ISSN 2307-6097

Ethiopian Journal of Human Rights
(Peer-reviewed)

December 2023	Published Once A Year	Vol. VIII

Articles

Published by the Center for Human Rights
School of Law and Governance Studies, Addis Ababa University
P. O. Box 1176, Addis Ababa, Ethiopia… www.chr-aau.org

Ethiopian Journal of Human Rights

December 2023 Vol. VIII

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Editor's Note

Meron Zeleke (PhD)

EJHR, *The Ethiopian Journal of Human Rights,* is a multidisciplinary journal published by the Center for Human Rights, Addis Ababa University (CHR-AAU). Like the previous issues, the articles included in this volume contribute to a diverse and insightful examination of human rights issues within the Ethiopian context. The six contributions included in this volume explore the complex relationships between human rights and various aspects of culture, society, law, and the environment. The contributions emphasize the unfolding challenges and opportunities for advancing human rights in Ethiopia.

The first article by Kidus and Wondemagegn, entitled *Rape Myths and the Legal Process in Ethiopia: Impact of Victim Behavior Prior to Rape* examines how rape myths continue to influence the legal handling of rape cases in Ethiopia. Through a combination of questionnaires, interviews, and court document analysis, the study reveals that attitudes toward victims—particularly their behavior prior to the crime—play a significant role in the way legal actors perceive and process rape cases. Despite legal reforms aimed at improving the protection of victims, this study highlights the persistent influence of victim-blaming attitudes and how they contribute to the challenges of securing justice for rape survivors. The authors' findings underscore the need for further reforms to address these biases and improve the fairness of the legal system in handling rape cases.

The contribution by Henok Ashagrey entitled *Realization of Economic, Social, and Cultural Rights in Ethiopia: Lifting the Veil of Tax Evasion and Avoidance* explores the intersection of taxation and the realization of economic, social, and cultural rights in Ethiopia, with a particular focus on the issue of tax evasion and avoidance. Drawing on human rights principles, the paper critiques the limitations of Ethiopia's tax policies in ensuring that the resources generated from taxation are used effectively to fulfill the state's obligations under the

International Covenant on Economic, Social, and Cultural Rights (ICESCR). The analysis of Ethiopia's tax system reveals a significant gap between the country's legal frameworks and the realization of ESC rights, particularly for vulnerable populations. The article calls for more robust measures to address tax abuse and ensure that public resources are directed toward improving the socio-economic conditions of all Ethiopians.

The third article by Dagim Melese *The Human Rights Implications of Climate Policy Action in Ethiopia: The Case of Humbo Afforestation/ Reforestation (A/R) Clean Development Mechanism (CDM) Project* critically examines the human rights implications of market-based climate policies, particularly through the lens of Ethiopia's Humbo Afforestation/Reforestation (A/R) Clean Development Mechanism (CDM) project. The author highlights significant human rights violations related to procedural rights, such as the lack of free, prior, and informed consent (FPIC) from local communities involved in the project. Furthermore, the study reveals that the project's implementation failed to protect the substantive rights of affected communities, particularly their right to an adequate standard of living. The findings suggest that globally driven market-based climate policies need a more inclusive approach in Ethiopia that respects the rights of vulnerable populations, particularly those directly impacted by environmental changes.

In the article, entitled *Representation of Slavery and Class in Kafa Proverbs*, Mesfin explores how proverbs in the Kafa language reflect and perpetuate systems of class and slavery, contributing to the ongoing marginalization of certain groups. The author examined Kafa proverbs through interviews with community members and shows how language can serve as a tool for reinforcing power hierarchies and perpetuating social inequalities. The article challenges the normalization of these harmful stereotypes and highlights how language can be a vehicle for either promoting or undermining human rights. This investigation serves as a timely reminder of the importance of cultural expressions in shaping social attitudes and practices that impact human dignity.

The fifth contribution by Anchinesh, entitled *Constitutional Adjudication of Rural Women's Land Rights in Ethiopia*, provides a critical analysis of how Ethiopia's constitutional adjudication system has addressed gender disparities in rural women's land rights. Focusing on decisions made by the Council of Constitutional Inquiry and the House of Federation, the author explores how constitutional interpretation of land-related disputes involving women and girls has varied and thus affected the rights of these vulnerable sections of the society. The paper highlights the lack of uniformity in addressing gender-sensitive land policies and calls for a more consistent approach to protect rural women's constitutional right to land. By examining both legal case studies and policy gaps, the article provides practical recommendations for improving gender justice in land administration.

The last contribution by Wubishet and Yilikal entitled A *Glimpse of Normative Framework of Physical Accessibility for Persons with Disabilities in Ethiopia and the Key Advocacy Areas by CSOs: The Case of Addis Ababa* examines the legal and practical challenges faced by persons with disabilities (PWDs) in accessing physical spaces in Addis Ababa. The study highlights the inadequacies of existing building regulations and the lack of comprehensive accessibility legislation. Through interviews and observations, the author identifies key advocacy areas for civil society organizations (CSOs) and organizations of persons with disabilities (OPDs), emphasizing the need for robust legal reforms and improved implementation of accessibility standards. The article also stresses the importance of integrating PWDs' rights into broader urban planning and development policies, which are crucial for ensuring full participation and inclusion in society.

To sum up, the articles included in this volume of EJHR collectively contribute to the debate on the critical human rights issues that continue to shape Ethiopia's legal, political, and social landscape. They address vital concerns about gender equality, environmental justice, social inclusion, and the effective implementation of human rights principles. As Ethiopia navigates complex challenges in

achieving the full realization of human rights for all its citizens, I believe that the insights offered by these authors are essential for fostering informed dialogue and shaping future policy interventions.

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Rape Myths and the Legal Process in South Ethiopia Region: Impact of Victim Behavior Prior to Rape

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Abstract

Ethiopia has implemented numerous policy improvements including reforming a legislation against rape. However, it is still unclear how much these changes have shifted the focus of rape case processing from the victim's reputation and behavior to the offender's criminal behavior. The purpose of this article is to study how the myth of "victim behavior" affects rape prosecutions in South Ethiopia Region. The study used a socio-legal method of empirical data collection, which combined survey, interview, and court document analyses. All in all, 230 key actors, including judges, prosecutors, defense lawyers, and investigating police officers answered a self-administered survey questionnaire. Besides, 40 interviews were conducted and 316 prosecution and court files were analyzed. The survey data shows that the majority of respondents (64.82%) rated their attitudes on the six-item scale above average indicating that many of the key actors in the legal process are inclined to believe in rape myths and, when addressing rape cases, have been influenced by victims" purported actions before rape. Besides, data from interviews, as well as case review analysis, revealed that the victim's reputation and risk-taking behavior prior to rape have a significant influence on the legal process. As a result, the findings of this study indicate that rape victims in the study area are more likely to be unfairly treated in the legal process due to the influence of rape myths on the key legal actors.

Keywords: *rape myths, legal process, victim, South Ethiopia Region*

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Introduction

Most rape definitions appear simple and clear on paper, but they are incapable of accommodating the various legal issues that arise in rape trials. Nonetheless, the importance of the definition of rape in the legal process is becoming increasingly recognized. Without knowing the legal definition of rape, it is difficult to understand the entire legal process that is set in motion in the prosecution of rape. The term rape is used in reference to only one gender-specific sexual offense in the Ethiopian Criminal Code (2004), namely, sexual intercourse (penile-vaginal penetration) of a man with a woman outside of marriage, by violence (physical force), by threat of force (grave intimidation), or by rendering the victim incapable of offering resistance or unconscious. Other sexual offenses have been treated separately, with different headings and severity of penalties. However, in the current study, the term "rape" refers to only one gender-specific sexual offense that has been criminalized under the Ethiopian Criminal Code (2004): "Whoever compels a woman to submit to sexual intercourse outside wedlock, whether through violence or grave intimidation or after rendering her unconscious or incapable of resistance, is punishable..."[3]

The crime of rape has an impact on the victim's physical and emotional health. Rape is considered a violation of one's dignity, freedom, and rights.[4] The most severe effect of rape may be the denial of women's basic human rights and freedoms (Innocenti Digest 200). It is considered discriminatory since it alters women's lifestyles and limits some of their options, such as freedom of movement, in an effort to lower the danger of being raped (Stellings 1993, 188).

In Ethiopia, according to a national study conducted by the Ministry of Women, Children, and Youth Affairs (MoWCYA), the prevalence of sexual violence in the workplace was 37 percent in

[3] The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Proclamation No. 414/2004, art. 620.

[4] "Dignity on trial," Human Rights Watch India-WRD_0910_web Accessed September 1, 2023.

the public sector and 33 percent in the private sector.[5] In the higher education institutions, the prevalence rate was determined to be 39 percent, substantially higher than the secondary school average of 20.7 percent.[6] Similarly, the 2016 Demographic and Health Survey found that 7 percent of women aged 15 to 49 had experienced sexual violence in the year before the survey, and 10 percent had experienced it at some point in their life.[7] According to the survey, 2 percent of girls and 5 percent of women who were 18 or younger had experienced sexual assault.

Despite the widespread incidence of sexual violence and its effects, few women and girls actually report the occurrence. According to 2016 Demographic and Health Survey data, only 8 percent of victims sought police aid.[8] Only 2 to 3 percent of women had ever consulted a lawyer, a doctor, or a social worker, among other potential support providers.[9]

There is a general belief that rape is terrible, degrading, and dishonorable to victims and their families, and such impact may even be worse upon reporting the occurrence and pursuing justice (Biseswar 2011; Sara Tadiwos 2001). The social retribution of the victim gives the perpetrator an unfair advantage as the offenders" acts are attributed to the victim. This means that the victim is affected twice, one when they faced the assault of sexual violence and second when the society may turn accusation towards them. Consequently, the victim is discouraged from reporting the assault, pursuing justice, and obtaining other essential assistance (Sinidu Fekadu 2008).

Over the past 20 years, Ethiopia has introduced a number of policy changes that also address the issue of rape (Mesay Hagos 2020). The extent to which these changes have improved reporting to the

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5 "Ministry of Women, Children and Youth Affairs, *Assessment of Conditions of Violence against Women in Ethiopia*, Final Report November 2013, 60-64.

6 Ibid.

7 "Central Statistical Agency, *Ethiopia Demographic and Health Survey*," Addis Ababa, Ethiopia, 2016.

8 Ibid.

9 Ibid.

police, prosecution, and conviction rates for rape cases, and rape victim treatment, however, is still an area which is less studied. It has also been found that these legal revisions had not influenced the shift of focus of rape case processing from the victim's reputation, character, and behavior to the offender's criminal behavior (Mesay Hagos 2020).

Due to the mistreatment of victim-witnesses during cross-examination, some feminists have referred to the unpleasant experiences of many complainants during both the investigation and trial processes as "judicial rape (Lees 1993)." Although it should be highlighted that some jurisdictions have made improvements, these problems show a "justice gap" in the successful prosecution of sexual abuse (Smith and Skinner 2002).

Feminist research claims that the "justice gap" in rape cases is at least partially a result of the propagation of rape myths (Temkin, Gray and Barrertt 2018; Eyssel and Bohner 2011; Estrich 1987). Rape myths are widespread beliefs about rape that "affect subjective definitions of what constitutes a "typical rape," contain problematic beliefs about the likely behavior of perpetrators and victims, and paint a distorted picture of the antecedents and consequences of rape (Bohner et al. 2009). Many criminal justice professionals are alleged to have an unconscious bias towards rape complainants, which has been demonstrated to affect their judgment in rape cases (Temkin 2010). These biases have led to a high rate of unwarranted defendant discharge since many legal professionals have a tendency to unduly favor rape defendants during justice processes to the detriment of complainants (Temkin 2010).

Thus, one of the main causes of unfair proceedings in rape cases is the tendency of judicial authorities to have incorrect assumptions about the traits and behavior of a "genuine" rape victim and thus to place more emphasis on these than the defendants" acts. According to studies, this thinking is a more discreetly stated kind of victim blaming than overt one, and it manifests negative beliefs toward rape victims (Edwards et al. 2011). The rape victims are blamed for being victimized, and/or they are held accountable

and/or blameworthy for their victimization (Bohner et al. 2009). Commentators assert that "there is probably no other criminal offense that is as closely linked to broader social attitudes and evaluations of the victim's conduct as sexual assault" (Kelly, Lovett and Regan 2005). It is believed that gender roles and sexist attitudes are the attitudes that lead to assigning blame and accountability to the victim (Frese, Moya and Megias 2004). Behaviors that increase attributions of responsibility or blame to the victim are consistently identified as behaviors that may be considered to exceed female gender-role expectations (Grubb and Turner 2012). Belief in victim precipitation suggests skewed perceptions of what causes rape, and it is unethical because "the perpetrator's responsibility must remain with them" and "it is the perpetrator who decides to commit rape regardless of the victim's behavior (Bohner et al. 2009; Lovett and Horvath 2009)." Similarly, in a qualitative study conducted in Addis Ababa, Blain documented instances where perceived risk-taking behaviors were used to disqualify rape victims from being considered "genuine" and to determine case-processing outcomes (Blain Worku 2011).

