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### **Barruulee Articles**

Birth-Defects of A Constitution And Its Impacts on Outcome: Reflection on Ethiopian Constitution- Making Experience

The Funding of Political Parties in Ethiopia: A Review of Problems

Making Investment Work for Sustainable Development: A Pressing Need to Integrate Sustainable Development into Ethiopian Investment Law

To'anno Dambiilee fi Qajeelfamoota Aangoo Bakka Bu'insaan Ba'anii: Haala Qabatamaa Oromiyaa

Kenniinsa Koroora fi Dhiifama Sirreefamtoota Seeraa Naannoo Oromiyaa: Seeraa fi Hojimaata



# JOORNAALII SEERAAD OROMIYAA

## OROMIA LAW JOURNAL

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## BIRTH-DEFECTS OF A CONSTITUTION AND ITS IMPACTS ON OUTCOME: REFLECTION ON ETHIOPIAN CONSTITUTION-MAKING EXPERIENCE

*Aberra Degefa\**

### ABSTRACT

*In their struggle to restrain the destructive exercise of power of their governments, quite a big number of countries have made one constitution after another with little or no success. Some are still in a situation of perpetual quest for constitutionalism. The main argument in this article is that the process of making a constitution will have significant impact on the life and performance of a constitution. Ethiopia is one such country where a number of constitutions have been made but the quest for constitutionalism still an unanswered. With such a long history of independence and four constitutions within six decades, why has Ethiopia failed to build a stable democratic constitutional order? This article attempts to find out the possible explanations for the failure of the past Ethiopian constitutions to bring about a sustainable democratic order. But the particular focus of the article is to examine the process of making the 1995 FDRE Constitution with a view to determine the extent to which the process of making the Constitution was flawless or blemished with the birth-defects that has led to the demise of the earlier constitutions. The extent to which the defects in the process have affected the actual performances of the 1995 Constitution has been explored. In the assessment of the 1995 FDRE Constitution-making process the main requirements that are imperative for making a modern democratic constitution have been taken into account. The relevant literature has also been surveyed to show what others scholars in the area have written concerning the process of making modern democratic constitution. The finding of the assessment will help all those concerned to rectify the wrongs made during the process of making the constitution so that it may not face the fate similar to the past Ethiopian constitutions.*

**Key Terms:** *birth -defects, constitutionalism, constitution- making, Ethiopia, federalism, post-conflict society.*

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## 1. INTRODUCTION

In its struggle to curb the destructive exercise of state power, human society has designed a tool known as constitution with the intention to use it as a shield against arbitrary and harmful exercise of state power. As shown by the experiences of so many countries of the world, the need for constitutions has evolved as a reaction to the destructive exercise of state power. The history of constitutionalism itself has always been the struggle of human society for the limitation of the destructive exercise of power by power holders.<sup>1</sup> In their struggle to restrain the destructive exercise of power of their governments, quite a number of countries have made one constitution after another with little or no success. Considerable number of countries is still in a situation of perpetual quest for constitutionalism.

Ethiopia is one such countries where a number of constitutions have been made but the quest for constitutionalism has not yet answered. Ethiopia was formed initially through conquest and has been sustained by force of arms since then. Although Ethiopia claims to have a long history of independence, in terms of constitutional development, he remained stagnant. In fact the hitherto history of Ethiopian power politics indicates that all the past successive regimes assumed power through force of arms and removed from power by force of arms. The country's more than eight decades of constitutional history shows that every regime first seized State power and then suspended the earlier constitution and made a new constitution to be viewed as legitimate regime. None of the past three Ethiopian constitutions has survived the regimes under which it was made.<sup>2</sup> As a consequence, Ethiopian people are still in perpetual quest for constitutionalism and genuine democratic governance.

One may wonder why with such a long history of independence and four constitutions within six decades, Ethiopia has not succeeded to build a stable democratic and constitutional polity? The objective of this article is to look into the possible explanations for the failure of the past Ethiopian constitutions to

<sup>1</sup>Loewenstein K., Political Power and Governmental Process (Chicago: University of Chicago, 1965).

<sup>2</sup> The 1931 and the 1955 constitutions are referred to as Imperial or Haile Sellassie's. The 1987 PDRE Constitution as the Derg's Constitution and the 1995 FDRE Constitution is referred to as the EPRDF's constitution by some.

create a sustainable democratic State. The article aims at identifying the birth-defects of the past constitutions which led to their fatal outcomes. The process of making the 1995 FDRE Constitution has been examined with a view to determine whether or not the process was free from the birth-defects that led to the demise of the earlier constitutions. The extent to which the defects in the process of making the 1995 FDRE Constitution have affected the performances of the Constitution has also been explored.

The article begins with an introductory part dealing with significance of constitution-making process in building a democratic state. The impacts of flaws in constitution-making process would have on the performances of a constitution will be looked at next. The pre-1991 Ethiopian constitutional experiences have been explored to show the impacts defects in the processes of making the constitutions have made on the performances of the constitutions. Establishing the extent to which the process of making the 1995 FDRE Constitution was flawed or not and revealing the consequences thereof will be the main focus of the article. Conclusions drawn from looking at the process of making the 1995 FDRE Constitution will be given at last.

## 2. SIGNIFICANCE OF CONSTITUTION-MAKING PROCESS

Modern constitution-making is a democratic process which aims at representing the will of the people, achieving “a consensus on the future of the state, and to ensure respect for universal principles such as respect for human rights and democratic governance”.<sup>3</sup> In post-conflict societies, a new constitution lays foundation for the state by way of changing the post –conflict society from force-based to consensus-based thus giving legitimacy to the state and the government. In a post-conflict society, constitution-making is a process of recreating the state based on consensus and equality. In its short-term goals, constitution-making in post-conflict societies contributes to peace-making and conflict resolution but in its long-term goals, it contributes to building democratic constitution and inclusive and sustainable state institutions.<sup>4</sup>

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<sup>3</sup> Benomar, J., *Constitution Making and Peace-building and National Reconciliation: Lessons Learned from the Constitution-Making Processes of Post-Conflict Countries* (New York: United Nations Development Program, 2003), P3.

<sup>4</sup> Widner, J., *Constitution Writing in Post-conflict Settings: An Overview*, William and Mary Law Review 49 (2008), Pp.1513-1537.

In a post-conflict society that intends to create stable democratic arrangement, the tasks of a new constitution is to establish a political community and lay down rules for the allocation and exercise of state power. A political community here doesn't necessarily mean a homogenous society with one language and culture. In the context of multi-ethnic societies that have been kept under repressive regimes, a political community implies consensus-based society where the diverse ethnic groups have agreed to live together and have developed shared beliefs/aspirations enshrined in a collectively made constitution. If such diverse ethnic groups constituting the population of a state hold divergent viewpoints capable of tearing the polity apart in opposing directions, writing of a constitution alone cannot artificially fuse such diverse groups into a political community.<sup>5</sup>

In the context of a diverse and post-conflict society, constitution -making should go beyond mere writing of the document and establish a political community with shared visions. Constitution-makers need to know the difference between mere writing of a constitutional text and constitution-building. Constitution-building goes beyond the text and encompasses all the phases of constitution-making process from having a written constitution up to building inclusive state institutions with effective performance. Constitution-building aims at building a sustainable political community and guarantees the observance of the values enshrined in a constitution. Constitution-building implies constitutional reality that sustains the constitution.<sup>6</sup>

For a post-conflict pluralistic society where the diverse people have been under successive repressive regimes, the making of a new constitution is like a fresh start where the constitution will serve as a means of bringing political stability and sustainable democracy.<sup>7</sup> For any war-torn society intending to establish a new political community constitution making is an instrument for rebuilding of the society on new foundations by rectifying past historical wrongs and establishing sustainable and democratic constitutional order. Constitution-making is a fully participatory institution-building project that lays down constitutional foundation for sustainable democratic state. What constitution-

<sup>5</sup> Ghalli, Y. & G. Galli, *Constitution-Building Process and Democratization: Lessons Learned*, International IDA (Hong Kong: University of Hong Kong, 2006).

<sup>6</sup> Widner, *Supra* note 4.

<sup>7</sup> Samuels, K., *Post-Conflict Peace –building and Constitution making*, Chicago Journal of International Law 6 (2006), Pp. 663-669.

makers do or fail to do during the constitution making process are crucial in determining the effects and outcome of the resulting constitution.<sup>8</sup>

### **3. IMPACTS OF CONSTITUTION-MAKING PROCESS ON THE OUTCOME**

Where constitutions are made following civil conflict or successive authoritarian rule, constitution-making process would significantly impact the value of the resulting constitution, state institutions and transition to democracy.<sup>9</sup> To begin with, democratic constitution-making and the establishment of sustainable democratic constitutional order are inseparable. Without undertaking proper democratic constitution-making process, a democratic state, a sustainable constitution with democratic content, and inclusive state institutions cannot be established and nurtured. If a certain constitution-making process is undemocratic, neither can the content genuinely be democratic and nor can one expect democratic practice.<sup>10</sup>

A democratic constitution is judged by the extent to which it reflects the values, shared norms, beliefs and ideals of the people which would require that the constitution be authored by the people. This means the constitution-making process has to be inclusive and fully participatory. In order to gain legitimacy and be durable, a constitution has to be made, approved and adopted with free and full participation of the people through democratic procedures reflecting popular will.<sup>11</sup>

In the process of making a constitution, there are flaws that would have grave effects on the contents and sustainability of a constitution. Constitution-makers need to know these flaws and take the necessary precaution to avoid these defects which may otherwise result in fragility of a constitution and lack of legitimacy. Without effective and extensive public participation during its

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<sup>8</sup> Benomar, *Supra* note 3; See also Ghalli & Galli, *Supra* note 5.

<sup>9</sup> Samuels, *Supra* note 7.

<sup>10</sup>Saati, A., How Participatory Constitution-Building Affects the Quality of Democracy, (2011); Available at [www.diva-portal.org/smash/get/diva2:759746/FULLTEXT01.pdf](http://www.diva-portal.org/smash/get/diva2:759746/FULLTEXT01.pdf)  
< Accessed on December 21, 2017>

<sup>11</sup> Benomar, *Supra* note 3.

making, a constitution would lack the required public support and legitimacy.<sup>12</sup> If the making of a certain constitution is fully participatory and inclusive, the people will have feeling of ownership of the constitution and become loyal.<sup>13</sup>

Full and effective public participation in constitution making process would result in “increased legitimacy, improved knowledge about the political system, avenue towards reconciliation, and a sense of ownership over the document”<sup>14</sup>. Here it is good to note that the merits of participation depend on whether or not participants actually had real influence over the final decisions.<sup>15</sup> There are cases where public participation is nominal with no actual influence on the final outcome.<sup>16</sup>

Along with effective participation, another key issue is the extent to which constitution –making process includes or excludes the relevant social and political actors, before, during and after the making of the constitution. The outcome of constitution-making will have wider support and sustainability only where those who have experienced injustices in the past are included in all phases of constitutional deliberations.<sup>17</sup> Inclusion of all segments of the population in the making of a new constitution will provide all groups equal opportunity to address past wrongs and determine future directions collectively.<sup>18</sup>

In his study of some selected countries, Benomar has shown that inclusive constitution-making process and extensive deliberation among key groups contributed to the “longevity of the constitutions and the durability of the state institutions”<sup>19</sup> Hence, when making a democratic constitution, the main concern of constitution- makers should always be how to make it command the loyalty,

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<sup>12</sup> Ginsburg, T. Elkins, Z & Blount, J. *Does the Process of Constitution Making Matter?* Annual Review of Law and Social Science, Vol.5 (2009), Pp 201-233.

<sup>13</sup> Benomar, *Supra* note 3.

<sup>14</sup> Saati, *Supra* note 10, P8.

<sup>15</sup> *Ibid.*

<sup>16</sup> Arnstein, S. R. “A Ladder of Participation,” In *The Participation Reader* (ed). A Cornwall (New York: Zed Books, 2011), 3-18; See Also Pateman, C. *Participation and Democratic Theory*, (Cambridge: Cambridge University Press 1970).

<sup>17</sup> Hart, V., Democratic Constitution-making (United States Institute of Peace, 2003); Available at <http://www.usip.org/files/resources/sr107.pdf> < Accessed on March13, 2015>

<sup>18</sup> Saati, *Supra* note 10.

<sup>19</sup> Benomar, *Supra* note 3, P.11.

obedience and confidence of the people. They have to make sure that the constitution is free from serious birth- defects. Exclusion of key players from constitution-making process is the most common and fatal defect leading to fragility of a constitution.<sup>20</sup> If those involved in constitution-making fail to take the necessary precaution, they will end up in producing a constitution with fatal birth-defects destined to have short duration.<sup>21</sup>

When a constitution is made, the entire constitution- making phases should be seen as an important forum for dialogue where the struggle between different political forces over issues of distribution, redistribution, and limitation of power are publicly and soberly discussed and determined.<sup>22</sup> In view of that, constitution-makers should avoid rushing the constitution through hastily without sufficient time for deliberation and negotiations. All those who take part in the making of the constitution need to have ample time and sobriety so that they may be able to make critical reflections on all issues, negotiate and arrive at genuine consensus. As it deals with fundamental issues of the given polity, constitution-making by its nature would require sober mind-set and well-considered approach to all the issues. A constitution not based on shared views, values and aspirations of all the people will be disowned by the people and be short-lived.<sup>23</sup>

A constitution and the institutions it establishes should not be imposed by a certain group or regime on the people from above. A constitution is not dictated, it is a negotiated and compromise document. As seen from constitutional experiences of many countries, there have been cases where constitutions have been made by the ruling regimes and imposed on the people. But the life -spans of these constitutions have not been longer than the regimes. If a constitution is a dictated one, neither can it get the required loyalty, obedience and confidence from the people nor can it have legitimacy.<sup>24</sup>

In a post-conflict society, in the entire process of making a new constitution, all those taking part in the constitution-making have to work towards harmonizing

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<sup>20</sup> Ginsburg *et al.*, *Supra* note 12.

<sup>21</sup> Widner, *Supra* note 4.

<sup>22</sup> Benomar, *Supra* note 3.

<sup>23</sup> Hart, V., Democratic Constitution Making, United States Institute of Peace, 2003 <http://www.usip.org/files/resources/sr107.pdf> < Accessed on March13, 2015>

<sup>24</sup> Benomar, *Supra* note 3; see also Ginsburg et al., *Supra* note 12.

their conflicting viewpoints through negotiations and dialogue in order to come up with a compromise document. Constitution-makers should identify and agree on the main constitutional concerns and problems of the society which the constitution should address. In the process, the fundamental differences which exist between the major national political forces have to be acknowledged and commonly addressed. Mutual- trust and compromise are the essence of a democratic and sustainable constitution. Especially when a new constitution is being made for a divided post-conflict society with diverse interest groups, there is a need to give concessions to potential spoilers who may possibly be able to exploit and mobilize the excluded interests and endanger the stability of the constitutional arrangement.<sup>25</sup> For such a society, an inclusive and fully participatory constitution-making process will serve as an instrument that brings about peace and reconciliation between conflicting communities.<sup>26</sup>

#### **4. CONSTITUTION-MAKING IN PRE-1991 ETHIOPIA AND THEIR OUTCOMES**

Modern Ethiopian Empire State came into being through Menelik's war of conquest at the end of the 19<sup>th</sup> Century. The different groups of people incorporated into the Empire have been brought together by force of arms and kept together by force. There has never been consensual-basis for Ethiopian State which gives it legitimacy. The past successive rulers of the Empire have uncompromisingly and persistently been engaged in their attempts to forge a nation- state out of the multi-ethnic Empire. As a result, the diverse ethnic groups have been forced to remain under the Empire thus making Ethiopia a prison-house of nationalities.<sup>27</sup>

The assimilationist nation-building project of Ethiopian rulers has been facing series of resistances all along from the various subjugated peoples that have been forcibly brought under the Empire-State. But the successive rulers of the Empire continued their forcible assimilationist strategy in total disregard of the resistances and revolts of the subjugated people. With the initial lack of consensual-basis at birth, the subsequent drive by the successive ruling regimes

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<sup>25</sup>Samuels, K. and Wyeth, V.H. State-building and Constitutional Design after Conflict (New York: International Peace Academy, 2006).

<sup>26</sup>Ginsburg et al., *Supra* note 12.

<sup>27</sup> Markakis, J. Ethiopia: The Last Frontiers (New York: James Currey, 2011).

of the Empire to forcibly maintain the multi- ethnic Empire has served as a seed-bed for perpetual constitutional crises in Ethiopia. The centralist nation-building project of the successive rulers has been facing fierce resistances and revolts from the diverse subjugated people of the Empire from the very outset and has drawn Ethiopia into endless upheavals for several decades.<sup>28</sup>

In Ethiopian constitutional history, the 1931 Constitution of Haile Sellassie was the first written constitution adopted and used by Ethiopian ruler as an instrument to create a modern nation –state out of multi-ethnic Empire. The Emperor made the Constitution on his own initiative with the sole objective of reducing the political power of the nobility and to consolidate his absolute power.<sup>29</sup> The Constitution made Emperor Haile Sellassie's hereditary rule that was alleged to have descended from King Solomon incontestable. According to Thomas Paine (1954), hereditary rule and government by their nature are tyrannical since inheriting a government simply amounts to inheriting the people “as if they were flocks or herds”<sup>30</sup>.

The 1955 Revised Constitution of Haile Sellassie has made considerable departure from the 1931 Constitution in terms of content and structure, but in their essence, both pursued the same assimilationist strategy of building a nation-state out of multi-ethnic Empire and consolidating Haile Sellassie's absolutist rule. Since both constitutions were given /granted/ by the Emperor, they could not restrain the exercise of power of the Emperor in any way.<sup>31</sup> The two Imperial constitutions have failed to build the desired nation-state but they have succeeded in creating a strong predatory state with exclusive and fragile state institutions. During his half a century imperial rule, there were more than enough signals and demands for change<sup>32</sup>. But rather than considering reconstituting the Empire-State on consensual- basis, Haile Sellassie's regime continued its assimilationist

<sup>28</sup> Merera Gudina, Ethiopia: Competing Ethnic Nationalisms and the Quest for Democracy, 1960-2000 (Addis Ababa: Chamber Printing Press, 2003).

<sup>29</sup> Paul, J. C. N. & Clapham, C., Ethiopian Constitutional Development, Vol. 1 (Addis Ababa: Faculty of Law 1972).

<sup>30</sup> Thomas Paine, Rights of Man: Being an Answer to Mr. Burke's Attack on the French Revolution, (London: C.A. Watts & Co. 1954), P144.

<sup>31</sup> Brietzke, P. H., *Ethiopia's Leap in the Dark': Federalism and Self Determination in the New Constitution*, Journal of African Law 39(1) (1995), Pp.19-38.

<sup>32</sup>The 1960 coup, the peasant revolts of Bale, Gojam, Sidama, the Eritrean Liberation struggle, Ethiopian students' movement, (see Gebru Tareke, The Ethiopian Revolution: War in the Horn of Africa (Yale University, 2009).

policy with hegemonic and authoritarian rule. Ultimately, the popular uprisings and revolts made by the diverse subjugated people of the Empire led to the 1974 removal of the Emperor from power with disgrace.<sup>33</sup>

After overthrowing Emperor Haile Sellassie and suspending the 1955 Revised Constitution, the Provisional Military Administrative Council (PMAC) known as the *Derg*, constituted itself as a provisional military government. In taking that move, Ethiopian military deprived Ethiopian people the opportunity history has offered them as a result of the demise of more than four decades of Haile Sellassie's feudal and autocratic rule. The Derg ruled the country without a constitution for 13 years. The 1987 Peoples Democratic Republic (PDRE) Constitution was the third constitution for Ethiopia and it was the first to constitutionally declare the country a Republic. But the Constitution was made merely to serve as a camouflage for the Derg's naked rule by force.

Except for the change in its name and form, in its essence, the 1987 PDRE Constitution endorsed the previous Imperial assimilationist approach and declared Ethiopia a centralized unitary State. Instead of being responsive to the continuous, deepening and legitimate demands of the diverse subjugated people of Ethiopia for equality, the Derg regime became more centralist, authoritarian and assimilationist than Emperor Haile Sellassie. The centralization efforts made by the architects of the Empire- state were taken to climax by the Derg's over-centralization of the State and the economy.<sup>34</sup> In terms of democratic constitutional development, the Derg regime abolished hereditary rule of Haile Sellassie and changed the name from Empire to a "republic". Other than that, the Derg regime had perfected and used (rather in a more refined way) the hegemonic, predatory and repressive features of all state machineries that have been put in place and used under the Imperial regime.

Paul Brietzke has characterized the Derg's style of governance as "unitarist in the extreme"<sup>35</sup> In trying to make multiethnic Ethiopian polity centralist and unitarist in the extreme, the Derg regime worsened the fragility of the predatory and authoritarian state it took over from the Emperor. Ultimately, the Derg's extreme assimilationist strategy and hegemonic rule generated ethnic backlash

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<sup>33</sup> Gebru Tareke, *Supra* note 32.

<sup>34</sup> Brietzke, *Supra* note 31.

<sup>35</sup> Brietzke, *Supra* note 31, P.2.

and led to the emergence of different armed insurgent groups which brought about the downfall of the regime in 1991. In terms of durability, from its adoption in 1987, the PDRE Constitution lived barely for four years. According to Widner, if a certain constitution is suspended within five years of its ratification, it is considered a “failed effort”<sup>36</sup>.

Overall, when one looks into the pre-1991 Ethiopian constitutions, they all have failed to build sustainable democratic constitutional state with inclusive state institutions. Rather, what they have established was an authoritarian culture of power that nurtured and promoted hegemonic mind-set among the power elites from the ruling regimes. This class of ruling elites always aimed at the control of central state power and accessing the country’s resources, most importantly land. The kind of Ethiopian State that was crafted was predatory in its nature and impervious to democratic values. Ultimately, since the constitutions, the state and the institutions the regimes created have all been elite-driven, exclusivist and not consensus-based, and owing to their inherent fragility, they all disappeared with the regimes.<sup>37</sup>

## 5. THE TRANSITIONAL PERIOD: STAGE-SETTING FOR THE MAKING OF THE 1995 FDRE CONSTITUTION

### 5.1. CONTEXT AND BACKGROUND

The fall of the Derg regime in the year 1991, conclusively proved the total failure of attempts to build a nation-state out of multi-ethnic Empire –State and the fragility of Ethiopian polity as a state.<sup>38</sup> It revealed more than ever before that the legitimacy of Ethiopian state and the authority of the rulers were under uninterrupted challenge. The pre-1991 constitutional experiences of Ethiopia have shown the need for a fresh start with a radical departure from the past.<sup>39</sup>

In May 1991, the Derg regime was removed from power by force and the Ethiopian People’s Revolutionary Democratic Forces (EPRDF) assumed power

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<sup>36</sup> Widner, *Supra* note 4, P.1526.

<sup>37</sup> Acemoglu, D. & Robinson, J. A., *Why Nations Fail: Origins of Power, Prosperity, and Poverty*, (New York: Grown Publishers 2012); See also Markakis, *Ethiopia: The Last Frontiers* *supra* note 27; See also Sarah Vaughan & Kjetil Tronvol, *The Culture of Power in Contemporary Ethiopian Political life*, (Stockholm: SIDA, SIDA Studies, 10 2003).

<sup>38</sup> Merera, *Supra* note 28.

<sup>39</sup> Markakis, *Supra* note 27.

through force showing that power has once again assumed by force. With the downfall of the Derg regime, the diverse subjugated ethnic groups and people in Ethiopia have been provided with another opportunity to make a fresh start and re-constitute a consensus-based democratic state. The first opportunity was in 1974 which according to Eshetu Chole “turned out to be a bitter ‘harvest of sorrow’”.<sup>40</sup> At the time, many thought the opportunity could be used by Ethiopian people to establish an endurable constitutional system with sustainable and inclusive State institutions. In view of the fact that Ethiopia was a post-conflict society struggling to come out from decades of authoritarian rule into democratic system, hoping for a new constitution that could rectify historical wrongs and addressed the perennial constitutional problems was justifiable optimism.

After the downfall of the Derg regime by joint forces of ethnic-based liberation movements in the year 1991, the dream of those who have strived much to build a nation- State out of the Empire -State was shattered. In 1991, after more than four decades futile attempt of trying to prevent Eritrean secession, Eritrea seceded from Ethiopia and declared its independence. The events which took place in 1991 were conclusive evidences as to the need to transform Ethiopia from prison-house of nations to a consent-based multilingual and multicultural federal state. No genuine Ethiopian constitution-maker could have missed the need for making a fresh start by reconstituting Ethiopia based on consent through fully-negotiated new constitutional arrangement.

With a brief transitional period from 1991 -1995, the FDRE Constitution was adopted in 1995 as a fourth constitution in Ethiopian constitutional history. Now, more than eighty-seven years after the 1931 Constitution and almost a quarter of a century after the 1995 FDRE Constitution, can one comfortably say Ethiopian people have used the opportunity offered to them in 1991 or was it a missed opportunity once again? To what extent had the efforts made during the making of the 1995 Constitution gone beyond mere constitution-writing and became constitution-building by producing a political community with sustainable democratic State and inclusive institutions? Have the diverse subjugated people of Ethiopia who were forcibly brought together through conquest and kept

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<sup>40</sup> Eshetu Chole, Ethiopia at the Cross Roads: Reflections on the Economics of the Transition Period (*Dialogue*, 3<sup>rd</sup> Series, 1(1) Addis Ababa, 1992).

together by force succeeded in building the quested for consensus-based political community capable of nurturing democratic values and institutions?

The extent to which the 1995 FDRE Constitution was made in such a way as to gain the loyalty, obedience and confidence of the people and thus gained legitimacy will be looked at hereunder starting with the transitional Charter. The article has attempted to pin-point some of the conspicuous birth-defects which have affected the outcome and legitimacy of the 1995 FDRE Constitution.

## **5.2. THE TRANSITIONAL PERIOD CHARTER**

Having controlled state power by force of arms, the EPRDF convened a National Conference held in July 1991 which adopted the Transitional Charter on the basis of which the governance for transitional period was established and the 1995 FDRE Constitution was prepared. The EPRDF invited different political movements to take part in the July Conference most of which were small ethnic parties created after 1991. At the end of the Conference, the participants have agreed upon and came up with a Transitional Charter and the Transitional Council of Representatives (COR) which had 87 members. The Charter stressed and recognized the right to self determination of ethnic groups to independence. The move to make ethnic self determination was dictated by the political setting and the nature of the political force which came to power at the time. Since ethnic problem was the cause that led to the emergence of the liberation movements and the downfall of the Derg, the EPRDF-led Government could no more disregard ethnic issue.

After the overthrow of the Derg regime, when the EPRDF formed coalition government with a number of liberation movements, things appeared to be moving towards reconstituting Ethiopian State on consensual basis. But, in the course of time, events proved that the EPRDF had no intention of sharing power.<sup>41</sup> Ethiopian constitutional history so far shows that every successive regime modified or changed the previous structure but “each time with a view to raising its efficiency as an instrument of control and raising revenue”<sup>42</sup>

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<sup>41</sup> Vestal, T. M., *An Analysis of the New Constitution of Ethiopia and the Process of Its Adoption*, North East African Studies, 3(2) (1996), Pp. 21-38.

<sup>42</sup> Markakis, *Supra* note 27, P12.

When one looks at the stage-setting period preceding the making of the new constitution, starting from the very determination of participants taking part on the July Conference and the allocation of seats for the 87 COR members; the EPRDF dominated the political landscape by virtue of the state power it already controlled and because of the partisan military supremacy it had. The EPRDF introduced a battle-field formula during the Transitional Charter to apportion the 87 COR seats. Based on the formula, the power positions of the liberation movements were determined by taking into account the role played by the liberation movements in the fight to defeat the Derg regime. This battle-field formula placed the EPRDF in an uncontestedly dominant position with effective control of the stage-setting and the making of the 1995 FDRE Constitution.<sup>43</sup>

As seen from the constitutional experiences of various countries, when governments preceded constitutions and took part in the making of the constitutions, the governments in power dominated the processes and influenced the outcomes in ways that favored them.<sup>44</sup> In principle, since it is a constitution that is supposed to create the government and gives it legitimacy, a constitution should be antecedent to government.<sup>45</sup> In the 1991 Ethiopian situation, the fact that the EPRDF already assumed power and was in total control of power all along enabled it to make use of its political and military leverage to dominate the Transitional process. The EPRDF's exclusive control of state power has enabled it to dominate the entire constitution-making process and the outcome thus creating legitimacy deficit for the 1995 FDRE Constitution.<sup>46</sup> Consequently, the whole transitional process and the subsequent constitution-making process became the exclusive affair of the EPRDF and those allied to it.<sup>47</sup>

## 6. THE MAKING AND OUTCOME OF THE 1995 FDRE CONSTITUTION: AN APPRAISAL

EPRDF's exclusivist approach and dominance of the whole process has been condemned by the different opposition groups excluded from the transitional

<sup>43</sup> Vestal, *Supra* note 41.

<sup>44</sup> Benomar, *Supra* note 3.

<sup>45</sup> Thomas Paine, *Supra* note 30.

<sup>46</sup> Vestal, *Supra* note 41.

<sup>47</sup> Abbink, J. *The Ethiopian Second Republic and the Fragile Social Contract*, Africa Spectrum, 2009, 44 2(3) 3-28; See also Markakis, *Supra* note 27; Lyonns, T., *Closing the Transition: The May 1995 Elections in Ethiopia*, The Journal of Modern African Studies, 1996, 34 (1) 121-142.

Conference and the subsequent constitution-making process. All the same, the 1995 FDRE Constitution was drafted by a commission which was formed after several representatives of the opposition have boycotted.<sup>48</sup> The few remaining opposition groups who were part of the EPRDF-led TGE were removed.<sup>49</sup> The Commission consisted of 29 members designated as the General Assembly.<sup>50</sup> Ethiopian oppositions have even gone to the extent of calling for the resignation of the Commission declaring their rejection of the Commission and the legitimacy of the constitution.<sup>51</sup> Despite this, the draft Constitution prepared by the Commission was submitted for discussion to the Constituent Assembly elected on the basis of the draft constitution, ratified on Dec 8, 1994 and entered into force on 21<sup>st</sup> August 1995.<sup>52</sup>

A participatory constitution-building process is an all inclusive exercise where all stakeholders are required to make full and effective participation. According to Meaza Ashenafi (2003), one of the key participants in the making of the 1995 Constitution<sup>53</sup>, although the “debates were lively nonetheless, the EPRDF- the ruling party, always dominated when an issue came to a vote as it had the largest delegation.”<sup>54</sup> Evidently, in the absence of important political forces, there could be no serious debates and negotiations among different political forces on important and controversial issues. In effect, this would mean issues relating “ethnicity, self-determination and federalism were never adequately

<sup>48</sup> The credible opposition parties left out or boycotted the process were; The Agew Peoples Democratic Union, the All Amhara People’s Organization (AAAPO), the Coalition of Ethiopian Democratic Forces (COEDF), the Council of Alternative Forces for Peace and Democracy(CAFPDE), the Ethiopian Democratic Action Group, the Ethiopian Democratic Union Party(EDUP0, the Ethiopian Medhin Democratic Party, The Ethiopian National Union Party (ENUP), the Ethiopian People’s Revolutionary Party(EPRP), the Gurage Peoples Liberation Front, the Islamic Front for the Liberation of Oromo, , the Oromo Liberation Front (OLF), the Somali Liberation Front, and the Southern Ethiopia Peoples Democratic Coalition (SEPDC). Names of those parties boycotted the 29 member Commission were EDU ENUP OLF Southern Coalition

<sup>49</sup> Abbink, *Supra* note 47.

<sup>50</sup>The General Assembly of the Commission was composed of 7 members of the TCR, 7 representatives various political parties, 3 from trade unions, 2 from teachers association, 2 from lawyers association 2 from health professionals association, 3 from Chamber of commerce and 3 represented women.

<sup>51</sup> Benomar, *Supra* note 3.

<sup>52</sup> Vestal, *Supra* note 41.

<sup>53</sup> For detail of the process of the making of the 1995 FDRE Constitution, see Vestal, 1996.

<sup>54</sup> Meaza Ashenafi, Ethiopia Process of Democratization and Development, In: A. A. An-Naim (ed.) *Human Rights under African Constitutions: Realizing the Promise for Ourselves* (Philadelphia: University of Pennsylvania Press 2003), P32.

deliberated.”<sup>55</sup> This would in effect mean the outcome of the 1995 FDRE constitution-making process was dictated by the EPRDF, not negotiated among all political forces.

Although the exclusivist approach pursued by the EPRDF had created resentments and led to tensions and violent conflicts among political groups, with the help of its political and military power the EPRDF was able to dominate the political landscape making the constitution-making process unwelcoming to consensus and democratic dialogue. Eventually, “what had begun with a noisy diversity of views among a broad array of political organizations ended quietly with the clear hegemony of the EPRDF.”<sup>56</sup>

John Abbink maintains that there is “historically engrained authoritarian/hierarchical tradition in Ethiopian politics.”<sup>57</sup> Having studied Ethiopian nation-building project for many decades, John Markakis stated that “The analysis of succeeding crises along the route highlights the structural fault in its design, which is the centre’s monopoly of power.”<sup>58</sup> This historically engrained authoritarian tradition which generates and nurtures hegemonic mind-set has been the main impediment to participatory and inclusive constitution-making in Ethiopia. Owing to this engrained hegemonic and authoritarian mind-set which always haunted them, the ruling power elites could not be accommodative by renouncing their longstanding hegemonic drive.

As revealed from the constitutional experiences of various countries, when making a new constitution, the role of a government in power during the constitution-making process need to be regulated and defined. In view of the fact incumbent governments have actual interests in the outcome of the process; such incumbent governments in many countries have negatively influenced the outcomes of the processes by using the state machinery and the military power they controlled. In the same vein, in Ethiopia, the EPRDF assumed control of state and military power before the making of the constitution which enabled it to dominate the whole constitution-making process and the outcome. This has

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<sup>55</sup> Benomar, *Supra* note 3, P.7.

<sup>56</sup> Lyonns, *Supra* note 47, P121.

<sup>57</sup> Abbink, *Supra* note 47, P173.

<sup>58</sup> Markakis, *Supra* note 27,P355

happened because there was no mechanism to prevent any possible manipulation or influence coming from the powerful ruling party.<sup>59</sup>

In South Africa the constitution-makers first laid down negotiated rules and principles in the interim constitution to equally govern all parties.<sup>60</sup> But in Ethiopia, there was no such arrangement or mechanism in place to prevent the EPRDF from dominating the transitional process and from influencing the process and outcome of the 1995 FDRE constitution-making. The monopoly over the stage-setting enabled the EPRDF not only to determine who could take part in the constitution making processes but it enabled the ruling party to exclude the vanquished and all others opposed to the regime.<sup>61</sup>

In terms of form and contents, the FDRE Constitution generally has resemblance with many modern federal democratic constitutions. Looking at the nicely-worded text, one may be misled and conclude that it is a democratic constitution. Regarding forms and contents of modern constitutions, almost all countries have constitutions which consist of set of rules structuring and defining powers of governments and almost all contain provisions that purport to recognize and protect most of the fundamental human rights. But of all these countries, a significant number of them have a well-written constitutional text but without constitutionalism or constitutional practice.<sup>62</sup>

For modern dictators, a written constitution has nowadays come to serve as a camouflage for deception. The fact that there is a formal written constitution with provisions that purport to recognize and protect fundamental human rights cannot be taken as conclusive evidence that the governments are constitutional. In fact, any government with the intent to sidestep a constitution will have several extra-constitutional means to make the well-written constitution irrelevant as it has been the case in many developing countries. In view of that, in judging the merits of modern constitution one should not be deceived by the form and contents of the constitutions which also applies to the 1995 FDRE Constitution.<sup>63</sup>

<sup>59</sup> Vestal, *Supra* note 41.

<sup>60</sup> Benomar, *Supra* note 3.

<sup>61</sup> Vestal, *Supra* note 41.

<sup>62</sup> Loewenstein, *Supra* note 1.; See also Nwabueze, B. O. Constitutionalism in Emergent States (London: C. Hurst & Co., 1973).

<sup>63</sup> Vestal, *Supra* note 41.

Overall, when looked at in terms of gaining the loyalty, obedience and confidence of the people and earning legitimacy, the 1995 FDRE Constitution making process had fatal defects. Effective participation and inclusiveness are essential requirements for making a democratic constitution. But these essential requirements were lacking in the making of the 1995 FDRE Constitution which has made the process seriously flawed. The ruling regime wielded control of the whole process of making the federal constitution by totally excluding all opposition political forces. The federal arrangement was not fully negotiated among the key political forces. This has made Ethiopian federal arrangement a dictated and imposed one. Ultimately, what prevailed was the traditional centralized command governance style under the guise of federalism.

Regarding legitimacy of the 1995 FDRE Constitution, one issue often raised is the possibility of gaining legitimacy later on which has been lacking in the beginning. According to Tsegaye Ararsa, the 1995 FDRE Constitution had a weak original legitimacy but could have earned derived legitimacy through consistent implementation.<sup>64</sup> Surely, as rightly put by Tsegaye, where legitimacy may be weak originally, it can be gained through practice. This could have been done through opening the political space to those excluded when the Constitution was made. In fact, the EPRDF did not have the intent to be inclusive at the time of the making of the Constitution. In view of the fact that it lacked original intent, expecting that it will act towards gaining the intent to be inclusive will be remote. In due course, what we have come to observe during the last 25 years is the fact that the EPRDF has narrowed the political space more and more.

One may wonder whether the 1995 FDRE Constitution can still gain legitimacy under the ongoing reform measure of the EPRDF. On this issue, I generally agree with the following statement of Gedion. In his view, “instead of adopting a new constitution, the current constitution’s lack of legitimacy can be remedied by comprehensive constitutional reform that would still maintain the basic architecture and cornerstones of the current constitution.”<sup>65</sup> But in my view, the problem would still be the EPRDF once again exclusively remaining in control

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<sup>64</sup> Tsegaye Ararsa, *The Making and Legitimacy of the Ethiopian Constitution Towards Bridging the Gap Between Constitutional Design and Constitutional Practice*, Afrika Focus, (1) 2010, Pp. 85-110.

<sup>65</sup> Gedion.T Hesseon, *The Precarious Future of Ethiopian Constitution*, Journal of African Law, 57 2 (2013), P. 215.

of the ongoing reform. If the EPRDF is sincere about the current reform, if it abandons its exclusivist disposition and ready to share power, the possibility of the Constitution gaining legitimacy cannot be ruled out.

## 7. CONCLUSION

In close to a century Ethiopian peoples' quest for constitutionalism, the single-most persistent problem remains to be lack of consensual-basis which is a prerequisite for building a political community with inclusive and sustainable state institutions. Whoever wants to genuinely address this perennial problem of the diverse Ethiopian people has to accept that Ethiopian people have not as yet built a consent-based political community. To the extent that it was not consent-based at the start and to the extent that the diverse Ethiopian people are still being kept together by force alone, the legitimacy of Ethiopian state and the authority of the rulers continue to be contested.

In the context of constitution-building, one bitter truth which should be acknowledged by any prudent Ethiopian constitution-maker is that the formation of Ethiopian polity was based on force and its survival was maintained simply by force. This is the main reason why legitimacy of Ethiopian polity and authority of its successive rulers have been contested all along. A multiethnic-Empire constituted by conquest and maintained by force cannot build a political community and establish sustainable constitutional system without renegotiating and reconstituting the state on the basis of consent.

All the past constitution-making processes in Ethiopia have failed to recognize the need for reconstituting Ethiopian polity with a view to make it consensus-based. Constitution-building in post-conflict society aims at re-building the society with a view to create a political community that can serve as foundation for sustainable democratic and constitutional order. This assumes that the existence of historical wrongs and injustices that have to be rectified. In the case of Ethiopian power elites who have taken the lead in making the constitutions, there has been reluctance to break with the past by way of recognizing historical wrongs and being ready to rectify them.

If one looks at Ethiopian constitutional history as a whole, under the Imperial rule of Haile Sellassie, the constitutions were meant to consolidate the absolutist rule of the Emperor which was feudal-based and inherently impervious to

democratic values. Besides, the Imperial constitutions were imposed on the people from above by the Emperor and opposed to democratic principles in their declared intent. But the Imperial constitutions have succeeded in building repressive, exclusive and predatory state institutions. The 1987 PDRE Constitution of the Derg regime was made with a view to give a legal cover to its overt rule by force. In so doing, the Derg changed the name of the State from unitary Empire to unitary “Democratic Republic” but with more repressive and authoritarian style of governance. Instead of democratizing the Empire, the Derg pursued Haile Sellassie’s assimilationist policy and centralist state structure in its most extreme form which back-fired and brought about the fall of the Derg in 1991.

The downfall of the Derg regime had opened a new opportunity for the diverse oppressed people of Ethiopia to reconstitute the polity and build a political community capable of sustaining a democratic state with inclusive institutions. The 1995 FDRE Constitution was greatly expected to bring about the consensus and the state legitimacy that has been lacking since the formation of the Empire-State and rebuild Ethiopia on new solid foundation. The expectation among many was that the constitution will not only be the means of legitimizing the government but it was also expected to recreate and legitimize Ethiopian State.

The main argument of this article was that there is direct correlation between constitution-making process and its outcome. If the process of making a constitution is not democratic, one can hardly have a genuine democratic constitution with legitimacy. It is only where the constitution-making processes are made fully participatory and inclusive that it be considered democratic, ensures the peoples’ ownership of the constitution and earns legitimacy. The process of making the 1995 FDRE Constitution was elite-driven and non-participatory which put in danger the survival of the Constitution. As it has been the case under the successive rulers of Ethiopia, the main problem was the traditional hegemonic mind-set of the ruling elite who always wanted to have exclusive control of state power and thus have free access to resources from the centre.

In turning the constitution-making into an affair of a few ruling elites and excluding the majority, the EPRDF restored the old hegemonic culture of power established by architects of the Empire and pursued by successive Ethiopian rulers. Lack of mechanism to prevent possible influence from the government on

power allowed the EPRDF to exclude key players without any restraint which resulted in frustrating the much expected democratic transformation. Ultimately, in the power relationship, the new constitution maintained the subordinate position of the people who have been brought under the Empire through conquest. Without changing the initial power relationship established by the architects of the Empire, the new constitution has camouflaged the old structure and gave it the name federal.

In a war-torn society like Ethiopia where the people have been kept for so long under successive repressive and predatory regimes and authoritarian culture of power, building mutual trust between the diverse people of Ethiopia should have been taken as a matter of utmost concern to the constitution-makers. At the time of making of the 1995 FDRE Constitution, instead of negotiation, what resurfaced was the old hegemonic and authoritarian culture of power. Instead of taking moves towards trust- building between different ethnic groups and oppositions, the EPRDF acted like a victor and excluded the vanquished and the oppositions.

Besides, to judge the merits of the 1995 FDRE Constitution, one can as well go beyond the text and look at the promises and performances of the Constitution twenty- two years after its adoption. Obviously, the Constitution has changed the name of the state from unitary democratic republic into Federal Democratic Republic. But still the Constitution-makers have ensured that command over the country's vital resources including land remain under the control of the central government. With vital resources under effective control of the central government and the EPRDF controlling the Regions through its party structure, in practice, there is a centralized federal state which almost operates as a unitary state under the guise of a Federal Democratic Republic.<sup>66</sup>

In effect, despite the existence of such a well-written constitutional text with good contents, the past authoritarian culture of power and “the tendencies that uphold the politics of command are very much alive today, as they were during imperial and revolutionary times.”<sup>67</sup> This command can be seen from the reluctance of the ruling party to loosen the exclusive monopoly it assumed over the political and

<sup>66</sup> Aalen, L., Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000 (Bergen: Cgr. Michelsen Institute, 2002).

<sup>67</sup> Kassahun Berhanu, Party Politics and Political Culture in Ethiopia, In: Mohammed Saleh M.A. (ed.) African Political Parties (London:-Sterling, VA: Pluto Press 2003), P142.

economic power by force. The Ethiopian state and its institutions have remained as extractive, exclusive and as unsustainable as they were during the past successive regimes.

Eighty-eight years after the first written constitution and twenty-four years after the fourth constitution, Ethiopia still has not succeeded in creating a consent-based democratic constitutional State with sustainable constitution and inclusive state institutions. What we can learn from the experience of the past eighty-eight years is that there is a need to renegotiate and reconstitute Ethiopian polity and make it consent-based. The mass protests of the years 2014 to 2018 have amply shown that legitimacy of Ethiopian state and the regime has gone beyond being contested and forcefully condemned. According to Markakis, the only way out of these perpetual crises is for Ethiopian power elites to “make a clean break with the past, renounce centre hegemony and accept equitable power-sharing with the periphery”.<sup>68</sup>

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<sup>68</sup> Markakis, *Supra* note 27, P357.

## THE FUNDING OF POLITICAL PARTIES IN ETHIOPIA: A REVIEW OF PROBLEMS\*

*Gebremeskel Hailu\*\**

### ABSTRACT

*Political parties serve democracy through articulating and aggregating social interests. However, keeping other factors as they are, the success of political parties is dependent on having the necessary funds. Yet, there is extreme manipulation of political funding to create political advantages and disadvantages that affect election outcomes in a range of ways. Specifically, unequal access to funding, abuse of state resources and illegal funding are the challenges disrupting the competitiveness of election and democracy in Africa and Ethiopia alike. Thus, political finance is both a necessity and a problem. In response to such problems, the author tries to explore the way the Ethiopian political finance functions with due emphasis to the problems of political funding. For doing so, it uses primary and secondary sources of data. It reviews the existing laws governing the system of political funding. It also examines the reports of the 2010 and 2015 national elections of the ENEB, the EU and AU Election Missions to Ethiopia. It conducts interviews with key political actors and officials of the ENEB to appreciate the problems of the system of political funding. Accordingly, the research finding indicated that the incumbent party in Ethiopia has excessively used its incumbency to protect its position and further weaken the already weak opposition political parties. The amount of public funding granted to the political parties is so insignificant related to all African states. Of which the incumbent party takes the lion's share because of the biased apportionment criteria. The public media allocation also significantly favors the incumbent party. Besides, the incumbent party massively abuses the state resources for its own partisan advantages. Now, therefore, there is a pressing need for leveling the political playing field by safeguarding equitable political resource distributions.*

**Key terms:** Political Finance, Political Party, Public Funding, Ethiopia, EPRDF, Opposition Parties

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## INTRODUCTION: WHY POLITICAL FUNDING MATTERS?

In modern democracy, regular elections among contending political parties have become the dominant method of selecting governments. In the process, political parties play two important roles: they form government or they serve as opposition.<sup>1</sup> They promote vital competition on policies and offer the same alternatives to the electorate.<sup>2</sup> They also give channels for citizens' participation in government decision-making process. As agents of representative democracy, political parties are required to reach out to the electorate and explain their goals and policies, and receive inputs from the people.<sup>3</sup> Thus, election campaigns need to engage citizens in the democratic dialogue.<sup>4</sup> For accomplishing these democratic functions, political parties need financial resources, otherwise called 'political finance'.<sup>5</sup> Marcin Walecki in his work entitled 'Challenging the Norms and Standards of Election Administration and Political Finance' defined 'political finance' as "money for electioneering or campaign finance of political parties". In connection to this, this introductory part intends to address the question: why is political finance so important?

Political funding is crucial for any political activity and indeed, sufficient access to funding is crucial to the overall vibrancy of an electoral and democratic system.<sup>6</sup> It also determines fundamentally the quality of democracy.<sup>7</sup> This is because the financial resources available to parties, the distribution of those resources, and the ways in which they are collected and spent can have a pivotal impact on the efficacy of political parties, the nature of electoral competition and ultimately the legitimacy of elections and

<sup>1</sup>Wondwosen Teshome, *Political Finance in Africa: Ethiopia As A Case Study*, World Academy of Science, Engineering and Technology (2009), Vol.31, P.854.

<sup>2</sup> *Ibid.*

<sup>3</sup> Magnus Ohman, Introduction to Political Finance (ed.), *Funding of Political Parties and Election Campaigns* (A Handbook on Political Finance, International IDEA, 2014), P.1.

<sup>4</sup> Wondwosen, *Supra* note 1.

<sup>5</sup> Marcin Walecki, Challenging the Norms and Standards of Election Administration: Political Finance, (Ed.), 2007, P.75. See also, Magnus Ohman, *supra* note 3.

<sup>6</sup> Magnus Ohman, *Supra* note 3.

<sup>7</sup> Gudeta Kebede and Alemu Kassa, *Ethiopian Opposition Political Parties in the Post -1991 Political Structure*, International Journal of Current Research (2014), Vol. 6, Issue, 01, Pp.4796-4797, Available online at : <http://www.journalcra.com> <as accessed on April 4, 2018>.

democratic institutions.<sup>8</sup> In this regard, various authors have highlighted the importance of political finance in various terminologies. For instance, Heidenheimer in his classical work published in 1970 coined political finance as the “oil that greases the engine” of party politics.<sup>9</sup> Another author also called political finance as “mother’s milk of politics”.<sup>10</sup> Gudeta Kebede quoting the work of Sachikonye underlined the importance of political finance stating, ‘the viability of political parties largely depends on whether they generate or receive satisfactory funding for their activities’ and he further underscored the fact that “little funding cripples a party’s operations and reach”.<sup>11</sup> Makara likewise accentuates the importance of finance to political parties and democracy asserting, “under-funded political parties are not likely to compete effectively in the political game and are unlikely to nurture the growth of democracy”.<sup>12</sup>

Although political finance is very important to the viability of political parties, yet, the relation between money and politics has come to be one of the great problems of democratic governments.<sup>13</sup> Political finance is susceptible to manipulation by “all political actors” though the degree of manipulation could differ from one to another.<sup>14</sup> At any rate, it has never been neutral; rather it creates significant political advantages and disadvantages that affect election outcomes in a range of ways.<sup>15</sup>

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<sup>8</sup> *Ibid.*

<sup>9</sup> Heidenheimer, A., Comparative Political Finance: The Financing of Party Organizations and Election Campaigns ((ed.), Lexington, DC: Heath, 1970).

<sup>10</sup> Unruh, Jesse, as quoted in Nassmacher, K-H., Introduction: Political Parties, Funding and Democracy(2003), in International Institute for Democracy and Electoral Assistance (IDEA) *Funding of Political Parties and Election Campaigns*, Handbook Series (Stockholm: International IDEA) P. 5.

<sup>11</sup> Gudeta and Alemu, *Supra note 7*.

<sup>12</sup> Makara, S., *The Challenge of Building Strong Political Parties for Democratic Governance in Uganda: Does Multiparty Politics Have A Future?* IFRA-Les Cahiers (2007), Vol. 41, P.74.

<sup>13</sup> Marcin Walecki, *Supra note 5*.

<sup>14</sup> Wondwosen, *Supra note 1*, p.4, see also, Gudeta Kebede, *Supra note 7*.

<sup>15</sup> Michael Johnston, Political Parties and Democracy in Theoretical and Practical Perspectives, political Finance Policy, Parties, and Democratic Development, NDI, (2005), P.3, retrieved from:<https://www.ndi.org/files/FINAL-Policy-Development-PDF-2.pdf>, <accessed on Jan 31, 2018>.

What is worst further is that election campaigns are getting expensive from time to time.<sup>16</sup> Particularly, in Africa political campaigning is getting more costly due to the low income of the society, large rural population living in sporadic villages, high illiteracy rate, low technological development and infrastructure such as poor roads, poor telecommunications and transport.<sup>17</sup> All these factors increase the burden of election campaigning for the political parties.<sup>18</sup> According to Magnus Ohman, such situation more affects the opposition political parties than the incumbents.<sup>19</sup> Wondwosen Teshome also concurs with the latter conclusion.<sup>20</sup> Over all, the system of political financing in Africa inclines towards the advantage of the incumbent political parties and thereby creating uneven playing field between the incumbent and the opposition political parties.<sup>21</sup> Moreover, there is serious abuse of state resources, whereby the incumbent political parties use resources belonging to the public to strengthen their political power and increase the chances of re-election.<sup>22</sup>

In connection to this, one may assert that Ethiopia is not an exception as regards the problems of political financing in Africa. Nonetheless, in order to examine the magnitude and degree of the problems, there is pressing need to appreciate how the Ethiopian political finance functions on the ground. Because of its importance for one's democracy and political system as a whole, political finance has attracted the attention of many researchers in different countries. However, except Wondwosen, who gave observations on African political finance with particular emphasis on the case of Ethiopia and Gudeta who brought a passing remark on the issue,<sup>23</sup> to the best knowledge of the author, there is no other research on the Ethiopian political finance.

<sup>16</sup> Wondwosen Teshome, *Democracy promotion and Western aid to Africa: Lessons from Ethiopia (1991-2012)*, International Journal of Human Science (2013), Vol.10, Issue 1, P.996.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Magnus Ohman, The State of Political Finance Regulations in Africa ( International IDEA Discussion Paper 14/2016, International Institute for Democracy and Electoral Assistance, 2016).

<sup>20</sup> Wondwosen, *Supra* note 1.

<sup>21</sup> Magnus Ohman, *Supra* note 19.

<sup>22</sup> *Ibid.*

<sup>23</sup> Exceptionally, Wondwosen Toshome has tried to explore the area while dealing with the topic entitled ‘Political Finance in Africa: Ethiopia as a Case Study.’ Yet, his discussion is wide enough covering the context in Africa and not entirely focused on Ethiopia. Another

In view to regulate the perceived or real problems, Ethiopia has introduced laws regulating political finance.<sup>24</sup> Whether the laws are fair and whether they are efficiently enforced is yet a point of inquiry discussed in the upcoming topics. What is vivid from the laws is that most sources of funding are banned except those received from membership contributions, public funding and donations and grants from Ethiopian nationals, either individuals or businesses.<sup>25</sup> Wondwosen Toshome quoting a research finding of Louise Alen, which she incidentally tried to touch, said, “One of the major causes for the weakness of political parties in Ethiopia is the lack of strong resources or funds”.<sup>26</sup> The opposition political parties also overlap with this finding that they are suffering from the scarcity of resources to undertake their political activities.<sup>27</sup> Even the public fund allotted to political parties by the government has its own impediments.<sup>28</sup> Furthermore, there are questions, among others, on the allocation of public media and on how the incumbent party uses its incumbency in administering the resources of the state.

In view of these problems and concerns, the author tries to address how the Ethiopian political finance is actually working on the ground. It specifically aims to examine the problems of the political funding system in Ethiopia. For doing so, it employs primary and secondary data sources. It reviews the existing laws governing the system of political funding and the reports of the 2010 and 2015 national elections of the Ethiopian National Electoral Board (here after ENEB), the reports of the European Union (EU) and African Union (AU) Election Missions to Ethiopia. It also conducts interviews with some key political actors and officials of the ENEB.

author who can be mentioned here is Gudeta Kebede, which he incidentally touched the area while dealing with ‘Ethiopian Opposition Political Parties in the Post-1991 Political Structure’.

<sup>24</sup>For example, *the Revised Political Parties Registration Proclamation*, No. 573/2008, *the African Charter on Democracy, Election and Governance Ratification Proclamation* No. 613/2008 and *Regulation Concerning the Procedure for Determining the Apportionment of Government Financial Support to Political Parties Regulation* No. 5/2009.

<sup>25</sup>The Revised Political Parties Registration Proclamation, Proc. No.573/2008, 14<sup>th</sup> Year No. 62, 24<sup>th</sup> Sep, 2008, Addis Ababa, Art. 51(1).

<sup>26</sup> Wondwosen, *Supra* note 1.

<sup>27</sup>An interview of ENN Television with Professor Beyene Petros, a key figure of Medrek, a coalition of four political parties, in the Voice of the Public Program, Feb 19, 2018 at 4:30 PM.

<sup>28</sup> Wondwosen, *Supra* note 1, P858.

The structure of the article goes as follows; it starts outlining the introductory part stressing on how important is political funding to political parties. It goes on briefly addressing the need for regulating political funding. It then reviews the challenges of political funding in Ethiopia with particular focus associated to direct and indirect funds. This part explores how and who determines the amount of public funding, looks the eligibility and allocation criteria for apportioning public funding and the interval and timing for its distributions. It also investigates the problems of public media distribution among the political parties and its effect on opposition political parties. The last part scrutinizes the problems and effects of abuse of state resources in Ethiopia and winds up with conclusions.

With this introduction, the following sub-topic examines the need for regulating political funding before resorting to see how Ethiopia tries to regulate the system of its political finance.

## **1. WHY DO WE NEED TO REGULATE POLITICAL FUNDING?**

As stated above the relationship between finance and politics has become among the thorny issues in democratic states. Kevin Casas-Zamora in his work, ‘Political finance and state funding systems,’ has summarized the possible negative consequences of political financing on democracy, unless properly managed, in the following three accounts.<sup>29</sup>

- *The flow and distribution of funds can encroach upon electoral equality. A lopsided distribution of funds erodes genuine electoral results.*
- *Political donation can bestow asymmetric opportunity among political parties where political power simply reflects economic power and*
- *Fund raising process may result in a ‘quid pro quo’ deals between donors and policy makers where the latter serves the interests of donors at the expense of public interest.*

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<sup>29</sup> Kevin Casas-Zamora, Political Finance and State Funding Systems: An overview (Brookings Institution / University of Costa Rica, 2008), P.3.

