as to some act or purpose especially, given voluntarily by competent person*”⁴¹ jedheera. Akka hiikaa kanaatti, fedhiin walta’iinsa kaka’umsa walaba ta’e irra dhufuu qaba. Akkasumas, fedhii kana kennuuf gahumsa qabaachuun barbaachisaa akka ta’e mul’isa. Ulfa ilaachisee ulaagaan fedhii ija seeraan kallattii gara garaan ilaalamuu danda’a. Kana keessaas tokko tokko akka armaan gadiitti ilaalla.

2.1.1. Ulfa Hin Barbaadamne Addaan Kutuu

Ulfi hin barbaadamne karoora malee, gaa’ilaa fi gaa’ilaan alatti uumamuu danda’a. Miseensota Mootummoota Gamtoomanii keessaa harki 1/3^{ffaan} ulfa hin barbaadamne fedhiin baasuun akka danda’amu hayyamaniiru.⁴² Kunis biyyoota tokko tokko keessatti fedhii dubartittii qofaan yeroo raawwatu, biyyoota biroo keessatti immoo fedhii abba warraa ykn maatii akka

Graven, *An Introduction to Ethiopian Penal Law* (Oxford University Press,1965), F.208 ilaalun ni danda’ama.

⁴¹ Black’s Law Dictionary (Westgroup-St Paul Publisher,USA, 7th ed.,1999), F.300.

⁴²Alyson G.Hyman, *Olliitii yaadannoo lak.20, F. 13 ilaala.*

ulaagaatti gaafatu.⁴³ Ulfi fedhii qofaan bahu biyyoota baay'ee keessatti daangaa yeroo murtaa'e qofa keessatti raawwata.⁴⁴ Akka Itoophiyaatti immoo, Seerri yakkaa RDFI, ulfa hin barbaadamne addaan kutuuf ifaan beekamtii hin kennine.

Haa ta'u malee, raawwii seera kanaa yeroo ilaallu seerichi kara alkallattii ta'een beekamtii kan kenne fakkaata. Kunis, akka seera yakkaa kew. 551(1) (A) jalatti teechifame dubartiin yookin shamarreen ulfa addaan kutuu barbaaddu '*humnaan gudeedame ykn fira irraan ulfaa'e*' jechuun ishee gahaadha. Jecha kana ragaa biraan mirkaneessuun hin barbaachisu. Akkasumas, akka kew. 551(1D) tiin immoo umuriin dubartii ulfa addaan kutuu 18 gadi ta'uu mirkaneessuuf, umurii kaardii yaalaa ishee irratti guutame qofa ilaaluun gahaa dha.⁴⁵ Kana irraa kan hubannu, imammata seericha duuba jiru hin gaafatiin (don't ask policy) yaada jedhu kan hordofu ta'uu akeeka. As irratti, kaayyoon tumaa seerichaa bu'aa bayii gochicha ragaan mirkaneessuu hambisuun ulfa baasuu of-eegganno hin qabne ittisu fi iccitii dhimmicha eeguufidha. Haa ta'u malee, keewwattonni kun ulfa hin barbaadamne addaan kutuuf mala akka dawoo yookin riqichaatti tajaajiluu danda'u.⁴⁶ Sababni isaas, jecha dubartittiin kennite qofaan (mere statement) ulficha addaan kutuun gahaa waan ta'eef, dubartiin ulfa hin barbaadamne gaa'ila ykn gaa'ilaan alatti uumame baasisuu barbaadde '*dirqiin gudeedame ykn fira irraan ulfaa'e*' jechuun salphaatti ulficha addaan kuchisiisu dandeessi. QUAK ogeessi yaalaa xiinxala biraakka hin gaggeessine ifaan

⁴³WHO, *Olitti yaadannoo lak.33,F.68.*

⁴⁴Fakkeenyaaaf, Manni Murtii Waliigala Ameerika Bara 1973ALA dhimma galmees *Roe vs Wade* gidduutti murtii kenneen, ulfa addaan kutuu marsaa saditti quodeera. Marsaa 1^{ffaa} (1st trimester) guyyaa laguu idilee dhumaal mul'atee kaasee hanga ji'a saditti fedhii haadhaa qofa irratti hundaa'uun ulficha addaan kutuun ni danda'ama. Marsaa 2^{ffaa}, ji'a 3^{ffaa} hanga 6^{ffaa} gidduu immoo fayyummaa haadhaa eeguuf qofa yoo ta'edha. Marsaa 3^{ffaa}, ji'a 6^{ffaa} hanga dahumsaa jiru immoo, carraan lubbuun jiraachu daa'ima ulfa olaanaa waan ta'eef, lubbuu haadha baraarsuuf yoo ta'e malee, ulficha tasuma addaan kutuun hin eyyamamu jechun murteessera(Viki C. Jackson et al., *Comparative Constitutional Law*, 2nded, Foundation Press, 2006, F.23).

⁴⁵Asirratti, dubartiiittin umuriin ishee hammam iyyuu yoo taate, ykn ogeessi yaalaa yoo shakke qulqulleeffachuu isa irraa hin eegamu. Sababiin isaa; QUAK, ogeessi yaalu ragaa dabalataa gaafachuu akka hin qabne dhorkeera (*Olitti yaadannoo 5, F.10 ilaala*).

⁴⁶Dalia Mortada, Doctors in Ethiopia are looking past their religious beliefs on abortions to save lives <http://www.pri.org/stories/2014-09-01/doctors-ethiopia-are-looking-past-their-religious-beliefs-abortions-save-lives> <yeroo dhumaaf gaafa 08/06/2008 ilaalam>.

dhorkuuun isaa immoo qaawwaa kana bal’iseera.⁴⁷ Rakkoon qabatamaan dhaabbilee fayyaa keessatti mul’atus kanuma.⁴⁸ Kunis kan agarsiisu, seerichi nama dhuguma miidhamee fi hin miidhamne adda baasuuf ulaagaan kaa’e waan hin jirreef, ulfa hin barbaachifne addaan kutuuf kara alkallattii ta’een beekamtii kan kenne fakkaata.

Gochi kun dantaa daa’ima ulfaa’amee kan sarbu dha. Waadaa Mirgoota Daa’immanii kutaa seensaabuufata 9^{ffa} jalatti daa’imni osoo hin dhalatiin dura of-eeggannoo addaa fi kunuunsi barbaachisaa godhamuufi akka qabu mirga teechifame kan cabsu dha.⁴⁹ Tumaan seera yakkaa kun garuu mirga daa’ima ulfaa’amee kana hubannoo keessa kan galche hin fakkaatu. Kun immoo dabalatan kabajaa fi miira namummaa (humanity) kan gadi buusuu fi tokkummaa maatii illee booreessuu danda’a. Akkasumas, ogeessonni fayyaa tokko tokko akka jedhanitti, gal mee ulfa addaan kutuu harka caalaa keessatti sababni ulfi addaan cituuf dirqisiisanii gudeedu raawwatameen ulfa uumame ta’uu dha.⁵⁰

2.1.2. Daa’imman Umurii 18 Gadii Ulfa Addaan Kutuuf Fedhii Kennuu⁵¹

Daa’imni umurii 18 gadii yoo ulfoofte ulficha addaan kutuu akka dandeessu seerri yakkaa kew. 551(1D) ni kaa’aa. Haa ta’uu malee, ulficha addaan

⁴⁷ Olitti yaadannoo lak.5 afaan Amaariffaa lakk. 6(F.8-10) ykn Hiika Afan Ingiliffaa, FF.6-7.

⁴⁸ Dalia, Olitti yaadannoo lak.46.

⁴⁹ Waadaa kana Itoophiyaan waan fudhatteef akka Heera RDFI kew. 9(4) qaama seera biyya kanaati. Kanaaf, biyyi kun tumaa kana hojji irra oolchuuf dirqama qabdi.

⁵⁰ Dalia, Olitti yaadannoo lak.6.

⁵¹ Akka addunyaatti waggaan daa’imman umurii 18 gadii, Miiliyeena 15(kudha shan) ta’an daa’ima godhatu. Miiliyeena 4(afur) kan ta’an immoo gocha ulfa baasuuf raawwatu(Zerai Kasaye, “Sexual Experiences and Their Correlates among Jimma University Students”, Ethiopian Journal of Health Science (2005), Vol. 15, No. 1, F.2).Kana malees, carraan du’a haadholii shamarran umuri 15 fi isaa gadi sababa ulfa fi daa’ima godhachun dhufu olaanaa dha. Akka Itoophiyaatti,dubartoota miidhaa fiistullaaf saaxilaman keessaa parsantaan 50% ol daa’imman umurii 18 gadii akka ta’e WHO baasera. Kunis rakkoo ulfa irraa madduun akka ta’e dabalataan ibseera.(Bulletin of the World Health Organization, Adolescent Pregnancy: A Culturally Complex Issue <http://www.who.int/bulletin/volumes/87/6/09-020609/en/> yeroo dhumaaf gaafa 08/06/2008 ilaalame>. Akkasumas, gabaasa Mootummoota Gamtoomanii (UN) bara 2005 ALA baaseen daa’imman biyya kana keessatti ulfaa’anii fi haadha ta’an ilaalchisee naannoo naannootti garaagarummaa bal’atu jira(CRC/C/129 add.8, April 2005, F.41 ilaala).

kutuuf maatii moo daa'ima kanatu fedhii kenuu qaba kan jedhu seerri kun adda hin baasne. Kana ilaalcissee shamarreen ulfaa umuriin ishee 18 gadi taate fedhii isheetin ulfa addaan kutuu akka dandeessu QUAK ni teechisa. Kanaaf fedhii guddistoota ykn maatii shamarree kanaa hin barbaachisu.⁵² Keewwatni kun kan saxaxame rakkolee daa'ima ulfoofte kana karaa maatiin mudachuu danda'an irraa ittisuu fi iccitii dhimmichaa eeguufidha. Akka safuutti, shamarreen gaa'ilaan alatti yoo ulfoofte ulficha baasisuun akka cubbuutti waan ilaalamuf, maatiin daa'ima kanaa kabajaa fi maqaa gaarii isaani eeguuf namicha ulfeesse shamarree kana akka fuudhu taasisuun baadiyyaa keessattii baratamaa dha.⁵³ Kun immoo daa'ima kana rakkoo fayyaa, qaamaa fi xinsammuu garaa garaaf saaxila. Kanaaf, seerichi dantaa daa'ima Isa olaanaa (best interest of child) eeguuf, fedhii daa'ima kanaa qofaan akka ta'u hayyameera. Akkasumas, daa'imman maatii hin qabnee fi karaa irra jiraatan rakkoo kanaaf hunda caalaa saaxilamo waan ta'aniif dhimma kanaan walqabate fedhiin qaama 3^{ffaa} ni barbaadama yoo ta'e, shamarran kun ulfa baasuu of-eegganno hin qabne akka raawwataniif qaawwaa waan uumuuf, furmaata si'ayinaa fi bu'aa qabeessumma qabu kenuuf qajeelfamichi hayyameera.⁵⁴

Haa ta'uu malee, tumaan QUAK kun, tumaa Seera yakcaa kew. 547(2) waliin bakka itti wal hin simne ni qaba. Kunis, akka seera yakcaa kew. 547(2) tti “*Gochi ulfa baasuu kan raawwatame dubartiin ulfoofte sun kan hin hayyamne yookiin 'hayyama ishii kenuuf yommuu hin dandeenyetti yoo ta'e'... adabbi hidhaa cimaa wagga 3 hanga wagga 10 gahuun adabama*” jedha. Asirratti, jechi “*dubartiin ulfoofte... hayyama ishee kenuuf yommuu hin dandeenyetti*” jedhu, daa'ima umurii 18 hin geenye ni dabalata. Akka hiikaa kanaatti, fedhii daa'ima ulfoofte qofaan ulficha addaan kutuun yakkaan gaafachisu danda'a. Gama biraan, QUAK shamarran umurii 18 gadi ta'an, ulfa addaan kutuu yoo barbaadan, fedhii kenuuf gahumsa guutuu akka qaban tuma.

⁵²Olitti yaadannoo lak.5, F.11.

⁵³Alula Pankrust, et al. *Child Protection and Harmful Traditional Practices: Female Early Marriage and Genital Modification in Ethiopia, Development in Practice* (2012), Vol.22, No.4, F.512.

⁵⁴ James Hoot et al., *Voice Seldom Heard: Child Prostitutes in Ethiopia*, Journal of Children and Poverty (2007), Routledge Publisher, Vol .12, No.2, 2007, FF. 138-140 <http://dx.doi.org/10.1080/10796120600879558>.

Akka yaada barreessaatti, dhimmoota kana walitti araarsuuf, walitti dhufeenyaa tumaa seera yakkaa kewwata 547(2), 551 fi QUAK ilaaluun ni barbaachisa. Seerri yakkaa keewwatni 551 hambifannoo (exception) tumaalee isaa olii akka ta'e keewwata 545(1) irraa hubachuun ni danda'ama. Keewwatni 545(2) immoo yakki ulfa baasuu, haadha ulfaan ykn nama biraan akka raawwatamuu danda'u ibsa. Bu'uruma kanaan, seerri yakkaa haala yakki kun dubartii ulfaa fi nama biraan raawwatamu, kew. 546 fi 547 irratti, duraa duuban tumeera. Kanaaf, hundeen kew. 547, tumaa waliigala kew. 545/2 irraa kan maddu waan ta'eef akka qajeeltootti(principle) fudhachuu dandeenya. Haalli ulfa addaan kutuu kew. 551(1) (D) irratti hayyamame immoo hambifannoo kew. 547(2) ta'uu nu hubachiisa. Gama biraan, walitti dhufeenyaa kew. 547(2) fi QUAK qaban ilaaluun dura, walitti dhufeenyaa kew. 551 fi QUAK qaban ilaaluun barbaachisaadha. Kanas, kan walitti nuu firoomsu tumaa seera yakka kew. 552(1) dha. Akka tumaa kanaatti,

Bu'uura haalawan armaan olitti kew. 551 jalatti tarreeffamaniin sirna ulfi addaan itti citu, haala mirga dubartoota ulfaa hin tuqneen Ministeeri Eegumsa Fayyaa ... qajeelfama ni baasa.

Keewwatni xiqaan kun haalota hambifannoo kew. 551 irratti hayyamame ilaachisee Ministeeri Eegumsa Fayyaa sirna ulfa addaan kutuu itti raawwatuuf qajeelfama akka baasu kallattiin aangoon kennamuufi mul'isa. Bu'uruma kanaan, Ministeeri Eegumsa Fayyaa QUAK baasuun isaa beekamaadha.⁵⁵ Kanaaf, tumaan kew. 547/2 irratti "dubartiin ulfoofte... hayyama ishee kennuuf yommuu hin dandeenyetti" jedhu qajeeltoo waliigalaa yoo ta'u, tumaan kew. 551(1D) irratti da'imman ulfa addaan kutuu hayyamu immoo hambifannoo tumaa kew. 547/2 ti. Akkasumas, tumaan QUAK daa'imni umurii 18 gadii fedhii isheen ulfa addaan kutuu akka dandeessu hayyamu bu'uura seera yakkaa kew. 552'tiin tumaa hambifannoo kew. 551 raawwachisuuf bahe dha. Kun immoo alkallattiin tumaan QUAK daa'imni umurii 18 gadii ulfa fedhii ishee qofaan addaan kutuu akka dandeessu hayyamu kun hambifannoo (exception) tumaa seera yakkaa kew. 547(2) ta'uu nu akeeka.

⁵⁵Ministeeri Eegumsa Fayyaa, bu'uura tumaa seera yakkaa kew. 552/1 tiin, Qajeelfama ulfa addaan kutuu (QUAK) yeroo jalqabaaf Waxabajjii 1998 ALI baaseera. Waxabajjii 2006 ALI tti immoo Qajeelfama kana fooyesseera (*Olitti yaadannoo lak. I^{ffa} fi 5^{ffa} ilaala*).

2.1.3. Daa'imman Maloota Ittisa Ulfaa Fayyadamuu

Mootummaan gochi miidhaa saalquunnamti daa'imman irratti akka hin raawwanneef eegumsa gochuuf dirqama qaba.⁵⁶ Haa ta'uu malee, yeroo ammaa daa'imman fedhiinis ta'e, sababa rakkoo gara garaan gocha saalquunnamtii irratti bobba'uun isaanii beekamaa dha. Fakkeenyaaaf, qo'annoon biyya kanatti taasifame tokko akka mul'isutti waggaa waggaan daa'imman 20,000 (kuma digdama) ol ta'an gocha saalquunnamtii irratti bobba'u.⁵⁷ Kana ilaachisee akka Waadaa Mirgoota Daa'immani (CRC) kew. 24 jala teechifametti daa'imman mirga fayyaa olaanaa argachuu qabu. Kunis, mirga fayyummaa walhormaata dabalata.⁵⁸ Kanaaf, mootummaan dirqama ulaagaa umurii gaa'ilaa, fi umurii gadi aanaa tajaajila ittisa ulfaa fayyadamuu murteessuu qaba. Fakkeenyaaaf, Afrikaan Kibbaa gama tokkoon daa'ima umurii 16 gadii waliin quunnamtii saalaa raawwachuun yakkaan akka gaafachiisu seera ishiirratti yeroo haammachiistu, gama biraan immoo daa'imman umurii 12 kaasee mirga maloota ittisa ulfaa fayyadamuu akka danda'an hayyamteetti.⁵⁹ Biyyoonni tokko tokko immoo, maloota ittisa ulfaa daa'immanii kennuuf seenaa shamarreen kun quunnamtii saalaa irratti qabdu dursa qorachuu, ulaagaa dursa maatiin fedhii kennuuf fi yoo akka tasaa ulfaa'uun daa'ima kanaa lubbuu ishee balaaf saaxila ta'e qabxiilee jedhan akka ulaagaalee maloota ittisa ulfaa gargaaramuuf barbaachisaniitti ni teechisu.⁶⁰

Seera yakkaa keenyatti yeroo deebinu kew. 626 fi 627 jalatti daa'ima umurii 18 gadii waliin, fedhiin illee yoo ta'e, quunnamtii saalaa raawwachuun dhorkaa dha. Kunis akka seeraatti fedhii ishee kennuuf gahumsa hin qabdu. Akka fayyaatti immoo, qaamni walhormaata quunnamtii saalaa raawwachuuf bilchina gahaa waan hin qabneef rakkoo irra gahuu danda'u irraa eegufi.⁶¹ Haa ta'uu malee, seeronni biyya keenyaa waa'ee shamarran umurii 18 gadii

⁵⁶ Waadaa Mirgoota Daa'immanii bara 1989 ALA bahe kew. 34 fi Chaartara Mirgootaa fi Nageenya Daa'imman Afrikaa bara 1990 bahe kew. 27 ilaaluun ni danda'ama.

⁵⁷ James Hoot, *Olitti Yaadannoo Lak.*54, F.137.

⁵⁸ Criminalising Sex is not the answer http://mg.co.za/article/2011-09-26-criminalising-sex-is-not-the-answer#disqus_thread<Yeroo dhumaaf gaafa 04/04/2007 ilaalam>.

⁵⁹ Akkuma 58^{ffaa}.

⁶⁰ State Policies in Brief: An Overview of Minors' Consents Law, Guttmacher Institute(2016) http://www.guttmacher.org/statecenter/spibs/spib_OMCL.pdf<yeroo dhumaaf gaafa 12/06/2008 ilaalam>.

⁶¹ Af-gaaffii Dr. Ikram Mohaammed, Ministeera Eegumsa Fayyaa Federaalatti Ofisara Adeemsa Fayyaa Haadholii waliin gaafa 02/04/2007 taasifame.

maloota ittisa ulfaa fayyadamuu ilaachisee callisaniiru. Kun immoo shamarri umurii 18 gadii tokko mala kana fayyadamuu yoo barbaadde fedha isheen qofa tajaajilamu dandeessi? Umurii meeqaa eegalee? gaaffii jedhu kaasa. Kana ilaachisee akka tarsiimoo biyyooleessa fayyaa walhormaata dargaggootaatti daa'imman umurii gaa'ilaa malee heerumu, quunnamtii saala eegaluu fi barmaatilee miidhaa qaqqabsiisan biroo irra eegamu akka qaban ni ibsa. Akkasumas, shamarranii fi dargaggootni quunnamti saala irratti bobba'an maloota ittisa ulfaa akka fayyadamanii fi hiriya isaaniif amanamoo akka ta'aniif tajaajilli hubannoo fi gorsaa kennamuufi akka qabu qajeelchera.⁶² Kunis miidhaa ulfa hin barbaachifne ittisu fi dhukkuboota saalaan daddarboo ta'an xiqqeessuuf gumaacha olaanaa qaba.