The researchers believe it is critical to address the presence of rape myths in the Ethiopian criminal justice system and their significant potential for undermining justice in rape cases. This, in turn, may reveal the influence of rape myths on the legal process for rape and possible solutions to the problem. Furthermore, it contributes to the existing body of knowledge on rape myths. The researchers believe that this study is one of a few to contribute to this phenomenon in terms of key actors in the criminal justice system. It is hoped that the study will generate knowledge that can be used as a starting point for further research into rape myths and actors who work with rape victims. The study's objective is to investigate the influence of victim's reputation and risk taking behavior prior to rape on the legal process in Ethiopia in order to provide knowledge that can help improve the criminal justice system's response to rape.

Methods

Study Area

This study was conducted in the South Ethiopia Region. Kenya borders it on the south, the South West Ethiopia Region on the southwest, the Sidama Region on the east, the Central Ethiopia Region to the north, and the Oromia Region to the east. The region is made up of approximately 31 indigenous ethnic groups, each having their own geographical setting, language, culture, and social identities. For this study, from twelve sub-regional administrative units, five zones, and three administrative towns were randomly selected.

Study Aesign and Sampling

Legal researchers use approaches from other disciplines to collect empirical data from the society (Kumar and Malik 2012). This study used a socio-legal method to investigate whether rape myths influence the criminal justice system in the study area. A mixed-method research design was used in this study, which Creswell defines as a procedure for collecting, analyzing, and "mixing" both quantitative and qualitative methods in a single study or series of studies to better understand a research problem (Creswell 2012). A mixed method leverages rich data and a fuller understanding of a problem in investigation (Doyle, Brady and Byren 2009, 178-179).

Quantitative Approach

Intended to evaluate attitudes toward rape victims, this study used cross-culturally validated scale named the Attitudes toward Rape Victims (Xenos and Smith 2001). A questionnaire with six items was developed, with the focus areas of credibility and victim blame. Items were scored using a 5-point Likert scale, and the total score ranging from 0 to 100 was employed to determine how much the reputation of the victim and risk-taking behavior prior to the rape affected the criminal justice system in the selected research locations. Therefore, a survey was undertaken to measure knowledge, attitude, and beliefs concerning rape victims in order to

examine how their reputation and risk-taking behavior prior to rape had influenced investigative officers, defense lawyer, prosecutors, and judges. Purposive sampling technique was employed to select key actors. As a result, judges, prosecutors, defence lawyers, and investigative police officers who had handled and made decisions on rape cases in their respective capacities were carefully identified as respondents. From a total population of 542 key actors in study area, a sample of 230 were selected for this study and completed a self-administered questionnaire based on Taro's (1967) simplified formula for sample size determination.

Qualitative Approach

After deciding on interviewing as one of the data collection methods, it was critical to select the right people who could provide the necessary data (Bryman 2016). The most relevant individuals were CJS's key players as they have direct experience with the legal process: judges, prosecutors, investigative police, defense lawyers, as well as defendants and rape victims. These categories, however, play different roles in the process, and some of them have competing interests. As a result, their perspectives are likely to differ, hence, the sampling strategy considered including these divergent groups (Norman and Denzin 1989). Defendants were not included in the study because their role in the legal process is largely assumed by their lawyers. In total, forty people were interviewed from the five categories listed above, including ten judges, ten prosecutors, six investigative police, six defense lawyers, and eight rape victims. To protect their anonymity, they are referred to as: JUDGE [number] for the ten judges, PROSEC [number] for the ten prosecutors, INVESTIGATIVE POLICE [number] for the six investigative police, DEFENSE LAWYER [number] for the six defense lawyers, and RAPE VICTIM [number] for the eight victims. The sampling of prosecutors and judges had to account for representation of the various structures and departments that make up the prosecution service and the judiciary. Rape cases are heard in two levels of courts within ordinary courts: first instance courts and the High Court. There are two levels of prosecution as well: Town/Woreda

(District) and Zone. This representation was critical in the case of diverse practices across departments.

Analyses of Prosecution and Court Documents

Collection and analyses of prosecution and court documents was essential to see if prosecutors" and judges were influenced by rape myths. The most detailed explanations of these decisions can be found in the case files. As a result, the researchers collected 316 files that went through the legal process to judgment using Taro's (1967) simplified formula for determining sample size. It was deliberate to collect the files with all of their contents rather than just the final decisions. This allowed these decisions to be critically examined in terms of how well they reflected the evidence available to the decision-maker.

Data Collection

To guarantee the consistency and validity of the items, a small sample of randomly chosen participants were first piloted with the questionnaire. Ten questionnaires were consequently issued. The feedback from the pilot test was used to modify the questionnaire. The questionnaire was altered to provide respondents the opportunity to omit the open-ended questions if they so choose, considering that the majority of participants dislike completing them. Following that, the required number of copies were duplicated and distributed to the participants, with enough provisions for possible incomplete and/or missing responses. In order to assess their knowledge, attitudes, and beliefs regarding the victim's reputation and risk-taking behavior when processing and making decisions on rape cases, the key actors filled out a 6-item questionnaire with a cross-culturally validated scale. The data collection period lasted three months, beginning October 2021. Interviews were conducted using semi-structured interview guides. The questions were open-ended, allowing interviewees to make detailed comments and express their opinions freely (Denscombe 2003). To make things even easier, the interviews were conducted in Amharic (the working language of the

region). The questions were translated into Amharic and then back translated to ensure consistency. Because most interviewees did not want to be recorded, the researchers took handwritten notes during the conversations. The preparation and conduct of the interviews differed depending on the type of participant.

The collection of prosecution and court documents required sampling as well as adherence to relevant ethical obligations. As a result, researchers have conducted seconder (document) analysis in seven Zones that were purposefully chosen based on the number of reported rape cases. Based on a list of questions, researchers used police and court records to assess the extent of reported rape cases, the size of charges warranted, and the number of defendants found guilty of rape. The questions on the checklist included the complaint's demography, the reported history about the time and condition of the rape, previous experience with sexual intercourse, and other information available in the records that have been used to identify factors that affect the prosecution process. Only cases handled between September 2016 and February 2020 were gathered, however. This was done to ensure consistency in their interpretation.10

Data Analysis

In terms of data analysis techniques, qualitative data were organized manually in accordance with the research objectives and transcribed, coded, and analyzed using qualitative data analysis procedures. In particular, data were systematically organized into related themes and categories in accordance with the study's main objectives, from which analyses and interpretations were made. Data collected through document analysis and a cross-sectional survey, on the other hand, were entered into a template in Microsoft Excel and exported to SPSS #20 for cleaning and analysis. The recorded information from court documents was analyzed using descriptive statistics, cross-tabulation with the chi-square statistic,

[10] This article is based on data obtained for a PhD thesis. This fact should be considered when analyzing the study area, quantity of respondents, and court cases.

and binary logistic regression. Using SPSS, simple descriptive statistics were used to analyze data collected via questionnaires, and Chi-square tests were used to determine statistical significance. Throughout the process, efforts were made to triangulate data from various sources. Finally, complete interpretations of the data from all sources, inferences, and conclusions were made.

Ethical Statement

Letters of approval for this work were acquired from the graduate program committee of the Addis Ababa University School of Law. Prior to filling out the questionnaire, each study participant was given a clear explanation of the study's goals. They were also told that, if they so choose, they may skip any question or even refuse to participate altogether. Additionally, they were clearly informed that their answers would be kept confidential and analyzed collectively. Finally, respondents gave their consent for the research findings to be published and disseminated.

Interviews with key justice actors were mainly held at their workplaces, which they preferred. Each interview lasted approximately an hour and were held in a friendly setting. Because of the ethical implications, interviews with rape victims required extra attention. All essential preparations were done to handle any potential ethical difficulties during interviews with rape victims (Ellsberg and Heise 2005). In this regard, three potential issues had been identified. The first was the survivors" safety (Ellsberg and Heise 2005). This risk was mitigated by holding meetings in a secure place. The participants were asked to choose a convenient place, but the majority of them trusted the researchers to identify an appropriate location. As a precaution, the researchers would always notify the local police commanders to be present before meetings. There were no safety incidents reported during any of these interviews.

The second concern that had to be avoided or addressed during the interviews with rape victims was the possibility of distress caused by remembering their traumatic experience (Ellsberg and Heise 2005). This problem was minimized by the fact that the interviews

with rape victims centered on their interactions with the criminal justice system rather than the assault. It was, however, vital to be ready in case a problem emerged. As a result, the researchers exercised caution before conducting the interviews. The researchers advised the interviewees ahead of time that they could terminate the interview at any point. Fortunately, none of the interviewees had a strong emotional reaction or asked that the session be halted.

The third concern was the possibility of unwittingly shocking the interviewees with probing or improper words (Ellsberg and Heise 2005). To avoid this, great care was taken in writing the questions and choosing the phrases used throughout the interviews. The questions were carefully planned, as were the wording used in the interviews. The interviews with all eight rape victims, as well as the thirty-two key actors in the criminal justice system, were completed without incident.

Results

As shown in Table 1 below, female respondents for the survey questions consist only 21.3 percent. Besides, 81.3 percent of the respondents were degree-certified. The vast majority of them have studied law. Among the participants are a large number of judges and public prosecutors.

Table 1. Demographic Characteristics of the Respondents

Variables		*Frequency*	*Percent*
Sex	*Male*	*175*	*76.1*
	Female	*46*	*21.3*
Education level	*9-12*	*5*	*2.2*
	Diploma	*21*	*9.1*
	Degree	*187*	*81.3*
	Masters	*15*	*6.5*
Field of study	*Law*	*113*	*49.1*
	Accounting or management	*16*	*7.0*
	Others	*96*	*41.7*

Occupation	*Investigative Police*	*36*	*15.7*
	Public prosecutor	*71*	*30.9*
	Judge	*99*	*43.0*
	Defense Lawyer	*20*	*8.7*

As the Table 2 below shows, majority of the respondents have rated their attitude on the 6-items scale above the average i.e. 64.82 percent. This implies that most of the key actors within the Criminal Justice System tend to accept the rape myths and have relatively negative attitude towards rape victims. Interestingly, there is no statistically significant difference in the attitude of key actors across sex.

Table 2. Descriptive Summary of Rape Myths Acceptance by Respondents, Focusing on the Reputation of the Victim and Risk-taking Behavior

Categorization	***Variables***	***Frequency***		***Percent***
Victim's reputation	*women who have had prior sexual relationships should complain about rape*	*SD*	*118*	*51.3*
		D	*87*	*37.8*
		N	*9*	*3.9*
		A	*4*	*1.7*
		SA	*10*	*4.3*
Victim's risk-taking behavior	*women do not provoke rape by their appearance or behavior*	*SD*	*62*	*27.0*
		D	*101*	*43.9*
		N	*26*	*11.3*
		A	*29*	*12.6*
		SA	*10*	*4.3*
	women should complain to be raped if she went voluntarily to the suspect's home	*SD*	*76*	*33*
		D	*60*	*26.1*
		N	*27*	*11.7*
		A	*62*	*27.0*
		SA	*2*	*0.9*

	woman who goes out alone at night puts herself in a position to be raped	*SD*	*27*	*11.7*
		D	*38*	*16.5*
		N	*29*	*12.6*
		A	*107*	*46.5*
		SA	*26*	*11.3*
	women who wear short skirts or tight blouses are not inviting rape	*SD*	*51*	*22.2*
		D	*81*	*35.2*
		N	*29*	*12.6*
		A	*54*	*23.5*
		SA	*10*	*4.3*
victim's history of working in a "disreputable" situation such as "prostitution"	*accusations of rape by bar girls, dance hosts and sex workers should be viewed with suspicion*	*SD*	*22*	*9.6*
		D	*42*	*18.3*
		N	*36*	*15.7*
		A	*102*	*44.3*
		SA	*26*	*11.3*

Note: SD: Strongly Disagree D: Disagree N: Neutral A: Agree SA: Strongly Agree

Table 2 lists the elements that could lead decision-makers to accuse the victim or cast doubt on their veracity. These factors have been classified as victim's reputation and risk-taking behavior for the purposes of simple descriptive analysis. The victim's history of working in a "disreputable" setting like "prostitution" and prior relationships with the offender (whether they were romantic or platonic) are among the contributing factors. Other factors include the victim going out alone late at night or dressing in a sexually provocative manner, walking or going to a bar alone, and working in a "disreputable" setting like "prostitution."