Unregulated political funding can shape public debates and can unduly influence the results of an election.<sup>30</sup> In addition, the expense of running for office can prevent some parties from doing so and may cause them to spend too much time raising money or accepting money from unacceptable sources, and could contribute to public skepticism concerning the political process.<sup>31</sup> Unregulated political finance can also feed the greediness of political parties, and their increasing financial need can affect the other arenas of democracy.<sup>32</sup> For instance, political parties with authoritarian tendencies can sometimes put pressure on the state apparatus, civil society and economic society through the abuse of state resources.<sup>33</sup>

Consequently, in order to prevent these dangers coming from the incumbent or opposition parties, democracy must regulate political funding,<sup>34</sup> be it for campaign or party activities. In this regard, though there seems consensus on the need for regulating political funding, the practice reveals that there is extreme heterogeneity of political finance regulatory systems i.e. there is lack of single, magic, ‘one-size-fits-all’ solution to the problems of political financing.<sup>35</sup> For the time being, the complex question of why different political systems travel along different regulatory paths will be sidelined. Yet, within the various regulatory systems, there are four categories subject to legal regulation; source of funding, political expenditure, financial transparency of political parties and sanctions and penalties.<sup>36</sup>

The issue of regulating political funding has also attracted different international organizations, which tend to propose standards for political finance systems. Many of the proposals emerge from international and

<sup>30</sup> *Id.*,P.76.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Throughout this paper, the term “political funding or political finance” will encompass all aspects related to the funding and spending of resources by political parties and candidates in the context of election campaigns as well as in non-electoral times. As such, it is a broader term than “campaign finance”, often used in the literature to cover the whole subject, see, Kevin Casas-Zamora, *ibid.*

<sup>35</sup> Kevin Casas-Zamora, *Supra* note 29.

<sup>36</sup> *Ibid.*

regional organizations including the African Union (AU)<sup>37</sup>. These proposals may differ in approach but all focus on the need for transparency of political finance.<sup>38</sup> Because of such international, regional and domestic concerns, in recent decades, there has been much desire toward more political finance regulations and more public funding.<sup>39</sup> Yet, scholars and practitioners agree that an effective political finance system should meet the following *minimum* requirements:<sup>40</sup>

- ✓ *Enabling equal opportunity to stand and compete in elections;*
- ✓ *Preventing political corruptions through the abuse of state resources;*
- ✓ *Avoiding biased enforcement mechanisms against political opponents and*
- ✓ *Ensuring transparency about how parties collect and spend their money.*

Generally, by examining the system of political financing in the world, as the USAID and IDEA in their respective Handbooks on ‘Money in Politics,’ pointed out, one can understand that there exist too many laws but too little enforcements.<sup>41</sup> Hence, among others, lack of enforcement is one scenario hindering healthy political financing.

This said about the importance of regulating political financing, the subsequent discussion tries to examine the regulatory system of political funding in Ethiopia.

<sup>37</sup>The African Union Convention on Preventing and Combating Corruption (Adopted in Maputo on 11 July 2003), Art. 10.

<sup>38</sup> Kevin Casas-Zamora, *Supra* note 29.

<sup>39</sup> Ingrid van Biezen, *State Intervention in Party Politics: The Public Funding and Regulation of Political Parties*, European Review (2008), Vol. 16, No. 3, P338.

<sup>40</sup> Kevin Casas-Zamora, *supra* note 29.

<sup>41</sup> USAID, Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies (USAID: Washington D.C., 2003)

## 2. THE REGULATION AND CHALLENGES OF POLITICAL FUNDING IN ETHIOPIA

According to Transparency International, “political finance regulations have been introduced in a majority of democracies to promote fair political competition and to 'clean up' politics, or limit the influence of money over politics.”<sup>42</sup> To address the problems of political finance, though they vary from country to country, more and more countries are introducing some form of regulation, which encompass public funding, disclosure regulations, bans and limits on donations, the setting of party spending ceilings etc.<sup>43</sup>

In this view, Ethiopia has introduced its first political finance legislation in 1993<sup>44</sup>. This law included various provisions intended to regulate political finance though it was not effectively enforced. For instance, articles 27 and 28 of this law deals with affairs related to source of income and properties of political parties. Accordingly, it stipulates that political parties are prohibited from engaging in commercial and industrial activities. However, they can raise funds from such events as bazaars on a non-permanent manner. Parties can also draw funds from membership dues, subsidies and grants from the government, and donations from supportive domestic sources. Prohibited donations according to this law were; grants from foreign nationals, foreign governments and political parties, external welfare and religious organizations, and convicted prisoners.

Later in 2008, the former legislation is amended by the revised parties’ registration proclamation, No.573/2008. As it is the case in the former, the latter proclamation tries to regulate political finance in many aspects, including ensuring transparency thought disclosure and reporting and the scheme of public funding. In this regard, article 51(1) of the proclamation describes the sources of income of political parties as income from membership dues, donations or grants by Ethiopian nationals and companies in accordance with the limit set by the Ethiopian National Electoral Board<sup>45</sup>

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<sup>42</sup>Transparency International (TI), *Political Finance Regulations: Bridging the Enforcement Gap*, TI Policy Position, No.2, 2005), P.18.

<sup>43</sup> Wondwosen, *Supra* note 1, P.855.

<sup>44</sup> Political Parties Registration Proclamation No.46/1993.

<sup>45</sup>So far, there is no any law made by the National Electoral Board of Ethiopia, which limit the amount of contribution to political parties.

and the grant and support given by the government (public fund). Besides, article 51(2) of the same proclamation states; “a political party may, upon the approval of the government or regional state administration, collect money from the proceeds of events organized on non-permanent basis to enhance its financial position.” However, as it was the case before, political parties are not allowed to directly or indirectly engagement in commercial activities.<sup>46</sup> Moreover, the proclamation puts a bulky list of sources of funds that political parties could not resort.<sup>47</sup> It strictly prohibits political parties from accepting any donation or grant from foreign nationals,<sup>48</sup> foreign government or foreign political party.<sup>49</sup> It also prohibits donation from welfare organization or non-governmental organization,<sup>50</sup> religious organization,<sup>51</sup> prisoners of law,<sup>52</sup> an organized group or person assuming state power in a manner other than that provided under the Constitution,<sup>53</sup> and terrorist organization.<sup>54</sup> Besides, it outlaws donation or grant having unknown source,<sup>55</sup> from government organization<sup>56</sup> and donation or grant from anybody or person intended for the execution of any inappropriate or unlawful future benefit.<sup>57</sup> However, there is no ceiling limit on election expenditure by the political parties though there are disclosure requirements for any fund received from the lawful sources

<sup>46</sup> The Revised Political Parties Registration Proclamation *Proc. No.573/2008, 14<sup>th</sup> Year No. 62, 24<sup>th</sup> Sep, 2008, Addis Ababa, Art.52(3)*. On this respect, even though there are no businesses ventures registered by the name of political parties, in practice there are business activities administered by the EPRDF member parties. The TPLF, ANDM and OPDO administer huge companies over which they have full autonomy over them. The SEPDP has also a business activities led by the party called Wondo Trading.

<sup>47</sup> Article 52(2) states; where any political party receives directly or indirectly the donation or grant prohibited in paragraph /a/ to /j/ of sub article (1) of this Article, the received money or property shall be confiscated. The political party may be responsible under the appropriate law and article 52(3) also states where a political party happened to get in any way the donation or grant prohibited under sub article (1) of this Article, the party shall return the donation or grant to the Board together with related documents within 21 days from the date it received the donation or grant.

<sup>48</sup> The Revised Political Parties Registration Proclamation, *supra note 25*, Art. 52(1a).

<sup>49</sup> The Revised Political Parties Registration Proclamation, Art.52(1b).

<sup>50</sup> The Revised Political Parties Registration Proclamation, Art. 52(1c).

<sup>51</sup> The Revised Political Parties Registration Proclamation, Art. 52(1d).

<sup>52</sup> The Revised Political Parties Registration Proclamation, Art. 52(1e).

<sup>53</sup> The Revised Political Parties Registration Proclamation, Art. 52(1f).

<sup>54</sup> The Revised Political Parties Registration Proclamation, Art. 52(1g).

<sup>55</sup> The Revised Political Parties Registration Proclamation, Art. 52(1h).

<sup>56</sup> The Revised Political Parties Registration Proclamation, Art. 52(1i).

<sup>57</sup> The Revised Political Parties Registration Proclamation, Art.52(1j).

from either a person or a business corporate.<sup>58</sup> Yet, the law intends to put maximum limit on the amount of donations given to political parties as determined by the ENEB. Nevertheless, still now, such law is not issued.

As depicted in the aforementioned paragraph, the law treats most sources of funds except few as illegal. Arguably, membership due is preferred source of funding to political parties for it encourages democratic engagement and grass-roots ownership.<sup>59</sup> Nonetheless, in the Ethiopian case, as it stands, membership contribution is very limited, specifically, for the opposition political parties, because of their narrow membership base and the obvious reason of poverty.<sup>60</sup> Hence, membership contribution cannot become reliable source of funding for the opposition political parties, unlike the EPRDF that is substantially benefiting from the contributions of its large membership base as well as significant financial support from the business sector.<sup>61</sup> As opposed to this, the opposition political parties are unlikely to receive donations and grants from Ethiopian individuals and businesses except the diaspora.<sup>62</sup> This is mainly because of the fact that the disclosure of the identity of the donors may make them fear the possible revenge that comes from the incumbent party.<sup>63</sup> The public has a right to know which individuals or businesses contribute funds to which parties because contributors donate to political parties not for merely altruistic reasons but for what they hope to get in return. Thus, it is logical to demand the disclosure of donations made to political parties as a way of enforcing the legal restrictions; otherwise, the banned

<sup>58</sup> See, the Revised Political Parties Registration Proclamation, No. 573/2008 articles 19 (1d) and 54(2(a, b and c)).

<sup>59</sup> Ingrid van Biezen, *Supra* note 39, Pp.337–353.

<sup>60</sup> An interview of ENN Television with Professor Beyene Petros, *supra* note 27.

<sup>61</sup> As Wondwosen depicted, in Ethiopia, for instance, according to the official declaration of the EPRDF, the party collected 17.8 million (Ethiopian Birr) in 1999EC, and 11.4 million in 2000EC. In addition, it collected 75.6 million from the public and 70 million Birr from business owners as donation. The party's expenses in 1999EC were 18.8 million and in 2000 E.C it was 18.7 million, see Wondwosen, *supra* note 1, P858.

<sup>62</sup> Wondwosen, *Supra* note 1, P857, According to this author, the most common sources of income for opposition parties in Ethiopia is the diaspora, for instance, in the 2005 Ethiopian parliamentary election, the main source of income for opposition parties was the Diaspora Ethiopians. However, the Diaspora money has also brought many troubles to the opposition parties.

<sup>63</sup> Abrha, *Infra* note 91, P18.

organizations will donate in anonymity and can spoil the political process, as it was the case in the 2005 Ethiopian National election.<sup>64</sup>

Therefore, if there is strict enforcement of political finance laws, the opposition political parties will lack viable alternative source of funding unless they resort to rely on public funding. Yet, the system of public funding merits investigation whether it is a reliable source of funding, if not, for reviewing the problems that it is facing.

## **2.1. PROBLEMS RELATED TO PUBLIC FUNDING**

Although there are arguments forwarded for and against state funding of political parties, the spread of the latter has become a dominant trend over the last century following its early introduction in Uruguay in 1928.<sup>65</sup> Though there are critics dispatched against state funding, among others, arguing it damages the public purse, the positive political significance of state funding has garnered immense support in the following three areas.<sup>66</sup> These are;<sup>67</sup>

- ✓ *Ensuring autonomy of political parties and prevention of corruption,*
- ✓ *Helping political equality and electoral competition and*
- ✓ *Safeguarding the institutionalization and organization of political parties*

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<sup>64</sup>“For instance, the collapse of the Coalition for Unity and Democracy (CUD) was mainly the result of the diaspora divergence and “one of the reasons that contributed for the collapse of the CUD was the party’s heavy dependence on the Diaspora donors and hence, the party was the victim of the infighting and rivalries of the Diaspora Ethiopians.” In that particular time, the Diaspora supporters of the CUD in the US and Europe split into two and two rival Diaspora groups emerged: one group (i.e. Kinijit International Leadership-KIL) allied itself with Birtukan Midekassa, the party’s first chairperson, and Berhanu Nega, the mayor-elect of Addis Ababa. The other group (i.e. Kinijit International Council-KIC) allied itself with Hailu Shawel, the chairperson of the CUD. They blackmail each other; while the supporters of Birtukan Midekssa and Berhanu Nega accused Hailu Shawel of dictatorship, and his close associates in the Diaspora for involving in corrupt practices, the supporters of Hailu Shawel accused Birhanu Nega, Birtukan and their Diaspora associates as infiltrators and agents of the incumbent party”, See, Wondwosen *supra* note 1, P.857.

<sup>65</sup> Kevin Casas-Zamora, *Supra* note 29, P.10.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

Because of its importance, state funding, now days, has become the most common form of state intervention in political finance and it comprises three basic categories;<sup>68</sup>

- *Direct state funding, i.e. cash grants disbursed to parties according to a public procedure laid down in the law.*
- *Indirect state funding, i.e. any grant delivered in kind to political parties-such as access to State-owned broadcasts, public buildings and*
- *Specific political subsidies, for instance cash grants earmarked for party-related or party-controlled organizations, such as parliamentary caucuses, ancillary groups (women's and youth, mainly), and newspapers.*

The Ethiopian laws dealing with public funding comprises the first two types of funding, direct and indirect state funding and the third form of state funding is included neither in the laws nor in the practice. Nevertheless, as it is the case in many African countries, there are problems with the two types of state funding in Ethiopia.<sup>69</sup> Among others, the weakness of opposition political parties emanates from the problems of public funding<sup>70</sup> either because the amount reserved for public funding as a whole is insignificant or because the formula used to apportion the already insignificant fund is predisposed towards the incumbent party.

<sup>68</sup> The demarcation of different kinds of State funding is controversial, particularly concerning the status of specific subsidies. While, in principle, these *specific grants* may be considered as no more than particular examples of direct subvention, it seems advisable to group them in a separate category. Specific grants are frequently outside the control of the parties' central or local organs and, in fact, are frequently disbursed to entities with a separate legal existence from the party (e.g. a newspaper or a research foundation). Moreover, in the case of parliamentary subsidies the extent to which public funds help to sustain the activities of parties rather than the workings of Parliament is unclear. See, Kevin Casas-Zamora, *ibid*.

<sup>69</sup> Kassahun Berhanu, *Beleaguered Opposition under A Dominant Party System*, P.8, available at <https://www.cmi.no/file/?1315> <accessed on 6 February 2018>.

<sup>70</sup> Lovise Aalen, Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000 (Bergen: Chr. Michelsen Institute, Development Studies and Human Rights, 2002), P.31. This is because, unlike for the incumbent party, membership dues made to the opposition is insignificant because of the presence of narrow membership. Again, contribution from the business sector is unlikely to be made to the opposition unless made without exposing the identity of contributors, which is illegal.

With the existing deficiency of financial resources, it seems so demanding that political parties must be partially, if not fully, funded through budgetary allocations of the government. However, the actual challenge with public funding remains in addressing the questions, '*how much, when and how*.' Hence, the upcoming discussion will examine these points one by one. Particularly, the first three points, which concern with direct state funding will discuss how and with what procedure is the amount of state funding determined, the criteria used for determining the eligibility and apportionment of funds and the interval and timing of disbursements. The fourth part of the discussion that deals with indirect state funding tries to investigate the issue of public media allocation to see how fair it is.

### **2.1.1. Amount and Procedures of Determining Public Funding**

In most countries the initial amount of Direct State Funding (DSF), rests in the hands of legislators.<sup>71</sup> In other countries, non-political organ defined the amount of funding, so as to isolate the grant from political meddling.<sup>72</sup> In the former case, the initial amount determination may follow one of several paths, including one that gives politicians a blank authorization to define the subsidy's amount on an ad-hoc basis through the budget or a special law.<sup>73</sup> This *unconstrained* system leaves the subsidy open to manipulation.<sup>74</sup> Others follow *constrained* amount definition procedures, which lay down clear rules for the calculation of the amount of DSF and most countries have indeed preferred to formalize the rules for calculating subsidies to protect them from short-term political manipulation.<sup>75</sup> In this regard, in some countries, the electoral law may define in detail the amount of subsidy payable for each seat or vote and alternatively, legislators may choose to fix the total sum of the donation.<sup>76</sup>

<sup>71</sup> Kevin Casas-Zamora, *Supra* note, 29, P14.

<sup>72</sup> Hofnung Menachem, *The Public Purse and the Private Campaign: Political Finance in Israel*, Journal of Law and Society (1996), Vol.23, No.1.

<sup>73</sup> Kevin Casas-Zamora, *Supra* note, 29, P15.

<sup>74</sup> *Ibid.*

<sup>75</sup> This is the case, for example, in Australia, Belgium, Colombia, Denmark, Italy, Japan, Paraguay, Portugal, South Korea, Sweden, Taiwan, Germany and, with slight variations, Canada and the U.S.

<sup>76</sup> Hofnung Menachem, *Supra* note 72.

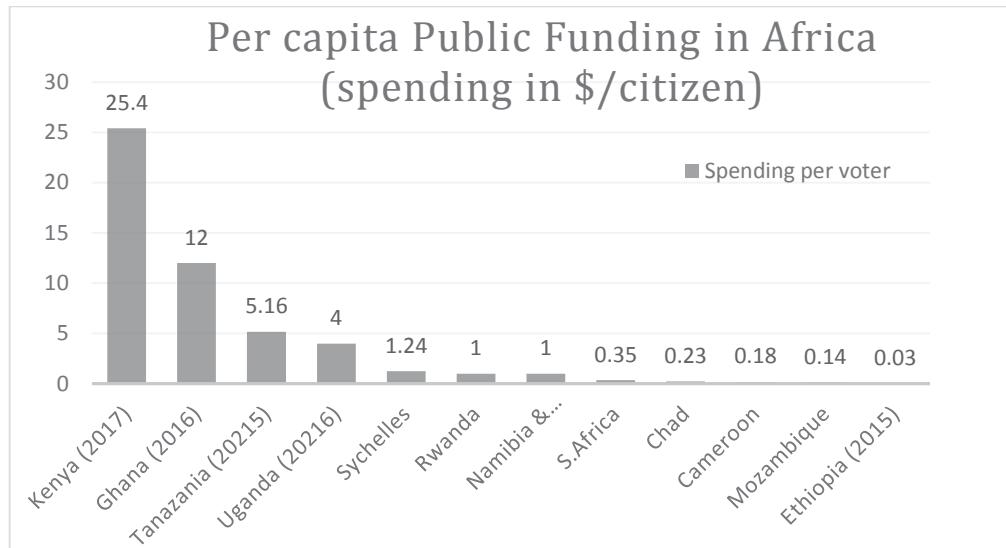
When it comes to Ethiopian situation, who determines the amount of grant extended to political parties and how is that determined is important issue in this regard. Article 42 of the Revised Political Parties Registration Proclamation No.573/2008 states the government may grant support for political parties for conducting their day-to-day activities or for election purposes that have representation at the Federal and at State houses. Yet, it says nothing as to the amount of finance allotted and how it is determined. Like all other budgets, it is left to the determination of the Federal House of Peoples Representatives done in consultation with the Ministry of Finance and Economic Cooperation. Hence, the influence of the incumbent party is so obvious that it might affect it in one or the other way.

To be specific, it would be better to examine further the practice and its consequence on the opposition political parties. As far as the amount of finance reserved for public funding is concerned, Ethiopia appears the last in the list of African countries. In this regard, Magnus Ohman recaps the situation of public funding in Africa as the lowest and the Ethiopian case as the worst of all.<sup>77</sup> The following chart tries to summarize the amount of public funding in Africa.

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<sup>77</sup> Magnus Ohman, *Supra* note 3, P.50 and See also, Abdi Latif Kadir, Kenya is set to hold one of the most expensive elections in Africa, Quartz Africa, July 18, 2017, available at: <https://qz.com/1030958/kenyas-elections-will-cost-1-billion-in-government-and-campaign-spend/> <accessed on March 26, 2018>.

Figure 1-Per capita public funding in Africa



**Source:** Adapted from the Handbook on Political Finance, IDEA, 2014 and Ashiagbor, S., Party Finance Reforms in Africa, Lessons Learned from Four Countries: Ghana, Kenya, Senegal & South Africa National Democratic Institute for International Affairs 2005.

From the chart, one can clearly see the level of public funding in African countries where Kenya stood the peak followed by Ghana, Tanzania and Uganda. Other like Seychelles, Ruanda, Morocco and Namibia have an African ‘average public funding per capita’ (over \$1 per citizen), compared to around \$0.7 in Tanzania, \$0.35 in South Africa, \$0.23 in Chad, \$0.18 in Cameroon, \$0.14 in Mozambique, \$0.08 in Niger and a meager of all \$0.03 in Ethiopia. Accordingly, Ethiopia is the least per capita public funder in Africa compared to all other states. This being as it is, who is going to suffer much from the small amount of public funds allotted to political parties is a question that will be considered in the subsequent discussion.

### 2.1.2. Eligibility and Allocation of Public Funding

As far as the formula employed for the distribution of public funding, there are generally two issues: first, which parties should have the right to receive funds (eligibility thresholds) and second, how the fund distributed among

those who are eligible (allocation criteria).<sup>78</sup> Magnus Ohman while writing about the African public funding stated that there is lack of a level playing field between the incumbent and the opposition parties.<sup>79</sup> This often gave raise to direct struggle between those who are in power and those who are not.<sup>80</sup> From this perspective, it would be better to scrutinize the situation of public funding in Ethiopia.

According to the revised political parties' registration proclamation No.573/2008, direct subsidies can be *permanent* and/or *electoral*. Both categories differ in the frequency of the allocation, their recipients and the object of the funding. Thus, in contrast to electoral subsidies given during elections,<sup>81</sup> permanent subsidies are normally annual, payable to political parties and directed towards a wide array of activities primarily for building up and administering the day-to-day activities of the political parties.<sup>82</sup> This type of public funding is granted to political parties for conducting their day to day activities but its allocation is made on the basis of the existing seats of the political parties' in the federal and regional parliaments.<sup>83</sup> By implication, it excludes opposition political parties from receiving funds of such sort for they lack parliamentary seats in the 2010 and 2015 national elections in the federal and regional parliaments. In effect, the EPRDF and its allies are the sole beneficiaries of this fund.<sup>84</sup> This type of public funding can be more beneficial than the election time fund, for two reasons. First, this type of fund is apportioned annually more frequently than its counterpart. For instance, the previous trend shows seven million birr allotted yearly to those who have parliamentary seats.<sup>85</sup> Second, the number of parties involved in the allocation of funds for the day-to-day activities is very small (EPRDF and five of its allies) compared to the election funding where numerous political parties take

<sup>78</sup>Magnus Ohman, *Supra* note 3, P.23.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> The Revised Political Parties Proclamation, *supra* note 25, Art. 42 (2).

<sup>82</sup> The Revised Political Parties Proclamation, Art. 42 (1).

<sup>83</sup> The Revised Political Parties Proclamation, Art. 45 (1).

<sup>84</sup>The Ethiopian National Electoral Board Regulation concerning the procedure for determining the apportionment of government financial support to political parties, regulation No.5/2009, Art. 20. This regulation confines the allotment of funding for day-to-day activities to political parties who have a seat in either the federal or regional parliaments and technically excluding all other opposition parties.

<sup>85</sup> The ENEB Office, *Election 2010*, A Special Bulletin, June 2010, P.22.

part (for instance, during 2010 and 2015 election periods 63 and 58 political parties involved respectively).<sup>86</sup>

When it comes to the election campaign funding, it is allocated based on the number of elected representatives in the federal and regional houses, the number of candidates and the number of women candidates.<sup>87</sup> This formula proportionately favored those parties already represented in the parliaments.<sup>88</sup> According to ENEB sources, in the 2010 General election seven million birr allocated for election campaign.<sup>89</sup> Yet, all opposition parties considered that the received amounts were insufficient to conduct an effective campaign.<sup>90</sup> Even some opposition party members argued, not only the money is meager but also it was less than the money needed for preparing audit reports for itself.<sup>91</sup> To support or otherwise disprove this allegation, it would be proper to examine the formula or criteria employed to distribute the public funding. In this regard, the ENEB has prepared a formula for allocating public funds to the political parties as depicted in the following table.<sup>92</sup>

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<sup>86</sup> ENEB Office, *Post-Election Assessment of the 2015 General Election*, June 2016, P.3.

<sup>87</sup> This fund is extended to political parties for election campaigning and it was established according to the Political Parties Registration Proclamation No.572/2008 and the NEBE Regulation Concerning the Procedure for Determining the Apportionment of Government Financial Support to Political Parties regulation No.5/2009.

<sup>88</sup> The Revised Political Parties Registration Proclamation, *supra* note 25, Art. 45 (2).

<sup>89</sup>The ENEB Bulletin, *supra* note 85.

<sup>90</sup> Report produced by the European Union Election Observation Mission to Ethiopia 2010 and presented the mission's findings on the 23 May 2010 elections to the House of People's Representatives and State Councils, Addis Ababa, Ethiopia, p.6, retrieved from: <http://aceproject.org/ero-en/regions/africa/ET/ethiopia-final-report-house-of-peoples/view>, <accessed on Jan 2, 2018>.

<sup>91</sup>Abrha Desta, chairman of Arena Tigray for Democracy and Justice, a regional party in Tigray which is a member of the national coalition, Medrek, in an international conference on the them; Political Parties, Multi-Party System and Democracy in Ethiopia, hosted by Mekelle University and Friedrich Evert Stiftung, Ethiopia, Feb. 14 and 15, 2018.

<sup>92</sup> Data from ENEB, 27 October 2017.

Table 1-formula used for allocating public funding in the 2010 and 2015 general elections

<b>Criteria on the basis of</b>	<b>2010 election</b>	<b>2015 election</b>
Parliamentary Seat	55%	35%
Number of candidates	25%	40%
Women candidate	10%	15%
Equality	10%	10%

**Source:** Adapted from the data gathered from ENEB, Political Parties' Directorate Office

As revealed from the table, in the 2010 general election public fund distribution, the highest weight given to the seat of the political parties. Thus, the EPRDF and its allies, which entirely controlled the federal and regional parliaments, had an exclusive claim on the 55% of the budget before resorting to the other criteria. Furthermore, EPRDF and its allies had the highest degree of advantage even on the other two criteria; number of candidates and women candidate presented for the election. The rest 10%, allotted on equality basis, among numerous political parties is insignificant.<sup>93</sup> Hence, the opposition parties likely suffer from shortage of budget. In this regard, taking into consideration the financial limitations of most political parties, European Union Election Observation Mission to Ethiopia (EU EOM) concluded that most Ethiopian political parties, with the exception of the EPRDF, are under-funded.<sup>94</sup> As depicted in the table, though the ENEB has introduced some modifications in the 2015 national election on the weight of the criteria allotted to parliamentary seats, yet it increased the weight given to the number of candidates presented to which the EPRDF would possibly have greater advantage.

<sup>93</sup> Data from NEBE, 27 October 2017.

<sup>94</sup> EU EOM Report, *supra* note 90.

Given the plurality electoral system and the huge wastage of votes when converted in to seats, using parliamentary seat as criteria for apportioning public funding would not be fair in the Ethiopian context. It would not also show the popular support of political parties. Rather it would have been fairer than it is, had the criteria been based on votes earned in the previous elections. Besides, as it is done in Israel and Mexico, substantial amount of subsidy could have disbursed in equal terms for all recipients.<sup>95</sup> However, while leveling the playing field for allowing the state funding to all political parties fairly is important, there is a challenge that some parties may use it as a tool, only for getting the funds without having serious courage to compete in the election. To regulate such problems, it can be necessary to devise a system of threshold limits for becoming eligible to get state funding. Yet, the threshold limit should not be so high, that only one or two already well-established parties will benefit.

Against all odds, as it stands, the incumbent party in Ethiopia, with substantial alternative sources of funds, is the recipient of the largest portion of the meager budget allotted to public funding of political parties and the opposition political parties with minor alternative sources of funding get the smallest portion of the disbursement.

### **2.1.3. Interval and Timing of Distributions of Public Funds**

The moment of the disbursement of public funding is consequential having its own negative and positive impacts on parties and enforcement of reporting requirements. In some countries, the State subsidy operates as a post-electoral reimbursement of expenditures, while in other systems there are rules that entitle parties full access to the subsidy before the election.<sup>96</sup> In a few countries both options are mixed, combining in different measures a post-election

<sup>95</sup> Most countries allocate the bulk of DSF proportionally, according to the share of vote or representation obtained by each eligible recipient in the previous election (e.g. Belgium, Greece [per share of votes]; Finland, Sweden [per share of parliamentary seats]). The use of vote or seat-based allocation rules is not, however, universal or unqualified. Out of normative choice or political expediency, reformers frequently enact rules that qualify proportional election-based distributions and make the subsidy system move towards absolute equality for all recipients. See, Kevin Casas-Zamora, *supra* note, 29, p.14.

<sup>96</sup> Kevin Casas-Zamora, *Supra* note 29.

reimbursement with a pre-electoral advance.<sup>97</sup> The availability of subsidies before the election or, alternatively, their arrangement as a post electoral reimbursement can greatly influence the financial barriers experienced by newcomers since advances tend to be distributed according to the parties' or candidates' previous electoral results.<sup>98</sup> Despite such an effect on emerging parties, it might still provide them with vital resources during the decisive months of the campaign and thus reducing to some extent their dependency on private financial operators.<sup>99</sup>

When it comes to the Ethiopian case, the Ethiopian National Electoral Board Regulation concerning the procedure for determining the apportionment of government financial support to political parties, regulation No.5/2009, under its article 17, underscores the fact that political parties shall receive public funding before the Election Day.<sup>100</sup> Through this, it enables political parties to receive important resource for making campaigns though the amount is insignificant as discussed above. Yet, such an arrangement hinders newly emerging potential competitors from having fair share from the electoral funds, for instance, in the 2010 national election out of the seven million allotted to political parties more than half (55%) of the fund was allotted on the basis of seats that actually demand previous performance. Hence, to try to compromise these two interests it may be good to introduce a mixed system of fund allocation without compromising the other concerns stated herein above.

#### **2.1.4. Problems Related to Public Media Allocation**

As an indirect support of the government to political parties,<sup>101</sup> the Ethiopian Broadcast Authority (EBA) have allocated free airtime and space to all political parties contesting the election.<sup>102</sup> For instance, in 2010 general

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> ENEB regulation, *supra note* 84, Art. 17.

<sup>101</sup> The Revised Political Parties Registration Proclamation, *supra note* 25, Art. 42(3) states the support to be granted by the government may be in the form of money, in kind and in service.

<sup>102</sup> The Ethiopian Broadcast Authority *Directive on Media usage of political partied for the fifth general election* (May 2015 general election), January 2015, Art.5.

election such an allocation extended to all 63 political parties attending the general election.<sup>103</sup> The formula for its allotment is depicted as follows:

Table 2-Public Media allocation criteria for the 2010<sup>104</sup> and 2015<sup>105</sup>  
Ethiopian general elections

<b>Criteria on the basis of</b>	<b>2010 election</b>	<b>2015 election</b>
Parliamentary Seat	55%	40%
Candidates presented	20%	40%
Equality	25%	10%
Women candidate	-	10%

*Source:* Adapted from the data gathered from ENEB, Political Parties' Directorate Office

When we look at the distribution of the state-owned media, it does not seem to provide a balanced coverage in its news and bulletins.<sup>106</sup> This is mainly because parliamentary seat has taken the highest weight where the EPRDF would be the sole beneficiary. On this regard, the EU EOM Report on the 2010 Ethiopian general election has visibly shown the actual benefit that the EPRDF received compared to the other opposition political parties.<sup>107</sup> The following chart summarizes the practical distribution of public media airtime and bulletin by the EPRDF and the combined opposition in the 2010 general election.

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<sup>103</sup> An interview with Ato Tesfalem Abay, Public Relations Directorate Director of the ENEB, October 27, 2017.

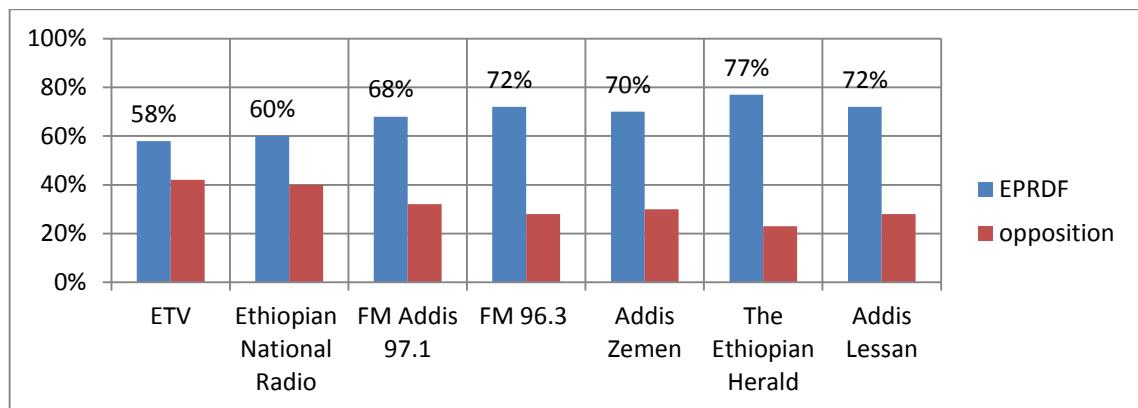
<sup>104</sup> The Ethiopian Broadcast Authority *Directive on Media usage of political partied for the fourth general election* (May 2010 general election), January 2010, Art. 5.

<sup>105</sup> The Ethiopian Broadcast Authority Directive, *supra* note 102.

<sup>106</sup> EU EOM Report, *supra* note 90, P.21.

<sup>107</sup> *Ibid.*

Figure 2-the distribution of public media both airtime and bulletin by the EPRDF and the combined opposition in 2010 general election



*Source:* Adapted from the EU EOM Report on the 2010 Ethiopian election

As can be depicted from the chart, on ETV1, the EPRDF obtained 58% of total airtime for election-related news. Likewise, Ethiopian National Radio devoted 60% of airtime to the ruling party. The EPRDF's coverage on FM Addis 97.1 and FM 96.3 amounted to 68% and 72% of total airtime, respectively. The imbalance was even more marked in state-owned written media, where the EPRDF obtained 70%, 77% and 72% of all electoral coverage space in Addis Zemen, The Ethiopian Herald and Addis Lessan, respectively.

Consistent with the above finding, Kassahun Berhanu in his article entitled 'Ethiopia: Beleaguered Opposition under a Dominant Party System' argued opposition parties in Ethiopia got limited access to state owned media during the previous elections to publicize their election platforms. He emphasized that no equal coverage given to the opposition in a manner that is on a par with the access enjoyed by the ruling party.<sup>108</sup>

Hence, there is genuine concern on the distribution of Public Medias, as a public resource, where the EPRDF surpasses the combined opposition parties when it comes to the actual exercise and this would have negative

<sup>108</sup> Kassahun Berhanu, *supra* note 69.

ramifications on the electoral results by creating information asymmetry among the competitors.

## 2.2.PROBLEMS ASSOCIATED WITH ABUSE OF STATE RESOURCES

One of the problems of opposition parties in emerging democracies is the situation where the ruling party makes use of governmental resources for party purposes, while opposition parties are cutoff from access to public funds.<sup>109</sup> This situation makes the opposition parties disadvantaged in the electoral process. As such, the abuse of state resources is a key problem in the field of political finance in Africa.<sup>110</sup> Most incumbent political parties in Africa use their position to increase their chance of re-election to a certain extent by directly misusing public resources and this contributes to the uneven playing field between political parties.<sup>111</sup> Abuse of state resources carries the risk of undermining the *democratic process* by giving the incumbent an undue advantage.<sup>112</sup> This has been mainly because of the blurred distinction between the state and the ruling party.<sup>113</sup> In effect, as one analyst underlines, “it causes damage to democracy by creating an unleveled playing field which expands the re-election chances of incumbents.”<sup>114</sup>

In the Ethiopian context, the use of public resources, including federal, regional and municipal, for a particular party's campaign is strictly forbidden in article 14 of the Electoral Code of Conduct for Political Parties and it is regarded as ‘abuse of power’.<sup>115</sup> Nonetheless, against this provision, there is widespread abuse of state resources to the extent of failing to distinguish the government and the incumbent party. In this regard, the European Union

<sup>109</sup> Peter Arthur, *Political Parties’ Campaign Financing in Ghana’s Fourth Republic: a Contribution to the Discourse*, Journal of Asian and African Studies (2017), Vol.52, No.8, Pp.1126 &1127.

<sup>110</sup> Magnus Ohman, *Supra* note 3, P.40.

<sup>111</sup> *Ibid.*

<sup>112</sup> Magnus Ohman, The State of Political Finance Regulations in Africa (International IDEA Discussion Paper 14/2016, International Institute for Democracy and Electoral Assistance, 2016), P.7.

<sup>113</sup> Wondwosen Toshome, *Supra* note 1, P855.

<sup>114</sup> Magnus Ohman, *Supra* note 3.

<sup>115</sup> A Proclamation to Provide for the Electoral Code of Conduct for Political Parties Proc. No.662/2009, 15<sup>th</sup> year No.8, Addis Ababa 28<sup>th</sup> August 2009, Art. 14 (1).

Election Observation Mission (EU EOM) to Ethiopia witnessed the exploitation of public resources by the ruling party's campaign throughout the country, mainly in Oromia, the Somali Region and Tigray.<sup>116</sup> It also observed a blurred distinction between the ruling party and local administration, which were, according to the latter, “often perceived and referred by citizens as being one single entity”.<sup>117</sup> It particularly expressed as having directly comprehended;

*The ruling party consuming propaganda on public administration buildings, civil servants wearing ruling party propaganda while on duty, the loading of EPRDF campaign posters in local administration vehicles, the use of local administration offices to coordinate campaign activities, housing of ruling party offices in local administration compounds and the storing of EPRDF posters within local administration installations.*<sup>118</sup>

These practices would have the possibility of providing an unfair advantage to the incumbent party in the process of campaigning. It has also an effect of further blurring the already blurred distinction between the state and the ruling party.<sup>119</sup> When considering the fusion between the incumbent party and the state in Ethiopia, Merera Gudina in his article ‘Elections and democratization in Ethiopia, 1991–2010’, also coincides with the above stated idea.<sup>120</sup> He observed that there is fusion between the ruling party and the state, which in turn allows the former to have unrestricted resources under the command of the state with little or no accountability.<sup>121</sup> He further argued that the hegemonic power of the EPRDF has effectively excluded the opposition political parties from taking fair access to mass media and campaign finances.<sup>122</sup>

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<sup>116</sup> EU EOM report, *supra* note 90, P.17.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> Merera Gudina, *Elections and democratization in Ethiopia, 1991–2010*, Journal of Eastern African Studies (2011), Vol.5 No.4, Pp.664-680, available at: <https://doi.org/10.1080/17531055.2011.642524> on April 16, 2018.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

Because of the unmatched resource disparity between the ruling and the opposition political parties and because of the limited resources available to the latter, the opposition political parties tried to depend on foreign funds, mainly in the diaspora. For instance, in the 2005 Ethiopian parliamentary election, the main source of income for opposition parties was the Diaspora community.<sup>123</sup> Yet, the Diaspora money has brought several troubles to the opposition parties. Particularly, the collapse of the Coalition for Unity and Democracy (CUD) was chiefly the result of the diaspora divergence.<sup>124</sup> In this regard, Wondwosen firmly argues, “one of the reasons that contributed for the collapse of the CUD was the party’s heavy dependence on the Diaspora patrons and hence, it was the victim of the infighting and rivalries of the Diaspora donors.”<sup>125</sup> In this regard, one can safely conclude that the opposition parties’ political allegiance to the diaspora is the consequence of the latters’ financial support. Therefore, controlling or at least reducing the heavy financial dose of the diaspora community on the opposition political parties in Ethiopia is necessary. This is possible, first by leveling the resource platform among all political competitors, specifically, by ensuring sufficient and equitable public resources to the parties. Second, together with the first, it is necessary to strictly enforce the financial regulatory laws with due consideration to take corrective measures on issues affecting reasonable resource distribution.

### **3. CONCLUSION**

Political parties are agents of representative democracy. They have incomparable contribution in a democratic process. For accomplishing their democratic functions, they need resource or political funding. Political funding greatly determines their strength. Yet, political funding is highly manipulated for creating unequal laying field and thereby extending ones

<sup>123</sup> Wondwesen, *supra* note 1, P857.

<sup>124</sup> The CUD was the biggest and the formidable opposition party coalition in the 2005 parliamentary election. In the said election, the CUD controlled almost 100% of the seats in Addis Ababa legislature. It also won many seats in the Federal parliament. In the post-election period, in fighting and rivalry among the party leaders fuelled by the Diaspora led the party into disintegration see Wondwesen, *Id*, P.855.

<sup>125</sup> *Ibid.*

electoral success. The incumbent parties are the beneficiaries in most of these manipulations through either law or practice.

In view to this, this research intends to address the system of political funding in Ethiopia. It particularly examines the regulation of sources of funds, the allocation of public funds and the abuse of state resources in Ethiopia to demonstrate their influence on the opposition and the incumbent parties.

Accordingly, it concludes that political funding in Ethiopia is unevenly dispersed. While the EPRDF garners huge resource, the opposition suffers from lack of the same. The regulation and distribution of political funding favors the incumbent party. In this regard, the incumbent party earns large amount of funds from its big membership base and from the private business contributions. It takes the lion's share of the public funds allotted by the government. It also substantially benefits from the public media distribution. Moreover, the incumbent party uses its incumbency for abusing the state resources, at its disposal, for its own partisan advantages thereby getting the upper hand in the electoral competition. In sharp contrast, the opposition political parties suffer from lack of adequate resources. It is because their membership base is narrow and private donations are rare for the latter fears retributions coming from the incumbent party. As far as public funding is concerned, on the one hand, the funding allotted for day-to-day activities is apportioned based on parliamentary seats where the opposition parties are effectively excluded. On the other hand, regarding the election funding, from the beginning the whole amount is so small but in addition to this, the substantial amount of money is distributed based on parliamentary seats where the incumbent party overall have substantial claim. The same problem also exists in the allocation of public media allocation.

Generally, the Ethiopian political competition functions in a vicious circle; the opposition parties are financially weak, as a result, they are unable to win parliamentary seats and still the direct and indirect resource allocations base on parliamentary seats and yet the same problem continues reproducing itself.

To deal with such problems in the political funding system of our country, though there is no-one-size-fits-all solution to the said problems, the author suggests the following measures might help:

1. The laws regulating political funding, from the very start, should be drafted through the concerted and genuine engagement of all stakeholders. Specifically, the voices and concerns of political parties, civic societies and the citizenry must be duly considered.
2. Both the sum of the total budget granted to political parties and the specific criteria employed for its apportionment, to each of the political parties, should not be left as a ‘blank check’ only to the determination of the legislative organ dominated by the incumbent party. To be more explicit, either objective standards must be set in advance as part of the laws regulating public funding or the same should be determined in an open and transparent discussion of all stake holders.
3. Further, to avoid biased enforcement of the political financing laws by the National Electoral Board, usually against the opposition political parties, the former’s independence and impartiality should be ensured first. Besides, the board’s institutional capacity should be strengthened to make sure it has the capability to properly enforce the laws regulating financial fair plays.
4. Last but not least, to minimize or control the abuse of state resources by incumbent parties, the best way is ensuring that the government institutions including the civil servants and the bureaucracy of the civil service and public media are liberated from partisan dispositions. And again, as part of the enforcement of the funding laws among political parties, the National Electoral Board should be given the mandate to investigate abuse of state resources and expose the same to the public and other relevant bodies.

## MAKING INVESTMENT WORK FOR SUSTAINABLE DEVELOPMENT: A PRESSING NEED TO INTEGRATE SUSTAINABLE DEVELOPMENT INTO ETHIOPIAN INVESTMENT LAW

*Abiyot Mogos\**

### ABSTRACT

*Sustainable development is aspiration of all nation, nationality and people of Ethiopia. It embraces three mutually reinforcing pillars; economic growth, social development and environmental protection as integral part of development process. The FDRE Constitution recognizes right to sustainable development and dictates integration of economic, social and environmental concern into investment process. However, the close inspection of how investment operates in the country reveals that essence of sustainable development is missing from Ethiopian investment governance. Against this backdrop, this study examines the nexus of investment and sustainable development in Ethiopia, and appraises the adequacy of Ethiopian investment laws in mobilizing investment for sustainable development. To this end, it employed a combination of doctrinal and socio legal research method utilizing both primary and secondary sources. This study established a quest for inclusive economic growth, respect for human right, and need to curb social and environmental impacts in the course of investment as pressing issues that necessitate the integration of the pillars of sustainable development into the Ethiopia's investment laws. It argues that the economic, social and environmental pillars of sustainable development are not appropriately integrated under the Ethiopian investment laws to insure investment works for sustainable development. Thus, legal reform is suggested to integrate sustainable development in Ethiopia's investment laws so as to realize the motto of investment for sustainable development.*

**Key words:** *Ethiopia, Investment, Investment law, Sustainable development*

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## I. INTRODUCTION

With the advent of globalization, the importance of investment as the primary engines of growth in all economies has been strongly affirmed especially for developing countries. Investment is generally understood to mean the expenditure of capital for the production of goods and services with the purpose of making a profit.<sup>1</sup> From the legal point of view, different legal instruments attempted to define investment using different criteria on the basis of the purpose to be achieved by the instrument in question. For instance, in an attempt to establish its jurisdiction under Art.25 of the International Centre for settlement of Investment Dispute (ICSID) convention<sup>2</sup> in *salini* case, the ICISD arbitration panel adopted a *Salini* test, which defines investment as having four elements: (1) a contribution of money or assets (2) a certain duration (3) an element of risk and (4) a contribution to economic development.<sup>3</sup>

Investment is a potential weapon of development; especially for developing countries like Ethiopia. However, it has also tremendous negative impacts unless there is effective law that will be used to avoid or minimize such side effects of investment and mobilize it for sustainable development. However, a close look at how investment operates in the country reveals the missing of sustainable development from Ethiopian investment governance.

Against this background, this study aims to examine the nexus of investment and sustainable development in Ethiopia, by shading light on the pressing need of integrating sustainable development into Ethiopian investment laws. This article will first expose the pressing concerns that have been proliferated under guise of investment in Ethiopia so as to lay down rational for the need to integrate sustainable development into Ethiopian investment law. Next, it makes critical analysis whether the three pillars of sustainable development are adequately integrated in Ethiopian investment laws. To this end, the study employed a combination doctrinal and socio legal research methods utilizing both primary and secondary sources. Accordingly, relevant International

<sup>1</sup> BRYAN A. GARNER, BLACK'S LAW DICTIONARY (8<sup>th</sup> Edition, 2004).

<sup>2</sup> ICSID Convention, Oct. 14, 1966, 17 U.S.T.1270, 575 U. N.T.S. 159.

<sup>3</sup> Alex Grabowski, *The Definition of Investment under the ICSID Convention: A Defense of Salini*, Chicago Journal of International Law (2014), Vol.15, No.1, P 287.

instruments, Ethiopian laws, books, articles, relating to the matter were reviewed along with key informants interview<sup>4</sup> selected purposively from Ethiopian Investment Commission (EIC), Oromia Investment Commission (OIC) and Oromo Federalist Congress (OFC).

The paper is organized in five sections. The first section is introduction; while the second section provides general concepts of sustainable development and its accommodation under the FDRE Constitution. The third section exposes prevailing economic, social, environmental and human right impacts of investment in the country as pressing issues that compel for legal intervention. The fourth section evaluates the status of Ethiopian investment laws on the issues. As usual, the paper ends up with conclusion and recommendation on ways forward.

## **II. THE CONCEPT OF SUSTAINABLE DEVELOPMENT AND ITS ACCOMMODATION UNDER THE FDRE CONSTITUTION**

### **A. The concept of sustainable Development and its principles**

Sustainable development is an elastic and evolving concept that it's meaning, content and legal status evolved over times in a series of international conferences.<sup>5</sup> United Nations (UN) Declaration on right to development defined development as a comprehensive process which facilitates for entire population and all individuals the enjoyment of economic, social, cultural, and

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<sup>4</sup> These key personnel are contacted to solicit supplementary information that may enrich or update the existing secondary data. EIC is selected because of its responsibility in respect of investment in the country. OIC is added because it is believed that majority of investments that are devoid of sustainability are operating in Oromiya, especially in Oromiya special zone Finfinne round. Of oppositions, OFC is selected because this party was highly criticizing Ethiopian investment approach by raising issues like land grabbing, eviction and violation of human right.

<sup>5</sup> Key among the conferences include: the United Nations Conference on Human Environment held at Stockholm held in 1972 reading the Stockholm declaration; ii) the United Nation Conference on Environment and Development held at Rio de Janeiro in 1992 that led to the Rio declaration; the Johannesburg World Summit on Sustainable Development of 2002 that resulted in the adoption of Johannesburg Declaration and; the 70th Conference of the International Law Association(ILA) held in New Delhi in 2002 which led to the codification of the new Delhi declaration on principles of international law relating to sustainable development.

political improvements.<sup>6</sup> However, the need to insure other competing principles like environmental objective was resulted in the inception of new approach to development also called sustainable development. Sustainable development is thus, a process that improves living standard of people inclusively while respecting environment, based on bottom-up agendas and priorities.<sup>7</sup>

According to the definition provided in 1987 report of Brandtland commission<sup>8</sup>, sustainable development implies the development that meets needs of the present without compromising the ability of future generations to meet their own needs. In the wording of the 1992 Rio declaration<sup>9</sup>, sustainable development embraces, *inter alia*, inclusive economic deal and equity, and addressing social, environmental and human right concern as its substantive elements; and making people at the center of development, and social and environmental impact assessment as its procedural elements. Similarly, Johannesburg Declaration on sustainable development<sup>10</sup> considers sustainable development as embracing the three interdependent and mutually reinforcing pillars; economic growth, social development and environmental protection. The New Delhi declaration<sup>11</sup> eventually consolidates the international law principles on sustainable development in seven international Law principles. These includes principle of integration; the principle of common but differentiated responsibilities; principle of precaution, principle of good governance; the principle of public participation; the principle of equity and poverty eradication; and the principle duty of states to ensure sustainable use of natural resources. These principles are widely accepted as benchmark and guiding principles that should form the starting point in a principled

<sup>6</sup> United Nations Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 (1986) (hereinafter Declaration on right to development), Art.1.

<sup>7</sup> Lorenzo Cotula, Foreign Investment, Law and Sustainable Development: A Handbook on Agriculture and Extractive Industries, Natural Resource, Issue No 31.Iied (2<sup>nd</sup> Ed., 2016).

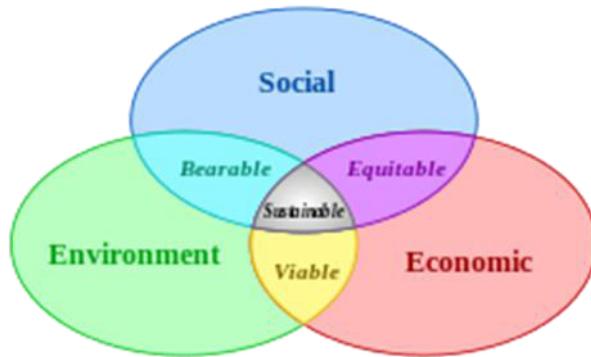
<sup>8</sup> Brundtland *et al*, Our Common Future; Report of the UN World Commission on Environment and Development (UN: New York, NY, USA, 4 August 1987; UN Doc A/42/ 427).

<sup>9</sup> Rio Declaration on Environment and Development, Annex I to the Report of the UN Conference on environment and Development (Rio de Janeiro, UN Doc. A/CONF.151/26, June 1992).

<sup>10</sup> Johannes Barge Declaration on Sustainable development (Johannesburg, South Africa, 2 -4 September 2002).

<sup>11</sup> New Delhi Declaration on the Principles of International Law Related to Sustainable Development (ILA, September 2002).

assessment of any national law and/or policy regarding any activity related to sustainable development.<sup>12</sup> Sustainable development is the intersection of the three pillars of development as could be observed figuratively in the diagram below.



*Source: Free cyclopedia*

The idea embodied in the diagram is that, when environment is linked with social interest, it will be bearable; when environment is linked with economic interest, it will be viable; and when social interest is linked to economic interest, it will be equitable. Hence, environmental concern linked with the socio-economic development amounts to sustainable development and vice-versa. To achieve this desired goal of integration, there shall be better and realistic Economic (Investment) law, a better and achievable social law, and better and inclusive environmental law that collectively lead to sustainable development.

## B. Precursor to Sustainable Development under the FDRE Constitution

Sustainable development is the aspiration of all nations, nationalities, and peoples of Ethiopia. And this is reflected in the preamble of the FDRE Constitution which reads;

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<sup>12</sup> M. Barnard, *The Role of International Sustainable Development Principles in Enabling Sustainable Energy Policy: A south African Perspective*, 15(2) PER /PELJ, (2012), Pp 212, 207-243.

We, Nations, Nationalities and Peoples of Ethiopia: Strongly committed, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing democratic order, and **advancing our economic and social development**; Firmly convinced that the fulfillment of this objective requires full respect of individual and people's **fundamental freedoms and rights** to live together on the basis of equality and without any sexual, religious or cultural discrimination...*emphasis added.*<sup>13</sup>

From this preamble, one can infer advancing economic and social development with due respect to fundamental right and freedom of all individual and people. This stipulation triggers the inclusion of social and economic pillar of sustainable development expressly and environmental pillars by implication in context of right to environment. In effect, the preamble introduced human right based approach to development by recognizing fulfillment of human right as a precondition for realization of economic and social development.

A key provision that boldly recognizes sustainable development under FDRE Constitution is Art. 43 (1). The provision reads as follows. "The People of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development."<sup>14</sup> This provision does not merely envisage economic growth, but targets 'sustainable development' that embraces economic growth, social development, and environmental protection. The inclusion of the three pillars of sustainable development in this provision can be buttressed by making cross reference to Art.44 of the constitution and stipulations enshrined in the preamble, national policy objectives and principles, and other provisions that made reference to economic and social development.<sup>15</sup> Arts.43 and 44 of the constitution expressly provide for right to development and right to clean and healthy environment, respectively. Right to development under the constitution includes right to improved standard of living, right to sustainable

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<sup>13</sup> FDRE Constitution, Preamble.

<sup>14</sup> The FDRE Constitution, Art. 43 (1).

<sup>15</sup> The FDRE Constitution, Preamble, Art 43-44 & Art 89-92.

development and right to participate in development process. Arts.89-92 of the constitution provide for economic, social, cultural and environmental objective of the country.

Inclusion of economic pillars of sustainable development in the constitution is evident if we read Art. 43 of the Constitution. The Article is dealing with right to sustainable development in conjunction with economic policy objective of the country and other provisions of the constitution that expressly used term ‘economic development’.<sup>16</sup> Art. 89 titled ‘Economic Objectives’ lists down the duty of the Government to formulate and implement economic policy that ensure economic development pillars of sustainable development. In particular, Art. 89(2) require the government to formulate policies that create equal opportunities and conditions conducive to development and equitable distribution of wealth for Ethiopian people. In this regard, the economic development pillar of sustainable development under the Constitution entails realization of economic right enshrined under Art. 41 of the constitution which envisages among other things creation of job opportunities, the right of citizens to be engaged in an economic activity, and the duty of the State to increase opportunities for citizens to find gainful employment.<sup>17</sup>

Similarly, the inclusion of social development pillars of sustainable development in the constitution can be elucidated from the overall reading of Art.43 of the constitution dealing with right to sustainable development in conjunction with social development policy of the country and other provisions that expressly used term ‘social development’.<sup>18</sup> Art. 43(2) of the constitution duly recognizes right to public participation and to be consulted in development process as social pillar of sustainable development. Human right as integral part of social development pillar is evident from chapter three of the constitution which provides a list of inalienable and inviolable human right, and the preambular assertion which recognizes the protection of the human rights as a precondition to realization of social and economic

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<sup>16</sup> The FDRE Constitution, Preamble, Art 18(4) (d), 41(8),51(2), 89(4 &7).

<sup>17</sup> The FDRE Constitution, Art. 41.

<sup>18</sup>Abdi Jibril, The Right to Development in Ethiopia in Human Right And Development: Legal Perspective From And For Ethiopia, 68 -97 (Eva Brems, Christophe Van der Beken and Solomon Abay Eds., International Studies of Human Rights, Vol. 111, 2015), P 82.

development.<sup>19</sup> Arts.90 and 91 of the constitution embodied social and cultural objectives of the country imposing duty to promote social and cultural development on government.

The incorporation of environmental pillar of sustainable development can be construed from Arts.44 and 92 of Constitution that relates to environmental rights and environmental policy objective of the country, respectively. Art.44 of the Constitution provides for the right to a clean and healthy environment. Moreover, Art.92 of the constitution states that the design and implementation of the development project shall not damage the environment. It adds that People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly, and urges the government to ensure that all Ethiopians live in a clean and healthy environment. What is more, the provision imposed environmental protection as a duty of Government and individual citizens. These constitutional provisions call for a balance which addresses the dual constitutional objectives of development without damaging the environment. In general, as can be deduced from the above discussion, the three pillars of sustainable development have been recognized under the FDRE constitution. Keeping in mind that the constitution is the supreme law of the land, the recognition of sustainable development under the constitution has a paramount implication for nature of the country's investment legislation. The economic, social, cultural and environmental policies and principles enshrined under Arts.85 to 92 of the Constitution are also important as any organ of government are dictated to be guided by these principles in implementation of the Constitution and other laws or public policies.<sup>20</sup> Hence, it can be submitted that the Constitution has subscribed to sustainable development and it requires integration of its three pillars into the Ethiopian investment laws.

Even though the ideology of developmental state is claimed to be pursued by the country, principles enshrined in the constitution, the principles of rule of law dictates ruling party to give up the ideology and uphold sustainable development agenda advocated by the constitution in its investment laws and policy. This is because the ideology lacks constitutional legitimacy as the

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<sup>19</sup> See The FDRE Constitution, the preamble, Art 41 and chapter three.

<sup>20</sup> The FDRE Constitution, Art.85 (1).

constitution guaranteed all three generation rights without prioritizing one right over the other but the ideology prioritize economic growth over civil and political freedom.<sup>21</sup> That way, the ideology may potentially shape the investment laws of the country to prioritize economic growth over other pillars of sustainable development. Hence, it can be submitted that lawmakers should not be influenced by the claimed ideology of developmental state while enacting or amending the investment laws.