Tarsiimoon kun daa'imman umurii 10 eegalee tajaajila mirga fayyaa walhormaata argachu akka danda'an hayyameera. Haa ta'uu malee, umurii meeqaa eegalani tajaajila maloota ittisa ulfa ammayyaa⁶³ argachu akka danda'anii fi fedhiin maatii haa barbaachisu ykn haa dhiisu ifaatti waan tume hin qabu. Qabatamaan kan hojii irra oolaa jiru immoo yoo ilaalle “daa'imman mala ittisa ulfaa akka fayyadamanii ulaagaan jiru, umurii qofa osoo hin ta'iin, hirmaanna daa'imni kun quunnamtii saala raawwachuu qabduun kan murtaa'u dha”.⁶⁴ Kunis, daa'imni kun quunnamtii saala yeroo yeroon kan raawwattu yoo taate, gorsi barbaachisaan akka irraa deebitu kennamefi yoo hin milkoofne, miidhaa gara fuulduraatti irra gahuu danda'u ittisuuf yookin xiqqeessuf, umurii 10 gad illee yoo taate fedhi ishee irratti hundaa'un maloota ittisa ulfa akka fayyadamtu ni taasifama. Haaluma kanaan, kaayyoon imaammata fayyaa inni duraa balaa yookin dhukkuba ittisu waan ta'eef, daa'imman maloota ittisa ulfaa akka fayyadaman gochuun ulfa hin barbaachifne fi dhukkuboota sababa kanaan dhufan xiqqeessuf gargaara. Tajaajilli kun immoo kan kennamu jiddu lixummaa fi fedhii maatii osoo hin barbaachisin fedhii daa'ima kanaa qofa irratti hunda'uni.⁶⁵ Fedhiin maatii yoo barbaadama ta'e aadaan akkasii daa'ima fi

⁶²FDRE Ministry of Health, National Adolescent and Youth Reproductive Health Strategy (2007-2015), FF. 19-25.

⁶³ Maloota ittisa ulfaa ammayyaa kan jedhaman qoricha akka Piilsii, maloota ittisa ulfaa gadameessa keessa taa'u, fkn IUCD, ykn Qaama namaan baqaqsuun kan keessa awwalamu ni dabalata (*Olli yaadannoo 4, F.81ilaala*).

⁶⁴Afgaaffii Siister Birhaanee Aseffaa, Ministeera Eegumsa Fayyaa Federaalaatti Qindeessituu Karoora Maatii waliin gaafa 02/04/2007 adeemsifame.

⁶⁵Akkuma 64^{ffaa}.

maatii gidduutti waan hin dagaagnee fi gochi akkasii faallaa safuu waan ta'ef daa'imman kun fedhii maatii yoo barbaachise maatii isaanii akka hin dhiyeessine ni beekama. Kun immoo, daa'imman kun quunnamtii saalaa of egganno hin qabneef akka of-saaxilaniif qaawwa waan banuuf tajaajilli walhormaataa kophatti icciin kennamaaf.⁶⁶ Haalli kun, dantaa daa'ima kanaa kan eegu qofaa osoo hin taane, duudhaa mirga tajaajila fayyaa wal hormaata icciin argachuu fi bilisummaa dhuunfaa daa'ima dhugoomsa.

2.1.4. Gocha Barmaatilee Miidhaa Qaqqabsiisuu (GMBQ) Irratti Miidhamtuun Fedhii Kennuu (Victim Consent)

GBMQ keessaa tokko, gochaa dubartii ulfaa irratti yeroo dahuumsaa raawwataman ta'uut kutaa darban keessatti ilaalleerra. Kunis yakka akka garaa dubartii ulfaa sukkuumuu ykn urgufuu yeroo ta'u, gochi kun haadhaa fi daa'ima ulfaa'ame miidhaa fayyaa ykn lubbuuf saaxiluu danda'a.⁶⁷ Gochoonni kun yeroo baay'ee waliigaltee miidhamtuu fi qaama sadaffaatiin kan raawwatamu dha.⁶⁸ Akka seera yakcaa kew.70(1)' tti gochii yakcaa fedhii garee lamaanin raawwate yoo yakka iyyata dhuunfaan dhiyaatu ta'e itti gaafatamummaa hin hordofsiisu. Yakkoonni GBMQ'tiin dubartii ulfaa irratti raawwataman immoo yakka dantaa uummataa irratti raawwatamani dha. Kanaaf, namni gochaa kana raawwate fedhii miidhamtuu akka deebii faccisaatti dhiyeeffachu hin danda'u.⁶⁹

Dhimma kana ilaachisee seerri yakcaa kew. 562(1) itti gaafatamummaan yakka GBMQ nama gochaa kana raawwate qofaa akka ta'e yeroo tumu, miidhamtuun GBMQ akka ishee irratti raawwatuuf fedhii yoo kennite itti gaafatamummaa yakcaa qabdi moo hin qabdu? ijoo jedhu seerichi

⁶⁶Akkuma 65ffaa.

⁶⁷Olitti yaadannoo lak. 4, F.138

⁶⁸Ruth Jackson, *'Waiting-to-see' if the baby will come: Findings from A Qualitative Study in Kafa Zone, Ethiopia*, Ethiopian Journal of Health Development (2013), Vol.27, No.2, F. 120.

⁶⁹Akka seera yakcaa kew.70(1) tiin yakootni iyyata dhuunfaan dhiyaatan yoo fedhii miidhamaa ykn bakka bu'aa isaatin raawwatame yakkaan ni gaafachiisu. Akka dubbisa garagaltoo (contrario reading) tumaa kanatti, yakkoonni eeruu dantaa ummataa irratti dhiyaatan himatamaan itti gaafatamumma yakcaa jalaa fedhii miidhamaan/tuun illee yoo ta'e, kan hin miliqne ta'u nu hubachiisa. Himatamaan/tun kun, garuu, fedhii miidhamtuu akka yaada adabbii salphisutti bu'ura seera yakcaa kew. 82(1A) tiin dhiyeeffachuu danda'a/essi. (*Ph. Graven, Olitti Yaadannoo 40, F. 186 ilaala*).

calliseera.⁷⁰ GBMQ dubartii ulfaa irratti raawwatu haadhaafis ta'e, daa'ima ulfaa'ameef miidhaa malee faayidaa akka hin qabne beekamaa dha. Gocha ulfa baasuu ilaachisee dubartiin tokko ta'e jettee ofirratti yoo raawwatte (kew. 546) ykn namni biraakkaan akka gaafatamtu seerri yakkaa uwuisuun isaa miidhaa haadhaa fi daa'ima ulfaa'ame irra gahuu danda'u hambisuuf kan teechifame dha.⁷¹ Haa ta'u malee, GBMQ dubartiin ulfaa tokko ta'e jettee ofirratti yoo raawwatte ykn akka ishee irratti raawwatuuf hayyama kennite ilaachisee itti gaafatamummaa yakkaa isheen qabdu sababni calliseef ifaa miti. Asirratti, GBMQ dubartiin ulfaa ofirratti raawwattu ykn akka ishee irratti raawwatuuf hayyamtu dantaa ishee qofaa kan haammatu osoo hin ta'iin, kan daa'ima ulfaa'amees ni ilaallata. Akka Waadaa Mirgoota Daa'immanii (CRC) kutaa seensaa buufata 9^{ffaa}tti immoo daa'imman osoo hin dhalatiin duraa eegalee kunuunsaa fi of-eegganno addaa, eegumsa seeraa barbaachisaa dabalatee godhamuufi akka qabu ifaan tumeera. Kunis, daa'imman ulfaa miidhaa haadhaan ykn nama biraan irratti raawwatuamu irraa eegamuu akka qaban akeeka.⁷² Biyyi keenya waadaa kana waan fudhatteef, tumaan kun qaama seera biyyattiiti. Kanaaf, eegumsa seera daa'ima ulfaa'ameef barbaachisu tumuuf dirqama qabdi. Seerri yakka itti gaafatamummaa haadha ulfaa, yakka GBMQ ofirratti yoo raawwatte ykn akka irratti raawwatuuf hayyama kennite callisuun isaa, eegumsa dantaa daa'ima ulfaa'amee waadaa kanaa fi mirga wal hormaata dubartoota dhugoomsu waliin hin deemu.⁷³

Kanaaf, akka yaada barreessaatti haati ulfaa gocha akka garaa ulfaa sukkumu, urgufuu fi k.k.f ofirratti yoo raawwatte ykn akka ishee irratti raawwatuuf hayyamte, mirga fayyummaa ishee fi dantaa daa'ima ulfaa'amee waan sarbuuf yakkichaan gaafatamuu qabdi. Haa ta'u malee, ejjennoon kun bu'a qabeessa akka ta'uuf, hambifannoowwan (exceptions) sirna himannaar irraa bilisa taasisu (plea bargain) fi haalli dirqisiisaa humnaa olii fi filannoo

⁷⁰ Seerri yakkaa gochoota badii yakkaaf miidhamaa gahee olaanaa qabu tokko tokko irratti miidhamaa fi raawwataan yakkichaayakkaan akka gaafataman yeroo tumu (Fkn: kew.573 fi 647), kanneen biroo irratti immoo, yakka GBMQ dubartiin ulfaa raawwattu dabalatee, itti gaafatamummaa yakkaa isaani calliseera (Fkn: kew. 635).

⁷¹ *Olitti yaadannoo lak.28, F. 260.*

⁷² Abby F.Janoff, *Olitti Yaadannoo Lak.10, FF. 168-169;* Patrick J.Flood, *Olitti Yaadannoo Lak.11, F.9 ilaala.*

⁷³ Ibsa dabalataa dhimma kanaa ilaachisee, mata -duree xiqqaa 'Ulfa garaa keessa jiru irratti miidhaa geessisuu' jedhu kutaa 2.2.2 armaan gadii jiru ilaala.

biraan maqfamuu hin dandeenye mudachuun raawwatu itti gaafatamummaa yakkaa akka hin hordofsiifne seerichi walumaan beekamtii kennuu qaba.

Ijoon biraa yakka GBMQ dubartii ulfa irratti raawwatuun walqabatee ilaalamuu qabu, yakki GBMQ dubartii ulfa irratti raawwate fedhii ishee malee ykn dirqisisuun, gowwomsun, sodaachisuun fi haala k.k.f yoo ta'e, haalli adabbiin itti cimu jiraa? dhimma jedhu dha. Kana ilaachisee, seerichi haala adabbiin yakka kanaa itti ulfaachuu danda'u hin tumne. Haalli adabbin itti cimuu danda'u yakka daddabalamoo ciminaa fi gosa miidhaa qaqqabe irratti hundaa'uni.⁷⁴ Haa ta'u malee, akkaata raawwii yakkichaa fakkenyaaf gowwomsuun yeroo miidhamtuun fedhii kennuuf gahumsa seeraa hin qabnetti yakki kun yoo irratti raawwate seerichi haalli adabbiin itti cimuu danda'u kew. 561-563 jalatti hin uwvisne.⁷⁵ Kanaaf, yakka daddabalamoo dhimmichaan walqabatanii fi ulaagaa seerichaa guutaniin himachuun yeroof furmaata dha.⁷⁶

2.2. ITTI GAAFATAMUMMAA YAKKAA MIRKANEESSUU

2.2.1. Hirmaannaa Yakkaa Jaarmiyaalee Namummaa

Jaarmiyaan qaamni namummaa seeraa kennameef yakka irratti yoo hirmaatan, raawwataa yakkaa muummee ta'uun ykn kakaastumman ykn miiltummaan gaafatamuun akka danda'an seera yakkaa kew. 34 irratti tumameera. Yakkoota ulfa irratti raawwatamaniin walqabatee dhaabbileen fayyaa tokko tokko haala seerri hin hayyamneen ulfa yeroo addaan kutan ni mul'ata. Haa ta'u malee yakkoota ulfa irratti raawwataman ilaachise jaarmiyaaleen namummaa⁷⁷ yoo yakka kana irratti hirmaatan akka seera yakkaatti itti gaafaatamummaa yakkaa hin qaban. Sababiin isaa, itti

⁷⁴Seera yakkaa, *Olitti yaadannoo lak.24, kew. 561(2) fi 562(2) ilaala.*

⁷⁵Ijoo kana irratti, tumaa seera yakkaa ulfa baasu irra jiru yoo fudhanne gochi ulfa baasuu hayyama bilisaa miidhamtuun ala yoo irratti raawwate adabbii hidhaa cimaa waggaa 3-10 gahu akka hordofsiisu seera yakkaa kew. 547(2) tumeera.

⁷⁶Fakkenyaaf, tumaaleen seera yakka yakkoota bilisummaa dhuunfaa namaarratti raawwataman (kew. 580-585 fi 590) akka barbaachisummaa fi amala yakkicha irratti hundaa'un yakka daddabalamoone gaafachiisuu danda'u.

⁷⁷Jaarmiyaleen namummaa dhaabbata fayyaa: Kiliinikoota fi Hospitaalota dhuunfaa ykn mootummaa, Maaristooppis Internaashinal, Waldaa Qajeelcha Qusanna Maatii Itoophiyaa, fi k.k.f kan dabalu dha.(Ibsa dabalata waa'ee itti gaafatamummaa yakka Jaarmiyaalee Namummaa ilaachisee Dejene, *Olitti yaadannoo lak. 40, FF.35-46ilaala*)

gaafatamummaan yakkaa jaarmiyaalee namummaa seerichi haala addaan ifatti yoo tume qofa ta'uu seerri yakkaa kew. 34(1) ni ibsa. Kun immoo, jaarmiyaaleen namummaa yakkaan gaafatamuuf kutaa addaa seera yakkaa keessatti beekamti yoo kenname qofadha. Waa'een itti gaafatamummaa jaarmiyaalee namummaa immoo tumaalee yakka ulfa baasuu keessatti hin uwvisamne. Rakkoo kana agarsiisuf dhimma tokko haa ilaallu.

Dhimma tokko keessatti himatamtootni tumaa seera yakkaa kew. 27(1) fi 548(1) bira darbuun hayyama ulfa baasuu osoo hin qabaatiin kilinika dhuunfaa isaanii keessatti himatamtuu 2ffaan(haatii qabeenya kilinikicha) waliigaltee miidhamtuu waliin uumuun, himatamaa 1ffaan(Narsii) akka ulficha baasu gochuuf waan yaalaniif himataman. Manni murtii dhimmicha ilaale falmii bitaaf mirgaa dhagahuun himatamtoota keewwata himataman jalatti balleessaa jedheera.⁷⁸ Dhimma kana irratti himatamtoonni, yakkicha kan raawwatan kilinika dhuunfa beekamti seeraa qabu keessattidha. Haa ta'uu malee, kilinika kana yakkaan gaafachuuf tumaan seera yakkaa kana haguugu waan hin jirreef, namoota gochaa kana irratti hirmaatan qofa irratti tarkaanfiin seeraa fudhatame. Kanaaf, dhaabbileen fayyaa gochaa kana yoo raawwatan tarkaanfii bulchiinsaa irratti fudhachuu fi ogeessota dhuunfaa badii uuman immoo yakkaan gaafachuun yeroof furmaata ta'uu danda'a.

2.2.2. Ulfa Garaa Keessa Jiru Irratti Miidhaa Geessisuu

Haalotaa fi maloota yakka ulfaa irratti raawwataman armaan dura ilaalle malee gochootni daa'ima ulfa irra miidhaa geessisuu danda'an biroo haadhaan ykn qaama 3ffaan raawwatamuu danda'u. Haati ulfaa gochaa dhoorkame raawwachuun (fkn; yeroo ulfaa dhugaati alkoolii fi wantoota biraa dhorkaman fudhachuun⁷⁹) ykn of-eeggannoo gochuu qabdu raawwachuu dhiisuun (fkn: gorsa ogeessi yaalaa kenne hordofuu diduun⁸⁰)

⁷⁸A/Alangaa fi Biraanuu Baqqalaafaa (N-2), Mana Murtii Federaala Sadarkaa 1ffaa Lak. Galmee, 85521

⁷⁹Ijoo kana ilaachisee Naannolee Ameerikaa keessaa Mootummaan naannoo Teenessee bara 2014 tti dubartiin ulfaa waantota yeroo ulfaa dhorkaman(fkn dhugaatii alkoolii ykn qorichoota dhorkaman) yoo fudhatte yakkaan akka gaafatamuut tumeera(Substance Abuse During Pregnancy, State Policies in Brief, *Guttmacher Institute*, 2014, F.1).

⁸⁰ Fakkeenyaaaf, Galmee yakkaa *People* fi *Stewart* gidduutti Manni Murtii Saandiyagoo biyya Ameerika bara 1987 ALA murteesseen, haati ulfa gorsa ogeessi yaalaa akka boqonnaa ciisichaa fudhattu, quunnamtii saalaa irraa of quasattuu fi yeroo dhiigni mul'atetti tajaajila yaalaa hatattaman akka argattu gorsamtee didde yakkaan adabeera. (Punishing Women for

daa'ima ulfaa'ame irra miidhaan yoo gahee ykn immoo namni biraan garaa dubartii ulfaa rukutuun, ulficha irra miidhaa qaamaa ykn ajjeecha yoo geessise, itti gaafatamummaan yakkaa hordofsiisu jiraa? dhimmi jedhu kan ilaallamuu qabu dha. Ijoo kana irratti, Seera yakkaa RDFI keessatti waanti ifaan tumame hin jiru. Haa ta'u malee, gocha nama biraan miidhaa daa'ima ulfa irra gahu ilaachisee dhaddachi ijibbaata Federaalaa falmii dhimma yakkaa *Oliyyattuu Zeenit Abbaabbu fi Abbaa alangaa Bulchiinsa Naannoo Beenishangulii* jidduutti murteesseen haalotaa fi maloota ulfa irra miidhaan gahuu danda'u seeraa yakkaa keessaatti tumame irratti yaada haarayaa kan dabalu fakkaata. Murticha irraa akka hubatamutti namni dubartii ulfaa garaa ishee irra rukuchuun ulfichi akka du'u godhe, yakka yaalii ajjeechaan gaafatama.⁸¹

Murteen kun miidhaa gahe kallattii miidhaa haadha irra gahee qofaan xiinxaluun isaa ifa dha. Haa ta'uu malee, gama mirga yookin miidhaa ulfichaatiin hoo? gaaffii jedhu ilaaluu barbaachisa. Murteen kun daa'imman ulfaa haadha irraa of danda'un ykn haadha waliin mirga ykn eegumsa seeraa akka hin qabne akeeku kan barbaade fakkaata. Kun immoo qabiyyee seera yakkaa dantaa lubbuu daa'ima ulfaa'amee eeguuf tumee jiru⁸² fi tumaalee Waadalee Mirgoota dhala namaa biyyi keenya fudhatteen wal hin simu.

Fakkenyaaf, seerri yakkaa yakki ulfa baasuu yakkoota lubbuu namaa irratti raawwataman keessa tokko ta'uu, yaa'iinsa ijoo tumaa mata-duree yakkoota ulfa baasuu⁸³ fi qabiyyee sanada sababa seerri yakkaa yeroo tumamu bu'uureffate agarsiisu (**የወንጀል ሂሳብ ሁኔታ ከምሮከራቸት**)⁸⁴ irraa hubachuun ni

their Behavior during Pregnancy:An Approach that Undermines Women's Health and Children's Interests, Center for Reproductive Rights, September 2000, P.17, www.reproductiverights.org.

⁸¹Zeenit Abbaabbuu fi Abbaa Alangaa Bulchiisa Mootummaa Naannoo Beenishangulii, DhIMMWF, Lak. Galmee 90089, Jildii15^{ffa}, *Baafata, F. XXVII fi F. 384-386*.

⁸² Fakkenyaaf, Yakkoota ulfa irratti raawwataman barruu kana keessatti ilaalle malee, tumaaleen seera yakkaa kew.119, 658/b fi SDFY kew. 206(A) kallattiinis ta'e al-kallattiin dantaa daa'ima ulfaa'amee eeguuf kan saxaxamani dha.

⁸³ Kunis, yaa'iinsa(flow) tumaa seera yakkaa dhimma kanaa irraa gara jalatti (descending order) yeroo dubbisnu, Kitaaba 5^{ffa}->Yakkoota namoota biroo fi firoota irratti raawwataman->Mata duree Tokko (Yakkoota 'lubbuu', qaama fi fayyaa 'namaarratti' raawwataman) ->Boqonnaa Tokko(Yakkoota 'lubbuu namaa' irratti raawwataman)-> Kutaa lama(Yakka ulfarratti raawwatamu, ulfa baasuu) jedhu jalatti argama.