Table 2 also shows that the majority of respondents (51.3 percent) 'strongly disagree" and (37.8 percent) "Disagree" when considering decision-making about victims who have had prior sexual interactions. According to the majority of respondents, (33 percent) 'strongly disagree" and (26.1 percent) "Disagree" that the victim has

voluntarily accompanied the suspect when making decisions. The majority of respondents to this study also agreed that a victim had "increased her risk of rape" by, for instance, her conduct (27 percent) 'strongly disagree" and (43.9 percent) "Disagree" or clothing choices (22.2 percent) 'strongly disagree" and (35.2 percent) "Disagree", and a further (46.5 percent) "Agree" and (11.3 percent) 'strongly agree" that women "ask for it" by acting in particular ways, such as leaving the house alone at night. Table 2 shows that (44.3 percent) "Agree" and (11.3 percent) 'strongly agree" of majority of the respondents think that allegations of rape against bar ladies, dance hosts, and sex workers should be taken seriously.

As a result, Table 3 shows police and court records to determine the extent of reported rape cases, the size of charges warranted, and the number of defendants found guilty of rape based on a list of questions. The checklist's questions included the reported history of the time and condition of the rape, the victims" reputation and risk-taking behavior, and other information available in the records. These were used to identify factors that affected the prosecution process.

Table 3. Frequency of Cases Where the Victims" Reputation and Risk-Taking Behavior Were Raised During Trials (N-316)

Category	***Variables***	***Yes***		***No***	
		Frequency	***Percent***	***Frequency***	***Percent***
Victims" reputation	*Victims were asked about previous sexual intercourse experience*	*75*	*23.7*	*241*	*76.3*
	Victims were asked about previous crime record	*17*	*5.4*	*299*	*94.6*
	Victims were asked about drug and alcohol use pattern	*8*	*2.5*	*308*	*97.5*

Victims" risk-taking behavior	*Victims were asked whether they walked alone late at night*	*62*	*19.6*	*254*	*80.4*
	Victims were asked whether they were in the bar late at night	*11*	*3.5*	*305*	*96.5*
	Victims were asked whether they have accompanied the suspect to their house	*51*	*16.1*	*265*	*83.9*
	Victims were asked whether they have invited the suspects to their house	*15*	*4.7*	*301*	*95.3*
Victims" risk-taking behavior	*Victims were asked whether they were dressing in sexually soliciting manner*	*2*	*0.6*	*314*	*99.4*
	Victims were asked whether they were drunk before the incident	*2*	*0.6*	*314*	*99.4*

As a result, Table 4 below demonstrates that decision making in the prosecution process was found to be influenced by a variety of factors. The likelihood of a reported rape case being rejected or charged is determined by the victims" reputation and risk-taking behavior, particularly accompanying the suspect to a perpetrator's house and walking alone at night. For instance, victims who were asked if they were walking alone late at night had a 3.1 times higher chance of their case being rejected than their counterparts.

Table 4. Chi-Square and Logistic Regression Results on Factors Associated with Decision Making in the Prosecution Process

Variables	*Category*	*Decision (0=rejected, 1= proved guilty and sentenced)*			
		Chi-square	*p-value*	*Odds Ratio*	*95% CI*
Victims voluntarily accompanied the suspect to their house	*0= Yes* *1= No*	*5.153*	*0.023*	*0.387*	*0.168, 0.894*
Walking alone at night	*0= Yes* *1= No*	*4.947*	*0.026*	*3.067*	*1.101, 8.543*

Discussion

Victims' Reputation

This study found that the result of rape cases is significantly influenced by the victims" earlier sexual behavior. According to table 2, when it comes to making decisions, the majority of respondents are influenced by the victims' prior sexual interactions with the suspects. This important actors' propensity to accept or reject rape victims reflects the ingrained notion that permission to sexual activity is "temporarily unconstrained (Anderson 2002)." Anderson (2002) argues that it is false to think that a single person's sexual consent provided at a specific time is untimely.

According to previous studies carried out in Ethiopia, it is rather difficult for a rape victim to receive an appropriate response from the Criminal Justice System. For instance, an Addis Ababa-based qualitative study indicates that it is difficult to believe a woman if she had previously had sex with the suspect (Blain Worku 2011). A similar study revealed that "consent appears to be presumed in most of the cases where the victim has had a previous sexual relationship with the accused" (Blain Worku 2011). This inference of consent was assumed unshakable, even by providing direct witnesses or supporting documentation. Because of this, a later sexual offense may be considered less serious if the victim and the perpetrator had

a previous sexual relationship. Furthermore, the victims' previous sexual relationships with someone other than the accused have influenced many prosecutorial and judicial decisions. For example, public prosecutors and judges have asked 23.7% of victims about previous sexual intercourse experience (see Table 3 above).

Moreover, victims confirmed that they were questioned not only about their sexual history with the accused, but also about their sexual history with other people. An informant stated, "They inquired me about my boyfriend from when I was a teenager. They also inquired me about my relationship with the accused. They repeatedly asked me about this for three days. This made me feel terrible at first, but I knew I could eventually call witnesses to disprove this." (RAPE VICTIM7)

Victim participants reported that some of the questions about their prior sexual history caused them great distress and made them feel unfairly treated. As one informant stated, "All of the decisions appeared to favor the accused. I was questioned about my previous sexual history, which was very unfair and upsetting." (RAPE VICTIM5). According to DEFENSE LAWYER2, "The courts typically do not shield adult rape victims from being questioned about their sexual past". Similarly, DEFENSE LAWYERS1 stated, "During cross-examinations, it's typical to inquire about the victims" past sexual behavior. The victims were frequently cross-examined by the defense lawyers regarding their prior sexual behavior". INVESTIGATIVE POLICE6 also made the case, for instance, that

> *A victim should be interrogated about her sexual past since sometimes what she claims and what actually had transpired may be conflicting. The court may dismiss the case if a woman alleges that she was raped but the forensic medical evidence proves otherwise. For instance, she can assert that she hadn't engaged in any sexual activity with anyone before the attack and that it involved sexual penetration. However, the forensic medical evidence shows there hasn't been any recent sexual penetration.*

Such a situation demonstrates McGlynn's (2017) claim that by concentrating on the victim's personality, legal practitioners usually become sidetracked from the investigation's main goal and neglect to properly assess other pertinent evidence (McGlynn 2017). Additionally, it shows how frequently rape victims who are deemed to be promiscuous are denied legal protection (Anderson 2002).

Victim Risk-taking Behavior

Prior relationships between the victim and the offender (whether strangers or acquaintances) as well as victim walking or bar alone late at night or dressing in sexually soliciting manner have been classified as victim's risk-taking behavior for the purposes of simple descriptive analysis. The majority of respondents considered whether the victim voluntarily accompanied the suspect to his home. According to Table 2, majority of the respondents are influenced when making decisions if the victim has voluntarily accompanied the suspect.

The figures in the preceding subsection provide useful insights into the factors or victim characteristics that lead key actors within the CJS to blame the victim, question her credibility, or determine the outcomes of rape-case processing within the CJS. Data were obtained from key informants, primarily investigative police, prosecutors, judges, defense lawyers, and rape victims, to gain a better understanding of the trends and reasons for the rates of attrition, prosecution, and conviction for rape cases in particular.

In their interviews, if the victim was familiar with the assailant, key actors within the CJS questioned the victim's credibility. For example, if a complainant went to the defendant's house freely and willingly, it was frequently interpreted as evidence of consent to sexual intercourse or rape provocation. JUDGE8, for example, stated: 'sometimes you find that the woman freely goes to the man's home. In this case, you realize she has willingly went into a sexual intercourse or could have prevented it." PROSEC6 also confirmed that: "If the woman was raped at the defendant's home, judges are likely to question why she went freely to visit him despite the

fact that he is single." According to DEFENSE LAWYER6, "if a woman is raped in the defendant's house, she generally has some responsibility in the rape." Similarly, a RAPE VICTIM3 confirmed in their interview: "...I felt that others believed that I had made up the rape," said one participant who was only acquainted with the accused in passing.

This attitude was evident in prosecutorial and court documents as well. Based on the number of reported rape cases, prosecutorial and court document analyses was carried out for this purpose. For example, as shown in table 3, judges and public prosecutors considered some of the victims" characteristics and risk-taking behavior during the prosecution process. A significant number of victims (16.1%) were asked if they had accompanied the suspect to his home.

Additionally, prior studies have shown that elements like the "victim-offender relationship" affect decision-making as well as blame attribution, credibility, and case-processing results. For instance, the variable "victim-offender relationship" had been connected to judgment as well as to blaming and credibility (Bell, Kuriloff and Lottes 1994). Many false allegations instances have involved a victim and an offender who were at the moment dating or have previously been together (Venema 2016). Key figures in the criminal justice system only described rape reports as real or serious when the perpetrator was an outsider (Venema 2016). Kelly's (2009) research indicates that more responsibility is frequently placed on the victims the more the victim and perpetrator know one another and the tighter their relationship is. The study also found that men and women tend to hold the perpetrator of acquaintance rapes less liable (Kelly 2009).

An earlier study in Ethiopia found out that the victim-offender dynamic affects case attrition, credibility, and assigning responsibility (Blain Worku 2011, 56-59). For instance, according to a qualitative study done in Addis Ababa, "the prosecutor had used the victim's relation or acts before the commission of the crime as a sole or an additional ground to close a case. Similarly, Blain

Worku (2011, 58-59)) recorded cases in her research done in Addis Ababa where perceived risk-taking behaviors were utilized to rule out rape victims as being "genuine" and to decide case-processing outcomes. She referred to "risk-taking behavior" as "vulnerability" instead of the more conventional "risk-taking behavior" (Blain Worku 2011). Her study unequivocally demonstrates that law enforcement officials held the view that rape was a crime that could be avoided by the victim by refraining from "risk-taking behavior" (Blain Worku 2011). The key actors held that the victim's risk-taking behavior pushes offenders to the point where they are unable to control their wants to engage in sexual activity. They used the victim's "risk-taking behavior" as the primary criterion for assessing the unlawfulness of the aforementioned sexual encounter (Blain Worku 2011). In Blain's study, the key actors seemed to interpret risk-taking conduct too broadly as to what a reasonable member of society may anticipate will occur during the next sexual encounter. The key actors anticipated that sexual activity would follow, for example, if the victim accompanied the perpetrator home late at night (Blain Worku 2011).

Correspondingly, prior studies have revealed that "risk-taking" actions by victims, such as walking alone after hours, hitchhiking, and being observed alone in a bar, have an impact on the attribution of responsibility and believability as well as case attrition (Kelley and Campbell 2013; Spears and Spohn 1996, 1997). These factors, according to a research by Spears and Spohn (1997), are characteristics that set "genuine" victims apart from other victims. Genuine victims were those who had a "good" moral character (for instance, no history of drug or alcohol abuse, prior offenses, or involvement in sex work), as well as those who had not engaged in risk-taking behavior before the offense (Spears and Spohn 1997). The majority of respondents to this study also agreed that a victim had "increased her risk of rape" by, for instance, her conduct or clothing choices, and that women "ask for it" by acting in particular ways, such as leaving the house alone at night.

A review of the court documents also revealed that victim characteristics or behavior, rather than rape evidence, was at the center of the evaluation of many cases. Prosecutors and judges have openly stated that their decisions were based on moral judgments about the complainant. Table 4 above, for example, shows a chi-square analysis of each factor, as well as the extent to which each factor was considered in rape-case decision making. Besides, prosecutorial and court documents show that a significant number of victims (19.6%) were asked by public prosecutors and judges during the prosecution process if she was walking alone late at night (see table 3 above).

These findings from document investigation were largely replicated as follows. JUDGE3 said "In some cases, the complainant engages in provocative behavior. For example, when a woman dresses sexually provocatively and pays attention to him." Similarly, INVESTIGATIVE POLICE3 indicated, "In some cases, rape is caused by the victim. For example, if a woman agrees to share [alcoholic] drinks with a man in a bar and attracts him, the man is then compelled to have sex with her."