### **III. EXPOSING THE NEED TO INTEGRATE SUSTAINABLE DEVELOPMENT INTO ETHIOPIA'S INVESTMENT LAW: AN ELEPHANT IN THE ROOM**

This section exposes the existing tragedy and burning issues under the guise of investment in Ethiopia as a serious problem that requires integration of the principles of sustainable development into Ethiopia's investment laws. Accordingly, it establishes the quest for inclusive economic growth, respect for human right and need to curb social and environmental impacts the in the course of investment as pressing issues that necessitate harnessing Ethiopian investment laws for sustainable development. The discussion is primarily based on inference made on basis of the existing literature; but some key informant interview has also been used to update and buttress the inference made on the basis of the existing literature.

#### **A. The Need to Mobilize Investment for Inclusive and Equitable Economic Growth**

The underlining assumption behind attraction, protection, and promotion of investment in a given country is that such investment specially FDI will boost economic growth through job creation, technology transfer, transfer of managerial skill and the same justification has been pleaded by Ethiopian government in its policy toward investment.<sup>22</sup> However, the close inspection

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<sup>21</sup>Assefa Fiseha, Development with or without Freedom, in Human Right and Development: Legal Perspective From and For Ethiopia, 101 -138 (Eva Brems, Christophe Van der Beken and Solomon Abay Eds., International Studies of Human Rights, Vol.111, 2015), P 133.

<sup>22</sup> Interview with Mr. Mesay W/Semayat, Team Leader of Investment Treaties and Legal Affairs, Ethiopian Investment Commission, on 26<sup>th</sup> of March 2018. See also The Investment Proclamation, Preamble and Art. 5.

of how investment operates in the country suggests expected economic benefit of investment remained elusive and unfulfilled promises; especially for the concerned local communities. In this regard, different study and report of the alerting institution and data obtained from the key informants covered under the study revealed that investment in Ethiopia, especially large scale land investment, have little or no economic significance to the local community. For instance, the Oakland Institute argues that the large-scale land transfer in Ethiopia to manufactures resulted in hungers and poverty; as the government takes away key coping strategies from its people and impacts the livelihoods of millions.<sup>23</sup> Das and Grant also found that the large-scale land transfer in Ethiopia displaces poor and vulnerable populations which in turn exacerbate poverty and food insecurity.<sup>24</sup> Moreover, opposition party leader professor Merera Gudina has been quoted to complain that the stated promises of large scale land deal like employment creation, technology transfer and boosting export earnings are empty or utterly inadequate, and are not up to the standard of the propagated promises.<sup>25</sup>

Different studies found that, most of lease contracts signed with large scale land investor in the country were not negotiated with job creation in mind, that they do not contain local content provisions requiring the lessee to prioritize local workforce in recruitment.<sup>26</sup> It is also revealed that majority of the jobs are labourer positions, are often seasonal and short term in nature, workers will not be fully paid, or the rate of wages is very low that is not commensurate with the service rendered by the workers, even the costs of living cannot be guaranteed. In addition, there is also a concern that most of the employees,

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<sup>23</sup> Oakland Institute, *Miracle or Mirage? Manufacturing Hunger and Poverty in Ethiopia* (2016); Available at <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/ethiopia-miracle-mirage.pdf> <Accessed on 25th of January, 2018>

<sup>24</sup> Evadne Grant & Onita Das, Land Grabbing, Sustainable Development and Human Rights, Transnational Environmental Law, Vol.4, No.2, 289-317. ISSN 2047-1025, available at <http://eprints.uwe.ac.uk/26106> <Accessed on 25th of January, 2018>

<sup>25</sup> Daniel Behailu, *Large-Scale Land Acquisition in Ethiopia – Towards Attracting Foreign Direct Investment*, 3(1) JLAEA , 279-295 (2015), P292.

<sup>26</sup> Uche E. Ofodile, Foreign Investment in Land and Clash of the Regime In Africa, Paper prepared for the Law and Development Conference 2013 “Legal and Development Implications of International Land Acquisitions” Kyoto, 30-31 May 2013, P20.

specially the managerial employee and skill operator, came from other parts of Ethiopia rather than the local or indigenous people.<sup>27</sup>

Transfer of managerial skills to local personnel claimed by the government is also illusory because the foreign investor does not allow higher managerial positions for local professionals and that personnel employed cannot acquire new skills.<sup>28</sup> Moreover, the interview with the key informants covered by the study confirms that expected economic benefit of investment remained elusive for local community. In this regard, key informant from the EIC claimed that the foreign investment has contributed a lot to the economic development of the country through foreign currency earnings and revenue generation but he confirms that poor labour standard and very low level of wages had made it insignificant in improving the livelihood of the local people.<sup>29</sup> According to Mesay, wages rate in Ethiopia is seven times lower than the payment in Asian countries and he asserted that we consider this cheap labour wages as opportunity for investment.<sup>30</sup> The informant from OFC stated that both FDI and domestic investment in Oromia produce no significant economic contribution to the local community due to its cheap wages standards, and even more, the prevailing wages rate is not enough to cover rent price of the residential house.<sup>31</sup> Besides, the informants from OIC and OFC confirmed that the employees are recruited from the other parts of the country and that in some situation the managerial employee does not understand the local language of the place of investment and this in turn incapacitated the employments of local people.<sup>32</sup> The informants also exposed different economic problem of investment such as eviction from the land without adequate compensation, lack of transparency and corruption in compensation and valuation, cheap land lease price to investor, and absence of effective rehabilitation mechanism. As a result, the operation of investment in the country undermined economic development of local community;

<sup>27</sup> Dessalegn Rahmato, Land to Investors: Large-Scale Land Transfers in Ethiopia, Forum for Social Studies , Addis Ababa , 2011, P 22

<sup>28</sup>Tesfaye Abate, Investment Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute (2009), P 59

<sup>29</sup> Mesay, *supra* note 22

<sup>30</sup> *Ibid.*

<sup>31</sup> Interview with Mr. Birmadumma Namo, Public Relation and Youth League Vice President, Oromo Federalist Congress <on 29<sup>th</sup> of March 2018>.

<sup>32</sup> *Ibid.*

progressively marginalize smallholders, and eventually turning local farmers into guards or beggars.<sup>33</sup> In this regard, Kuma stated that even after getting compensation, the farmer use up the proceeds of compensation within short period of time due to absence of effective rehabilitation mechanism.<sup>34</sup> As a solution, Birmaduma mentioned that his party proposed a policy that local residents displaced as a result of investment project be a shareholder to the investment in question in return for their land.<sup>35</sup>

It shall be noted that practice and policy of any investment should primarily target economic empowerment of local and indigenous peoples<sup>36</sup> but such quality is missing from most of investment in Ethiopia. In this regard, Kuma stated that to ensure economic benefit of investment for local community, a number of investments that failed to accord any benefit to the community in accordance with the terms of the contract, and those investment that are licenced in favour of individuals through a corrupt practice are being closed as part of the reform agenda in the region.<sup>37</sup> Hence, the author believes that the aforementioned discussion that cast doubt in economic sustainability of investment practice in Ethiopia calls for the need to integrate sustainable development into Ethiopian investment laws.

## **B. The Need to Foil Human Right Violation under the Guise of Investment**

Different international human right instrument to which Ethiopia is a party recognize the inalienable and inviolable human rights and impose a duty to respect, protect and promote these rights on states. In line with these requirements, the FDRE constitution provides for a list of human rights provisions under chapter three and adopted the human right based approach to development. The constitution dictates that no development program and investment project shall be implemented at the expense of fundamental right and freedom. However, different study and report of alerting institution

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<sup>33</sup> Dessalegn, *Supra* note 27, P. 26.

<sup>34</sup> Interview with Kuma Daba, Investment Potential Study and Project Appraisal Directorate, Oromia Investment Commission, on 25<sup>th</sup> of March 2018.

<sup>35</sup> Birmadumma, *supra* note 31.

<sup>36</sup> Husen A. Tura, Land Rights and Land Grabbing in Oromia, 70 Land Use Policy7, 247-255 (2018).

<sup>37</sup> Kuma, *supra* note 34

discloses mass violation of human rights such as land right, labor right, right to food, cultural right, right of indigenous people, and forced villagization and resettlement in the name of investment in Ethiopia<sup>38</sup>, and to some extent, such violation are also confirmed by the data obtained from the informants covered by the study. The perpetrators are both government and individual investor. The investors engage themselves directly or indirectly in suppression of human rights to ensure the continued maintenance of regimes favourable to investors.<sup>39</sup> The government commits violation of human right in course of facilitating and protecting investment.<sup>40</sup>

The prevalence of human right violation in the name of investment in Ethiopia is particularly evident if one examines the practice of aggressive large scale land investment running in Oromia and Gambella regions, and the villigization program implemented by the government to facilitate such investments. According to Human Rights Watch, the government of Ethiopia has relocated tens of thousands of indigenous people and leased out an estimated millions of hectares of land to investors and these lease arrangement are negotiated between investors and the federal or regional governments.<sup>41</sup> The study conducted by the Oakland institute also noted that in its aggressive pursuit of agricultural investment, the Ethiopian government has forcibly displaced hundreds of thousands of indigenous people from their lands, and has arbitrarily arrested and beaten individuals who have refused to comply with its policies.<sup>42</sup> Refuting all evidence, the Ethiopian government insists that consultations are being held with host communities in all instances where land deals are occurring, no farmers are being displaced, and the land being granted is unused.<sup>43</sup> However, Oakland Institute found that consultations with local

<sup>38</sup>See inter alia, Human Rights Watch, Waiting here for Death: Forced Displacement and Villagization in Ethiopia's Gambella (2012 ), Available at <http://www.hrw.org/reports/2012/01/16/waiting-here-death> <Accessed 10<sup>th</sup> of September 2017> ; Oakland Institute, Development Aid to Ethiopia, Overlooking Violence, Marginalization, and Political Repression (2012)available at <http://www.oaklandinstitute.org/pressrelease-fingerprints-international-aid-forced-relocation-repression-and-humanrights-abuse-eth> <Accessed 10<sup>th</sup> of September 2017>.

<sup>39</sup> Tesfaye, *Supra* note 28, P.60.

<sup>40</sup> Human Rights Watch, *Supra* note 38, P 3.

<sup>41</sup> *Ibid.*

<sup>42</sup> Oakland Institute, FAQs on Indian Agriculture Investment in Ethiopia (2013), available at [https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/FAQs\\_Ethiopia\\_Conference.pdf](https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/FAQs_Ethiopia_Conference.pdf) <Accessed on 22<sup>th</sup> of January, 2018>.

<sup>43</sup> *Ibid.*

communities did not occur, in violation of their right to Free and Prior Informed Consent, the claimed land is used for grazing and never unused as claimed by the government.<sup>44</sup> The data obtained from key informants covered under study confirmed the prevalence of human right violation under the guise of investment in Ethiopia. In this regard, informant from the Ethiopian investment commission claimed that though there might be human right violation in the course of investment in the country, such violation is natural for developing countries like Ethiopia and hence it's not peculiar to Ethiopia.<sup>45</sup> Accordingly, he hesitates to unequivocally deny or confirm the prevalence of violation of human rights under the guise of investment in the country. The informant from Oromia investment commission on his part unequivocally confirmed that operation of investment in the region is full of human rights violations and stated that the government is striving to improve human rights condition in general including investment related human right issues.<sup>46</sup> The informant from OFC, Birmaduma, disclosed the gross violation of human rights by the investor and the government organ which includes forced eviction from the land, violation of right to food, clothing, and right to life, labour right, sexual harassment, and rape at work place.<sup>47</sup> All of the informants confirmed that there is no practice of conducting human right impact assessment before the implementation of any project even if it is likely to produce adverse human right impacts to the local community.

Unfortunately, the Ethiopian government has thoroughly repressed any form of open political debate and public participation in its development policies. This resulted in inability of people affected by development project have no way to speak out without punishment even through their elected regional representatives, and hence the decision and implementation of development project remained top down imposition from the federal authority.<sup>48</sup> In this regard, the informants of the three institutions also confirmed that the notion of public participation is almost missing from Ethiopian investment process.

<sup>44</sup> *Ibid.*

<sup>45</sup> Mesay, *Supra* note 22.

<sup>46</sup> Kuma, *supra* note 34.

<sup>47</sup> Birmadumma, *supra* note 31.

<sup>48</sup>Oakland Institute, Ignoring Abuse In Ethiopia: DFID and USAID in Lower Omo Valley (2013), available at <http://www.mursi.org/documents-and-texts/reports/ignoring-abuse-in-ethiopia-dfid-and-usaid-in-the-lower-omo-valley> <Accessed on 20th of January, 2018>.

Kuma states that the notion of public consultation is at its infant stage but he claimed that the government of Oromia regional state recognized importance of public consultation and started to make public consultation as part of the reformation agenda triggered by government.<sup>49</sup> Even worse, according to the Oakland institute<sup>50</sup>, let alone the concerned local communities, the local officials were not consulted in most of the decision to transfer the land to investors, and as a result, the regions are not able to protect the right of indigenous peoples not to be removed from their lands without their free, prior and informed consent by the decision of Federal authorities usurping the jurisdiction of the regions. Acknowledging this problem to some extent, Kuma stated that the government is working to come up with the policy that the federal authority should not licence investment in the region unless the investor obtained the investment land from the concerned regional authority and this will in turn give an opportunity for the regional authority to indirectly participate in the decision on investment permit to be issued by federal authority.<sup>51</sup>

In general, as can be understood from the above discussion about the incidence of human right violation in the name of investment in Ethiopia, the investment practice in the country reverses human right based approach to development and rushes for economic growth at the expense of human right and freedom of the local communities. Hence, to curb such human right violation in the name of investment, Ethiopia need to have an effective investment law that adequately integrate the human right protection into investment process and decision. And thus in the author's view, integrating sustainable development in Ethiopian investment law aids a lot in ensuring protection of human right in the course of investment.

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<sup>49</sup> Kuma, *supra* note 34.

<sup>50</sup> Azeb W. Degife, The Intricacies of Large Scale Agricultural Investment in Gambella Region, Ethiopia, Paper prepared for presentation at the “2017 WORLD BANK CONFERENCE ON LAND AND POVERTY” The World Bank - Washington DC, March 20-24, 2017.

<sup>51</sup> Kuma, *supra* note 34.

### C. Need to Curb Social and Environmental Harm under the Guise of Investment

Addressing social and environmental concerns in any investment process is among key elements of sustainable development, and this assertion has been reflected under FDRE constitution. However, different researches and reports of relevant institutions disclose tragic social and environmental impacts of investment in Ethiopia; especially in large scale commercial agricultural investment and floriculture investment. The most recent phenomenon in this regard is the case of donkey slaughter investment at Bishoftu. Accordingly, the environmental impacts like water pollution, soil pollution and degradation, air pollution, human and cattle health hazards, defective pregnancy, risk on aquatic life, as well as water logging and salinization has been identified in different floriculture industries.<sup>52</sup> Moreover, the waste and the gasses emitted from a certain factory had polluted the air in the surrounding area causing respiratory problems to nearby societies.<sup>53</sup> All of the informants covered under the study confirmed the prevalence of aforementioned impacts of investment on the environment.<sup>54</sup> In fact, the informants from both governmental authorities claimed that government is trying its best to minimize these environmental impacts of investment within the existing capacity.

Social impacts identified in floriculture industry include poor labour standards, absence of worker's health and occupational safety, sexual harassment, health problems and improper compensation for previous land holders.<sup>55</sup> Adverse socio-cultural impacts on local community are prevalent in large scale land investment as well. All informants confirmed that there exist enormous social and cultural impacts of investment in the country. Socio-cultural impacts of investment is exposed by informants from OIC and OFC include deterioration of infrastructural facility, food insecurity and famine, cultural disappearance, social marginalization and identity crisis, and excessive labour exploitation that is approximate to slavery and feudal

<sup>52</sup> Mulugeta Getu, *Ethiopian floriculture and Its Impacts on the Environment,: Regulation, Supervision and Compliance*, Mizan Law Review (2009), Vol.3(2),P126.

<sup>53</sup> Tesfaye, *Supra* note 28, P 247.

<sup>54</sup> Mesay, *Supra* note 22; Birmadumma, *Supra* note 31; and Kuma, *Supra* note 34.

<sup>55</sup> Gudeta Degtytnu, Socio-economic and Environmental Impact of Floriculture Industry in Ethiopia (Unpublished, LL.M Thesis, University of Gent, 2011-2012),P 47

system.<sup>56</sup> To curb these socio-cultural impacts that arise due to eviction from the land for investment, Birmadumma stated his party proposed a requirement that investment should not displace indigenous and local people for more than ten kilo meters.<sup>57</sup> This is because, in Ethiopia, the issue of land is very sensitive, and to many Ethiopians, land is not merely a commodity but is a critical component of their social identity and that the loss of land, whether farmland, grazing areas, or areas of religious or cultural value, has serious impacts on people, their identity and socioeconomic conditions.<sup>58</sup>

The other unusual investment that resulted in dramatic socio-cultural impacts on the local community is the opening of donkey slaughter houses by Chinese company in Bishoftu town, which is absolutely insult to the culture of local people.<sup>59</sup> In this regard, the informant from the EIC insisted that our primary goal is to attract investment for economic growth and that so long as it benefits the economy of the country in the form of foreign currency earnings or revenue generation, and so long as it is not used for domestic consumption, there is no wrong in licensing donkey slaughter investment.<sup>60</sup> He added that such objection emanates from misconception about investment and attitudinal problem, and hence we should work on awareness creation rather than rejecting investment for the sake of culture and morality.<sup>61</sup> The informant from OIC on other hand bitterly opposed any act of licensing investment that has adverse impacts on culture and moral values, and asserted that this kind of investment will neither permitted nor given investment land for operation in Oromia in future.<sup>62</sup> He added, they are on the way to include socio-cultural impacts assessment as part of project appraisal due to protest from community.

In general, it can be submitted that there are tremendous social and environmental impacts in the course of investment in Ethiopia, and it seems

<sup>56</sup> Kuma, *supra* note 34, and Bimadumma, *supra* note 31.

<sup>57</sup> Bimadumma, *supra* note 31.

<sup>58</sup>Gudeta Degtynu, *Supra* note 55, P16.

<sup>59</sup> The information accessed from Addis fortune website at <https://addisfortune.net/articles/donkey-meat-up-for-export-slaughterhouse-opens/> uncovered that the donkey slaughter - house in Bishoftu started its operation regardless of the protest by the local community though later forced to closure

<sup>60</sup> Mesay, *supra* note 22.

<sup>61</sup> *Ibid.*

<sup>62</sup> Kuma, *supra* note 34.

both investor and government turned blind eye to such negative impacts of investment. In this regard, all informants confirmed that there is no practice of requiring social and cultural impacts assessment for the implementation of the investment project, and even the existing environmental impact assessment is too weak in implementation and supervision.<sup>63</sup> The author believes that legal tool is an important strategy to prevent and remedy social and environmental impacts of investment. Hence, these and other social and environmental impact under the guise of investment demand integration of social and environmental pillars of sustainable development into Ethiopia's investment laws.

#### **IV. STOCKTAKING SUSTAINABILITY OF ETHIOPIAN INVESTMENT LAWS: A FOCUS ON INVESTMENT PROCLAMATION AND REGULATION**

In Ethiopia, Civil Code and Commercial Code serve as general frameworks for business activities but within these broad frameworks, there are specific investment laws regulating investment. Accordingly, Investment Proclamation No.769/2012<sup>64</sup> and Investment Incentive and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations No.270/2012<sup>65</sup> along with their respective amendments in 2014 represents the main legal documents governing investment in Ethiopia. Besides, there are also other special investments laws that are designed to regulate specific form of investment activities such as Mining Operation proclamation No.678/2010, Energy proclamation No.810/2003, Petroleum operation Proclamation No. 838/2014, and transaction of precious mineral proclamation No.651/2009.

The Investment Proclamation has nine parts which starts with preamble and provides for a detail rules on different points such as definition of relevant terms, jurisdiction and scope the proclamation, investment objectives and areas of investment, forms of investment and capital requirement, investment permit, technology transfer, investment incentive, guarantees

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<sup>63</sup> Ibid; Mesay, *supra* note 22, and Birmadumma, *supra* note 31.

<sup>64</sup> Investment Proclamation, Proclamation No.769/2012, *Federal Negarit Gazeta*, 18th year no.63, Addis Ababa, 17<sup>th</sup> September, 2012 (Hereinafter the *Investment proclamation*)

<sup>65</sup> Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations, Regulation No.270/2012, *Federal Negarit Gazeta*, 9th Year No. 34, Addis Ababa, November 2012 (hereinafter *Investment Regulation*).

and protection, investment administration, industrial development zone and some other miscellaneous provisions.<sup>66</sup> The investment regulation provides for lists of areas reserved for domestic investor, areas open for foreign investor, and some fiscal and non-fiscal incentives to both foreign and domestic investor so as to encourage investment in the country. These investment proclamation and regulation generally apply to both foreign and domestic investment and all investment in all sectors except the investments in prospecting, exploration, and development of minerals and petroleum resources<sup>67</sup> and that is why they are picked for this study. Moreover, it is believed that the investment proclamation and regulation are more subject to scrutiny for their inadequacy to accommodate sustainable development as compared to the aforementioned specific investment laws. Below, the author appraises the extent to which the three pillars of sustainable development have been integrated under these investment proclamation and regulation.

### A. Ethiopia's Investment Law and Economic Development Pillar

Under the New Delhi Declaration, the economic pillar has been reaffirmed by the principles of integration, and reflected in principle of equity and eradication of poverty and principle of common but differentiated responsibilities.<sup>68</sup> Collectively, it has been echoed through these principles that economic pillar of sustainable development requires any development process (including investment) to improve economic condition of people inclusively and equitably. Toward these overarching goal, the economic pillar requires the investment project to equitably and inclusively economic growth in host country through job creation, revenue generation, transfer of technology and managerial skill, research and development, export promotion etc.<sup>69</sup> However, much of this economic ambition depends on the way investment is regulated. And hence, to reap the economic benefit of investment, sustainable development calls for legal arrangement to maximize

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<sup>66</sup> See generally the Investment Proclamation.

<sup>67</sup> The Investment Proclamation, Art.3.

<sup>68</sup> The New Delhi Declaration, Principles 2, 3 & 7.

<sup>69</sup> AD.Basiago, *Economic, Social, and Environmental Sustainability in Development Theory and Urban Planning Practice*, 19 THE ENVIRONMENTALIST, 145-161(1999), at 149; see also the new Delhi declaration, principles 1-7

positive linkages with the local economy through different means like introduction of performance requirements

In line with this, the FDRE constitution recognized economic pillar of sustainable development within the constituent elements of right to sustainable development incorporated under Art.43 and as further reinforced under provision dealing with socio-economic right of peoples and economic policy objectives of the country. To ensure the realization of the objective of inclusive economic development enshrined in the constitution, the detailed investment legislation was enacted to pursue this constitutionally founded objective of economic development.

Accordingly, the preamble of the investment proclamation highlights the need to encourage investment to accelerate economic development of the country and improve living standards of its peoples; increasing inflow of capital; accelerating transfer of technology into the country; and enhancing and promoting equitable distribution of investment among the region and benefit the society as key economic objective that necessitates its enactments.

Similarly, Art.5 of the proclamation provides for the general and specific objective of investment that capitalizes on economic development. The general objective of investment as articulated under this article is improving the living standard of people through realization of sustainable economic and social development. Sub article 1 to 8 of the provision listed eight specific objectives, seven of which relate to economic development. The seven specific objective that relates to economic development under Art.5 includes accelerating economic development; developing the domestic market through the growth of production, productivity and services; increasing foreign exchange earnings by encouraging expansion in volume and variety of the country's export products and services and the improvement of their quality as well as to save foreign exchange through production of import substituting products; encouraging balanced development and integrated economic activity among the regions and to strengthen the inter-sectoral linkages of the economy; enhancing role of private sector in accelerated economic development; render foreign investment play its proper role in the country's economic development; and create employment opportunities for Ethiopians

and fostering the transfer of technical know-how, of managerial skills, and technology required for progress of the country.<sup>70</sup>

As can be understood from the above discussion, both the preambular and declared objective of the investment proclamation adequately incorporated the economic pillar of sustainable development but this overambitious preambular and declared objective of economic development is not translated into other operative provisions. It should be noted that the expected economic benefit of investment may not be achieved through mere aspiration as an objective of investment. Under the investment proclamation, fostering economic growth is declared as an objective of investment but investment may fail to create enough positive linkages with the local economy unless there is a law that obliges the investor to do so. For instance, investment may fail to create expected job or even if it creates, wages may be too low to support employee's livelihood, or it may fail to insure equity by targeting local community. One of the best practices to ensure investment for equitable and inclusive economic growth is the use of performance requirement which may be imposed as a condition for admission and operation or linked to incentive.<sup>71</sup> They could be used to achieve the twin purpose of economic development pillar, enhancing economic growth and ensuring that the resulted economic growth is inclusive and equitable to the local community.

To examine the extent to which performance requirement is used to mobilize investment for sustained economic growth under the Ethiopia's investment law is vital to analyze provisions dealing with investment permit and incentive. Arts.12 to 19 of the investment proclamation deal with investment permit, however, economic performance requirement, such as local content requirement including hiring local personnel, requirement to achieve specific level of jobs and level of wage are not explicitly provided as a requirement for application, issuance, renewal and expansion or promotion or revocation. Furthermore, incentives provided under the investment regulation are linked to few forms of performance requirement like investments in certain sector,

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<sup>70</sup> The Investment Proclamation, Art.5.

<sup>71</sup> Suzy H.Nikiëma , Performance Requirements in Investment Treaties Best Practices Series (2014), available at <http://www.iisd.org/sites/default/files/publications/best-practices-performance-requirements-en.pdf> <Accessed on 20th of January, 2018>.

certain areas/regions, and export requirement that other forms of economic performance are not rewarded by incentive.

However, though not well organized, there are some provision that may relate to some aspects of performance requirement under both investment proclamation and regulation. For instance, part 6 of the investment proclamation has provided certain provisions relating to registration for technology transfer and collaboration with local investor, nonetheless the provision is merely procedural and it is not clear whether technology transfer or collaboration with local investor is a requirement for investment permit or operation. Art 37 of the proclamation dealing with employment of expatriates is short of providing local employment requirement. Even more, it solidifies the investor's right to hire expatriate employees. The only limitation to employment of expatriate under the proclamation is that an investor who employed expatriate for the operation of business is required to replace, within a limited period, such expatriate by Ethiopian employee, by arranging a necessary training.<sup>72</sup> The list of performance requirement including the local content disclosure is not provided even in business license application form, and the form merely requires the investor to fill a number and nature of employment opportunities to be created including Ethiopian and expatriate. Thus, no more information is needed as to whether Ethiopian employee is from the local employee or from other parts of the country.<sup>73</sup> Accordingly, the Ethiopian investment law fails to oblige investor to employ local worker when the Ethiopian workers are qualified to the position, and even if it may do so, it fails to target local people of the specific place where investment is operating.

Moreover, the provisions dealing with level of liberalization, registration and capital requirement, standard of treatment, and nature of incentive under Ethiopian investment law are also subject to scrutiny as regard their implication for the achievement of economic development objective aspired by the investment specially from FDI perspective. To start with level of liberalization, almost majority of lucrative investment areas in the country remained closed for foreign investment there by blocking potential FDI that

<sup>72</sup> The Investment Proclamation, Art 37(2).

<sup>73</sup> Ethiopian Investment Commission, Application for Business License form, available at [http://www.investethiopia.gov.et/images/pdf/form\\_Business\\_Licence\\_App.pdf](http://www.investethiopia.gov.et/images/pdf/form_Business_Licence_App.pdf) <Accessed on 25th of January, 2018>.

could contribute to the economic development of the country.<sup>74</sup> The requirements regarding minimum capital requirement has also more of hindrance than contribution.<sup>75</sup> As regard standard of treatment, only two standards dealing with guarantee against expropriation and transfer of fund is available but it could have been better to add other standards of protection like national treatment and physical protection and security with some necessary exception just to signal that protection of FDI in the country.

Besides, overly promised packages of incentive with no effective link to economic performance have made the expected benefit of revenue generation a mere illusive. Moreover, a provision dealing with investment form and registration has negative implication to the objective of insuring equity and making investment beneficial for local people.<sup>76</sup> Without giving proper guidance on the would-be corporate structure, the proclamation allow the four form of investment formed and registered in accordance with commercial code and the federal authority is given jurisdiction to register these business regardless of the regions in which they operate. As the business is required to pay tax at their place of registration, they pay tax to the federal authority rather than to the concerned regional authority making the local community affected by the investment distant from benefit of the revenue generated. The proclamation could have given direction as regards corporate structure of would-be investment by requiring them to be registered at concerned regions so that tax benefit will equitably go to local community.

In short, as far as economic development pillar of sustainable development is concerned, it has been sufficiently incorporated as an objective in the preamble and under Art. 5 but these preambular and declared objectives are not translated into other substantive provisions.

## **B. Ethiopia's Investment Law and Social Development Pillar**

Social development pillar requires, *inter alia*, making people at the center of investment, social inclusion of the poor and historically marginalized people,

<sup>74</sup> See The Investment Proclamation, Arts. 6 &7; *The Investment Regulation*, Art 3.

<sup>75</sup> The Investment Proclamation, Art .11.

<sup>76</sup> The Investment Proclamation, Art 10.

improving the welfare of all through poverty eradication, improved labor standards, secured land tenure, transparency and anti-corruption, insuring interest of indigenous and local communities, respect for culture and human right in general.<sup>77</sup> Under the New Delhi declaration, social development (including human right) has been recognized as pillar of sustainable development through the principles of integration and further reflected under principles of equity and eradication of poverty, principle of public participation and access to injustice and information; and principle of observance of human right envisaged under the umbrella of good governance.<sup>78</sup> The principle of integration recognizes social (including human right) issues as equally important principles of sustainable development and requires the integration of this concern in investment rule making.

The FDRE Constitution explicitly recognizes social development as a pillar of sustainable development and it dictates the investment law and policy of the country to integrate and uphold the social development of the Ethiopian people. Against this constitutional guidance, the Ethiopian investment laws (both the investment proclamation and regulation) failed to adequately integrate social development pillar including human right issues, labor standards, public participation, and anti-corruption measures. Both the preambular and declared objective of the proclamation capitalize on economic pillar and the reference made to social development pillar is loosely crafted, merely indirect and remained fairly inadequate. Attempt has been made to make reference to social development pillar in the preamble and objective of investment under Art.5 of the proclamation indirectly in furtherance of and as an ultimate goal of economic development. For instance, some of the preambular language that recognizes the importance of investment for economic development and improving living standard of people as highlighted in paragraph 1 that recognized the need to equitably distribute investment among the regions to equitably benefit of society as in paragraph 2, and the language that recognized the need for transparent and efficient administration of investment as in Para 5 of the preamble of the investment proclamation could indirectly relate some components of social development objective. The preamble neither uses the term sustainable development that is capable of

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<sup>77</sup> AD. Basiago, *Supra* note 69; see generally the New Delhi Declaration, Principles 1-7.

<sup>78</sup> The New Delhi Declaration, Principles 2,5,6 & 7.

including social development nor it makes express reference to important components of social development like human right, labor standards and, thus, it failed to integrate the social development pillar.

Art.5 of the proclamation dealing with the objective of investment is probably the only provision that attempted to incorporate social development pillar by recognizing the realization of social and economic development to improve living standard of Ethiopian people as objective of investment. However, without undermining importance of this provision in making express reference to social development as a general objective, it is nonetheless doubtful as to whether it is incidental or the clear objective of investment since it is not translated into subsequently listed specific objectives. Sub-Articles 1 to 8 of Art.5 lists about eight specific objective that emphasize on economic development pillar but with no direct reference to the social dimension other than issues of balanced and integrated development among the regions mentioned in Art. 5 (5) and the employment opportunities mentioned in Art.5 (8) both of which have economic and social dimensions. Possibly, legislature could have at least mentioned illustrative list of social development pillar including the human right so as to translate the general objective relating to social development into the specific objective just as in the case of economic development pillar.

Taking the spirit of the preamble and the objective, other substantives provisions of the proclamation also failed to integrate social development. Firstly, social development has not been integrated in provision dealing with investment permit and incentive. None of sustainability impact assessment components including social, cultural and human right impact assessment is provided as a condition for investment permit under Arts.12 to 18 of the proclamation. Furthermore social, cultural and human right performance of the investment is neither sanctioned by suspension /revocation of investment permit under Art.19 of the proclamation nor rewarded by the incentive provided under the investment regulation. Moreover, the provision dealing with standard of protection and guarantee failed to assist social sustainability. Hence, government regulatory measures taken to achieve legitimate social policy, insure human right, and achieve other public welfare objective may not be excused as an exception to the guarantee against expropriation provided

under Art.25 of the proclamation. Similarly, provision dealing with transfer of funds lacks public welfare policy safeguards that excuse restriction on transfer of funds to insure different social development concerns.

Besides, there is no substantive provision that deals with social standards like human right standards, labor standards and no reference to the internationally recognized standards or best practice is made in the proclamation and the regulation. Moreover, the investment proclamation failed to integrate social development pillar (including human right) either as obligation of investor or as state's right to regulate. Ended, Art.37 of the proclamation dealing with employment of expatriate has no more stipulation about labor standards.

The only provision that deals with non-investment obligation of investor is Art.38 of the proclamation which states that investor shall have a duty to observe the law of the country ,and in particular, shall give due regard to the environmental protection. Though in weak language, the second sentence of Art. 38 picked out and emphasized investor's obligation as regard environmental laws, but no similar reference is made to the relevant social and human right laws including the constitution, the labor law, land laws, or international human right instruments. From this, one can understand that reference to the environmental law under second sentence acknowledges the weakness of the first sentences in imposing non-investment obligation in other laws, and the omission of other relevant human right and social laws from second sentence reaffirms the legislature's intention to deemphasize investor's obligation to respect laws other than environmental laws. Accordingly, the proclamation failed to make sufficient reference to the relevant human right law and social law as in the case of environmental laws.

Furthermore, social development pillar is not reflected under the provisions dealing with jurisdiction and investment administration<sup>79</sup> and industrial development zone.<sup>80</sup> In fact, had it been carefully crafted, these provision could have integrated or at least reflected components of social development pillar like public participation and access to justice and information, democratic governance based on rule of law, respect for human right- and self-

<sup>79</sup> Investment Proclamation, Arts.27-32.

<sup>80</sup> *The Investment Proclamation*, Arts. 33-35.

determination, transparency, and anti-corruption measures; respect for tenure security, culture, and the legitimate social interest of indigenous and local communities. It should be noted the preamble has also no spirit of encouraging bottom up approach to investment.

Art.4 of the proclamation reserves administration of core investment matters to the jurisdiction of the federal investment organ regardless of the region in which they operate and the regional and local authorities that are presumed to have proximity with concerned local community have no power to decide on or administer the investment in line with the interest of local communities. Similar feature of centralism has been reflected under parts dealing with investment administration organ. Even though Art. 27 of the proclamation hangs the possibility of having federal and regional investment organ to administer investment by law, the subsequent provisions, Arts. 28 and 29 of the proclamation which lists the power and duties of federal investment organ exhausted the core investment matters, and left no important place for regional organs to decide on investment operating in their regions specially the FDI. As a result, the regional investment organ remained the mere facilitator, information provider and executor of the decision of federal investment organ.

Moreover, the provision of one stop shop service provided under Art. 30 coupled with the absence a provision that establish a firm cooperation among the federal and regional investment authority and other cross sectorial authority has worsened the problem making the investment administration and decision a top down imposition in the country. The only provision that talks language of cooperation between federal and regional organ in the proclamation is Art. 31 of the proclamation dealing with the cooperation as regard investment related information, but this does not cover issues of cooperation to give joint decision. In addition, there is no provision that ensures grassroots public participation in investment administration and decision making nor is the room for individual to submit grievance on the investment decision either to the authority or the regular court as access justice scheme since this right are available only for investor as per Art.32 of the proclamation. And, hence, both direct and indirect participation through the close local representative are missing from Ethiopian investment administration system.

Even more, provision of the proclamation dealing with industrial zone has exacerbated the concern about social sustainability like ensuring public participation and bottom up approach to investment administration that respect right to self-determination, respecting local land right, respecting and preserving cultural identity, ensuring the interest of local and indigenous community. The provision gives an exclusive and unchallengeable power for the federal government to establish industrial zone in regions and hung up every issues to be determined by the regulation to be issued by council of minister.<sup>81</sup> The proclamation is silent about the role if any of the regional authorities, the role and interest of local community and the aforementioned issues of social sustainability that could be raised in respect of industrial development zone nor it provide framework that guides the would be laws in addressing these issues. Within the umbrella of the aforementioned deficiency, Industrial park proclamation has been enacted in 2015, but the author prefers not to examine its sustainability for scope and time limitation.

In general, both the investment proclamation and regulation have no sufficient space for social development. Even if the general objective stipulated in the proclamation made references to social development, this is not translated in to specific objectives and other substantive provisions. Thus, the proclamation failed to address components of social sustainability like human right, public participation, ensuring equity, and the interest of local community, access to justice and information, labor standards, and good governance.

### C. Ethiopia's Investment Law and Environmental Protection Pillar

The environmental protection as pillar of sustainable development requires integration of the environmental concern in any development process. This has been reflected under the New Delhi declaration through the principles of integration, the principles of duty to sustainable utilization of natural resources and the principles of precautionary approach to human health, natural resources and ecosystems.<sup>82</sup> Addressing environmental concern in any investment process has been firmly recognized as pillar of sustainable

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<sup>81</sup> See Investment Proclamation, Arts. 33-34

<sup>82</sup> The New Delhi Declaration, Principles 1, 4, & 7.

development under FDRE constitution. However, there is neither express reference to the constitution nor detailed provision that fully integrates this constitutional requirement under the subsequently enacted investment legislations. The stipulation integrating environmental protection is missing from both preamble and declared objective of Ethiopian investment proclamation and regulation.

The preamble is totally mute about the environmental protection pillar. Art.5 of the proclamation dealing with the objective of the investment tries to make a loose reference to environmental pillar. It states general objective of the investment as realization of sustainable economic and social development. Even if the term ‘sustainable’ is embodied in this general objective, express reference made to social and economic development and omission of environmental sustainability seems that environmental pillar is not contemplated under the general objective of investment. By the same token, the specific objective listed under Art. 5 of the proclamation seem to capitalize on economic development pillar saving the insignificant reference made to exploitation and development of the immense natural resource of the country under Art.5 (2).<sup>83</sup> This incidental reference made to the environment is indeed inadequate even if it envisages not only the exploitation of natural resources, but also their simultaneous development.<sup>84</sup> Hence, the environmental sustainability does not feature prominently in both the general and specific objectives outlined under Art. 5.

Part four of the proclamation titled investment permit is among a potential place under which environmental issues could have been integrated. However, Arts.12 to 19 of the proclamation failed to explicitly provide environmental conditions, such as compliance with environmental standards and the making of environmental impact assessment as a requirement for application, issuance, renewal and expansion or promotion or revocation of permits.<sup>85</sup> In particular, Art.19 (2) of the proclamation specifically put exhaustive list of grounds for revocation of investment permit but the law maker skipped to integrate environmental issues in a clear language.

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<sup>83</sup> Fikermekos Merso, *Green Growth, Investment, Environment & Sustainable Development in Ethiopia, Country Report: Ethiopia*, 5 IUCNAEL EJOURNAL, 163-171, P168.

<sup>84</sup> *Ibid*

<sup>85</sup> *Id.* P. 169.

Part 5 which deals with the registration of technology transfer could have provided requirements for investors to use clean technology so as to enhance environmental protection but no such requirement is contemplated. Part 6 of the proclamation which deals with investment incentive, guarantees and protection also remained silent on the issues of environmental sustainability. Environmental sustainability does not appear to be a justification for an incentive packages provided under the investment regulation as contemplated by Art.23 of the proclamation.<sup>86</sup> Furthermore, Art. 25 of the proclamation dealing with investment protection and expropriation lacks environmental safeguards and could prohibit legitimate regulatory measures aimed at insuring environmental protection as indirect expropriation.

Part 7 of the proclamation which deals with investment administration including issues of institutional cooperation, one shop service and grievance mechanism also fails to assist in environmental sustainability. In this regard, the investment proclamation fails to incorporate the requirement of institutional cooperation among the relevant organ like investment commission and environmental protection authority. The only provision in the investment proclamation that relates to cooperation is Art.20 which deals with the cooperation of investor and investment organ. Even worse, without creating such institutional cooperation, the proclamation aspires to give one-stop shop service as highlighted under Art.30 (4) (d). This provision imposes an obligation on investment commission to facilitate execution of investor's requests for approval of environmental impact assessment but does not compel investors to do environmental impact assessment. At this juncture, since there is no provision establishing firm coordination with environmental authority, the investment commission may issues license without making impact assessment to comply with the expected one-stop shop service.

Under miscellaneous part, the relatively important provision that attempted to integrate environmental issues is Art.38 of the proclamation .The provision states that any investor shall have the obligation to observe the laws of the country in carrying out his investment activities, and in particular, he shall give due regard to environmental protection. According to Fikermarkos, the

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<sup>86</sup> *Ibid.*

first sentence of this article does not add anything since it is the obligation of an investor to respect the laws regardless.<sup>87</sup> The second sentence is important developments given its direct reference to the environment, is nonetheless formulated in a weak language, stating ‘...give due regard to environmental protection’ and may not add meaningful obligation related to the environment in the context of investment.<sup>88</sup> The sentence does not specify the legal consequences of a failure to give due regard to environment.<sup>89</sup> There is no explicit penalty provided for by the Proclamation be it is criminal or administrative sanction saving an implicit measures of suspension of permit that could be arguably anticipated by interpreting Art 38 in conjunction with Art 19(1) of the proclamation which entitled the authority to revoke license if investor violated the provision of the proclamation.

Lastly, part 8 of the proclamation dealing with industrial development zone could have play some role in incorporation environmental concern in investment law, nonetheless remained with no meaningful contribution to this direction. Under definition part, industrial development zone has been defined to have the objective of mitigating the impact of environmental pollution but there is no hard and fast rule as to how this objective could be achieved. The only guiding provision that relates to the environment in this regard is Art. 34 (3) (c) of the proclamation which reserves the possibility of possessing a leasehold land within or adjacent to industrial zone for the purpose of maintaining natural resources, cultural heritage, or place required to be preserved by law in decision regarding reduction or expansion of industrial development zone. It should be noted that industrial development zone being the investment place that could cause worst environmental issues; this part could have addressed at least key environmental issues.

Overall, it can be submitted that the Ethiopian investment laws has failed to fully mainstream environmental protection pillar into investment governance. The only direct references made to environmental issues are found under Art.38 but this is in itself in adequate to insure environmental protection mainly for its weak terminology and absence of bold sanction. It seems that

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

environmental issues are left for the environmental laws ,however these issues could and should have been at least briefly stated as a preambular and declared objective objectives under article 5, and in other provisions dealing with guarantee against expropriation, investment permit and incentives as appropriate.

## V. CONCLUSION AND RECOMMENDATION

Sustainable development is aspiration of all nation, nationality and people of Ethiopia at all times. It embraces three mutually reinforcing pillars; economic growth, social development and environmental protection as integral part of development. It is uncontested that investment is a weapon of development, but it has also tremendous economic, social and environmental impacts on local community unless it is effectively regulated. In furtherance of this, FDRE Constitution recognized right to sustainable development and dictates integration of economic, social, and environmental concern in investment process. However, the fact on the ground evidences that sustainable development objective is almost missing from Ethiopian investment governance.

Through a combination of doctrinal and socio legal investigation, this study established a quest for inclusive economic growth, respect for human right, and need to curb social and environmental impacts in course of investment as pressing issues that necessitate integrating of the three pillars of sustainable development into the Ethiopia's investment laws. It is also found that the Ethiopia's investment laws (both Investment proclamation and investment regulation) failed to adequately integrate economic, social and environmental pillars of sustainable development as envisaged by the constitution and the requirements of sustainable development.

To be specific, it has been found that economic pillar of sustainable development has been overly asserted under preamble and declared objective of investment stipulated under Art.5 of the proclamation but are not fully translated in to other substantive provisions of the investment proclamation and regulation. In particular, the proclamation failed to explicitly employ important components of performance requirement such as local content

requirement including hiring local personnel, requirement to achieve specific level of jobs and level of wage as the requirement for application, issuance, renewal and expansion or promotion or revocation investment permit or incentive to maximize positive linkages of investment with the local economy. Moreover, there is no provision that ensure equity and inclusiveness dimension of investment to target the economic empowerment of the local people.

Besides, the Ethiopia's investment law also failed to adequately integrate social development pillar of sustainable development including human right issues, ensuring public participation and the interest of local community, ensuring social equity, labor standards, and good governance. Attempt has been made to make reference to social development pillar under the preamble and objective of investment, but these loose references are either merely indirect or fairly inadequate. The proclamation also failed to provide sustainability impact assessment components including social, cultural and human right impact assessment as a requirement for application, issuance, renewal and expansion or promotion of investment permit. Moreover, the proclamation also failed to integrate social development pillar as obligation of investor nor it align investor's right with social development in any other substantive provisions.

With regard to environmental protection pillar, the study confirmed that the preamble of the investment proclamation and the general objective of investment provided under Art.5 are totally mute saving the incidental and tiny reference made to the exploitation and development of natural resources under Art.5(2). Moreover, environmental conditions, such as compliance with environmental standards, use of clean technology and the making of environmental impact assessment are not explicitly provided as a requirement for investment permits nor they are linked with incentive packages provided under the investment regulation. The only direct reference to environment is found under Art.38 of the proclamation but this is in itself in adequate to ensure environmental protection for its weak terminology and absence of bold sanction. Even though it can be argued that investment related environmental issues can be addressed by making reference to existing environmental laws, these issues could and should have been at least briefly stated as a

preambular and declared objective of investment, and explicitly linked with investment permit and incentive as appropriate to achieve a better result.

Therefore, it shall be a call of time for the Ethiopian legislature to revolutionize Ethiopia's investment law in manner that adequately integrate economic, social and environmental pillars of sustainable development, and rectify all legal deficiency and gaps identified in this paper. This could be achieved *inter alia* through reforming the preamble, reforming objective of investment, standardizing investor's right with sustainable development, inserting investor's obligation that assists sustainability, and democratising provisions dealing with investment administration to ensure bottom approach to investment. Besides, the Ethiopian judges shall exercise their inherent power of judicial activism and interpret the investment laws in manner that ensure right to sustainable development and human right based approach to development enshrined in the constitution. In that method, we use our investment laws as tool to mobilize investment for sustainable development and ensure that an elusive economic benefit of investment does not cause irreversible environmental, social and human right impact to our people.

## TO'ANNOO DAMBIILEE FI QAJEELFAMOOOTA AANGOO BAKKA BU'INSAAN BA'ANII: HAALA QABATAMAA OROMIYAA\*

*Tafariii Baqqalaa\*\**

*Waaqgaarii Dullumee\*\*\**

### ABSTRACT

*The core idea of principle of separation of power was coined by John Lock and latter refined by Montesque in the 18<sup>th</sup> century. It advocates for separation of government power among three branches: legislative, executive and judiciary. Each branch has its own primary function and intervention in the primary function of the other branch is not allowed. However, the principle is not absolute for different reasons. One area of deviation is delegated legislation whereby executive branch makes laws; although the function belongs to legislature. However, the compatibility of delegated legislations with enabling legislation should be controlled so that the principle of separation of power is not totally eroded. The objective of this article is to investigate how delegated legislations (regulations and directives) are controlled by the three branches of government. In doing that, qualitative research method that includes review of literature, in-depth interview, case analysis and scrutinizing legal provisions was employed. Accordingly, 38 in-depth interviews with officials from different executive sectors at bureau level; 16 cases decided by quasi-judicial organs; 10 cases decided by regular courts; most importantly 20 proclamations, 20 regulations and 20 directives were read and examined critically. Finding of the research claims ineffective control on delegated legislations in Oromia mainly due to lack of institutionalized controlling mechanisms supported by laws; and leniency and sometimes the inability of the judiciary to exercise its judicial review power. Due to this, there are cases whereby delegated legislations become ultra virus to the primary laws thereby unduly restricting constitutionally guaranteed rights such as the right to procedural justice. Hence, the article suggests institutionalizing controlling mechanisms which are supported by laws, and enabling the judicial organ to effectively exercise its inherent power of judicial review as ways forward.*

**Key words:** Controlling Delegated Legislations, Delegated Legislations, Directives, Oromia, Regulations

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\* Barruun kun qorannoowwan ILOQHQSO tiin bara 2010 gaggeeffaman keessaa gabaabbatee kan dhiyaate dha.

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## 1. SEENSA

Qajeeltoon qoqqoodama aangoo dalgee jaarraa 18<sup>ffaa</sup> keessa hayyuu siyaasaa fi falaasamaa biyya Faransaay, maqaadhaan Monteskuu jedhamuu kan dhiyaate yoo ta'u, yaadni bu'uuraa isaas, aangoon mootummaa biyya tokkoo qaamolee mootummaa sadan: qaama seera baastuu, seera raawwachiiftuu, fi seera hiiktuu jidduutti qoqqoodamuu kan qabuu, fi qaamni mootummaa tokko hojii qaama mootummaa isa biraq keessa seenuu hin danda'u kan jedhu dha.<sup>1</sup> Haa ta'u malee, haala addaatiin, qajeeltoo kana irraa akka maqamuuf sababootni dirqisiisan (fakkeenyaaaf, baay'achuu hojii) kan jiran yoo ta'u, bakkeewwan kun itti mul'atu keessaa tokko ammoo hojii seera baasuun kan walqabatu dha. Hojii kana hojjechuuf qaamni aangoo uumamaa (inherent power) qabu qaama seera baastuu ta'us, qaamolee mootummaa biroofis aangoon kun bakka bu'insaan kennamu ni danda'aa; yoo kennamu garuu, daangaa aangoo bakka bu'insaa keessatti ba'uun hojiirra ooluun isaa to'atamuu qaba. To'annoonaan kunis akkuma haala isaatti sadarkaa wixineetti ykn ragga'uun hojiirra erga oolanii booda, qajeeltoowwan hordofamuu qaban tarreessuun sana keessa darbuu isaa hordofuu (to'annoow waliigalaa) fi qaamolee mootummaa adda addaan, keessattuu qaamolee mootummaa sadaniin akka ta'u hogbarruuwwan toora kanatti barreeffaman ni agarsiisu.<sup>2</sup>

Gara Itoophiyaafi Naannoo Oromiyaatti yoo dhufnu, Heerota lachuu ilaaluun barbaachisaa ta'a. Heerri Mootummaa Rippabilika Dimokiraatawaa Federaalawaa Itoophiyaa caaseffama mootummaa federaalaawaa akka hordofuu fi aangoonis qaamolee mootummaa sadan (seera baastuu, seera raawwachiistuu, fi seera hiiktuu) jidduutti kan qoqqoodame ta'uu ni ibsa.<sup>3</sup> Heerri kun Manni Marii Bakka Bu'ota Uummataa qaama aangoo ol'aanaa mootummaa federaalaa akka ta'e ibsuun, hojii seeraa baasuus qaama kanaaf

<sup>1</sup> Separation of power: An Overview, <http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx> <Sadaasa 5, 2010 kan ilaalam>; Qajeeltoon qoqqoodama dalgee aangoo kun Monteskuun caalaatti balballoomee kan dhiyaate yoo ta'elée, dursa kan kalaqame garuu Joon Lookiin akka ta'e hogbarruuwwan ni ibsu (Oyelami, T.O., *The Challenges of Controlling Administrative Legislation in Nigeria*, NIALS Law and Development Journal (2010), F1 ilaala).

<sup>2</sup> Fakkeenyaaaf, Oyelami, T.O., *The Challenges of Controlling Administrative Legislation in Nigeria*, NIALS Law and Development Journal (2010); Delegating Law-making Powers to the Executive, <http://idac.org.nz/assets/documents/13.-Delegating-law-making-powers-to-the-executive.pdf>, F8 ilaaluun ni danda'ama.

<sup>3</sup> Heera Mootummaa RDFI, kwt. 50 (2) fi kwt.1

kenneera.<sup>4</sup> Gama biraatiin, aangoo Manni Marii Bakka Bu'ootni Uummataa kennuuf irratti hundaa'uun qaamni raawwachiistuu (Manni Maree Ministerotaa) dambiiwwan baasuu akka danda'u, Heerumti kun ifatti tumeera.<sup>5</sup> Heerri Mootummaa Naannoo Oromiyaas aangoon qaamolee mootummaa sadeen giddutti kan qoodamu ta'uu ni tuma.<sup>6</sup> Bu'uura Heerichaatiin Caffeen Oromiyaa qaama mootummaa aangoo ol'aanaa mootummaa naannichaa yoo ta'u, aangoo seera baasuu, dambiilee dabalatee kan qabus qaamuma kana dha.<sup>7</sup> Haa ta'u malee, haala addaatiin, aangoo bakka bu'insaa Caffeen kennuuf irratti hundaa'uun qaamni raawwachiiftuu dambiiwwan baasuu akka danda'u, Heerumti kun tumeera.<sup>8</sup>

Qabatamaanis labsiwwan Caffee irra dhaabbachuun dambiilee fi qajeelfamoonni adda addaa ba'aa jiru. Hanga yeroo daataan qorannoo kanaa walitti qabametti, labsiwwan Caffee Oromiyaan labsaman lakkofsaan **208** yommuu ta'an, dambiiwwan aangoo bakka bu'insaan ba'an ammoo **195** irra gahaniiru. Qajeelfamoonni seekteroota mootummaan ba'anii hojiirra jiranis lakkofsi isaanii hanga kana jedhamee beekamuu baatus hedduu dha. Haa ta'u malee, dambiilee fi qajeelfamoonni Oromiyaa keessatti ba'aa jiran kunniin daangaa aangoo bakka bu'insaa seera Caffeen kennameen ba'uun isaanii bifaa kamiin to'atamaa akka jiran qoranno agarsiisu hin jiru. Kaayyoon qorannoo kanaa Oromiyaa keessatti akkaataa dambiilee fi qajeelfamootni bakka bu'insaan itti bahanii fi qaamolee mootummaa sadaniin (qaama seera baastuu, qaama seera raawwachiiftuu fi qaama seera hiiktuun) to'ataman maal akka fakkaatu sakatta'uun qaawwa seeraa fi hojimaataa jiru agarsiisuun yaada furmaataa akeekuu dha.

Kana gochuuf malli qorannoo hordofame: dursa, seerotni aangoo bakka bu'insaan ba'an seerota Caffee Oromiyaan ba'an wajjiin walsimuun fi dhiisuun isaanii bifaa kamiin to'atamuu danda'u? kan jedhu qajeeltoowwan bu'uuraa seera bulchiinsaa keessa jiran maalfaa akka ta'an beekuuf; akkasumas, sirni to'annoq qaamolee mootummaa sadaniin taasifamu (qaama seera baaftuu, seera raawwachiiftuu fi seera hiiktuu) maal akka fakkaatuu fi

<sup>4</sup> Heera Mootummaa RDFI, Kwt.55.

<sup>5</sup> Heera Mootummaa RDFI, kwt.77 (13).

<sup>6</sup> Heera Mootummaa Naannoo Oromiyaa, Kwt.46.

<sup>7</sup> Heera Mootummaa Naannoo Oromiyaa, Kwt.46 (1), 49 (1) fi 49 (3p).

<sup>8</sup> Heera Mootummaa Naannoo Oromiyaa, Kwt. 55(6).

muuxannoowwan akka addunyaatti gama kanaan jiranis maal akka ta'e bifa agarsiisuu danda'uun hogbarruuwwan sakatta'amaniru. Muuxannoon biyyoota sakatta'amanis Hindii, Ingiliizii, Ameerikaa, fi Naayijeeriyya yommuu ta'an, kan filatamanis sirna bulchiinsaa hordofan (sirna mootummaa federaalawaa fi waaltawaa; fi sirna mootummaa paarlamaa fi pirezidaantummaa) jiddu-galeessa godhachuudhaani.

Itti aansuun, dambiilee fi qajeelfamoonni aangoo bakka bu'insaan tumaman kunniin Oromiyaa keessatti bifa kamiin ba'anii to'atamaa jiru kan jedhu qajeeltoowwan seera bulchiinsaa fi muuxannoowwan jiran irratti hundaa'uun hammatni heeraa, seeraa fi/ykn hojimaataa gahaa ta'e jiraachuuf dhiisuu isaa xiyyeffannoon madaaluun qaawwa jiru adda baasuuf hooggantootaa fi ogeessota Waajjira Caffee Oromiyaa, Waajjira Bulchiinsa Mootummaa Naannoo Oromiyaa, Biirroo Haqaa Oromiyaa, qaamolee raawwachiiftuu mootummaa naannoo Oromiyaa biroo amala hojii isaanii irraan kan ka'e dambiilee fi qajeelfamoota hedduu baafachuun itti hojjetu jedhamanii tilmaamaman jahaa fi abbootii seeraa fi pirezidaantota manneen murtii naannichaa sadarkaa hundarra jiran wajjiin afgaaffiin gadi fageenya qabu (in-depth interview) soddomii-saddeet (38) gaggeeffameera; dhimmoonni qaamolee bulchiinsaa aangoo abbaa seerummaa qabaniin (quasi-judicial bodies) murtaa'an 16 fi dhimmoonni manneen murtii idileen murtaa'an 10; walumatti, dhimmoonni 26 sakatta'amuun warreen gaaffii qorannoo wajjiin hidhata qaban filatamuun xiinxalamaniiru. Akkasumas, labsiiwwan 20, dambiiwwan 20 fi qajeelfamoota 20; walumatti, seerotni 60 walbira qabamuun dubbifamaniiru.