⁸⁴ Seerri adaba yakkaa bara 1949 bahe jecha 'lubbuu' jedhu mata duree keewwatoota ulfa baasuu irratti yakkoota 'lubbuu' ulfaa irratti raawwataman' jechun qooqa afaan Amariffaa fi hiikaa Ingiliffaa irratti fayyadamee ture. Seerri yakkaa bara 1996 bahe immoo, mata duree

danda'ama. Haala teessuma tumaa seera yakkaa ulfa baasuu irraa akka hubatamutti boqonnaa tokkoffaan mata duree 'yakkoota lubbuu nama irratti raawwataman' jedhuseera yakkaa kew. 538-552 jalatti tumamee jira. Kunis, kutaa 1ffaan haalaa fi akaakuu ajjeechaa (kew. 538-544) yeroo tumu, kutaa 2ffaan boqonnaa kanaa immoo yakka ulfa baasuu (kew. 545-552) jechuun tumeera. Yaa'insa kana irraa kan hubannu yakki ulfa baasuu yakka lubbuu nama hin dhalanne irratti raawwatamu ta'uu mul'isa. Kanaaf, yaa'iinsi kun eegumsi lubbuu daa'ima ulfaa'amee yakkoota ajjeechaa bira irradda bahee jiraachuu nu akeeka. Akkasumas,qabiyyee yakka ulfa baasuu tumaa seera yakkaa yeroo ilaallu daa'imman ulfaa'aman miidhaa haadhaan ykn qaama 3ffaan raawwatamu irra eeggamuu akka qaban nu agarsiisa.⁸⁵

Waadaalee mirgoota dhala nama biyyi keenya fudhatte keessaa immoo, fakkeenyaaaf, akka Waadaa Mirgoota Daa'immanii(CRC) kutaa seensaa buufata 9^{ffaa} armaan dura ilaalleen daa'imni ulfaa eegumsa seeraa haadha irraa of danda'u akka qabu mul'isa. Akkasumas, Koreen Waadaa Mirgoota Daa'immanii ibsa waliigalaa (General Comment) lakk. 7 irratti kenneen biyyoonni waadaa kanaa mirga lubbuun jiraachuu daa'ima Waadaa Mirgoota Daa'immanii (CRC)kew. 6(2) irratti tumame dhugoomsuu fi mirga fayyummaa dahuumsa duraa (Pre-natal care) kew. 24(2d) irra jiru guutummaan hojiirra oolchuuf haadhaa fi daa'ima ulfaa'ameef of-eeggannoo barbaachisaan dahuumsa dura eegalu godhamuu akka qabu ni ibsa.⁸⁶ Sanadoonni mirgoota dhala namaa gara garaas dantaan daa'ima ulfa of-danda'ee ykn mirga haadha ulfaa waliin kabajamuu akka qabu akeeku. Kunis, yoo walitti bu'iinsi dantaa daa'ima ulfaa'ameefi haadha gidduutti uumame qofaa kan haadhaa dursuu akka qabu qajeelchu malee dantaan daa'ima ulfaa'amee kan haadhaa keessatti kan haguugamu ykn tasuma

afaan Ingiliffaa qofatuu jecha 'lubbuu' jedhu (Crimes against [Life] Unborn) fayyadame. Akka sanada sababa seerri yakkaa yeroo tumamu bu'uureffate agarsiisu/*የወጪዎች ህንጻቸውን*/ ibsutti, sababiin jechi lubbuu jedhu qooqa Afaan Amaariffa keessa haqameef, jechi ulfa jedhu lubbuu waan of keessatti haammatuufi jedha. Kunis al-kallattin yakki ulfa baasuu, yakka lubbuu nama hin-dhalanne irratti raawwatu ta'uu nu akeeka (*የወጪዎች ህንጻቸውን በፊት የወጪዎች ህንጻቸውን Olitti yaadannoo* 28, F. 259).

⁸⁵Seera Yakkaa, *Olitti yaadannoo lak.*24, kew. 545(2), 546 fi 547 *ilaala.*

⁸⁶ UN Committee on the Rights of the Child, *A Guide to General Comment 7: Implementing Child Rights in Early Childhood*, United Nations Children's Fund and Bernard van Leer Foundation, The Hague, 2006, F. 38 fi 69

eegumsa seeraa akka hin qabne hin mul'isan.⁸⁷ Murtiin dhaddacha ijibbaata armaan olii garuu, miidhaa du'a daa'ima ulfaa'amee irra gahe kallattii haadhaa qofaan madaaluun isaa qabiyyee waadaa mirgoota dhala namaa biyyi keenya fudhattee fi eegumsa seeraa daa'ima ulfaa'ameef seera yakkaa RDFI keessatti uwvisamee jiru hubannoo keessa kan galche hin fakkaatu.

2.2.3. Tumaalee Yakkoota Ulfa Baasuu Ilaalchisee Jechoota Ifa Hintaane

Yakkoota ulfa irratti raawwataman ilaalchisee tumaalee ifa hin taane tokko tokko akka armaan gadiitti ilaalla.

- A. Seera yakkaa kew. 548(3) jalatti, ogeessonni fayyaa yakka ulfa baasuu seeraan alaa '*irra deddeebiin (Repeatedly)*' yoo raawwatan, hayyamni hojii isaanii dhaabbataan dhorkamuu akka qabu tuma. Kana irratti, jechi '*irra deddeebii*' jedhu, yeroo meeqa yoo irra deebi'ame '*irra deddeebi*' jedhama jedhu safartuun hin kaa'amneefi. Akka qopheessaa barruu kanaatti, jechi *irra deebi* jedhu, yeroo 2^{ffaa} kan ibsudha. Jechi *irra deddeebii* jedhu immo gocha yakkaa yeroo lamaa ol raawwate akka ta'e waan akeekuuf, bu'uruma kanaan hiikamu qaba.
- B. Seera yakkaa kew. 550 irratti immoo gochi ulfa baasuu *sababa hiyyummaa garmaleen* yoo ta'e adabbiin akka salphatu tumeera. Haa ta'u malee, jechi '*hiyyummaa garmalee*' maal akka ta'e hin ibsine. Dhaabbatni mootummota gamtoomanii hiikaa jecha hiyyummaa garmalee (*Extreme Poverty*) jedhuuf kenne yoo ilaalle:

*A condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information*⁸⁸

Hiikaan kun kan mul'isu hiyyummaa garmaleen galii qofaan kan madaalamu osoo hin ta'iin, dhaqqabummaa tajaajilawwan bu'uraa dabalata. Kunis hamma galiin yeroo shaallagamu, guyyaatti Doolaara

⁸⁷ Abby F.Janoff, *Olitti yaadannoo lak.10, FF.187-189; Patrick J.Flood, Olitti yaadannoo 11, FF. 187-189; Olitti yaadannoo lak.15 ilaala.*

⁸⁸ Choosing and Estimating a Poverty Line <http://web.worldbank.org/wbsite/external/topics/html> <Yeroo dhumaaf gaafa 09/06/08 ilaalame>.

Ameerikaa 1.25 gadi argachuu akka ta'e Baankiin Addunyaa baaseera.⁸⁹ Kanaaf, jechi kun yeroo hiikamu ulaagaan armaan olii hubannoo keessa osoo galee gaarii dha.

C. Seera yakkaa Kew. 551(1) (C) irratti sababoota ulfa addaan kutan keessaa tokko ‘hir’ina qaamaa ulfaataa fi fayyuu hin dandeenye’ jedhu irratti yaadni “*Hir’ina qaamaa ulfaataa*” jedhu maaliin safarama? Fakkeenyaaaf, harka dhabuu, qaamoleen miiraa hir’achu, lakkuu walitti maxxanan ta’uu, quba dabalataa qabaachu, hir’ina sammuu qabaachu, fi k.k.f ni dabalata moo miti? ijoon jedhu dhimma ilaalamu qabu dha.

Kanaan walqabatee, biyyoonni tokko tokko dhimmoota ‘qaamaa hir’uu’ jedhaman ulaagaa daa’imichi yoo dhalate of-danda’ee jiraachu danda’u ykn dhiisu irratti dhiibbaa uumuun akka madaalamu yeroo tuman, biyyootni biroon immoo dhimmoota ulfa addaan kuchisiisu danda’an tarreessuun (list) kaa’aniiru.⁹⁰ Biyyoonni hafan, hanqina qaamaaf (fetal impairment) ifaan osoo beekamtii hin kenniin fayyummaa fi rakkoo hawaasummaa haadhaa fi daa’ima kana fuulduratti mudachuu danda’u keessatti ilaalu.⁹¹ Akka Itoophiyaatti immoo, ogeessa yaalaan qorannoo barbaachisaan erga godhamee booda hir’inni qaamichaa, yoo kan hin fayyine ta'e ykn hir’inni jeenetikii yoo mul’ate ulfichi adda cituu akka danda’u QUAK eyyameera.⁹² Ulaagan kun haala waliigalaan kan taa’ee fi seerichi dhimma kana ogeessi yaalaa akkaataa ogummaa isaatiin akka itti fakkaatetti (discretion) akka murteessu kan dhiise ta’uu nu hubachiisa.

2.2.4. Yakkoota GBMQ tiin Dubartii Ulfaa Irratti Raawwataman Ilaalchisee Adabbiin Tumaalee Seerichaan Taa'an Rakkoo Qaban

Qajeeltoowwan seeraa keessaa tokko namootni badii raawwatan irraa seeraan fayyadamoo ta’uu hin qaban kan jedhu dha.⁹³ Akka qajeeltoo

⁸⁹Akkuma 88^{ffaa}

⁹⁰WHO, *Olitti yaadannoo lak.33, F. 92.*

⁹¹Akkuma 90^{ffaa}.

⁹²*Olitti yaadannoo lak.5, F.9.*

⁹³ Jechi kun Afaan Laatinin “*Commodum Ex Injuria sua nemo habere debet*” (wrong doer should not be enabled by law to take any advantage from his/her action) jedhama. Kunis, seerri namoonni badii isaanii irra akka fayyadamaniif tumamuu akka hin qabne mul’isa. <www.duhame.org/legaldictionary/C/ilaala>.

kanaatti, adabbiin seera yakkaan bahu madalawaa, balaafamummaa fi amala dhuunfaa raawwataa yakkichaa, cimina yakkichaa, haala raawwii yakkichaa fi k.k.f irratti hundaa'un adabbiin cimuu akka qabu mul'isa. Kunis, namni itti yaadee yakka raawwate kan dagannoon raawwate irraa balaafamummaa waan qabuuf, adabbiin isaas qixuma kanaan cima. Akkasumas, namni miidhaa olaanaa geessise kan miidhaa gadi aana geessise waliin walqixa adabamuu waan hin qabneef, cimina miidhaa gahee bu'ureffachuun adabbiin seera yakkaa tumama.⁹⁴Haa ta'uu malee,tumaaleen yakkoota GBMQ tiin dubartii ulfa irratti raawwataman (kew. 561-563) fuggisoo duudhaa armaan oliiti.

Kunis, akka keww. 561(1) tti karaa GBMQ tiin, *miidhaa lubbuu* dubartoota ulfaa fi daa'imman irratti namni *itti yaadee* miidhaa geessise *adabbi maallaqaatiin yookiin hidhaa salphaa ji'a sadii hanga waggaa tokkoo* gahuun adabama. Namni yakkuma kana *dagannoon* raawwate immoo kew. 543 jalatti adabama.⁹⁵ Adabbii kew. 543(1-3) jala jiran yeroo ilaallu, *hidhaa salphaa ji'aa ja'a hanga hidhaa cimaa wagga kudha shanii fi akkaata cimina yakkichaatti, adabbi maallaqa akka filannootti ykn hidhaa waliin hanga qarshii 15,000 gahu* adabamuu akka danda'u tuma. Akkasumas, akka kew. 562(1)' tti karaa GBMQ tiin *miidhaa qaamaa* dubartoota ulfa fi daa'imman irratti namni *itti yaadee geessise adabbi maallaqaatiin yookiin hidhaa salphaa ji'a ja'a hin caalleen* akka adabamu yeroo tumu, namni yakkuma kana *dagannoon* raawwate immoo kew. 559 jalatti akka adabamu keewwati 562(2) ni qajeelcha. Haalawan kew. 559(2) jala jiran yoo ilaalle immoo, namni yakkuma kana *dagannoon* raawwate, fakkeenyaaaf, miidhaa qaamaa cimaa yoo geessise adabbii hidhaa salpha ji'a ja'aa gadi hin taanee fi qarshii kuma tokkoo gadi hin taanen adabama.

Dhimmoontni armaan olii lamaan kun kan agarsiisan, namni itti yaadee gocha yakkaa raawwate adabbiin gadi aanaan irratti waan kennamuuf badii isaarraa fayyadamaa ta'a. Nama yakkuma kana *dagannoon* raawwate garuu, isa itti yaadee raawwatee ol adabsiisa. Gochi akkasii namoonni ta'e jedhanii yakka akka raawwataniif kan kakaasu dantaa fi mirga dubartii fi daa'ima ulfaa'amee kan eegu osoo hin ta'iin kan miidhu dha. Kana malees, tumaan seera yakkaa kew.563 qajeeltoo adabbii madaalawaa kan faallessu dha.

⁹⁴Dejene, Olitti yaadannoo lak.40, F. 156.

⁹⁵Seera yakkaa, Olitti yaadannoolak. 24, kew.561 (2) ilaala.

Sababni isaa, akka keewwata kanaatti yakkoota GBMQ tiin lubbuu ykn qaama dubartii ulfaa irra miidhaan yoo gahe manni murtii ‘akeekkachisa’ kennuu qofaan bira darbuu danda’ a. As irratti waanti hubatamuu qabu, seerichi miidhaan lubbuu irras ta’e qaama irra yoo gahee, manni murtii akeekkachisa qofaan bira darbuu akka danda’ u tume jira. Ija haqaa fi nama dhama qabeessaan yeroo ilaalamu garaa-garummaan cimina miidhaa fi adabbichaa wal hin madaalu. Akkasumas, miidhaa lubbuu irra gahu akeekkachisa qofaan akka bira darbamuf seerichi hayyamuun isaa amansisaa hin fakkaatu.

Tumaaleen armaan olitti qeeqaman kun kaayyoo seera yakkaa; yakkoota ittisuu fi nageenya hawaasaa eeguu fi dudhaalee adabbii kan akka adabbii walsimu (consistency), madaalawaa, tilmaamamumma, fi seera duratti walqixaan ilaalamuu qajeeltoowwan jedhaniin kan wal hin simne dha.⁹⁶ Kana malees, tumaan kun mirga himatamtoota kan sarbuu fi amantaa uummanni sirna haqaa irratti qabu gadibuusuu danda’ a.

3. YAKKA ULFA IRRATTI RAAWWATAMUUN WALQABATEE RAKKOOLEE RAAWWII IRRATTI MUL’ATAN

3.1. RAKKOOLEE HAALA RAAWWII YAKKICHAAN WALQABATAN

Itoophiyaa keessatti daa’imman waggaatti gara miliyeena 4 ulfaa’aman keessaa 380,000-500,000 kan ta’an ulfa fedhii malee bahuu⁹⁷ fi mala ulfa baasuu of-egganno hin qabneen kan addaan citu ta’uu qorannoon gara garaa ni mul’isa.⁹⁸ Kunis, gocha ulfa baasuu kan GBMQ ulfa irratti raawwatu

⁹⁶Dejene Girma and Mekonnen Feleke, Sentencing and Execution Teaching Material, (*Sponsored by the Federal Justice and Legal System Research Institute, Unpublished, 2009*), FF. 15-20.

⁹⁷As irratti waanti hubatamuu qabu, ulfa baasuu gosa lamati jira. Inni 1ffaan, ulfa fedhii malee bahu (involuntary abortion) yeroo ta’u, kunis haala humnaa oliin fedhii dubartitti malee kan bahudha. Waantonni kanaaf sababa ta’an, dhukkuboota ho’ina qaamaa baay’ee dabalan (fkn busaa), balaa tasaa ulfa irratti dhaqqabu ykn haalli uumama ulfichaa rakkoo qabaachuu fa’i. Inni 2ffaan immoo ulfa baasuu ta’e jedhee raawwatu (induced abortion) yeroo ta’u, gosti kun karaa seera qabeessaan ykn seeraan alaa ulficha adda kutuu ta’u danda’ a (*Olitti yaadannoo lak.4, F.139 ilaala*).

⁹⁸Facts on Unintended Pregnancy and Abortion in Ethiopia <https://www.guttmacher.org/pubs/FB-UP-Ethiopia.pdf> <gaafa 25/04/2008 kan ilaalame>; <www.guttmacher.org.ipasethiopia.com/<gaafa 24/07/2006 kan ilaalame>.

dabalateedhibbeentaan (%) 70 ol of-eegganno malee namoota ogummaa hin qabnee fi bakka mijataa hin taanetti raawwata.⁹⁹ Haa ta'u malee, yakkootni ulfa irratti raawwataman kun yeroo baay'ee adeemsa seeraa keessa galchuun murtiin haqaa yeroo irratti kennamu hin mul'atu.¹⁰⁰

3.1.1. Yakkichi Waliigaltee fi Wal-amantaan Raawwatamuu

Yakkoonni ulfa irratti raawwataman baay'een isaanii waliigaltee fi wal amantaa, fedhii miidhamtuu fi qaama sadaffatiin raawwatamu. Kunis dursamee bakka, yeroo fi haala dhoksaat ta'een saxaxama. Kanaaf, haala kan mijeessanii fi raawwii yakkichaa kan beekan namoota firoota dhiyoo ta'an yookiin michummaan walamantaa iccitii eeguu gidduu isaani jiruu dha.¹⁰¹ Kun immoo, miidhaan cimaan yoo qaqqabes himatamtoota seeratti dabarsanii akka hin kennineef dawoodha. Akkasumas, eeruun yoo dhiyaate illee ragaa kana qoratanii baasuun salphaa waan hin taaneef himatamtooni carraan qorannoo fi itti gaafatamummaa yakkaa jalaa miliquu isaanii bal'aa dha. Ijoo kana ilaachisee himata dhiyaate mirkaneessuuf ragaan bu'aa qorannoo yaalaa miidhamtuu irraa argamu barbaachisaa yeroo ta'u jira. Jecha biraan, ragaan qorannoo yaalaa miidhamtuu irraa argamu, namoota biroo yakkicha irratti hirmaatan ykn miidhamtuu mataa ishee yakkichaan

⁹⁹Dalia Mortada, *Olitti yaadannoo lak.* 6

¹⁰⁰Akka qopheessaan barreffamichaa carraa argameen bakka tokko tokko ilaale keessa, Go/I/A/ Booraa Aanaa Aallee keessatti Bara 2001-Fulbaana 2007tti fi Mana Murtii Federaala Sadarkaa 1^{ffa}a Kutaa Magaalaa Yeekkaatti galmeen yakkaa ulfaan walqabatee murtii argatee tokko illee hin jiru. Akkasumas, Mana Murtii Olaanaa Godina Addaa Naannawaa Finfinnee galmaa'e hin jiru. Go/Qe/Wallaggaa Aanaa Anfillootti immoo bara 2003 fi Muddee 2006 tti galmee lama qofatu seeratti dhiyaachuun murtii argate. Dabalataan, qopheessaan barruu kanaa ogeessota seeraa, keessattuu Abbooti Murtii fi Abbooti Alangaa godinaalee Oromiyaa keessa jiranii fi naannolee biroo irra hojjetan, Yuuniversiitii SSI'itti barnoota LLM hordofan, tokko tokko irra dhimmicha qulqulleessuf akka yaaletti, galmeen yakka dhimma kana irratti qulqulla'uun murtii argatu baay'ee gadi aanaa ykn tasuma kan hin jirre akka ta'e dha.

¹⁰¹Rakkoo kana ilaachisee galmeewwan MMOF Dhaddacha Boolee lakk. Gal.121639, G/Q / Wallaggaatti M/Murtii Aanaa Anfilloo lakk. Gal. 09413, M/Murtii Federaala Sad. 1^{ffa}a lakk.3 tti Gal. lakk. 206785 jiran miidhamtuun gocha kana akka raawwattuuf kan harka keessaa qaban michuu jaalala, hiriyyaa, maatii dhihoo akka ta'an mul'isa. Galmeewwan kana irratti yakkichi akka saaxilamuuf sababa kan ta'an hirmaanna uummanni odeeffannoo dabarsee kennuu fi miidhamtuu irra miidhaan cimaan gahuun malee kaka'umsa miidhamtootan akka hin taane agarsiisa.

himachuuf ragaa bay'ee barbaachisu ta'uu danda'a.¹⁰² Miidhamtun immoo, dantaa ishee fi waahiltoota ishee eeguuf jecha qorannoo yaalaaf hayyama kennuu dhiisuu dandeessi. Kun immoo ragaa namaas ta'e kan mana yaalaaf argachuuf aarsaa guddaa akka barbaadu mul'isa.

3.1.2. Yakkicha Faayidaa Waliiniif Raawwachuu

Yakkootni baay'een jibbiinsaan ykn haaloo bahuuf ykn aariin raawwatamu. Yakkoota kana keessatti tokko miidhaa fi kan biraa immoo miidhamaa waan ta'eef gareen miidhame eeruu kennuu kaasee hanga murtii argatutti dhiyeenyaa hordofuun hojii qoranna yakka walta'iinsaan deeggaruun mirga isaa sarbame kabachiifata. Haa ta'uu malee, yakka ulfa irratti raawwatuun walqabatee miidhamtuun (fkn dubartiin ulfi irraa bahu) dhiibbaa sababa ulfa kanaan gara fuulduratti dhufuu danda'u hambisuuf gocha kana akka carraa dhumaatti yeroo fayyadamtu, qaamni sadaffaan himatamaa yakkichaa ta'u immoo faayidaaf ykn kabajaa (beekamtii) argachuuf raawwata. Kana ilaachisee, dhimmooni itti aanani dhiyaatan rakkoo gama kanaan jiru agarsiisu.