Such prevalent beliefs regarding complainants' actions, as shown in this study, reflect an Ethiopian culture that holds women accountable for them being mistreated. Men can shift blame onto victims, whether they are consenting participants or not, in order to escape accountability (Brownmiller 1975). Women are expected to defend themselves against male sexual approaches, and those who do not or are thought to "provoke" males into abusing them sexually are held accountable. While it is true that this viewpoint still predominates in legal process in Ethiopia, it is not exclusive to this country. According to Brownmiller (1975), these behavioral patterns and ingrained stereotypes against women have been present throughout history. Women were denied the ability to live a life free from rape crime due to these structural and cultural inequalities. Basic human interaction includes having a drink together or paying attention to other males. If women are supposed to shun social situations and act irrationally, they cannot freely socialize. To refute such beliefs,

evidence must be presented. Previous studies have shown that rape is a "pseudosexual act" driven mostly by motivations like punishment, retaliation, dominance, and vengeance (Le Goaziou 2011; Groth 1979). Such a horrible act, in the opinion of Walters and Tumath (2014), is proof of gender hatred and ought to be recognized as a hate crime in addition to a sexual assault (Walers and Tumath 2014). They stress the need of recognizing hate motives in some sexual attacks driven by gender antagonism and advise addressing these in accordance with their particular seriousness. This would assist in modifying gender-biased views on rape (Walers and Tumath 2014).

Victims' History of Working in a "Disreputable" Environment

Other elements of the questionnaire, such as the victims" history of employment in a "disreputable" setting, like prostitution, have been implicated in prior studies as determining factors of the believability of victims (Campbell, Menaker and King 2015). For example, a 2007 study carried out in two states in the Southeast United States found that the police were less willing to believe victims who were sex workers (Page 2007). Similarly, a 2016 study in the Great Lakes Region found that police officers frequently mistake complaints of rape by prostitution-related individuals for false accusations because they believe the sexual encounter to have been consensual (Venema 2016).

In response to rape complaints filed by sex workers, the majority of respondents stated dismay. Table 2 shows that key actors in the criminal justice system believe that charges of rape against bar ladies, dance hosts, and sex workers should be taken seriously, with 44.3 percent agreeing and 11.3 percent strongly agreeing. However, whether the complainant was raped is unrelated to the victims" sexual experience (including prostitution).

Data from interviews, as well as case review analysis, revealed a strong tendency to exonerate rape defendants on the basis of allegations of victim prostitution. Perhaps more troubling, the interviews revealed that defendants and their lawyers routinely

claimed that the victim is a sex worker in order to prove that the alleged rape did not occur, regardless of the complainant's history of sex work. INVESTIGATIVE POLICE4 admitted: "We frequently assert that the complainant is a sex worker that she is used to having sex voluntarily and that there was no rape as a result." Many participants also believed that suspicion of victim se workers occasionally resulted in silent hostility toward the complainant and influenced the decision to acquit the defendants: According to PROSEC1, "Accusations by a sex work has an impact on judicial decisions in rape cases. Sometimes the judges show animosity toward the complainant and exonerate the defendants without saying so openly." DEFENSE LAWYER5 added, "In our society, sex workers are regarded as outcasts. If the complainant is a sex worker, the judge tells himself that she cannot be raped."

All women, even sex workers and sexually active women, enjoy the same legal protection from sexual violence under the law. Therefore, there is no distinction between those who are protected from rape and those who are not. Additionally, it significantly hinders victim involvement in the legal process. If there is no setting that encourages victims to express themselves, their involvement in the legal process will be unproductive.

Conclusion

This article aimed to examine the practice of focusing on the victims" behavior rather than the defendants" actions, as well as the tendency of justice actors to hold incorrect views about the traits and behavior of rape victims. Investigative police officers, prosecutors, judges, and defense lawyers in South Ethiopia Region where this study was conducted still have preconceived views about how rape victim would have acted prior to a sexual attack in order for the claim of rape to be taken seriously. This finding is likely similar to those in many other jurisdictions, as the literature shows. Genuine victims are individuals who have a "good" moral character, who did not engage in risky behaviors prior to the offense, who are not anticipated to know the accused, and who have a "good" sexual

reputation before the assault. The judgment that a rape claim is false often arises from the victim behaving in deemed unexpected. Consequently, when assessment of rape cases relies in inaccurate assessment of victims" behavior, it leads to unjust outcomes. This approach results in numerous complaints being unfairly dismissed and many accused individuals being acquitted.

Recommendations

Without further law reform and on the basis of the current legal framework, justice institutions can act decisively in response to the challenges raised by this study. Immediate action shall be taken to protect rape victims from injustice; a long-term plan shall be established to change justice practitioners" attitudes toward rape victims; and a particular training course for legal professionals shall be designed to counteract the influence of rape myths.

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Realization of Economic, Social, and Cultural Rights in Ethiopia: Lifting the Veil of Tax Evasion and Avoidance

Henok Ashagrey [11]

Abstract

Ethiopia is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which obliges the government to ensure the realization of economic, social and cultural (ESC) rights to the maximum of its available resources. Taxation, which is the most predictable source of government revenue, is a critical part of the state's compliance with the Covenant's obligation. Therefore, Member States are required to levy effective types of taxation, while discouraging diversion of resources. Putting in place effective legal frameworks aimed at combating tax avoidance and evasion, is not only an ICESCR compliance step, but also *a sine qua non* of generating sufficient resources that can be used to improve the socio-economic conditions of citizens, particularly the vulnerable groups. This paper examines Ethiopia's tax policies and practices, focusing on their effectiveness in tackling tax avoidance and tax evasion practices, through the prism of human rights principles and standards. The findings reveal that despite having robust legislations to address tax abuse practices, and a consistent nominal increase in tax revenue over the past two decades, Ethiopia is experiencing notable losses in potential tax revenue, and the tax-to-GDP ratio has been gradually declining, particularly for the last seven consecutive fiscal years. The prevalence of both domestic and international tax abuse practices contributes significantly to this situation. Although comprehensive data on the exact extent of these practices is limited, the paper draws on available information, including the State of Tax Justice reports in 2020 and 2021, to highlight how these abusive practices drain funds that could be invested in education, health, poverty reduction, and other critical areas.

Keywords: *taxation, maximum available resources, avoidance, evasion, and socio-economic rights*

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Introduction

Taxation policies have a significant impact on the realization of human rights, as emphasized by Philip Alston, the United Nations (UN) Special Rapporteur on Extreme Poverty and Human Rights, who says that "[*t]ax policy is, in many respects, human rights policy* (UN Special Rapporteur (Alston) 2015, para.13)." When taxation policies are effectively designed and implemented, they can serve as a facilitator for the enjoyment of human rights. This relationship between taxes and human rights can be broadly categorized into three principal areas: resource mobilization, redistribution, and accountability (Saiz 2013, 81-87; UN Special Rapporteur (Carmona) 2014, paras.36-53). First, tax is linked with the duty of states to devote the maximum of available resources for the fulfillment of human rights as it supplies the revenue that states need to finance the provision of essential services like education, healthcare, water, sanitation, and electricity (UN Special Rapporteur (Carmona) 2014, paras.42-44). By levying taxes, states can generate the resources needed to invest in and maintain these services. The obligation to mobilize resources, within the human rights law regime, is found in core human rights treaties to which Ethiopia is a party, including ICESCR,[12] the Convention on the Rights of Persons with Disabilities (CRPD),[13] and the Convention on the Rights of the Child (CRC).[14] While the link between taxation and human rights is most clear in ESC rights, it also extends to civil and political rights (Saiz 2013, 78),[15] as the effective realization of all rights necessitates various measures like "legislative, judicial, administrative, and educative," all of which require resources (UN Human Rights Committee (UNHRC) 2004, para.7). There are also soft laws that recognize the vital link between taxation and human rights. For instance, the 2030

[12] The International Covenant on Economic, Social and Cultural Rights (ICESCR) Art 2(1).

[13] The United Nations Convention on the Rights of Persons with Disabilities (2006) Art 4(2).

[14] The United Nations Convention on the Rights of the Child (1989) Art 4.

[15] In this regard, Article 2(2) of the International Covenant on Civil and Political Rights (ICCPR) imposes obligations upon member states to "take the necessary steps to give effect to the rights set forth therein."

Agenda for Sustainable Development emphasize the importance of this connection and urge states to enhance their "domestic capacity for tax and revenue collection (Goal 17)," and to address illicit financial flows (Goal 16(4)), including individual and corporate tax abuse (Tax Justice Network (TJN), Public Services International (PSI) and Global Alliance for Tax Justice (GA4TJ) 2021, 20)

The second area where human rights and taxation intersect is in the redistribution of resources caused by taxation (UN Special Rapporteur (Carmona) 2014, paras. 16-17 & 45-50). A progressive taxation scheme allows states in redistributing wealth from the high net-worth individuals and large corporations to the poor, thereby redressing systemic social, economic, and gender inequalities and combating discrimination (Hodgson and Sadiq 2017, 108-118; UN Special Rapporteur (Carmona) 2014, paras. 16-17 & 45-50). This is in line with the right to equality and to non-discrimination, which implicitly urges states to establish a progressive tax system with a redistributive capacity that preserves, and gradually increases, the income of poorer households (UN Special Rapporteur (Carmona) 2014, paras. 51-53).

The third aspect where taxation and human rights intersect is the pivotal role of taxation in ensuring government accountability (Sjursen 2023; Prichard 2015; UN Special Rapporteur (Carmona) 2014, paras. 51-53). Taxation, being a fiscal social contract whereby citizens assent to pay taxes which is used by the government to implement programs for the collective welfare, including the realization of citizens' rights, has a crucial role in cementing the bond of accountability between states and citizens. Research has shown that governments that rely on domestic tax revenues have an incentive to be more responsive to taxpayers (Ross 2004; Saiz 2013, 83). The UN Special Rapporteur on Extreme Poverty and Human Rights (Carmona) also averred that states that have sufficiently tapped their tax bases tend to display higher levels of accountability and participation in public affairs (2014, paras. 51-53).

The aim of this paper is to examine Ethiopia's tax policies and performances through the lens of human rights principles derived

from treaties ratified by Ethiopia, with a specific focus on the ICESCR. From its fiscal performance reports, Ethiopia's revenue from taxation has seen a substantial upsurge in nominal values since the end of the socialist era in 1991. The tax revenue recorded a notable surge from Birr 3.08 billion in 1993/94 to Birr 8.19 billion in 2002/03 (Hailu 2004, 3; Kinde and Alem 2018, 69). From 2005 to 2015, the figure increased thirteen-fold, from Birr 12.4 billion to Birr 165.3 billion (UNDP Ethiopia 2016, 1). Furthermore, there was a continuous increase in tax revenue from the fiscal year 2015/16 to 2020/21, reaching 190.5 in 2015/16, 210.2 in 2016/17 (Ministry of Finance Ethiopia 2019, 12), 235.2 in 2017/18, 268.5 in 2018/19, 311.5 in 2019/20, and 388.8 in 2020/21, all measured in billions of birr (Ministry of Finance Ethiopia 2022, 6). Additionally, the country managed to collect 336.7 billion in tax during the 2021/22 fiscal year (Ministry of Revenues of Ethiopia 2022), and 324.3 billion birr in the first nine months of the current fiscal year (2022/23) (Ethiopian Monitor 2023). These figures show an increase in tax collection in nominal terms over the past two decades. However, when examining the tax-to-GDP ratio, which measures a country's tax revenue in relation to its GDP, the figures reveal disappointing results, as discussed in the third section of this paper.

The paper is organized into five sections, including this introduction and the second section that introduces the methodology and the caveats the paper puts forward. The third section illustrates how the ICESCR, particularly the provisions on the obligation to mobilize resources and the principle of equality and non-discrimination, impose constraints on the discretionary power of states in formulating fiscal policies, including taxation. The fourth section delves into the Ethiopian context, analyzing the country's tax policies, tax revenue performance, particularly in terms of tax-to-GDP contribution, and then delving into the issue of tax evasion and avoidance and their impact on the realization of ESC rights. The paper ends with a conclusion.