Gaaffii qabatee ka'e deebisuuf akka tolu qorannichi kutaalee afuritti qindaa'uun dhiyaateera. Seensa kanatti aanee, kutaan lammaffaa, sirna to'annoo dambiilee fi qajeelfamoota aangoo bakka bu'insaan ba'anii ilaachisee dhimmoota waliigalaa jiran irratti hogbarruuwwan sakatta'a. Haaluma kanaan, maalummaa seerota aangoo bakka bu'insaan ba'anii, dambiilee fi qajeelfamootni aangoo bakka bu'insaan ba'an qajeeltoowwan bu'uuraa hordofuu qabani fi qaamoleen seerota kanneen to'achuuf aangeffaman eenyufaa akka ta'an kutaan kun hammateera. Kutaan sadaffaa, seerota aangoo bakka bu'insaan ba'an to'achuun Oromiyaa keessatti maal akka fakkaatuufi rakkoowwan qabatamaan mul'atanis maalfaa akka ta'an

adda baasuun agarsiisa. Dhuma irratti, kutaan afraffaa, yaadota gudunfaa fi furmaataa kan dhiyeessu ta'a.

## **2. SIRNA TO'ANNOO SEEROOTA AANGOO BAKKA BU'INSAAN BA'ANII: SAKATTA'A HOGBARRUU FI SEEROTAA**

### **2.1.MAALUMMAA SEEROOTA AANGOO BAKKA BU'INSAAN BA'ANII**

'Seera aangoo bakka bu'insaan ba'u'<sup>9</sup> kan jedhu seerota biyyoota adda addaa keessatti hiikkaan adda addaa yoo kennamuuf ni hubatama. Fakkeenyaaaf, Seerri Adeemsa Falmii Bulchiinsaa Amerikaa bara 1946 ba'e kaayyoo seerri aangoo bakka bu'insaan ba'u jiddu galeessa godhaachuun, seera qaama raawwachiiftuun dhimma addaa ykn waliigalaa irratti baasu ta'ee seera ykn imaammata hojiirra oolchuuf, ykn hiikuuf; ykn hojimaataa, fi adeemsa dhaabbata tokko ibsuuf jedhee tumu jechuu akka ta'etti hooke.<sup>10</sup>

Hogbarruwwan hedduu keessattis 'seera aangoo bakka bu'insaan ba'uu' jechuuun maal jechuu akka ta'e yoo hiikamu: *seera qaama raawwachiiftuun seera qaama seera baasuuf aangoo uumamaa qabuun aangeffamee seera boodaa kana (seera qaama seera baastuun ba'e) hojiirra oolchuuf ykn bulchuuf baasu jechuu*<sup>11</sup> akka ta'etti dha.

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<sup>9</sup> 'Aango bakka bu'insaan seera baasuu' kan jedhu afaan Ingiliziin, *delegated legislation, secondary legislation, subsidiary legislation, statutory instrument, administrative rule, subordinate legislation, administrative legislation or quasi-legislation*"gaaleewwan jedhan kan bakka bu'u dha.

<sup>10</sup> The American Administrative Procedure Act (APA) of 1946: "Rule means the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency ..."

<sup>11</sup> Dr. Ketan Govekar, Delegated Legislation in India, Kare College of Law, Margao, F1 [www.grkarelawlibrary.yolasite.com/.../FM-Jul14-LT-2-Ketan.pdf](http://www.grkarelawlibrary.yolasite.com/.../FM-Jul14-LT-2-Ketan.pdf) <gaafa 27/2/2010 kan ilaalam>; Delegated Legislation in Nigeria: the Challenges of Control (2013/2014), F12, [www.sas-space.sas.ac.uk/.../Jemina%20Fabiawari%20Benson%20LLM%20D..](http://www.sas-space.sas.ac.uk/.../Jemina%20Fabiawari%20Benson%20LLM%20D..) <gaafa 27/2/2010 kan ilaalam>; Oyelami T.O,The Challenges of Controlling Administrative Legislation in Nigeria(2010), FF196-197,Martin Shapiro,Judicial Delegation Doctrines: The US, Britain and France,FF173-174 [www.tandfonline.com/doi/pdf/10.1080/713601590](http://www.tandfonline.com/doi/pdf/10.1080/713601590) <gaafa 27/2/2010 kan ilaalam>

Gara Itoophiyaatti yommuu dhufnu, Wixineen Adeemsa Seera Bulchiinsa Federaalaan bara 1996 ALItti wixineeffame kwt.2 (4) (10) jalatti, hiikkaa seerri Adeemsa Bulchiinsa Amerikaa olitti kenne wajjiin haala baay'ee walfakkaatuun hiikee argina. Haaluma kanaan, qaamni seerota aangoo bakka bu'insaan baasu Ejensii dha. 'Ejensii' jechuun ammoo Ejensii bulchiinsaa qaama raawwachiiftuu federaalaan ta'ee hojii to'anno hojjetuu fi biiroo tajaajila uummataaf kenuu jechuu akka ta'e wixinichumti kwt. 2 (2) (2)<sup>12</sup> jalatti hiikee jira.

Ibsa olii kana irraa waanti hubannu, dambiilee fi qajeelfamootnii fi hogbarruwwan karaa adda addaa hiikkoo kan kennan ta'uu dha. Biyyoota adda addaa keessattis maqaa adda addatiin waamamu.<sup>13</sup> Akka naannoo Oromiyaatti garuu, dambiilee fi qajeelfamoota maqaa jedhuun beekamu. Gabaabumatti, 'seerri aangoo bakka bu'insaan ba'u' seera qaamni seera baasuuf aangoo uumamaa hin qabne seera qamni seera baasuuf aangoo uumamaa qabu baasu kenneef irratti hundaa'uun baasu akka ta'e hubachuun ni danda'ama. Qorannoo kana keessattis seerotni aangoo bakka bu'insaan ba'an dambiilee fi qajeelfamoota adda addaa aangoo bakka bu'insaa Caffeen kenuu irratti hundaa'uun bahan akka ta'etti kan hubatame dha.

## **2.2. DHIMMOOTA AANGOO BAKKA BU'INSAAN SEEROTNI IRRATTI BA'ANII FI HIN BAANE (DELEGABLE & NON- DELEGABLE LEGISLATIVE POWER)**

Seerotni aangoo bakka bu'insaan ba'an sababa itti ba'anii fi faayidaa mataa isaanii kan qaban yoo ta'elée, dhimmoota hunda irratti ba'uun danda'u jechuu miti. Akka waliigalaatti, dhimmoonni imaammataa fi qajeeltoon walqabatan qaama aangoo uumamaan seera baasuuf aangoon kennameefin ba'u.<sup>14</sup> Seerotni aangoo bakka bu'insaan ba'an bu'uurarraan seerota aangoo

<sup>12</sup>Agency means an administrative agency with regulatory/supervisory power/function of the federal executive and a service rendering public office (The Draft Federal Administrative Proclamation, Art.2(2) (2)).

<sup>13</sup>Fakkeenyaaaf, Orders in Council, Regulations, Statutory Instrument, Rules, Orders schemes, Warrants fi Directions maqaawwan isaan ittiin waamamani dha (Miers DR and Page AC, Legislation, London Sweet and Maxwell (1982), P140).

<sup>14</sup> Delegating Law-making Powers to the Executive, F50; <http://ldac.org.nz/assets/documents/13Delegating-law-making-powers-to-the-executive.pdf> <Onkoloolessa 10, 2010 kan ilaalame>.

uumamaan qaama seera baastuun ba'an hojiirra oolchuuf jecha kan ba'ani dha.<sup>15</sup> Dhimmoota aangoo bakka bu'insaan seerri irratti ba'uu danda'u fi hin dandeenye tokko tokkoon tarreessanii kaa'uun salphaa ta'uu baatus, agarsiiftonni akka waliigalaatti fudhatama argatan kan jiran akka ta'e hogbarruuwwan ni ibsu. Kana akka itti aanutti gabateedhaan agarsiisuun ni danda'ama.

<i>Lak</i>	<i>Dhimmoota aangoo bakka bu'insaan seerri irratti hin baane (Non-delegable Legislative power)</i>	<i>Dhimmoota aangoo bakka bu'insaan seerri irratti ba'uu danda'u (Delegable Legislative power)</i>
1	Dhimmoota bu'uuraa imaammataan walqabatan	Dhimmoota adeemsa sasalphaa akkaataa kaffaltiin itti raawwatu agarsiisu; qophii unka sanadoota adda addaa
2	Dhimmoota mirga namoomaa miidhuu danda'an	Tarreffama bal'ina qabu(large lists), dhimmoota sasalphoo gabateedhaan (schedules) ibsaman
3	Dhimmoota sakatta'insaa fi qabiinsaa ykn dhaala qabeenyaa	Dhimmoota walxaxoo teekinkaawaa ta'an (technically complex matters)
4	Dhimmoota mirga ol'iyyannoo kennuu ykn jijiiruu ilaallatan	Dhimmoota ariifachiisoo (emergencies) dafanii furmaata seeraa argachuu qaban
5	Dhimmoota yakka cimaa hundeessanii fi adabbii isaanii murteessan	Dhimmoota yeroo yeroon haaromsuu barbaadan
6	Dhimmoota taaksii kaffalchiisuu, qarshii liqeeffachuu fi qarshii uummataa baasii gochuu ilaallatan	

<sup>15</sup> Akkuma lak.14ffaa

7	Dhimmoota seera duraan qaamni seera baasaa baasee ture akka fooyya'u godhu	
8	Dhimmoota seerri duubatti deebi'ee bu'aa akka qabaatu taasisu tumuu	

*Madda: Delegating Law-making Powers to the Executive, FF50-51*

Gabatee olii kanarraa wanti hubatamu, seerri aangoo bakka bu'insaan ba'u bu'uurraan seera qaamni seera baasuuf aangoo uumamaa qabu haala bu'a qabeessa ta'een hojiirra oolchuuf yaadamee kan ba'u ta'uu dha. Fakkeenyaaaf, seerri aangoo bakka bu'insaan ba'u qaawwa seerri qaama seera baastuun ba'e qabu duuchuuf jecha, adeemsa dheeraa parlaamaan hordofu gabaabsuuf jecha, falmii siyaasaa ka'uu malu dhabamsiisuf jecha akka ba'u taasisuun sirrii miti.<sup>16</sup>

### **2.3.SIRNA TO'ANNOO WALIIGALAA (GENERAL CONTROLLING MECHANISMS)**

Dambiileefi qajeelfamootni aangoo bakka bu'insaan ba'an akka seerota qaama seera baasuuf aangoon uumamaa kennameeffi adeemsa cimaa keessa darbuu qabu jedhamee hin eegamu. Kun ammoo mirgootni namoomaa waliigalteewan idila addunyaafi heeraan beekamtii argatanii jiran akka sarbamaniif daandii saaquu danda'a. Akkas akka hin taaneef dambiilee fi qajeelfamootni aangoo bakka bu'insaan tumaman kunniin qajeeltoowwan hordofuun irra jiraatu ni qabu. Qajeeltoowwan kunniin qajeeltoo beeksisaa (principle of notice), qajeeltoo uummata hirmaachisuu, fi qajeeltoo maxxansaa kan jedhaman yommuu ta'u, iddo tokkotti sirna to'anno waliigalaa (general controlling mechanisms) jedhamuu waamamuu danda'u.<sup>17</sup> Itti aansuun, qajeeltoowwan kanniin gabaabinaan ibsina.

#### **2.3.1. Qajeeltoo Beeksisaa (Principle of Notice)**

Qajeeltoon beeksisaa qajeeltoo hirmaachisummaa ittiin dhugoomsuuf gargaaramnu keessaa isa tokko yommuu ta'u, kunis malawwan lamaan

<sup>16</sup> Akkuma 15<sup>ffaa</sup>, F51.

<sup>17</sup> Akkuma 16<sup>ffaa</sup>, F8.

raawwatamuu danda'a: 1) wixinee seerichaa gaazzexaa irratti maxxansuu uummanni beekee yaada isaa akka ibsatuu gochuu fi 2) qaamni wixinee seerichaa qopheesse uummanni yaadaa fi qeeqa isaa akka kennuuf guyyaa murteessuun affeeruu dha.<sup>18</sup> Malawwan kana irratti hundaa'uun yaadotaa fi qeeqota seericha irratti ka'an wixinee keessatti hammachiisuun seerichi akka ba'u taasisuu dha. Seerota qajeelticha hojiirra oolchuuf gargaaran ilaachisee biyyaa biyyatti adda addummaan ni jira. Fakkeenyaaaf, biyya Hindiitti, tokkoo tokkoo seera aangoo uumamaan seera baastuun baasu (primary act) keessatti hammatamee yoo argamu, biyya Amerikaa fi Ingilizitti ammoo seera addatti of danda'een hoogganama.<sup>19</sup> Itoophiyaa keessattis, Wixineen Seera Adeemsa Falmii Bulchiinsaa Federaalaa qajeeltoo kanaaf boqonnaa lama, kwt. 7 jalatti beekamtii kenneera.

### **2.3.2. Qajeeltoo Uummata Hirmaachisuu (Public Participation)**

Qajeeltoon kun qaamoleen seera aangoo bakka bu'insaan ba'u ilaallatu hunduu adeemsa seericha wixineessuu keessatti hirmaachuu kan dandeessisu dha.<sup>20</sup> Hirmaannaa kanaanis yaadotnii fi gorsi walitti qabamuun seera ba'uuf akka galteetti kan gargaaru ta'a.<sup>21</sup> Kanaaf faayidaan isaa faayidaa qajeeltoo beeksisuu wajjiin hidhata guddaa qaba. Yaadni qajeeltoo kanaa, jalqabumayyuu, aangoon seera baasuu kan qaama seera baastuu dha kan jedhu dha. Qaama kana keessa ammoo qaamoleen uummata bakka bu'uu danda'an hedduun waan jiruuf fedhiin hin hammatamiin hafu hin jiraatu jedhamee tilmaamama.<sup>22</sup> Seerota aangoo bakka bu'insaan ba'an irratti garuu, haalli fedhiin kun hundi itti hammatamu jiraachuu dhiisuu mala. Qajeeltoon

<sup>18</sup> Upadhyaya, J.J.R, *Administrative law*, 6th e d., (Central Law Agency, Allahabad, India, 2006), F107 (Aron Degol and Abdulatif Kedir, *Administrative Rulemaking in Ethiopia: Normative and Institutional Framework*, Mizan Law Review (2013), Vol. 7, No.1, F9 keessattii akka ibsame).

<sup>19</sup> Amerikaatti, Seera Adeemsa Falmii Bulchiinsaa Amerikaa bara 1946, kutaa 4 (American Administrative Procedure Act, 1946); fi Ingilizitti, Seera Dambiilee fi qajeelfamootni itti Tumaman bara 1946 ba'een (Britain's Statutory Instrument Act 1946 ) hoogganamu.

<sup>20</sup> Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak. 18, F11.

<sup>21</sup> Ralph F. Fuchs, Procedure in Administrative Rulemaking, Indiana University School of Law, 1938, F.274; Dr Sunita Zalpuri, Training Package on Administrative Law, Reading Material; [http://persmin.gov.in/otraining/UNDPProject/undp\\_modules/Administrative%20Law%20N%20DLM.pdf](http://persmin.gov.in/otraining/UNDPProject/undp_modules/Administrative%20Law%20N%20DLM.pdf), F37 <Onkoloolessa 13,2010 kan ilaalam>

<sup>22</sup> Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak. 18<sup>taa</sup>.

uummata hirmaachisuu kun qaawwa akkasii duuchuuf ni gargaara jedhamee yaadama. Akkuma qajeeltoo beeksisu, hojiirra oolmaan qajeeltoo kanaas adda addummaa qaba.

Fakkeenyaaaf, biyya Amerikaatti, Seerri Adeemsa Falmii Bulchiinsaa bara 1946 bahe hojiirra oolmaa qajeeltoo kanaa gadi fageenyaan tumee jira.<sup>23</sup> Biyya Ingiliitti, qabatamatti, uummata hirmaachisuun kan baratame ta'us, seerri akka dirqamaatti tumee hin jiru.<sup>24</sup> Biyya Hindiittis, qabatamaan bal'inaan itti hojjetama; dambilee fi qajeelfamootni akka dirqamaatti tuman garuu hunda osoo hin taane tokko tokko qofa.<sup>25</sup>

### **2.3.3. Qajeeltoo Maxxansaa (Principle of Publication)**

Dambilee fi qajeelfamootni aangoo bakka bu'insaan ba'an akkuma seerota qaama seera baasuun ba'anii mirgaa fi dirqama tumu. Akkas erga ta'ee ammoo hawaasa biratti beekamu qabu. Karaa dambilee fi qajeelfamootni kunniin ittiin beekaman keessaa tokko maxxanfamuudhaani. Qabiyyee fi bifiti dambilee fi qajeelfamootni aangoo bakka bu'insaan ba'an itti maxxanfaman adda addummaa kan qabu ta'us, maxxanfamuun hawaasa biratti beekamuu akka qaban irratti garuu mormiin hin jiru.<sup>26</sup> Fakkeenyaaaf, biyya Hindiitti dambilee fi qajeelfamootni tokko tokko gaazzexaa ofishaalaa irratti maxxanfamu akka qaban yoo dirqisiisan, dambilee fi qajeelfamootni tokko tokko ammoo bifaa mijataa ta'een maxxansuun akka danda'amu tumu.<sup>27</sup>

Akka Itoophiyaatti, Labsiin Negaarit Gaazzexaa Federaala Hundeessuuf Bahe Lak.3/1995, kwt. 2(2) seerotni hundi gaazzexaa kana irratti maxxanfamuu akka qaban ni tuma. Hiikkoon jecha 'seera' jedhuuf kennamu labsiwwan mootummaa federaalaan ba'anis ta'e muuxannoowwan akka addunyaatti jiran irraa ka'uudhaan yoo ilaalamu qajeelfamootas ni dabalata. Fakkeenyaaaf, Labsiin Mana Maree Federeeshinii Hundeessuu fi Gahee fi Aangoo isaanii tarreessuuf bahe seerri labsiwwan, dambiiwwanii, fi qajeelfamoota mootummaa federaala fi naannoleen bahan; akkasumas,

<sup>23</sup> Delegating Law-making Powers to the Executive, Olitti yaadannoo lak. 14<sup>ffaa</sup>, F12.

<sup>24</sup> Dr Sunita Zalpuri, Olitti yaadannoo lak. 21, F37; Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.18, F12.

<sup>25</sup> Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak. 18<sup>ffaa</sup>, F12.

<sup>26</sup> Dr Sunita Zalpuri, Olitti yaadannoo lak. 21<sup>ffaa</sup>, F13

<sup>27</sup> Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.18<sup>ffaa</sup>, F13.

waliigalteewwan idila addunyaa biyyi keenya kan raggaasifte kan dabalatu akka ta'etti hiikee jira.<sup>28</sup> Kanaaf, dambilee fi qajeelfamootni aangoo bakka bu'insaan ba'an qajeeltoo maxxansaaf beekamtii kan kennan akka ta'e ni hubatama.

## **2.4. TO'ANNOO QAAMOLEE MOOTUMMAA SADANIIN TA'U**

### **2.4.1. To'anno Qaama Seera Baastuu (Parliamentary Control)**

Akka seenaatti yoo ilaalamu, to'anno seera baastuun seerota qaama raawwachiistuun bahan irratti taasifamu kan qaama seera hiikuun yoo wal bira qabame taatee yeroo dhiyooti.<sup>29</sup> Ta'us, gama bu'a qabeessummaa isaatiin yoo madaalamu to'anno qaama seera hiikuun taasifamu irra fooyee akka qabu hogbarruuwwan ni agarsisu.<sup>30</sup> Sababiin isaas, to'anno seera hiiktuun raawwatamu erga miidhaan gahee fi qaamni miidhame gara mana murtiitti dhimmicha yoo dhiyeesse qofa yoo ta'u; kan seera baastuun gaggeeffamu garuu osoo miidhaan hin gahiinis raawwatamuun kan danda'uu fi mirga hawaaasa waligalaa kan eegisu waan ta'eefi dha. Qaamni seera baasu haala lamaan seerota bakka bu'insaan bahan to'ata.<sup>31</sup> Inni duraa fi bu'a qabeessi, daangaa aangoo qaamni raawwachiistuu keessatti seera baasuu danda'u tumaa seeraan daangessuun yommuu ta'u, inni biraan ammoo koreetti fayyadamuu dha. Tokko tokkoon haa ilaallu.

#### **A) Ifa Taasisuun Kennuu**

Barreessaan tokko barbaachisummaa seeraan ifatti daangessanii aangoo bakka bu'insaa kennuu haala armaan gadiin ibseera:

<sup>28</sup> Fakkeenyaaaf, Labsii Mana Maree Federeeshinii Hundeessuu fi Aangoo fi Hojii Isaa Tarreessuuf Bahe, Labsii Lak.251/2001, Kwt.2 (2).

<sup>29</sup> Delegated Legislation, Historical Perspective House of Commons [https://www.Our commons.ca/Marleau\\_Montpetit/DocumentViewer.aspx?DocId=1001&Language=E&Print=2&Sec=Ch17&Seq=0](https://www.Our commons.ca/Marleau_Montpetit/DocumentViewer.aspx?DocId=1001&Language=E&Print=2&Sec=Ch17&Seq=0) <Sadaasa 15, 2010 kan ilaalame>.

<sup>30</sup> Bharat Singh, Technology Lawyer, Author of Entrepreneur, Effectiveness of Parliamentary Control Over Delegated Legislation (2016), <https://www.linkedin.com/pulse/effectiveness-parliamentary-control-over-delegated-bharat-kumar-singh/> accessed on 11/8/17<Sadaasa 15,2010 kan ilaalame>.

<sup>31</sup> Oyelami, T.O., Olitti yaadannoo lak. 1<sup>ffa</sup>, F202

*“One of the most effective controls is for Parliament in the first place to carefully spell out the limits of the delegate’s law making powers so that there can be no doubt when the delegate is exceeding his powers. If the provisions in the enabling legislations that set out the powers of the delegates are vague or ambiguous, then the limits of the powers of the delegate will be unclear and control over the exercise of these powers will be made more difficult.”<sup>32</sup>*

Kana irraa kan hubatamu, toofaan gaarii seera baastuun seerota aangoo bakka bu’insaan bahan haala bu’a qabeessa ta’een to’atu yeroo aangessu wanta raawwatamuu qabu ifa taasisuun akka ta’e dha. Dhimmoota qaamni raawwachiistuu irratti seera baasuu danda’u ifatti teechisuun bu’uura sanaan bahuu fi bahuu dhabuu seerota bakka bu’insaan bahanii qaamni aangoo isaa kenne haala salphaan to’achuu dandeessisa. Gama kanaan biyyi Hindii muuxannoo gaarii qabdi. Achitti, keewwata aangoo bakka bu’insaa kenuu (delegative clause) irratti Paarlaamaan yeroo gaaffii (question hour) addaa kennuun ifa ta’uu fi dhiisuu keewwatichaa qulqulleefata.<sup>33</sup> Toofaan kun biyya Jarmanittis sirriitti beekamaa dha. Seerri Bu’uuraa (Heerri Mootummaa) Biyya Jarman kwt. 80 (1) jalatti qabiyyeen (content), kaayyoo (purpose) fi daangaan (scope) aangoo bakka bu’insaa kennamu seerumaan ifatti adda ba’ee beekamuu akka qabu tumeera.<sup>34</sup> Biyya Ingiliz keessattis paarlaamaan seera qaamni raawwachiistuu baasu san to’achuu akka danda’u asumaa achi seeruma aangoo bakka bu’insaa kenuu keessatti ni tumu.<sup>35</sup>

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<sup>32</sup> Marume, S. B. M. *et al*, Subsidiary Legislation as a Vital Component of Administrative Law (2016), Vol.4(1), 2014–2017.

<sup>33</sup> Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.18<sup>ffaa</sup>, F14.

<sup>34</sup> Jechoonni sadan kunniin adda adda ba’anii kan ilaalamani osoo hin taane, inni tokko isa biraahubachiisuu kan danda’u dha. Fakkeenyaaaf, kaayyoo (purpose) aangoo bakka bu’insaa irra dhaabbachuun qabiyyee fi daangaa beekuun ni danda’ama (*Gadi fageenyaaf, Delegation of Legislative Power to Agencies: A Comparative Analysis of United States and Germany Law, Administrative Law Review (Spring 1994)*, F232 *ilaaluun ni danda’ama*).

<sup>35</sup> Beatson, Jack, *Legislative Control of Administrative Rulemaking: Lessons from the British Experience*, Cornell International Law Journal (1979), Vol.12 (2), Article 3; available at: <http://scholarship.law.cornell.edu/cilj/vol12/iss2/3> <Sadaasa 30, 2010 kan ilaalam>.

## B) Koree Hundeessuun Itti Fayyadamuu

Karaan lammaffaa seera baastuun seerota bakka bu'insaan bahan itti to'atu koree (committee) hundeessuuni dha.<sup>36</sup> Bu'uura kanaan, koreen qaama seera baasuun hundaa'e seerotni aangoo bakka bu'insaan bahan aangoo kennameef keessatti bahuu fi bahuu dhabuu isaanii sakatta'uun dhimmicha qaama seera baasuuf dhiyeessa. Seera baastuunis yaada koree dhiyesseef irraa ka'uun seerri bahe angoo kennameefii ol (ultra vires) kan bahe yoo ta'e seericha haquu ni danda'a. Koreen paarlaamaan hundaa'u kun seerotni aangoo bakka bu'insaan bahan (sadarkaa wixineetti fi/ykn erga bahanii hojirra oolanii booda) seera paarlaamaan baase waliin walsimuu fi simuu dhabuu ni sakatta'u. Sirni koreetti fayyadamuu kun biyyoota Ingiliz fi Hindii keessatti baay'ee beekamaa fi bal'inaan dhimma kan itti bahamu dha.<sup>37</sup>

Akkuma biyyoota sirna bulchiinsa paarlaamaa hordofanii biyyoota sirna pirezidaantummaa hordofan keessattis to'annoona qama seera baasuun seerota bakka bu'insaan bahan irratti taasifamu raawwatamummaa ni qaba.<sup>38</sup> Fakkeenyaaaf, biyya Amerikaatti, dambiileefi qajeelfamootni qaama raawwachiistuun bahan daangaa aangoo kennameefii keessatti ta'uu isaa bal'inaan kan to'atu seera hiiktuu ta'us, seera baastuun biyyichaa akka hojii to'annoona qama seera raawwachiisu irratti gaggeeffamuutti kallattiin abbaa aangoo, ministeerota adda addaa seerota qaama seera baasuun bahan raawwachiisan qorachuuf aangeffameera.<sup>39</sup> Waan ta'eefuu, qaamni seera baasu seerota qaama raawwachiistuun bahan irratti to'annoona taasisuuf aangoo kan qabu ta'uu isaati. Naayijeeriya keessattis qaamni seera baasu dhimmoota qaamni raawwachiistuu seerota irratti baasuu danda'u haala ifa ta'een gadfageenyaan tarreessa.<sup>40</sup> Fakkeenyaaaf, labsiwwan '*Emergency Power Act 1964* fi *Fire Arm Act 1958*' keessatti dhimmoota qaama raawwachiistuun irratti

<sup>36</sup> Marume, S. B. M. *et al*, Olitti yaadannoo lak.32<sup>ffaa</sup>.

<sup>37</sup> Akkaataa koreetti fayyadamuu biyyi Ingiliz fi Hindii seerota aangoo bakka bu'insaan bahan itti to'atan caalaatti hubachuuf walduuraa duubaan: Beatson, Jack, Olitti yaadannoo lak.35; Factsheet L7 Legislative Series Revised May 2008, Statutory Instruments House of Commons Information Office Factsheet L7 fi DR. YOGENDRA NARAIN (2005), RAJYA SABHA PRACTICE & PROCEDURE SERIES, F. No. RS. 17/5/2005-R & L Series, COMMITTEE ON SUBORDINATE LEGISLATION ilaaluu dandeessu.

<sup>38</sup> Oyelami, T.O., Olitti yaadannoo lak. 1<sup>ffaa</sup>

<sup>39</sup> Akkuma lak. 38<sup>ffaa</sup>

<sup>40</sup> Jemina Fabiawari Benson, Delegated Legislaion in Nigeria: The Challenges of Control (2014).

dambii baasuu danda'an tarreeffameera. Kana jechuun, qaamni dambii akka baasuuf aangeffame sun dhimmoota labsichaan tarreeffaman qofa irratti kan daanga'u ta'a jechuu dha. Akkasumas, dambiilee fi qajeelfamootni aangoo bakka bu'insaan bahan hunda ta'uu baatanis hedduun isaanii qaama seera baasu duratti ni dhiyaatu.<sup>41</sup>

#### **2.4.2. To'annoo Qaama Seera Hiiktuu (Judicial Control)**

Seera hiiktuun miidhawwan aangoo humnaa ol fayyadamuu qaama raawwachiistuun<sup>42</sup> lammilee irra gahu hambisuuf; akkasumas, aangoo seera baasuu qaama raawwachiistuu to'achuu irratti gahee olaanaa qaba.<sup>43</sup> Manni murtii eegduu mirgaa fi bilisummaa lammilee waan ta'eef, dambiilee fi qajeelfamootni bakka bu'insaan bahan mirga lammilee kan miidhan yoo ta'e heeraa fi seerota seerichi akka bahuuf aangessan waliin wal bira qabuun raawwatamummaa akka hin qabaanne murteessuu ni danda'a. To'annaa manni murtii haala kanaan seerota qaamni raawwachiistuu baasu irratti taasisu 'judicial review' jedhama.<sup>44</sup> Dambiilee fi qajeelfamootni aangoo bakka bu'insaan bahan sirrii ta'uuf ulaagaawan hedduu guutuu qaba.<sup>45</sup> Fakeenyaaf, adeemsa dambiilee fi qajeelfamootni aangoo bakka bu'insaan bahan keessa darban keessa darbuu; seerota waliigalaan wal simuu; daangaa aangoo seeraan kennname keessatti kan bahe ta'uu barbaachisa. Kana yoo hin taane, namni kamiyyuu seericha irratti mormii kaasuu danda'a.<sup>46</sup> Manni murtiis seerichi aangoo kennameen olitti bahe (ultra vires) jechuun fudhatama dhabsiisuu ni danda'a.

Tooftaan to'annoo isaanii biyyaa gara biyyaatti garaagarummaa haa qabaatu malee, biyyoota adda addaa keessatti seera hiiktuun seerota aangoo bakka bu'insaan bahan irratti to'annoo ni taasisa. Amerikaa keessatti yaadama manni murtii murtiwwan qaama raawwachiistuun raawwataman irra deebiin

<sup>41</sup> Factsheet L7 Legislative Series Revised, Olitti yaadannoo lak. 37 <sup>ffaa</sup>.

<sup>42</sup> Poverty, F *et al.*, Judicial Control over Administration and Protect the Citizen's Rights: An Analytical Overview (2017).

<sup>43</sup> Aron Degol and Abdulatif Kedir, Olitti yaadannoo lak.. 18 <sup>ffaa</sup>.

<sup>44</sup> Vivian C. Madu, Judicial Review of Legislation, F1.

<sup>45</sup> Marume, S. *et al.*, Olitti yaadannoo lak.. 32 <sup>ffaa</sup>.

<sup>46</sup> Sabti, S. *et al.*, A comparative Study of Delegated Legislation: With Special Reference to United States of America and United Kingdom (2017). Vol.3 (3), FF 70–74.

ilaaluurratti daangaan hin jiru jedhutu jira.<sup>47</sup> Manni Murtii Waliigalaa Amerikaas kanuma bifa mirkaneessuun manneen murtii ol'aanoo federaalaa biyyichaa seerota koongiresiin bahanillee heerawummaa isaanii mirkaneessuuf dirqama akka qaban ibseera.<sup>48</sup> Biyyicha keessatti manneen murtii seerota qaama raawwachiistuun bahan irratti to'annoo taasisuunis ni beekamu. Haaluma kanaan, Manni Murtii Waliigalaa Amerikaa bara 2010 keessa seerota Kongiresiin biyyattii baase 163 heerawaa miti jechuun murteesseera.<sup>49</sup>

Naayijeeriya keessattis seerota qaama raawwachiistuun bahan to'achuu keessatti manni murtii gahee guddaa qaba.<sup>50</sup> Aangoon to'annoo gama mana murtiin taasifamu kunis bara 1962 yeroo labsiin 'Emergency Power Act' pirezidaantii biyyattii seerota qaama seeraa baasuun bahan fooyyessuu, akka hojiirra hin oolle tursuu fi haquuf aangessu baaseen qoramee ilaalam. Manni murtiis seerri akkasii kun bu'uura seeraa akka hin qabne murteessuun seerota qaama raawwachiistuun bahan to'achuu akka danda'u mirkaneesse.<sup>51</sup>

Biyya Hindii keessattis, manni murtii seerota qaama raawwachiistuun bahan irratti to'annoo ni taasia. Fakkeenyaaaf, dhimma '*Municipal Corporation of Delhi v. Birla Cotton Mills*' irratti manni murtii qaamni seera baasu bakka bu'iinsa yeroo kenu qajeeltoo qaamni sun ittiin baasu ibsuun ta'uu akka qabu ibseera.<sup>52</sup> Kana irraa manni murtii dambiilee fi qajeelfamootni qaama raawwachiistuun bahan akka feetee akka hin taaneef daangaa aangoo isaan keessatti baasan ibsamuu akka qabuu fi yoo daangaa aangoo kennameefii keessatti hin baane ta'e ammoo manni murtii seera san fudhatama dhabsiisuu kan danda'u ta'uu hubachuun ni danda'ama.

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<sup>47</sup> Poverty, F. et al, Olitti yaadannoo lak.. 42<sup>ffaa</sup>.

<sup>48</sup> Marume, S. et al, Olitti yaadannoo lak.. 32<sup>ffaa</sup>.

<sup>49</sup> Poverty, F. et al, Olitti yaadannoo lak. 42<sup>ffaa</sup>.

<sup>50</sup> Jemina Fabiawari Benson, Olitti yaadannoo lak.. 40<sup>ffaa</sup>. It is said in Nigeria, as the country does not really have in place an adequate system of legislative scrutiny of delegated legislation. What seems to be relied on here is judicial control which is not enough because, decisions that are made under judicial review seem to affect only parties to it as against Parliamentary scrutiny that cuts across the whole society.

<sup>51</sup> Jemina Fabiawari Benson, Olitti yaadannoo lak. 40<sup>ffaa</sup>.

<sup>52</sup> Akkuma 51<sup>ffaa</sup>.

Gara biyya Ingilizittis yoo dhufnu, manneen murtii seerota aangoo bakka bu’insaan bahan irratti to’annoo ni taasisa.<sup>53</sup> Manni murtii Ingiliiz sirrummaa seerota aangoo bakka bu’insaan bahanii bu’ura seera aangeessee (enabling act) tiin ilaalee, yoo aangoo kennameefiin ol ta’e seerichi guutummaa guutuun yookiin gar-tokkeen akka hojiirra hin oolle murteessuu ni danda’a.<sup>54</sup>

#### **2.4.3. To’annoo Qaama Raawwachiistuu (Executive Control)**

Qaamni seera raawwachiisuus aangoo bakka bu’insaan seeraa baasuu qaama seeraa baasuun kennameef bu’ura aangoo kennameefiin raawwatamuu isaa mirkaneeffachuu ni hojjeta.<sup>55</sup> Sababiin isaas, daangaa aangoo kennameefii keessatti kan hin raawwatamne yoo ta’e, inni aangoo kenne seera bakka bu’insaan bahe san raawwatamummaa akka hin qabaanne taasisuu waan danda’uifi dha. Biyya Ingiliiz keessatti, qaamni raawwachiistuu aangoo isaatiin ala bahee akka hin raawananne koree kaabinee hundeessuun to’annoo taasisa. Hojji kanaafis koreen dhimma seeraa (legislative committee) jedhamu kan hundaa’e yoo ta’u, koreen kunis dambiilee fi qajeelfamootni aangoo bakka bu’insaan bahan bu’ura seera aangesseen kan bahe ta’uu isaa mirkaneessuuf itti gaafatamummaa qaba.<sup>56</sup> Naayijeeriya keessattis sirnoota to’annoo jiran keessaa kan qaama raawwachiistuu raawwatamu isa tokko.<sup>57</sup>

### **3. SIRNA TO’ANNOO SEEROTA AANGOO BAKKA BU’UMMAAN BA’ANII: AKKA NAANNOO OROMIYAATTI**

Hog-barruwwan kutaa lammaffaa jalatti ilaalamani, seerota jiranii fi daataawwan bifa adda addaan walitti qabaman ka’umsa godhachuun, siri to’annoo dambiilee fi qajeelfamoota Oromiyaa keessaatti bahanii maal akka fakkaatuu fi rakkowwan kanaan walqabatanii jiran kutaa kana jalatti xiinxalameera. Kutaan kun xiinxalaaf akka tolutti kutaalee xixiqqaasadiitti qoodamuun dhiyaateera. Kutaan xiqqaa duraa, gama to’annoo waliigalaan,

<sup>53</sup> Beatson, Jack, Olitti yaadannoo lak. 35<sup>ffa</sup>.

<sup>54</sup> Sabti, S. et al., Olitti yaadannoo lak.. 46<sup>ffa</sup>.

<sup>55</sup> Oyelami, T.O., Olitti yaadannoo lak..1<sup>ffa</sup>.

<sup>56</sup> Akkuma 55<sup>ffa</sup>.

<sup>57</sup>“Executive Control is another form of control that exists in Nigeria. The executives are always conscious of the fact that the law makers can always withdraw the delegated powers that they have conferred as such there are some level of control that it imposes on itself in the exercise of these powers in order not to be embarrassed by the exercise of parliamentary powers over its regulations.” (Jemina Fabiawari Benson, Olitti yaadannoo lak. 40<sup>ffa</sup>)

yoo ilaalamu maal akka fakkaatu xiixale. Kutaan xiqqaa lammataa, gama qaamolee mootummaa sadaniitiin to'annoon dambiilee fi qajeelfamoota irratti taasifamu qabatamatti maal akka fakkaatu xiinxale. Kutaan xiqqaa sadaffaa, hanqina to'anno dambiilee fi qajeelfamootaa irraa ka'uun rakkooowwan qabatamatti mul'ataa jiran maal fa'a akka ta'an sakatta'eera.

### **3.1. To'anno Waliigalaa**

Kutaa kana jalatti, Oromiyaa keessatti, dambiilee fi qajeelfamoonni aangoo bakka bu'insaan ba'an ija to'anno waliigalaatiin yoo madaalaman maal akka fakkaatantuun xiinxalame. Xiinxalicha qixa sirriin gaggeessuuf akka tolu ammoo adeemsa qophii isaanii beekuun barbaachisaa dha. Waan ta'eefuu, adeemsa qophii dambiilee fi qajeelfamootaa adda adda baasuun akka armaan gadiitti haa ilaallu.

#### **3.1.1. Adeemsa Qophii Dambiilee**

Dambiin Hojimaata Mana Marii Bulchiinsa Mootummaa Naannoo Oromiyaa Lak.131/2003, kwt.15 irratti adeemsa dambiileen naannicha keessatti bahan keessa darban tarreesseera. Haaluma kanaan,

1) Qaamni wixineen seeraa akka qophaa'u yaada burqisiise,duraan dursee,barbaachisummaa fi kallattii isaa irratti Pirezidaantii wajjiin mariyachuu qaba



2) Qophii wixinee seeraaf qorannoo barbaachisu gaggeessuu



3) Qorannoo irratti hundaa'uun seera wixineessuu



4) Qaamni wixinicha qopheesse qorannoo wixinicha qopheessuuf gaggeeffame wajjiin Biirroo Haqaaf dhiyeessuun ogummaa seeraatiin ilaalamee irratti mari'atamuun sirreffamni barbaachisaa ta'e ni taasifama



5) Wixineen akkaataa olitti sirreffame qo'annoo gaggeeffamee fi yaadota falmisiisa fi murtii barbaadan haala agarsiisuu danda'uun qophaa'ee xalayaadhaan waajjira Pirezidaantif ni dhiyaata



6) Dameen seeraa waajjira Pirezidaantii qaama wixinee qopheessee fi Biirroo Haqaa Oromiyaa waliin ta'uun ni ilaala.



7) Ilalee barbaachisaa ta'ee yoo argame qaamota biroo dhimmi ilaalu wajjiin marii gaggeessuun wixineen akka gabbatu ni taasifama



8) Wixineen haala kanaan damee seeraatiin erga illaalamee booda,Mana Mariif ni dhiyaata

Kunis adeemsa dambiileen keessa darbuun ba'an ilaalchisee uwarsi seeraa kan jiru ta'uu agarsiisa. Seerri kun qajeeltoowwan jiran keessaa hirmaachisummaaf uwvisa kenneera. Sababni isaa, fakkeenyaaaf, kwt.15 (2) (b) jalatti, qaamni wixinnee seeraa qopheesee qo'annoo wixinicha qopheessuuf gaggeeffame wajjiin irratti mari'atamuun sirreeffamni barbaachisaa ta'e erga taasifameen booda ta'uu akka qabu tumameera. Wixinneen qorannoo jira taanaan ammoo qaamotni dhimmi ilaallatu irratti waan mari'atuuf hirmaachisummaan ni jira jedhamee tilmaamama. Dabalataan, dambuma kana kwt.17 (a) jalatti, dhimmi murtee barbaachisu kamiyyuu osoo mana mariif hin dhiyaatiin dura, manneen hojii dhimmi ilaalu, federaala, naannolee biraadabalatee yoo barbaachisaa ta'ee argames yaada hawaasichaa argachuudhaan yaada kanniin jiddu galeessa kan godhate dhiyeessuun dirqama mana hojii mootummaa dhimmicha dhiyeessu akka ta'u tumameera. Dhimmoota murtee barbaadan keessaa tokko ammoo dhimma aangoo bakka bu'insaan seera baasuu akka ta'e beekamaa dha. Kanaaf, dambichi qajeeltoo hirmaachisummaa uummataa kan hammate akka ta'e hubachuun ni danda'ama.

Qajeeltoo maxxansuu ilaalchisee garuu calliseera. Ta'us, akka Naannoo Oromiyaatti, gaazzexaan seerotni irratti maxxanfaman *Magalata Oromiyaa* akka ta'e beekamaa dha. Akka Labsii Magalata Oromiyaa Irra Deebiidhaan Hundeessuuf Bahe, Lak 186/2006 tti, dhimmoontni gaazzexaa kana irratti maxxanfaman Labsii, Dambii, Waliigalteewwan Mootummaa Naannichaan taasifamanii Caffeedhaan ragga'anii, fi seera naannichaa kamiyyuu dha.<sup>58</sup> Tarreeffamni keewwata kanaa guutummaatti duguugamee kan hin dhiyaanne akka ta'e "...seera naannichaa kamiyyuu dha" kan jedhu irraa ni hubatama. Hiikkoowwan labsii biroo keessatti tumamanis, seera jechuun labsii, dambii, fi qajeelfamoota Caffee fi qaamolee aangoon kennameef birootiin bahan jechuu akka ta'etti hiikuun yaaduma kana kan cimsani dha.<sup>59</sup> Kanaafuu, qajeeltoon maxxansuu uwvisa seeraa akka qabu hubachuun ni danda'ama.

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<sup>58</sup> Labsii Magalata Oromiyaa Irra Deebiidhaan Hundeessuuf Bahe, Lak 186/2006, Kwt.3 (1).

<sup>59</sup> Fakkeenyaaaf, Labsii Koomishinii Hiikaa Heera Mootummaa Naannoo Oromiyaa, Kwt. 2(7), Labsii Gumii Calaltuu Heera Mootummaa Naannoo Oromiyaa Hundeessuu, Angoo fi Hojimaatasaa Murteessuuf Bahe, Lak.168/ 2003, Kwt.2(7) fi Labsii Waajjira Caffee Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Hundeessuuf Bahe Lak.191/ 2007, Kwt.2(8).

Dambichi qajeeltoo beeksisuuf (principle of notice) garuu uwvisa hin kennine. Waan ta'eefuu, adeemsa qophii dambiilee Oromiyaa ilaachisee uwvisni seeraa kan jiru ta'us, ija to'annoo waliigalaatiin yoo madaalamu garuu gahaa dha jechuun hin danda'amu.

Qajeeltoo hirmaachisummaa dambichi beekamtii kenne hojirra oolchuun walqabatee qabatamaan hanqinatu jira. Kun, fakkeenyaaaf, qorannoон dambiilee baasuuf gaggeeffamu bilchinaan gaggeeffamuu dhabuu, qaamolee dhimmi ilaallatu waliin marii bilchina qabu taasisuu dhabuu, yaadota marii irratti dhiyaatan fudhachuun hammachiisuu dhabuu, fi kkf fa'i.<sup>60</sup>

Ija qajeeltoo maxxansaatiin (principle of publication) yoo ilaallu, gama hammata seeraatiin qaawwi jiraachuu baatus, maxxansa dabiileen walqabatee qabatamaan hanqinni ni jira. Hundaa ol, qaamni abbummaan dambiilee maxxansuuf seeraan aangeffame eenyu akka ta'e hanga bara 2009 ALItti hin beekamu ture.<sup>61</sup> Biirroon Haqaa Oromiyaas (amma mana hojii Abbaa Alanagaa Waliigalaa) maxxansaa fi jiildessaa kan ture seeraan aangeffamee osoo hin taane, itti siqeenyuma seerotaaf qabu irraa ka'ee akka ta'e afgaaffii gaggeeffame irraa ni hubatama.<sup>62</sup> Waan ta'eefuu, baajata hojii kanaaf barbaachisu ramaduun xiyyeffannoон hojjechuu irratti hanqinni jiru bal'aa dha.<sup>63</sup> Kun ammoo dambiilee ba'an maxxansuun dhaqqabamaa taasisuu irratti rakkoo fideera. Rawwiin gama maxxansa dabiileen jirus hanga qorannoон kun gaggeeffametti meeqa akka ta'e adda bahees sirriitti hin beekamu.<sup>64</sup> Haa ta'u malee, dambiilee 195 hanga yoonaatti ba'an keessaa kan maxxanfaman 72 kan hin caalle ta'uuti tilmaama.<sup>65</sup> Kun dhibbeentaan yoo shallagamu % 36.73 qofa waan ta'uuf, raawwiin jiru gadi bu'aa ta'uu namatti agarsiisa.

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<sup>60</sup> Afgaaffii Ob. Addisu Laggaas, Gorsaa Ol'aanaa Dhimmoota Seera, Waajjira Pirezidaantii waliin gaafa 17/2/2010 gaggeeffame.

<sup>61</sup> Bara 2009 irraa eegalee Hojiin kun abbummaan Caffee Oromiyaatiif kennamee jira.

<sup>62</sup> Afgaaffii Ob. Isaa Booruu, Dura-taa'aa Koree Dhaabbii Dhimmoota Seeraa fi Bulchiinsa Caffee Oromiyaa waliin gaafa 14/7/2010 gaggeeffame.

<sup>63</sup> Afgaaffii Ob. Addisu Laggaas, Olitti yaadannoo lak. 60<sup>ffa</sup>

<sup>64</sup> Beatson, Jack, Olitti yaadannoo lak.. 35<sup>ffa</sup>.

<sup>65</sup> Af-gaaffii Hajii Arsee, Gaggeessaa Adeemsa Hojii Ijoo Qorannoofi Qophii Wixinee Seeraa, Biirroon Haqaa Oromiyaa waliin gaafa 17/2/2010 gaggeeffame.

### 3.1.2. Adeemsa Qophii Qajeelfamootaa

Akka waliigalaatti, manneen hojii qorannoo kanaaf filataman hundi<sup>66</sup> qajeelfamoota hojii isaanii ittiin gaggeessan ni qabu.<sup>67</sup> Adeemsa qajeelfamoonni ittiin ba'an ilaachisee seerri ifatti tumame hin jiru. Sekteroонни sakatta'amanis kana irratti qajeelfama ykn maanuwaalii ifa ta'e barreffamaan qopheeffatanii hin qabani. Kana irraan kan ka'e adeemsa qophii qajeelfamootaa ilaachisee qabatamatti adda addummaan seekteroota jidduutti ni mul'ata. Biroleen tokko tokko qajeelfama bahuuf yaadame irratti karaa manaajimentiin hordoffii cimaa kan gaggeessan yoo ta'u; isaan kaan ammoo, koree hundaa'een akka hojjetamuuf dhiisu.<sup>68</sup> Biiroon wixinee qajeelfama mana hojii irratti qaamni biraa akka yaada kennuuf gaafatus ni jira. Fakkeenyaf, Abbaan Taayitaa Galiiwwan Oromiyaa fi Biiroon Paabilik Sarvisii fi Misooma Qabeenya Namaa Oromiyaa qajeelfamoota kan baafatu adeemsa akkasii hordofuudhani.<sup>69</sup>

*Qaphxiin xiinxala barbaadu, adeemsi qophii baratamaan jiru kun ija qajeeltoowwan seerotni aangoo bakka bu'insaan ba'aniin yoo madaalamu, attamitti ilaalamuu danda'a?* kan jedhu dha. Qajeeltoon beeksisuу seeraan

<sup>66</sup> Manneen hojii kunniin Waajjira Caffee, Waajjira Pirezidaantii, Manneen Murtii Oromiyaa, Biiroo Haqaa Oromiyaa, Biiroo Bulchiinsaa fi Itti Fayyadama Lafaa Baadiyyaa, Abbaa Taayitaa Galiiwwan Oromiyaa, Biiroon Paabilik Sarvisii fi Misooma Qabeenya Namaa, Biiroo Daldalaa fi Misooma Gabaa, Biiroo Misooma Magaalaa fi Manneenii Oromiyaa, fi Koomishinii Investmentii Oromiyaa dha.

<sup>67</sup> Fakkeenyaf, Caffeen qajeelfamoota digdama(20), Biiroon Haqaa Oromiyaa qajeelfamoota kudhan (10), Biiroon Misooma Magaalaa fi Manneen Oromiyaa qajeelfamoota kudha-sagal (19), Biiroon Bulchiinsaa fi Itti Fayyadama Lafaa Baadiyyaa qajeelfamoota saddeet (8) baafatanii itti hojjechaa akka jiran afgaaffii gaggeeffame irraa hubachuu danda'ameera.

<sup>68</sup> Fakkeenyaf Manaajimentiin Biiroon Itti Fayyadama Lafaa Badiyyaa Oromiyaa, wixinee qopheessuuf sakatta'insi akka gaggeeffamu kallattii ni kaa'a; argannoo sakatta'insichaa madaaluun sana irratti hundaa'uun qajeelfamni akka wixineeffamu kallattii ni kaa'a, wixinee dhiyaate ilaalee fooyyaa'insi barbaachisu akka ta'u kallattii ni kaa'a, hirmaattota wixinee qajeelfamichaayaadaan gabbisuu qaban adda ni baasa, wixinichi yaadaan gabbatee dhiyaachuu isaa ni qorata, dhuma irrattis ni raggaasisa. Fakkenyaaf, kan akka Biiroowwan akka: Abbaan Taayitaa Galiiwwan Oromiyaa fi Biiroon Paabilik Sarvisii fi Misooma Qabeenya Namaa Oromiyaa yoo fudhanne qajeelfamoota kan baafatanu kallattii manaajimentiin ta'een qajeelfa barbaadame koreen hundaa'e qopheessuun erga dhiyeessee irratti mari'atanii mirkaneessuudha.

<sup>69</sup> Ob. Gammadaa Waariyyaa, A/Alangaa Abbaa Taayitaa Galiiwwan Oromiyaa fi Ob. Heenook Kabbaboo, Ogeessa Seeraa Abbaa Taayitaa Galiiwwan Oromiyaa, waliin gaafa 8/5/2010 gaggeeffame; Ob. Silashii Fiqaaduu, Walitti Qabaa Abbootii Seeraa Mana Murtii Bulchiinsaa Biiroo Paabilik Sarvisii fi Bulchiinsa Gaarii Oromiyaa waliin gaafa 22/6/2010 gaggeeffame.

uvwxyzisa hin arganne. Baratamni isaas hin jiru waan ta'eef xiinxala addaa osoo hin barbaachisiin gabaabumatti bira darbuu dandeenyaa.

Qajeeltoon uummata hirmaachisuus seeraan beekamtii hin arganne. Kana jechuus kan nu dandeessisu, Dambiin Lak.131/2003, kwt.15 jiddu galeessa kan godhate seerota Mana Marii Bulchiinsa Mootummaa Naannoo Oromiyaaf dhiyaatan yoo ta'u; qajeelfamootni hedduun garuu Mana Marii Bulchiinsa Mootummaa Naannoo Oromiyaa bira osoo hin ga'iin sadarkuma mana hojiitti waan ba'aniif, Dambiin Lak. 131/2003, kwt 15 isaan irrattis raawwatinsa ni qabaata jechuun hin danda'amu. Kunis qajeelfamoota ilaalchiseeuvwxyzisni seeraa qajeeltoo uummata hirmaachisuuf ifatti kennname kan hin jirre ta'u dha. Qabatamaanis, adeemsa qophii qajeelfamootaa keessatti uummata hirmaachisuun baay'ee hin baratamne. Dhimmi qajeelfamni irratti ba'u xiyyeffanna uummataa addatti kan qabuu (fakkeenyaaaf, kan akka lafa magaalaa) fi hojiirra oolmaan isaas deeggersa qaamolee adda addaa kan barbaadu yoo ta'een alatti mariin irratti hin taasifamu.<sup>70</sup> Inniyyuu, hooggantootaa fi eksipertootaa qajeelfamicha kallattiin hojiirra oolchan qofa irratti kan daanga'e dha malee uummata bal'aa kan dabalatu miti.<sup>71</sup> Waan ta'eefuu, adeemsa qophii qajeelfamootaa ilaalchisee qajeeltoon hirmaachisummaa bal'inaan hin jiru; yoo jiraates uummata bal'aa waan hin dabalanneef baay'ee daanga'aa dha.

Qajeeltoon maxxansuu uvwisa seeraa ni qaba. Haa ta'u malee, qabatamatti, qajeelfamoonni Gaazzexaa Magalaataa Oromiyaa irratti maxxanfamaa hin jiran. Gaazzexaa Magalaataa irratti maxxansuun haa hafuutii lakkoofsa itti kennun toora galchanii qabachuu irratti hanqinni jiru salphaa miti. Hanga qajeelfamoota bahanii illee beekuun rakkisaadha. Fakkeenyaaaf, akka waajjira Pirezidaantii Bulchiinsa Mootummaa Naannoo Oromiyaatti qajeelfamootaaf lakkoofsa kennun tartibessuun kan jalqabe bara 2004 irraa eegaleeti.<sup>72</sup> Akka Biirroo Paabilik Sarvisii fi Misooma Qabeenya Namaattis qajeelfamootaaf lakkoofsi kennamuu kan jalqabe bara 2008 irraa eegalee ti.<sup>73</sup>

<sup>70</sup> Afgaaffii ob. Jamaal Usmaan, Itti Gaafatamaa Kutaa Seeraa, Biirroo Misooma Magaalaa fi Manneenii Oromiyaa, 17/5/2010 fi Ob. Addisu Laggaas, Olitti yaadannoo lak. 60<sup>ftaa</sup>.

<sup>71</sup> Ob. Addisu Laggaas, Olitti yaadannoo lak. 60<sup>ftaa</sup>.

<sup>72</sup> Ob. Addisu Laggaas, Akkuma 71<sup>ftaa</sup>.

<sup>73</sup> Afgaaffii Ob. Silashii Fiqaaduu, Walitti Qabaa Abbootii Seeraa Mana Murtii Bulchiinsaa Biirroo Paabilik Sarvisii fi Bulchiinsa Gaarii Oromiyaa, 22/6/2010.

### **3.2. TO'ANNOO QAAMOLEE MOOTUMMAAN GODHAMU**

#### **3.2.1. To'annoo Qaama Seera Baasaan (Caffeen) Ta'u**

Muuxannoowwan kan agarsiisan seera baastuun tooftawan lamatti fayyadamuun dambiilee fi qajeelfamoota bakka bu'insaan bahan akka to'atu dha. Inni duraa, durumaan aango bakka bu'insaa ifa taasisee kennuu; fi inni lammataa, sirna koree hundeessuun to'annoo gaggeessuu dha. Kutaa kana jalatti, to'annoon Caffee Oromiyaan taasifamaa jiru ija kanaan yoo ilaalamu maal akka fakkaatu tokko tokkoon xiinxalameera.