Dhimma 1^{ffaa} keessatti Abban alangaa fi himatamaa Warqinaa Taaddasaa jedhamu (lakk. Galmee 206785 ta'e irratti) seera yakkaa kew. 548(3) irra darbuun miidhamtuu irraa qarshii 350 fudhachuun haala seerri hin hayyamneen ulfa waan baaseef kan himatame yeroo ta'u, Manni Murtii Sad. 1^{ffaa} Federaalaa himatamaa keewwata himatame jalatti balleessaa jedheera. Akkasumas, dhimmi A/Alangaa fi Himatamaa Biraanuu Baqqalaafaa (N-2) armaan olitti ilaalle ijoo kana kan cimsuu dha. Kunis, miidhamtuu fi himatamtoonni akkaataa seerri hin hayyamneen ulfa baasuuf qarshii 800 tiin waliigalani hojjechuuf utuu jedhanii qabamuu isaanii mul'isa. Dhimootni armaan olii kun himatamtootaa fi miidhamtootaa gidduu faayidaan waliini jiraachuu agarsiisu. Himatamtoonni gochichaa baay'inaan badii kana keessa kan seenan, keessattu ogeessonni yaalaa yakkummaa gochicha wallaaluun osoo hin ta'iin faayidaa hin malle argachufidha. Haaluma wal fakkaatuun, garaa dubartii ulfaa sukkuumuu fi urgufuunis yeroo bay'ee miidhamtuun yeroo ciniinsuu, cinqaa muddamtee jirtu jalaa bahuuf gochi kun akka

¹⁰² Fakkeenyaaaf, ulfa baasuu nama biraan haalawan kew.547 tiin raawwatu ilaachisee namoonni gocha kana irratti hirmaatanii fi miidhamtuun hayyama kennite itti-gaafatamummaa yakkaa akka qaban tuma.

raawwatuuf fedha ishee kenniti. Kun immoo garee bitaa fi mirgaa gidduu faayidaan waliinii waan jiruuf, ragaa kana mirkaneessu funaanuu gufachisuun qorannaayakkicha walxaxaa taasisa.¹⁰³

3.1.3. Hirmaattotni Yakkichaa Hundumtuu Yakkamaa Ta'uu

Yakkoota ulfi irratti raawwatu kan akka ulfa baasuu, dubartiin akka irraa bahuuf fedhii ishee kennite ykn ofirraa baaste ykn namni ulfa baasuu irratti sadarkaa adda addaan hirmaate akka seera yakkaa kew. 545-552 tiin fi namni GBMQ irratti hirmaate bu'ura kew. 569 tiin yakkaan akka gaafatamuu danda'u tumameera. Kun immoo namoonni iccitii kanaa beekanii fi harka keessaa qaban faayidaa dhuunfaa isaaniif jecha ragaa dabarsanii hin kennan. Kana caalaa immoo, gareen lamaanuu ija seeraan himatamtoota waan ta'aniif yakkicha dhoksuu fi ragaa balleessuuf cimsanii itti fufuun qorannoo yakkaa jalaa fedhii waliiniif wal miliqsu. Rakkoo gama kanaan jiruu agarsiisuf dhimma itti aanu haa ilaallu.

Kunis, dhimma A/Alangaa fi himatamtuu Ababaa Shifarrraa (lakk. Galmee 09414 ta'e irratti) seera yakka kew. 548(2) irra darbuun ogumma barbaachisu osoo hin qabaatiin gocha ulfa baasuu raawwatte jechuun kan himatamte yoo ta'u; Go/ Qe/ Wallaggaatti Manni Murtii Aanaa Anfilloo falmii bitaaf mirgaa dhagahuun murtii balleessummaa kenneera. Haaluma walfakkaatuun, miidhamtuun himata kanaa immoo (lakk. Galmee 09413) keessatti seera yakkaa kew. 547(3) irra darbuun gochi armaan olii akka irratti raawwatamuuf hayyama ishii waan kenniteef himatamtee, keewwata kana jalatti balleessaa jedhamteetti. Asirratti waanti hubatamuu qabu yakkicha kan saaxile himatamtuu ykn miidhamtuu osoo hin ta'iin hirmaanna fi hordoffii hawaasa naannoon akka ta'e galmicha irra hubachuun ni danda'ama. Galmeewan arman olii kana irraa akka hubannutti, gareen lamaanu (himatamtuu fi miidhamtuun) itti gaafatamummaa yakkaa kan qaban ta'uu fi yakkicha ittisuufis ta'e saaxiluuf hirmaannan uummataa hammam barbaachisaa akka ta'e dha.

¹⁰³Af gaaffi Itti-aantuu Koomandaraa Ad. Shitoo Likkaasaa, Abbaa Adeemsa Hojii Dhimma Dubartootaa, Daa'immanii fi Dargaggoota Koomishinii Poolisii Oromiyaa, waliin gaafa 05/05/2008 taasifame.

3.1.4. Miidhamtuun Safuu Hawaasaan Balaaleffatamuu

Baratamaan namni miidhaan yakkaa irra gahe miidhaa kana irraa akka dandamatuuf hawaasni yaadaa fi deeggarsa adda addaan ni jajjabeessa. Haa ta'uu malee, yakka ulfa baasuun walqabatee himatamaa/tu caalaa miidhamtuutu balaaleffatama. Sababni isaa, yeroo baay'ee ulfi hin barbaadamne gaa'ilaan alatti kan uumamu yommu ta'u, kun immoo duudhaa, aadaa, safuu, fi amantii hawaasa irraa maquu waan ta'eef, ulfii gaa'ilaan alaa akka sagaagalummaatti kan fudhatamuu fi erga ulfaa'amee booda ulficha ofirraa baasisuun immoo cubbuu lubbuu nama irratti raawwatamuu jechun akka hojii abaaramaatti fudhatama.¹⁰⁴ Gama biraan, yakka GBMQ dubartii ulfa irratti namoonni raawwatan miidhamtuu gargaaruuf yaaduun waan ta'eef, miidhamtuun namoota ishee gargaaran (garaa ulfaa sukuuman yookin urgufan) kana yakkaan yoo himatte dhiibbaan hawaasa biraa ishee irra gahuu bal'aa dha.¹⁰⁵ Kun immoo miidhamtuun miidhaa cimaan yoo irra gahes badii ishee irratti raawwatame kana saaxiluuf kaka'uumsa hin qabaattu.

3.2. RAKKOOLEE QAAMOLEE HAQAA BIRATTI MUL'ATAN¹⁰⁶

Rakkoon biraa yakkoota ulfa irratti raawwatamanin walqabatee jiru qaamolee haqaa bira hanqina jiru dha. Rakkoo kana keessaa inni tokkoffaan qorannoo yakkaa barbaachisu yeroon gaggeessuu dhabuun ragaan mana murtiif dhiyaatu laafaa ta'uu dha. Kana ilaachisee dhimma A/Alangaa fi Dr. Kinfee Gadluufaa (Na-2) haa ilaallu. Himatamtootni seera yakkaa kew. 543(3) fi 548(3) irra darbuun yakka ulfa baasuu seeraan ala raawwachuun miidhamtuu irra miidhaan du'aa waan dhaqqabeef yakka dagannoon nama ajjeesuu fi yakka ulfa baasuu cimaan, duraa duuban, himataman. Ragaa miidhaa du'aa mirkaneessuuf dhiyaate keessaa tokko ragaa qoranna reenfaa yeroo ta'u, ragaan barreeffamaa kun akka jedhutti *miidhamtuun kan duuteef*

¹⁰⁴Kalkidan Bekele, Cultural Practices That Affected the Status of Women in Benishangul Gumuz Mandura Woreda, (Unpublished MA thesis, AAU, 2007), F.23.

¹⁰⁵Afgaaffii Ad. Shittoo Likkaasaa, *Olliitti yaadannoo lak.*103 waliin gaggeeffame.

¹⁰⁶Mata dureen xiqqaan kun rakkolee qaamolee haqaa biratti mul'atan hunda kan mul'isu osoo hin ta'iin rakkolee qabatamaa tokko tokko ragaan deeggaraman kan agarsiisu dha. Akkasumas, rakkoleen kun akka amalaa fi raawwii isaanii irratti hundaa'uun bakkaa fi qaamolee haqaa hunda biratti mul'achuu ykn dhiisuu akka danda'an hubatamuu qaba.

sababa infeekshinii ulfa seeraan ala addaan kutuu irraa dhufeeni dha. Haa ta'u malee, ragaan kun kan argame erga miidhamtuun awwaalamtee turtee ji'a tokkoof torbee sadu boodadha. Ragaan ogeessaa dhimmicha irratti dhiyaatee ibse akka jedhutti, ‘*qorannaa reenfaa erga du'ee ji'a tokko booda godhamuu siritti beekuun akka hin danda'mnee fi ragaan kana booda kennamu 'tilmaama' irratti hunda'uun'* akka ta'e dha.

Manni Murtii Olaanaa Federaalaa Dhaddacha Boolees ragaa kana bu'uura godhachuun duuti miidhamtuu sababa infeekshinii ulfa baasuu seeraan ala uumame irraa dhufreen ta'uu ragaan dhiyaate sababaa fi bu'aa mirkaneessuuf amansiisaa waan hin taaneef, himannaaj jeecha dagannoo (seera yakkaa kew. 543(3)) jalaa bilisa jechuun himannaaj 2^{ffaa} seera yakkaa kew. 548 (3) jalatti balleessaa jedheera. Galmee kana irraa akka hubannutti qorannaan reenfaa kun ji'a tokko keessatti osoo ta'ee jiraatee murtiin kennamu faallaa ta'uu danda'a ture. Seenaa galmichaa irraa akka hubatamutti eeruun yakkichaa yeroon qaamolee haqaa biratti yoo dhiyaatullee, qorannaan reenfaa barbaachisaa ta'e kun erga eeruun dhiyaatee booda battala (yeruma) sana waan hin taasifamneef fudhatamummaa ragichaa gadi buusera. Kanaaf ‘*Haqni ture haqa hafe*’ ta'uu isaa galmee kana irraa hubanna.

Rakkoon biraa qaamolee haqaa biratti mul'atu himata yakkaa tumaa rogummaa qabuun banuu dhiisu dha. Sababa kanaan himatamtoonni adabbii isaaniif malu jalaa miliqu. Fakkenyaaf, himata A/Alangaa fi Biraanu Baqqalaafaa (N-2) armaan dura ilaalle irratti himatamtoonni seera yakkaa kew. 27(1) fi 548(1) irra darbuun yakka ulfa baasuu cimaan himatamuun, manni murtii falmii bitaaf mirgaa dhagahee tumaa kana jalatti balleessaa jedheera.¹⁰⁷ Haa ta'u malee, himatamaan Biraanuu Baqqalaafaa ogeessa fayyaa Narsii waan ta'eef, seera yakkaa kew. 548(3)'n himatamuu qaba ture. Akka keewwata xiqqaa kanaatti ogeessotni fayyaa yakka ulfa seeraan ala baasuu yoo raawwatan tumaa kanaan gaafatamuun akka qaban ifaan tumeera. Kunis ogeessotni fayyaa itti gaafatamummaa ogummaa qaban dagachuun yakkicha waan raawwataniif manni murtii adabbii hidhaa fi maallaqaa irratti dabalataan yeroo murtaa'eef yookiin yakkicha irra kan deddeebi'e yoo ta'e hanga dhumaatti hojii ogummaa isaanii irraa ni dhorka. Himatamaan kunis hamma ogeessa fayyaa ta'ee gocha kana raawwateetti tumaan kun raawwatiinsa irratti qaba ture. Garuu, himanni Abba Alangaa himatamaan

¹⁰⁷ *Olitti yaadannoo lak.78*

faayidaa argachuu malee ogeessa fayyaa ta'uu isaa hubannaa keessa hin galchine. Manni murtiis tumaa kana bu'uura godhachuun murtii laate.

Dabalataan, yakkoota ulfa baasuu ilaalchisee akka seera yakkaa kew. 547(3) tti miidhamtuun gocha ulfa baasuu seeraan ala akka irratti raawwatuuf fedhii kennite itti gaafatamummaa yakkaa akka qabdu tumeera. Haa ta'u malee, tumaan kun yeroo hojii irra oolu hin mul'atu. Fakkeenyaaaf, galmee A/Alangaa fi Warqina Taaddasaa fi A/Alangaa fi Biraanuu Baqqalaafaa (N-2) armaan dura xiinxalame irratti miidhamtootni gochichi akka irratti raawwatuuf hayyama kennuun, raawwii yakkichaaf gumaacha akka qaban mul'isa. Himatamtootni kun garuu, yakkaan hin himatamne. Sababni osoo hin himatamaniif hafanis galmee qoranna irraa waanti mul'isu hin jiru. Haa ta'u malee, kanaaf sababa ta'uu kan danda'u miidhamtootni kun yakkaan kan himatamaan yoo ta'e ragaa himatamtoota irratti kennan gufachiisuu waan danda'uuf ykn miidhamtuun gocha ishee amanuun waliigaltee qaama haqaa waliin taasisuun (plea bargain) ykn ragaa gahaan dhimma yakkaa mirkaneessu dhabuu fi k.k.f ta'uu danda'a. Yeroo kana ragaan ykn qorannaan kana mul'isu jiraachu qaba. Kun immoo, yoo xiqqaate iftoominaa fi itti gaafatamummaa galmee sanaa mirkaneessuuf gargaara.

Rakkoon biraa, adabbiin gahaan akkaata seeraan kennamuu dhabuu dha. Kunis adabbii kennamu irratti manni murtii aangoo isaa fayyadamuun akkaataa seeraan adabbii gadi buusuu akka danda'u yoo tumamee jiraates, adabbiin akkaataa seeraa kanaan kennuu dhabuun ni mul'ata. Fakkeenyaaaf, galmee A/Alangaa fi Abbabaa Shifarrraa armaan dura xiinxalame irratti himatamtuun seera yakkaa kew. 548(2) jalatti balleessaa jedhamuun adabbii hidhaa ji'a sadii qofatu itti murtaa'e. Akka tumaa kanaatti, *adabbiin kennamuu qabu hidhaa salphaa wagga tokkoo gadi hin taanee fi adabbii maallaqaati*. Kunis, ka'umsi adabbii hidhaa salphaa wagga tokko yeroo ta'u, sababoota amansiisaa fi ulaagaa seeraa guutaniin hidhaa salphaan hanga guyyaa 10 (kudhan) itti gadi bu'uu danda'a.¹⁰⁸ Manni murtichaa garuu, daangaa gadi aanaa hidhaa salphaa yoo hin dabarres sababa adabbii ka'umsaa wagga tokko irraa gadi buusee hin keenye. Adabbiin maallaqaa dabalataan akka tumaa kanaatti murtaa'u qabu tures sababa malee bira darbeera. Kun immoo kaayyoo adabbii yakkaa: yakkoota ittisuu fi barsiisuu mirkaneessuu irratti dhiibbaa uumuu danda'a.

¹⁰⁸Seera yakkaa, Olitti yaadannoo lak.24, kew. 106 fi 179(F).

Galmeewwan dafanii murtii argachuu dhabuun hanqina qaamolee haqaa biratti mul'atan keessa isa kan biraati. Dhaqqabummaan seeraa kan ittiin madaalamu keessaa tokko himanni dhiyaate si'aayinaa fi qulqullinaan yeroo dhama qabeessa ta'e keessatti murtii argachuu dha. Haalli walxaxaan osoo hin jiraatin galmee lafarra harkisuun dhaqqabummaa haqaa daangessuu dha. Ijoo kana irratti turtii dhimmoota itti aanan lamaa haa ilaallu. Dhimma 1^{ffaa} gal mee A/Alangaa fi himatamtoota Dr. Kinfee Gedluufaa (Na-2) kanaan dura xiinxalle irratti himanni mana murtiitti kan baname gaafa 22/01/2006 yeroo ta'u, murtiin kan kenneme gaafa 27/05/2007dha. Akkasumas, dhimma 2^{ffaa} A/Alangaa fi himatamaa Warqinaa Taaddasaa irratti himanni kan mana murtiitti saaqame gaafa 05/10/2005 yeroo ta'u, murtii kan argate immoo gaafa guyyaa 12/10/2006 dha. Dhimmoota lamaan armaan olii irraa kan hubannu, galmeewwan kun yeroo qoranna himannaa dura turee fi oliyyanno murtii booda jiru osoo hin dabalatiin wagga wagga tokkoo ol turan. Galmeewwan kana irratti himatamtooni beellama kudhanii (10) ol deddebi'aniiru. Galmeewwan beellamu fi lafarra harkisuun sababa amansisaa ykn amansiisaa hin taaneen yoo ta'e iyyuu sababoонни kun dheebuu miidhamaa fi hawaasni si'oominan haqa argachuuf qabu mirkaneessuu hin danda'ani. Kana malees, galmeen yeroo dhageetti uummataa keessa jiru yoo murtaa'e hawaasa barsiisa. Kun immoo kan mirkanaa'u galmeen si'oominan fi qulqullinaan qoratamee yoo furmaata argate dha. Yeroo kana amantaa uummatni sirna haqaa irratti qabu ni dabala. Kun yoo hin taane garuu, duub-deebiin isaas faallaa ta'uu danda'a.

4. YAADOTA GUDUUNFAA FI FURMAATAA

Yakkootni ulfa irratti raawwataman yeroo ammaa dhimma ijoo seeraa qofaa osoo hin ta'iin dhimmoota safuu hawaasaa, amantii, siyaasa, fayyaa, mirgoota dhala namaa, fi k.k.f'iin walqabatee ilaalamu dha. Waadaaleen mirgoota dhala namaa gara garaa sadarkaa idil-addunyaatti jiran mirga daa'ima ulfaa'ameef ifaan beekamtii hin kennine. Gama biraatiin immoo waadaaleen kunneen gocha ulfa baasuu ifatti akka mirgaatti hayyamanii hin jirani. Biyyootni gara garaas haala qabatamaa naannoo isaanii irratti hundaa'uun seeraa fi imaammata isaanii keessatti haala itti fakkaateen dhimma kanaaf uwissa kennaniiru. Seerri yakkaa RDFI yakkoota ulfa irratti raawwataman bakka tokkotti gurmeessuun yoo tumuu baatellee, yakkoota

seeraan ala ulfa baasuu, GBMQ'tiin miidhaa lubbuu fi qaama dubartii fi daa'ima ulfa irratti geessisuu fi tooftaawwan ulfa baasuu ifatti beeksisuun yakka akka ta'e labseera. Akkasumas, mirga saalaa fi walhormaata dubartootaa mirkaneessuu fi miidhaa ulfaan walqabatee dhufu hir'isuuf, ulfichi dirqisiisanii gudeeduun yookin fira irraa yoo uumame, fayyummaa haadhaa fi daa'ima ulfaa'ameef, rakkoo uumama ulfichaa fi dubartiin ulfaa hir'ina fayyaa qabaachuu ykn ijoollee ta'uu isheetiinii fi balaan tassaa humna olii yoo mudate ulficha addaan kutuun akka danda'amu hayyameera.

Haa ta'u malee, raawwii irratti rakkoleen garagaraa ni mul'atu. Barruun kunis dhimmoota yakkoota ulfaan walqabatee qaawwa seeraa fi raawwii jiru xiinxaleera. Qaawwaa seeraa jiran keessa inni tokko dubartiin ulfa hin barbaadamne baasuu barbaaddu fira irraan ulfaa'e yookin dirqisiifamee gudeedameen ulfaa'e waan jetteef qofa ulficha akka baastu hayyamuufiin kan walqabatu dha. Ragaa yookin qorannoon dabalataa haalli itti gaggeeffamu waan hin jirreef tumaa kana akkaata hin malleen fayyadamuun bal'inaan ni mul'ata. Inni kan biraa daa'imman umurii 18 gadii tajaajila maloota ittisa ulfa argachu irratti seerri kallattiin kaa'e hin jiru. GBMQ dubartii ulfa irratti raawwatu ilaachisees miidhamtuun gochichi fedha isheen ykn fedha ishee ala yoo irratti raawwate tumaan seera yakkaa ifaan kana bulchu hin jiru. Gama biraan hanqinni jiru, itti gaafatamummaa yakkaa guutummaan mirkaneessuu dhabuudha. Kunis, jaarmiyaalen namummaa seeraa qaban gocha yakka ulfa baasuu irratti yoo hirmaatan itti gaafatamummaan isaanii seera yakkaan hin uwvisamne. Yakkoota GBMQ'tiin dubartii ulfa irratti raawwatamaniif adabbiin tumames nama yakka dagannoon raawwate kan itti yaaduun badii uume caalaa kan adabsiisuu fi miidhaan du'aa sababa kanaan yoo qaqqabe akeekkachiisa qofaan bira darbamuu akka danda'amu tumee jira. Kunis kaayyoo seera yakka fi adabbii kan faallessu dha. Akkasumas, murtiin DhIMMF namni dubartii ulfa garaa irra rukuchuun ulfichi akka du'u godhe yakka yaalii ajjeechaa haadha irratti raawwatameen akka gaafatamu murteessee jiru miidhaa qaqqabe kallatti haadhaa qofaan kan madaalee fi dantaa daa'ima ulfaa'amee eeguuf tumaalee seera yakkaa fi waadaalee mirgoota namoomaa idil-addunyaay biyyi keenya fudhatte keessa jiran hubannoo keessa kan galche miti.

Yakkoota ulfa irratti raawwataman seeratti dhiyeessun murtii haqaa kennisiisuu irratti waantoti danqaa ta'an adda durummaan amala yakkichaa

irra kan maddanii fi qaamolee haqaa keessatti hanqinaalee mul'atanidha. Rakkoleen haala raawwii yakkichaan walqabatanii jiran; yakkicha waliigaltee fi wal amantaan faayidaa waliiniif raawwachuu, hirmaattotni yakkichaa, miidhamtuu fedhii kennite dabalatee itti gaafatamummaa yakkaa waan qabaniif walii dhoksuu fi miidhamtuun hawaasaan balaaleeffatamu fa'i. Kun immoo qorannoo yakkaa gochaa kana irratti adeemsifamu walxaxaa taasisuun himatamtooni carraa itti gaafatamummaa yakkaa jalaa miliquu bal'isa. Kana malees, hanqinootni qaamolee haqaa biratti mul'atan maddi isaanii tajaajilamtoota ykn dhimmamtoota ykn hojimaata qaama haqaa keessatti mudatu irraa dhufu. Rakkolee tajaajilamtoota biratti mul'atan keessaa: miidhamtooni battala miidhaan irra dhaqqabetti beeksisuu dhabuu fi dhimmicha hanga xumuraatti hordofuu dhiisuun sababa gara garaan addaan kutuu yeroo ta'u; qaawi dhimmamtoota biratti mul'atu immoo ogeessotnii fi dhaabbileen fayyaa tokko tokko yakkicha irratti hirmaachuu fi miidhamtoota seera qabeessaan ulfa adda kutuu barbaadaniif tajaajila si'ataa kennuu dhabuun miidhamtuu rakkoo dabalataaf saaxilu fi k.k.f dha. Hanqinoota hojimaata qaamolee haqaa keessa jiru ilaachisee qorannoo yakkaa yeroon gaggeessu dhabuun ragaan barbaachisu baduu, himata yakkaa keewwata rogummaa qabuun banuu fi murteessu dhabuu, miidhamtuun gocha ulfa baasuu seeraan ala akka ishee irratti raawwatuuf fedhii kennite itti gaafatamummaa yakkaa osoo qabduu himachuu dhiisuu, adabbii gahaan akkaataa seeraan kennamuu dhabuu fi galmee lafarra harkisuu fi kkf warra gurguddoo dha.