Methodology and Caveats

Methodology

The paper adopts a qualitative desk-based approach, drawing insights from primary and secondary sources. Primary sources include Ethiopia's domestic laws and relevant human rights treaties ratified by Ethiopia, particularly the ICESCR. Secondary sources comprise scholarly works and reports from civil society organizations working on the human rights and tax issues. The examination of human rights treaties, especially the ICESCR, aims to establish Ethiopia's obligations to combat tax abuse practices to fulfill its human rights commitments. It leverages soft law instruments, such as general comments and concluding observations from the CESCR, to operationalize the principles enshrined in these treaties. The analysis of Ethiopian national legislation and policies on tax issues aims to assess their effectiveness in addressing tax evasion and avoidance practices, considering approaches adopted by other jurisdictions. The paper also draws on Ethiopian government reports from many years over the last two decades on annual budgeted tax revenue and actual tax revenue, which are supplemented by scholarly publications and reports from civil society actors and inter-governmental organizations. This analysis pursues twin aims: assess Ethiopia's tax revenue collection performance via metrics including nominal intake, and tax revenue as a percentage of GDP; and unveil the implications of revenue losses to abusive tax practices in relation to the government's budget for critical social sectors like education, health, justice, and employment programs in the 2022/23 fiscal year.

Caveats

There are two caveats to be noted before moving on to the next section of the paper. Firstly, while there exists a plethora of materials discussing tax abuse practices in Ethiopia, there is no comprehensive figure on the exact amount of revenue lost due to these practices. This constrains a full impact analysis vis-à-vis budgets for critical sectors. The paper thus attempts only to demonstrate, using

available information (including the State of Tax Justice reports in 2020 and 2021), how even conservative estimates of revenue leakage stemming from abusive tax practices represent substantial sums of tax revenue lost that could have otherwise expanded budgets to meet Ethiopia's ICESCR obligations. Secondly, the paper does not address the issue of expenditure, which is another critical aspect in the intersection of tax and human rights. It focuses on revenue collection and operates under the assumption that the money lost due to tax-abusive practices could have funded to ensure the realization of socio-economic rights as provided under the ICESCR. However, it is crucial to recognize that the money lost due to abusive tax practices, even if it were collected, is not guaranteed to be allocated to fund socio-economic rights; the government may, for example, allocate it towards strengthening the military. Therefore, considering not only revenue collection, but also expenditure patterns, which are beyond the scope of this paper, is necessary for a complete analysis of the nuances between tax collection and the realization of human rights.

Taxation as a Means to Ensure Implementation of Esc Rights Under the Icescr: tax as a Resource and Tool for Fighting Inequality

Neither the ICESCR nor other human rights treaties prescribe specific fiscal policies for governments. They do, however, limit the discretion of states in formulating fiscal policies, including taxation (UN Special Rapporteur (Carmona) 2014, para. 4). The main limitation of this discretion is rooted in the duty of state parties, under Article 2(1) of the ICESCR, to make full use of all their available resources individually and collectively to progressively achieve the full implementation of the rights in the Covenant. Article 2(1) of the ICESCR commits States parties to:

> "*take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of [their] available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*"

This provision encompasses various sub-obligations, including taking steps, allocating maximum resources, and fulfilling obligations of international assistance and cooperation. The duty to "take steps" stands for the obligation of member states to actively take targeted and specific measures to fulfil ESC rights (UN Committee on Economic, Social and Cultural Rights (CESCR) 1990, paras. 2-12; CESCR 1999, para. 43; CESCR 2000, para. 30; United Nations Committee on the Rights of the Child 2016, para. 18; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights 1986, para. 16).[16] These measures may include adopting legislations, implementing policies, establishing programs, and creating mechanisms that promote and protect the rights outlined in the Covenant. The reference to "resource availability" and "achieving progressively" under the provision reflects a recognition that the implementation of ESC rights can be hindered by a shortage of resources and can only be realized incrementally over time (Office of the United Nations High Commissioner for Human Rights (OHCHR) 2008, 13). In the same vein, the reference to "available resources" shows that a state's compliance with its obligations should be assessed considering the resources, both financial and non-financial, at its disposal (OHCHR 2008, 13). By referring to "available resource," the provision also makes fiscal issues, including mobilization of resources, a human rights issue.

Treaty-monitoring bodies, including the CESCR, interpret the notion of resources broadly and evaluate states' adherence to this obligation not only based on what they can achive with existing resources, but also by mandating them to undertake all necessary measures to mobilize resources. According to the CESCR General Comment 3, "available resources are not limited to those existing resources within a state but include those available from the international community via international cooperation and assistance (1990,

[16] The relevant part of Limburg Principles provides as follows. "All States Parties have an obligation to begin immediately to take steps toward full realization of the rights contained in the Covenant."

para. 13)." It also encompasses resources that a state has a potential to develop but has not yet developed, including what states can gather from taxation (UN Special Rapporteur (Carmona) 2014, para. 27; UN Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural Rights (Bohoslavsky) 2016, paras. 12-13). This implies that resources states do not collect due to tax abuse practices, or bribery, corruption and money laundering, constitute a potentially available resource (UN Special Rapporteur (Carmona) 2014, paras. 27 & 58-62).

The CESCR urges states to mobilize resources, including by enforcing progressive taxation schemes (CESCR 2017, para. 23). The Inter-American Commission on Human Rights also notes that State's actions concerning its taxation policy should comply with the human rights legal framework (Unit on Economic, Social and Cultural Rights 2017, para. 502). The UN Special Rapporteur on Extreme Poverty and Human Rights further highlights taxation policies as a significant factor influencing the enjoyment of human rights (UN Special Rapporteur (Carmona) 2014; UN Special Rapporteur (Alston) 2015). It portrays taxation as a critical tool for addressing inequality by generating the resources required to realize human rights.

Here it is important to note that states are not bound to rely solely on taxation as the primary source of resources to comply with their commitments pursuant to the ICESCR. They can collect the resources they need to meet their obligations from sources other than taxes. However, states cannot argue that they are unable to implement covenant rights due to a lack of resources while allowing potential resources to be squandered through tax evasion and avoidance practices. Such an argument would put them at risk of non-compliance with their obligation to allocate the maximum available resources for implementing the rights outlined in the Covenant (Tuazon and Stenlund 2019, 48; UN Special Rapporteur (Carmona) 2014, para. 60). In other words, they cannot argue that

they are not obliged to fulfill their obligations immediately due to a scarcity of resources while allowing tax evasion and avoidance practices to persist within their jurisdiction, as it would mean that not all available resources are being devoted to fulfilling those obligations.

In addition to the obligation to devote the maximum of available resources, human rights treaties including the ICESCR, have human rights principles such as the principles of equality and non-discrimination that are relevant to state resource mobilization. Per this principle, member states must set up a progressive tax system with a redistributive ability, which preserves, and gradually increases, the income of households with lower incomes. In this regard, the CESCR and the Special Rapporteur on Extreme Poverty and Human Rights assert that taxation must be implemented in such a way that it has a redistributive effect on resource mobilization (CESCR 2017, paras. 16-17; CESCR 2016, paras. 41-42; UN Special Rapporteur (Carmona) 2014, paras. 45-50). Accordingly, states must address any action or omission related to tax that perpetuate discrimination and inequality. A state that possesses a very narrow tax base or neglect to tackle abusive tax practices may face difficulties in financing social protection programs or public services, a condition that would most likely generate or entrench inequalities (UN Special Rapporteur (Carmona) 2014, para. 17). Also, if a tax system lacks progressivity, it would transgress the equality principle.

Hence, the responsibility of states under ICESCR to use the maximum of their available resources to finance ESC rights, coupled with the principles of equality and non-discrimination, establishes limits on their discretion in developing and implementing tax policies. Member states facing resource challenges or socioeconomic inequalities like Ethiopia therefore need to undertake specific measures regarding their tax policies. Firstly, states, especially those with the lowest tax-to-GDP ratio, must expand their tax base in human rights-compliant ways to meet their obligation to finance rights and tackle social inequality (Schutter 2017, 6; UN Special

Rapporteur (Carmona) 2014, para.55). The CESCR, in its concluding observations to Guatemala, El Salvador, and Paraguay, urged states to setup a tax system that is adequate, progressive, and socially equitable (2014, para. 8; 2014, para.8; 2015, paras. 10-13). Secondly, it is imperative to ensure sufficient progressivity in tax policies (Schutter 2017, 6; CESCR 2015, para. 14). Thirdly, it is crucial to address tax evasion and tax avoidance practices (Schutter 2017, 6). Both contribute to resource diversion and have a negative impact on the redistributive effect of taxation in all countries, regardless of their level of development (UN Special Rapporteur (Carmona) 2014, para. 5; UN Special Rapporteur (Alston) 2020, para. 47). Tolerance of states to these practices will run afoul of the obligation to devote the maximum of available resources as provided under Article 2(1) of the ICESCR. It was said that "[i]ncreasing tax levels without also addressing tax evasion would be like pouring water into a leaking bucket (Schutter 2017, 5)." Moreover, tax avoidance and evasion practices hobble the capacity of governments to undertake redistributive policies, thereby undermining the principles of equality and non-discrimination. This is because those engaging in these practices end up paying less than others with similar or even lower capacity to pay. Further still, these abusive practices, although seemingly neutral, disproportionately benefit wealthy individuals and corporations who can afford tax advisors and lawyers, thereby exacerbating the disadvantage of the most vulnerable populations. This can lead to indirect discrimination (UN Special Rapporteur (Carmona) 2014, para. 60). It goes without saying that these abusive practices force governments to resort to regressive taxes, which disproportionately burden low-income earners (UN Special Rapporteur (Carmona) 2014, para. 60). Beyond the economic implications, the prevalence of such practices erodes public confidence in the government, thereby undermining the essential bonds of accountability between states and their citizens.

Alarmed by these practices and their disproportionate impacts on the realization of ESC rights, the CESCR has taken a firm stance. In its General Comment No 24, the Committee urges member states to end tax avoidance, tax abuse, and fraud (2017, paras. 15, 23 & 37).

It was noted further that combating tax evasion not only increases available resources to fulfil the obligations under Article 2(1) of the ICESCR but also puts an end to practices that create significant inequalities (UN Special Rapporteur (Carmona) 2014, para. 60). Along a similar line, the CESCR, in its concluding observations on state parties' reports such as those from the Dominican Republic (2016, paras. 17-18), Honduras (2016, paras.19-20), Kenya (2016, paras.17-18), and the United Kingdom and Northern Ireland (2016, paras.16-17), urges states to undertake measures to address tax abuse practices, by corporations and high net-worth individuals. It also urges Spain to take a string of measures to tackle tax fraud of large inheritances (2018, paras. 15-16).

The next section discusses Ethiopia's fiscal policies, focusing on anti-tax abuse policies, tax-to- GDP performance, and the repercussions of abusive practices on financing ESC rights in the country.

Human Rights and Ethiopia's Tax System

Ethiopian Fiscal Policies on Revenue Mobilization

Ethiopia has undergone multiple rounds of tax policy reforms since the end of the socialist regime in 1991, and over the course of the last two decades, these reforms have intensified significantly (Eshetu 2017, 26-27). The country, for example, abolished its sales tax in 2003 in favor of VAT (and a turnover tax for businesses not eligible for VAT registration), and it adopted tax identification numbers (Eshetu 2017, 26-27). During the implementation of the two Growth and Transformation Plans (GTP I and II) from 2010 to 2020, several tax reform measures were taken, including enacting a separate tax administration proclamation,[17] as well as new excise and income tax laws to boost revenue and increase tax base, among

[17] Federal Tax Administration Proclamation No 983/2016 (TAP). TAP, adopted in 2016, aims to increasing efficiency, effectiveness, and measurement in the tax administration process.

other things.[18] The GTPs were primarily intended to strengthen the enforcement powers of the Ethiopian tax administration to mobilize adequate revenue (GTP I, 27-38 & 96; GTP II, 9-10, 85, 90, 107, 111-114 & 195), but they also addressed other aspects of Ethiopian tax policy, including tax equity (Gemechu 2013, 110-116). In the same vein, Ethiopia's new 10 Year Development Plan, i.e., "A Path to Prosperity" (2021-2030), which replaced the GTPs that were in effect from 2010 to 2020, also includes the tax reform agenda. This Plan identifies inadequate capacity to mobilize domestic resources as one of the past major development challenges, and vows to achieve a healthy balance between revenue and expenditures, including by increasing tax collection and expanding the tax base (Ethiopia's Ten Years Development Plan: A path way to Prosperity 2021-2030, 5&32). The Plan includes an ambitious objective to increase the country's tax-to-GDP ratio to 18.2 percent by 2030 from 9.2 percent in 2019/20 (32).

It is clear from these legislative and policy frameworks that Ethiopia aims to boost its revenue and redistribute resources through taxation. However, it is worth noting that the country's tax legislations do not explicitly address taxation as a human rights issue, nor do they make references to the government's obligation under the ICESCR or other human rights instruments. This decoupling is presumably the result of a tradition of viewing revenue policy as entirely separate from human rights issues, and it carries significant ramifications, including potentially fostering judicial timidity to interpret tax laws in a manner that recognizes this linkage.