#### **A) Tooftaa Aangoo Bakka Bu'insaa Ifa Taasisuun Kennuu**

Aangoon bakka bu'insaa ifa ta'ee kennamuu qaba yommuu jedhamu, qaamni seera akka tumuuf aango bakka bu'insaa argate maal irratti seera tumuuf akka aangeffame sirriitti beekuun daangaa aango kennameef keessatti seera baasuu danda'uu qaba yaada jedhu agarsiisa.<sup>74</sup> Caffeen Oromiyaa haala sadiin aango bakka bu'insaa kenna. Tokkoffaa, bifuma waliigala ta'een keewwata tokkoon labsicha raawwachiisuuf Manni Marii Bulchiinsa Mootummaa Naannoo Oromiyaa dambii baasuu akka danda'u tumuu dha.<sup>75</sup> Lammaffaa, dhimmoota labsichaan uwatifaman keessaa dambii dhimmoota adda ba'an qofa irratti kan tumamu akka ta'e keewwata-keewwataan adda baasee

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<sup>74</sup> Delegated Legislation Text Book Notes, F29

<sup>75</sup> Fakkeenyaaaf, Labsii Dhaabbilee Misoomaa Naannoo Oromiyaa Lak.181/2005, Kwt.41 'Manni Maree Bulchiinsaa Labsii kana raawwachiisuuf dambii baasuu ni danda'a'; Labsii Gamoo Naannoo Oromiyaa Lak. 174/2004, kwt.58 'Manni Maree Bulchiinsa Mootummaa Naannichaa Labsii kana hojiirra oolchuuf dambii baasuu ni danda'a'; Labsii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyaa Naannoo Oromiyaa Lak.130/1999, kwt.29 'Labsii kana raawwachiisuuf Manni Maree Bulchiinsa Mootummaa Naannoo Oromiyaa dambii baasuu ni danda'a'.

agarsiisuudhani.<sup>76</sup> Sadaffaa, mala tokkoffaa fi lammaffaa kanniin iddo tokkotti waluma faana fayyadamuudhani.<sup>77</sup>

Qaphxiin xiinxala barbaadu, *tooftaawwan kenninsa aangoo bakka bu'insaa sadan olitti ibsaman keessaa isa kamti filatamaa dha?* kan jedhu dha. Kun ammoo deebi'ee filannoowwan jiran keessaa isa kamti aangoo bakka bu'insaan dambii ykn qajeelfama baasuu ifa taasisuu danda'a? gaaffii jedhu kaasa. Sababni isaa, muuxannoo biyyootaa sakattaane irraa waanti hubanne qabiyyee, kaayyoo, fi daangaan aangoo bakka bu'insaan kennamu ifa ta'u qaba kan jedhu malee bifa kanaan yoo kennname sirrii ta'a, ykn sirrii hin ta'u kan jedhu miti waan ta'eefi dha. Dhimma kana ilaachisuun yaadni afgaaffii walitti qabames adda addummaa qaba. Yaadni tokko, waliigala taasisuun iddo tokkotti keewwata tokkoon kennuun dhimma kam irratti aangoon bakka bu'insaa akka kennname adda baasanii beekuuf nama hin dandeessisu; hojji to'anno Caffeen gaggeessus ulfaataa taasisa waan ta'eef, labsicha keessaa dhimmoota dambii fi/ykn qajeelfamni irratti ba'uq abbaa baasuun bakka bu'insa kennuu wayya jechuun tooftaa lammaffaa irratti ibsame filatamaa taasisu.<sup>78</sup> Yaadni biraam ammoo, sirni wixineessa seeraa akkuma biyyattiittu baay'ee laafaa waan ta'eef, dhimmoota dambiin fi/ykn qajeelfamni irratti ba'uun barbaachisu jalqabuma irratti adda baafachuun labsii keessatti

<sup>76</sup>Fakkeenyaaaf,Labsii Koomishinii Jeequmsa Naannoo Oromiyaa Keessatti Ka'e Qulqulleessu Hundeessuuf Bahe Lak.107/1998, kwt. 5(1-4) jalatti Aangoo fi Gahee Koomishinichaa erga tarreessee booda, achuma kwt.5(5) jalatti ammoo hojiiwwan bu'uura kwt.5(1-4)tiin Koomishinichaaf kennaman raawwachuuhaaf karoora fi qajeelfama hojii tarreeffamaan baafachuu akka danda'u aangesseera. Kwt.5(5)tiin alatti keewwati biraam aangoo bakka bu'insaan seera baasuu aangessu hin jiru; Inni kun yaada labsiitiin ala ba'uun dhimmoota biroo irratti Manni Maree Bulchiinsa Mootummaa Naannichaa dambii akka hin baafne to'achuuf filatamaa akka ta'e ni hubatama. Biyyoota biroo, fakkeenyaaaf, Hindiin mala akkasii fayyadamtii. Achitti, daangaan qaama raawwachiiftuun keessatti seera baasuu danda'u qaamni seera baasu jalqabuma yeroo bakka bu'insa kenu ibsa waliin kennaafi (*Parliamentary Scrutiny of Executive Rule Making (PRS Legislative Research)*, 2012, F1 ilaala).

<sup>77</sup>Fakkeenyaaaf, Labsii Kenninsa Hayyamaa fi Bulchiinsa Abukaattotaa fi Barreessitoota Dhimma Seeraa Mootummaa Naannoo Oromiyaa Lak.182/2005 kwt. 10 (3) (b) jalatti *Dhaabbata barnootaa seeraan beekamti argate irraa barumsa seeraatiin dippiloomaan eebbifamee tajaajila ogummaa seeraatiin wagga saddeetifi isaa ol kan tajaajile yoo ta'e. Raawwiin Keewwata kanaa Dambii bahuun kan murtaa'u ta'a jechuun tooftaa lammeffaa hordofeera.* Labsichumti kun kwt. kwt.78 (1) jalatti ammoo 'Manni Maree Bulchiinsa Mootummaa Naannoo Oromiyaa Labsii kana raawwachiisuu kan gargaaru Dambii baasuu ni danda'a jechuun tooftaa tokkoffaatti fayyadamuun aangoo bakka bu'insaa kenneera.

<sup>78</sup> Fakkeenyaaaf, af-gaaffii ob. Isaa Booruu, Olitti yaadannoo lak. 62; Addisu Fallaqa, fi Abdii Kadiir, Gorsitoota Dhimmoota Seeraa Caffee Oromiyaa waliin gaafa 7/5/2010 gaggeeffame.

keewwata-keewwataan tumuun akka ulfaatu ibsuun sirnuma kenninsaa amma itti hojjetamaa jiru hordofuun gaarii akka ta'e ibsu.<sup>79</sup>

Yaadonni lamaanuu dhugummaa of keessaa qabu. Haata'u malee dhimmoota lama jiddu galeessa godhachuun xiinxaluun gaarii ta'a. Tokkoffaa, haalli aangichi itti kennamu iftoomina qabaachuu yoo ta'u; lammaffaan, labsiiwwan keenya qorannoo gad-fageenya qabu irratti hunda'anii bahuu dhabuu isaaniiti. Kana bu'uureffanee yoo ilaallu, muuxannoo amma itti hojjetamaa jiru keessaa filannoos sadaffaa (bifa waliigalaatiin aangoo bakka bu'insaa kennuu fi tokko tokkoon keewwata- keewwataan walfaana yeroo tokkotti fayyadamuu) irra deddeebii hin barbaachifne ta'uu bira darbee qaamni aangoo bakka bu'insaan dambii ykn qajeelfama akka baasu aangeffame aangoo kennameefiin ala (ultra vires) akka ba'uuf haala mijataa uumuun ala faayidaan argamsiisu hin jiru jechuun ni danda'ama. Sababni isaa, seerri ba'u durumaan qorannoo irratti kan hundaa'e yoo ta'e, seera baaftuun dhimmoota kam faa irratti ofiif seera akka baasuu fi dhimmoota kam faa irratti aangoo bakka bu'insaa akka kennuu asumaa achi dursee beekuu ni danda'a. Kana ammoo tooftaawan sadan amma itti hojjetamaa jiran keessaa isa 1<sup>ffaa</sup> ykn isa 2<sup>ffaa</sup> qofa hordofuun aangoo bakka bu'insaa kennuu ni danda'ama. Haa ta'u malee, tooftaa 1<sup>ffaa</sup> irra tooftaan 2<sup>ffaa</sup> caalaatti filatamaa ta'uu akka danda'u waanti namatti agarsiisu ni jira. Sababni isaa, seerri aangoo bakka bu'insaan seera baasuu aangessu qabiyyee, kaayyoo, fi daangaan ifa ta'uuti irraa eegama. Qabatamatti garuu, hojiirra oolmaa labsii tokkoof dhimmoonni dambiin ykn qajeelfamni akka irratti ba'u barbaadamu hedduu ta'uu danda'u; hedduudhas. Dhimmoota hedduu kanneen keewwata seeraa tokkoon akkaataa barbaadamuun ifa godhanii aangoo bakka bu'insaa kennuu rakkoo ta'uun isaa hin oolu. Kun kan agarsiisu, tooftaa 1<sup>ffaa</sup> fayyadamuu aangoo bakka bu'insaan dambiilee ykn qajeelfamota baasuu ifa godhanii kennuu kan rakkisu ta'uudha.

Tooftaan 2<sup>ffaa</sup> amma itti hojjetamaa jiru (aangoo bakka bu'insaan dambii fi/ykn qajeelfama keewwataawan dhimmichi ilaalu jalatti ibsuu) kanneen biroon walbira qabamee yoo ilaalamu uumamuma isaatiinuu ifa dha jedhamee

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<sup>79</sup>Fakkeenyaaaf,Af-gaaffii Ob. Hajii Arsee, Olitti yaadannoo lak. 65 ; Sulxaan Abdoo, Biiniyaam Makibab, Leeyilaa Mohaammad fi Galataa Akkumaa, Wixineessitoota Seeraa BHOWaliin gaafa 21/5/2010 gaggeeffame.

yaadama. Dhimmoonni dambii fi/ykn qajeelfamni irratti ba'an hedduu yoo ta'anis tokko tokkoon ifa godhanii kaa'uuf tooftaa mijataa dha. Dabalataan, tooftichi aangicha daangessuun dhimma dambii fi/ykn qajeelfamni akka irratti ba'u barbaadame akkaataa barbaadamuun ifa godhanii kaa'uuf ni dandeessisa. Sababni isaa, seerri aangoo bakka bu'insaan ba'u dhimmuma keewwata sana jalatti tumaamee jiru irratti kan daanga'e akka ta'e ni beekama waan ta'eefi.<sup>80</sup> Waan ta'eefuu, jalqabumaan, labsiin tumamu qorannoo gahaa irratti kan hundaa'e taanaan, tooftaa lammaffaa amma itti hojjetamaa jiru kana (keewwata labsii dambii fi/ykn qajeelfamni akka irratti ba'u barbaadamu jalatti ibsaa adeemuu) qofatti fayyadamuu aangoo bakka bu'insaan dambii fi/ykn qajeelfama baasuu kennuun ni danda'ama. Kana gochuun kaayyoo barbaadame milkeessuu bira darbee Caffeen hojimaata walfakkaataa ta'e akka hordofu ni dandeessisa amantaa jedhu qabna.

Kanaan walqabatee hanqinni Caffee biratti mul'atu keewwata aangoo bakka bu'insaan seera baasuu aangessu (enacting clause) kanaaf xiyyeffannoo gahaa ta'e kennuun xiinxaluu dhabuu dha.<sup>81</sup> Caffeen Oromiyaa tuma seeraa bakka bu'insaan seera baasuu aangessu keewwattoota biroo labsicha keessatti ibsaman irraa adda godhee hin ilaalu.<sup>82</sup> Kun ammoo muuxannoo biyyootaa kan akka Hindii fi Ingiliiz fa'a<sup>83</sup> irraas kan maqe dha. Kun kan agarsiisu, tuma seeraa aangoo bakka bu'insaan seera baasuu aangessu ilaachisee Caffeen Oromiyaa xiyyeffannoo guddaa akka hin kennine dha.

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<sup>80</sup> Haa ta'u malee, akkuma Seerri Bu'uuraa biyya Jarman jedhu sanatti qabiyyeen, kaayyoo, fi daangaan aangoo bakka bu'insaa ifatti beekamuu yoo baate tooftaa kana hordofuu qofti to'anno Caffeen taasisuuf wabii ta'u hin danda'u.

<sup>81</sup> Afgaaffiwwan Ob. Addisuu Fallaqaaf fi Ob. Abdii Kadiir, Olitti yaadannoo lak. 78<sup>ffa</sup>; Ob. Isaa Boruu, Olitti yaadannoo lak. 62<sup>ffa</sup> waliin gaggeeffame.

<sup>82</sup> Afgaaffiwwan ob. Addisuu Fallaqaaf, ob. Abdii Kadiir fi Ob. Isaa Boruu, waliin gaggeeffame (Akkuma lak. 81<sup>ffa</sup>)

<sup>83</sup> Fakkeenyaaaf, paarlaamaan biyya Hindii tuma seeraa aangoo bakka bu'insaan seera baasuu kennu irratti addatti falmii cimaa gaggeessa; waan ifa hin taane irrattis yeroo gaaffii (question hour) ni qabaata. Ingiliziittis dhimmoota muraasa irratti seerota aangoo bakka bu'insaan kennaman kana paarlaamaan kan hordofuu fi to'atu ta'u jalqabuma seera bakka bu'insaan seerri akka ba'u aangessu keessatti ibsama.

## B) Sirna Koreetti Fayyadamuu (The Committee System)

Caffeen Mootummaa Naannoo Oromiyaa koreewwan dhaabbi saddeetitti gurmaa'ee jira.<sup>84</sup> Dambiin ykn qajeelfamni aangoo bakka bu'insaan ba'u kamiyyuu daangaa seerri Caffeen ba'e aangessee fi seera Caffeen baaseen akkaataa walsimutti ba'uu qaba.<sup>85</sup> Daangaa jedhame keessatti yoo hin baane Caffeen sirna ittiin to'atu tol fatee to'achuun dirqama isaati. To'anno kanas koreewwan dhaabbiitti fayyadamuu gaggeessuu danda'a. Koreewwan dhaabbi keessaa, hojiin to'anno dambiilee fi qajeelfamoota aangoo bakka bu'insaan ba'anii kallattiin Koree Dhimma Seeraa fi Bulchiinsaa ilaallata. To'annoon koreen ta'us sadarkaa wixinee fi erga bahee hojiirra oolee booda ta'uu danda'a.

### ➤ *Sadarkaa Wixineetti*

**Dambiwwan:** dambiwwan Mana Marii Bulchiinsa Mootummaa Naannoo Oromiyaan ba'an sadarkaa wixineetti Caffee hin dhaqqaban. Seerri dambiileen sadarkaa wixineetti Caffeetti akka dhiyaatan dirqisiisus waan hin jirreef to'annoon koreewwan dhaabbi caffeen dambiilee irratti taasifamu hin jiru. Kun kan agarsiisu, faallaa muuxannoo biyyoota Hindii fi Ingiliizii sadarkaa wixineetti dambiileen koree qaama seera baastuuun hundeessetti kan hin dhiyaanne ta'uu dha. Kun ammoo Caffeen Oromiyaa to'anno gahaa ta'e dambiilee irratti akka hin taasifneef sababa tokko ta'uu agarsiisa.

**Qajeelfamoota:** Manneen hojii qorannichaan sakatta'aman keessaa tokko kaka'umsa ofii isaatiin wixinee qajeelfama isaatii irratti koree dhaabbi Caffee

<sup>84</sup> *Labsii Gurmaa'ina, Hojimaata, Naamusa Miseensotaa fi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Murteessuuf Bahe, Lak. 201/2009, kwt.44 yoo ilaalle, koreewan dhaabbi 8 isaan kam akka ta'an tarreeffameera. haaluma kanaan: Koree Dhaabbi Dhimma Bulchiinsaa fi Seeraa 2) Koree Dhaabbi Dhimma Misooma Baadiyyaa 3) Koree Dhaabbi Dhimma Misooma Magaalaa 4) Koree Dhaabbi Dhimma Bu'uuraalee Misoomaa 5) Koree Dhaabbi Dhimma Baajataa fi To'anno Baasii Mootummaa 6) Koree Dhaabbi Dhimma Hawaasummaa 7) Koree Dhaabbi Dhimma Dubartootaa, Daa'immanii fi Dargagootaa fi 8) Koree Dhaabbi Dhimma Misooma Qabeenyaa Namaa akka ta'an hubachuun ni danda'ama.*

<sup>85</sup> *Labsii Gurmaa'ina, Hojimaata, Naamusa Miseensotaa fi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Murteessuuf Bahe, Lab. Lak. 201/2009, Kwt. 32 (4) ilaala.*

kan mariisisu ta'us<sup>86</sup>, akkuma dambiilee, qajeelfamoonnis sadarkaa wixineetti Koree Dhaabbii Caffeef hin dhiyaatan. Gabaabumatti, seeronni aangoo bakka bu'insaan ba'an (dambiilees ta'an qajeelfamoonni) sadarkaa wixineetti koree dhaabbii dhimmoota seeraa fi bulchiinsaa Caffeef dhiyaachuun adeemsi ittiin to'ataman ifatti seeraan diriiree hin jiru.

### ➤ *Erga Ragga'anii Booda*

To'anno Caffeen dambiilees ta'e qajeelfamoota ragga'uun hojiirra jiran irratti taasisaa turee fi jiru yoo ilaalamo bu'a qabeessa kan nama jechisiisu miti. Kanaafis agarsiiftuuwwan adda addaa kan jiran yommuu ta'u, kanneen keessaa seerotni aangoo bakka bu'insaan akka ba'an jedhame ba'uu fi ba'uu dhabuu isaanii hordofuu dhabuu, seerri armaan dura Caffeen baasee hojiirra jiru yommuu fooyyaa'uutti dambii fi/ykn qajeelfamni labsicha hojiirra oolchuuf ba'e sanuma faana akka fooyyaa'uuf hordoffii gochuu dhabuu, fi kkf akka fakkeenyaaatti kaasuun ni danda'ama.<sup>87</sup> Labsiwwan meeqaaf dambiileenii fi qajeelfamoonni akka ba'anii fi hin baanes adda ba'ee galmaa'ee hin beekamu.<sup>88</sup> Labsiwwan dhimmoota adda addaaf dambii baasun barbaachisaa akka ta'e akeekan baay'eef dambiin waggoota dheeraa osoo hin bahiin tureera.<sup>89</sup> Kun ammoo gama tokkoon, caffen dambiilee inni akka bahaniif aangesse bahaa jiraachuuf dhiisuu isaanii akkasumas warri

<sup>86</sup>Af-gaaffii Ob. Kadir Hamnuu, ogeessa seeraa Biirroo Daldala fi Misooma Gabaa Oromiyaa waliin gaafa 8/5/2010 gaggeeffame fi Ob. Isaa Boruu, Olitti yaadannoo lak. 62<sup>ffaa</sup> waliin gaggeeffame

<sup>87</sup>Afgaaffiwwan ob. Addisuu Fallaqa, Olitti yaadannoo lak. 78<sup>ffaa</sup>; Ob. Addisuu Laggaas, Olitti yaadannoo lak. 60<sup>ffaa</sup>; Ob. Hajii Arsee, Olitti yaadannoo lak. 65<sup>ffaa</sup>; Ob. Sulxaan Abdoo, Ad. Leeyilaah Mohaammad, Ob. Galataa Akkumaa fi Ob. Biiniyaam Makibab, olitti yaadannoo lak. 79<sup>ffaa</sup> waliin gaggeeffame.

<sup>88</sup>Af-gaaffii Ob. Isaa Boruu, olitti yaadannoo lak. 62<sup>ffaa</sup>.

<sup>89</sup>Fakkeenyaaaf, Labsiin Sakatta'iinsa Dhiibbaa Naannoo Mootummaa Naannoo Oromiyaa Lak. 176/2005, kwt. 7-Pirojektootni sakatta'insaa dhiibbaa naannoo gaggeessuun barbaachisuuf isaan kam fa'a akka ta'an dambii ba'uun murtaa'a jechuun kan tume yoo ta'u, dambiin kun hanga ammaatti osoo hin ba'iin waggoota shaniif tureera. Akkasumas, Labsiin Manneen Murtii Hawaasummaa Gandaa Irra Deebi'anii Dhaabuufi Aangoo Isaanii Murteessuuf Bahe Lak. 66/1995 Irra Deebiidhaan Fooyyeessuuf Bahe Lab. Lak. 128/1999 kwt. 44 jalatti labsicha raawwachisuuf Manni Maree Bulchiinsa Mootummaa Naannoo Oromiyaa dambii baasuu akka danda'uu, fi Manni Murtii Waliigala Oromiyaa fi Biirroon Haqaa Oromiyaa ammoo qajeelfama baasuu akka danda'an aangesseera. Haa ta'u malee, hanga har'aatti (wagga kudhan ol) dambiis ta'e qajeelfamni labsicha hojiirra oolchuuf bahe hin jiru.

bahan bu'uura aangoo kennameefiin ta'uu isaanii irratti to'annoo karaa koreewwan dhaabbiin gaggeeffamu kan hin jirre ta'uu agarsiisa.

Gama biraan, rakkooowwan dambiilee fi/ykn qajeelfamootni akka bahanii Caffeen aangeffaman yeroon bahuu dhabuuf hanqinni seeraa akkasii yeroo dheeraaf kan turan yoo ta'ellee, kan hubataman dhiyeenya kana ta'uu Labsii Gurmaa'ina, Hojimaata, Naamusa Miseensotaa, fi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Murteessuuf Bahe, Lak. 201/2009 irraa tilmaamuun ni danda'ama. Aangoo fi hojii Koreewwan Dhaabbii Caffee Oromiyaaf labsii kanaan kennaman keessaa tokko seerotni Caffeedhaan bahan qixa barbaadamuun hojiirra akka oolan gochuuf dambii fi qajeelfamaan deeggaramuu isaanii hordofuu fi to'achuu dha.<sup>90</sup> Dabalataan, qaamni dambii ykn qajeelfama bakka bu'iinsaan akka baasuuf aangoon seeraan kennameef seerichi erga bahee booda ji'oota sadii keessatti baasuuf dirqama qaba.<sup>91</sup> Qaphxiin kanaan walqabatee ka'uu malu yeroon ji'oota sadii labsichaan kenname kun gahaadhaamoo gahaa miti? kan jedhu dha.

Kana ilaalchisuun yaadotni adda addaa kan jiran yoo ta'ellee<sup>92</sup> akka waliigalaatti garuu, yeroo ji'oota sadii kana Caffeen Oromiyaa muuxannoo paarlaamaa federaalaa irraa kan fudhate akka ta'e hubachuun danda'ameera.<sup>93</sup> Qabatamaan garuu, erguma labsiin lak. 201/2009 ba'ee booda ji'oota sadii keessatti haalli dambiin itti hin baane ni jira. Fakkeenyaaaf, Labsii Lak.201/2009 hojiirra oolchuuf Caffeen dambii baasuu akka qabu labsichumti kwt.74 jalatti tumeera. Labsichi guyyaa Caffeen ragga'e irraa kaasee hojiirra kan oole ta'us (Guraandhala 24, 2009), hanga yoonaatti dambiin osoo hin ba'iiniif jira. Dabalataan, Labsiin Gibira Galii Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Fooyyeessuuf Bahe Lak.202/2009 Adoolessa 1, 2008 irraa ka'ee hojiirra kan oole yoo ta'us, hanga yoonaatti dambiin labsicha hojiira oolchuu bu'uura kwt.92 tiin hin ba'iin jira. Hojiirra oolmaa labsichaa

<sup>90</sup>Labsii Gurmaa'ina, Hojimaata, Naamusa Miseensotaafi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Murteessuuf Bahe, Lab. Lak.201/2009, kwt.45(5).

<sup>91</sup>Labsii Gurmaa'ina, Hojimaata, Naamusa Miseensotaafi Sirna Walgahii Caffee Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Murteessuuf Bahe, Lab. Lak.201/2009,, Kwt.32 (3).

<sup>92</sup> Kuun yerichi gahaa miti jedhu (Fknf:-Afgaaffiwwan Ob. Hajii Arsee, Olitti yaadannoo lak.65; Ob. Sulxaan Abdoo, Ob. Biiniyaam Makibab fi Ad. Leeyilaah Mohaammad, Olitti yaadannoo 79 waliin ta'e ); kuun ammoo qabatamaan adeemsa hojii keessatti beekama jedhu (Fknf:- ob. Isaa Booruu, Olitti yaadannoo lak. 62).

<sup>93</sup> Af-gaaffi ob. Isaa Boruu, Olitti yaadannoo lak. 62<sup>ffaa</sup>.

madaaluuf yeroon gaheera jedhamuu baatus, yeroon ji'oota sadii jedhame kun qabatamaan hojiirra oolaa kan hin jirre ta'uu waanti namatti agarsiisu ni jira.

Haa ta'u malee, dhimmi murteessaan asitti ilaalamuu qabu yeroon ji'oota sadii dheerateera ykn gabaabbateera jedhamuuf ka'umsa ta'uu kan qabu labsichi durumaan yommuu qophaa'utti qorannoo bu'uureffateetimoo miti? kan jedhu ta'uu qaba. Labsiin qorannoo gadi fageenya qabu irratti hundaa'eeti yoo ta'e, yeroo gabaabaa keessatti dambii ykn qajeelfama qopheessuun rakkoo waan hin taaneef ji'i sadii gahaadha jedhanii yaaduun ni danda'ama. Gama biraatiin, adeemsi qophii labsichaa qorannoo gadi fageenya qabu irratti kan hin hundoofne yoo ta'e, dambii ykn qajeelfama bu'a-qabeessa ta'e qopheessanii hojiirra oolchuuf yeroon kun hin gahu jedhanii yaaduun nama hin dhibu.

Akka waliigalaatti, Caffeen rakkowwan seerotni aangoo bakka bu'insaan ba'an qaban kan hubatu dursee osoo hin taane erga komiin hawaasaa isa dhaqqabee booda dha. Rakkoo jiru erga beekee boodas to'annoo bu'a qabeessa ta'e taasisaa kan jiru miti. Fakkeenyaaaf, adabbii tumuun Dambii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyaa Oromiyaa Lak.151/2005 daangaa aangoo bakka bu'insaa kennameefin ala akka ba'e (ultra virus) Caffeen kan hubate Koreen Dhaabbii Dhimma Bulchiinsaa fi Seeraa hojiirra oolmaa seerotaa gamaaggamuuf wayita marii taasisu ture.<sup>94</sup> Rakkoo kana erga hubatee booda, tarkaanfiin fudhate yoo jiraate qaamni raawwachiisaan akka sirreessuuf xalayaadhaan qajeelfama kennuu dha.<sup>95</sup> Haa ta'u malee, akkaataa qajeelfama kennameen hanga guyyaa har'aatti sirreffamni gama qaama raawwachiisaan taasifame hin jiru. Dambichis har'as akkuma duraan turetti hojiirra oolaa jira. Kun Caffeen Oromiyaa dambiilee fi qajeelfamoota aangoo bakka bu'insaan ba'an to'achuu irratti ejjennoon qabu laafaa ta'uu agarsiisa.

### **3.2.2. To'annoo Qaama Seera Hiiktuun (Manneen Murtiin) Ta'u**

Akka Itoophiyaattis ta'e, Naannoo Oromiyaatti aangoon abbaa seerummaa kan mana murtiiti.<sup>96</sup> Manneen murtii Oromiyaa Heerummaa

<sup>94</sup> Ob. Isaa Boruu, Akkuma 93<sup>ffa</sup>.

<sup>95</sup> Ob. Isaa Boruu, Akkuma 94<sup>ffa</sup>.

<sup>96</sup> Heera Mootummaa RDFI, Kwt 79 (1) fi Heera Mootumaa Naannoo Oromiyaa, Kwt 61 (2) walfaanaa dubbisaa.

(constitutionality) dambiilee ykn qajeelfamootaa karaa Koomishinii Hiiktuu Heera Mootummaatiin; akkasumas, seerummaa (legality) isaanii ofumaaf hiikkoo itti kennuun<sup>97</sup> seerota aangoo bakka bu'insaan bahan irratti to'anno ni taasisu. To'annoona qaama kanaan ta'u kan jalqabu erga seerichi bahee booda dha. Manneen murtii dambiilee fi qajeelfamootni aangoo bakka bu'insaan ba'an daangaa aangoo qaamni seera baasu kenneen ala yoo ta'an, hiikkoo itti kennuun seerotni kунин raawwatiinsa akka hin qabaanne taasisuu ni danda'u. Yaadni kun sadarkaa yaadrimeetti bal'inaan ni hubatama.<sup>98</sup>

Qabatamaatti, to'annoona kallattii kanaan jiru maal akka fakkaatu beekuuf dhimmoota qabatamoo sakatta'uuf yaaliin kan taasifame ta'us, galmeewan haala kanaan murtaa'an baay'inaan argachuu hin dandeenye. Sababni isaa: Tokkoffaa, falmiiwan akkasii jalqabumarraa gara mana murtiitti hin dhiyaatan; mana murtiittis dhimmoonni waan itti baay'ataniif, seerotni sadarkaa sadarkaan jiran (labsii, dambii fi qajeelfamni) walsimu fi simuu dhabuu sakatta'uu caalaa seeruma dhimmichi bu'uureffatee dhiyaate hiikuun furmaata kenna.<sup>99</sup> Lammaffaa, abbootiin murtii, badii naamusaa seera ifa jiru cabsuun himatamuu dandeenya sodaa jedhuun osuma beekanii dhiibanii itti hin deemani.<sup>100</sup> Haa ta'u malee, qajeelfama dambii wal hin simne, ykn dambii labsiin wal hin simne hiikkoo seeraatiin fudhatama dhabsiisuun hojiima idilee manneen murtii waan ta'eef, sodaan asumaa achi seera ifa jiru cabsuun naamusaa nan himatama jedhu sirrii miti.

Sadaffaa, manneen murtii qaamni falmiitti jiru dambii ykn qajeelfamni falmiin irratti hundaa'ee dhiyaate fudhatamummaa qabaachuu akka hin qabne hanga falmii kaasutti eeguun bal'inaan mul'ata.<sup>101</sup> Kunis waantota lama irraa madda:

<sup>97</sup>Heera Mootumaa Naannoo Oromiyaa, Kwt 46.

<sup>98</sup>Af-gaaffiwwan Ob. Wandimmuu Kabbadaa, Gaggeessaa Adeemsa Hojji KTAS; Dabalee Xilaahun, A/Murtii MMO Godina Arsii; Bazzuu Lammii, A/Murtii MMO Godina Arsii; Gammachu Dabalaa, A/Murtii Godina Arsii waliin 4/5/2010 gaggeeffame

<sup>99</sup>Af-gaaffiwwan Kaasahun Guuttataa, A/Murtii MMWO, Dhaddacha Kibbaa; Gabii Galatoo, A/Murtii MMWO, Dhaddacha Kibbaa; Ashannaafii Raggaasaa, A/Murtii MMWO, Dhaddacha Kibbaa, waliin gaafa 24/5/2010 gaggeeffame.

<sup>100</sup>Af-gaaffiwwan Ob. Hirphoo Irreessoo, Pirezidaantii MMA Shaashamannee, waliin gaafa 23/5/2010 gaggeeffame; Kaasahun Guuttataa, A/Murtii MMWO, Dhaddacha Kibbaa; Gabii Galatoo, A/Murtii MMWO, Dhaddacha Kibbaa; Ashannaafii Raggaasaa, A/Murtii MMWO, Dhaddacha Kibbaa, waliin gaafa 24/5/2010 gaggeeffame.

<sup>101</sup>Af-gaaffii Ob. Biqilaab Abarraa, Pirezidaantii MMO Godina Addaa Adaamaa; Ob. Badiirtemaam Umar, Gaggeessaa KTAS MMO Godina Addaa Adaamaa; Solomoon

sodaa namuusaan nan himatama jedhuu fi manneen murtii tarkaanfii akkasii fudhachuu danda'uu irrattis hubannoona jiru walfakkaataa ta'uu dhabuudha. Fakkeenyaaaf, aangoon seera hiikuu mana murtii hanga seera hojiirra oo lee jiru fudhatama dhabsiisuu hin gahu; kana gochuu kan danda'u Koomishinii Hiiktuu Heera Mootummaa dha jedhanii yaaduun ni jira. Haa ta'u malee, walitti bu'insi akka kanaa kan jiru taanaan gareewwan walfalman kaasanis kaasuu baatanis, manni murtii dambii ykn qajeelfama aangoo bakka bu'insaan ba'e kana fudhatama dhabsiisuu irraa waanti isa daangessu hin jiraatu.

Dhimmootni qabatamoo baay'inaan manneen murtii keessa jiraachuu baatanis, dhimmootni muraasni dambii 151/2005'n walqabatanii ka'an ni jiru. Kunis darbinsa yeroo fi adabbii dambichaan tumamee jiruun kan walqabatu dha. Fakkeenyaaaf, dhimmoota armaan gadii haa ilaallu.

Dhimma Mana Murtii Aanaa Mi'eessoo Galmee Lak. **05921** ta'e irratti iyyataan sababa qaala'insa jirenyaatiif qabiyyee isaa dhiisee gara biraa waan deemeef himatamtooni lafa isaa akka qabatan ibsuun Mana Murtii Aanaatti himata isaa dhiyeffateera. Himatamotoa keessaa inni tokko lafa isaa akka hin qabanne kan ibse yoo ta'u; himatamaan inni tokko immoo ani ergan qabadhee wagga digdamaa (20) ol ta'eera waan ta'eef bu'uura Dambii Lak 151/2005 kwt 32 tiin darbiinsa yeroo wagga 12n kufaa ta'a jedheera. Manni murtiis wagga 12 ol fayyadameera waan ta'eef, bu'uura Dambii Itti Fayyadama Lafa Baadiyyaa Oromiyaa Lak.151/2005 kwt 32 tiin darbinsa yeroon gaafachuu hin danda'u jechuun jala murtii dhaddacha gaafa 17/10/2006 ooleen himata dhiyaate kufaa godheera. Dhimmichi Mana Murtii Ol'aanaa Godina Harargee Lixaatti kan ol'iyyatame yommuu ta'u, Manni Murtii Ol'aanaa kunis Galmee Lak. 33367 irratti murtiin Mana Murtii Aanaa ragaa dhiyaate irratti hundaa'uun kan kennname waan ta'eef, kan qeqamu miti jechuun deebi kennaa waamuun osoo hin barbaachisiin galmee cufeera. Manni Murtii Waliigala Oromiyaa dhaddachi Ijibbaataa galmee lakk. **186120** irratti, Manneen Murtii jalaa ragaa wal dhahaa fi qulqulluu hin taane irratti hundaa'uun himatamaan wagga 15 ol lafa falmii kaasetti fayyadameera jechuun darbiinsa yeroon hafaa ta'a jedhanii murteessuun sirrii miti jechuun

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Gaarradoo, A/Murtii MMO Godina Addaa Adaamaa, waaliin gaafa 3/5/2010 gaggeeffame. Akka yaada ogeessota kanaatti, hanga abbaan dhimmaa falmii kaasutti abbaan seeraa ofin rakkoo seeraa xiinxaluu dhiibee itti hin deemu.

Manni Murtii Aanaa ragaan sirriitti erga qulqullaa'ee booda murtii itti fakkaate haa kenu jechuun dhaddacha gaafa 18/5/2007 ooleen Mana Murtii Aanaatti gad-deebiseera.

Akka waliigalaatti, seerotni mirga bu'uuraa namoota dhuunfaa gonfachiisan ykn irraa muulqan karaa beekamtii qaama seera baaftuun ba'uu qabu.<sup>102</sup> Tooftaawwan mirgi bu'uuraa kun itti muulqamuu fi argatamu keessaa tokko ammoo karaa darbinsa yerooti. Dhimma olii kanaan walqabsiifnee yoo ilaallu, darbinsi yeroo waggaa 12 kan tumame Dambii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyyaa keessatti malee labsii Caffeen baase keessatti miti. Kun ammoo dambichi keewwta darbinsa yeroo kan tume aangoo Caffeen kenneen ala ba'uun (ultra vires) ta'uu agarsiisa. Waan ta'eefuu, dhimmi akkasii manneen murtiif yoo dhiyaatu tumaa dambii kanaa hiikkoo itti kenuun fudhatama dhabsiisu jedhamee eegama. Haa ta'u malee, dhimma olii kana irratti manneen murtii sadarkaa sadarkaan jiran kallattumaan dambii 151/2005, kwt.32 kan hiikan malee haala kamiin hiikamuu akka qabu bira darbuun hin xiinxalle. Manni Murtii Waliigalaas kan irratti xiyyeffate qulqullina ragaa irratti malee, tumaan dambichaa haala kamiin hiikamuu akka qabu miti. Xiinxala Manni Murtii Waliigala Oromiyaa kenne irraa waanti hubatamu osoo darbinsi yeroo jedhame sun ragaa qulqulluu ta'een mirkanaa'eera ta'e murtii manneen murtii jalaa kan cimsu ta'uudha. Kuni ammoo, dhimma darbiinsa yeroo irratti manneen murtii dambicha seerota rogummaa qaban biroo waliin xiinxaluun to'annoo taasisurra dambichuma kallattiin kan hiikan ta'uu isaati.

Dhimma biraan tokko irratti tumaalee adabbii dambii 151/2005 tiin wal qabatu tokko irratti Abbaan Alangaa galmeed Mana Murtii Aanaa Wandoo Lakk. **02170** ta'e irratti himatamtoonni (N-2) Seera Yakkaa bara 1996 bahe kwt 32(1A), 433 fi Dambii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyyaa Lak. 151/2005 kwt 33(1) irra darbuun lafa bal'inni isaa hektaara 0.4 ta'u daangaa isaa kallattii hundaan ibsuun seeraan ala qabatan jechuun himatamaniiru. Manni Murtii Aanaa himanni itti banamee ragaan barbaachisu Waajjira Lafaa

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<sup>102</sup> Fakkeenyaaaf, biyya Awustiraaliyaatti, seerotni mirga namoota dhuunfaa irratti dhiibbaa dhaqqabsiisuu danda'an aangoo bakka bu'insaan ba'uu hin danda'an (SCOPE OF DELEGATED LEGISLATION available at: <https://www.abyssinialaw.com/component/k2/item/310>) < Onkoloolessa 20,2010 kan ilaalame>

fi Eegumsa Naannoo irraa hin dhiyaanne jechuun himatamoota bilisaan gaggeesseera. Manni Murtii Ol'aanaa Arsii Lixaa gal mee lak. 23769 irratti dhimmicha ol'iyyataan ilaaluun ragaa barbaachisaa dha jedhee itti amane Waajjira Lafaa fi Eegumsa Naannoo irraa akka dhiyaatu taasisuun D/kennitootni akka ofirraa ittisan taasisuun; ragaan ittisaas irraa ittisuun hin dandeenye jechuun kewwatoota abbaan alangaa ittiin himate jalatti balleessaniru jedhee hidhaa waggaa tokkoo fi baatii jahaan adabeera. Murtii kana komachuun D/kennitoonni Mana Murtii Waliigala Oromiyaa Dhaddacha Dhaabbii Kibbaatti kan ol'iyyatan ta'us, Manni Murtichaa Gal. Lak.195657 irratti ilaaluun ol'iyyatichi hin dhiyeessisu jechuun kufaa godheera.

Dhuma irratti, dhimmichi Mana Murtii Waliigala Oromiyaatti Dhaddachi Ijibbaataaf kan dhiyaate yoo ta'u, Dhaddachi ijibbaataas Gal. Lak. 230693 irratti ilaaluun ijoowwan dubbii: *Iyyattoonni ammaa gocha tokkoon keewwata seeraa lamaan himatamuun isaanii fi keewwata seeraa lama jalatti balleessaa godhamuun isaanii deeggersa seeraa qabamoo miti? fi Iyyattoonni kun gocha yakkaa raawwataniiru yoo ta'e, tumaa seeraa isa kamtuu gocha isaanif rogummaa qaba?* Jedhan qabatee akka itti aanutti xiinxaluun murtii kenneera.

Ijoo dubbii duraa ilaachisee bu'uura Seera Yakkaa kwt.61(1)tiin gocha yakkaa tokkoof himati tokko qofti keewwata seeraa tokko qofa jalatti dhiyaachuu akka qabu ibsuun Abbaan Alangaa keewwattota seeraa lama jalatti himanna banuu fi manneen murtii jalaas sanuma jalatti balleessaa taasisuun adabbii kennuun isaanii dogoggora jedheera. Ijoo dubbii lammaffaa ilaachisee, *tumaan Seera Yakkaa kwt.433 dhimma yakkoota hojii mootummaa irratti namoota hojjettoota mootummaa hin taaneen raawwataman ilaallata. Dhimmi amma ilaalamaa jiru ammoo yakka hojii mootummaa irratti raawwatamu osoo hin taane lafa qabiyyee mootummaa ta'e irratti kan raawwatame dha jechuun kwt.433 jalatti himachuun sirrii miti jedheera. Waa'ee Dambii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyyaa osoo hin ilaaliin dura waa'ee Labsii Bulchiinsaa fi Itti Fayyadama Lafa Baadiyyaa xiinxaluun barbaachisaa dha. Labsiin 130/1999 kan tumamuu danda'e Labsii Bulchiinsaaa fi Itti Fayyadama Lafa Baadiyyaa Mootummaa Federaalaa Lak.456/1997 bu'uura godhachuun akka ta'e ibsuun; labsii 456/1997, seera yakkaa, 130/1999 fi dambii 151/2005 walbira qabun akka itti aanutti xiinxaleera. Labsiin 456/1997 yakkootni dhimma lafaan walqabatan bu'uura*

*seera yakkaatiin akka ilaalamana tuma. Gama biraatiin, labsiin 130/1999 kwt 27 irratti dhimmoota yakka lafa baadiyyaa irratti raawwataman seera rogummaa qabuun ilaalamna jedha. Seerri rogummaa qabu kun ammoo seera yakkaa RDFI akka ta'e labsii 456/1997 irraa ni hubatama. Dhaddachi Ijibbaataas dhimmichaan walqabatee seerri rogummaa qabu seera yakkaa kwt.686 (1) (a) dha jechuun dambiin 151/2005 raawwatamummaa hin qabu jedhee murteesseera.*

Kana irraa waanti hubatamu, sadarkaa Dhaddacha ijibbaataa Mana Murtii Waliigala Oromiyaatti to'annoona seerota aangoo bakka bu'insaan bahan irratti taasifamu cimaa akka ta'ee fi hubannoona dhimmicha irratti jirus gaarii ta'uun dha.

### **3.2.3. To'annoona Qaama Seera Raawwachiisaan Ta'u**

Qaamni biraadambiilee fi qajeelfamoota aangoo bakka bu'insaan bahan irratti to'annoona gaggeessu qaama seera raawwachiistuu dha. Akka Naannoo Oromiyaattis to'annoona gama qaama raawwachiistuu taasifamu ni jira. Adeemsaalee dambiiwan keessa darbuun qophaa'an Dambii Hojimaata Mana Marii Bulchiinsa Mootummaa Naannoo Oromiyaa Lak. 131/2003, kwt.15 jalatti tarraa'ee jira. Haaluma kanaan, Biirroo Haqaa Oromiyaa keessatti adeemsi hojji ijoo tokko hundaa'uun wixineewwan dambiilee sekteroota qaama raawwachiistuu adda addaan qophaa'anii dhiyaataniif seerota biroo waliin walsimuu fi walsimuu dhabuu isaanii sakatta'uun sirreeffamni barbaachisu akka fudhatamu taasisaa jira.<sup>103</sup> Kana booda, wixineen sirreeffame qo'annoona gaggeeffamee fi yaadota falmisiisaa fi murtii barbaadan haala agarsiisuu danda'uun qophaa'ee xalayaadhaan waajjira Pirezidaantiif ni ergama. Dameen seeraa waajjira Pirezidaantii qaama wixineen qopheesee fi Biirroo Haqaa Oromiyaa waliin ta'uun ilaalee; barbaachisaa ta'ee yoo argame qaamota biroo dhimmi ilaalu wajjiin marii gaggeessuun wixinichi akka gabbatu taasisa. To'annoona akkasii kun sadarkaa wixineetti kan jalqabu

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<sup>103</sup> Maqaan guutuu adeemsa kanaa Adeemsa Hojji Ijoo Qorannoo fi Qophii Wixinee Seeraa jedhama.

ta'ee dambiilee hunda irrattii fi qajeelfamoota muraasa<sup>104</sup> sekteroota adda addaatiin raawwatamanis kan dabalatu dha.<sup>105</sup>

Iddoo kanatti, walitti dhufeenyi Biirroo Haqaa Oromiyaa fi Damee Seeraa Waajjira Pirezidaantii jidduu jiru maal akka ta'e gaaffiin ka'u mala. Haaluma kanaan, qaamoleen lachuu hojii waldeeggarsaa (cooperative) kan hojjetan malee hojii walmorkii (competing) kan hojjetan miti.<sup>106</sup> Fakkeenyaaf, qabiyyee wixinnee seeraa irratti qaamoleen lachuu yaadaan waliigaluu yoo dadhaban maalti ta'a? gaaffiin jedhu ka'u mala. Kana ilaalchisee afgaaffii gaggeeffamerraan kan hubatame hanga yoonaatti falmii ogummaa gaggeessuun yeroo isaan waliigaluu dadhabuun addaan ba'an kan hin jirre ta'u dha.<sup>107</sup> Qaamoleen lachuu qaama raawwachiiftuu waan ta'aniif bifaa kanaan hojii waldeeggersaa hojjechuun isaanii loojikaawaa dha jechuun ni danda'ama. Kun kan agarsiisu, akkuma Kaabineen biyya Ingiliiz Koree Dhimmoota Seeraa (Legislative Committee) hundeessuun seerota aangoo bakka bu'insaan ba'an to'atu, Oromiyaa keessaattis Biirroon Haqaa fi Waajjirri Pirezidaantii dambiilee hundaa fi qajeelfamoota muraasa kan to'atu ta'u dha. Kanas to'annoo qaama seera raawwachiiftuu jechuu dandeeyna.

### **3.3. DAMBIILEE FI QAJEELFAMOOOTA AANGOO BAKKA BU'INSAAN BA'AN IRRATTI RAKKOOWWAN QABATAMAAN MUL'ATAN**

#### **3.3.1. Daangaa Aangoo Bakka Bu'insaa Kennameen Ala Ba'u (Ultra Vires)**

Dambiin Bulchiinsaa fi Itti Fayyadaa Lafa Baadiya Oromiyaa Lak.151/2005 rakkoo akkasii qaba. Dambichi tumaalee labsii inni bu'uureffatee bahe

<sup>104</sup> Akka fakkeenyaatti, qajeelfama kenniinsa mana jirenyaa barsiisotaa fudhachuun ni danda'ama.

<sup>105</sup> Af-gaaffii ob. Addisu Laggaas, Olitti yaadannoo lak.. 60<sup>ffa</sup>; Hajii Arsee, Olitti yaadannoo lak.. 65<sup>ffa</sup>, Sulxaan Abdoo, Biiniyaam Makibab, Leeyilaah Mohaammad, fi Galataa Akkumaa, Olitti yaadannoo lak.. 80<sup>ffa</sup>.

<sup>106</sup> Afgaaffii Addisu Laggaas, Olitti yaadannoo lak. 60<sup>ffa</sup>; Hajii Arsee, olitti yaadannoo lak. 65<sup>ffa</sup>, Sulxaan Abdoo, Biiniyaam Makibab, Leeyilaah Mohaammad, fi Galataa Akkumaa, Olitti yaadannoo lak. 79<sup>ffa</sup>.

<sup>107</sup> Afgaaffiiwan Addisu Laggaas, Olitti yaadannoo lak. 60<sup>ffa</sup>; Hajii Arsee, Olitti yaadannoo lak. 65<sup>ffa</sup>.

keessatti hin hammatamiin kanneen akka darbiinsa yeroo fi adabbiwwan bilisummaa qaamaa daangessan of keessatti qabateera. Kun ammoo dambichi labsii irratti hundaa'ee bahe raawwachiisuu caalaa labsicha fooyyessuuf kan bahe fakkaata. Sababni isaa, akkaataa Labsii 130/1999ti qabiyeyen lafa baadiyyaa kan argamu karaawan sadii: jechunis kennaa mootummaan, kennaa fi dhaalaan maatii irraa qofanidha. Akka dambii kanaatti garuu, namni tokko darbinsa yerootti fayyadamuun (qabatee waggoota 12f kan itti fayyadame yoo ta'e)<sup>108</sup> abbaa qabiyey ta'uu akka danda'u ni hubatama. Labsiin lak.130/1999 yakkoota lafa baadiyyaa irratti raawwataman ilaachisee seerri rogummaa qabu raawwatiinsa akka qabaatu tumeera. Kun caalaatti kan akeku seera yakkaa RDFI dha malee dambii kaabineen baasu miti. Waan ta'eefuu, adabbiin dambicha keessatti teechifame aangoo kennameen ol deemuu (ultra vires) agarsiisa.

### **3.3.2. Mirga Ol'iyyannoo Sarbuu ykn Dhaphisuu**

#### **A) Mirga Ol'iyyannoo Sarbuu**

Dambiin Bulchiinsa Hojjettoota Abbaa Taayitaa Galiiwwan Mootummaa Naannoo Oromiyaa lak.160 /2005, kwt.36 (3) ifatti kan tume murtiin badii naamusaa gocha malaammatummaa irratti Daarikteeraan kennname kan dhuma ta'uu dha.<sup>109</sup> Kun ammoo mirga ol'iyyannoo eegumsa Heeraa qabu beekamtii Caffeen ala dhorkamuu agarsiisa waan ta'eef dogoggora. Qabatamaan garuu, badii naamusaa gocha malaammaltummaas manni murti bulchiinsaa ol'iyyanno yoo ilaalu ni mul'ata. Fakkeenyaaaf, Dhimma tokko irratti <sup>110</sup>falmii dakatti adeemsifameen Waajirri D/Kennaa ol'iyyataan kun badii naamusaa raawwateera jechuun koree naamusaa Abbaa Taayitaa Galiiwwanii Bulchiinsa Magaalaa Sabataa (ATGBMS) tti himata dhiyeesseen Ol'iyyataan kun hojii isa hin ilaallanne keessa galuun abbaa dhimmaa irraa qarshii 16,000 fudhatte jedhamee gocha malaammatummaa raawwateen

<sup>108</sup>Darbinsi yeroo kun falmii qaama lafa namootaan seeraan ala qabame deebisuuf aangoo qabu (mootummaa) fi nama dhuunfaa giddutti ka'u qofa akka ilaallatu dambicharraa ni hubatama.

<sup>109</sup>Dambichi kwt.36 (3) jalatti yaada murtee koreen naamusaa dhiyeessu irraa ka'uun murteen badii naamusaa gocha yakka malaammatummaan walqabatee raawwatuun Daarikteera Ol'aanaan kennamu kan dhuma ta'a jechuun tumeera.

<sup>110</sup> Ob. Geetahuun Dhufeera (Ol'iyyataa) fi ATG Damee Bulchiinsa Magaalaa Sabbataa (D/kennaa), Lak.G-816/2009 (Gaafa 21/02/2009 kan murtaa'e).

himataameera. Koreen naamusaa dhimmicha ilaales waggaaf lamaaf sadarkaa fi mindaa irraa akka gadi bu'u bu'uura yaada murtii dhiyeesseen Daarikteerri Abbaa Taayitaa Galiiwanii Oromiyaa adabbicha cimsuun mirkaneesseera.

Ol'iyyataan komiin ol'iyyannoo kan dhiyeeffate murtii adabbii kana komachuun yoo ta'u, Manni Murtii Bulchiinsaa Mootummaa Naannoo Oromiyaas komii dhiyaate simachuun D/kennaan dhiyaatee deebii akka kennu ajatus guyyaa beellamaatti dhiyaatee deebii waan hin kennineef akkaataa dambii lak.36/1996 kwt.42 (a)tiin mirga deebii kennuu bira darbuun bakka hin jirretti ilaaluun ol'iyyannichi ragaa gahaadhaan hin mirkanoofne jechuun adabbicha haquun bu'uura labsii lak.61/94 kwt.72 (1) tiin ol'iyyataa **bilisaan** gaggeesseera.

Akka waliigalaatti Dambiin Lak.160/2005 badii gocha naamusaa malaammaltummaa irratti murtiin Daarikteeraan kennamu kan dhumaati jechuun tumuun isaa mirga ol'iyyannoo Heeraan eegumsa argate jiddu galeessa kan hin godhanne waan ta'eef dogoggora.

### **B) Mirga Ol'iyyannoo Dhaphisuu**

Dambiin Ittiin Bulmaata Abbootii Alangaa Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Fooyyeessuuf Bahe Lak. 161/2005 rakkoo akkasii qaba. Dambiin kun dhimmoota bulchiinsa Abbootii Alangaan walqabatan hedduu of keessatti hammatee kan jiru yoo ta'u, kanneen keessaa dhimmi naamusaa isaanii isa tokko dha. Akka waliigalaatti, badiiwan naamusaa abbootii alangaa badii cimaa fi badii salphaa jedhamuun iddo lamatti qoodamaniiru. Qaamni badiiwan naamusaa kana qorachuun himatu garee inispeakshinii yoo ta'u, gareen kun sadarkaa Naannoo fi Godinaatti dambichaan hundaa'eera.<sup>111</sup> Badii naamusaa ilaachisee qaamni aangoo adabbii murteessuu qabu Gumii yoo ta'u, innis Gumii Godinaa fi Gumii Waliigalaa jedhamuun caasaa lamaan gurmaa'ee kan jiru dha.

Aangoon Gumii Godinaa, balleessaa naamusaa salphaa abbootii alangaa godinaa fi aanaa irratti dhiyaatu qulqulleessee murtii itti kennuu yommuu ta'u, gareen murtii kenname irratti mormii qabus ol'iyyannoo isaa Gumii

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<sup>111</sup>Dambii Ittiin Bulmaata Abbootii Alangaa Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Fooyyeessuuf Bahe Lak.161/2005, kwt.74.

Waliigalaatiif dhiyeeffachuu ni danda'a.<sup>112</sup> Gama biraatiin, aangoon Gumii Waliigalaa himannaa balleessaa naamusaa cimaa ta'e ilaaluun murteessuu dha.<sup>113</sup> Himanni balleessaa naamusaa salphaa ta'us, himannichi Abbootii Alangaa Naannoo fi Itti Gaafatamtoota Waajjira Haqaa Godinaa irratti kan dhiyaate yoo ta'e, Gumiin Waliigalaa aangoo sadarkaa duraatiin dhimmicha ilaaluun murteessuuf aangeffameera.<sup>114</sup> Akkasumas, dhimmichi akka balleessaa naamusaa salphaatti ilaalamee dursa Gumii Godinaatti dhiyaatee qorannoo keessa garuu, balleessaa naamusaa cimaa ta'uun isaa yoo beekame, qaamni dhimmicha murteessuuf aangeffame Gumii Waliigalaa dha.<sup>115</sup> Dabalataan, sababa balleessaa naamusaa cimaatiin himatni Abbaa Alangaa Godinaa ykn Aanaa Gumii Waliigalaatti dhiyaatee yommuu qulqulla'u, balleessaa naamusaa salphaa ta'ee yoo argame Gumiin Waliigalaa ofii isaatif adabbii murteessuu ykn Gumii Godinaatti deebisuu ni danda'a.<sup>116</sup>

Kana irraa waanti hubatamu, haalawan Gumii Waliigalaa dhimmoota aangoo sadarkaa duraan ilaalee itti murteessu hedduun kan jiran ta'uun dha. Haa ta'u malee, murtiin qaama kanaan kennname qaamuma kanaan irra deebi'amee ilaalamuu<sup>117</sup> haalli itti danda'u jiraachuuti ibsame malee ol'iyyannoonaan ilaalamuu kan danda'u ta'uun isaa dambii kanaan taa'ee hin jiru. Kun kan agarsiisu, dambichi carraa mirga ol'iyyannoonaan dhiphisu ta'uun isaati. Kun ammoo mirga ol'iyyannoonaan Heera Mootummaa federaalaa fi naannoonaan beekamtii argatee jiru wajjiin kan wal simu miti.

<sup>112</sup> Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt.90 (1).

<sup>113</sup> Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt.80 (1).

<sup>114</sup> Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt. 80.

<sup>115</sup> Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt. 80.

<sup>116</sup> Dambii Ittiin Bulmaata Abbootii Alangaa, Kwt. 80 (3).

<sup>117</sup> Haalli murtiin irra deebi'amee itti ilaalamu Dambicha kwt.91. jalatti akka itti aanutti ibsameera:

#### **Kwt. 91 Mirga Murtiin Irra Deebi'ame Ilaalamuu**

1. *Abbaan alangaa naamusaa cimaatiin himatamee adabbiin cimaan irratti murtaa'ee murtiin kennname Gumii Waliigalaatiin akka irra deebi'amee ilaalamuuuf iyyannoonaan isaa Hoogganaaf dhiyeeffachuu ni danda'a.*
2. *Iyyannoonaan murtiin irra deebi'amee akka ilaalamuuuf dhiyaatu guyyaa murtiin kennname irraa kaasee guyyoota 30 keessatti dhiyaachuu qaba.*
3. *Iyyannoonaan akkaataa keewwata kanaa keewwata xiqqaa (2) tiin hin dhihaanne fudhatama hin qabu; haa ta'u malee sababni humnaa ol ta'e yoo isa mudate akka hayyamamuuf Hoogganaaf iyyata dhiyeessuu ni danda'a.*

### 3.3.3. Aangoo Qaama Biraaf Kenname Irratti Seera Baasuu

Seerota qorannoo kana gaggeessuuf sakatta'aman keessaa Qajeelfama Abbaa Taayitaa Eegumsa Naannoo, Bosonaa, fi Jijiirama Qilleensaa Naannoo Oromiyaan ba'e tokko irratti rakkoon akka kanaa mul'ateera. Qajeelfamni kun Qajeelfama To'annoo Sochii Bu'aa Bosonaa fi Itti Fayyadama Bu'aa Bosona Mootummaa Naannoo Oromiyaa jedhamuun kan ba'e dha.<sup>118</sup> Qajeelfamichi Abbaan Taayitichaa galii bu'aa bosona naannichaa seera qabeessa ta'e kamiyyuu irraa argamu (royalty fee) ofumaaf sassaabuun misooma bosona mootummaaf, dawoo bineensota bosonaa eeguu, fi misoomsuuf oolchuu akka danda'uuf aangesseera.<sup>119</sup> Haa ta'u malee, hojiin kun abbummaan Dhaabbata Bosonaa fi Bineensota Bosonaatiif kan kenname dha.