Rakkoo gama kanaan jiru maqsuuf hojiin bu'uraa hanqinaalee armaan olii irratti hojjechudha. Isaanis; dubartootni yakkoota seeraan ala ulfa baasuu fi GBMQ isaan irratti akka hin raawwanneef hubannoo gahaan uumuu, dhaqqabummaa tajaajila seeraa fi fayyaa caalaatti mirkaneessuun rakkoon kun akka hin uumamne dursanii ittisuun ni danda'ama. Rakkoon kun yoo uumame immoo, gama tokkoon himatamtoota irratti qorannoo yakkaa barbaachisaa si'oominaa fi qulqullinaan gaggeessuun hojii haqaa mirkaneessuu yeroo ta'u, gama biraan immoo miidhamtooni miidhaa kana irraa akka dandamataniif haala mijeessuu dha. Fakkeenyaaaf, qaama tajaajila fayyaa fi seeraa (Medico-legal service) bakka tokkotti kennuu danda'u dhaabuu ykn dhaabbilee fayyaa keessatti qaamolee haqaa waliin ta'uun haala itti hojjechuun danda'amu uumuu fi kkf irratti hojjechuun barbaachisaa dha.

Kana malees, mootummaan tumaalee seera yakkaa keessatti dabalataan haguugamuu qabanii¹⁰⁹ fi kanneen seera yakkaa keessatti tumamani raawwii irratti qaawwa agarsiisan yeroo yeroon haala qabatama jiru irratti hundaa'uun fooyyessuu qaba. Fakkeenyaaaf, yakka ulfa baasuu ilaachisee itti gaafatamummaan yakkaa jaarmiyaalee namummaa seeraa qabanii akka uwvisu gochuun barbaachisaa dha. Ulfii kan uumame sababa dirqisiisanii gudeeduu yookin quunnamtii saalaa fira waliin raawwatame irraa argame yeroo jedhamu sababni kun dhugaa ta'uu mirkaneessuuf ragaa yookin qorannaan dabalataa akkaataa itti taasifamuu danda'u irratti seerri jiru fooyya'uun qaba. Kanaan walqabatee iccitii fi si'oomina tajaajila kanaa mirkaneessuuf qorannoon gal mee battala miidhamtuun tajaajila kana argachuuf gaafattetti haala itti eegaluu danda'amurratti hojjetamuu qaba. Adabbiin yakkoota GBMQ tiin dubartii ulfaa fi ulficha irratti raawwataman irratti kennamus kaayyoo seera yakkaa fi qajeeltoowwan adabbiitiin akka walsimuu danda'u seerichi fooyya'uun qaba.

¹⁰⁹Tumaalee haaraa seera yakkaa keessatti dabaluu ilaachisee bu'ura Heera Mootummaa RDFI kew.55(5)tiin naannoleen dhimmoota seera yakkaa federaalan hin haguugamiin irratti aangoo seera yakkaa baasuu akka qaban waan tumeef, dhimmoota seerri yakkaa federaala hin uwvisiin irratti naannooleen, Oromiyaa dabalatee, seera naannoo isaaniitin haguuguu danda'u.

ETHIOPIAN WITNESS PROTECTION SYSTEM: COMPARATIVE ANALYSIS WITH UNHCHR AND GOOD PRACTICES OF WITNESS PROTECTION REPORT*

Wekgari Dulume**

ABSTRACT

Witnesses play an indispensable role in the justice system. As Bentham says “Witnesses are the eyes and the ears of justice.” They assist the court in deciding the guilt or otherwise of the accused person. They are crucial in a criminal proceeding; from reporting of crime to its trial. The evidence by a witness is crucial for the conviction of offenders. At the same time, individual facing criminal investigation or prosecution wants to obstruct the justice administration and relief themselves of liability; by intimidating witnesses and/or their families to jeopardize the criminal proceeding. Hence, it becomes very important to protect the witnesses to make sure they are not intimidated in order not to fear revealing the truth in court. This article discusses the concept of witness protection in Ethiopia and analyzes its protection law; emphasizing on provisions that are very essential for effective implementation by making comparisons with UNHCHR, Good Practices of Witness Protection, UNODC draft model law and some countries’ laws where witnesses are protected well. From the comparative analysis factors affecting implementation of the law like lack of necessary fund, organized staff, awareness about the law is concluded. Awareness creation, allocating necessary budget for the protection program, enacting regulation, and courtroom protection procedural guideline are measures needed to be taken for effective implementation of the law.

1. INTRODUCTION

A number of factors have led to increased attention for the role of witnesses in criminal proceedings at international level during the last 10-15 years. Perhaps the two most important factors have been the emergence of interest in the status of victims and witnesses in criminal proceedings and the significant rise in terrorist and organized crime.¹ The legal obligation of a

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¹FelföldiEnikö, “The Rising Importance on the Protection of Witnesses in the European Union”, Revue internationale de droit penal 2006/1 (Vol. 77), Pp. 313-322.

witness to testify in the criminal file is fair and equitable as long as there are no threats putting at risk the life, bodily integrity, freedom, asset or professional activity of the witness or any of his/her family members upon the fulfillment of an obligation.² The successful prosecution of crimes largely depends on securing reliable evidence, including the testimony of witnesses.³ When witnesses withdraw from proceedings due to intimidation or actual harm, securing convictions often becomes impossible. For this reason, the protection of witnesses remains a cornerstone of an effective criminal justice system. According to a review of Witness Protection Programs around the world, including the U.S., the protection of victims and witnesses is essential to acquire convictions and maintaining public confidence in the effectiveness of governments to protect their citizens.⁴ Consequently, it has become an important issue for both the academic and practical departments to protect the personal rights, property rights, action rights, etc. of the witness.⁵

Coming to Ethiopia, a proclamation to protect witness or whistleblower has come to force from 2010. It covers several measures in protecting witness and includes procedural laws for protecting witness or whistleblowers. This proclamation which serves as both substantive and procedural laws towards protecting witnesses or whistleblowers is widely blamed of some drawbacks that hinder its effective implementation. This article examines factors that affect its implementation by comparing it with good practices of witness protection, UNODC draft model law, and A/HRC/15/33 Report of the United Nations High Commissioner for Human Rights on the Right to the Truth; since countries are required to harmonize their protection laws in line with the spirit of the report for holistic protection.

²Some Considerations on the Necessity of Witness Protection on the Territory of Romania <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ejpons1&div=15&id=&page=<>Accessed on August 19, 2016>.

³Some Considerations on the Necessity of Witness Protection on the Territory of Romania <http://www.Issafrika.org/iss-today/witness-protection-the-missing-cornerstone-in-africas-criminal-justice-systems> <Accessed 25/7/2016>

⁴ Dr. YvonDandurand and Kirstin Farr N.P, *A Review of Selected Witness Protection Programs: Canada Law Enforcement and Policy Branch Public Safety Canada Research and National Coordination Organized Crime Division* (2010).

⁵Gong, W. L, *A Study on the Witness-Protection System in the Process of Investigating Crimes: In A Perspective of the Legalized Witness-Protection System in Taiwan*, Canadian Social Science (2015), Volume 1(3), Pp 110-115. Available at DOI: <http://dx.doi.org/10.3968/6224>.

For this, the article is organized into five sections. Following this introductory section, section two briefly traces the origin and how the idea of witness protection spread across the world. Historical background, legal basis of witness protection, and the right of the accused are all treated under this section. Section three briefly indicates Ethiopian witness protection legal framework before the enactment of separate proclamation. Section four comparatively analyses the Ethiopian witness protection law by pinpointing some important provisions. Finally, section five gives conclusions and recommendations.

2. WITNESS PROTECTION: GENERAL OVERVIEW

The term ‘witness protection’ denotes a range of actions applicable at any stage of criminal proceedings to safeguard witnesses and thereby ensure their effective cooperation in providing testimony.⁶ “Witness protection programme” which is referred to as witness protection is defined as formally established covert programme subject to strict admission criteria that provides for the relocation and change of identity of witnesses whose lives are threatened by a criminal group because of their cooperation with law enforcement authorities.⁷ Witness protection is the process in which witnesses who testify in criminal trials are provided with specific procedural and non-procedural protection measures aimed at effectively ensuring theirs and sometimes including their relatives' safety before, during and after their testimony.⁸ These given definitions have similar meaning stating measures necessary to protect witness so as to make sure that those cooperating with the justice system are not harmed because of their involvement to bring deviants to justice. In general, witness protection legal system which is

⁶JNjeri Witness protection: *The Missing Cornerstone in Africa’s Criminal Justice Systems*, (2014) www.issafrica.org/iss-today/witness-protection-the-missingcornerstone-in-africas-criminal-justice-systems.

⁷UNODC *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (2008), <http://www.unodc.org/documents/organizedcrime/Witness-protection-manual-Feb08.pdf>

⁸ European community has made working document on the feasibility of EU legislation in the area of protection of witnesses and collaborators with justice; and in this working document witness protection is defined. However, the community reached the conclusion the time does not seem ripe for immediate legislative action at EU level in witness protection which binds all EU members as most of the EU members got their respective witness protection law either separately or in their criminal procedure.

equated with witness protection is contained within multiple subjects as constitutional jurisprudence, science of procedural laws and sociology.⁹ On one way or another, witness protection has a great link with constitutional, procedural and sociological matter. For instance, when we talk about anonymity of witness, there is no way to jump over constitutional issue i.e. the right of accused. It also involves science of procedural law; (in and out of court protection). Best witness protection starts as early as an investigation start which is out of court and during testimony in the court room to ensure witnesses testify free of intimidation. It is also the matter of sociology as witness protection involves social cohesion of the protected person. Scholars like Cheng, Mao and Zhu defined the concept of witness protection.¹⁰

The term witness protection is defined nowhere in Ethiopian Witness and Whistleblowers Protection Proclamation No. 699/2010 (here in after, WP). The Proclamation starts with why it is necessary to have witness protection law and simply defined what witness or whistleblower means and who protected person is.¹¹ The meaning of witness protection could be inferred from the definition given to who witness and protected person is. Thus, inferred meaning of witness protection is, measures that maybe taken in order to protect witness or whistleblower and/or families from intimidation

⁹ Dr. YvonDandurand and Kirstin Farr N.P, *Supra* note 4.

¹⁰ According to Cheng, Witness protection legal system refers to “the protection system that judicial offices implement to ensure the safety of a witness and his or her relatives in a certain range. In his view, judicial office implements protection measure. For instance, if the protection measure agreed is to anonymous testimony judicial officer will implement the same in proceeding provided it does not hamper right of the defendant. In the view of Miao, state has duty to implement witness protection to safe guard the interest of witnesses and their relative. This stand shows for protection measures like relocation, which demands construction of institution within state’s financial power. And therefore, it is better to give this duty to a state for its implementation. Zhu focused on the physical protection measure referring state implementation by avoiding the hinder of witness testify by means of violence and threats, or the retaliation behaviors of assault and insult on testified witness and relatives regarding their safety and interests.

¹¹ Providing protection to witness or whistleblower is important in the prevention of crime as it plays significant role in bringing offender to justice by uncovering crimes that causes serious threat to the public. This creates conducive environment for witnesses and whistleblowers from being intimidated testifying commission of crime. Article 2 (1&2) define who witnesses or whistleblower and protected person is. Accordingly, witness means a person who has given or agreed to give information, or has acted or agreed to act as a witness in the investigation or trial of an offence and protected person means a witness, a whistleblower or a family member of a witness or whistleblower who has entered into a protection agreement with the Ministry.

or threats against their life, security or property; because of cooperation with law enforcement or judicial authorities in the maintenance of justice.¹²

2.1. HISTORICAL BACKGROUND

Witness protection first came to prominence in the United States of America to dismantle Mafia style criminal organizations.¹³ Before its formal establishment by act, witness protection system started to protect people testifying against a member of **Ku Klux Klan**.¹⁴ An established formal program of witness protection in the United States dates back to organized criminal control act of 1970. This protection system is run by the United States marshal service. Earlier in the 20th century, the Federal Bureau of Investigation also occasionally crafted new identities to protect witnesses.¹⁵ Currently, many states, including California, Connecticut, Illinois, New York and Texas, as well as Washington D.C, have their own witness protection programs for crimes not covered by the federal program.¹⁶

In the United States, before witness protection funds can be sought, law enforcement must conduct an assessment of the threat or potential for danger. This assessment includes an analysis of the extent the person or

¹² Meaning of witness protection could be inferred from reading of Witness Protection Proclamation No. 699/2010, Art 2(1, 2), Art 3(1b) and Art 4.

¹³United Nations New York, Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, 2008.

¹⁴ The Ku Klux Klan (KKK) is the name of three distinct past and present movements in the United States that have advocated extremist reactionary currents such as; white supremacy, white nationalism, anti-immigration. This Klan historically expressed through terrorism aimed at groups or individuals whom they opposed. All three movements have called for purification of American society and all are considered right organizations. In the Enforcement Act of 1871, the President is empowered to suspend the writ of habeas corpus to combat the Ku Klux Klan (KKK) and other white supremacy organizations. And someone who testifies in the court for what they committed will be protected.

¹⁵ Gary T. Rowe Jr., 64, Who Informed on Klan In Civil Rights Killing, Is Dead states “He was buried under the name of Thomas Neal Moore, the identity that Federal authority helped him to assume in 1965 after he testified against fellow Klansmen.

¹⁶ California Witness Protection Program –California Bureau of Investigation – California Dept. of Justice – Office of Attorney General Archived February 20, 2008, Glaberson, and William (2003-07-06). “LIE OR DIE – Aftermath of Murder; Justice, Safety and the System: A Witness is slain in Brooklyn”. The New York Times, Unpublished: July 09, 1999 (1999-07-06). “Metro News Briefs: Connecticut; Witness Protection Plan Is Created by New Law”. Nytimes.com <Retrieved on 2013-01-04>.

persons making the threats appear to have the resources, intent, and motivation to carry out the threats and how credible and serious the threats appear to be.¹⁷ When threats are deemed credible and witnesses request law enforcement assistance, witness protection funds can be used to provide assistance to witnesses who help law enforcement, keep witnesses safe and help ensure witnesses appear in court and provide testimony.¹⁸

Today, witness protection is viewed as a crucial tool in combating organized crime, and a large number of countries around the world have established such specialized programmes or have legislated for their creation. Examples from different jurisdictions among many; Australia, for instance has introduced witness protection in 1983. In 1983, a Royal Commission highlighted the need in Australia for better use to be made of informers in the fight against organized crime and, accordingly, for lower-level players to be given an incentive to inform on organizers. At that time, arrangements for witness protection were a matter for individual police forces and approaches differed, with some placing emphasis on 24-hour protection and others preferring relocation of witnesses under new identities.¹⁹ Witness protection programmes have been in place in Germany since the mid-1980s.²⁰ They were first used in Hamburg in connection with crimes related to motorcycle gangs. In the following years, they were systematically implemented by other German Lander (federating units) and the Federal Criminal Police Office.

In Africa, where witness intimidation and harm have led to case dismissals and acquittals, justice fails in these circumstances.²¹ This demands responding appropriately to complex transnational and international crimes require a multifaceted approach that includes a robust criminal justice response.²² Protection for witnesses is, therefore, central to effective rule-of-law-based responses and robust criminal justice systems. In most of the

¹⁷Naveena Varghese, National University of Advanced Legal Studies, *Witness Protection: Problems Faced and Need for a Protection Programme in India* (2015), P8.

¹⁸ Matthew O'Deane, 'Gang'. Gangs: Theory, Practice and Research.

¹⁹UNODC (2008), *Supra* note 7.

²⁰*Ibid.*

²¹ Jemima NjeriKariri and UyoSalifu, Witness Protection: Facilitating Justice for Complex Crimes (2016), P 25.

²²*Ibid.*

African countries, witness protection is absent, or weak, or inconsistent. This seriously hampers efforts to successfully prosecute serious crimes.

A case in point is Nigeria, where, in April 2014, a crucial prosecution witness declined to testify during the trial of alleged Boko Haram member Dr. Muhammad Nazeef Yunus. The judge's earlier decisions to disallow the use of masks to conceal the identity of witnesses in favor of using a cubicle and to maintain an open court is likely to have resulted in the witness's withdrawal.²³ The trial is still to be finalized.²⁴ Similarly, the withdrawal of certain key protected and unprotected witnesses in the International Criminal Court (ICC)²⁵ case against the Kenyan President, Uhuru Kenyatta, relating to crimes committed during post-election violence in 2007/08 in Kenya led to postponements and the eventual withdrawal of charges for lack of evidence.²⁶ Some of those who withdrew are said to have been insider witnesses who represented substantial evidence for the prosecution's case. Kenyatta's lawyers have denied involvement in any form of witness intimidation.²⁷

Witness intimidation, and/or harming witnesses is believed to have played a role in the 2004 disappearance of Peter Mulamba, a key witness in the

²³Osazuwa, Boko Haram: Witness refuses to testify in open court, April 2014,www.nigeria-news-world.com/2014/04/-witness-refuses-testify-open-court.html#.VKT9qXYrLIU.

²⁴Kogi Reports, Boko Haram: Absence of lead counsel stalls KSU lecturer's trial, 15 February 2016, www.kogireports.com/boko-haram-absence-of-lead-counsel-stallsksu-lecturers-trial. This information is true as of August 2016.

²⁵Similarly, in September 2015 the ICC opened a case against Jean-Pierre Bemba Gombo for subverting the course of justice for, among other things, corruptly influencing witnesses to give false testimony in connection with the ICC case against Bemba for war crimes and crimes against humanity in the Central African Republic.

²⁶International Criminal Court, The Prosecutor v. Uhuru Muigai Kenyatta, ICC-01/09-02/11, 13 March 2015, www.icc-cpi.int/en_menus/icc/situations%20and%20cases/ situations/situation%20icc%200109/related%20cases Icc01090211/ court%20records/ chambers /tc Vb/ Pages/1005.aspx.

²⁷N Kulish and M Simons, Setbacks rise in prosecuting the president of Kenya, 19 July 2013,www.nytimes.com/2013/07/20/world/africa/dwindling-witness-list-threatenscase-against-kenyan-president.html. On 5 April 2016 the ICC ruled that the Kenyan deputy president, William Samoeiarap Ruto, and his co-accused, a radio journalist, Joshua Arap Sang, had no case to answer for the charges of crimes against humanity allegedly committed during the 2008 post-election violence. The termination of the case was due to interference with witnesses, recanting of testimonies, disappearances or as a result of political meddling and intimidation. The accused denied the allegations, despite an ICC warrant for the arrest of a Kenyan journalist, Walter OsapiriBarasa, in 2013 on charges of being involved in a 'witness interference scheme' in the same case.

corruption case against former Malawian Finance Minister, Friday Jumbe. Reports pointing to Mulamba's death surfaced but were allegedly untrue.²⁸ Preventing witnesses of serious crimes or crimes involving high profile or influential people from being intimidated or harmed is, therefore, central to witness protection. Individuals are more likely to testify if they can be guaranteed of their safety and that of their families. Nevertheless, harming, threatening, interfering with or intimidating witnesses are not sufficiently addressed, either in legislation or protection services, in most African countries. It is worth noting that justice processes other than criminal justice ones, such as transitional justice measures, are also subject to these concerns if witnesses do not feel safe to testify.²⁹ Insufficient funding, shortage of skill, weak political will/interest is among obstacles preventing practices of witness protection in Africa.

Currently, Africa has recognized the significance of witness protection; addressing serious crimes. Specifically; the African Union Model National Law on Universal Jurisdiction over International Crimes stipulates both prosecutorial and court responsibility to ensure the protection of witnesses.³⁰ The Rules of Procedure of the African Commission on Human and Peoples' Rights also acknowledge the need to prevent reprisal against witnesses. Other forums, such as the Africa Prosecutors Association, the East African Association of Prosecutors, and the East African Magistrates and Judges Association, also emphasize the crucial function of witness protection in fighting complex crimes.³¹ Despite these agreements and bodies, however, there is only limited provision for witness protection at the national level in many African countries.³²

²⁸African Financial Markets, Mulamba holds Jumbe, Mvula cases, 28 July 2009, www.africanfinancialmarkets.com/front-news-detail.php?News_ID=54051.

²⁹ Chris Mahony, *the Justice Sector Afterthought: Witness Protection in Africa*, Tshwane: Institute for Security Studies (2010), www.issafrica.org/publications/books/the-justice-sector-afterthought-witness-protection-in-africa.

³⁰ Report of African Union Model National Law on Universal Jurisdiction over International Crimes on July 2012.