Ethiopian Government Legislative Tails in Combating Tax Avoidance and Evasion

The three most common ways in which taxpayers reduce their tax liabilities are through tax avoidance, tax evasion, and tax planning. The right of citizens to limit their tax liabilities through tax planning is acknowledged in democratic societies (Mazur 2012, 551). The right does not apply, however, to tax evasion and avoidance.

[18] Federal Income Tax Proclamation No 979/2016 (ITP) Preamble para 2. The Excise Tax Proclamation No 1186/2020 Preamble Para 3. This Excise Tax Proclamation has now been revised with the Excise Tax (Amendment) Proclamation No 1287/2023.

Tax Avoidance

Tax avoidance refers to the practices of exploiting loopholes or inconsistencies in tax legislations to reduce or avoid owed taxes (Otto, et al. 2015, 4-5). While not an illegal act per se, it entails obtaining tax benefits from a transaction that adheres to the literal reading of tax provisions but circumvent their intended purpose (Mazur 2012, 553). The practice not just erodes government tax revenues, but also undermines the redistribution effect of taxation, resulting in inequality, as the affluent members of society are more likely to take advantage of the legal loophole by, for example, hiring a tax expert to minimize or eliminate their tax liability (UN Special Rapporteur (Carmona) 2014, para. 60). It also unfairly shifts the tax burden. Several countries, recognizing these harmful effects of tax avoidance, have taken a wide range of measures to combat it. These measures are broadly classified as Specific Anti-Avoidance Rules (SAAR) and General Anti-Avoidance Rules (GAAR) (Ostwal and Vijayaraghavan 2010, 63; Waerzeggers and Hillier 2016, 7). Both approaches of tax avoidances are recognized under Ethiopian tax laws.

SAARs, as their name suggests, target specific tax avoidance practices or areas where abuse has been identified (Ostwal and Vijayaraghavan 2010, 63; Waerzeggers and Hillier 2016, 7). The scope of their application is limited to specific "known" arrangements of tax avoidance and they do not give wide discretion to the tax authority. SAARs exist in many jurisdictions although their design and severity vary.[19] Ethiopia's tax law regime also incorporates SAARs to counteract specific avoidance practices such as transfer pricing, thin capitalization, and income splitting (Fenta 2023).[20]

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[19] There are specific anti-tax avoidance laws in many countries, including ones targeting income splitting, transfer pricing, and thin capitalization; however, the rules vary in their design and severity.

[20] See for instance Federal Income Tax Proclamation 979/2016 (ITP) Art 78. For more, see Hailemariam Belay Fenta "Ethiopian income tax law tails in combating tax avoidance: A critical analysis from tax policy perspectives" (unpublished paper). I would like to take this opportunity to thank him for sharing his draft article and for his insightful inputs on the early version of this paper.

It should be noted, however, that even though SAARs provide precision and predictability, they cannot be used alone as a tool to effectively address tax avoidance (Mazur 2012, 560). Firstly, it is not feasible for legislators to enact specific rules to target all avoidance practices. Secondly, governments often adopt SAARs reactively, after identifying new avoidance practices, leaving taxpayers to unjustly benefit until the rules are adopted (Department of the Treasury 1999, XIII).[21] Thirdly, SAARs often become ineffective over time as taxpayers' resort to new strategies to circumvent the anti-avoidance rules or to leverage them to their advantage (Mazur 2012, 561). Considering these factors, the SAARs are often regarded as insufficient in combating all avoidance practices, leading countries to adopt GAAR to combat avoidance practices that fall outside the scope of the SAARs. The concept of GAAR is hard to define in a way that everyone agrees on, but it can be summed up as a mechanism of last resort that tax authorities can employ to stamp out tax avoidance practices that would otherwise align with the literal meaning of tax provisions. It empowers a country's revenue authority to deny tax benefits to transactions or arrangements that lack any genuine commercial purpose and only aim to get a tax benefit (Ostwal and Vijayaraghavan 2010, 63; Waerzeggers and Hillier 2016, 7). Many countries, including Australia, Belgium, Canada, UK, China, France, Germany, Italy, Kenya, the Netherlands, Singapore, and South Africa, have implemented statutory GAAR as anti-abuse measures (Waerzeggers and Hillier 2016, 7).

Ethiopia has also incorporated GAAR into its various tax laws, including its VAT Proclamation,[22] Excise Tax Proclamation (ETP)[23] and TAP.[24] The Ethiopian GAAR shares features with the GAARs of other countries and includes many of the attributes

[21] Meaning, the fact that governments typically adopt anti-avoidance rules only after they become aware of a new avoidance practice makes this approach reactive in nature, which permits taxpayers to benefit from a specific scheme until governments recognize and implement measures to address it (Department of the Treasury 1999, XIII).

[22] Value Added Tax Proclamation (VAT) 285 (2002) Art 60.

[23] ETP Art.41.

[24] TAP Arts.2(33) & 110.

common to all GAARs. It defines a tax avoidance arrangement or a "scheme" for the purposes of the GAAR when three conditions are met (Fenta 2023). To begin, a "scheme" must exist; although definitions vary slightly across laws, it is most commonly defined as "any agreement, arrangement, promise, or undertaking, whether expressed or implied, enforceable by legal proceeding or not, or any plan, proposal, course of action, or course of conduct."[25] The second requirement is that the taxpayer must receive a tax benefit from the scheme.[26] For this purpose, a tax benefit is broadly defined as the reduction or postponement of a person's tax liability, or any other avoidance of a person's tax liability.27 Finally, the scheme should have been undertaken solely or primarily for the purpose of obtaining a tax benefit.28 Most importantly, like other modern GAARs, Ethiopia GAAR includes powers of reconstruction that allow the Ethiopian Revenues and Customs Authority to deny in whole or in part the tax benefit where a scheme or arrangement was entered into solely or dominantly for the purpose of avoiding taxes or obtaining tax benefits (Fenta 2023).29 Pursuant to Article 110 of the TAP, tax avoidance practices will also result in a penalty equal to twice the amount of tax that could have been avoided but for the anti-avoidance provision. Considering these attributes, one can assert that the legislative framework in Ethiopia, which aims to address avoidance practices, is praiseworthy. Nevertheless, what remains inadequate is its implementation.

Tax Evasion

Tax evasion refers to intentionally breaking the law to avoid or reduce taxes, which is a crime as it, unlike tax avoidance, violates both the letter and the spirit of the law (Elffers, Weigel and Hessing 1987, 333). There are two main theories that shed light on taxpayers'

[25] ITP Art.80(4)(a-b). VAT Proclmation Art. 60(1). ETP Art.41(4)(a)).
[26] ITP Art. 80(1)(C). VAT Proclamation Art.60(2)(a). ETP Art.41(1)(b).
[27] ITP Art. 80(4)(b).VAT Proclamation. Art.60 (1) (a-c). ETP Art.41(4)(b). The ETP provides additional indications regarding what tax benefits are. ETP Art 41(5).
[28] ITP Art. 80(1)(c). VAT Proclamation Art.60(2)(b). ETP Art.41(1)(c).
[29] See ITP Art. 80(2); VAT Proclamation Art.60(2); ETP Art.41(1)(c).

compliance or non-compliance with their tax obligations: the deterrence theory (economic deterrence theory) and the behavioral theory (Alem and Tewabe 2022, 273). The deterrence theory of taxation holds that taxpayers prefer not to pay taxes and are deterred from doing so solely by the risk of being audited, detected, and penalized (Allingham and Sandmo 1972). It claims that increasing the likelihood of detection as well as the size of the fine reduces tax evasion (Tajuddin and Muhammad 2019, 318). The behavioral theory of tax compliance argues, however, that taxpayers' decisions on whether to pay taxes cannot be explained solely by expected economic benefits and costs. Their decisions are influenced by different psychological, sociological, and demographic factors (Feld and Frey 2007, 5; Alem and Tewabe 2022, 273). For instance, taxpayers may pay taxes, believing they will get public services in return (Alem and Tewabe 2022, 273). Further, the existence of service and client relations between taxpayers and tax authorities (rather than a cops and robbers' approach) boosts tax compliance by fostering trust (Feld and Frey 2007, 5). Taxpayers may also pay taxes dutifully because of adherence to their personal norm (Doran 2009, 131-132) and perceptions of procedural justice by tax officials (Feld and Frey 2007, 5). Further still, according to proponents of the behavioral theory, incentives also play a key role in enhancing tax compliance behavior (Feld and Frey 2007, 5).

Ethiopia's tax system adopts both theories of tax compliance. To begin, the Ethiopian tax laws, specifically the TAP, include concepts aligned with the behavioral theory.[30] Firstly, the TAP requires tax officers to bear obligations such as treating taxpayers with courtesy and respect, enforcing the tax law honestly and fairly,[31] and avoiding conflict of interest situations while exercising their power and function.[32] These obligations aim to promote good governance and fairness in tax administration, as well as strengthen trust and loyalty between a taxpayer and the government with a view

30 TAP Arts 5-8, 21-29, 135 & 49-51
31 TAP Art 6 (2).
32 TAP Art 6 (3).

to boosting taxpayer morale (Feld and Frey 2007, 5). Second, the Proclamation requires taxpayers to file a tax declaration and a self-assessment declaration;[33] these actions are intended to foster a bond of trust between the tax authorities and taxpayers, thereby building tax morale in society. Thirdly, the Proclamation offers incentives to taxpayers who consistently fulfill their tax obligations.[34] This approach promotes a positive behavioral norm of tax compliance. Fourth, the Proclamation offers tax relief for taxpayers experiencing severe hardship.[35] This relief scheme is expected to help create a service-client relationship between the government and taxpayers. Furthermore, the Proclamation deals about other issues that help promote a service-client relationship between taxpayers and authorities, such as credit for tax payments,[36] refund of overpaid tax,[37] and confidentiality of tax information.[38]

The Ethiopian tax law regimes also embrace the ideals of deterrence theory, by incorporating administrative, civil, and criminal liabilities against disobedient taxpayers, such as fine, and imprisonment. Regarding criminal liability, the TAP unifies most of the tax offenses that were previously scattered across different tax laws into one single law and provides punishments ranging from fines to the loss of liberty. One of the tax offenses recognized by the Proclamation is tax evasion, which involves activities like concealing income, not filing a tax declaration, or missing the tax deadline, all with the

33 TAP Arts 21&25.

34 TAP Art.135(1). It is important to note that the TAP does not mandate the publication of lists highlighting taxpayers with exceptional compliance. Instead, it focuses on the publication of criminal tax prosecutions (TAP Art. 133). It was argued that the requirement to publish convictions ignores the negative effects of such publicity on building tax morale (Alem and Tewabe 2022).

35 Art. 51(1)(a)). The relief will be granted when the Ministry of Finance believes payment of the full amount of taxes owed by a taxpayer will cause severe hardships to that taxpayer because of natural causes, supervenient calamities or catastrophes, or personal hardships that are not caused by negligence or any failure on the taxpayer's part. The Proclamation also provides that the ministry of Finance may make concessions if the full payment of the deceased's tax debt would result in serious hardship for his or her dependents.

36 TAP Art 49.

37 TAP Art 50.

38 TAP Art 8.

intention of evading tax responsibilities.[39] Those who violate these prohibitions may face penalties of up to 200,000 Ethiopian Birr and imprisonment for a maximum of five years.[40] The TAP also specifies various civil liabilities that can be imposed on taxpayers individually or in combination with other types of liabilities, including payments intended to recover costs.41 Moreover, the Proclamation provide for the imposition of administrative liabilities against tax not-compliance behavior. The penalties are to be imposed in the form of a "fixed amount penalty" and a "percentage-based penalty."In summary, Ethiopia has laws in place that address tax evasion and avoidance practices. The next two sections analyze their practical implementation.

Unveiling Tax Collection Performance in Ethiopia: Exploring Tax Avoidance and Evasion Scheme, and Their Impact on Financing Esc Rights

Tax-to-GDP Ratio

Ethiopia's revenue from tax has shown nominal progress over time, as discussed in the introductory section. However, the tax-to-GDP ratio remains low and continues to decline. From available data spanning fiscal years between 2001/02 and 2020/21, Ethiopia's tax-to-GDP ratio reached its peak of 12.7 percent in 2013/14 and 2014/15

[39] TAP Art 125.