### 3.3.4. Bifa Seerri Qabaachuu Malu Qabaachuu Dhabuu

Seerri bifaa (form) ittiin bahu kan mataa isaatii qaba. Fakkeenyaaaf, lakkoofsaa fi bara itti bahe, seensa (preamble), seerichi maal bu'uureffachuun akka bahe ni caqafama. Haa ta'u malee, qajeelfamootni tokko tokko yeroo itti bifaa waliigalaa seerri tokko qabaachuu qabu osoo hin qabaatiin bahan ni jira.<sup>120</sup> Fakkeenyaaaf, Qajeelfamni Abbaa Taayitaa Eegumsa Naannoo, Bosonaa, fi Jijiirama Qilleensaa Naannoo Oromiyaan ba'e tokko rakkoo akkasii qaba. Qajeelfamichi, Qajeelfama To'annoo Sochii Bu'aa Bosonaa fi Itti Fayyadama Bu'aa Bosona Mootummaa Naannoo Oromiyaa jedhamuun bahe.<sup>121</sup> Mata-duree isaa, "*Qaajeelfamni kun labsii manneen hojii mootummaa naannoo Oromiyaa lak.199/2008 Bosonaa irratti hundaa'ee kan qophaa'e jedhamee waamama*" jedha. Silaa mata-dureen qajeelfamichaa waan qajeelfamichi bituuf yaadamee ba'e haala agarsiisuu danda'uun ta'uu qaba ture. Akkasumas, qajeelfamichi kewwattoota tartiibaan hin teechifne.<sup>122</sup> Rakkoon kun

<sup>118</sup> Qajeelfamni kun lak.oofsaa fi bara kan hin qabnee fi bifaa qajeelfamni tokko qabatee ba'u of keessatti qabateera jechuuf kan hin danda'amne dha.

<sup>119</sup> Qajeelfama To'annoo Sochii Bu'aa Bosonaa fi Itti Fayyadama Bu'aa Bosonaa Mootummaa Naannoo Oromiyaa, Kutaa II ilaala.

<sup>120</sup> Af-gaaffii Addisuu Laggaas, Olitti yaadannoo lak.60<sup>ffaa</sup>; Silashii Fiqaaduu, Olitti yaadannoo lak..73<sup>ffaa</sup>.

<sup>121</sup> Qajeelfamni kun lak.oofsaa fi bara kan hin qabnee fi bifaa qajeelfamni tokko qabatee ba'u of keessatti qabateera jechuuf kan hin danda'amne dha.

<sup>122</sup> Qajeelfamichi Qajeelfama To'annoo Sochii Bu'aa Bosonaa fi Itti Fayyadama Bu'aa Bosona Mootummaa Naannoo Oromiyaa jedhamuun kan waamamu yoo ta'u; mata duree qajeelfama bosona mootummaa naannoo oromiyaa jedhu jalatti hiikoo adda addaa kan teechiseera.

qajeelfamichi yeroo ba'u ogeessa seeraa akka hin hirmaachisnee fi qaamolee dhimmichi ilaallatu hirmaachisuu dhabuu irraa akka maddu hubachuun hin rakkisu.

### **3.3.5. Seerri Caffeen Tume Yeroo Fooyaa'u Kan Aangoo Bakka Bu'insaan Ba'u Duuka Fooyaa'uu Dhabuu**

Seeronni Caffeen yeroo tokko ba'uun erga hojiirra oolanii booda, akkuma barbaachisummaa isaaniitti ni fooyaa'u. Yeroo akkasii dambiin ykn qajeelfamni labsicha raawwachiiisuuf bahanis bifuma walfakkaatuun waliin fooyaa'uu qabu. Akkas yoo hin taane, dambiin seera fooyya'e bu'uureffachuun bahe seera haaraa raawwchiisuu kan itti fufu ta'a. Qabatama naannoo Oromiyaa yoo ilaallu, labsiin yoo fooyya'u dambiin labsicha hojiirra oolchuuf ba'e waliin fooyaa'uu dhabuu isaa hordoffiin taasifamu cimaa miti.<sup>123</sup> Fakkeenyaaaf, Labsii Qaamolee Raawwachiiftuu Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Gurmeessuu, Aangoo, fi Hojii Isaanii Murteessuuf Bahe, Lak.163/2003 Labsii Lak.199/2008 bakka kan bu'e ta'us dambiileen labsii 163/2003 bu'uureffachuun bahan hedduun<sup>124</sup> hin fooyyofne. Kanarraa seerotni Caffeen bahan yeroo fooyya'an dambiileen isaan irratti hundaa'anii bahan waliin fooyyeessaa adeemuu irratti hanqinni kan jiru ta'uut hubatama.

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Fakkeenyaaaf, bosonaa fi abbaan qabeenyummaa bosonaa kutaa kana jalatti hiikoon kennameeraaf. Qajeelfamichi garuu irra deebiyuudhaan mata duree abbummaa qabeenya bosonaa kan jedhu jalatti irra deebiin hiikeera. Kana malees qajeelfamichi kaayyo qajeelfamichaa silaa seensa keessatti kan teechifamu qabu hiikoo jechootaatti aansuuf teechiseera.

<sup>123</sup> Af-gaaffii Ob.Isaa Boruu, Olitti yaadannoo lak. 62<sup>ffa</sup>; Addisu Fallaqaa, Olitti yaadannoo lak. 78<sup>ffa</sup>.

<sup>124</sup> Fakkeenyaaaf Dambii Labsii Dhaabbilee Misooma Mootummaa Naannoo Oromiyaa Lak.. 181/2005 Raawwachiiisuuf Bahe Lak. 184 /2008; Dambii Waajjira Qindeesaa Piroojaktii Sirna Qabiinsa Ragaa Lafa Magaala Hundeessuuf bahe Lak.142/2004; Dambii Sirna Kenniinsa Manaa fi Lafa Mana Jireenya Barsiisota Mootummaa Naannoo Oromiyaa Murteessuuf Bahe Lak.183 /2008 ilaaluun ni danda'ama.

### **3.3.6. Dambiilee fi Qajeelfamoonni Aangoo Bakka Bu'insaa Yeroo Jedhame Keessatti Ba'uu Dhabuu**

Akka Naannoo Oromiyaatti, Caffeen qaama mootummaa ol'aanaa<sup>125</sup> bu'uuraan aangoo seerota baasuu qabu dha. Seerotni Caffeen ba'an hojiirra ooluu isaaniis qaama ol'aantummaan to'atu dha. Qabatamaan garuu, Caffeen qaama dambii ykn qajeelfama akka baasuuf aangeffame hordofuun dambii ykn qajeelfama jedhame yeroon ba'aa adeemuu irratti to'annoos sirnaan akka hin gaggeessine ta'uu afgaaffiwwan gaggeeffamee<sup>126</sup> fi sakatta'a seerotaa tokko tokko armaan olitti kutaa **3.2.1.B** jalatti agarsiifne irraa kan hubatamu dha.<sup>127</sup>

### **3.3.7. Dhimmoota Labsiin Aangeffamuu Malan Qajeelfamaan Aangessuu**

Dhimmoota Labsiin Hojjettoota Mootummaa Lab. Lak 61/ 1994tiin uwvisa argatan keessaa tokko Mana Murtii Bulchiinsaa hundeessuu dha.<sup>128</sup> Kaayyoon hundeeffama Mana Murtii kanaas, ol'iyyannoowwan falmii hojjettoota mootummaatiin dhiyaatan ilaalee akka murteessuuf yommuu ta'u, dhimmootni manni murtichaa ilaalus labsicha kwt. 71 jalatti tarreeffamaniiru.<sup>129</sup> Akka labsii kanaatti, dhimmootni manni murtii

<sup>125</sup> Labsii Waajjira Caffee Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Hundeessuuf Bahe, Labsii Lak 191/2007 kwt 2 irratti hiikoo caafeef kenname ilaaluun ni danda'ama. “Caffee” jechuun akkaataa tumaa Heerichaa Keewwata 46 Keewwata Xiqqaa 1 jalatti tumameen kan dhaabbate Qama Seera Baasaa fi Abbaa Aangoo Ol'aanaa Mootummaa Naannoo Oromiyaati.

<sup>126</sup> Af-gaaffii Isaa Boruu, Olitti yaadannoo lak. 62<sup>ffa</sup>; Addisuu Fallaqaafi Abdii Kadiir, Olitti yaadannoo lak. 78<sup>ffa</sup>; Istaatiksii labsiwwan caafeen bahan meeqaaf dambii akka bahee fi hin baane illee bira gahuun rakkisaadha. Labsiin Caffee ammaa 207 irra gaheera; kanneen keessaa meeqaaf dambii bahe ykn hin baane kan jedhu mataa isaatiin rakkoo akka ta'e af-gaaffin Efereem, Daarikteera Daarektoreetii Kenna Deeggersa Ogummaa, Hojji Seera Tumu, fi Hordoffii fi To'annoos Caffee Oromiyaa waliin gaafa 07/05/2010 gaggeeffame ni agarsiisa.

<sup>127</sup> Seerota kanniin wayita to'annoos Caffeen dambiilee fi qajeelfamoota irratti taasisu xiinxallu (3.2.1.B) fakkeenyaaaf waan agarsiifneef, irra deddeebii hambisuuf jecha asitti osoo hin agarsiisiin bira darbameera.

<sup>128</sup> Labsiin Hojjettoota Mootummaa Naannoo Oromiyaa Lak. 61/1994, Kwt.70.

<sup>129</sup> Haaluma kanaan, Manni Murtichaa:

- 1) *Seeraan ala hojiirraa dhorkamuudhaan yookiin tajaajilli isaa addaan cituudhaan;*
- 2) *Adabni naamusaa cimaan waan irratti murtaa'eef;*
- 3) *Seeraan ala mindaan isaa yookiin kaffaltiin biroo kan jalaa qabame yookiin cite ta'uu isaan;*

bulchiinsaa ilaaluuf aangeffame hundi duguugamee tarreeffameera. Kun kan agarsiisu, manni murtii bulchiinsaa dhimmoota labsichaan tarreeffamaniin ala dhimma hojjetaa mootummaan walqabatee ka'u kan biroo ilaaluu hin danda'u jechuu dha. Haa ta'u malee, qajeelfamni *Job Evaluation and Grading* (JEG) lak.10/2009 hojjetaan mootummaa komii ol'iyyannoo ramaddii JEG irratti qabu gara mana murtii bulchiinsaatti dhiyeffachuu akka danda'u tumuun<sup>130</sup>, aangoo labsiin mana murtichaaf hin kennine kenneera. Qabatamaanis, manni murtii bulchiinsaa komiiwwan bu'uura qajeelfama JEG tiin aangeffame ofitti fudhatee murtii kennaa jira.<sup>131</sup>

### **3.3.8. Dhimmoota Qajeelfamaan Ba'uu Qaban Dambiin Baasuu**

Ejensiin Galmeessa Ragaalee Bu'uuraa Hawaasummaa Naannoo Oromiyaa Dambii Lakk 169/2006 tiin kan hundaa'e yoo ta'u; kaayyoon isaas hojiilee galmeessa ragaalee bu'uuraa hawaasummaatiin walqabatan hoogganuu dha.<sup>132</sup> Aangoo fi gahee hojii Ejensichaa keessaa tokko galmeen ragaalee bu'uuraa hawaasummaa naannicha keessatti haala barbaachisuun raawwatamuu fi *waraqaan ragaa kennamuu* isaa to'achuu dha. Dambichi waraqaan ragaa ragaalee bu'uura hawaasummaa akkamitti akka kennamuu fi kaffaltiin tajaajilichaa hangam akka ta'e hin tumne. Ejensichi boordiin kan bulu yoo ta'u; boordichis aangoo qajeelfama baasuu ni qaba.<sup>133</sup> Dambii kana raawwachiisuuq qajeelfama barbaachisu keessaa inni tokko hanga kaffalti tajaajila ragaalee bu'uura hawaasummaati. Fakkeenyaaaf, ragaa dhalootaa, kan du'aa, gaa'ela raawwachuu, hiikkaa raawwachuu fi kkf hangam akka ta'e murteessuun barbaachisaa dha. Haa ta'u malee, dhimmoota olitti tarreeffaman

4) *Miidhaa haala hojii isaan irra gaheen haala walqabateen mirgi isaa hir'achuu isaatiin hojjetaan mootumma komii qabu oliyyannoo inni dhiyeffatu ilaalee murteessuuf aango ni qabaata* (kwt. 71, Lab. Lak. 64/1996 ilaala)

<sup>130</sup>Qajeelfama Raawwii Ramaddii Hojjetoota Mootummaa Gitoota Hojii Mala Qabxiin Madaaluufi Sadarkeessuu Hojiiitiin Madaalamaniif Sadarkeeffaman Irratti Gaggeessuu Qophaa'e Lak.10/2009 kwt 32 fi 36 (3) walfaana yoo dubbifamu.

<sup>131</sup>Fakkeenyaaaf, dhimmoota falmii ramaddii JEG Lak. Galmee T-947/10; *Tigist Biyaaziniliny Waasee fi Waajjira Bulchiinsaa Fi Nageenya Godina Wallagga Bahaa fi* Galmee W-909/10; Warqituu Safaraa fi Abbaa Taayitaa Daandiiwwan Oromiyaa jidduutti gaggeeffame ilaaluun ni danda'ama.

<sup>132</sup> Dambii Ejensiin Galmeessa Ragaalee Bu'uuraa Hawaasummaa Naannoo Oromiyaa Hundeessuuf Bahe Lak 169/2006, Kwt 7 ilaala.

<sup>133</sup> Dambii Ejensiin Galmeessa Ragaalee Bu'uuraa Hawaasummaa Naannoo Oromiyaa Hundeessuuf Bahe Lak. 169/2006, Kwt 27.

kanaaf Kaffaltii Tajaajilaa Kenniinsa Waraqaa Ragaa Ragaalee Bu'uuraa Hawaasummaa murteessuuf dambiit bahe.<sup>134</sup> Dhimmi dambii kana keessatti teechifames dhimma qajeelfamaan tumamuu danda'u kan akka hanga kaffaltii tajaajila hawaasummaa murtessuu dha.

### **3.3.9. Dhimmoota Hunda Hammachiisuu/Diddiriirsuu Dhabuun Hojiirratti Rakkoo Uumuu**

Seerotni Magaalota Oromiyaatiin wal qabatanii yeroo ammaa hojiirra jiran, Labsii Magaalota Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Hundeessuuf Bahe, Lak. 195/2008 (kanaa booda *Labsii 195/2008* jedhamuu) fi Labsii kana kan fooyesse Labsii Lakk. 196/2008; akkasumas, dambii labsicha raawwachiisuuf bahe Dambii Magaalota Mootummaa Naannoo Oromiyaa Lakk. 186 /2008 (kana booda *Dambii 186/2008* jedhamu) dha. Seerota olitti caqasaman kanneen raawwachiisuuf qajeelfamootni adda addaas mana hojichaan bahanii jiru. Qaawi asitti mul'atu aangoo labsii keessatti teechifame dambiin diddiriirsee teechisuu dhabuu dha. Fakkeenyaaaf, Labsiin 195/2008 keewwata 12(1b) jalatti bulchiinsi magaalaa, aanaa magaalaa hundeessuu akka danda'u tumameera. Keewwatni 12(2) ammoo Bulchiinsa sadarkaa Magaalaaatti aanee caasaa Aanaa Magaalaa hundeessun kan danda'amu Magaalota sadarkaa Riijiyoo Pooliisi<sup>135</sup> fi Muummee keessatti qofa akka ta'e tuma. Labsiin 196/2008 tumaalee kanneen fooyessuun magaalaan sadarkaa Riijiyoo Pooliisi akka hin jirree fi jechi Aanaa Magaalaa Labsii 195/2008 keessatti ibsame haqamee Kutaa Magaalaa akka bakka bu'u tumeera.<sup>136</sup> Labsii 195/2008 kwt 34 jalatti aangoo fi hojii hoji-gaggeessa kutaa magaalaa tuma. Dambiin 186/2008 ammoo, waa'ee aangoo kutaa magaalaa homaa osoo hin jedhiin irra utaaluun aangoo ganda magaalaa tumeera. Dambichi kwt 22 (1) irratti aangoo fi hojiin Ganda magaalaa, aangoo fi hojii sadarkaa magaalaa yookiin kutaa magalaatiif kennae

<sup>134</sup> Dambii Kaffaltii Tajaajilaa Kenniinsa Waraqaa Ragaa Ragaalee Bu'uuraa Hawaasummaa Naannoo Oromiyaa Murteessuuf Bahe Lak. 188/2008, Kwt 5.

<sup>135</sup>Riijiyoo Poolisii jechuun akka labsii Magaalota Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Hundeessuf Bahe 195/2008 kwt.2 (14) jalatti hiikametti kallattiwwan adda addaatiin giddu gala misoomaa ta'uudhaan magaaloni naannawaa isaanii jiran akka guddatan kan gargaaran jechuu dha.

<sup>136</sup>Labsii Magaalota Mootummaa Naannoo Oromiyaa Irra Deebiidhaan Hundeessuuf Bahe Lak.195/2008 Fooyessuuf Bahe, Lak. 196/2008,Kwt 2(2), 2(9).

*qooddachuuun*<sup>137</sup> kan hojjatu ta'ee, dabalataan aangoo fi hojji inni hojjetus (a-j) tti tarreesseera. Dambii 186/2008 kwt 43 irratti aangoo qajeelfama baasuu Biirroo Industirii fi Misooma Magaalaa/yeroo ammaa Biirroo Misooma Magaalaa fi Manneeniif kenneera. Aangoo kutaa magaalaa ilaalchisee Biirichi qajeelfama baasuuf yoo jedhu dambii keessa waan hin jirreef, qabatamatti rakkoo uumeera.<sup>138</sup>

#### 4. YAADOTA GUDUNFAA FI FURMAATAA

Xiinxala waliigalaa gaggeeffame irraa ka'uun argannoowwan armaan gadii argamaniiru.

- ☞ Qophiin dambiilee fi qajeelfamootaa ija to'anno waliigalaatiin yoo ilaalamu, qaawwa seeraas ta'e kan raawwii ni qaba. Iddoo tokko tokkotti (fknf: qajeeltoo beeksisu) uwarsi seeraa hin jiru; hojimaatanis itti hojjetamaa hin jiru. Iddoo tokko tokkotti ammoo (qajeeltoo hirmaachisuu, fi maxxansuu) uwarsi seeraa jira. Hojiirra oolmaan isaa garuu, hanqina guddaa qaba.
- ☞ To'annoon qaamoleen mootummaa adda addaan, keessattuu Caffee fi Manneen Murtiin dambiilee fi qajeelfamoota irratti taasifamaa jiru hanqina bal'aa qaba.
- ☞ Qaama raawwachiiftuun sadarkaa wixineetti dambiilee irratti to'anno akka taasisu siri dandeessisu diriiree jiraachuun isaa akka gaariitti kan ilaalamu ta'us, qajeelfamoota ilaalchisee warreen adeemsa qophii dambiilee hordofuun ba'an yoo ta'e malee siri ittiin to'atamu diriiree hin jiru. Dambiilee ilaalchisees qabatamatti qaawwa isaan agarsiisaa jiran irraa ka'uun yoo ilaalamu, to'annoon jiru bu'a-qabeessa jechuun hin danda'amu.
- ☞ To'annoon dambiilee fi qajeelfamoota irratti taasifamu cimaa akka hin taane dhimmootni akka sababoota ijootti ilaalamian uwarsi seeraa gahaa

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<sup>137</sup>Dambichi silaa aangoo fi hojiiwwan kutaan magaalaa hojjetu tarreessuun isaan keessaa warra kamtu ganda magaalaf qoodamuu akka danda'an ibsee gaarii dha.

<sup>138</sup>Afgaaffii Jamaal Usmaan, Olitti yaadannoo lak. 70<sup>faa</sup>.

ta’ e jiraachuu dhabuu, bakka uwarsi seeraa jirutti ammoo hojiirra oolmaan laafaa ta’uu fi hubannoona gahaa ta’ e dhabamuun dha.

Kana irraa ka’uun yaadotni furmaataa armaan gadii akeekamaniiru:

- ✓ To’annoon waliigalaa fi qaamolee mootummaa adda addaan dambiilee fi qajeelfamoota irratti taasifamu bu’ a qabeessa taasisuuf Caffeen Oromiyaa seera bulchiinsaa qindaa’aa yoo baase gaarii dha. Seerri ba’u kun bu’uuraan:
  - a) Sirni kenninsa aangoo bakka bu’insaan dambiilee fi qajeelfamoota baasuu qabiyyee, kaayyoo, fi daangaan ifa akka ta’utti dhimmoota seerota kanniin baasuun irratti barbaachisu adda baasuun keewwata-keewwataan akka ta’utti osoo tumee gaarii dha.
  - b) Adeemsi qophii dambiilee fi qajeelfamootaa qajeeltoowwan beeksisu, uummata hirmaachisu, fi maxxansuu keessa darbuu akka qabu kan dirqisiisu ta’uu qaba.
  - c) Dambiileen hundi ragga’uun dura sadarkaa wixineetti Caffeef dhiyaachuun seera qabeessummaan isaanii akka to’atamu kan dirqisiisu ta’uu qaba.
  - d) Qajeelfamoonni, keessattuu warreen dantaa uummataa fi mootummaan kallattiin hidhata qaban (fakkeenyaaaf, qajeelfamootni bulchiinsa lafa magaalaa fi baadiyyaa, investimentii, taaksii fi gibira, faayinaansii mootummaa fi dhaabbilee misooma mootummaa) sadarkaa wixineetti Caffeef dhiyaachuun akkaataa aangoo bakka bu’insaan ba’uun isaanii akka to’atamuuf kan dirqisiisu ta’uu qaba. Kana bu’ a-qabeessa taasisuuf humna namaa Caffee baay’inaa fi qulqullina barbaadamuun guutuun barbaachisaa dha.
  - e) Caffeen Oromiyaas dambiilee fi qajeelfamoota sadarkaa wixineetti dhiyaataniif yeroo seeraan murtaa’e keessatti sakatta’ee duubdeebii barbaachisu qaama wixinicha ergeef kennuu qaba. Yeroo jedhame

keessatti erguu yoo baate, wixineen dhiyaate bahee hojiirra kan ooluu akka ta'uttis saxaxamuu qaba.

- ✓ Caffeen Oromiyaa dambiilee ykn qajeelfamoota hojiirra jiran seera ofii baasee jiruun (labsiin) wal simuu dhabuu isaanii yoo beeke qaama seericha baase dirqisiisuun sirreeffamni barbaachisaa akka ta'u gochuu qaba.
- ✓ Manneen murtiif falmiin dhiyaatu dambii ykn qajeelfama kan bu'uureffate yoo ta'e, tumaa dambichaa ykn qajeelfamichaa qofa irratti hundaa'uun dhimmicha murteessuu (akka amma bal'inaan mul'atu) osoo hin taane; dabalataan, seerota rogummaa qaban biroo (heeraa fi labsii) waliin walbira qabuun xiinxaluun gaarii ta'a. Haaluma kanan,
  - Heera waliin walitti bu'insi kan jiru yoo ta'e, karaa Gumii Calaltuu Heeraan gara Koomishinii Hiiktuu Heera Mootummaatti qajeelchuu;
  - Labsii Caffeen baase waliin walitti bu'insi kan jiru yoo ta'e, sodaa tokko malee ofumaaf hiikkoo kennuun akkuma haala isaatti dambicha ykn qajeelfamicha bu'aa yoo dhabsiise gaarii dha.
- ✓ Sekterooni dambiilee wixineessuun Biiroo Haqaa Oromiyaaf dhiyeessan akkaataa dambii lak.131/2003, kwt.15tiin qorannoo gahaa ta'e irratti hundaa'uun dhiyeessuun daran barbaachisaa dha. Biiroon Haqaa Oromiyaa fi Waajirri Pirezidaantiis qorannoong gaggeeffame akkaataa barbaadamuuun kan gaggeeffame ta'uu isaa mirkanoeffachuuf hordoffii cimaa yoo taasisan gaarii dha.
- ✓ Seekterooni mootummaa, keessattuu warreen sadarkaa Biirootti jiran caasaa ogeessa seeraa gahumsa qabu itti qacaratan diriirsuun gaarii dha; warreen caasaa akkasii qabanis dhimma wixinee seeraa irratti leenjii kennuun gahoomsaa adeemuun murteessaa dha.

## KENNIINSA KOROORAA FI DHIIFAMA SIRREEFFAMTOOTA SEERAANNAANNOO OROMIYAA: SEERAANFI HOJMAATA\*

*Geetaachoo Fayisaa\*\**  
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### ***ABSTRACT***

*This article focuses on examining practical and legal aspect of parole and pardon granting in oromia regional state. It is found that the assessment of the inmate in rehabilitation center takes place only when the candidate served his 2/3 of penalty. Also poor documentation of inmate profile and Wrong assessment of 2/3 penalty have been observed. The cause of wrong assessment roots in judgments not identifying when the penalty began to be served. Additionally Most of behavioral assessment by rehabilitation center lack individuality of the inmate. Under selection process sometimes all inmate given the same evaluation while some other time a single inmate got two different evaluation. The very objective of parole is to ensure the rehabilitation through looking after the inmate within community before serving the whole sentence while Our court simply sign the warranty as to release of the inmate without setting the condition to be observed after release. Regarding pardon, it is found that the board is not duly established and functioning in regular basis as described in the pardon proclamation. The crime designated as ineligible is not identified based on research. The organizations of zonal committee for pardon are not in accordance with the proclamation. The time frame, in which selection of candidate for pardon undertakes, unable the inmate to file their complain duly. Like parole also, inmates are released by pardon without condition to be observed after release. It is recommended that the rehabilitation center has to modernize the assessment and documentation system of inmate profile. Also courts have to give due attention for parole procedure in implementing rules in criminal code. The pardon board needs to be organized with all necessary staff so that function properly in regular basis. The pardon proclamation or the directive has to be revised and properly address issue after release.*

**Key words:** Courts Inmate Institution, Discretion, Pardon, Pardon Board, Parole

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\*Barruun kun qorannoo Inistiitiyuutiin Leenjii Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaa bara 2010 gaggessee ture irraa gabaabbatee kan dhiyaate dha.

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## 1. SEENSA

Sirna haqa yakkaa keessatti adabbii murteessuu fi raawwachiisuun haala qabatamaa hawwaasummaa, siyaasaa fi diinagdee irratti hundaa'a. Akka waliigalaatti adabbii murteessuu fi raawwachiisuu keessatti yaadamoota lamatu jira. Tokkoffaan yaadama *ritribuutivizimii* jedhamu yoo ta'u, namoota yakka raawwatan adabuu fi adabbii kanas raawwachiisuu irratti kan xiyyeefatu dha.<sup>1</sup> Kan lammataa immoo yaadama *yuutiliteriyazim* jedhamu dha. Innis, yakkamtoota adabuun bu'aa inni hawaasa bal'aaf argamsiisu irratti hundaa'uu qaba yaada jedhu kan bu'uureffatu dha.<sup>2</sup> Yaadamni inni lammataan kun kanneen yakka raawwatan adabuu caalaa haromsanii hawwaasatti makuu irratti xiyyeeffata. Haaromsa namoota yakka raawwatanii yookiin sirreeffamtootaa keessatti tarkaanfiiwwan yookiin adabbiwwan hidhaan alaa (non-custodial measures) baay'inaan hojiirra oolu. Tarkaanfiiwwan kanneen keessaa koroorrii (parole) fi dhiifamni (pardon) isaan ijoo dha. Koroorrii fi dhiifamni tarkaanfiiwwan hidhaan alaa murtiin adabbii erga kennamee booda hojiirra oolani dha.

Akka Itoophiyaattis ta'e akka Oromiyaatti koroorrii fi dhiifamni tarkaanfiiwwan sirna haqaa keessatti bal'inaan raawwatani dha. Koroorri bu'uura tumaalee seera yakkaa labsii lakk. 414/96 keessumattuu, keewwata 201-210'tti jiraniin qajeelfama. Dhiifamni immoo akka naannoo Oromiyaatti labsii lakk. 114/98 fi qajeelfamoota yeroo adda addaatti Boordii Dhiifamaan bahan bu'ureeffachuuun kennama. Akka federaalaatti labsiin 840/2008 raawwatiinsa qaba.

Haa ta'u malee kenniinsaa fi bulchiinsa korora fi dhiifamaa keessatti hanqinoota hedduutu jira. Sirreeffamaan korooraan gadhiifamuuf ulaagaan waliigalaa ilaalamu, yommuu adabbiin itti murtaa'ee raawwatamaa turetti hojii yookiin amala isaatiin fooyya'uu isaa kan agarsiise, miidhaa qaqqabsiiseef akkaataa manni murtii itti murteesseen yookiin miidhamtoota waliin araaramee beenyaa kanfaluu isaaf kan ragaa dhiyessee fi amallii fi haalli jirenyaa isaa gaarii ta'uu fi korooraan yoo gadi dhiifame bu'aa gaarii

<sup>1</sup> The Purpose of Criminal Punishment, [https://www.sagepub.com/sites/default/files/upm-binaries/5144\\_Banks\\_II\\_Proof\\_Chapter\\_5.pdf](https://www.sagepub.com/sites/default/files/upm-binaries/5144_Banks_II_Proof_Chapter_5.pdf) <Accessed on 11/30/2017>.

<sup>2</sup> Joycelyn M. Pollock, The Philosophy and History of Prisons (Texas State University–San Marcos, 2005), FF4-5.

ni argamsiisa jedhamee kan itti amanamu ta'uu akka qabu tumaa seera yakcaa keenya kwt 202(1) irraa ni hubatama. Haa ta'u malee sirreffamaan mana sirreessaa erga galeen booda akkaataa nama miidhame waliin walargee itti araaramu irratti haalli mijachuu dhabuun kenniinsa dhiifamaa fi koroora waliin kan walsimatu miti. Qaamoleen gaafffi koroora fi dhiifamaa dhaga'uun ajaja kennanis murtii kaayyoo barbaadame galmaan gahu kennuu hin danda'ani.

Manni sirreessaa sirreffamaan simatee hubannoo laachuu irraa eegalee, ragaa qabatamaa irratti hundaa'uun fooyya'iinsa amala sirreffamaa madaaluu fi loogii irraa bilisa ta'ee tajaajila koroora fi dhiifamaa kennuu irratti hanqinootni jiru.

Boordiin dhiifamaa bu'uura labsii lakk. 114/98'tiin gurmaa'ee haala idilee ta'een tajaajila barbaachisu kennaa hin jiru. Keessumattuu, rakkoon qulqullina tajaajila calallii fi kenniinsa koroora fi dhiifamaa keessatti akka mul'atu, sirreffamtoota korooraaf qopheessuu fi erga gadhiifaman booda hordofuu irratti hanqinni jira. Kara biraan sirreffamaan koroora fi dhiifamaan erga gadhiifameen booda hordoffiin gaggeeffamu waan hin jirref kaayyoon koroora fi dhiifamaa galma ga'uu hin dandeenye.

Kanaaf barruun kun hojiin kenniinsa koroora fi dhiifamaa haala kamiin raawwataa akka jiruu fi hanqinoota mul'atan addaa baasuu irratti xiyyeffata. Keessumattuu, hojiin sirreffamtoota koroora fi dhiifamaaf qopheessuu irratti hojjetamu maal fakkatu; akkaataa calallii fi kenniinsa koroora fi dhiifamaa, kenniinsa koroora fi dhiifamaa booda hojiin sirreffamaa hawaasatti makuu fi rawwii isaa hordofuu haala kamiin gaggeeffamaa akka jiruu fi hanqinoota mul'atan kan agarsiisuudha.

Hojimaataa fi hanqinoota bulchiinsa koroora fi dhiifamaatiin walqabatee akka naannoo Oromiyaatti mul'atu hubachuuf daataan bifaa afgaaffii, marii garee, sanadootaan (galmeewan) funaanaman seerota fi hogbarruuwan jiran faana xinxaalamaniiru. Bu'uura kanaan, afgaaffiin baay'inaan 149 ta'u, hoggantootaa fi ogeessota mana sirreessaa, mana murtii, biiroo fi waajjiraalee abbaa alangaa, boordii fi koree calallii dhiifamaa akkasumas, sirreffamtoota waliin taasifamee jira. Manneen sirreessaa adda addaa keessatti mariin garee 10 sirreffamtoota waliin gaggeeffameera. Mana murtii, mana sirreessaa fi biiroo haqaa (kana booda barreffama kana keessatti abbaa alangaa waliigalaa

jedhamee kan caqamu) irraa galmeen 168 ta'an ilaalamaniiru. Kana amalees, bargaaffiin 143 ogeessota mana murtii, biiroo fi waajjiraalee haqaa, mana sirreessaa fi sirreffamtoota irraa funaaname xinxaalamee jira. Daataan qoranichaaf oolan mala eddattoo kiyyeeffataa (purposive sampling)<sup>3</sup>tiin godinaalee Oromiyaa 10 fi aanota 14 irraa sassabame. Godinaalee fi aanoleen kunneenis: Godina Addaa Oromiyaa Naannawaa Finfinee (Buraayyuu), Arsii Lixaa (Aanaa Shashamannee, Dodolaa), Jimmaa (Jimma, Aggaaroo), Gujii (Adoolaa, Nageellee Booranaa), Shawa Kibba Lixaa (Waliso), Iluu Abbaa Booraa (Mattuu, Aallee ), Shawaa Lixaa (Aanaa Ambo), Wallaggaa Lixaa (Gimbii), Baalee (Aanaa Sinaanaa) fi Harargee Lixaa (Aanaa Habroo) ti.

Barreffamni kun kutaa saditti kan qoodame yoo ta'u, seensa kanatti aansuun kutaan lammaffaa hogbarruwwan waa'ee koroora fi dhiifamaa hubachiisan xinxala. Kutaan sadaffaa keessatti immoo daataan barreffamicha ilaachisee funaaname xiinxala. Kutaa isa dhuma fi atraffaa keessatti immoo yaada guduunfaa fi furmaataatu dhiyaata.

## **2. SAKATTA'A HOGBARRUWWAN KOROORAA FI DHIIFAMAA**

### **2.1. MAALUMMAA KOROORAA FI DHIIFAMAA**

Koroorii fi dhiifamni tarkaanfiiwwan hidhaan alaa murtiin booda hojiirra oolan keessaa kanneen beekamoo dha. Haaromsa sirreffamtootaa keessatti hawaasa hirmaachisuu fi namoonni yakka raawwatan miira itti-gaafatamummaa akka horatan jajjabeessuuf taarkaanfiiwwan yookiin adabbiwwan hidhaan alaa fayyadamuun dhimma xiyyeeffannoo argate ta'eera. Kanumaafis Gumiin Waliigalaa Dhaabbata Biyyoota Gamtoomanii (UN General Assembly) barbaachisummaa fi itti-fayyadama adabbiwwan hidhaan alaa irratti murtoo dabarsee jira.<sup>3</sup> Adabbiwwan hidhaan alaa murtii qaamni aangoo qabu, nama yakka raawwachuun shakkame, himatame yookiin itti murtaa'e haalduree fi dirqama hidhaatiin ala jiran akka raawwatu ittiin taasifamu dha. Adabbiwwan kunneen sadarkaawwan sirna bulchiinsa haqa yakkaa murtii duraa fi booda jiru keessatti hojiirraa ooluu danda'u.<sup>4</sup>

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<sup>3</sup> United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted by General Assembly, Resolution No. 45/110, 1990.

<sup>4</sup> Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), F8.

Tarkaanfiwwan akka hojii humnaa, adabbii daangessuu, miidhamaa fi yakkamaa walitti araarsuu, beenyaa kanfalchiisuu fi kanneen biroo akka fakkeenyatti kaasuun ni danda'ama.

## 2.2. SEENAA FI MAALUMMAA KOROORAA

Jechi koroora ‘parole’ jedhu jecha Faransaay ‘*Parole d'Honnuer*’ jedhu irraa akka dhufe ta’uu himama. Sirreffamaan mana sirreessaatii bahee hawaasa keessatti seeraa fi duudhaa hawaasaa kabajuun jiraachuuf kan itti waadaa galu jechuu dha.<sup>5</sup> Faransaay bara 1830’ootaa jalqabdee yaadrimee haaldureedhan bilisoomsuu (conditional liberty) jedhu fayyadamuun sirreffamtoota hawwaasatti makaa turte. Haal-dureen bilisoomsuun yakkamtootni to’annoo jalaa bahani bilisumma guutuu osoo hin qabaatiin to’annaan mana sirreessa jala haala ittiin turan kan agarsiisu dha.<sup>6</sup> Koroorri sagantaa haaroomsaa ta’ee yakkamaan adabbii itti murtaa’e keessaa hanga tokko mana sirreessa keessatti erga raawwateen booda haal-dureedhaan mana sirreessaatii bahee hordoffii fi deeggarsa waliin hawaasatti akka makamu sirna dandeessisu dha. Ogeessi *Neeseer* jedhamu jecha koroora jedhu yeroo ibsu akkaataa sirreffamaan adabbii manni murtii kenne hawaasa keessa turee itti raawwatu irratti waliigaltee dhaabbatni sirreessa fi sirreffamaan seeraa taasisanidha jechuun hiikeera.<sup>7</sup> Hiikkoowwan armaan olii irraa akka hubatamuu danda’u koroorri haala yakkamaan adabbii itti murtaa’e keessaa adabbii xiqqaa seeraan teechifame erga raawwateen booda haal-dureewan teechifaman kabajuun yeroo adabbii hafee hawaasa keessatti dabarsuuf waada seenuu dha.

Koroorri yaadamawwan adda addaa kanneen akka yaaddama waliigaltee (consent or contract theory), yaadama eegumsaa (custody theory) fi yaadama kennaa (privilege theory) irratti bu’ureeffata. Akka yaadama duraatti koroorri waliigaltee manni amala sirreessa sirreffamaa waliin raawwatu yommuu ta’u haal-duree yakkamaan hawaasa keessa turuun lammii seera kabaju akka ta’u haaloota biroo waliigaltee keessatti teechifaman kabajuuf dirqama seenu

<sup>5</sup> Raphael Tuhamyela, The Granting or Refusal of Parole in the Namibian Correctional Service (A Dissertation Submitted in Partial Fulfilment of the Requirements for the Degree of Bachelor of Laws (LLB) of the University of Namibia).

<sup>6</sup> Howard Abadinsky, Probation and Parole: Theory and Practice (7<sup>th</sup> ed.), F204.

<sup>7</sup> Francois Christiaan Marthinus Louw, The Parole Process from a South African Perspective, F14.

dha. Waliigaltee kanaan yakkamaan erga hidhaa gad-lakkifamee haalota kabajuuf waadaa seene yoo kabajuu baate deebi'ee mana hidhaa seenuu akka danda'u ni godhama.<sup>8</sup> Yaadamni lammafaan immoo yakkamaan mana sirreessaatii erga bahee booda hanga yeroo murtaa'ee hordoffiin irratti kan gaggeeffamu ta'uu agarsiisa. Sirreffamaan hawaasatti makamuun isaa qaamuma raawwii murtii adabbii waan ta'eef mirgoonni sirreffamichaa ammas daanga'uu itti fufu. Kana jechuun sirreffamaan korooraan bahe akka gariin hidhamaatti (quasi-prisoner) ilaalamu.<sup>9</sup> Akka yaadama sadaffatti, namni adabbiin yakkaa itti murtaa'e mana sirreessaa keessaa bahuu kan danda'u adabbi erga xumuree booda qofa ta'us, haala addaatiin osoo yeroon hin gahiin gad-lakkifamuuf fooyya'iinsa amalaa fiduu isaa qaama haaromsa isaa hordofu amansiisuun irraa eegama kan jedhu qaba.<sup>10</sup> Haaluma walfakkaatuun koroorri yaadama sirreffamtootni seeraa adeemsaan deeggarsii fi to'annoон dhiyeenyaa taafisamaafi hawaasa keessa tursiisuun, sirreffamtoota lammilee seera kabajan taasisuu fi haaromsa isaaniif gahee olaanaa qaba yaada jedhu kan bu'uureffatee dha.

Haaldureewwaan sirreffamaan korooraan gad-lakkifame akka kabaju barbaadamu akka haala isaatti dhiphachuu yookiin baldhachuu danda'us isaan bu'uuraa: seera kabajuu, dhugaattii fi baala sammuu hadoochan fayyadamuu irraa fagaachuu, miidhamtoota yakkaa waliin wal-quunamuu dhiisuu, hojji argachuu fi ogeessa hordoffii irratti taasisuun walitti dhufeenya jiru kabajuu fa'a dha.<sup>11</sup> Gama biraatiin, sirreffamaa yeroon adabbii isaa osoo hin xumuramiin gad-lakkisuun hordoffii taasisaa jirenya hawaasaa akka baratu gochuu fi hawaasa immoo gocha yakkaa irraa eeguf yaadameeti.<sup>12</sup>

Yaadamooni kunneen Seera yakkaa biyya keenyaa keessattis haala walfakkaatuun ibsamaniiru. Sirreffamaan korooraan gad-lakkifamuun dura adabbiit kennye keessaa harka lama raawwachuu fi fooyya'iinsa amalaa fiduu isaa dhaabbata haaromsaa amansiisuun irraa eegama.<sup>13</sup> Gama biraatiinis

<sup>8</sup> Howard Abadinsky, Olitti yaadannoo lak. 6<sup>ffaa</sup>.

<sup>9</sup> Akkuma 8<sup>ffaa</sup>.

<sup>10</sup> Akkuma 9<sup>ffaa</sup>.

<sup>11</sup> Francois Christiaan, Olitti yaadannoo Lak 7<sup>ffaa</sup>, F 204.

<sup>12</sup> Thamsanqa Elisha Nxumalo, Parole Supervision: A Penological Perspective (Submitted in Fulfilment of the Requirements for the Degree of Master of Arts, 1997), F30.

<sup>13</sup> Seera Yakkaa RDFI, Labsii Lak. 414/96, Kwt 202(3).

sirreeffaman erga korooraan gadi dhiifameen booda, hawaasa keessatti hordoffiin akka irratti taasifamu, akkasumas sochiin sirreeffamaa haala murtaa'een daangeffamuu akka danda'u ni akeeka. Kun immoo sirreeffamaan bilisummaa guutuu akka hin qabne beekee of-eeggannoon hawaasa keessa akka jiraatu taasisa.<sup>14</sup> Kana malees sirreeffamaan erga mana sirreessaa baheen booda haal-dureewwan teechifaman yoo kabajuu dhabe gara mana sirreessaatti deebi'ee adabbii isaa akka raawwatu tumamee jira.<sup>15</sup>

Itoophiyaatti seera yakkaa bara 1922 bahes ta'e seerota sanaan dura bahan keessatti xiyyeffannoo guddaa kan argate namoota yakka raawwatan adabuu waan tureef, haaromsa sirreeffamtootaaf iddo guddaa hin kennine.<sup>16</sup> Seenaa koroora seera yakkaa biyya keenyaa yommuu ilaallu yeroo jalqabaatiif seera yakkaa bara 1949 bahe keessatti barreeffamee argama. Kunis sirreeffamaan fooyya'iinsa amalaa fiduun isaa yommu itti amanamu, miidhaa geessiseef hanga danda'uun beenyaa yoo kanfalee fi amalli isaa hawaasa keessatti gaarii akka ta'e eeruu dhaabbatni sirreessu dhiyeessuun manni murtii sirreeffamaan akka gad-lakkifamu ajajuu akka danda'u ni teechisa.<sup>17</sup> Haaluma wal-fakkaatuun seera yakkaa bara 1996 bahe keessattis sirreeffamaan yeroon adabbii isaa osoo hin xumuramiin korooraan gad-lakkifamuu akka danda'u teechisee jira.<sup>18</sup> Labsiin kun yeroo xiqqaa sirreeffamaan hidhamee turuu qabu ifa gochuun, iyyatni koroora sirreeffamaanis dhiyaachuu akka danda'u teechisee jira.<sup>19</sup>

### **2.3.SEENAA FI MAALUMMAA DHIIFAMAA**

Aangoon dhiifama gochuu yeroo jalqabatiif kan ibsame dhaloota Kiristoos dura jaarraa 18ffa keessa seera Hamuraabii keessatti dha.<sup>20</sup> Dhiifama gochuun aangoo mootichaa akka ta'eefii, namoota yakka raawwatan adabbii irraa salphisuu yookiin murtiiwwan adabbii balleesummaan wal-qabatanii

<sup>14</sup>Seera Yakkaa RDFI, Kwt 198,199, 206.

<sup>15</sup> Seera Yakkaa RDFI, Kwt 200(1).

<sup>16</sup> The Development of Criminal Law of Ethiopia, toora intarneet <http://www.abyssinialaw.com> irraa kan ilaalame, F3.

<sup>17</sup> Seera Yakka Itoophiya Bara 1949 Bahe, Kwt 207.

<sup>18</sup> Seera Yakkaa Itoophiya Bara 1996 Bahe, Kwt 201.

<sup>19</sup> Seera Yakkaa Itoophiya Bara 1996 Bahe, Kwt 201.

<sup>20</sup> Jody c. Baumgartner and Mark H. Morris, Presidential Pardon Unbound:A Comparative Look at Presidential Pardon, P4

jiran akka hafan taasisuu aangoo dandeessisu dha. Dhiifamni gocha qaamni raawwachiiftun aangoo seeraan kennameef bu'uura godhachuun namoota yakka raawwatan adabbiin seerri teechise akka irratti hin raawwatamne yookiin akka irraa salphatu ittiin taasifamu dha. Dhiifamni kennaa mootummaan (pirezidaantiin) nama adabbiin itti murtaa'eef kennu malee dhimma akka mirgaatti gaafatamuu miti.<sup>21</sup> Adabbiin manni murtii seera qofa ilaaluun murteesse bu'aa hin barbaadamne yoo fidee fi adeemsa seera biraatiin furmaata argachuu hin dandeenye yoo ta'e, qaamni raawwachiistuu, keessumattuu Pirezidaantiin aangoo dhiifama gochuu seeraan kennameef fayyadamuun dogongora hanqina seeraatiin raawwatame sirreessuuf itti tajaajilama.<sup>22</sup>

Seenaa dhiifama seera biyya keenya yommuu ilaallu heera mootummaa bara 1923 bahe keessatti barreeffamee argama. Heericha kwt 16 jalatti mootiin biyyattii aangoo adabbiawan hir'isuu fi dhiifama gochuu akka qabaatu teechisee jira. Haaluma wal-fakkaatuun heera bara 1948 fooyya'ee bahe kwt 35 jalattis mootichi aangoo dhiifama gochuu akka qabaatu ibsa. Heera Rippablika Ummattoota Itoophiyaa bara 1979 bahe kwt 86 jalattis pirezidaantiin Ripaablikaa aangoo dhiifama gochuu akka qabaatu ni teechisa. Heera Dimokraatawaa Rippablika Federaalawaa Itoophiyaa bara 1987 bahe kwt 71 jalatti aangoon dhiifama gochuu kan pirezidaantii biyyattii akka ta'e teechisee jira. Heera mootummaa naannoo Oromiyaa keessattis pirezidaantiin bulchiinsa mootummaa Naannoo Oromiyaa sirreeffamtoota manneen sirreessaa naannoo keessa jiraniif dhiifama gochuu akka danda'u teechisee jira.<sup>23</sup> Haala addatiin heerri mootummaa RDFI fi mootummaa Naannoo Oromiyaa hanga ta'e aangoo dhiifama pirezidaantii daangeessuuf yaalee jira. Jecha biraatiin heeronni kunniin yakkoota dhiifamni irratti taasifamuu hin dandeenye teechisanii jiru.<sup>24</sup> Kana malees akka nannoo Oromiyaatti

<sup>21</sup> Solomon A.M. Ekwenze, Presidential Pardon and Prerogative of Mercy: A Necessary National Soothing Balm For Social Justice.

<sup>22</sup> Akkuma 21<sup>ffaa</sup>.

<sup>23</sup> Heera Mootummaa Naannoo Oromiyaa, Labsii Lak.49/94, Kwt 57(3).

<sup>24</sup> Heera Mootummaa RDFI, Kwt 28, Heera Mootummaa Naannoo Oromiyaa jalattis yakkoonni sanyii namaa balleessuu dhiifamni taasifamuuf akka hin dandeenye ibsamee jira.

qajeelfama calallii dhiifamaa keessatti yakkootni dhiifamni irratti hin taasifamne tarreeffamaniiru.<sup>25</sup>

Yadrimee dhiifamaa (pardon) fi baraarsaa (amnesty) adda baasuu irratti haanqinootni kan mul'atan waan ta'eef lamaan isaanii adda baasuun hubachuunis barbaachisaa dha. Baraarsi gocha mootummaan namoota yookiin garee yakka siyaasaa rawwataniif dhiifama itti taasisu dha.<sup>26</sup> Dhiifamni murtii adabbii booda kan taasifamu yoo ta'u, baraarsi garuu sadarkaa murtiin duratti taasifamuu danda'a. Seera yakkaa Itoophiyaa kwt 230 jalatti akkaataan kenniinsa baraarsaa ibsameera. Bu'aa balleessummaa irratti qaban ilaalchisee, baraarsi yakkichaa fi yoo adabbiin kenname, adabbichas guutummaatti kan haqu ta'a. Dhiifamni garuu, balleessummaa osoo hin taane, adabbii qofa kan hambisu dha. Labsiin dhiifamaa naannoo Oromiyaa dhifamaaf hiiikcaa hin kennine. Labsiin dhiifamaa Federaala, dhiifamni adabbii kenname gutummaan yookiin gar-tokkeen akka hin raawwatamne taasisuu yookiin haalli raawwii isaa akka salphatu kan godhu dha jechuun hiikee jira.<sup>27</sup>

## 2.4. KAAYYOO KOROORAA FI DHIIFAMAA

Sirreffamaa korooraan gadhiisuun hawaasatti makamee nagaan jiraachuu akka danda'u mirkaneessuufi. Imaammanni haqa yakkaa biyya keenyaatis kayyoowwan tarkaanfii hidhaan alaa sirreffamaa haaromsuun hawwasatti makuu, nagaan jiraachuu akka danda'uu fi nageenyi hawwaasaas akka eegamu dandeessisu akka ta'e ni ibsa.<sup>28</sup> Namootni yakka raawwatani mana sirreessa seenan carraan yeroon adabbii osoo hin xumuramiin korooraan bahuu jiraachuu yoo hubatan, fooyya'iinsa amalaa akka fidanii fi duudhaa hawaasa bal'aa akka kabajan kaka'uumsa waan ta'uuf nageenya hawwaasaa eegsisuu fi lammii gaarii horachuuf ni fayyada.<sup>29</sup> Gara biraan immoo, manneen

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<sup>25</sup> Fakkeenyaaaf, Qajeelfama Calallii Raawwii Dhiifama Sirreffamtoota Seera Oromiyaa lak..5/2009 kwt 16 jalatti namootni murtii du'atiin adabaman, yakka sanyii namaa balleessuun adabaman, namootni dhiifamaan erga bahanii booda yakka raawwatan, yakka dirqiin gudeeduu, butii, yakka malaamaltummaa fi godaansa seeraan alaa raawwatan dhiifama hin argatani.

<sup>26</sup> Blacks Law Dictionary, H.C 1992.

<sup>27</sup> Labsii Kenniinsaa fi Sirna Raawwii Dhiifamaa Mootummaa Federaala, Lab. Lak.840/2007, Kwt 2(1).

<sup>28</sup> Imaammata Haqa Yakkaa Itoophiyaa Bara 2003 Bahe, Kwt 5.3.

<sup>29</sup> Bronwyn Naylor and Johannes Schmidt, Do Prisoners Have a Right to Fairness before the Parole Board?,F1.

sirreessaan sirreeffamtootaan akka hin dhiphanne taasisuun baasiwwaan mootummaan haaroomsa sirreeffamaatiif baasu hir'isuufis ni gargaara.<sup>30</sup> Kaayyoo dhiifamaa keessaa inni guddaan, hojiirra oolmaan seera yakkaa bu'aa hin barbaadamne yommuu uumu rakkowwan mudatan sirreessuu dha. Dabalataan mootummaan nageenya hawaasa bal'aaf barbaachisaa yoo ta'e dhiifamatti fayyadama. Hojimaata sirna haqaa keessatti namni dogoggoraan murtiin adabbii yommuu itti murtaa'u, dhiifamni akka falaatti gargaara.<sup>31</sup> Kanaan wal-qabatee akka naannoo Oromiyattis namoonni raga sobaatiin kan itti murtaa'e ta'uun yoo mirkana'e akka dhiifamaan gad-lakkifamuu danda'an teechifamee jira.<sup>32</sup> Haalli kun hawaasni bal'aan sirna haqa biyyaa irratti amantaa akka hin dhabne taasiisuun akkasumas haqa jallate sirreessuuf akka furmaataatti kan tajaajilu dha.

Labsii dhiifamaa naannoo Oromiyaa irraa akka hubatamu, kaayyoon dhiifamaa sirreeffamtoota yakka dalaguu isaaniitti gaabbanii haarooman jirenya hawaasaatti makamanii lammii oomishaa akka ta'an taasisuun, fedhii hawaasa bal'aa, mootummaa fi sirreeffamtootaa eeguu dha.<sup>33</sup> Akkuma dhimma koroora sirreeffamtootni yeroon adabbii isaanii osoo hin gahiin carraa mana hidhaatii bahuu uuma waan ta'eef, sirreeffamtootni fooyya'iinsa amalaaf kaka'uumsa akka qabaatan ni taasisa. Kun immoo kaayyoo seerri dhiifamaa gama sirreeffamtootaan lammii oomisha akka ta'aniif qabu galmaan gahuu keessatti gahee ol'aana taphata.

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<sup>30</sup> Bara 1867 Ameerikaa Ohio keessattii yommuu lak.oofsi sirreefamaa baay'atu sirreeffamtoota biraatti iddoon akka gad-lak.ifamuuf jecha sirreefamtootni haal-dureen akka bahan ni taasifama ture. Haaluma wal-fakkaatuun bara 1898 Varjiinyaa keessattis seera sirreefamtootni adabbi hidhaa walak.aa ol-raawwatan akka boordiif iyyannoo dhiyeessanii gad-lak.ifamuu danda'an hayyamu hojii irra olchite. Haaluma wal-fakkaatuun naannoolee adda addaa Ameerika keessatti sirreeffamtoota korooraan gad-lak.isuun akka mala lak.oofsi sirreeffamtootaa itti too'atamuutti fayyadee jira.

<sup>31</sup> Solomon A.M. Ekwenze, Olitti yaadannoo lak.21, F4.

<sup>32</sup> Qajeelfama Calallii fi Raawwii Dhiifama Sirreefamtootaa Seeraa, Qaj. Lak.05/2009, Kwt 15(1).

<sup>33</sup> Imaammata Haqa Yakkaa Itoophiyaa, Olitti yaadannoo 28, Kwt 3.

## 2.5.QAJEELTOOWWAN RAAWWII KOROORAA FI DHIIFAMAA

Tarkaanfiwwan hidhaan alaa hojiirra oolchuu keessatti yaadotni bu'uuraa xiyyeffannoo argachuu qaban jiru. Qajeeltoowwan kunneenis waliigalteewwan idil-addunyaa keessumattuu, istaandaardiwwan Dhaabbanni Mootummoota Gamtooman raawwii tarkaanfilee hidhaan alaa (non-custodial measures) irratti baase irraa kan dhufani dha. Koroorrii fi dhiifamni gosoota tarkaanfiwwan hidhaan alaa keessaan kanneen ijoo waan ta'aniif qajeeltoowwan kunneen tarkaanfiwwan kanaafis ni oolu.

Jalqabarratti,adabbiin hidhaa filannoo isa dhumaat ta'uu qaba. Waliigalteewwan idil-addunyaa hedduun qaamoleen sirna haqaa rakkoo hidhaan qaaqqabsiisu hubachuun akkaataa seerri hayyamuun adabbi hidhaan alatiif dursa kennuu akka qaban ni akeku.<sup>34</sup> Dabalataan adabbiin hidhaan alaa loogii sanyumaa, bifa, saala, umurii, afaan, amantaa, ilaalcha siyaasaa fi kanneen biroo wal fakkaatan irratti osoo hin bu'uureffatiin hojiirra ooluu qaba.<sup>35</sup> Adabbiwwan kanneen hojiirra oolchuu keessatti murtii wal fakkaatu kennuu akkuma jirutti ta'ee, haalota bu'a-qabeessummaa adabbiwwan kanaaf fayyadan hubachuun hojiirra oolchuun barbaachisaa dha. Dhimmoonni ilaalamuu qabanis: akaakuu fi cimina yakka raawwatamee, seenaa fi eenyummaa nama yakka raawwatee, hawaasaaf eegumsa gochuu fi adabbi hidhaa haala hin malleen fayyadamuu dha.<sup>36</sup> Hojiirra oolmaan adabbi hidhaan alaa mirgoota namoomaa nama yakka raawwatee akka hin miine, dursee seeraan kan ibsamee fi kan murtaa'e (*principle of legality*) ta'uu qaba.

Qaamoleen tarkaanfiwwan kanneen hojiirra oolchuuf aangoon yookiin bakka bu'iinsi kennameefis aangoon isaanii ifatti ibsamuu qaba. Haaluma wal fakkaatuun adabbi hidhaan alaa hojiirraa oolchuuf namni yakka raawwate dhimma kana beekee, mirga isaa akka hin tuqne itti amanee fedhii isaan kan hirmaatu ta'uu qaba. Namni yakka raawwate adabbiin hidhaan alaa kun yoo kan irratti raawwatu ta'e maal akka argatuu fi maal akka dhabu dursee akka

<sup>34</sup> Fakkenyaaf, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), The UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); The "Kadoma Declaration on Community Service Orders in Africa (1997), "Kampala Declaration on Prison Conditions in Africa" (1996:2)

<sup>35</sup> The Tokyo Rules, Olitti yaadannoo 4.

<sup>36</sup> The Tokyo Rules, Olitti yaadannoo lak.34, Rule 2.3.

beeku gochuun barbaachisaadha. Hojiirra oolmaa adabiiwwan hidhaan alaa keessatti hirmaannaan hawwaasaa baay'ee murteessaa dha. Hojiirra oolmaan adabbii hidhaan alaa mirgaa fi bilisummaa sirreeffamaa akka hin miine giddu lixummaan qaamolee haqaa hanga danda'ametti gadi aanaa akka ta'uu fi nageenya hawaasaa qofa eegsisuu irratti kan xiyyeffate ta'uu qaba. Akka waliigalaatti sirreeffamaan tarkaanfii hidhaan alaa kanneen akka korooraan fi dhiifamaatiin akka haaromu yommuu murtaa'u qajeeltoowwan kanneen ilaalcha keessa galchuun raawwachiisuun baay'ee barbaachisa.