³¹Institute for Security Studies; *Recommendations of the 3rd East African Magistrates and Judges Association Training Workshop on Responding to Terrorism, International and Transnational Crimes*, [www.issafrica.org/uploads/Recommendations third-EAMJA training - workshop.pdf](http://www.issafrica.org/uploads/Recommendations%20third-EAMJA%20training%20workshop.pdf).

³² African Commission on Human and Peoples' Rights, *Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010*, www.achpr.org/instruments/rules-of-procedure-2010/.

International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone are prominent institutions established in Africa to prosecute responsible persons for genocide crime, serious violation of international humanitarian law committed in Rwanda³³ and Sierra Leone³⁴ respectively. These tribunals employed witness protection in the process of investigation and making them responsible for atrocities happened in the country.

Months after the genocide ended in Rwanda, the UN Security Council created an International Criminal Tribunal to prosecute those responsible.³⁵ ICTR has played a pioneering role in the establishment of a credible international criminal justice system, producing a substantial body of jurisprudence on genocide, crimes against humanity, war crimes, as well as forms of individual and superior responsibility.³⁶ In the statute of International Tribunal for Rwanda, there is a provision for witness protection.³⁷ Witness and victim protection has already emerged as a major problem for the tribunal. This is especially true for prosecution witnesses as the ongoing violence in Rwanda has already claimed many genocide survivors who were both potential victims and witnesses. The United Nations Human Rights Field Operation in Rwanda (HRFOR) has investigated these attacks and uncovered chilling accounts of targeted killings to eliminate potential witnesses who could testify about the 1994 genocide in either Rwandese courts or the ICTR.³⁸ To protect witnesses who intends to bring perpetrator of the crime to justice, a chamber may hold an in camera proceeding to determine whether measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a

³³Statute of the International Tribunal for Rwanda, Art 1. According to this provision, the tribunal has the power to prosecute persons responsible for serious violation of international humanitarian law committed in the territory of Rwanda and Rwandan citizens in the Rwandan territory or neighboring states between 1 January and December 31, 1994.

³⁴Statute of the Special Court for Sierra Leone, Art 1. As per this article, the special court has the power to prosecute persons who bears greatest responsibility for serious violation of international humanitarian law and Sierra Leone law committed in the territory of Sierra Leone since 30 November 1996.

³⁵A Lawyers' Committee Report on the ICTR and National Trials July 1997 Prosecuting Genocide in Rwanda available at <http://www.unwatch.com/rwanda.html>.

³⁶United Nations Mechanism for International Criminal Tribunals <http://unictr.unmict.org/en/tribunal><Accessed on 12/ 18/2016>.

³⁷Statute of the International Tribunal for Rwanda, *Supra* note 33, Article 21.

³⁸HRFOR, Status Report/33/1/24 January, 1997, "Killings and other attacks against genocide survivors and persons associated with them, January to December 1996".

witness, or of persons related to or associated with him by such means as: Giving of testimony through image or voice-altering devices or closed circuit television³⁹ and the like. Protecting witnesses who are said to be eyes of justice system ICTR managed to indict 93 individual sentencing 62 of them.⁴⁰

The Special Court for Sierra Leone was established by an agreement between the Government of Sierra Leone and the United Nations in January 2002. Even though there is no explicit call provision for witness protection in its statute unlike that of statute for ICTR statute, the Special Court operates a witness-protection program that seeks to meet victims' and witnesses' needs, including psychological assistance, before, during, and after trial. Most of the witnesses used at the Special Court are children and to limit their vulnerability psychosocial support and identification of potential witnesses have been investigated. Even in some cases although witnesses were both over 18, they continued to benefit from special measures for children. This included granting pseudonyms and other measures to protect their identity. Closed circuit television was used to avoid confrontation in the courtroom and risks of re-traumatizing (although some preferred to testify in the courtroom).⁴¹ Most witnesses before the Court benefit from protective measures like relocation, either to neighboring countries (usually under informal arrangements) or overseas.⁴² Since Sierra Leone is a small country in which information travels quickly through informal networks, and ex-combatants of all factions remain in the community and the difficulty to find countries willing to conclude formal arrangements to host witnesses and their relatives, particularly so-called 'insiders', protecting witness remain challenging. In building complex criminal prosecutions, the office of Prosecution has interviewed hundreds of witnesses and placed dozens of them in various forms of protected custody. Many witnesses have required relocation. The costs of witness protection are inevitably high where

³⁹ICTR Rules of Procedure and Evidence Rule, 75(B (i c)).

⁴⁰Supra note 36.

⁴¹The report of prosecutor general at Special Court of Sierra Leon on Nov. 10-12, 2005 shows witness protection on going and most of them benefited as children; Luc Cote, "Prosecuting Child Related Crimes at the Special Court for Sierra Leone: A Mid-Term Assessment," presented at UNICEF Conference on Transitional Justice and Children, Florence.

⁴²Ibid.

relocation measure is taken that demands adequate fund. Therefore, Special Court raised fund from different donor countries.⁴³ This shows how crucial funding is for witness protection.

One of the most innovative aspects of the Special Court for Sierra Leone is its Defense Office, which may be a promising new model for defense services in international tribunals. Defense Office represents a considerable improvement over approaches in other criminal courts, where the defense has typically suffered a lack of institutional support and the trials have been plagued with issues of inequality of arms.⁴⁴ Currently, international observers agree that in general terms, the trials before the Special Court are in compliance with fair trial standards, which is largely due to the Defense Office's role. Although there have been valid complaints regarding late disclosure of materials by the Prosecutor (including revealing the identity of a witness 21 days before he was called), insufficient funding for investigators and experts, and problems of performance by individual defense counsel which steps have been taken to address some of these concerns. Generally, the Special Court was seen as an improvement in terms of implementing a narrow focus on "those bearing the greatest responsibility", which in turn would allow for a more limited and efficient approach. When evaluated on these terms, the Special Court is succeeding in rendering a measure of justice for some of the worst atrocities in Sierra Leone, as a number of prominent former faction leaders are facing trial⁴⁵ and therefore their experience is interesting in witness protection thereby resulting preservation of justice system.

⁴³Countries like Japan, Netherlands, Sweden, United Kingdom, U.S.A, Canada, Denmark, Finland, Germany, Ireland donated to the Special Court in 2003-2005 to the total approximately 15, 742,138 in 2002/2003, 21, 801, 390 in 2003/2004 and 18, 620, 444 and other countries supplied by the Special Court. Other donors to the Court, for smaller amounts, include Australia, Belgium, Chile, Cyprus, Czech Republic, Greece, Israel, Italy, Lesotho, Liechtenstein, Malaysia, Mali, Mauritius, Mexico, Nigeria, Oman, Philippines, Senegal, Singapore, South Africa, and Spain.

⁴⁴*Supra* note 36.

⁴⁵Tom Perriello and Marieke Wierda, Senior Associate at the International Center for Transitional Justice (ICTJ), Hybrid Courts Case Study the Special Court for Sierra Leone under Scrutiny pdf (2006), P1.

2.2. LEGAL BASES OF WITNESS PROTECTION

The issue of witness protection has been gaining attention by countries, not only as to how to better protect witness under threat but also how to better assist them during their contact with the criminal justice system.⁴⁶ The reasons for the attention may be due to both increase and globalization of crime which has affected countries. Additionally, the issue is being raised due to the jurisprudence and practice of the international tribunals and courts.⁴⁷ Witness protection has legal bases internationally, regionally as well as nationally in many countries.

At international arena United Nations General Assembly passed resolution that covers witness protection on transnational organized crime.⁴⁸ United Nations Office on Drug and Crime has drafted model law on witness protection with the purpose of protecting witness and their relatives whose life or safety is at risk because of their involvement in justice system.⁴⁹ United Nations Convention against Corruption Recognized Witness Protection.⁵⁰ European Union has addressed the issue of witness protection

⁴⁶Karen Kramer, protection of witnesses and whistle-blowers: how to encourage people to come forward to provide testimony and important information.

⁴⁷ Witness protection got attention in international arena; such as the International Criminal Court, the Extraordinary Chambers in the Courts of Cambodia (ECCC), the International Criminal Tribunal for Rwanda (ICTR) and the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) and the Special Tribunal for Lebanon (STL).

⁴⁸ United Nations Convention against Transnational Organized Crime, Resolution 55/25 of November 2000 Article 24. As per this provision, all parties to the convention are encouraged to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences... [Including], as appropriate; their relatives and other persons close to them.” Specifically, it calls for the establishment of procedures “for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.

⁴⁹ UNODC model law on witness protection on its very article one states the purpose of the law is to provide the conditions and procedures for ensuring special protection on behalf of the state to witnesses in possession of important information, who are facing potential risk or intimidation arising from their cooperation in the judicial process.

⁵⁰ In order to have effective legal instrument against corruption, UN General Assembly adopted resolution 58/4 after series of negotiation on October 31, 2003 which became functional as of December 2005. On its Art 32, 33, 37 the States parties are called upon to take appropriate measures for the protection of witnesses against retaliation or intimidation for their testimony. Under the Convention, protection should be granted not just to witness collaborators but also to victims who become witnesses and it can extend to family members or persons close to the witness.

through principally two resolutions.⁵¹ Nowadays large number of countries all over the world have witness protection law.⁵² After all, witness protection has legal bases and is regulated by specific legislation in some countries and in some other the case isn't true in countries like Austria, Denmark, Finland, France, Greece, Ireland, Luxemburg, the Netherlands and Spain.⁵³ In the UK, witness protection evolved out of police practice, but was given statutory footing in 2005.

2.3. WITNESS PROTECTION AND THE RIGHT OF THE ACCUSED

Witness protection has been a key concern of the international criminal system since the establishment of international criminal tribunals in the decade before the ICC.⁵⁴ The ICTY and ICTR have incorporated in their statutes an explicit call for the protection of victims and witnesses, alongside respect for the rights of the accused. Therefore, protection should be made without jeopardizing the right of defender.⁵⁵ In the UNCAC, protection measures are mandatory for crimes covered by the convention, but only when appropriate, necessary, without prejudice to the rights of the defendant and within the means of the state.⁵⁶ As a result, the obligation to provide effective protection is limited to specific cases or specified conditions and officials have some discretion in assessing the level of threat and decide on protective measures accordingly.

⁵¹Resolution of the council of 23 of November of 1995, http://europa.eu/smartapi/cgi/sga_doc?smartpi!prod!CELEXnumdoc&lg=EN&numdoc=31995Y1207 (04) &model=guichett. It call on member states to guarantee proper protection of witness against all form of direct or in direct threats, pressure or intimidation, as well as during and after trials.

⁵²Naveena Varghese, *Supra* note 17, P1.

⁵³In some countries, including Austria, Slovakia and the UK, witness protection is associated with the police, in others (e.g. the Netherlands) the programmes operate within the executive or the judiciary. In Italy and Belgium WPPs are implemented by multidisciplinary bodies: respectively the Central Commission, composed of the Under-Secretary of State at the Ministry of the Interior, two judges or prosecutors and five experts in organized crime, and the Witness Protection Commission, composed of prosecutors, high-level police officers and representatives of the Ministries of Justice and the Interior.

⁵⁴*Witness Anonymity at the International Criminal Court: Due Process for Defendants, Witnesses or Both?* The Denning Law Journal (2011), Vol. 23, Pp 29-46.

⁵⁵UNODC, *Supra* note 7.

⁵⁶*Ibid.*

Protection measures also need to be within the means (resources and capacity) of the state.⁵⁷ Thus, constitutional values and rights of accused and any third party should not be affected under the guise of witness protection. This constitutional issue could be raised since one among witness protection measure could be witness anonymity which in turn affects the right of cross examination. There is great public interest in avoiding the protection of witnesses who might pose a threat or whose protection might alienate the rights of others to whom witnesses and the state owe a duty of care. These interests must be weighed against the public good of fighting forms of organized crime often resistant to rudimentary law enforcement procedures.⁵⁸ There are a number of situations where the right of the accused is compromised with witness protection at international standards resulting in the priority of public security at the risk of accused right of defense.

For instance, in *Prosecutor vs. Tadic* before the International Criminal Tribunal for the former Yugoslavia (ICTY), the court held that the identities of witnesses could be withheld indefinitely from the accused and the counsel.⁵⁹ This was an important and severely mitigating precedent for the rights of the accused. Justice Stephen's dissenting opinion, however, found the provision of anonymity would deny the accused's fair trial and may lead to convictions on the basis of tainted evidence. Authorities on international law, such as Christine Chinkin, err on the side of the majority in that 'other interests' need to balance an accused right to know and confront prosecution witnesses.⁶⁰ Clearly, these interests involve the safety of witnesses and victims. International instruments which instruct the accused right to a fair trial, such as article 14 of the International Covenant on Civil and Political Rights (ICCPR), should not, in practice or perception, appear to be

⁵⁷Ibid.

⁵⁸N kulish and M Simons, *Supra* note 27.

⁵⁹International Criminal Tribunal for the former Yugoslavia, *Prosecutor vs. Dusko Tadic*, Decision on the prosecutor's motion requesting protective measures for victims and witnesses, Trial Chamber, UN Doc IT-94-1-T, 10 August 1995. The court further analyzed the "balancing exercise" now so familiar in this and other fields of the law must be undertaken. On the one hand, there is the public interest in the preservation of anonymity . . . On the other hand, there is the public interest that . . . the defendant should be able to elicit (directly or indirectly) and to establish facts and matters, including those going to credit, as may assist in securing a favorable outcome to the proceedings. There is also the public interest in the conduct by the courts of their proceedings in public.

⁶⁰ Christine Chinkin *Due Process and Witness Anonymity*, The American Journal of International Law, Vol. 91, Pp 75–79.

compromised. To do so, paint some protective measures as impeding a fair and equitable justice process at best, and, at worst, severely undermines the legitimacy of justice institutions and processes. Chinkin cites the novel dimension of protecting witnesses where large-scale violent conflict has taken place. In such circumstances she finds that a climate of fear and intimidation exists and that witnesses are spread across borders, thereby limiting protective capacity to engage normative measures.⁶¹

Under article 14 of the ICCPR, a fair trial includes the right to 'examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him'.⁶² Chinkin qualifies the clear abrogation of such rights through the provision of indefinite anonymity by citing article 14 as non-derogable, not absolute and, therefore, requiring qualification in a situation of public emergency. The anonymity of witness jurisprudence requires full disclosure to the defense, but not necessarily the public, prior to trial. This allows adequate defense preparation and witness cross-examination. In circumstances of great threat, pre-trial physical protection, particularly surrounding disclosure and testimony, is critical to achieving observation of the accused right to fair trial, as well as the physical and psychological wellbeing of witnesses.⁶³

According to Article 20(1) of the FDRE Constitution, accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. This right may be limited and the court may hear cases in closed session with the view of protecting the right of privacy of parties concerned, public morals and national security. Moreover, as per Article 20(4) of the Constitution, accused have the right to full access to the evidence presented against him and examine them. This right, however, may be derogated in case the attendance of witness may expose them to the threat to the life or property of the witness or relative merely because of aiding justice organs. When the issue of witness protection arises, it is not only protecting the witnesses or their relatives but also about perseveration of

⁶¹*Id.* P76.

⁶²United Nations General Assembly, Article 14(3) (3) of the International Covenant on Civil and Political Rights, Resolution 2200A (XXI), New York, 16 December 1966, <http://www2.ohchr.org/english/law/ccpr.htm>.

⁶³Chinstine, *Supra* note 60, P77.

justice system and general public interest. This could be inferred from reading Art 3 (1(a & b)) of WP. Therefore, it is possible to trade the right of accused; mainly examinations of witness when it is believed a threat of serious danger exist to the life, physical security, freedom or property of the witnesses or their relatives.

Protection measures applicable to witness are listed under Article 4 of Ethiopian WP law. Among protection measures, producing evidence by electronic devices or any other method, hearing testimony behind screen or by disguised identity, non-disclosure of the identity of a witness until the trial process begins and witness testifies, hearing testimony in camera poses danger to the right of accused. Producing evidence electronically affects the right of the accused the most since there is no way to cross examine witness who testified against him/her. In order to protect the right of the accused to some extent, unlike that of ICTY where most of evidences produced electronically, ICTR and Special Court of Sierra Leone used direct witness testimony under protection. Like experiences of ICTR and Special Court of Sierra Leone shows, there could be possibility of limiting the right of accused for witness protection. Thus, issue of witness protection and right of the accused could be solved in the same way in our case, too; as far as constitutional right is concerned.

3. WITNESS PROTECTION SYSTEM IN ETHIOPIA

The idea of witness protection came to being by Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 235/2001. The Proclamation put duty on the Commission to provide physical and job security protection to witnesses and whistle blowers.⁶⁴ This proclamation simply made protecting witness and whistleblower duty of Federal Ethics and Anti-corruption Commission without listing procedures for protection and kinds of protection measures that may be taken. Because of that, protection under this proclamation could be judged incomprehensive to guarantee the protection of witness and whistleblower. Proclamation No. 433/2005, which revised Federal Ethics and Anti-corruption Commission Establishment Proclamation No. 235/2005; repeated the same issue adding

⁶⁴ Federal Ethics and Anti-Corruption Commission Proclamation No.235/2001, Art. 7(16).

the necessity of cooperation with other bodies. It made reference to law; in order to provide the protection. The problem here is non-existence of the law that provides protection at the time.

Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 236/2001 has provision that protect whistleblower. According to this proclamation, the objective of whistleblower protection is to encourage disclosure of corruption offences. Although, witness protection is equally important as whistleblower, the proclamation lacks witness protection provision. The amendment proclamation of 236/2001 i.e. Proclamation No. 434/2005 added witness protection and made reprisal against them illegal.⁶⁵ Under Article 38 (2) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005, public prosecutor may apply to court keep identity of witness in secret during preparatory hearing and if court authorizes, the identity of witness will be kept secret. This could serve as a means of witness protection; however, nothing is said as to how long the witness identity could be kept undisclosed or whether it could extend to normal hearing. Therefore, protection under this proclamation could be judged as not comprehensive enough to protect witnesses.

With the introduction of Ethiopian Criminal Justice Policy in 2003 E.C. (Herein after (CJP)), witness protection got a vast coverage. According to the policy, most of the time witnesses refuse to testify even though they know commission of a crime and who committed it; due to fear of reprisal or threat of intimidation. Thus, protecting witness is the must work to be carried out. Under 3.19 of CJP, most of the time criminal justice fails due to lack of witness. This happens in most cases as witness refrain from testifying because of threat from offenders. So, if they are protected obviously justice would be served. In some cases the victims even fail to bring their cases to court as they face intimidation and threat from offenders or their relatives. To make sure victims bring their cases to justice overcoming fear of threat, the policy extended protection to victims of a crime.⁶⁶ In order to have effective criminal prosecution especially for heinous crimes, there is a need to protect witnesses who testify against such criminals. Taking protection

⁶⁵Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No.434/2005, Art.53 (1).

⁶⁶አብዛኛውን ገዢ የወንጀል ዓይነቶች ቁልፍ የስነዱ ሆኖ የሚቀርቡት ሪፖርቶች የወንጀል ተነሱዎች በመሆኑዎች የወንጀል ስምምነት የሚረዳበት ጥበቃ ለእነዚህ በተመሳሳይ መልካት እንደሚያስፈልግ ይታወቁ::

measure starts at the time of crime investigation; continues during proceeding and may extend after conviction.⁶⁷ The policy has given direction for its implementation, by stipulating that provisions protecting witness shall be added in laws like criminal procedure code and other related one. Nowadays, Ethiopia has law that governs witness and whistleblower protection.

4. ETHIOPIAN WITNESS AND WHISTLEBLOWER PROTECTION PROCLAMATION

As stated in its preamble, the purpose of this enactment was to create conducive situation in order to ensure safety and security of the public by having criminal offenders brought to justice and sustain the right penalty.⁶⁸ This is needed for prevention of crime by disclosing crimes that may cause serious threat to the public; and to protect witnesses and whistleblowers of criminal offense from direct or indirect danger and attack they may face as a consequence thereof and thereby to ensure their safety.⁶⁹

The proclamation is applicable to witness who wishes to give testimony or whistleblower who gives information on suspect punishable with ten or more years rigorous imprisonment or with death. The proclamation put two grounds under which witness is protected. One is where offence may not be revealed without the testimony of the witness or whistleblower's information. The other is existence of serious danger to the life, physical security, freedom or property of the witness or whistleblower or their respective family.⁷⁰ The proclamation serves as both substantive and

⁶⁷በወንጀል ፍትሕ ሆርቃቄ ወሰኑ በሚፈልጊዣ ከባድና አይነቶ የሆኑ የወንጀል ጥያቄ ላይ ማዘኝዋና ወጪታማ ካለ ማቅረብ እንዲችል ለተቻቻ የተጠለው የሚከርቡን ለመርካተኝ ሆኖታቸውን ለማሳወገድ የሚያስችል ሆርቃቄ መዘርጋት ተገበረ ይሁዳል፡፡ በመሆኑም፣ ለወንጀል የሚከርቡ ምንደረግ ተበቃን አስመልክቶ በዘርፅ የሚወጠው አንቀጽ የሚከተላለትን ፍል ጥያቄ በዋናነት መያዝታውን ማረጋገጥ ያስፈልጋል፡፡ The policy listed bundles of issues like at which time the protection will be made; which in this case shall start at prosecution and may extend to after conviction of criminal. The policy also stated protection may be physical and property protection; concealing identity; hearing the testimony of the witness through video are included in the policy, which make it good as of legal framework save its implementation.