[40] TAP Art.125. Also, withholding agents who, with the intent to evade, withhold tax but fail to pay it to the tax authority by the due date may face sentences of three to five years in prison (TAP Art. 125(2)). Besides the principal offender, the TAP proclamation also extends criminal liability to those who aid, abet, counsel, or procure a taxpayer to commit fraud resulting in a tax shortfall or to evade taxation (Art. 128). Also, the Proclamation creates a secondary liability for auditors or accountants when the taxpayer commits fraud or evasion (Art. 48). The TAP and other specific tax legislations have also provisions that sanction different tax related offences including the misuse of a tax identification number, making a false or misleading statement or provides fraudulent documents, obstruction of administration of tax laws and unauthorized tax collection (TAP Arts. 117, 118, 126 & 127). Moreover, the TAP requires the publication of taxpayer names convicted of tax-related crimes as a deterrent mechanism.

[41] TAP Arts. 30(3), 2(39) & 31. Pursuant Art 30(3) of the TAP, taxpayers are required to pay not only the unpaid balance of taxes, but also all charges incurred by the tax administration authority in taking action to recover the unpaid tax

fiscal years, while the lowest ratio of 9.0 percent was recorded in 2020/21 (Harris and Seid 2021, 49).[42]

Table 1: Tax-to-GDP ratios, 2001/02-2020/2143

Fiscal year	*Tax-to-GDP ratio*	*year*	*Tax-to-GDP ratio*
2001/02	*11.9%*	*2011/12*	*11.5*
2002/03	*11.2%*	*2012/13*	*12.4*
2003/04	*12.6%*	*2013/14*	*12.7*
2004/05	*11.6%*	*2014/15*	*12.7*
2005/06	*10.8%*	*2015/16*	*12.1*
2006/07	*10.1%*	*2016/17*	*11.5*
2007/08	*9.6%*	*2017/18*	*10.7%*
2008/09	*8.6%/*	*2018/19*	*10.0*
2009/10	*11.3*	*2019/20*	*9.2*
2010/11	*11.4*	*2020/21*	*9.0*

The statistics indicate a consistently low tax-to-GDP ratio trend. In the past two decades, except for four fiscal years, the ratio has been below 12 percent. The highest peak was observed in the fiscal years 2013/14 and 2014/15 when the ratio reached 12.7 percent. However, even this figure fell short of the target of achieving a tax-to-GDP ratio of 15 percent by 2015, as set out in the country's GTP I (33), 17.2 percent by 2020 in the country's GTP II (108), and nowhere near the targeted 18.2 percent under the current 2021-2030 A Path to Prosperity plan (32). Moreover, it was not even possible to sustain the 12.7 percent ratio, as evidenced by the downward trend observed for the last seven fiscal years. Further still, the Country's tax-to-GDP ratio consistently falls below the Africa average. For

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42 In the fiscal year 2020/21, the tax to GDP contribution hit its lowest point in the last two decades, scoring just 9.0 percent.

43 The paper uses data from IMF on the tax-to-GDP ratio for the fiscal years 2001/02 through 2009/10, which is derived from USAID "EGAT/EG:Leadership in PFM Project" (2013) https://pdf.usaid.gov/pdf_docs/PA00JD81.pdf > (Accessed 23 May 2023). The data for the fiscal years 2010/11 through 2016/17 was derived from the Ministry of Finance's 2012 FY GoE Federal Budget Summary Volume One. <https://www.mofed.gov.et/media/filer_public/7e/b1/7eb14567-ac14-4b52-acf4-424b76817e9b/2012_fy_goe_federal_budget_summary_volume_one_main_document.doc>. The data for the fiscal years 2017/18 and 2018/19 was drived from the Ministry of Finance Ethiopia "የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፑብሊክ የ2015 በጀት ዓመት የተደገፈ በጀት" (2014) 5-6 (Accessed 9 February 2024).

instance, in the last seven years (2015-2023), the average tax-to-GDP ratio of African countries, calculated using data from 25-30 countries in different years, has been consistently between 15 percent and 17 percent (OECD ATAF, and AUC 2019; 2023). The low ratio in Ethiopia is attributable among other reasons to high prevalence of tax avoidance and evasion (Abdu and Adem 2023, 10; Kibret and Mamuye 2016, 5; Spanjers and Foss 2015, 6).[44]

Ethiopian Tax Avoidance and Evasion Scheme and ESC Rights

There is a considerable disparity between budgeted and collected tax revenues in Ethiopia. The underlying reason for this disparity is attributed to several factors, including non-compliance behavior of taxpayers. This behavior is evident in the widespread prevalence of tax evasion and avoidance practices in the country (Ayele 2019, 54). It is widely held that the level of tax compliance among businesses is exceptionally low, thereby harming the tax-to-GDP ratio (Gemechu 2013, 116). The informal sector's prevalence, low tax morale, weak tax administration, and underdeveloped financial sectors are major contributors to tax evasion (Mengistu, Molla and Mascagni 2019, 7).[45]

The extent of Ethiopia's lost resource due to abusive tax practices is not comprehensively documented, but available figures highlight the alarming nature. It was revealed that the presence of the underground or shadow economy - economic activities that take

[44] The major factors are: the prevalence of tax avoidance and evasion, the presence of informal sectors, the complexity of the tax system and inefficiency of the tax authorities, corruption, political unrest, tax-motivated illicit financial flows (IFFs), substantial tax incentives such as tax holidays and other exemptions, and a low level of tax awareness. For instance, as per the 2016 World Bank's Public Expenditure Review, tax exemptions and incentives have cost as much as 4-5 percent of GDP per annum. And had it not been for the incentives, the revenue ratio-all else equal-near 16-17 percent of the GDP. Accordingly, the existence of a myriad of tax exemptions and incentives would have the potential and result in low effective tax revenue mobilizations.

[45] Taxpayers employ various strategies to avoid or evade taxes, including not declaring and under-reporting income, overstating business expenses and deductions, overstating or understating trading stock, and claiming personal expenses as business expenses to conceal the actual tax liability.

place "off the books," out of the view of tax collectors and government statisticians - contributes to a significant amount of money being lost. The shadow economy allows transactions to take place without taxation, resulting in a decrease in tax revenues. Though estimating the size of the shadow economy is difficult, primarily because people involved in underground economic activities try to avoid detection, the estimated figures in Ethiopia indicate that it is very large. A study conducted by Emerta Asaminew Aragie in 2010 (using currency or money demand approach) revealed that Ethiopia's underground economy accounted for about 35.9 percent of the official economy from 1971 through 2008, reaching the highest levels of 51.8 percent and 51.4 percent in 1979 and 1985, respectively (2010, 16-20). In another study conducted eight years later in 2018, Gebeyehu Dejene estimated that the informal economy had a 43.3 percent share between 1980 and 2016 (Dejene 2018, 45). In his findings, he indicated that the informal economy reached its highest level in 2012, with 54.54 percent, and its lowest point in 2013, with 30.94 percent (Dejene 2018, 45). The World Economics 2021 report has also confirmed the high prevalence of the informal economy, stating that Ethiopia's shadow economy represented 33.7 percent of GDP ($106 billion at GDP PPP levels) (World Economics 2023).

While the size of informal economy cannot accurately reflect the extent of tax evasion arising from underground activities (Sam 2010), as some of the income generated by underground activities is exempt from taxation due to equity and/or political considerations,[46] it is undeniable that the shadow economy relates to tax fraud and avoidance. Using data from Ethiopia, Emerta Asaminew Aragie found that there was a clear inverse relationship between the tax to GDP ratio and the underground economy (2010, 21). According to his estimation, Ethiopia is losing around 10 percent of its GDP in tax evasion (2010, 21). It was also noted that "the shadow economy is also an economy where people hide their actual and taxable

[46] For instance, if a small business fails to properly record its output with the relevant authority and is consequently categorized as part of the informal economy, it may still be exempt from taxation, even if it is registered, provided its annual incomes remain below the tax threshold.

revenue from businesses and other lawful ventures to avoid paying taxes" (Mu, Fentaw and Zhang 2023, 3). The shadow economy thus keeps state revenues lower than what they otherwise would be, and in turn reduces the ability of governments to provide services and goods to their citizens (Schneider and Enste 2002, 11). Tax revenue lost because of unrecorded economic activity would have been used to construct schools, to provide health care services, to provide water, etc.

The shadow economy and tax evasion practices feed off each other as well (Schneider and Enste 2002, 11). If a government does not collect sufficient revenue to finance public services, such as as a result of the existence of a shadow economy, it may be forced to increase tax rates. In turn, this increase will promote a further flight into the shadow economy, worsening the budget constraints facing the public sector (thereby perpetuating the cycle). In Ethiopia, the introduction of several types of tax burdens in the early 2000s was associated with the subsequent growth of the informal sector, which rose from 23.4 percent in 2004 to 33.3 percent during 2007-2008 (Aragie 2010, 17). This illustrates the need for fiscal bodies to focus on improving the efficiency of the tax administration and expanding the tax base rather than imposing high tax rates that discourage taxpayers and force them into the underground economy. The country not only faces a loss of tax revenue in the informal sector but also significant challenges due to tax evasion and avoidance among registered taxpayers. Tax payers employ tactics such as underreporting income, inflating business expenses, and categorizing personal expenses as business-related to reduce their tax obligations. While comprehensive data on the extent of tax revenue lost due to domestic tax abuse by registered taxpayers is unavailable, government reports and research studies acknowledge the existence of this issue. For instance, on May 25, 2023, the Ministry of Revenue announced the recovery of 28.6 billion ETB through audits targeting 6,540 business organizations involved in fraudulent tax filings, tax evasion, and false bankruptcy claims (Demsew 2023). This finding highlights the gravity of the country's tax evasion and avoidance problems. With Addis Ababa alone

having over 452,000 taxpayers (Tesfaye 2023), expanding audits to a larger number of taxpayers could potentially expose the severity of these issues. Notably, the recovered amount of 28.6 billion ETB exceeds the budget allocations for key sectors in the country's 2022/23 fiscal year. The budget for health is 19.3 billion ETB, urban development and construction is 18.5 billion ETB, agricultural and rural development is 18.5 billion ETB, justice and security is 17.0 billion ETB, and prevention and rehabilitation is 13.1 billion ETB (Cepheus Research and Analytics 2022, 8). This stark comparison highlights the significant impact of tax evasion and avoidance on the country's finances.

Ethiopia also faces significant losses of resources due to international corporate and private tax abuse. The State of Tax Justice 2020 reports reveal an annual loss of $379,569,403 to international tax abuse in Ethiopia, with $362,658,520 attributed to corporates and $16,910,883 to individuals (Tax Justice Network (TJN), Public Services International (PSI) and Global Alliance for Tax Justice (GA4TJ), 17). This loss of resources could have been utilized to finance the implementation of rights under the ICESCR. It was noted that the lost revenue due to international tax abuse accounts for 56.42 percent of the country's health budget or the equivalent of the annual salaries of 436,648 nurses (TJN, PSI, and GA4TJ 2020, 17). Comparing this loss to the Federal government's budget allocated for the education sector in 2022/23, which amounts to birr 64,763,384,204 (approximately $1.24 billion based on the average USD/birr exchange rate for 2022),[47] it represents approximately 30.48 percent of the education budget. This percentage signifies a huge portion of education funding that could have been allocated towards improving infrastructure, enhancing the quality of education, and investing in the future of the country's youth. This trend persists, as the 2021 report indicates a loss of $148.3 million to international tax abuse, $137.4 million due to corporate tax abuse, and $10.9 million due to individual tax evasion. (TJN, PSI and GA4TJ

[47] On average in 2022, 1 USD was worth 51.9425 ETB. See <https:/ www. exchangerates. org. ukUSD-ETB-spot-exchange-rates-history-2022.html > (Accessed 23 May 2023).

2021, 21). According to the report, these lost resources would have been sufficient to fund the vaccination of 8,621,096 individuals (8.31 percent of the population) against COVID-19 (21). Furthermore, when compared to the country's annual health budget, the report shows that this loss stands for 22.26 percent (21). When considering the percentage of the lost amount of $148.3 million in comparison to the Federal budget allocation for food security and job creation in the 2022/23 fiscal year, which amounts to 19.0 billion ETB (United Nations Children's Fund (UNICEF), Ethiopia 2022, 2),[48] it becomes clear that the lost revenue represents around 40.55 percent. This emphasizes the magnitude of the loss and its impact on food security and job creation initiatives.