## **2.6.QAAMOLEE BULCHIINSA KOROORAA FI DHIIFAMAA KEESSATTI GAHEE QABAN**

Caaseffamni qaamolee tajaajila korooraan kennanii biyyaa biyaatti garaagarummaa qaba. Akka waliigalaatti tajaajilli Korooraan qaamolee hojii kanaaf qofaatti dhaabbatan, boordii yookiin komishinnii yookiin mana murtii (idilee yookiin addaa)'tiin hundeeffamaniin ta'a. Biyyoota hedduu keessatti tajaajilli korooraan qaama dhaabbata tajaajila tarkaanfiwwan hidhaan alaa raawwachiisuuf hundaa'uun (probation agencies) hojiirra oola. Biyyoota Awurooppaa hedduu keessatti qaamoleen tajaajila kana kennan mana sirreessaa waliin Ministeera Haqaa jalatti gurmaa'u. Naannolee biyya Jarman muraasa keessatti aangoon namoota adabbiin isaanii daangeeffame to'achuu kan abbaa alangaa yoo ta'u, hojiin sirreeffamtoota korooraan gadhiisuu fi to'achuu immoo kan mana murtiiti.<sup>37</sup> Biyyoota akka Ostiriyyaa fi mootummaa naannoo *Baden-Württemberg* biyya Jarman keessatti tajaajilli tarkaanfiwwan hidhaan alaa hojiirraa oolchuu dhaabbilee dhuunfaatiin raawwatama.<sup>38</sup>

Aangoon sirreeffamaa korooraan yookiin dhiifamaan gadi dhiisuu aangoo mana murtii moo aangoo qaama raawwachiiftuu ta'uu qaba dhimmi jedhu falmisiisaa dha.<sup>39</sup> Koroori kan mana murtiin kennamuu fi kan boordii korooraan kennamu jedhamee iddo lamatti quodamuu danda'a. Biyyoota sirna adabbii murtaa'e qaban keessatti yeroo fi haala kenninsa korooraan kan murteessu mana murtiiti. Biyyoota sirna adabbii hin murtoofneen fayyadaman keessatti immoo aangoo sirreeffamaa korooraan gadhiisuu kan qabu boordii

<sup>37</sup> Promoting Fair and Effective Criminal Justice on Probation: Models of Good Practice for Alternative to Prison (Penal Reform International, 2016), F17.

<sup>38</sup> Akkuma 37<sup>ffaa</sup>, F19.

<sup>39</sup> Nicola Padfield, Who to Release? Parole, Fairness and Criminal Justice, 2007, F44.

korooraa ti.<sup>40</sup> Qaamoleen lamaan kunneen kenniinsaa fi hordoffii korooraa keessatti gahee guddaa taphatu. Yeroo ammaa biyyoota lixaa hedduu biratti dhimma korooraa bulchuu keessatti aangoon bal'aa kan qabu boordii korooraa ti.

Dhiifama ilaachisee aangoon murteessummaa kan pirezidaantiiti. Kenniinsa dhiifamaa keessatti Ministeerri Haqaa yookiin Abbaan Alangaa muummichaa iyata dhiifamaa calaluun yaada murtoo dhiyeessuun pirezidaantii ni gargaaru.<sup>41</sup> Haa ta'u malee sirni bulchiinsa dhiifamaa hanga kan korooraa kan gabbate miti.

Akka biyya keenyatti yoo ilaalle, kenniinsa korooraa keessatti manni murtii gahee olaanaa taphata.<sup>42</sup> Manni murtii iyyannoo korooraa sirreffamaan yookiin mana amala sirreessaan dhiyaate qeebaluun ulaagaawwan seeraan taa'an faana madaalee sirreffamaan akka korooraan gadhiifamu ajaja kenna. Dabalataan manni murtii haal-duree sirreffamaan yommuu korooraan gadhiifamu akka eegu mana amala sirreessaa fi qaamolee dhimmi ilaaluun qophaa'es qoratee ni mirkaneessa. Sirreffamaan haal-duree teechifame kan hin kabajne yoo ta'e aangoon korooricha haquus mana murtiif kennameera.

Qaamni biraan kenniinsa korooraa keessatti aangoo qabu mana amala sirreessaati. Manni sirreessaa, sirreffamaan jalqaba yommuu gara isaanii dhufu haala sirreffamaa fi carraa inni fuulduratti korooraan gadhiifamuuf qabu irratti hubannoo kennuufii qaba. Turtii sirreffamaan mana sirreessaa keessatti godhuunis, fooyya'iinsa amalaa fi gochaa sirreffamaa sirnaan hodofuu, bu'uura seeraa fi qajeelfamaatiin korooratti akka fayyadamus gahee isaa bahachuutu irraa eegama.<sup>43</sup> Sirreffamtoota korooraan gadhiifamuu qabanis ulaagawwan teechifaman irratti hundaa'uun loogii malee mana murtiif dabarsuu qaba. Sirreffamaa korooraan gadhiifaman hordofuu fi to'achuu irratti qaamoleen siivikii gahee akka qaban tumaalee seera yakkaa

<sup>40</sup> The Design and Objectives of Parole System, New South Wales Law Reform Commission, 2013, F16.

<sup>41</sup> Fakkeenyaaaf, USAatti qaama Abbaan Alangaa muummicha biyyattii kan ta'e, 'U.S. Department of Justice, Office of the Pardon Attorney' jedhamu tajaajila kana kenna.

<sup>42</sup> Seera Yakkaa Itoophiyaa RDFI, Kwt 112,113 fi 201(210).

<sup>43</sup> Seera Yakkaa Itoophiyaa RDFI, Kwt 202 fi 203 walirratti yoo dubbisamu.

irraa hubachuun ni danda'ama.<sup>44</sup> Qaamoleen kunneen haalduree sirreffamaan korooraan gadhiifamu kabajuu qabu mana amala sirreessaa waliin ta'uun qopheessuu irraa eegalee sirreffamaa haala kanaan gadhiifame, gorsuu, qajeelchuu, deeggaruu fi hordofuun gahee isaanii bahachuu danda'u.

Akkaataan caaseffama qaamolee fi adeemsi kenniinsa dhiifamaa hanga kan koroora cimaa miti. Akkaataa caaseffama qaamolee kenniinsa dhiifamaa keessatti hirmaatanii fi gahee isaan taphatan ilaachisee moodeeloota bebbeekamoo lamatu jira.<sup>45</sup> Modeelli tokkoffaan '*Presidential Model*' kan jedhamu, aangoo fi murteessummaan pirezidaantii olaantummaan kan itti calaqqisu dha. Akka moodeela kanaatti aangoon dhiifama gochuu guutumaan guutuutti kan pirezidaantii waan ta'eef pirezdaantichi haala barbaadeen fayyadamu ni danda'a. Qaamoleen gaaffii dhiifamaa calalanis kanneen *birokiraasi* irratti hundaa'uun muudamani dha. Fakkeenyaaaf, akkaataa kenniinsa dhiifamaa Ameerikaa ilaaluun ni danda'ama. Moodeelli inni lammaffaan immoo '*Agency Model*' jedhama. Sirnootni moodeela kana fayyadaman aangoo dhiifama kennu keessatti daangaa aangoo pirezidaantii hir'isuuf; kenniinsi dhiifamaa hirmaanna qaamolee adda addaan akka ta'u; akkasumas, akkaataa kenniinsa dhiifamaa seera iftoomina qabuun akka qajeelfamu kanneen taasisanii dha. Moodeeluma kana jalattiyuu caaseffama gara garaatu mul'ata. Kanneen aangoo dhiifama kennu pirezidaantiin ala qaama biraaf (fakkeenyaaaf, boordii dhiifamaaf) kennan jiru. Kanneen biroo immoo aangoo dhiifama kennu pirezidaantiif dhiisuun, garuu iftoomina isaa eeguuf qaamoleen biroo akka hirmaatan godhu.

Akka biyya keenyaattis yoo ilaalee caaseffamni qaamolee kenniinsa dhiifamaa keessatti hirmaatanii fi kenniinsi dhiifamaa moodeela isa lammataa waliin kan walfakkaatu ta'uu ni hubatama. Heerri mootummaa yakkota dhiifama hin kennisiisne caqasee jira.<sup>46</sup> Dabalataan, kenniinsi dhiifamaa iftoomina akka qabaatu seerri qajeelchu akka jiraatus heerichi ni akeeka. Kenniinsa dhiifamaa irratti qoodinsa aangoo federaalaa fi naannoo yoo ilaallu, pirezidaantiin Itoophiyaa sirreffamtoota murtii manneen murtii federaalaatiin adabbiin

<sup>44</sup> Seera Yakkaa Itoophiyaa RDFI, Kwt.208.

<sup>45</sup> H. Abbie Erler, Executive Clemency or Bureaucratic Discretion? Two Models of the Pardon Process, (2007), 443.

<sup>46</sup> Heera Mootummaa RDFI, Kwt 28.

irratti darbeef dhiifama kan taasisan ta'uu heera mootummaa federaalaa kwt 71(7) fi labsii 840/2006 irraa ni hubatama. Murtii du'aa yookiin bu'uura heera mootummaa federaalaa kwt 78(2)'tiin bakka bu'iinsaan manneen murtii naannolee kennan irrattis aango dhiifama kennuu kan qabu pirezdaantii biyyoolessaati.

Gama biraatiin, pirezidaantiin bulchiinsa mootummaa naannoo Oromiyaa immoo bu'uura Heera Mootummaa Naannoo Oromiyaa kwt. 57(3) (i) fi labsii lak. 114/98'tiin sirreffamtoota naannichaaf dhiifama gochuuf aango qabu. Sirreffamtoota dhiifamni godhamuufii qabu qulqulleessuun yaada murtii pirezidaantiif kan dhiyeessu boordiin dhiifamaa ogeessota manneen hojii adda addaa irraa walitti babba'an irraa akka hundeffamus labsiileen lachuu ni ibsu.

Labsiin dhiifamaa naannoo Oromiyaa, labsiin lak. 114/98 boordiin gaaffii dhiifamaa qulqulleessuun yaada murtoo pirezidaantiif dhiyeessu hundeffamuu fi hojiilee hojjetu ibsuun ala, aangoon qajeelfama baasuu ifatti hin kennamneef. Qajeelfamoonni boordichi haga ammaa baasu tumaa labsichaa kwt. 6(4), *gaaffilee dhiifamaa haala saffisaa ta'een deebii kennuuf ulaagaa barbaachisaa ta'e baasee hojiirra oolcha* kan jedhu bu'ureeffateeti. Tumaan bira ifatti aango qajeelfama baasuu boordiif kenne hin jiru. Haa ta'u malee yeroo ammaa yakkootaa fi sirreffamtoota dhiifama argachuu qabanii fi hin qabne irratti boordiin qajeelfama baasaa jira. Boordichi dhiifama haalduree irratti hundaa'un kenname, sirreffamaan kan hin kabajne ta'uu yoo himanni irratti dhiyaate qoratee pirezidaantiidhaaf yaada murtii ni kenna. Qajeelfamni calallii fi keniinsa dhiifamaa, namoota dhiifamaan bahan koreen calallii godinaa fi aanaa gara poolisii fi caasaa bulchiinsaa fi nageenya gandaatiin akka hordofu ni ibsa.<sup>47</sup>

Akka waliigalaatti seerotni koroora fi dhiifama bulchuuf bahan (kan naannoos ta'e kan federaalaa) yommuu ilaalamani, xiyyeffannoonaan isaanii akkaataa calallii fi keniinsa irratti akka ta'e ni hubatama. Sirreffamaan bu'uura koroora fi dhiifamaan haalduree waliin hawaasatti makamu hordofuu

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<sup>47</sup> Qajeelfama Calallii, Qaj. Lak. 5/2008, Kwt 7 fi 9.

fi raawwachiisuu irratti sirni dandeessisu jiraachuunis dhimma xiyyeffannoo barbaadu dha.

## 2.7. ULAAGAA KENNIINSA KOROORAA FI DHIIFAMAA

Sirreffamaan adabbii itti murtaa'e keessaa  $\frac{2}{3}$ <sup>ffaa</sup> kan raaawwate ta'uu (adabbii hidhaa umurii guutuu yoo ta'e waggaa digdama kan raawwate ta'uu), yeroo raawwii adabbii sirreffamaan hojii fi amala isaatiin fooyya'iinsa kan agarsiise yoo ta'e, miidhaa geessiseef hanga danda'een beenyaa mana murtiin murtaa'e yookiin qaama miidhameen waliigalame yoo kanfalee fi amalli sirreffamaa korooraan gadhiisuun bu'aa argamsiisa tilmaama jedhu kan deeggaru yoo ta'e Korooraan gadhiifamuu danda'a. Ulaagaawwan kunneen wal faana guutamuu qabu. Sirreffamaa yakka amaleeffateef (persistent recidivist) koroorri akka hin kennamne tumichi ni ibsa.

Ulaagaan dhiifamaa hubachuuf heera mootummaa federaalaa fi naannoo Oromiyaa, labsii dhiifamaa federaalaa fi kan naannoo akkasumas qajeelfamoota boordiin dhiifamaa baasan ilaaluun barbaachisaa dha. Sirreffamtootni bu'uura Heera mootummaa kwt 28 jalatti ibsameen yakkoota suukanneessaa sanyii namaa irratti raawwataman raawwachuu itti murtaa'e dhiifamni hin taasifamuuf. Kanneen irraa kan hafe sirreffamtootni yakkoota biraa raawwatan akkaatuma aangoo seeraan ibsameen pirezidaantii naannoo yookiin biyyolessaatiin dhiifamni taasifamuufi danda'a.

Qajeelfamni boordii dhiifamaa akka naannoo Oromiyaatti yeroo adda addaatti tumamu ulaagaawwan dhiifamaa fi sirreffamtoota dhiifamni hin taasifameef ni ibsu. Fakkeenyaaaf qajeelfama dhiifamaa lakk.4/2008 keessatti sirreffamtoota seeraa dhiifamni ilaallatuu fi hin ilaallanne, akkasumas qabxii kenniinsa dhiifamaa keessatti ilaalamuu qaban jechuun tumaaleen adda addaa ulaagaan dhiifamaan wal qabatan teechifamiiru.<sup>48</sup> Haaluma kanaan sirreffamaan adabbii hidhaa umurii guutuu itti murtaa'e, waggaa 15, kan hidhaan baatii 6 hanga hidhaa cimaa waggaa 25 itti murtaa'e,  $\frac{1}{2}$ <sup>ffaa</sup> yoo raawwate dhiifama argachuu danda'a.<sup>49</sup> Qajeelfamichi sirreffamtoota ragaa sobaatiin adabaman, dubartoota daa'ima waliin mana sirreessaa galan, kanneen umuriin isaanii waggaa 55 ol ta'e, kanneen dhibee fayyuu hin

<sup>48</sup> Qajeelfama Dhiifamaa Naannoo Oromiyaa, Qaj. Lak.4/2008, Kwt 13-16.

<sup>49</sup> Qajeelfama Dhiifamaa Naannoo Oromiyaa, Qaj. Lak.4/2008, Kwt 14.

dandeenyen akka HIV'� qabamaniif dhiifamni haala addaatiin godhamuu fi malu ni teechisa.

Gara biraatiin, yakkoota ciccimoo fi xiyyeffannoo argatan kanneen akka shororkessummaa, yakkoota daa'immanii fi dubartoota irratti raawwataman, diinagdee fi bu'uura misoomaa irratti raawwataniin himatame sirreffamaan adabame dhiifama akka hin arganne ni ibsa. Qajeelfamichi adabbii hidhaa waliin adabbiin maallaqaa kan murtaa'e yoo ta'e sirreffamaan adabbii qarshii raawwatu malee dhiifama akka hin arganne tumee jira.<sup>50</sup>

## **2.8.SIRNA IYYANNOO FI KENNIINSAA KOROORAA FI DHIIFAMAA**

Iyyatni korooraan gad-lakkifamuu sirreffamaa dhuunfaan yookiin akkuma haala isaatti haalotni korooraan gad-lakkifamuuf barbaachisan guutaman jedhee yommuu amanutti dhaabbata amala sirreessuun mana murtiif dhiyaachuu danda'a.<sup>51</sup> Manni murtii erga iyyanni dhiyaateef haalota korooraan gad-lakkisuuf barbaachisan jedhamanii seera yakkaa kwt 202(1) jalatti tarreffaman guutamu isaanii mirkanoeffatee sirreffamaan yeroo yaaliin akka gad-lakkifamu ajaja. Sirreffamaan yommuu korooraan gad-lakkifamee hawaasa keessa turu qajeelfamni amala inni hordofuu qabu akkaataa tumaa seeraa waliigalaa waa'ee adabamaa murtii adabbii fi raawwiin adabbii irraa daangeffameen kan qajeelfamu ta'uu seerri yakkaa keenya ni ibsa.<sup>52</sup>

Haaluma kanaan manni murtii sirreffamaa yommuu korooraan gad-lakkisu qajeelfama amalaa, hordoffii fi eegumsa sirrii itti fakkaate ni murteessa. Qajeelfamni sirreffamaan gad-lakkifame akka hordofu mana murtichaan kennamu umurii, carraa yakkaaf saaxilamuu, haala maatii isaa, hojii ogummaa akkasumas haala jirenya hawaasummaa bu'uura kan godhate ta'uu qaba.<sup>53</sup> Qajeelfamni kennamu kunis sirreffamaan kun baruumsa ogummaa murtaa'e tokko akka baratu, iddo murtaa'e tokko akka turu, hojjatu yookiin akka jiraatu taasisuu, namoota muraasa akka wal hin quunnamne taasisuu,

<sup>50</sup> Qajeelfama Dhiifamaa Naannoo Oromiyaa, Qaj. Lak.4/2008, Kwt 14(3).

<sup>51</sup> Seera Yakkaa RDFI, Kwt.203(2).

<sup>52</sup> Seera Yakkaa RDFI, Kwt.205.

<sup>53</sup> Seera Yakkaa RDFI, Kwt.205(1).

iddoowwan muraasa irraa daangeessuu, galii hojii isaa irraa argatu guutummaan yookiin gar-tokkeen maatiif yookiin nama isa bulchuuf akka kenu akkasumas qajeelfamoota biroo bu'aa argamsiisuu danda'an kan biroo murteessuu ni danda'a.<sup>54</sup> Kenniinsa koroora keessatti miidhamaan yakkaa haalli itti hirmaatu seeraan ifatti hin tumamne.

Manni murtii yommuu sirreffamaan akka gad-lakkifamu ajaju yeroon yaalii teechifame yeroo hangamiif akka turu ni murteessa.<sup>55</sup> Yeroon yaali manni murtii murteessu kun haala kamiinu waggaa lamaa gad kan hin taaneefi waggaa shan kan hin caalle ta'a. Yeroon turtii kun sirreffama murtii umrii guutuuf yeroo waggaa shanii gad hin taaneefi waggaa torba kan hin caalle ta'a.<sup>56</sup>

Akkaataa iyyannoo fi kenniinsa dhiifamaa yoo ilaalle immoo, labsiin dhiifama naanno Oromiyaa lak.114/98 haala, yeroo fi qaama iyyanno dhiifamaa itti dhiyaatuu qabu teechisee jira. Dhiifamni kaka'uumsa qaamolee saditiin godhamuu danda'a. Kunis iyyanno nama murtiin adabbii irratti darbe yookiin bakka bu'aa isaa, kaka'uumsa pirezidaantii naannichaa fi gaaffii Biiroon Haqaa (yeroo ammaa Mana Hojii Abbaa Alangaa) dhiyeessuun ta'uu mala.<sup>57</sup>

Iyyanni dhiifamaa murtiin dhumaan kennamee yeroo kamittuu akkasumas erga iyyanni duraa kufaa ta'ee ji'a jahaan booda boordii dhiifamaa naannichaaf dhiyaachuu akka danda'u teechisee jira<sup>58</sup>. Murtii dhumaan jechuunis adeemsa oliyyanno kan fixate akka ta'e ni hubatama. Iyyatni dhiyaatus qabiyyee maal qabaachuu akka qabu labsicha keessatti tarreefamee jira. Kunis iyyatni dhiyaatu maqaa, hojii, yakkaa raawwachuu wagga shaniin dura teessoo isaa, yakka ittiin himatame, adabbii, haala raawwii, mana murtii adabbii murteesse, lakkofsa galmee, yakka sanaan dura itti adabame yoo jiraate, mana sirreessa keessatti argamu, sababa dhiifamni itti taasifamuuf, ragaaleen kana deeggaran yoo jiraate yookiin iddooyatti argamu, namoota sadi firooma dhiigaafi gaa'ilaa hin qabne kan dhiifama deeggaran sababa isaanii waliin, idaa mootummaa qabaachuu fi dhiisuu isaa guutee dhiyaachuu qaba<sup>59</sup>.

<sup>54</sup> Seera Yakkaa RDFI, Kwt.198

<sup>55</sup> Seera Yakkaa RDFI, Kwt.204

<sup>56</sup> Seera Yakkaa RDFI, Kwt.204

<sup>57</sup> Labsii Kenniinsa Dhiifamaa Naanno Oromiyaa lak.114/98, Kwt.12 fi 13

<sup>58</sup> Labsii Kenniinsa Dhiifamaa Naanno Oromiyaa lak.114/98, Kwt.15

<sup>59</sup> Labsii Kenniinsa Dhiifamaa Naanno Oromiyaa lak.114/98, Kwt.14

Dabalataanis iyyatni dhiifamaa gama Biirroo Haqaatiin (yeroo ammaa Mana Hojii Abbaa Alangaa) dhiyaachuu akka danda'uu fi garagalchi iyyannaas nama gafatameef akka dhaqqabuu qabu dha.<sup>60</sup> Iyyata dhiyaate akka barbaachisummaa isaatti Boordichi gal mee Mana Murtii, Waajjira Haqaa akkasumas namoota adda addaa irraa qulqulleessuun yaada murtii pirezidaantii naannoo Oromiyaatiif dhiyeessuun akka hayyamamu ni taasisa.<sup>61</sup> Tumaa seeraa armaan olitti ibsamu irraa akka hubatamu sirreeffamaan yommuu dhiifama gaafatu gaaffii isaa ragaadhaan akkasumas sababaan deeggaree dhiyeessuu akka qabu dha. Boordiin dhiifamaas iyyannoo fi ragaa dhiyaate akkasumas, ragaa fi qaama barbaachisaa ta'e qorachuun yaada murtoo waliin pirezidaantif dhiyeessa. Pirezidaantiinis ragaa fi yaada murtoo boordichaan dhiyaateef, akkasumas barbaachisaa yoo ta'e qaama kamirraayyuu yaada fudhachuun gaaffii dhiifamaa dhiyaate raggaasisuu yookiin kufaa gochuu danda'a. Labsichi ifatti kaa'uu baatus murtiin dhiifama irratti pirezidaantiin kennamu kan dhumaan ta'uu muuxannoo jiru irraa ni hubatama.<sup>62</sup>

## **2.9.HORDOFFII SIRREEFFAMTOOTA KOROORAA FI DHIIFAMAAN GADHIIFAMANII**

Namoota yakka raawwatanii adabbiin daangeffameef, korooraan yookiin dhiifamaan gadhiifaman hordofuuf maloonni lama hojiirra oolu. Adeemsi tokkoffaan '*casework approach*' kan jedhamuu fi nama yeroo yaaliin gadhiifame hojjettoota hawwaasummaa ramaduun gorsaa fi deeggarsa barbaachisaa ta'e argataa yeroo yaalii isaa milkaa'inaan akka xumuru taasisuu dha. Adeemsi inni lammataa immoo '*surviliance approach*' kan jedhamu namni yeroo yaaliitiin gadhiifame waadaa galee fi haal-dureewwan teechifaman kabajuu fi dhiisuu isaa dhoksaan hordofamee qaama ajaja yeroo yaalii kenneef gabaafama.<sup>63</sup>

Seera yakkaa keenya yommuu ilaallu, hordoffiin sirreeffamtoota korooraan gadhiifamanii adeemsota kanneen lachuu kan of keessaa qabu ta'uu ni

<sup>60</sup> Labsii Kenniinsa Dhiifamaa Naannoo Oromiyaa lak.114/98, Kwt.13(2)

<sup>61</sup> Labsii Kenniinsa Dhiifamaa Naannoo Oromiyaa lak.114/98, Kwt 6

<sup>62</sup> Pardon-information-and-instructions, USA Department of Justice, <https://www.justice.gov/pardon> <Accessed on 12/4/2018>.

<sup>63</sup> Richard P. Seiter, Supervision Styles in Probation and Parole: An Analysis of Activities, (Marshal University, 2003), F4.

hubatama.<sup>64</sup> Manni murtii qajeelfama sirreffamaan kabajuu qabu erga murteesseen booda namni sirreffamaa korooraan gad-lakkifame bulchu, ogeessi amala sirreessaayookiin ogeessi eegumsa waliigalaa irratti ramadamee (poolisii) jirenya sirreffamaa hawaasa keessatti akka hordofu ni ajaja.<sup>65</sup> Qamni sirreffamaa akka hordofuuf ajajame walitti dhufeenyuu umuudhaan manaa fi iddo hojii isaatti daawwachuuun akkasumas yeroo boqonnaa isaatti hordoffii irratti taasisuun sirreffamaan kun hanga danda'ameen haala jirenya isaa akka fooyyefatu ni gargaara. Kun adeemsa *casework* jedhamuun kan walfakkaatu dha. Hordoffiin taasifamu akka barbaachisummaa isaatti dhoksaan gaggeefamuu kan danda'u yommu ta'u qaamni hordofu yoo xiqqate komishini amala sirreessaaf ji'a sadiin yookiin yeroo barbaachisaa ta'etti gabaasa akka dhiyeessu ni taasifama.<sup>66</sup> Adeemsi kun immoo adeemsa *survillance*'n walfakkata. Tajaajjilli hordoffi koroora dhaabbilee siivikii yookiin dhaabbilee mootummaa yookiin dhuunfaa hirmaachisuun raawwatamuu akka danda'us tumaan seera yakkaa ni agarsiisa.<sup>67</sup> Akkaataa hordoffi sirreffamtoota dhiifaman gadhiifamanii irratti kallattiin seeraan kaa'ame hin jiru.

Yeroo yaalii milkaa'inaan xumuruu fi dhabuun bu'aa hordofsiisu yoo ilaalle, sirreffamaan korooraan gadhiifame yeroo yaalii keessa qajeelfama kennameef hordofuun amala gaarii agarsiisee yoo xumure, to'annoo fi adabbii jalaa guutummaan bilisa ta'a.<sup>68</sup> Haa ta'u malee, qajeelfamoota taa'an yoo cabse manni murtii yeroo yaalii dheeressuu danda'a. Darbees, yeroon yaalii bu'aa akka hin qabaanne yoo mirkaneesse ajajni korooraan gad-lakkifamuu kenname haqame sirreffamaan gara mana sirreessatti akka deebi'u ni taasisa.<sup>69</sup>

Dhiifama ilaachisees, haal-durreewwan teechifaman kabajuu dhabuun dhiifama kenname ni haqsiisa. Dabalataanis namoonnii dhiifama dogongorsuun argatan himanni irratti dhiyaatee boordiin qoratee yaada murtii pirezidaantif dhiyeessuun murtee argata.<sup>70</sup>

<sup>64</sup> Seera Yakkaa RDFI, Kwt 199(1).

<sup>65</sup> Seera Yakkaa RDFI, Kwt.199 fi Kwt.208 wal-faana dubbisuun

<sup>66</sup> Seera Yakkaa RDFI, Kwt.199.

<sup>67</sup> Seera Yakkaa RDFI, Kwt.210

<sup>68</sup> Seera Yakkaa RDFI, Kwt.206(3).

<sup>69</sup> Seera Yakkaa RDFI, Kwt.206 fi Kwt.200 wal-faana dubbisuun.

<sup>70</sup> Seera Yakkaa RDFI, Kwt.6(3).

### **3. XIINXALA DAATAA**

Itti aansuun dhimmoota xiyyeffannoo barruu kanaa ta'an irratti daataa bifa af-gaaffii, bar-gaaffii, gal mee fi marii gareetiin funaanaman kan itti xinxaalaman ta'a. Kutaa kana keessatti calalliin koroora fi dhiifamaa haala kamiin gaggeefamaa akka jiru; manni murtii gaaffii koroora dhiyaatu haala kamiin simatee ajaja akka kenuu; akkaataan kenniinsa dhiifamaa maal akka fakkaatu; hordoffiin sirreffamtoota dhiifamaa fi korooraan bahanii maal akka fakkaatuu fi hanqinoota kanneen keessatti mul'atan daataa argaman waliin kan xinxaalamu ta'a.

#### **3.1.SIRREEFFAMAA KOROORAA FI DHIIFAMAAF QOPHEESSUU IRRATTI HAALA QABATAMAA JIRU**

##### **3.1.1. Simanna fi Hubannoo Uumuu**

Sirreffamaan adabbiin itti murtaa'ee mana sirreessaa yommuu galu, turtii isaa keessatti fooyya'iinsa amalaan yoo agarsiise yeroon adabbii isaa osoo hin dhumiin dursee gadhiifamuu akka danda'u manni sirreessaa hubachiisuu akka qabu seerri yakkaa ni ibsa.<sup>71</sup> Kunis sirreffamtootni hubannoo fi abdii qabaatanii akka of-qopheessaniif fayyada. Hojjirra oolmaan tumaa kanaa manneen sirreessaa biratti maal akka fakkaatu hubachuuf hirmaatotni afgaaffiin godhameef hubannoo uumuu irratti hanqinni guddaan akka hin jirre agarsiisa.<sup>72</sup> Bargaaffii sirreffamtoota seeraa waliin gaggeefameen hirmaattotni 85.3% ta'an haala koroora fi dhiifamaan bahuun itti danda'amu irratti hubannoona ni kennama yommuu jedhan 14.4% kan ta'an immoo hubannoona nuuf uumamee hin jiru jechuun deebisanii jiru. Hojiin hubannoo uumuu fooyya'aa akka ta'e yaada afgaaffii fi bargaaffii kanarraa hubatama.

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<sup>71</sup> Seera Yakkaa RDFI, Kwt. 203.

<sup>72</sup> Afgaaffii Waasihuun Taakkalaasirreffamaa seeraa mana sirreessaa Godina Gujii waliin gaafa guyya 22/05/10; Ob. Nugusee Xaahir sirreffamaa seeraa mana sirreessaa Godina Harargee lixaa waliin gaafa guyyaa 01/05/10; marii garee sirreffamtoota seeraa Mana sirreessaa Godina Harargee lixaa waliin gaafa guyyaa 01/05/10 taasifame.

### 3.1.2. Madaallii Fooyya'iinsa Amalaan Sirreeffamaa

Sirreeffamaan yakka raawwate irraa baratee, amalli isaa fooyya'uu isaa haala iftoomina qabuun gamaggamaa deemuun kenniinsa koroora fi dhiifamaatiif baay'ee barbaachisaa dha. Gama kanaan hojimaatni manneen sirressaa maal akka fakkaatu madaaluuf daataa funaaname irraa fooyya'iinsi amala sirreeffamaa haala saayinsawaa fi idilaa'aa ta'een madaalamaa akka hin jirre hubatameera.

Ogeessonni mana sirreessaa baay'een fooyy'iinsa amala sirreeffamaa yeroo yeroon hordofaa deemuun humna namaa fi baajata manni sirreessaa qabu faana ulfaataa waan ta'eef, qabxiin sirreeffamaa yeroodhuma sirreeffamaan korooraan bahu tilmaamaan kan guutamu akka ta'e ibsu.<sup>73</sup> Qabxiin kennamu ragaa irratti hundaa'ee akka hin taanes ni ibsu.<sup>74</sup> Akkuma armaan olitti ibsame galmeewwan sirreeffamtoota sakatta'aman irraa qabxiwwan madaallii sirreeffamaaf kennaman tilmaamaan akka ta'e hubachuun ni danda'ama. Fakkeenyaaaf sirreeffamtoota mana sirreessaa keessa jiran maraaf qabxii walfakkaataa kennuu<sup>75</sup>, iddoowwan tokko tokko irratti immoo qabxii gosa lama kennuu ni jira.<sup>76</sup> Galmeewwan manneen sirreessa muraasa sakatta'aman keessatti qabxii madaallii duuchumaan dhibbeentaa hammanaa argate jechuun qofa ibsuunis ni mul'ata. Kanaaf, qabxii madaallii kenname irraa bu'uura maaliin akka kenname waanti ibsu hin jiru.<sup>77</sup> Yeroo tokko tokko immoo

<sup>73</sup> Yaadataa Gonfaa fi Tafarraa Fallaqa, Ogeessota Mana Sirreessaa Godina Sh/Lixaa waliin afgaaffii 04/5/2010 gaggeeffame. Inspk. Olaanaa Damee Fufaa, Saj. Araarsaa Hirphasaa, Saj. Abduraazaq Yaasiin, G/Insp. Garruu Abeebee ogeessota amana sirreessa Go/Sh/Ki/Lixaa waliin gaafa 16/5/2010 taasifame.

<sup>74</sup> Afgaaffi Saj. Araarsaa Hirphasaa, Saj. Abduraazaq Yaasiin, G/Insp. Garruu Abeebee ogeessota amana sirreessa Go/Sh/Ki/Lixaa waliin gaafa 16/5/2010 taasifame.

<sup>75</sup> Fakkeenyaaaf, lak.. galme MMA Adoolaa 17814 lak.. xal Ams/480/2010, lak.. galme MMA 17639 Adoolaa xal.lak. Ams/502/2010, lak.. galme MMA Adoolaa 16397, xal.lak. Ams/449/2009 Mana Sirreessaa Aanaa Adoolaa irraa guutamee dhiyaate.

<sup>76</sup> Fakkeenyaaaf, unkaa xala.lak 18/775/2007 gaafa guyyaa 27/05/07 (Lak. Galmee mana murtii Aanaa Liban 10241) mana sirreessa Go/Gujii irraa mana murtii Aanaa Libaniif dhiyaateen qabxiilee madallii tokkoon tokkoon guutamanii sirreefaman ida'ama 90% akka argatee yommuuu ibsu fuula itti aanee jiru fi koreen madaalli irratti mallatteessani jiran irratti sirreefamaan qabxii madallii waliigalaa 80% akka argate ibsa. Haaluma wal fakkaatuun xala.lak. 18/710/07 mana sirreessa Go/Gujii irraa barreefame (Lak.. Galmee mana murtii Aanaa Liban 10275); Lak.. Galme MMO Go/Gujii 12794.

<sup>77</sup> Galmee yakkaa aanaa waadaraa Lak.. Galmee 10871 ta'e irratti Mana Sirreessaa Godina Gujii xal.lak. Am/SI/18/453/2010 ta'een, lak.. galmee MMA Adoolaa 17814 fi xal.lak. mana sirreessaa Aanaa Adoolaa Ams/480/2010, lak.. galmee MMA Adoolaa 17639 fi xal.lak.

‘sirreeffamaan amalli isaa fooyya’ee jira, hojii misoomaa irratti hirmaatee fi yakka raawwatetti gaabbe’ bifa jedhu qofaan sirreeffamaan korooraan akka bahu yommuu itti gaafatmus ni jira.<sup>78</sup>

Fooyya’iinsa sirreeffamaa gamaaggamuun kan barbaachiseef, sirreeffamaan hammeenyummaa qabu korooraan hawwaasatti makamee irra deebiin yakka akka hin raawwanneefi dha. Muuxannoo gama kanaan jiru yoo ilaalle, sirreeffamaa korooraan gadhiisuun dura carraa sirreeffamaan yeroo korooraan milkaa’uu danda’u yookiin yakka biraa raawwachuuf qabu irratti gamaaggamni (risk assessment) ni gaggeeffama. Mallii fi adeemsi gamaaggamni kun itti gaggeefamu yeroo gara yerootti fooyya’aa kan dhufe yoo ta’u yeroo ammaa moodeelli ‘*risk, need responsibility model*’ jedhamu irra deebiin yakka raawwachuuhir’isuu irratti bu’aa gaarii fideen biyyootni hedduun dhimma itti bahaa jiru.<sup>79</sup> Malli gamaaggamaa kun kutaa sadii, ‘*risk*’, ‘*need*’ fi ‘*responsity*’ jedhaman addaa baasuun kan dalagau ta’aa. Kutaan ‘*Risk*’ carraa sirreeffamaan irra deebiin yakka raawwatuuf qabu yoo ta’u, kunis wantoota dhaabbataa ta’an (kan akka umurii, yeroo fi gosa yakka raawwatee, galmee yakkaa qabaachuu fi dhiisuu fi kkf) fi waantoota jijiiramuu danda’aniin (kan akka ilaalcha hawwaasummaaf qabu, haala hojii fi kkf) fa’iin madaalamu. Fedhii (‘need’) immoo dhimmoota sirreeffamaatti danqaa ta’uun yakka akka raawwatuuf kakaasani dha. ‘*Responsity’n* immoo tattaaffiin haaromsa sirreeffamaa haala dandeettii fi beekumsa sirreeffamaa ta’uu akka qabu ibsa.<sup>80</sup> Kanaaf, kenniinsa korooraa keessatti dhimmoonni ilaalamu, yakka sirreeffamichi raawwate, umurii isaa yommuu mana sirreessaa seenu, duraan hidhamee beekuu, baduu, sadarka maatii isaa, namoota sirreeffamaatti hirkatanii jiraatan, haala hojii isaa fi kkf dha.

Kana irraa kan hubatamu madaallii yookiin gamaaggamni amma manneen sirreessaa Oromiyaatti gaggeeffamaa jiru haala saayinsawaa fi sirnaawaa ta’een gaggeeffamaa akka hin jirre ni hubatama.

mana sirreessaa Aanaa Adoolaa Ams502/2010, lak..galmee MMA Adoolaa 16397 fi xal.lak. mana sirreessaa Aanaa Adoolaa Ams/449/2009,

<sup>78</sup>Xalayaa mana sirreessaa GAONF lak.AdHISSS/223/08/10, Mana sirreessaa GAONF xal. lak.. AdHISSS/1863/08/2010, Mana sirreessaa GAONF xal.lak.. AdHISSS /129/08/2010,

<sup>79</sup> Jan Looman & Jeffrey Abracen, International Journal of Behavioral Consultation And Therapy (2013), Vol. 8, No. 3-4, P30.

<sup>80</sup> Nathan James, Risk and Needs Assessment in the Criminal Justice System, Congressional Research Service, October 13, 2015, F6.

### **3.2. SIRNA IYYANNOO FI CALALLII KOROORAA FI DHIIFAMAA**

#### **3.2.1. Iyyannoo Dhiyeessuu**

Sirreeffamtootni iyyannoo korooraa fi dhiifamaa qaama aangoo qabuuf dhiyeeffachuu walqabatee hanqinootni akka mul'atan hubatameera. Sirreeffamtootni mana sirreessa manaa murtii iyyannoonaan korooraa itti dhiyaatu irraa fagaatanii jiran qaamni iyyannoo isaanii mana murtiitti dhiyeessu waan hin jirref rakkataa akka jiran hirmaattooni ni ibsu.<sup>81</sup> Mana murtii dhimma korooraa keessummeessu irrattis hubannoo fi hojimaata adda addaatu jira. Godinaalee hedduutti dhimmi korooraa mana murtii adabbii dabarsetti dhiyaatee furmaata argataa jira. Godina muraasa keessatti immoo dhimmi korooraa manuma murtii dhiyeenya qabutti dhiyaatee ilaalamu. Fakkeenyaaaf, Godina Wallaggaa Lixaatti dhimmi korooraa mana murtii aanaa Gimbiitti dhiyaatee ilaalamu.<sup>82</sup> Adeemsi kun sababa fageenyaatiin sirreeffamtootni gaaffii korooraa dhiyeeffachuu keessatti rakkoo isaan mudatu kan hiiku ta'us, manni murtii ragaa sirreeffamaa guutuu osoo hin argatiin ajaja akka kenu taasisee jira.

Calallii dhiifamaan walqabatee yeroon calallii dhiifamaa gaggeefamu baay'ee gabaabbachuu irraa kan ka'e adeemsa labsii dhiifamaa keessa jiru hordofuuf rakkisaa ta'uu ogeessonni ni ibsu.<sup>83</sup> Dabalataanis iyyannoo dhuunfaan dhiyaatuun wal-qabatee deebiin itti kennamaa kan hin jirre ta'uu sirreeffamtootni ni dubbatu.<sup>84</sup> Gama biraatiin immoo iyyannoowwan dhiifamaa iddoowwan itti dhiyaachuu qaban beekuu dhabuun waajjira pirezidaantiitti yeroon ergaman ni jira. Kun rakkoo waajjirri boordii hunda'uu dhabuun irraa kan ka'ee dha.<sup>85</sup>

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<sup>81</sup> Afgaaffii Ob. Yaadataa Gonfaa ogeessa Mana sirreessa Godina Sh/Lixaa, Ob. Tafarraa Fallaqaa ogeessa Mana sirreessa Godina Sh/Lixaa.

<sup>82</sup> Afgaaffii Wubituu Beeggii, Giraany Margaa A/seeraa Mana murtii Aanaa Gimbi waliin gaafa 8/5/2010 taasifame.

<sup>83</sup> Afgaaffii Wuddinash I/G Wajjira Haqaa GAONF, Ob. Zarihuun I/G Waajjira Haqaa Go/Guji waliin taasifame.

<sup>84</sup> Marii garee sirreeffamtoota seeraa Go/Har/Lixaa Waliin gaafa guyyaa 01/05/10 taasifame.

<sup>85</sup> Ob. Addisu Laggeras, Waajjira Pirezidaantii Mootummaa Nannoo Oromiyaa waliin gaafa guyyaa 14/07/10 taasifame.

### **3.3.CALALLII FI KENNIINSA KAROORAA FI DHIIFAMA**

Itti aansinee calallii fi kenniinsi korooraa fi dhiifamaa haala kamiin gaggeeffamaa jira kan jedhuu fi hanqinootni mul'atan maal faadha kan jedhu haa ilaallu.

#### **3.3.1. Calallii fi Kenniinsa Korooraa**

Ulaagaleen calallii korooraa iftoomina qabaachuu adda baasuuf hirmaatotni qorannoo hubannoo isaanii akka ibsan bargaaffiin dhiyaatee ture. Abbootiin seeraa fi ogeessonni mana sreessaa hedduun ulaagaan kenniinsa korooraa ifa ta'uu ibsaniiru.<sup>86</sup> Bu'aan bargaaffii kun iftoomina seeraa fi hubannoo ogeessotaa irratti hanqinni guddaan akka hin jirre agarsiisa. Haa ta'u malee dhimmoonni ogeessonni hubannoo adda addaa fi hojimaata wal hin fakkaanne irratti hordofan akka jiran afgaaffiin hubatameera. Fakkeenyaaaf, sirreffamtootni yakkamaa irra deeddebii ta'anii fi kanneen adabbii hidhaa faana adabbiin maallaqaa itti murtaa'eef koroori ni kennama moo hin kennamu dhimma jedhu irratti hubannoonis ta'e hojimaanni jiru garaagarummaa ni qaba.<sup>87</sup> Manneen sirreessaa hedduun namoota kanaan dura yakka raawwataniii mana sirreessaa turaniif koroora akka hin kennamne yoo ibsan, muraasa biratti immoo sirreffamtootni deddeebi'oon koroora akka argatan ogeessooni ni dubbatu.<sup>88</sup>

Kenniinsa korooraa keessatti tumaalee jiran kanneen sirnaan hojiirra ooluu fi dhabuu adda baasuuf daataa saassabamerra hanqinoota heedduun jiraachuu hubatameera. Rakkooleen kunneen mana sirreessaa calallii korooraa raawwataniii fi manneen murtii koroora kennan biratti sadarkaa sadarkaan kanneen jirani dha. Yommuu calalliin raawwatamu manneen sirreessaa keessatti 2/3<sup>ffa</sup> adabbii raawwachuu sirreffamaa sirnaan adda baasuu

<sup>86</sup> Ogeessota mana sirreessa keessa 92.3% ulaagaleen korooraa iftoomina qaba jedhu, sirreffamtoota keessaa immoo 85.7% iftoomina qabaachuu ibsu, Abbooti seeraa bargaaffi guutan keessaa 81% ulaagaa korooraa irratti hubannoo akka qaban yoo ibsan kanneen hafan immoo hubannoo gahaa akka hin qabne agarsiisa.

<sup>87</sup> Afgaaffii Insp.Ayyaanaa Baqqalaa Ogeessa Mana sirreessaa Go/Jimaa waliin afgaaffii gaafa 24/5/2010 ; Saj. Zallaqaa Fiqramaariyaam, Ogeessa Mana sirreessaa Aanaa Aallee waliin gaafa 24/5/2010; I/A/Kom. Geetaachoo G/goorgis, Hoogganaa Mana Sirreessaa Go/Sh/Ki/Lixaa waliin gaafa 16/5/2010 taasifame.

<sup>88</sup> Afgaaffii Insp.Ayyaanaa Baqqalaa Ogeessa Mana sirreessaa Go/Jimaa waliin afgaaffii gaafa 24/5/2010 taasifame.

dhabuuun ni jira.<sup>89</sup> Fakkeenyaaaf, sirreffamaan yakka hanna cimaa raawwateen gaafa 26/05/2009 murtiin hidhaa salphaa ji'a 6tiin adabame. Gaafa 2/7/2009 immoo korooraan gadhiifame. Adabbiin yoom irraa jalqabee akka raawwatu murtii irratti hin ibsamne. Ragaan turtii poolisii hin dhiyaanne.<sup>90</sup> Murtii armaan olii irraa akka hubatamu sirreffamaan korooraan yoo kan gad-lakkifamu ta'e dirqamatti kan hidhamu baatii 4 dha. Garuu sirreffamaan erga murtiin kenname baatii 1 fi guyyaa 6 qofa hidhamee kan bahe. Ragaan iddo turtii bira bakka ibsamee hin jirretti 2/3<sup>ffaa</sup> adabbii raawwatee jira haalli itti jedhamee mana sirreessaan itti calalame iftoomina kan qabuu miti. Manni murtiis koroora kana kennuun dura ragaalee dhiyaatan sirnaan hin sakattaane.

Rakkoon bira calallii fi keniinsa korooraatiin wal-qabatee jiru inni bira ulaagalee teechifaman mara wal-biratti ilaalu dhabuu dha. Ogeessotnni af-gaaffiin waliin taasifame akka dubbatanitti ulaagaa koroora seera yakkaa kwt.202(1) fi dampii ittiin bulmaata sirreffamtoota nannoo Oromiyaa keessatti ibsaman keessaa ulaagaan midhamaa beenyaa kanfaluu yookiin araaramuu jedhu hojiirra akka hin oolchine ifatti dubbatu.<sup>91</sup> Kunis sirni kana raawwachuuf diriirfame dhabamuu irraa kan ka'eedha. Manneen sirreessa muraasa biratti sirreffamaa fi miidhamtootni yakkaa akka araraaraman gochuuf yaalamee jira. Fakkeenyaaaf, Godina Shawaa Lixaatti 'Bokkuu Cittuu' irraa sirreffamaan sirna araaraa irratti akka hirmaatu xalayaan gaafatamee manni sirreessas sirreffamaa sagantaa araaraa irratti akka hirmaatuuf haala

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<sup>89</sup> Fakkeenyaaaf Galmee lak..10241 himatamaa Muhammad Ahmadiuur gaafa guyyaa 12/03/07 adabbii baatii 4 akka adabamu manni murtii Aanaa Liban murteesee Manni sirreessa Godina Gujii iyyata uunkaa gaafa guyyaa 27/05/07 guutameen sirreffamaan adabbii 2/3<sup>ffaa</sup> gaafa guyyaa 28/05/07 xumura jechuun dhiyeessee sirreffamaan yeroo turtii iddo bira akka hin qabne iyyata keessatti caqasee jira; mana sirreessa keessattis guyyoota saddeetama akka hidhaman caqasee jira. Gaafa itti murtaa'ee irraa yommuu herreegamu sirreffaman korooraan 2/3<sup>ffaa</sup> adabbii (baatii 2 guyyoota 20 ) xumuree kan bahuu qabu gaafa guyyaa 02/06/07.

<sup>90</sup> Dhimma Naashaa A/Gisaa vs A/Alangaa L.G MMO 37223 Go/Jimmaa.

<sup>91</sup> Afqaaffi Kom. Andualam Xilahuun I/Gaafatamaa mana sirreessa Go/Har/Lixaa waliin gaafa guyyaa 01/05/2010 taasifame.

mijeessuun hubatamee jira.<sup>92</sup> Manni sirreessaa tattaaffii walfakkaataa taasisanii sababba hanqina humna nama fi loojistikiitiin addaan kutanis jiru<sup>93</sup>.

Shallaggii raawwii adabbii 2/3<sup>ffaa</sup> irratti hanqinni akka jiru, af-gaafii ogeessotaa<sup>94</sup> fi ragaalee argaman irraa hubatameera. Manni murtii yommuu murtii adabbii kenu, guyyaa harki isaa qabamee jechuun ala guyyaan addaan bahee hin ibsamu. Kun immoo mataa isaatiin yeroo koroori gahee sirreffamtootni turtii waajjira poolisii akka dhiyeessaniif dirqamu. Ragaan turtii akka dhiyaatu gaafatamu immoo gama tokkoon sirreffamtoota dhamaatiif akka saaxilu gama biraatiin immoo yeroon turtii dhugummaa hin qabne akka dhiyaatu godhee jira.<sup>95</sup> Fakkeenyaaaf, dhimma A/Alangaa fi Nagaash Dhaabaa Jilchaa jidduu turee fi L.G 12761'n MMO Go/Sh/Lixaatti ilaalamien sirreffamaan yakka ajjeechaa dagannoo raawwachuun gaafa 09/04/2010 adabbiin hidhaa salphaa ji'a 8 itti murtaa'e. Sirreffamaan mana sirreessaa seenee torban lama booda gaafa 24/4/2010 kororaa gadhiifamee jira. Ragaawwaan gal mee keessa jiranii fi dhiyaatan irraa akka hubatamutti sirreffamaan yakkicha gaafa guyyaa 07/06/2009 raawwate. Haa ta'u malee, ragaan Waajjira Poolisii Ada'aa Bargaa irraa kenname sirreffamaan yakkicha raawwachuun shakkamee gaafa 18/4/2009 hanga 14/09/2009 waajjiricha akka ture ibsee mana sirreessaa Aanaa Ejereef barreesse. Manni sirreessichaas kanuma bu'ureeffachuu sirreffamaaf iyyanno gaafatee MMO sirreffamaan akka hidhaa irraa hiikamu ajajee jira.<sup>96</sup> Gal mee kanarraa

<sup>92</sup> Fakkeenyaaaf, Xalayaa gaafa 02/08/2008 Bokkuu cittuu irraa mana sirreessaa godina shawa lixaaf barrefffame, Afgaaffii Kom. Takluu Lataa Hooggana Mana Sirreessaa Godina Sh/Lixa.

<sup>93</sup> Afgaaffii Insp. Ayyaanaa Baqqalaa Ogeessa Mana sirreessaa Go/Jimaa waliin afgaaffii gaafa 24/5/2010 taasifame.

<sup>94</sup> Afgaaffii kom. Zarihuun Baqqalaa, Ab/Ad Hojji Sirreessa Sirrefamtootaa Mana Sirreessaa Godina Shawaa Lixa. G/Insp. Garruu Abeebee ogeessa amana sirreessa Go/Sh/Ki/Lixa, Insp. Ayyaanaa Baqqalaa Ogeessa Mana sirreessaa Go/Jimaa waliin afgaaffii gaafa 24/5/2010, Saj. Maaruuf Diltaataa, ogeessa Mana Amala sirreessaa Aanaa Gommaa, Insp. Xilahuun Indashaaw Mana sirreessaa Go/I/A/Booraa, Saj. Yergaalam Mitikkuu hogganaa Mana sirreessaa Aanaa Aallee.

<sup>95</sup> Afgaaffii kom. Zarihuun Baqqalaa, Ab/Ad Hojji Sirreessa Sirrefamtootaa Mana Sirreessaa Godina Shawaa Lixa

G/Insp. Garruu Abeebee ogeessa amana sirreessa Go/Sh/Ki/Lixa, Insp. Ayyaanaa Baqqalaa Ogeessa Mana sirreessaa Go/Jimaa waliin afgaaffii gaafa 24/5/2010, Saj. Maaruuf Diltaataa, ogeessa Mana Amala sirreessaa Aanaa Gommaa, Insp. Xilahuun Indashaaw Mana sirreessaa Go/I/A/Booraa, Saj. Yergaalam Mitikkuu hogganaa Mana sirreessaa Aanaa Aallee, Ob. Sisaay Mul'ataa A/seeraa MMO Go/Guji.

<sup>96</sup> Dhimma Nagaash Dhaabaa Jilchaa fi A/Alangaa Go/Sh/Lixa Lak. Gal mee MMO 12761

akkuma hubatamu hanqina raawwatameen sirreeffamaan murtii hidhaa baatii 8 itti murtaa'e keessaa torban lama qofa akka raawwatu godhamuu isaati.

Gama biraatiin manneen murtii biratti akka hanqina guddaatti kan mul'atu shallaggii fooyya'iinsa amala sirreeffamaa ilaalchisee ragaa mana sirreessaan dhiyaatu irratti gaaffii tokko malee iyyata dhiyaate mirkaneessuu dha.<sup>97</sup> Kanaan wal-qabatee galmeewwan ilaalaman irraa akka hubatamu qabxiin sirreeffamtoota maraaf guutamu wal-fakkaataa ta'e yeroo manni murtiis itti mirkaneessu ni mul'ata.<sup>98</sup> Yeroo tokko tokko immoo qabxiin garagaraa gosa lama kennamee manni murtii osoo hin qulqulleesiin yommuu itti murteessu ni jira.<sup>99</sup> Manneen murtii adabbii 2/3<sup>ffa</sup>a yommuu shallagan sirnaan shallaguu dhabuu, ragaalee mana sirreessaa irraa dhiyaatan dhugummaa isaanii osoo hin qulqulleessini ajaja kenuun ni mul'ata.<sup>100</sup> Manneen murtii gaaffii koroora

<sup>97</sup> Afgaaffii Ob. Mallasaa Abrahaam A/seeraa fi gaggeessaa garee yakkaa MMO Godina Baalee waliin gaafa guyyaa 29/05/10,Ob. Midhksaa Magarsaa A/s MMO Godina Baalee waliin gaafa guyyaa 29/05/10,Ob. Mokonnn Raggaasaa Pireezidaantii MMO Godina Baalee waliin gaafa guyyaa 29/05/10 ,Ob. Dassalany Galatoo A/seeraa MMA sinaanaa waliin gaafa guyyaa 29/05/10 taasifame

<sup>98</sup> Lak. galmee MMA Adoolaa 17814 lak. xal Ams/480/2010, lak. galmee MMA 17639 xal.lak. Ams/502/2010 , lak..galmee MMA 16397 xal.lak. Ams/449/2009 mana sirreessaa Aanaa Adoolaa irraa guutamee dhiyaatee sirreeffamtoota hundaafuu qabxii madaallii 80%, iyyanoowwan MMO Go/I/A/Booraa qabxiwwan sirrefamaaf guutamee dhiiyatu hedduun isaa 85%, MMA Walisoo immoo hedduun isaanii qabxii madaallii 75% fakkeenyaf (L.G 33215 Abdii Mulunaa, MMA Walisoo- guyyaan murtiin raawwatamuu eegaluyaa harki isaa qabame jechuun ibsamee jira). Qabxiin haaromsaa 75%. Guyyaa harki isaa qabamee kaasee jechuun kan murtaa'an. G.L 33181 Gabbisa Nagaash Vs A/Alangaa MMA Walisoo. Qabxiin haaromsaa 75%. L.G 42354 Abbabaa Kumalaa vs A/Alangaan qabxii fooyya'iinsaa 75%).

<sup>99</sup> Xalayaa lak. 18/775/2007 gaafa guyyaa 27/05/07 (Lak.. Galmee mana murtii Aanaa Liiban 10241) mana sirreessaa Go/Gujii irraa mana murtii Aanaa Libaniif dhiyaateen qabxiile madallii tokkoon tokkoon guutamanii sirreeffamaan ida'ama 90% akka argate yommuu ibsu fuula itti aanee jiru fi koreen madaalli irratti mallatteessanii jiran irratti sirreeffamaan qabxii madallii waliigalaa 80% akka argate ibsa. Haaluma wal fakkaatuun xal.lak. 18/710/07 mana sirreessa Go/Gujii irraa barreffame (Lak.. Galmee mana murtii Aanaa Liban 10275). Lak.. Galme MMO Go/Gujii 12794.

<sup>100</sup> Fakkeenyaf, dhimmaa L.G 37223 MMO Go/Jimmaa, Naashaa A/Gissaa keessatti sirreeffamaan yakka hanna cimaa raawwateen gaafa 26/05/2009 murtiin hidhaa salphaa Ji'a 6tiin adabame. Gaafa 2/7/2009 immoo korooraan gadhiifame, A/Alangaa V. Shamsuu A/Maccaa fi L.G 22579 irratti, MMA Gommaa himatamaan gocha tokkoon yakka lama, qabeenya namaa faayidaa dhuunfaa isaaf oolchuu fi qabeenya balleessuu raawwachuuun himannoo irratti dhiyaate balleessaadha jechuun, gaafa 26/9/2008 yakka duraaf hidhaa ji'a 3, yakka lammaataaf hidhaa ji'a afur itti murteessee jira. Manni murtichaa adabbiin hidhaa inni lammaffaa kan raawwatu gaafa himatamichi adabbii isa duraa raawwatee fixe irraa eegalee akka ta'u gaafa 29/9/2008 ajaja kenneera. Gaafa 17/12/2008 adabbii isa lammaaffaa korooraan gadhiifame. Adabbiin galmee L.G 22581 irratti murtaa'e hin raawwanne.

dhiyaate irratti ajaja yommuu kennan sirreffamaan qaaman akka dhiyaatu gochuun haal-dureen hin teechisan.<sup>101</sup> Dhimma koroora xiyyeffannoon akka hin ilaalles galmee koroora irraa ni hubatama.<sup>102</sup>

### **3.3.2. Calallii fi Kenniinsa Dhiifamaa**

Calallii fi kenniinsa dhiifamaa ilaachisee, hanqinoota jiran haguuggiin seeraa gahaan dhabamuu, qaamoleen seerota kanneen raawwachiisan sirnaan gurmaa'uu dhabuu fi seerotuma jiraniyyuu sirnaan hojiirra ooluu dhabuutu mul'ata.