⁶⁸Ethiopian Witness and Whistleblowers Protection of Criminal Offences, Proclamation No. 699/2010, Preamble.

⁶⁹*Ibid.*

⁷⁰The proclamation made criterion basing on which witness or whistleblower or their respective family are going to get protection. As per this proclamation, the base of crimes

procedural law. In the 1st and 2nd part, issues like who could be protected? What kinds of protection measure may be taken? Criterions used to determine necessary protection measures are broadly dealt. In this regard, the proclamation has established legal framework even though its protection is not quite broad.

In Taiwan which has model law that protects witness; protection is accorded to offences punishable with not less than three years.⁷¹ In our case protection is applicable to offences that entail ten or more years imprisonment. In our criminal law, crimes entailing ten and more years punishment are limited. Moreover, in UNCAC witness protection is envisaged which Ethiopia has also ratified. However, under our corruption law ten or more years imprisonment is very rare which results in non-applicability of witness protection scheme in some cases of corruption offences despite protection envisaged in the UNCAC. From the very nature of corruption offences which are committed most of the time by high officials; witnesses are susceptible to intimidation as the criminals could reach them easily. An experience of others countries shows witness protection law makes exception as to the applicability of the law to corruption offences but, such exception isn't made in WP. For instance, in Taiwan protection is accorded for witness testifying against corruption offence even where the crime entail less punishment envisaged in witness protection law.⁷² This shows some limitation of the proclamation even if this does not affect its implementation. Because, it is possible to apply protection measures envisaged in the WP proclamation with all its limitations. Witness may face some problems when protected. For instance, if protection measure taken is relocation, the witness may be isolated from families, social life, and there is possibility of adapting culture of the society where s/he relocated for protection purpose.

Protection measures that could be applied to protected person or families are listed in the WP. The majors are: physical protection of person and property, relocation, concealing identity and change of identity. There are more

that may result in the protection of witness is pretty broad that international standard is met by the Ethiopian witness protection proclamation.

⁷¹Gong, W. L., *Supra* note 5.

⁷²*Ibid.*

measures that could be taken in protecting a person.⁷³ According to A/HRC/15/33 report which helps developing comprehensive witness protection; programmes and measures for protecting witness and victims should start at early stage. At early stage, it should be emphasized witness and victim protection cannot be viewed in isolation, but must rather be considered a crucial part of a comprehensive system designed to effectively investigate and prosecute perpetrators of human rights violations. Protection measures will be ineffective if other parts of the criminal justice system do not function well. Every step of the process, from investigation through to conviction and punishment, should be analyzed to identify ways in which witnesses are placed at risk, and potential reforms designed to limit those risks.⁷⁴ According to the report, countries while developing their witness protection law have to add provisions that state protection shall start at early stage. For instance, Bosnia and Herzegovina witness protection law under Article 6 states during investigation, prosecution and after the indictment, court has to keep witness's personal details undisclosed.⁷⁵ From the reading of article 3 and 6 of WP, we can find the non-procedural protection; i.e. protection at the early stage as envisaged in A/HCR/15/33 report.

Countries are required to introduce procedural guideline for court room protection measure in order to protect witness from intimidation in the courtroom. Procedural guideline deals with how witness testifies in the courtroom without being exposed to threat. Among measures that may be taken in courtroom procedural guideline; testifying under a pseudonym, behind screen, removals of accused from court room at the time of testimony. Countries, like Bulgaria, Canada, Croatia, El Salvador etc. have introduced special method of courtroom procedure⁷⁶ as it enhances witness protection. This is missing in our WP and no guideline is drafted by the organ entrusted to work on the matter. When there is no courtroom protection procedural guideline, there is possibility of potential exposure of witness and the programme to risk. Not only is the witness likely to be

⁷³Protection measures listed under Art. 4 of proclamation no. 699/2010 in all or partially applicable to protected person whichever is necessary to guarantee protection of the witness of whistleblower or their families.

⁷⁴A/HRC/15/33/ Report of United Nation High Commissioner for Human Rights on the Right to the Truth.

⁷⁵ “Official Gazette” of Bosnia and Herzegovina, 3/03, 21/03, 61/04, 55/05, Art. 6.

⁷⁶UNODC, *Supra* note 7.

vulnerable to intimidation and threats while physically present in the courtroom to give testimony, but sensitive information regarding the programme is liable to be exposed and tested by the parties (such as the identity and whereabouts of the witness or the security measures implemented). It is critical that any such risks be identified and addressed at the earliest opportunity through timely and appropriate consultation and liaison with the prosecution. Additional procedural protection measures may then be requested from the court for the duration of the testimony, such as the use of pseudonyms in witness statements or suppression of the identity of the witness if permissible under applicable law and if that does not so undermine the weight of the witness's testimony as to be counterproductive.

To determine appropriate protection measure, the nature of imminent danger the witness or whistleblower is exposed to, cost to be incurred while protecting person, health and living condition of protected person and etc. has to be investigated. Taking these and many more matters into consideration, appropriate protection measures like change of identity, relocation, physical protection, or other protection measures listed under article 4 of the WP will be applied. The question left unanswered here is who investigate the existence of threat? This aims at protecting who really deserves protection. United Nations Higher Commissioner demands the establishment of a specific body responsible to investigate assessment of threat. This body should be from multi-disciplinary team with strong investigation capacity. In WP the investigation and assessment of the threat is not properly dealt with; the proclamation simply says when application for protection is made, the minister shall solicit opinion of investigator or public prosecutor. Since the proclamation did not make any special investigator specifically on the matter; investigator envisaged here is no more than police who investigated commission of crime which application for protection measure is made. This shows there is no established system to investigate the existence of threat. Moreover, under the Proclamation No. 916/2015 Ministry of Justice is entrusted to ensure that whistleblowers and witnesses of criminal offences are accorded protection in accordance with the law. However, there is no organized staff responsible to work on witness protection and simply the prosecutors apply for protection if the witnesses

say they fear to testify.⁷⁷ The Ministry did not make witness protection one division or section which shows very little focus given by the ministry. This may lead to bias for those in need of protection. Unless it is investigated deeply, under the pretext of witness protection, some may benefit unduly. This hampers the successful application of the proclamation.

Fund is key issue in operation of witness protection. The cost associated with setting up and operating a witness protection programme may be deterrent to countries. Budgets differ from state to state,⁷⁸ depending on living costs, population size, crimes rates and other factors, and cost variations also result from several factors, including law enforcement activities, individual circumstances of the witness to be relocated, needs and safety of their family and close friends. However, cost must be weighed against benefits, which include combating impunity, strengthening rule of law and democracy, shorter investigation, more efficient prosecution, thus ensuring justice and integrity of the justice system. The UNODC on the draft model law urges state to allocate budget for witness protection.⁷⁹ This is crucial for effective application of witness protection program. The complexity of the operations involved in each case depends largely on whether witnesses need to be relocated alone or together with persons close to them. The concept of sustainability must be recognized. Funds need to be adequate to sustain the new identity and relocation of witnesses into the future coming.⁸⁰

In the good practices of witness protection which countries are required to follow to take a holistic approach to witness protection, funding is key point for effective witness protection. They identify a series of measures that may be adopted to safeguard from intimidation and threats against their lives the physical integrity of people who give testimony in criminal proceedings. That is why every country follows the good practice in developing one's own witness protection. The reason behind comparing Ethiopian witness

⁷⁷ Interview with Demoz Aman, Public Prosecutor at Ministry of Justice on December 4, 2009 E.C./Dec.14, 2016.

⁷⁸For example, South Africa's National Treasury allocated a fixed annual budget of 55 million rand (approx. US\$7.5 million) for the period 2006–2007 to the Witness Protection Programme. Source: UNODC, Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crimes, p. 52;See also South Africa, National Prosecuting Authority, Witness Protection Programme Unit, Annual Report 2004–2005 (Pretoria).

⁷⁹ The State shall include in the national budget the necessary allocations for funding and operating the Program.

⁸⁰Supra note 36.

protection with good practice and UNHRC report comes from the above scenario.

In countries where witness protection is functional and considered effective, there is budgetary procedures and the financial cost of witness protection. For example, in Australia, the Australian Federal Police submits budget bids to the Government each year. Some of the funds are tied and can only be used for defined activities. The budget is divided among broad functions. For witness protection, staff salary costs per financial year are about 4.5 per cent of the “Protection” staffing budget, and operating costs are about 9 percent of the “Protection” operating budget. The programme has about 20–30 active cases per year. In accordance with the Australian Federal Police report for the period 2005–2006 on witness protection to the Parliament, the programmes annual cost was 1 million Australian dollars (approximately 775,000 United States dollars).⁸¹ In United Kingdom, overall budget details are not available for the United Kingdom. However, in the period 2006–2007, the budget for the witness protection programme of the Merseyside police force, which covers the Liverpool area (population: 1.5 million), was 550,000 British pounds (approximately US\$ 1,080,000).⁸² In South Africa, the programme is registered as a sub-programme in the Department of Justice and Constitutional Development and was allocated a fixed annual budget of 55 million rand (approximately US\$ 7.5 million) for the period 2006–2007 by the National Treasury. About 80 per cent of the programme’s budget goes to operational expenses. On average, there are 250 witnesses and 300 related persons in the programme. In the period 2001–2002, witnesses were under the programme for about five years. In 2006, the cycle was reduced to 2.5 years through the fast tracking of witness protection cases in the criminal justice system.⁸³ Generally, countries where funding the protection program is available, it seems effective in protecting witness as well as punishing criminals.

⁸¹Australia, Australian Federal Police, *Witness Protection: Annual Report 2005–06* (Canberra, Team Leader Publications, 2006), P9.

⁸²Ethiopian Witness and Whistleblowers Protection of Criminal Offences Proclamation No.699/2010, the Preamble.

⁸³South Africa, National Prosecuting Authority, Witness Protection Program Unit: Annual Report 2004–2005 (Pretoria, 2006).

In some states government enact statutory provisions allowing the program to be funded through the use of proceeds from property seized or confiscated for having been acquired through activity involving drug trafficking or organized crime. Under Republic Act No. 6981, ten million pesos is authorized to form any fund to national treasury for the purpose of witness protection.⁸⁴ Even where the activity is entrusted to certain institution, it is better to have fund reserved for protection program provided that institution have different activities. This is attention paid to questions of protection, taking due account of the lack of means and resources.⁸⁵

In Ethiopian witness protection law, there is no provision about budget for protection business. Absence of provision regarding budget affects its implementation as measures that may be taken to protect witness demands money. Ministry of Justice, which the protection law gave duty to give protection did not organized staffs necessary for the activity and did not allocated budget for this activity.⁸⁶ When necessary budget is not allocated for this business obviously it is difficult to withdraw money from any title when needed. This indirectly affects the implementation of the law. Attorney general, who replaced ministry of justice, is researching how to effectively organize witness protection program. Giving hope witness protection will be practiced well under Attorney General; the attorney general shall consider allocating necessary fund for witness protection program.

Qualified staffing is a crucial element for the success of any protection programme. Witness protection officers need to possess a particular set of qualities and skills. They are required to be vigilant protectors, interrogators and undercover agents, as well as innovative thinkers, social workers, negotiators and even counselors. One of the first tasks when establishing a programme is to decide where to find people with such qualifications.⁸⁷ The

⁸⁴Section 20 of an act providing for a witness protection security and benefit program and for other purposes. Accordingly, (p10,000,000) is here by authorized to be appropriate out of any funds in the national treasure not otherwise appropriated to carry into effect the purpose of this act.

⁸⁵Isabelle Fery, *Executive Summary of A study on the Protection of Victims and Witnesses in the Democratic Republic of the Congo* (2012), P19.

⁸⁶Australia, *Supra* note 81.

⁸⁷According to good practices training is important in maintaining witness protection. Ongoing skills maintenance and development is the key to the effectiveness of a witness protection programme. Protection officers perform a number of functions that require aptitudes that are different and perhaps broader than normal police functions. As a result,

qualification needed could be gained through training which is envisaged in United Nations Higher Commissioner report.⁸⁸ The importance and necessity of training for public prosecutors was envisaged to facilitate better application of witness protection.⁸⁹ As far as the author's information is concerned, capacity building on this issue is not in action so far. In Oromia, the largest state of the country, no training is given to justice sector on the matter. I don't think even module is prepared let alone delivering training both at Federal Justice System and Research Institute and Oromia Justice Sectors Professionals Training and Legal Research Institute.

5. CONCLUSIONS AND RECOMMENDATIONS

Based on overall analysis, the following conclusions and recommendations can be drawn.

5.1. CONCLUSIONS

Even though the idea of witness protection exists in Federal Ethics and Anti-Corruption Commission Establishment Proclamation and proclamation that revised the same; as well as Anti-Corruption Special Rule and Evidence proclamation as a measure that could be used for protection, it wasn't comprehensive enough to protect witness and whistleblower. After enactment of CJP, wide coverage is given to witness protection. The CJP envisaged the enactment of necessary manual for its proper application and currently there is a separate law for witness protection.

training must be multidisciplinary in nature and cover diverse fields. Coordinated and standardized training in national witness protection programmes could increase the confidence of the authorities in the capacity of other countries to protect witnesses and lead to the strengthening of international cooperation on witness relocation.

⁸⁸ Although the witness protection mandate may be unified at the national level in one institution, many actors will continue to be involved in witness protection. Judges and prosecutors may not have adequate knowledge on how to handle vulnerable witnesses, or assistants (of judges and prosecutors) taking witnesses' initial statements may also lack basic training. The witness protection agency should create a strong training and capacity-building unit to keep its staff abreast of developments in the field, but also to train those persons who come into contact with vulnerable witnesses. Such training activities could gradually be integrated into the curricula of national judicial training institutions and involve, among others, Bar Associations.

⁸⁹የኢትዮጵያ ፌዴራል የጥናት የወንጀል ቅጽ ፳፻፲፭/፲፻፰፭፡ 3.19(ඩ).

WP has the details of who could be protected? How protection measure may be taken, procedure of its application and as to who and to whom application be made; organ responsible to take protection measures, rights and duties imposed on parties is dealt with in detail. With enactment of proclamation no. 943/2016 Ministry of Justice lost its legal personality and duty of witness protection is transferred to the Attorney General. At the time this article is on process, the organ entrusted for witness protection did not organized multidisciplinary staff necessary for protection program.

WP serves as substantive and procedural law with regard to witness and whistleblower protection. The protection law is not known that much to society and even to justice organ professionals. Measures taken to implement the proclamation is not convincing so far since there is no organized staff that works on protection, or that investigates the existence of threat. Most of the time, protection measures given for protected persons are providing self-defense weapon.

Government, except enacting law, necessary budget allocation to carry out the activity is hardly done. Unlike some countries' experience, there is no annual fixed allocation of budget for protection program; institution to which the work entrusted did not separately allocated budget for protection program. This affects the implementation of the law as the work requires adequate amount of money.

5.2. RECOMMENDATIONS

- To make the protection law pretty broad enough that covers enough criminal offences, there is a need to extend its application to crimes punishable with lesser years envisaged in the WP. Moreover, criminal offences like corruption need to be treated exceptionally; since it is susceptible for witness intimidation.
- Since protection of witness is crucial in maintaining justice, within its economic capacity, the government has to allocate necessary budget for the witness protection program. This could be done by allocating annually fixed amount of money for witness protection; or the organ to which this work is entrusted to may allocate necessary budget for the effective protection. Thus, Attorney General needs to make witness

protection a program; and has to organize multidisciplinary staff for the work allocating necessary budget for the protection measures to be applied.

- There is a need to have courtroom procedural guideline to make courtroom protection effective while maintaining the right of the accused and how the right could be limited in balancing general public interest.
- Training institutes in the country has to give training on the subject matter so as to enhance knowledge of justice professionals; to ensure the pivotal role of witness protection services among society and give awareness on the existence of such right thereby encouraging witness or whistleblowers who afraid to testify about a crime.

PRODUCING IN COMPLIANCE WITH ENVIRONMENTAL OBLIGATION: CASE OF BEDELE BREWERY

Mohammed Ibrahim¹

ABSTRACT

The Ethiopian environmental laws have provided different environmental regulation mechanisms for different types of industrial sectors based on their gravity of impact to the environment. Breweries are also subject to such regulation mechanisms according to environmental laws. This paper focuses on study of Bedele brewery with the intent to examine whether it is producing in compliance with the Ethiopian environmental laws. In line with this objective, different Ethiopian environmental laws, together with the data gathered through interview, field observation, and different literature related with the topic are examined. The cumulative result shows that the effluent that is released from the factory is causing some problem on farm land and its products. However, in order to create causal link between this effluent and its impact on the farm land and its products, it needs scientific study or laboratory test both on farm land and the product on the one hand, and the effluent itself on the other hand. Hence, the author of this paper recommends that it is better if the concerned government organs conduct further study through scientific methods or through laboratory test with the intent to give long lasting solution to the problem.

1. INTRODUCTION

The Ethiopian environmental laws provide for different environmental regulation mechanism for different types of industrial sectors based on their gravity of impact to the environment. Brewery is one of such industrial sectors that is subjected to environmental regulation according to environmental laws. This paper specifically focuses on the study of Bedele brewery. In line with this objective, it examined different Ethiopian environmental laws together with data gathered through interview, field observation, and different literature related with the topic.

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Structurally, it is organized into five sections. The first section provides for a succinct introduction to the paper. The second section deals with Environmental Standards for Industrial Pollution Control by the Federal Environmental Protection Authority together with data gathered through interview, field observation and different literature related with the section. The third section addresses Protection of Industrial Pollution Control Regulation No.159/2008 together with data gathered through interview and different literature related with the section. The fourth section analyzes Environmental Pollution Control Proclamation No.300/2002 together with the data gathered through interview. Finally, the fifth section provides conclusions and recommendations.

2. PROTECTION OF ENVIRONMENTAL STANDARDS FOR INDUSTRIAL POLLUTION CONTROL BY THE FEDERAL ENVIRONMENTAL PROTECTION AUTHORITY

Brewery wastes are generated in liquid, gaseous, and solid form. The liquid form of waste generated from brewery consists of waste water or effluent obtained from washing raw materials, cleaning of tanks, bottles, machines and floors. These effluents also originate from disposal of solid waste products.² Solid waste mainly consists of residuals from the process including spent grains and hops, sludge, surplus yeast, label sludge, Kieselguhr, powdered carbon and broken glass. Other solid wastes from a brewery are glass cutlets from the packaging area, Kieselguhr from the filtration process, paper pulp from the bottle washer, paper, and plastic from received auxiliary material (especially packaging materials), waste oil and grease, etc.³

Untreated brewery effluents are known to have organic components (expressed as BOD5) mainly consisting of sugars, soluble starch, ethanol, volatile fatty acids and so on. It also contains high chemical oxygen demand (expressed as COD) and high level of PH (acid) such as caustic soda,

²A. O. Odior, F. A. Oyawale and P. E. Amiolemhen, *Industrial Waste Management in a Brewing Industry in Benin City of Nigeria*, Journal of Engineering and Applied Sciences (2011), Volume 3, P.17

³Tesfalem Fikresilasie, Impact of Brewery Effluent on River Water Quality: The Case of Meta Abo Brewery Factory and Finchewa River in Sebeta, Ethiopia, Addis Ababa, University of Addis Ababa(2011), p.5.

phosphoric acid, nitric acid, ammonia and so on.⁴ If this untreated effluent is released to the environment, it creates serious problem to the environment.⁵

In order to preserve the environment, the Federal Environmental Protection Authority, issued environmental standard in 2003 to discharge limits for industrial effluents before they are released to the environment. According to this standard, the breweries waste water limit values for discharges to the environment like any other industrial effluents are provided as follows:

Limit Values for Discharges to Water

ParameterLimit Value

Temperature	40 °C
PH	6 – 9
BOD5 at 20°C	90% removal or 60 mg/l, whichever is less
COD	90% removal or 250 mg/l, whichever is less
Suspended solids	50 mg/l
Total ammonia (as N)	20 mg/l
Total nitrogen (as N)	80% removal or 40 mg/l, whichever is less
Total phosphorus (as P)	80% removal or 5 mg/l, whichever is less
Oils, fats, and grease	15 mg/l
Mineral oils at the oil trap or interceptor	20mg/l

The above diagram shows the limit value of the effluent that can be released to the environment. This means any effluent that is released to the environment in excess to the limit values stipulated in the diagram is considered as dangerous to the environment and punishable under the law.

A field observation by the author shows that this factory releases the effluent through pump to the nearby small river. The farmers around the factory use this river for irrigation. For the question that is provided to them concerning

⁴*Id*, Pp 6-7.

⁵*Ibid.*

the impact of this effluent on their health, products and farm land, they answered that it has no impact until a recent period. However, this effluent began to affect their land and products starting from a recent period.⁶

The interview conducted with Mr. Meles Asfaw, a worker in the factory on whether the released effluent is in compliance with the standard limit of the Federal Environmental Protection Authority, he answered positively without doubt.⁷ But, the author's field observation and interview conducted with the farmers showed the existence of complaint on the factory. Mr. Meles Asfaw did not deny the truth and stated that the factory is now improving or upgrading its production system in a more modernized and environmentally friendly manner which by its nature presupposes cleaning and changing the tank. As a result of this, it is releasing untreated effluent to the surrounding although it is for a short period of time. That is why such problems are happening according to him.⁸ For the question that is provided to him on how much maximum period the establishments of new tank will take, he answered that he has not any knowledge about it.