Kenniinsa murtii dhiifamaa keessatti hawwaasaa fi miidhamtoota hirmaachisuun kaayyoo dhiifamaa galmaan ga'uuf ni fayyada. Haa ta'u malee labsiin dhiifamaa naanoo Oromiyaa lakk.114/98 akkaataa hawwaasnii fi miidhamtootni kenniinsa dhiifamaa keessatti hirmaatan irratti tumaan teechise hin jiru.

Boordiin dhiifamaa yakkoota yookiin sirreffamtoota dhiifama argachuu hin qabne jechuun aangoo qajeelfama baasuu fi sirreffamtoota gidduutti garaagarummaa uumuu hin qabu yaadni jedhu bal'inaan dhaga'ama. Aangoon dhiifama gochuu kan pirezidaantiiti. Yakkoonni pirezidaantiin dhiifama gochuu hin dandeenye yakkoota suukanneessaa sanyii namaa irratti raawwataman jedhamuun heera mootummaa kwt.28 jalatti kanneen ibsamani dha. Pirezidaantiin naannoo immoo akkuma labsii 114/98 fi labsii dhiifamaa federaalaa 840/2008 irraa hubatamu yakkoota aangoo federaalaa ta'anii fi murtii du'aa irratti dhiifama kennuu akka hin dandeenye ni hubatama. Gama kanaan labsiin lakk.114/98, dambii fi qajeelfama labsicha raawwachiisuuf

<sup>101</sup> Afgaaffii Darajjee Faanta A/seeraa MMO Godina Harargee Lixaa waliin gaafa guyyaa 01/05/10 Abdii Sufiyaan sirrefamaa mana sirreessa Godina Harargee Lixaa irraa korooraan bara 2009 bahe waliin gaafa guyyaa 02/05/10,Ob. Aliyyii Kadiir Abbaa seeraa MMO Godina Harargee Lixaa waliin gaafa guyyaa 02/05/10 Buzunah Guutamaa pirezidaantii MM Magala Burrayyuu waliin gaafa guyyaa 07/05/10, Baayisaa Sorsaa A/seeraa MM Magala Burrayyuu waliin gaafa guyyaa 07/05/10, Dajanee Iddechaa A/seeraa Mana murtii Aanaaa Adaamii tulluu waliin gaafa guyyaa 09/05/10 taasifame

<sup>102</sup> Fakkeenyaaaf, iyyannoo koroora manni sirreessa Go/I/A/Booraa sirreffamtuu Obsinee Taarikuutiif dhiyesse ilaachisee MMO Go/I/A/Booraa ajaja L.G 26671 gaafa 23/5/2010 kennee ilaaluun ni danda'ama. Galmicha irratti A/seeraa osoo hin moggafaminii fi hin mallatteessin ajajani sirrefamtuun Mana sirreessaati haa gadhiifamtu jedhu kennamee jira. Galmeen iyyannoo koroora, Gannatii Moknonon L.G27185 MMO Go/I/A/Booraa gaafa 23/5/2010 Taakkalaa Mallasaa Vs A/Alangaa G.L 13194 MMA Walisoo, Yaadasaa Morodaa vs A/Alangaa, L.G 33006 MMA Walisoo).

barbaachisan akka baasu qaamni aangesse hin jiru. Labsichi dhimmoota dhiifamaan walqabatan ilaalcissee qoratee yaada murtii pirezidaantiif kan dhiyeessu, boordiin dhiifamaa akka hundaa'u kaa'a. Boordichi gaaffileen dhiifamaa haala ariifachiisa ta'een deebii akka argatan ulaagaa barbaachisu qoratee hojiirra akka oolchu aangeffamee jira. Yakkoota dhiifama kennisiisanii fi hin kennisiisne ulaagaa kaa'anii adda baasuun wal qabatee hojimaata adda addaatu jira.

Fakkeenyaaaf, Heerri USA akka biyooleessaattti aangoo dhiifama gochuu (dhimma aangooraa buqqisuu /empeachment/ ala) pirezdaantichaaf kennee jira. Abbaan alangaa waliigalatti kutaan dhimma dhiifamaa hordofu akkaataa gaaffiin dhiifamaa itti calalamuun pirezidaantiif dhiyaatu irratti qajeelfama dhiifamaa keessatti ulaagaa adda addaa ni kaa'a. Haa ta'u malee qajeelfamnichi kenniinsa taajaajila sadarkaa abbaa alangichaatti jiru qajeelchuun ala aangoo pirezidaanti daangessuu hin danda'u.<sup>103</sup> Gama kan Oromiyaatti yoo deebinu, akkuma olitti ibsame pirezidaantiin naannoo yakkootaa fi sirreffamtootaakkamiif dhiifama gochuu akka hin dandeenye heera mootummaa fi labsii naannoo fi federalaatiin ibsameera. Dhimmoota kanaan ala jiran irratti dhiifama gochuu danda'a. Nageenya fi dantaa ummataa fi mootummaaf barbaachisaadha jedhamee yoo itti amaname yakkootni dhiifamni hin taasifamneef jiraachuu danda'u. Muuxannoo biyyoota biraat irraayis ni hubatama. Fakkeenyaaaf, biyya Kanaadaatti yakkootni saalquunnamtii dubartoota irratti raawwataman dhiifama akka hin kennisiisne seerri daangessu bahee hojiirra jira. Akka naannoo keenyaattis dantaa uummataa fi mootummaa caalaatti eegsisuuf yakkoota dhiifamni hin godhamneef teechisuun ni danda'ama. Haa ta'u malee dhimmichi rakkoo loogii fi walqixxummaa sirreffamtoota gidduutti akka hin uumne qaama aangoo qabuun kallattiin seeraa taa'uun irra jiraata. Akka naannoo Oromiyaattii haala addaatiin qaamoleen biroo yoo aangeffaman malee, aangoo seera baasuu kan qabu coffee fi mana mare bulchinsa mootummaa naannoo Oromiyaati. Qajeelfamni amma ittiin hojjetamaa jiru garuu haala kanaan hin tumamne. Akkaataan yakkooni dhiifama kennisiisanii fi hin kennisiisne itti filatamanis qorannoon kan deeggarame miti. Qajeelfamichi

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<sup>103</sup> The United State Department of Justice office of Pardon, <https://www.justice.gov/pardon/pardon-information-and-instructions> <Accessed on 4/30/2018>.

rakkoo iftoominaa akka qabuu fi ogeessotnii fi sirreeffamtootni hubannoo gahaa kan hin qabne ta'uu ni hubatama.

Labsicha hojiirra oolchuuf qajeelfamoonni yeroo yeroon bahan iftoominan dhabuun rakkoo seeraa isa biraati. Sirreeffamtootnis ta'e ogeessonni hedduun qajeelfamootni boordiin bahan carraa dhiifama argachuu sirreeffamtoota kanaa kan dhiphisu dha yaada jedhu qabu.<sup>104</sup> Qajeelfamoonni yeroo yeroon bahan yakkoota dhiifama kennisiisanii fi hin kennisiisne adda baasuu irratti hanqina akka qaban ibsamee jira. Keessumattuu, yakka malaammaltummaa fi ajjeechaa sadarkaa adda addaa qabu addaa baasuu irratti hanqinni jira. Sababa kanaaf hojimaatni calallii sirreeffamaa bakkaa bakkatti garaa gara ta'ee jira. Fakkeenyaaaf, yakki amantaa hir'isuu yakka malaammaltummaa waan ta'eeef dhiifama hin kennisiisu ogeessonni jedhan jiru.<sup>105</sup> Ogeessonni biraam immoo yakka amantaa hir'isuu salphaa taanaan dhiifama ni kennisiisa yaada jedhu qabu.<sup>106</sup> Qajeelfama barreffamaan kenname ibsuuf jecha qajeelfama walitti bu'u afaniin kennuunis akka mul'atu hirmaattotni qorannichaa ni ibsu.<sup>107</sup>

Waajirri boordii dhiifamaa bu'uura labsichaatiin akka hin gurmoofnee fi itti gaafatamaanis akka hin ramadamne hubatamee jira.<sup>108</sup> Kana irraa kan ka'e ragaawwaan kenniinsa dhiifamaan wal qabatan adda addaa haala qindaa'aa ta'een argachuun hin danda'amne. Qaamolee bu'uura labsichaatiin miseensa boordii ta'aniin alas qaamoleen biroo gahee qaban kanneen akka Biiroo Leenjii Teekinikaa fi Ogummaa Oromiyaa fi Biiroon Dhimmaa Hojjetaa fi Hawwaasummaa Oromiyaa miseensa Boordichaa ta'uu dhabuun hojji sirreeffamaa haaromsanii hawwaasatti makuu sirnaan akka hin hojjetamne

<sup>104</sup> Laggasaa Kabbadaa, A/Alangaa Godina Shawaa Lixaa waliin afgaaffii gaafa 3/5/2010 taasifame, Saj. Yergaalam Mitikkuu Hogganay Mana Sirreessaa Aanaa Aallee waliin afgaaffii 24/5/2010 taasifame. Marii garee sirreefamtoota manneen sirreessaa Godina Shawaa lixaa, wallaggaa Lixaa, Jimmaa, Shawaa Kibba Lixaa, Iluu A/ Booraa waliin taasifame.

<sup>105</sup> Afgaaffii Kom. Takluu Lataa, Hooggana Mana Sirreessaa Godina Sh/Lixaa waliin gaafa 04/5/2010 gaggeeffame; Afgaaffii Hirkisaa Hundee, A/Alangaa Go/Sh/Ki/Lixaa waliin gaafa 14/5/2010 taasifame.

<sup>106</sup> Afgaaffii Kom Tanaanyee Walduu Hoggantuu Mana sirreessa Go/I/A/Booraa waliin gaafa 25/5/2010 taasifame.

<sup>107</sup> Afgaaffii Kom. Takluu Lataa, Hooggana Mana Sirreessaa Godina Sh/Lixaa waliin gaafa 04/5/2010 gaggeeffame; Afagaaffi saj/ol Amsaaluu Lataa, Ogeessa Mana Sirreessa Aanaa Gommaa waliin gaafa 22/5/2010 taasifame; Afgaaffii Saj.Abduraazaq Yaasiin ogeessaa Haaromsaa sirreefamtootaa mana sirreessaa Go/I/A/Booraa gaafa 25/05/2010.

<sup>108</sup> Afgaaffii Ob. Tashoomaa Girmaaa, Hoogganay Biiroo Haqaa Oromiyaa waliin gaafa 14/09/2010 taasifame.

dhiibbaa gochuus himamee jira.<sup>109</sup> Hojiin gaaffii dhiifamaa simachuu fi qulqulleessuu, akkasumas yaada murtii pirezidaantiif dhiyeessuu hojii itti fufiinsaan hojjetamu akka ta'e tumaalee labsii 114/98 irraa ni hubatama. Boordiin hojii kana hojjetus boordii dhaabbataa akka ta'e labsichi ni akeeka. Haa ta'u malee miseensotni boordichaa namoota manneen hojii bira, kanneen hojii idilee bira qaban qofa akka ta'an gochuun immoo hojichi akka hojii idileetti akka hin fudhatamne godhee jira. Rakkoon kun boordiin hojii isaa haala labsichi hin hayyamneen qaamolee biraaf akka quodoo yookiin dabarsee kennus dirqamsiiseera.

Manneen sirreessaa ilaalaman hunda keessatti, qabatamaattii hojii dhiifamaaf sirreffamaa calaluu kan hojjetu koree qajeelfamaan ibsame osoo hin taane ogeessota biroo koree tikanikaa jedhaman akka ta'e hubatamee jira. Koreen dhiifamaa bu'uura qajeelfamaa qabu, koree olaanaa jedhamuun beekamu hojii koree xiqa qabu yookiin teekinikaa kanaan hojjetame mirkaneessuu dha. Miseensonni korichaa sirnaan hirmaachuu dhabuu yookiin nama bira bakka buusuun baay'inaan ni mul'ata.<sup>110</sup>

Iyyannoos dhiifamaa hundinuu ragaa fi yaada murtii waliin pirezidaantiif dhiyaachuu akka qabu labsichi ni kaa'a.<sup>111</sup> Haala hojimaata naannoo Oromiyaa amma jiru yoo ilaalle garuu, koreen calalliis ta'e boordiin iyyannoos sirreffamaan dhiyaatu yookiin kaka'uumsa isaaniitiin calalan keessaa kanneen bu'uura ulaagaatiin dhiifama ni kennisiisa jedhanii itti amanan qofa pirezidaantiif dabarsu. Kun immoo boordii fi koreewwan calallii kunneen aangoo dhiifama irratti murteessuu akka qabaatan godhee jira.

Hanqinni bira mul'atu immoo dhimmoota murtii adabbii xumuraa hin arganne irratti dhiifama gochuun wal qabatee rakkolee uumamani dha. Labsii lakk. 114/98 irratti gaaffiin dhiifamaa murtii dhumaan murtii kenne bu'uureffatee akka ta'e ibsa. Murtii dhumaan jechuunis sirna keniinsa mana murtii keessatti carraawan jiran (oliyyannoos fi ijibbaata) kan fixate yookiin carraa adeemsa kana keessa darbuu kan hin qabaanne ta'u qaba.<sup>112</sup> Kunis

<sup>109</sup> Afgaaffii Ob. Tashoomaa Girmaa waliin ta'e (Akkuma 108<sup>ffa</sup>).

<sup>110</sup> Afgaaffii Ob. Zarihuun Dhugumaa, I/G Waajjira Haqaa Godina Guji waliin gaafa 22/05/10, Ob. Abdulwaahid Abdurahmaan, I/G Waajjira Haqaa Godina Baalee waliin gaafa 29/05/10 taasifame.

<sup>111</sup> Labsii Dhiifamaa Oromiyaa lak.. 114/1998, Kwt.6/1/b fi Kwt.12.

<sup>112</sup> Toora intarneetii [www.vocabulary.com/dictionary/final%20decision](http://www.vocabulary.com/dictionary/final%20decision) gaafa guyyaa 24/08 /10 ilaalamme

kenniinsi dhiifamaa falmii yakkaa dhimma yakkaa waliin haala wal simateen akka deemuuf kan gargaaru dha.

Akka naannoo Oromiyaatti gama kanaan hanqinni ni mul'ata. Fakkeenyaaaf, dhimma Getaachoo Abbabaa Vs. A/A L.G. 245691 MMWO, MMO G/A/N/F L.G 13634 irratti ilaalamo keessatti MMO iyyataan yakka raawwateef balleessaa jechuun adabbii itti murteesseera. Haa ta'u malee abbaan alangaa adabbiin kennname xiqaate jechuun oliyyaannoo MMWO fudhatee falmiin oliyyaannoo osoo ilaalamaa jiru, mootummaan deebii kennaaf dhiifama kenneera. Manni murtichaas falmii oliyyaannoo dhagahuun adabbii hidhaa fooyyessuun adabbii kenna. Iyyataan yakka raawwateef dhiifamni godhamuuffii ibsuun dhaddacha ijibbaataa mana murtichaatti iyyata dhiyeessus MMWO iyyatichi yeroon hin dhiyyaanne manni murtichaa murtii dura kenne keessa deebi'ee ilaaluuf aangoo hin qabu jechuun cufeera. Iyyataan dhiifama argatus hanga daataan qorannoo kanaa funaanamutti mana sirreessaa keessa turuuf dirqameera. Kana irraa kan hubatamu boordiin dhiifamaa namoota dhiifama argatan yommuu calalu dhimmoota murtii dhumaa argatan adda baasuu irratti hanqina kan qabu ta'uu isaati. Lammaffaa, Biiron Haqaa (yeroo ammaa manni hojji abbaa alangaa walii galaa) waliitti qabaa boordii dhiifamaa ta'e gama tokkoon sirreeffamaan dhiifama akka argatu haala mijessaa gama kaaniin falmii itti fufuu hanqina biraati.

Tumaalee qajeelfamaa fi labsii dhiifamaa keessa taa'an keessaa kanneen sirnaan hojjiirra oolaa hin jirres hedduu dha. Namoota umuriin dullooman, akkasumas dhibee hin fayyine qabaniif haala addaatiin dhiifamni godhamaafii akka hin jirres ibsamee jira.<sup>113</sup> Namoota sababa umuriitiin dhiifamni godhamuuffii qabu ilaachisee, umurii waliin dhahuu irraa kan ka'e, hojjiirra oolchuun akka hin danda'amne hoggantootni kaasaniiru.<sup>114</sup> Dhibee fayyuu hin dandeenye kan jedhu ilaachisee sirreeffamtootni hanqina hubannoo fi ragaa mana yaalaa haala qajeelfamni gaafatuun dhiyeessuu dhabuun akka itti hin hojjenne gochuun hoggansaan ibsamee jira.<sup>115</sup>

Sirreeffamtoota murtii du'aa itti murtaa'e irratti murtichi raawwatamaa hin jiru. Haa ta'u malee sirreeffamtootni kun dhiifamas argataa akka hin jirree fi

<sup>113</sup>Marii garee sirreeffamtoota Mana Sirreessaa Godina Shawaa Lixaa waliin gaafa 04/05 /2010 taasifame.

<sup>114</sup> Afagaaffii Ob. Tashoomaa Girmaa, Olitti yaadannoo lak. 108 waliin taasifame.

<sup>115</sup> Afagaaffii Ob. Tashoomaa Girmaa (Akkuma 114<sup>ftaa</sup>).

haala rakkisaa keessa akka jiran ibsameera.<sup>116</sup> Raawwiin murtii du'aa sochii murtii du'aa balleessuu (abolitionism) fi itti fufsiisuu (retentionism) waliin kan walqabatuu dha. Itoophiyaan waggoota kurnan darban keessa murtii du'aa murtaa'an hin raawwachiisne.<sup>117</sup> Kunis gara sochii murtii du'aa dhabamsiisuutti siqaa akka jirtu, yookiin 'defacto abolitionist' ta'u ishee agarsiisa. Gamtaan Afrikaa chaartara mirga namoomaa fi ummata Afrikaa irrattii wixinee pirotokoolii murtii du'aa dhabamsiisuuf qopheesseen, biyyoonti murtii du'aa seerota isaanii keessaa qaban murtii du'aa akka hin raawwannee fi gara adabbii hidhaa gosa adda addaa qabutti akka jijiiran kallattii agarsiisee jira. Gama biyya keenyaattis yoo deebinu, tumaa seera yakkaa kwt.<sup>117</sup> murtiin du'aa raawwatamuun dura dhiifama yookiin baraarsan akka hafu yookiin hir'atuuf pirezidaantii biyyaatti dhiyaatee mirkanaa'u akka qabu ol kaa'a. Haa ta'u malee Pirezidaantiin biyyaa sirreffamtoota kanneeniif dhiifama kan hin gooneef yoo ta'e, carraan isaanii maal ta'a kan jedhu irratti kallattiin ifa ta'e akka biyyaatti hin jiru. Kun immoo qabiinsaa fi qor-qalbii sirreffamtoota murtiin du'aa itti murtaa'e irratti dhiibbaa uumee jira.

Haala addaatiin dhimmoota sirreffamaaf dhiifama kennisiisan keessaa tokko adabbii ragaa sobaa irratti hundaa'ee kenname dha. Nama ragaa sobaatiin itti murtaa'eef haala addaatiin dhiifamni akka taasifamuuf, qajeelfamootni dhiifamaa ni ibsu. Sirreffamtootni mana sirreessaa daataan irraa funaaname keessa jiran hedduun yakkii fi adabbiin ragaa sobaan kan irratti murtaa'e akka ta'e ibsuun dhiifamni akka taasifamuuf kan gaafatan ta'u hubatamee jira.<sup>118</sup> Manneen sirreessaa hedduu keessatti sirreffamtootni ragaa sobaan adabamuun iyyatan dhiifama akka argatan gochuun akka hin danda'amne hoggantootnii fi ogeessotni mana sirreessaa akkasumas sirreffamtootni ibsanii jiru. Tumaan kun hojiirra akka hin oolle kan godhe, iyyatni ragaa sobaa bu'uurreffatu garmalee hedummachuu fi kana qorachuun deebii kenuun ulfaataa ta'uutu ibsame. Sirreffamaan tokko tumaa kanatti fayyadamee

<sup>116</sup>Afgaaffii Kom Tanaanyee Walduu, Hoggantuun Mana Sirreessa Go/I/A/Booraa waliin gaafa 25/5/2010 taasifame.

<sup>117</sup>Ethiopia's Dilemma with Capital Punishment, Long Overdue, Addis Fortune, Vol 18, No 910, 2017.

<sup>118</sup>Fakkeenyaaaf, Mana Sirreessa Godina Shawaa Lixaa keessatti bara 2010 qofa sirreffamtoota jiran keessaa 673 kan ta'an ragaa sobaan adabamne waan ta'eef qoratamee dhiifamni nuuf haa kennamu iyyata jedhu dhiyeessuu daataa mana sirreesichaa irraa argame irraa hubatameera.

dhiifama argachuu isaa hogganaan ibsan jiru. Kunis, iyyata ragaa sobaatiin adabamu dhiyaate irratti hundaa'uun abbaa alangaa fi poolisiin hawwaasaa fi maatii miidhamaa waliin ta'uun sirreeffamichi yakkicha akka hin raawwanne kan mirkaneessan ta'uu ibsaniiru.

Sirreeffamaan ragaa sobaan itti murtaa'e gaaffii dhiifamaa yoo dhiyeffate haala kamiin deebii argachuu qaba kan jedhu ilaaluun barbaachisaadha. Rakkoon sobaan yookiin dogoggoraan adabamuun biyyoota hundaa keessatti dhimma xiyyeffannoo argate ta'eera. Rakkoo kana furuuf biyyooni qaama addaa walaba ta'e hundeessanis baay'ee dha.<sup>119</sup> Akka biyyas ta'ee nannoo keenyatti qaamni waan kana qoratee mootummaaf dhiyeessu hin jiru. Qajeelfama dhiifamaa irraa akka hubatamutti sirreeffamaan ragaa sobaatiin itti murtaa'uuf ragaa qabatamaan mirkaneessuu qaba.<sup>120</sup> Ragaan sobaa kun hanqina sirna haqaatiin kan uumame ta'uun ifaa dha. Haa ta'u malee hanga qaamni dhimma kan qoratu hin jiraannetti, dhiifama kennuuf iyyata haala kanaan dhiyaatu hunda qaamoleen haqaa fuudhatanii qorannoo gaggeessun hojii ulfaataa dha. Hojii sirna haqaan hojjetame irra deebiin lammata ofuma isaanii kan hojjetan yookiin mirkaneessuuf deeman godha. Kun immoo bu'a-qabeessa hin ta'u. Muuxanno yoo ilaalles namni ragaa sobaatiin adabame, kana sababeeffatee dhiifama yoo gaafate ragaan ittiin adabame sun soba ta'u mana murtii murticha kenneen mirkaneessuu fi yaada kennuu akka qabu biyyootni taasisan jiru.<sup>121</sup> Ragaan amansiisaa kan ta'u adeemsa seeraa keessa darbuu qabu keessa darbee qaama aangoo qabuun ragaa kennname yoo ta'e dha. Kanaaf namoonni ragaa sobaan adabaman dhimmichi adeemsuma seeraa keessa darbuun qoratamee soba ta'uun yoo mirkanaa'e bu'uura ragaa kanaatiin dhiifamni kan godhamuuf ta'a. Akka waliigalaatti ragaa sobaa bu'ureeffatee dhiifama gaafatamu deebisuuf haalli dandeessisu hin uumamne.

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<sup>119</sup> England, Wales, Northern Ireland, Scotland, Norway, Canada and the United States are some of Countries that have officially responded to the problem of wrongful conviction and implemented significant governmental bodies and other legal mechanisms for the identification and correction of wrongful convictions, Weathered, Lynne, the growing acknowledgement of wrongful conviction (*The Australian Response with international context, Victoria University law and Justice Journal, 2013, F79*)

<sup>120</sup>Qajeelfamoota Calallii fi Raawwii Dhiifama Sirreeffamoota Seeraa Naannoo Oromiyaa Lak. 4/2008, Lak.. 5/2009 fi Lak. 6/2010, Kwt. 15.

<sup>121</sup> Texas State Board of Pardons and Paroles Rules, §143.2. Pardons for Innocence.

### 3.3.3. Hanqinoota Biroo Calallii fi Kenniinsa Koroora fi Dhiifamaa Keessatti Mul'atan

Hanqinootni biroon calallii fi kenniinsa koroora fi dhiifamaa keessatti mul'atan keessa tokko rakkoo sirreffamtoota jijirraan dhufan koroora fi dhiifama argachuu irratti isaan qunnamu dha. Sirreffamtootni manneen sirreessaa naannoo bira a irraa gara Oromiyaa dhufan manneen sirreessaa Oromiyaatiin yommuu simataman ragaa sirreffamaa guutuu waliin waan hin simatamneef kenniinsa koroora irratti rakkoon isaan mudata. Ragaa barbaachisu qaama jiru bira a nama yookiin qaama fiduuf hin argatan. Kanaaf koroora malee adabbii itti murtaa'e yommuu mana sirreessaa keessatti fixuuf dirqaman ni mul'ata.<sup>122</sup> Haalli calallii fi kenniinsa dhiifama sirreffamtoota iddo maratti hojimaata walfakkaataa akka hin taane ibsameera. Kunis calallii fi kenniinsi dhiifama sirreffamtoota kanneenii yeroo tokko tokko kan Oromiyaa faana yoo raawwatu yommuu bira a immoo qofaatti kan raawwatu ta'uu ogeessonni ni ibsu.<sup>123</sup> Sirreffamatoota calalliin isaanii raawwatamee gara boordii dhiifamaa federaalatti ergamuun wal-qabatee garuu yeroon furmaata argachuu dhabuun ni mul'ata.<sup>124</sup>

Ogeessota calallii koroora fi dhiifamaa raawwatan biratti rakkoon naamusaa akka mul'atus ogeessotnii fi sirreffamtootni afgaaffiin godhameef ibsaniiru. Rakkoowwan naamusaa kunneenis faayidaan hojechuu, walitti dhufeeny dhuunfaa irratti hundaa'uun sirreffamaan koroora yookiin dhiifama akka argatu gochuu, sirreffamtoota gidduutti loogii uumuu, ragaa sobaatiin sirreffamaan koroora yookiin dhiifama akka argatu gochuu fi kanneen

<sup>122</sup>Afgaaffii Insp.Ol Waaqoo Burqaa Hoogganaa Mana Sirreessaa Godina Harargee Lixaa waliin gaafa guyyaa 03/05/10 taasifame, Afgaaffii G/Insp. Mashuutee Abdulqaadir, Ab/Ad/sirreessa sirreffamtoota M/Sir/Godina Baalee waliin gaafa guyyaa 28/05/10, Marii garee sirreffamtoota Go/Har/Lixaa waliin gaafa guyyaa 01/05/10 taasifame

<sup>123</sup>Insp. Olaanaa, Damee Fufaa Mana sirreessaa Godina Wallaggaa Lixaa.

<sup>124</sup>Afgaaffii Kom. Andualam Xilaahun, Hoggaanaa Mana Sirreessaa Godina Harargee Lixaa waliin gaafa guyyaa 02/05/10, Asfaaw fiqaaduu, H/Gabriel Jadu, Sirreffamtoota Mana Sirreessaa Go/Sh/Lixaa waliin afgaaffii gaafa 04/5/2010 gaggeeffame.

fakkaatani dha.<sup>125</sup> Rakkoon naamusaa jiraachuu gal mee ogessota himatamaanii adabaman irraa hubachuunis danda'ameera.<sup>126</sup>

Akkaataa calalliin koroora fi dhiifamaa itti gaggeeffamu irratti sirreffamaan komii qabu dhiyeffachuu irrattis hanqinni jira.<sup>127</sup> Kunis sirni komii mijataa fi walfakkaataa ta'e diriiruu dhabuu fi yeroon calalliin dhiifamaa itti gaggeeffamu baay'ee gabaabaa ta'uu irraa kan ka'e dha.

### **3.4. HORDOFFII SIRREEFFAMAA KOROORA FI DHIFFAMAAN BAHEE**

Sirreffamtootni yeroo korooraan akka gad-lakkifaman murtaa'u jireenyi isaanii hawaasa keessatti kamiin akka hordofamu seerri yakkaa teechisee jira.<sup>128</sup> Dhiifamni immoo bu'uura qajeelfamoota boordiin dhiifamaa baasuun koreen calallii godinaa gara caasaa poolisii fi bulchiinsaafi nageenya gandaatiin akka hordofu teechisee jira.<sup>129</sup> Itti aansuun hordoffiin sirreffamtoota koroora fi dhiifamaan bahanii qabatamaatti maal akka fakkaatu haa ilaallu.

Hordoffiin sirreffamtoota korooraan gad-lakkifaman irratti taasifamu jiraachuu sakatta'uuf bargaaffii fi afgaaffiin oggeessota waliin taasifameera. Bargaaffii abbootii seeraa irraa funaanameenis abbootiin seeraa harki 97.8% ta'an sirreffamtootni yommuu korooraan gadhiifaman manni murtii sirreffamaan hawaasa keessatti akka hordofamu ajaja hin kennu jedhaniiru. Bu'aa afgaaffii irraayis hordoffii sirreffamtoota korooraan gadhiifamanii ilaachisee manni murtii ajaja akka hin kennine, qaamni to'atus akka hin jirre hubatameera.<sup>130</sup> Abbootiin seeraa hordoffii ilaachisee maaliif ajaja akka hin

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<sup>125</sup> Afgaaffii Ob. Gizaachaw Asaffaa, Ab/Ad/Qo/Yakkaa fi Murtii Haqaa Kennisiisaa, Waajjira Haqaa Aanaa Adoolaa waliin gaafa 24/05/10; Ob. Kiyyaa Salamoona, sirreffamaa seeraa korooraan mana sirreessa Godina Baalee irraa gad-lakkifame waliin gaafa 29/05/10 gaggeeffame.

<sup>126</sup> A/Alangaa fi It/A/Ins.Waaqshuum Abarraa, MMO Go/W/Lixaa, L.G 05233 murtii gaafa 06/11/2009肯ne.

<sup>127</sup> Afgaaffii Kom. Fiqiruu Kabbaddaa, I/G Mana Sirreessa Aanaa Adoolaa waliin gaafa guyya 23/05/10 taasifame.

<sup>128</sup> Seera Yakkaa RDFI, Kwt.199(1).

<sup>129</sup> Fakkeenyaaaf, Qajeelfama Calallii fi Raawwii Dhiifama Sirreffamtoota Seeraa Naannoo Oromiyaa lak.4/2008 fi 5/2009, Kwt.7(8).

<sup>130</sup> Afgaaffii Darajee Faantaa, Abbaa seeraa MMO Godina Harargee Lixaa waliin gaafa 01/05/10; Garamaw Ababaayyoo Abbaa seeraa MMA Dodolaa waliin gaafa 17/05/10; Ob.

kennine yommuu gaafataman, qaamni ajajamu hin jiru jechuun deebisaniiru.<sup>131</sup> Sirreeffamaan korooraan bahe yakka bira raawwatee itti murtaa'ee deebi'e haalli koroori isa dura itti haqamu kan hin jirre ta'uus isaa ogeessonni mana sirreessaa fi abbootiin seeraa ni ibsu.<sup>132</sup> Ogeessota bargaaffii deebisan keessaa 81.8% kan ta'an sirreeffamtootni korooraan erga bahanii booda badii yoo raawwatan sababa koroora duraatiif jedhamee carraan to'atamuu isaanii gadaanaa akka ta'e ni ibsu.

Hordoffii sirreeffamtoota dhiifamaan bahanii ilaachisees, hoggantootni miseensa koree calallii godinaa ta'anii fi afgaaffiin waliin gaggeeffame sirreeffamaan erga dhiifamaan gadhiifamee booda haal-duree teechifame eeguu fi dhiisuu qaamni hordofu akka hin jirre ibsanii. <sup>133</sup> Sababoonni hanqina hordoffiif ka'uumsaa ta'anis koreen dhiifamaa yeroodhuma dhiifama calaluuf barbaachise qofa kan wal gahu ta'uus fi xiyyefannoo fi hanqinni humna namma rakkoo ta'uus dha.<sup>134</sup> Hordoffiin waan hin gaggeeffamneef haga ammaas sirreeffamaan haalduree dhiifamaa cabse jedhamee mana sirreessaatti deebifame akka hin jirre hubachiisaniiru.<sup>135</sup> Sirrefamtootni dhiifamaan ba'anii yeroo yaalii keessatti yakka dalaganis ni jiru.<sup>136</sup> Haa ta'u malee sirreeffamtootni kunneen yakka lammataaf akka itti gaafataman gochuun ala

Taarikuu Filaa, Abbaa seeraa MMO Godina Gujii waliin gaafa 22/05/10 fi Ob. Mallasaab Abrahaam, Abbaa seeraa fi Gaggeessaa Garee Yakkaa MMO Godina Baalee waliin gaafa 29/05/10 taasifame.

<sup>131</sup> Afgaaffii Ob. Sisaay Mul'ataa, Abbaa seeraa MMO Godinaa Gujii waliin gaafa guyyaa 22/05/10 taasifame.

<sup>132</sup> Afgaaffii Ob. Mokonnin Raggaasaa Pireezidaantii MMO Go/Baalee waliin gaafa guyyaa , Ob. Aliyyii Muhammad Abbaa seera MMO Go/Har/Lixaa waliin gaafa guyyaa 02/05/10, I/A/Insp. Mashutee Ab/Ad/Sirreessa Sirrefamaa, Mana Sirreessaa Godina Baalee waliin taasifame.

<sup>133</sup> Afgaaffii Ob. Pheexiroos, Hoogganaa Waajjira Haqaa Godina Sh/Lixaa; Ob. Laggasaa Kabbadaa A/Alangaa Godina Shawaa Lixaa; Kom. Takluu Lataa, Hoogganaa Mana Sirreessaa Godina Sh/Lixaa. I/A/Kom. Geetaachoo G/Giyoorgis, Hoogganaa Mana Sirreessaa Go/Sh/Ki/Lixaa waliin ta'e.

<sup>134</sup> Afgaaffii G/Saj.Muhammadi Jundii, Itti Gaafatama Waardiyyaa Mana Sirreessaa Godina Harargee Lixaa waliin gaafa guyyaa 01/05/10 taasifame.

<sup>135</sup> Afgaaffii Sirreeffamtoota Mana Sirreessaa Go/W/Lixaa yakka ajjechaa sirreefamaa dhiifamaan bahe irratti raawwachuu himatamanii itti murtaa'e waliin gaafa 7/5/2010 godhame; Afgaaffii Inspreetar Urgee Abarraa, Qindeessaa Tajaajila Poolisii Hawwasummaa Aanaa Amboo waliin afgaaffii gaafa 03/5/2010 gaggeefame, Ob. Geetuu Margaa, Abbaa alangaa Aanaa Najjoo waliin gaafa guyyaa 05/05/10 taasifame.

<sup>136</sup> Afgaaffii Ob. Geetuu Margaa, Abbaa alangaa Aanaa Najjoo waliin gaafa 05/05/2010; A I/Saj.Ascannaaqii Alammayyoo, I/Saj.Gumaa Abdiisaa, Ogeessota Mana sirreessaa Godina Wallaggaa Lixaa waliin gaafa 7/5/2010 taasifame.

haalli dhiifamni isaanii haqamee mana sirreessaatti itti deebi'an akka hin jirre ogeessotni kunneen ni kaasu.<sup>137</sup> Sirreeffamtootni dhiifamaan mana sireessaatii bahanii osoo yeroo yaalii hin xumuriin yakka biraan raawwatan yookiin isaan irratti yakki raawwatame akka jiran galmeed irraa hubachuunis ni danda'ama.<sup>138</sup>

Daataa kanneen irraa sirni namootni korooraan fi dhiifamaan yoo bahan itti hordofaman akka hin jirre ni hubatama. Kanaafis, sirreeffamtootni korooraan fi dhiifamaan bahanii yeroo yaalii keessatti yakka biraan yeroo raawwatan yookiin yeroo irratti raawwatamu mul'ataa jira. Rakkoo kanaaf ka'uumsa kan ta'e sirna hordoffii sirreeffamtootaa korooraan bahanii irratti tumaalee seera yakkaa hojiirra oolchuu dhabuu dha. Sirna sirreeffamtoota dhiifamaan bahanii immoo diriirsuu dhabuunis madda rakkooti. Qajeelfamichi koreen calallii godinaa namoota dhiifamaan bahan gara poolisii fi bulchiinsaa fi nageenyaatiin akkamiin akka hordofu adeemsaa fi hariroo hojii isaanii hin ibsine. Gama biraan hordoffii namoota dhiifamaan bahanii keessatti hirmaannaan hawaasaa fi dhaabbilee hawaasaa hin mul'atu. Hawaasa Oromoo keessatti nama yakka raawwatee fi miidhamtoota walitti araarsuun nageenya buusuu keessatti jaarsolii fi Abbootiin Gadaa gahee guddaa taphatu. Sirna aadaa hawaasaa kanatti fayyadamuun, qajeeltoowwan raawwii tarkaanfilee hidhaan alaa keessatti hawaasaa hirmaachisuu fi giddu lixummaa qaama nageenya xiqqeessuu kanneen jedhan hojiirra oolchuun bu'a qabeessummaa hordoffii dabaluuf fayyada. Sirna aadaa ummataa kana sirna ammayyaa waliin qindeessuun faayidaa uummataaf oolchuu dhabuun hanqina dha.

#### **4. YAADOTA GUDUUNFAA FI FURMAATAA**

##### **4.1.YAADOTA FURMAATAA**

Fooyya'iinsa amala sirreeffamaa haala saayinsawaa, walfakkaataa (objective) fi iftoomina qabuun madaaluu irratti manneen sirreessaa keessatti hanqina guddaatu mul'ata. Qabxiin fooyya'iinsa amalaagarsiisu haala iftoomina

<sup>137</sup>Afgaaffii Ob. Mukataar Sharafuddiin, A/Alangaa Go/Jimmaa waliin taasifame.

<sup>138</sup> Fakeenyaaaf sirreeffamaan Daggafaa Baalchaa jedhamu yakka raawwateen, MMO Go/W/Lixaa L.G16964 irratti hidhaa cimaa wagga 7 gaafa 11/08/2003 adabee gaafa 28/7/2007 immoo dhiifamni godhameeffi erga bahe booda gaafa 29/02/2008 yakka biraan raawwachuu adabame, Faqqadaa Taayyee L/G/M/S 887/1376 – yakka ajjeechaa raawwatee irra dhiifamaan bahee yeroo wagga hin guutne keessatti nama biraan irratti yakka ajjeechaa raawwatee adabameera.

qabuu fi fooyya'iinsa amala sirreffamaa ibsuun kennamaa hin jiru. Ragaalee haaromsa sirreffamaa waliin hidhata qaban haala sirnaawaa ta'een qabachuu irratti hanqina guddaatu jira.

Kenniinsa dhiifamaa keessatti labsii fi qajeelfamni hanqina iftoominaa fi wal simannaa qabu. Yakkootaa fi sirreffamtoota dhiifamni hin ilaallanee ibsuu irratti qajeelfamni boordiin bahan hanqina iftoominaa qabu. Akkataan yakkootni fi sirreffamtoota dhiifamni hin kennamneef itti hambifaman qorannoo irratti kan hundaa'es miti. Qaamoleen gaaffii dhiifamaa simachuun calallii gaggeessan bu'uura labsiitiin hundaa'anii tajaajila idilaa'aa ta'e kennuu irratti hanqina guddaatu mul'ata. Sadarkaa naannootti boordiin dhiifamaa waajjiraa fi hojjettoota hojii kanaaf barbaachisan haala guuttateen hin gurmoofne. Sadarkaa godinaatti hojimaatni koree dhiifamaa hundeessuu fi hojii gaaffilee dhiifamaa qoratu labsii waliin kan wal simu miti. Gaaffilee dhiifamaa umurii, dhukkuba, ragaa sobaa fi kkf bu'ureeffachuuun haala addaatiin dhiyaataniif deebiin gahaan kennamaa hin jiru. Kana irraa kan ka'e iyyannoo dhiifamaaf tajaajila si'ataa kennuu irratti hanqinni jira.

Iyyannoo koroora simatanii ajaja kennuu irratti mana murtii bira hojimaatni garaagarummaa qabu ni mul'ata. Ajaja kennuu keessattis ulaagaalee seera yakkaa kwt 202 jalatti ibsaman, kanneen akka adabbii murtaa'e keessa 2/3<sup>ffaa</sup> raawwachuu, beenyaa kanfaluu yookiin araaramuu, fooyya'iinsa amala fi kkf hojiirra oolchuu irratti hanqina guddaatu jira. Rakkoon kun, hanqina qulquolina murtii adabbii keessatti mul'atu; sirreffamaan korooraan gadhiifamuun dura sirni miidhamtoota waliin walitti dhufuu araaraman yookiin dhimma beenyaa itti xumuratan dhabamuu; fi kenniinsa korooraaf xiyyeffanna kennuu dhabuu irraa kan maddu dha. Akkaata namoonni irra deebiin yakka raawwatanii fi yakka daddabalamaa raawwatan akkasumas adabbiin hidhaa fi maallaqaa wal faana yoo itti murtaa'e korooraan gadhiifaman irratti hanqinni hubannoo ogeessota biratti ni mul'ata.

Sirreffamtootni naannoo bira irraa jijirraan gara manneen sirreessaa Oromiyaa dhufan tajaajila koroora fi dhiifamaa argachuu irratti haala addaan rakkoon isaan qunnamaa jira. Kunis, yommuu simataman ragaa guutuu waliin simatamuun dhabuu; fi iyyannoo isaanii qaamolee dhimmi isaa ilaallatuuf dhiyeeffachuuuf rakkoo dhaqqabummaa irraa kan ka'e dha. Tajaajilli kennamus wal fakkaataa ta'uu dhabuun ni mul'ata.

Ogeessota calallii koroora fi dhiifamaa raawwatan bira rakkoon naamusaa kanneen akka, faayidaa fi walitti dhufeenyaa hojjechuu, hojii calallii qulqullinaan hojjechuu dhabuu fi tajaajila si'ataa ta'e sirreeffamaaf kennuu dhabuu ni mul'ata. Komii kenniinsa koroora fi dhiifamaa keessatti mul'atan hiikuuf mana sirreessaa keessatti sirni diriire hin jiru.

Namoota korooraan fi dhiifamaan gad-lakkifaman irratti hordoffiin gaggeeffamaa hin jiru. Qaamoleen mootummaa fi miti-mootummaa hordoffi irratti qooda isaanii bahaan hin jirani. Hordoffiin dhabamuu irraa kan ka'e namootni dhiifamaa fi korooraan ba'an yommuu irra deebiin yakka raawwatan yookiin yakki isaan irratti raawwatu ni mul'ata. Irra deebiin to'achuu fi adabbii akka raawwatu gochuunis hin mul'atu. Hordoffi dhiifamaa ilaalchisee tumaan qajeelfamichaa mataa isaatiin rakkoo iftoominaa qaba.

#### **4.2.YAADOTA FURMAATAA**

Argannoowwan qorannoo kana irratti hundaa'uun yaadotni furmaataa itti aanan akekamaniiru.

Fooyya'iinsi amala sirreeffamaa haala wal-fakkaataa fi iftoomina qabuun madaalamuuf, sirna madaallii saayinsaawaa fi ifa ta'e diriirsuun barbaachisaa dha. Sirna qabanna ragaa sirreeffamtootaa fooyyessuu fi ammayyeessuunis mana sirreessaa irraa ni eegama.

Boordiin dhiifamaa yakkota yookiin sirreeffamtoota dhiifamni hin taasifamneef qajeelfamaan murteessuun dura qorannoo kanaaf isa gargaaru taasisuu qaba. Dhimmichis caffee yookiin mana maree bulchiinsa mootummaa naannootiin akka murtaa'u gochuun barbaachisaa dha. Akka filannootti, qajeelfama boordiin qophaa'u pirezidaantiin akka mirkaneessu gochuun ni danda'ama. Qajeelfamni boordichaan bahu, iftoomina adeemsa kenniinsa dhiifamaaf kan gargaaru malee aangoo pirezidaantii daangessuuf akka hin taanetti hubatamuus qaba.

Sirreeffamaan gaaffii dhiifamaa yeroo fi haala mijatuun akka dhiyeeffatuu fi deebii argachuu danda'utti qaamolee gaaffii dhiifamaa simatanii fi calalan tajaajila idilaa'aa akka kennan gochuun hundeessuun waajjira Pirezidaantii fi Boordii dhiifamaa sadarkaa naannootti hundeeffame irraa eegama. Gaaffilee dhiifamaa kanneen akka umurii, dhukkubaa fi ragaa sobaa irraa ka'uun

dhiyaatan hundaafuu deebii kenuun akkataa danda'amu irratti hojimaatni akka diriiru manni sirreessaa Biiroo Haqaa fi boordii dhiifamaa waliin ta'uun hojjechuun irraa eegama.

Manneen murtii, murtii fi ajaja adabbii yommuu kennan ragaawan jiran hunda qulqulleessuun guyyaa adabbiin sirreffamaa irraa eegalu haala iftoomina qabuun ibsuutu irraa eegama. Mana murtiis ta'e manni sirreessaa hojii kenniinsa korooraaf xiyyeffannoon hojjachuu qabu.

Manni sirreessaa qaamolee nageenyaa, abbootii gadaa fi jaarsolee naannoo waliin ta'uun akkaataa sirreffamaan korooraan osoo hin gadhiifamin dura miidhamaa waliin araaramee nageenyaan jiraatu ilaachisee sirna barbaachisu diriirsuutu irraa eegama.

Inistitiyuutiin Leenji Ogeessota Qaamolee Haqaa fi Qorannoo Seeraa Oromiyaa dhimmoota kenniinsa koroora sirreffamtoota deddebi'oo fi yakka dachaa raawwatan akkasumas namoota adabbi hidhaan dabalataa mallaqaan adabaman ilaachisee ogeessota mana sirreessaa fi abootii seeraaf leenji yoo kenne rakkoo hojimaataa fi hubannoo furuun ni danda'ama. Dabalataan Inistitiyuutichi akkaataa madaalliin fooyya'iinsa amala sirreffamaa irratti qajeelfama fooyya'uu qabu irratti mana sirreessaa ogummaan deeggaruu qaba.

Hanqina kenniinsa dhiifama sirreffamtoota jjijiirraan dhufanii furuuf, mootummaan naannoo Oromiyaa aangoo sirreffamtoota kanneenif dhiifama gochuu gara bakka bu'iinsatiin yookiin seeraan akka qabaatuuf mootummoolee naannolee fi federaalaa waliin mari'atanii sirreessuun irraa eegama. Manneen sirreessaa sirreffamaa yommuu simatan ragaa haaromsaaf oolu hunda qulqulleessanii simaachuun irraa eeggama.

Rakkoo hanqina naamusaa furuuf, manni Sirreessaa sirna kenniinsa tajaajila iftoomina qabu (keessattuu qabiinsa ragaa fi sirreffamtoota hirmaachisu irratti) fi itti gaafatamummaa mirkaneessuu danda'u hundeessuun tajaajila si'ataa fi qulqulluu ta'e kennu qaba. Sirna naamusaa ogeessotaa fi sirna komii sirreffamtootaa hundeessuun fi kanneen jiranis hojiirra oolchutu irraa eegama.

Akkataa hordoffin namoota dhiifamaa fi korooraan gadhiifaman itti gaggeefamu irratti sirna cimaa aadaa fi duudhaa hawaasaa bu'ureeffatee fi hirmaachisu hundeessuun barbaachisaa dha. Koroora ilaachisee manneen murtii tumaalee seera yakkaa keessatti teechifaman hojiitti hiikuu qabu.

Rakkoo hordoffii sirreffamtoota dhiifamaan bahanii ilaachisee caffen labsii dhiifamaa lakk.114/98 yookiin boordiin qajeelfama amma jiru haala qajeeltoo kanneen haammateen fooyyessuun furmaata ta'a.

**List of articles, case analysis and reflections published on the first eight issues of Oromia Law Journal**

No	Article Title	Contribution Type	Volume & Number	Author/s	Year of Publication
1	Gaa'ilaafi Gaa'ilaan Ala Akka Dhirsaa fi Niitiitti Waliin Jiraachuu Adda Baasuu Keessatti Yeroo Waraqaan Ragaa Gaa'ilaan Hin Jirre Rakkoolee Qabatamaan Mudatan  <i>Corresponding Translation.</i>  Distinguishing Marriage from Irregular Union: Some Practical Challenges in Absence of Marriage Certificate	Article	I(I)	Jemal Kumbi	2004/2012
2	The Degree of Court's Control on Arbitration under the Ethiopian Law: Is It to the Right Amount	Article	I(I)	Birhanu Beyene	2004/2012
3	Madaallii Raawwii Hojji Abbootii Seeraa Oromiyaa: Barbaachisummaa fi Sirna Raawwii Isaa  <i>Corresponding Translation.</i>  Judges' Performance Evaluation in the State of Oromia: The Need and the How	Article	I(I)	Teferi Bekele	2004/2012
4	Mediating Criminal Matters under Ethiopian Criminal Justice System: The Prospect of Restorative Justice	Article	I(I)	Jetu Edosa	2004/2012
5	Sadarkaa Mirkaneessa Ragaa Dhimma Yakkaa: Yaadrimewwanii fi Xiinxala Dhimmaa  <i>Corresponding Translation.</i>  Standard of Proof in Criminal Cases: The Concepts and Case Analysis	Case Analysis	I(I)	Milkii Mekuria	2004/2012

6	Oromia Justice Sector Professionals Training and Legal Research Institute: Major Activities and Achievements	Reflection	1(1)	Milkii Mekuria	2004/2012
7	The Place of Environmental Protection in the Growth and Transformation Plan of the Federal Democratic Republic of Ethiopia	Article	2(2)	Dr. Dejene Girma	2005/2013
8	Derivation of Rights: Affording Protection to Latent Socio-economic Rights in the FDRE Constitution	Article	2(2)	Amsalu Darge	2005/20013
9	Bu'a qabeessummaa Rifoormiwwan Manneen Murtii Oromiyaa: Kallattii Si'oomina Abbaa Seerummaatiin Yoo Madaalamu  <i>Corresponding Translation.</i>  Assessing the Effectiveness of Judicial Reforms from the Perspective of Efficiency: The Case of the State of Oromia	Article	2(2)	Teferi Bekele	2005/2013
10	Cassation Review of Arbitral Awards: Does the Law Authorize It?	Article	2(2)	Birhanu Beyene	2005/2013
11	Determination of Personal and Common Property During Dissolution of Marriage under Ethiopian Law: An Overview of the Law and Practice	Article	2(2)	Silashi Bedasie	2005/2013
12	Perspectives on Common Property Regimes in Ethiopia: A Critical Reflection on Communal Land Holding Rights in Borana Oromo Pastoralists Context	Article	2(2)	Jetu Edosa	2005/2013
13	Federalism in Ethiopia and Foreign Relations: Regional State Diplomacy	Article	3(1)	Tesfaye Assefa	2006/2014
14	Dagannoon Nama Ajjeesuu Ilaalchisee Firriwwan Dubbi Seerichaa Irratti Hundaa'uun Hojjechuun Walqabatee Rakkoowwan Qabatamaan Mul'atan  <i>Corresponding Translation.</i> Negligent Homicide: Law and Practice	Article	3(1)	Tolosa Dame	2006/2014

15	Bigamous Marriage and the Division of Common Property under the Ethiopian Law: Regulatory Challenges and Options	Article	3(I)	Jetu Edosa	2006/2014
16	The Chance to Improve the System of EIA in Ethiopia: A Look at the New Investment Proclamation	Article	3(I)	Dr. Dejene Girma	2006/2014
17	Reforming Corporate Governance in Ethiopia: Appraisal of Competing Approaches	Article	3(I)	Hussein Ahmed	2006/2014
18	A Human Rights-based Approach to Counteract Trafficking in Women: The Case of Ethiopia	Article	3(I)	Bahar Jibriel	2006/2014
19	Same Sex Marriage: Nigeria at the Middle of Western Politics	Article	3(I)	Dr.O. A Odiase-Alegimenlen & J.O.Garuba	2006/2014
20	Old Wine in New Bottles: Bridging the Peripheral Gadaa Rule to the Mainstream Constitutional Order of the 21St C. Ethiopia	Article	4(I)	Zelalem Tesfaye	2007/2015
21	Qabiyyee Lafaa Faayidaa Uummataatiif Gadi-Lakkisiisuun Wal-qabatanii Rakkoowwan Jiran: Haala Qabatamaa Naannoo Oromiyaa  <i>Corresponding translation</i> Expropriation in the State of Oromia: Some Challenges	Article	4(I)	Alemayehu W.	2007/2015
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26	All about Words on the Procedure of Constitutional Interpretation in Ethiopia: A Comment on Melaku Fanta's Case	Case comment	4(1)	Desalegn Birhanu	2007/2015
27	Criminal Adjudication by State Courts under the FDRE Constitution: The Quest for Compartmentalization of Jurisdiction	Article	5(1)	Abdi Gurmesa	2008/2016
28	Human Rights Protection under the FDRE and the Oromia Constitutions: A Comparative Study	Article	5(1)	Teferi Bekele	2008/2016
29	Hariiroo Hojii fi Sirna Hiikkaa Waldhabbi Falmii Hojii Keessatti Rakkoolee Mul'atan  <i>Corresponding translation</i> Employment Relationship and Labor Disputes in the State of Oromia: The Challenges	Article	5(1)	Milkii Mekuria Getachew Feyisa Ayana Tolina	2008/2016
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31	Reforming the Ethiopian Electoral System: Looking for the Best Alternative	Article	6(1)	G/meskel Hailu	2009/2017
32	Daldala Seeraa Alaa To'achuu: Rakkoowan Seeraafi Hojimaataa Qaamolee Haqaa Naannoo Oromiyaa Keessatti Mul'atan  <i>Corresponding translation</i> Unlawful Trade Practices in the State of Oromia: Law and the Practice	Article	6(1)	Habtamu Bulti Abduselam Abe	2009/2017
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34	Yakkoota Ulfa Irratti Raawwataman: Xiinxala Seeraafi Raawwii Seera Yakkaa RDFI	Article	6(1)	Muluken Kasahun	2009/2017

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35	Ethiopian Witness Protection System: Comparative Analysis with UNHCHR and Good Practices of Witness Protection Report	Article	6(I)	Wekgari Dulume	2009/2017
36	Producing in Compliance with Environmental Obligation: Case of Bedele Brewery	Reflection	6(I)	Mohammed I.	2009/2017
37	The Relationship between the Federal and Regional States' Constitutional Review System in Ethiopia: The Case of Oromia Regional State	Article	7(I)	Muluken K.	2010/2018
38	Allocation of Costs and Fees of Civil Litigation in Federal Supreme Court Cassation Division: 'Does One Approach Really Fit All'?	Article	7(I)	Kahsay Gidey	2010/2018
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46	To'anno Dambiilee fi Qajeelfamoota Aangoo Bakka Bu'insaan Ba'anii: Haala Qabatamaa Oromiyaa  <i>Corresponding Translation</i> Controlling Regulations and Directives Enacted by Delegate Power: The Case of Oromia	Article	8(I)	Teferi Bekele Wekgari Dulume	2011/2019
47	Kenniinsa Koroora fi Dhiifama Sirreefamtoota seeraa Naannoo Oromiyaa: Seeraafi Hojimaata  <i>Corresponding translation</i> Parole and Pardon Granting in Oromia Regional State: Law and Practice	Article	8(I)	Getachew Feyisa Abduselam Abe	2011/2019

**Ergama, Mul'ata, Toorawwan Xiyyeeffannoo, fi Duudhaalee  
Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa  
Oromiyaa**

**Ergama**

Leenjii ogeessota qaamolee haqaa itti fufiinsaan kennuun gahumsaa fi qulqullina ol aanaa gonfataniit sirna heeraa fi seeraa kabajanii fi kabachiisan horachuu, gahumsa ogeessota seeraa mirkaneessuu fi rakkooowwan sirna haqaa irratti qorannoo fi qo'annoo gaggeessuu yaada haaraa burqisiisuun fooyyaa'insi sirna haqaa itti fufiinsaan akka jiraatu dandeessisuun dha.

**Mul'ata**

Bara 2012tti gahumsa hojii leenjii fi qorannoo seeraa fi haqaatiin Inistiitiyuuticha sadarkaa biyyaatti filatamaa, akka Afirikaatti beekamaa gochuu dha.

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1. Gahumsa Ogeessota Qaamolee Haqaa
2. Qo'annoo fi Qorannoo

**Duudhaalee Ijoo**

- Gahumsa
- Iftoomina
- Maamila Giddu galeessa godhachuu
- Kalaqummaa fi
- Dursanii yaaduu

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To ensure the competence 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**

To be a preferred centre for justice organ professionals training and legal research competency in Ethiopia and a recognized one in Africa by the year 2020.

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- Competence
- Transparency
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Oromia Law Journal (OLJ), a journal hosted by Oromia Justice Sector Professionals Training and Legal Research Institute, is annually published journal and a member of African Journals Online. 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, and 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](mailto:bekele.teferi@yahoo.com) or [tesfayeboresa2005@gmail.com](mailto:tesfayeboresa2005@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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