Taking the above information both from the factory and the farmers, the author has visited the agricultural expert of the kebele to ask whether this effluent has any effect on the farm land and products.⁹ The interviewee

⁶The farmers have said that they have been using this effluent for different purposes such as for irrigation and drinking their domestic animals starting from its establishment. Until a recent time (before 1 year), the effluent is treated one and it has no impact on their irrigation product and animals according to the farmers. However, they have said that the situation is changed since a recent time (before a year). According to them, untreated effluent which is released with high content of acid began to burn their product and crack their land. For example, they have shown the author different burned product and different cracked lands as a result of acidic content in the effluent to support their assertion. In this regard, the author conducted interview with Mr. Asrat Itafa, Farmer, Bedele, 6 May 2015; Mr. Tamesgen Ittafa, Farmer, Bedele, 6 May 2015; Mr. Tadese Gamta, Farmer, Bedele, 6 May 2015; Mr. Asafa Burayu, Farmer, Bedele, 7 May 2015; Mr. Tesfaye Itafa, Farmer, Bedele, 10 May 2015; Mr. Abdu Hussein, Farmer, Bedele, 9 May 2015; Misses Assagadu Jamana, Farmer, Bedele, 9 May 2015; Mr. Mansur Abdu, Farmer, Bedele, 10 May 2015; Mr. Nagasa Gamtessa, Farmer, Bedele, 10 May 2015

⁷Interview with Mr. Meles Asfaw, Technical Manager, Bedele Brewery Factory, Bedele, 11 May 2015

⁸For the question that the author raised to Mr. Meles Asfaw on what the factory is doing to minimize this problem until that time, he answered that the factory is only diluting the effluent by using large amount of water. That is why it becomes ineffective according to him (Ibid).

⁹Mr. Galata Tamiru, Agricultural Expert at Sidisa Kebele, Land and Environmental Protection Office, Bedele, 15 May 2015

replied by saying in order to say it has such effect, it requires scientific study /laboratory/ test. He also replied by saying since we have not made any laboratory test on the effects of this effluent on the farm land and products, he cannot say anything about it as an expert of agriculture. Regarding to the question that is provided to him on complaint of the society about its effect on their products and land, he says many society complained to him on that but since it requires scientific study, he referred them to the Bedele Woreda Investment Office seeking to initiate to conduct laboratory test both on the effluent and its impact on the soil and products. Depending on this information, the author has visited the Bedele Woreda Investment Office to know whether they have entertained such complaint from the societies. However, the office has answered by saying we have not appointed any worker on investment sector for more than a year and no one can give you reliable information on that.¹⁰

Besides the above fact, the author has visited Bedele Woreda Land and Environmental Protection Office to know whether they have any knowledge about this fact. In this regard, the author has made interview with Mr. Malkamu Bulcha.¹¹ For the question that is provided to him on this regard, he said, after you have made the interview with the society I have also visited the farmer around that factory and I have made some interview with some of them for the office consumption.¹² The farmers I have made interviews with answered that the effluent is causing damage both to their land and products. Further, he explained that although it requires laboratory test to handle peoples' complaint, it is somehow difficult to ascertain the allegation since there is no laboratory to test the composition of this effluent in Bedele town. However, he informed his office many times to make laboratory test on this effluent by taking the sample to Jimma town in order to take precaution although he did not get any response yet.

He also said that regarding soil study, there is laboratory here in Bedele that can study the soil and he has provided many times the question to his office to conduct such soil study on that land in order to avoid the impact of the

¹⁰Interview with Mr. Namarra Namomsa, Deputy Mayor, Bedele Town Administration, 16 May 2015.

¹¹Interview with Mr. Malkamu Bulcha, Environmental Concern, Bedele Woreda Land and Environmental Protection Office, Bedele, 30 May 2015.

¹²I have made the interview with Mr. Malkamu Bulcha staying some days after I have made interview with the farmer.

effluent by taking precautionary measure. Also he did not get any response for that. Indeed he said, in order to contribute some of his effort to help the farmers, he has guided some of the farmers to bring a written complaint containing signature on the effect of this effluent in order to discuss the situation with the factory. However, they did not provide him with this complaint until now and he is still waiting for them. Finally, Mr. Malkamu Bulcha put his opinion by saying that he thinks all these problems are happening because of the expansion of the product of the factory following its transfer to private ownership.

In relation to the above interviews, the author has obtained another source that is related with the issue under the section. That is - assessment report made by International Organization for Standardization (herein after referred as ISO) on the factory. This organization has made assessment in 26 - 27 May 2014 which is very close to the time when this study has been conducted. According to the report, the ISO has identified many gaps regarding the waste management system of the factory. Some of the identified gaps are: waste water treatment plant input, process and output is not adequately managed; gas emission from burning of waste papers (in incinerator) and vehicles are not adequately managed; used oil is not adequately managed etc... In order to improve and fill the identified gaps, the ISO recommended some solutions to the factory through its report.¹³

Breweries do not discharge air pollutants other than some odors.¹⁴ Concerning to the odor that comes from this effluent, the farmers and other community around the factory with whom the author has made interview unanimously answered about its disturbance. However, they have stated that it happens randomly.¹⁵ During this period the farmers have said that they

¹³This document falls on the hand of the author together with other documents received from the factory in soft copy. The one who gave this document to the author wanted to remain anonymous.

¹⁴Multilateral Investment Guarantee Agency Environmental Guidelines for Breweries (2015), available at www.miga.org/.../Breweries, p.330 <accessed on May 10, 2015>.

¹⁵ According to their answer, this odor comes randomly within two months interval by estimation. However, when it comes it remains for more than a week. They have said during this period living around the factory becomes difficult. In this regard, for example, I made interview with Misses Asnakech Chali, Resident, Bedele, 7 May 2015; Mr. Wayyessa Marga, Farmer, Bedele, 8 May 2015; Waqine Gamta, Resident, Bedele, 8 may 2015; Misses Ijigayo Ayyele, Resident, Bedele, 9 May 2015; Mr. Tesfaye Itafa, Farmer, Bedele, 11 May

were exposed to high headache and colds (cough). During the production process when the beer is filtered, solid waste products like surplus yeast and Kieselguhr remain under the bottom of tank. When the tank is opened for cleaning, this accumulated waste product is released out to the society with other water mixed effluents. As a result of this, high amount of odor occurs.¹⁶

Based on the information from the society and the factory, the researcher has made journey to Bedele Town Administration Health Office to know whether they have any information on what is happening to the society and if not, to know what precaution mechanism they have made to avoid the possible health problem that may arise from this effluent. For this question, the office head, Mr. Kamal Mohammed said, we have established committee as a town which is known by the name Town Sanitation and Beautification Committee (*yeketema tsidatinna wubet committee*) composed of many members from different sectors and our office health service and production work inspectors known as environmental concern is a member of this committee. Through such committee, we quarterly assess the environmental impact of the factory. Finally, he said that for detail information contact our Health Service and Production Work Inspectors Head by the name Mr. Meseret Abbiyyu¹⁷.

Accordingly, Mr. Meseret Abbiyyu said, in order to prevent environmental impact of this factory, we work based on - *Food, Medicine and Health Care Administration and Control Proclamation No.661/2009*.¹⁸ Mr. Meseret Abbiyyu goes on saying it is around one year from now that people complain the factory that it is releasing untreated effluent to the river thereby suffering the societies around the factory. Through Town Sanitation and Beautification Committee (*yeketema tsidatinna wubet committee*), we have

2015; Abdulqadir Ahmed, Merchant, Bedele, 11 May 2015; Mr. Tamesgen Ittafa, Farmer, Bedele, 6 May 2015

¹⁶ We are improving or upgrading our production system and when this activity is finalized there is no surplus yeast or Kieselguhr that is released out to the society with the effluent. Instead, we use it as a fertilizer and animal feed that is sold which in turn generates additional income to the factory. At this juncture, no bad odor found. Interview Mr. Duri Hussein, Maintenance Manager, Bedele Brewery Factory, Bedele, 15 May 2015

¹⁷ Interview with Mr. Kamal Mohammed, Head of Health Office, Bedele Town Health Office, Bedele, 29 May 2015

¹⁸ Interview with Mr. Meseret Abbiyyu, Health Service and Production Work Inspectors Head, Bedele Town Health Office, Bedele, 29 May 2015

made assessment and stopped the factory from releasing untreated effluent that the people complained about. Even we wanted to punish the factory. However, the Town Administrator of the time prohibited us from taking such measure on the ground that it affects the good name of the factory that is generating high income for the country.¹⁹ As a result of this, we are forced to oblige the factory only to release the effluent to the limited standard by the laws. We also warned the factory to minimize the limit of odor. Furthermore, he said, we have seen many environmentally unfriendly production systems during our inspection at different times. The followings are some of the problems he mentioned:

- We have seen during the assessment period that they have no standardized hole to burn some solid waste product. We warned them through letter to dig the standardized hole within two month and to notify us the result. However, they did not respond to us on the result until now. This event is now around a year.
- They only send a small portion of broken bottle for the recycling and throw the remaining part here and there both inside and outside the factory compound. Since the broken bottles are dangerous to the environment, we warned them to avoid this conduct although they did not respond to us on the result until now. This event is now around a year.
- They provide the spent grain (*furushka*) for animal feed to help the community. However, they damp it on the main road, near resident house, near government office, and near educational institutions in the town. When the rainfalls, this spent grain creates bad odor to the environment thereby preventing the residents to have and to live in beautiful and suitable town. For this reason, we have warned the factory to dump this spent grain to specified place prepared for this purpose. But, the situation is still continuing. The administration organ is also reluctant to take measure on the factory on the ground that it is

¹⁹ The author asked him about the then Town Administrator. However, he was not willing to explain for the security reasons.

important to the poor society-those engaged on breeding the livestock for their livelihood.

Taking the above information from Mr. Meseret Abbiyyu, the author has made a journey to the Head of Town Sanitation and Beautification Committee (*yeketema tsidatinna wubet committee alafi*), Mr. Habtamu Wagga to verify the obtained evidence. Supporting Mr. Meseret's view on the issue, Mr. Habtamu Wagga replied as follows: *For a question that we have provided to them based on the public complain, the factory responds by saying that we are improving the standard of the factory with the intent to modernize it and that is why these problems are happening. They also tell us that they are diluting the effluent by adding high amount of water in order to reduce its impact until the new machines are established. For the warning we gave them, they promised us to finish establishing the new machine within two months and notifying us the result in writing although they did not do that. Also, we did not visit them after that time and it is now around a year. For this reason, I have no any information personally on what is happening now. Finally, Mr. Habtamu Wagga puts his opinion by saying that he thinks all these problems are happening as a result of the expansion of the factory's product following its transfer to private ownership.*

3. PROTECTION OF INDUSTRIAL POLLUTION CONTROL REGULATION NO.159/2008

This regulation is issued pursuant to Environmental Pollution Control Proclamation No.300/2002. Its main objective is to give effective implementation to this Proclamation. Accordingly, one of the obligations of a factory that is provided under article 4(2) of this regulation is the obligation to handle equipments, inputs, and products in a manner that prevents damage to the environment, and to human and animal health. The factory thinks that it has no problem as far as application of such provision is concerned.²⁰ However, the ISO report shows that different chemicals (ammonia gas, acetylene gas, caustic soda, etc) are handled in the same store (constructed

²⁰ Interview with Mr.Meles Asfaw, *Supra* note 7.

from sheet metal wall and roof) without adequate space and ventilation in a way that may bring harm to the environment and human beings.²¹

Article 8 of the regulation obliges any factory to prepare and implement an emergency response system and to notify the competent environmental organ. The interview conducted with Mr. Meles Asfaw regarding the application of this provision revealed that the factory is fully implementing the provision.²² However, in contradiction with the information that was obtained through the interview, the ISO report reported as follows:

*Procedure for emergency preparedness and response has not been reviewed, communicated to relevant sites and implemented; identification of emergency situations and response planning has not been adequately done.*²³

Article 9 of the regulation obliges any factory to prepare and implement its own internal environmental monitoring system. Interview conducted with one of the workers in the factory regarding the application of this provision revealed that the factory is fully implementing it.²⁴ However, in contradiction with the information that is obtained through interview, the ISO report provides the following:-

“the depot and agent activities for product distribution have not been clearly defined in the scope of the environmental management system of the company; environmental policy of the company has not been reviewed and communicated to all stakeholders; procedure to identify environmental aspects of the company’s activities, products and services has not been reviewed, communicated to relevant sites and implemented; environmental aspects and impacts of operations of the brewery are not identified and documented; environmental objectives, targets and programs are not established; resources required for effective implementation of the environmental management system (e.g. time, waste water treatment plant, chemical store, etc) have not been adequately identified and provided; Procedure to identify training needs with

²¹ Documents, *Supra* note 13.

²² Interview with Mr. Meles Asfaw, *Supra* note 7.

²³ Documents, *Supra* note 13.

²⁴ Interview with Mr. Meles Asfaw, *Supra* note 7.

regard to environment performance of the company has not been implemented; training needs associated with environmental aspects and their management have not been adequately identified and planned; employees awareness regarding significant environmental impacts associated with their respective operations (e.g., chemical store, CO₂ and ammonia generation, etc) has not been conducted; mechanisms to communicate information with regard to environmental aspects and their management has not been reviewed, communicated to relevant sites and implemented; documents necessary to ensure effective planning, operation and control of processes that relate to significant environmental impacts(e.g. waste water treatment procedure, transportation) have not been reviewed, communicated to relevant sites and implemented; procedure to control environmental management system documents has not been communicated to relevant sites and implemented; methods needed for effective control of operations (chemical handling, waste management, etc) have not been reviewed, communicated to relevant sites and implemented; procedures for dealing with actual and potential environmental non-conformities and for taking corrective and preventive actions have not been reviewed, communicated to relevant sites and implemented; procedure for the identification, storage, protection, retrieval, retention and disposal of environmental management system records has not been implemented to control environmental management system records; program(s) and procedures for periodic environmental management system audits to periodically evaluate effectiveness of the Environmental Management System has not been reviewed, communicated to relevant sites and implemented. Finally, the report finalized its gap identification report by concluding that review of environmental management system that is needed to ensure continuing suitability, adequacy and effectiveness of the system has not been conducted”.²⁵

Article 11 of the regulation obliges every factory to keep written information describing the pollutant it has generated and a disposal mechanism it has used to dispose of the pollutant and other related matter. The regulation also

²⁵The document at *Supra* note 13.

obliges the submission to the competent environmental authority an annual report describing how it is complying with the provision of the regulation. In order to know the compliance of the factory with this provision, the author posed a question to Mr. Meles Asfaw. He answered that the factory has no as such grave pollutant which it has generated and hence has no recorded information.²⁶ Concerning the question as to whether the factory is submitting an annual report describing how it is complying with the provision of this regulation to the competent environmental authority, he answered negatively.²⁷

4. PROTECTION OF ENVIRONMENTAL POLLUTION CONTROL PROCLAMATION NO.300/2002

Article 7 of the proclamation says environmental inspectors that are established under Ministry of Environment, Forest and Climate Change ensure compliance with environmental standards and related requirements of the factory. The author has made interview with the factory on whether these inspectors come and the effect of their non-arrival on conducting their work according to the environmental laws. The interviewee replied that although he has been working in the factory for more than two years, no one comes for the purpose. Their inspection has no value on us to observe the laws because this factory is sold to Heineken Company, one of the biggest multinational companies. It has its own environmental standard that fits international environmental standard. Furthermore, he replied, since it is internationally competent multinational company, it protects the environment and works for its own repute.²⁸

Finally, in order to minimize the environmental effect of waste generated from brewery factory, conducting the following waste minimization process is recommended²⁹: using water for recycling in order to minimize both water consumption and the content of waste in the water, sending broken glass and bottles that cannot be used to recycling, using spent grain for livestock feed,

²⁶Interview with Mr. Meles Asfaw, *Supra* note 7.

²⁷ Interview with Mr. Meles Asfaw, *Supra* note 7.

²⁸Interview with Mr. Meles Asfaw, *Supra* note 7.

²⁹Reducing Waste in Beer Production(2011), available at www.alfalaval.com/about-us/press/.../reduced-waste.aspx,Pp.1-3,<accessed on May 9, 2015>.

using surplus yeast to filter it since it has some amount of beer and using the spent one to fertilizer and animal feed, burning label sludge, etc...

The author made interview with Mr.Tewelde Asfaw whether the factory has been applying the above waste minimization system. He replied that the factory is only applying some of the above system. According to him, the factory is using spent grain for animal feed, broken glass and bottles for recycling and burning label sludge. According to him, using the remaining west minimization process is on the ways since it is installing new machine. In other words, this is to mean that water is not recycled and waste product such as surplus yeast is released with other effluents until such installations are installed.³⁰

5. CONCLUSIONS AND RECOMMENDATIONS

The overall assessment of the study reveals the following. The interview with a society shows that the effluent from a factory has no effect both on their land and products. However, it starts to affect their land and product beginning from a recent period. The odor exists all the year round although it happens randomly.

Regarding to the conversation with the factory on whether it is operating according to the environmental laws, the interviewees answered positively for all the questions provided to them. However, they did not deny the fact that they are not operating according to the laws at this time for the reason that they are improving the standard of the factory. But, they have no answer for a question like for how long does the situation continue. Also they have no answer for a question like what scientific mechanism they are using now to minimize the harm until that time.

As it is also understood from the interview with government officials, the reason for non-compliance to the laws by the name of upgrading the standards were answered by the factory to these government officials before a year.The factory also promised them to finish the upgrading work and to notify them within specified period. But, it was a mere promise as the factory

³⁰Interview with Mr.Tewelde Asfaw, General Manager, Bedele Brewery Factory, Bedele, 10 May 2015.

did not do that. The findings of gap identification report by ISO and the interview conducted with the factory do also contradict each other.

Based on the above findings, it can be concluded that the factory is not producing according to environmentally friendly manner. However, in order to become more certain and to create causal link between this effluent and its impact on the farm land and product, it requires further practical investigation. That is to say, in order to ascertain the impact of this effluent on the farm land and products as it is asserted by the farmers, it needs scientific study or laboratory test both on farm land and the product on the one hand, and the effluent itself on the other hand. Hence, it is better if the concerned government organs conduct further study through scientific methods or through laboratory test with the intent to give long lasting solution for the problem.

**Ergama, Mul'ata, Toorawwan Xiyyeffannoo, fi Duudhaalee
Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo
Seeraa Oromiyaa**

Ergama

Leenjii ogeessota qaamolee haqaaaf itti fufiinsaan kenuun ogeessota gahumsaa fi qulqullina ol aanaa gonfatani sirna Heeraa fi seeraa kabajanii fi kabachiisan horachuu mirkaneessuu fi rakkowwan sirna haqaa irratti qorannoo fi qo'annoo gaggeessuun yaada haaraa burqisiisuun fooyyaa'insi sirna haqaa itti fufiinsaan akka jiraatu dandeessisuu dha.

Mul'ata

Bara 2012tti, gahumsa hojii leenjii fi qorannoo seeraa fi haqaatiin Inistiitiyuuticha sadarkaa biyyaatti filatamaa; akka Afrikaatti beekamaa gochuu dha.

Toorawwan Xiyyeffannoo

1. Gahumsa Ogeessota Qaamolee Haqaa
2. Qo'annoo fi Qorannoo

Duudhaalee Ijoo

- Gahumsa
- Iftoomina
- Maamila Giddu galeessa godhachuu
- Kalaqummaa fi
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 : Oromia Justice Sectors Professionals Training and Legal Research Institute

Adama, Oromia, Ethiopia

Mission, Vision, Thematic Areas and Core Values of Oromia Justice Sector Professionals Training and Legal Research Institute

Mission

To ensure the competency of our justice organ professionals in protecting the constitutional and legal order by giving an uninterrupted training, and conducting legal research to identify and to resolve problems of justice system in order to bring about continuous justice reform.

Vision

By the year 2020, to be a preferred centre for justice organ professionals training and legal research competency in Ethiopia and a recognized one in Africa.

Themes

1. Competence of the Justice Sector Professionals
2. Studies and Research

Core Values

- Competence
- Transparency
- Customer-centered
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Submission Guidelines

Oromia Law Journal (OLJ), a journal hosted by Oromia Justice Sectors Professionals Training and Legal Research Institute is published at least once annually. It accepts and publishes submissions fulfilling the following criteria upon revisions by the editors and approval by the Preparatory Board.

1. Submissions should be articles (not published elsewhere) related to legal, economic, political and social issues arising in relation to Oromian, Ethiopian, and other related International Laws. Contributions could also be other works such as essays, comments on legislation, book reviews, court cases (with or without comments).
2. Contributions may be submitted in Afan Oromo, English or Amharic
3. Submissions shall be computer typed, 1.5 space, in 12 font, Times New Roman; footnotes in 10 font, 1.0 space, Times New Roman (for Afan Oromo & English). These considerations also work for Amharic submissions except that the font size for footnote is 9.
4. The length of a contribution shall not exceed 30 pages for articles and essays. Other contributions like book reviews, case comments, etc shall range from five to ten pages.
5. The contribution should be organized into title page, abstract, introduction, body, and conclusion.
6. Footnotes should be numbered consecutively with superscript Arabic numerals in the text.

N.B. A contribution may at any time be submitted to the Editorial Committee (bekele.teferi@yahoo.com or abdiikoo2012@gmail.com) in soft copy or hard copy. Submissions in hard copy should not reveal the identity of the author in anyway.

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