These abusive tax practices squander the country's available resources, which could otherwise be utilized to finance ESC rights, and have a negative impact on the redistributive role of taxation in curbing vertical and horizontal inequalities.[49]

Conclusion

[48] This amount was equivalent to approximately $365,739,118.61, based on the average USD/Birr exchange rate for 2022. On average in 2022, 1 USD was worth 51.9425 ETB. See <https://www.exchangerates.org.uk/USD-ETB-spot-exchange-rates-history-2022.html > (Accessed 23 May 2023).

[49] These abusive tax practices undermine the principle of equality and non-discrimination. Firstly, they significantly diminish the tax revenue collected by the government, and as a result the government's ability to finance social welfare programs, public services, and infrastructure development will be limited. The money that is siphoned away through these abusive tax practices could have been utilized to improve access to education, healthcare, housing, and other basic needs, reducing poverty and fostering a more equitable society. Tax evasion and avoidance practices also undermine the wealth redistribution role of taxation by increasing burden on honest taxpayers. Tax evasion and avoidance shift the tax burden onto honest taxpayers who cannot or do not engage in such practices. When individuals or businesses successfully evade taxes, it creates an imbalance where a smaller group shoulders a larger share of the tax burden. This can lead to increased economic inequality and hinder the effective redistribution of wealth. Furthermore, these abusive tax practices reinforce existing inequalities. Tax evasion and avoidance tend to benefit wealthier individuals and entities more than those with lower incomes. The ability to employ sophisticated strategies and utilize offshore accounts or tax shelters is typically more accessible to financially wealthy individuals and entities. By evading or avoiding taxes, they can accumulate and retain wealth, exacerbating income inequality and undermining efforts to redistribute resources more equitably. (Taylor 2006, 14; (Zucman 2015, 108).

Taxation policies and human rights are closely intertwined, as taxation generates resource to comply with human rights obligations, promoting equality, and ensuring accountability. While human rights instruments including ICESCR do not prescribe specific tax policies, they incorporate principles that limit the discretion of states in adopting and implementing fiscal policies, including taxation. The duty of member states under the ICESCR to use maximum available resources necessitates measures against tax abuse practices. The principle of equality and non-discrimination also compels states to combat practices that perpetuate discrimination, such as tax evasion and avoidance. Especially, developing countries like Ethiopia, facing resource challenges, are required by the ICESCR to establish and enforce robust laws targeting tax abuses. The paper notes that, when compared to similar laws in other jurisdictions, Ethiopian tax laws exhibit the minimum characteristics of effective anti-tax avoidance and evasion laws, but there is a lack of proper implementation. This inadequate enforcement contributes to Ethiopia's low tax-to-GDP ratio, which is below the African average.

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The Human Rights Implications of Climate Policy Action in Ethiopia: The Case of Humbo Afforestation / Reforestation Clean Development Mechanism Project

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Abstract

The climate crisis is adversely affecting the full and effective enjoyment of a range of human rights such as the rights to life, health, water and adequate standard of living. Moreover, the crisis is characterized by uneven causes, vulnerabilities and impacts. This brings forth the climate justice concerns in which poor countries are subjected to disproportionate impacts of the problem which they hardly caused but are also obliged to shoulder inequitably distributed burden in mitigating the problem through policy instruments that are rife with human rights violations. The purpose of this article is to show the climate justice and rights implications of market-based climate policy drawing on empirical evidence from the implementation of Humbo Afforestation / Reforestation (A/R) Clean Development Mechanism (CDM) project in the Humbo Wereda of Wolayita Sodo Zone in the South Ethiopia Regional State. The article draws on in-depth interviews, Key Informant Interviews (KII) ,Focus Group Discussions (FGDs), survey questionnaire, observation checklist field notes and document analysis in the discussion and analysis of the human rights implications of the implementation of the CDM project. It is found out that the implementation of the project failed to respect such procedural rights as the rights to Free, Prior, and Informed Consent (FPIC), access to information, participation in decision making and getting remedies on the one hand and also both directly and indirectly violated such substantive right as the rights to adequate standard of living. The article concludes underlining that climate policy needs to recognize that the respect and protection of the right to a clean,

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healthy and sustainable environment and the right to development entails fundamental politico-economic transformation involving a shift away from reliance on fossil fuels as energy sources upholding the Human Rights-Based Approach to Climate Policy.

Keywords:- *Climate Injustice, Human Rights –Based Approach, A/R CDM Project, Kyoto Protocol, Flexibility Mechanisms, the Paris Agreement*

Introduction

The climate crisis, apart from being one of the greatest environmental challenges the global community is faced with, is characterized by uneven causes, vulnerabilities and impacts. Having been fundamentally and primarily caused by fossil fuel based industrial capitalism of the developed world, the problem has not only disproportionately threatened the full enjoyment of a range of human rights in poor countries and elsewhere but also curtailed their development efforts. The impacts of the crisis are documented as threatening, inter alia, the rights to life, health, food, water, adequate standard of life, means of subsistence, self-determination, and the right to development. (OHCHR 2009; Schapper 2018 ; Mclnerney-Lankford, Darrow and Rajamani 2011). Recognizing these threats to human rights from the adverse impacts of climate change, the global community devised strategies that would help "stabilize the climate at the level that would prevent dangerous anthropogenic interference with the climate system" as stated under article –two of the United Nations Framework Convention on Climate Change (UNFCCC). The convention operationalized its climate mitigation strategies via the Kyoto Protocol where it developed three market–based mechanisms of addressing the climate mitigation goals namely: Emission trading, Joint Implementation, and the Clean Development Mechanism. The mechanisms have also been de facto affirmed in the Paris Agreement. And they have been described as "the bedrock of the global carbon regime" (Mboya 2018).

Emission trading works on the basis of "cap and trade" where governments or intergovernmental bodies introduce caps to

companies in their territories specifying the amount of emissions reductions expected of them in a given year which these companies could either reduce or abide by them installing efficient technologies and sale their surplus allowances for others which have exhaustively used theirs or found efficiently running more expensive (Lohmann 2006; Gilbertson and Reyes 2009). Joint–implementation involves Annex-1 countries (industrialized countries) working jointly with countries in economies in transition (mostly Eastern Europe) where Annex-1 countries offset their pollution by funding clean projects in these countries (Yamin 2005; Bohm and Dahbi 2009). The Clean Development Mechanism (CDM) involves Annex-1 countries investing in developing countries in order to offset the emissions in their territories cheaply through their support of emission reduction projects in the developing countries (Yamin 2005). The CDM is believed to be generating a win-win-win solutions because it is seen as making available means of cheaply meeting emission reduction target of involved developed country, contributing to the realization of the ultimate objective of the UNFCCC and providing sustainable development support for the developing country hosting the project (Bohm, Misoczky and Moog 2012; Wilson 2011).

This article is about the climate injustice issues and human rights abuses linked with one of these market-based climate policies operationalized via the Kyoto protocol: the Clean Development Mechanism. The objective of the article is to show that the market–based climate mitigation mechanisms developed under the Kyoto protocol were formulated in a manner that does not address the climate injustice issues (unequal causes, vulnerabilities and impacts) and are rife with human rights violation through a synthesis of the critiques in relevant literature and relying on locally relevant empirical evidence from Humbo A/R CDM project in Wolayita Sodo Zone of South Ethiopia Region. Relying on survey questionnaires, individual interviews, FGDs, and document analysis, the article shows how unjustly developed climate policy fails not only to be effective in stabilizing the climate but also infringes upon the rights of local people hosting the project. The article is organized in such a way that part-I discusses the links between climate change and

human rights, part-II deals with the human rights implications of global climate policy, part-III delves into an assessment of rights implications of Humbo A/R CDM project which will be followed by concluding reflections.

Methodology

The article used both qualitative and quantitative data sources. The qualitative data were generated through in-depth individual interviews, FGDs, Key Informant interviews, document analysis, ratified treaties, and conventions, as well as employed a survey questionnaire. The sample kebeles were purposively chosen from Humbo Wereda on the basis of their adjacency to the project site: the three kebeles are adjacent to the project site and share its boundaries. It has also been considered that located being adjacent to a chain of mountainous project site, local people would naturally be expected to have been dependent on available forest based resources. Subsequently, 70 research participants were randomly chosen from each of the kebeles: Bosa Wanche, Abbala Longena and Hobbichaa Bada Kebeles of Humbo Wereda being reliant on lists of household numbers available in each of the Kebele administrations used as a sampling frame. Accordingly, about 210 participants were involved in the survey. The sample size was determined based on the widely held assertion that sample size should at least be 30 units if statistically significant claims about relations among or between variables is meant to be made about the study population drawing on sample statistics (Cohen et al. 2000; Delice 2010). In addition, a total of 6 FGDs, 20 in-depth interviews and 6 key Informant interviews were conducted. While convenience was considered in selecting participants of both FGDs and in-depth interviews, an attempt was made to ensure that members are heterogeneous demographically, and saturation of data determined the number of participants of in-depth interviews. Data collected via the survey questionnaire was organized and analyzed using descriptive statistics such as percentages, and frequencies and tabulation of analytical categories. Qualitative data were transcribed and organized into analytical themes and employed in argumentation. The employment of mixed

methods for generating different types of data for cross –referencing and triangulation along with the legal argumentation used in the analysis sets the research apart from other related research works .

Climate Change and Human Rights

The Inuit petition is cited as an event that marked the beginning of establishing the link between climate change and human rights. The petition was filed by the alliance of the Inuit from Canada and the United States, represented by Sheila Watt-Cloutier, to the Inter-American Commission for Human Rights (IACHR) alleging that the United States violated their rights and kept on further violating by failing to reduce its emission of greenhouse gases (GHGs) (Wagner and Goldberg 2004; Cameroon & Limon 2012). The petition states "*t*he effect of global warming constitutes a violation of the human rights of the Inuit for which the United States is responsible" (Inuit Petition 2005). Though not accepted by the commission, the case introduced the idea that climate change is a human rights issue with demonstrable human causes and effects.

Later, vulnerable states and their communities worked to highlight that climate change threatens human rights. In November 2007, the Male Declaration on the Human Dimensions of Global Climate Change was issued. In March 2008, the UN Human Rights Council adopted Resolution 7/23, stating that climate change poses a serious threat to people and communities worldwide and impacts human rights. In January 2009, an unedited version of the analytical study on the relationship between climate change and human rights was published (OHCHR 2009). Different countries reacted differently to the analytical report. Canada, for instance, took the position that climate change does not directly infringe upon the human rights of people but via environmental degradation which is exacerbated by climate change. The UK recognized that climate change directly affects the full enjoyment of human rights within states' territories. The US concurred that climate change impacts human rights, but viewed this as matter of factual observations rather than a matter of international law (Limon 2009; Knox 2009).

At the UN, the Office of High Commissioner for Human Rights (OHCHR) used information from the Intergovernmental Panel on Climate Change (IPCC)'s Fourth Assessment Report, which detailed the observed and projected impacts of climate change on human rights, in relation to the obligations of States under international human rights treaties to address the legal gap (OHCHR 2009). At the time, there was no internationally recognized right to a clean, healthy, and sustainable environment (UNGA 2022). They relied on the 1972 Declaration of the United Nations Conference on Human Environment where the interdependence and interrelatedness of human rights and the environment is recognized, in addition to the recognition by the UN human rights bodies of the intrinsic link between the environment and human rights (OHCHR 2009).

The OHCHR's analytical report established that the observed and projected negative impacts of climate change, as documented in the IPCC's Fourth Assessment Report, affect the enjoyment of human rights. These impacts relate to the obligations that States have under international human rights treaties (OHCHR 2009). The report affirmed that "global warming will potentially have implications for the enjoyment of a full range of human rights and that such rights as the right to life, adequate food, water, health, adequate housing, and the right to self-determination are most directly implicated by the adverse impacts of climate change". In addition, some geographic regions and sections of society such as age, gender, disability, and minority groups are more disproportionately impacted due to their vulnerabilities. Besides, it is not just the adverse impacts of climate change that have human rights implications; but government responses to climate change also impact human rights (Knox 2009, 21).

Later, on March 25, 2009, resolution 10/4 drew out certain conclusions from the OHCHR's report noting that "climate change related effects have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to housing and the right

to self-determination." (UNHRC 2009). The resolution further recognized that these effects of climate change will be "most acutely felt by those segments of populations who are already in vulnerable situations owing to geography, gender, age, minority status, poverty and disability." (OHCHR 2009).

Before UN treaty bodies recognized that climate change affects human rights, policy responses had already been developed through the UNFCCC negotiations. But these responses have turned out, over decades, to be ineffective and not genuine in addressing the problem(Bohm and Dabhi 2009; Gilbertson 2017; Dehm 2016; Bachram 2004). As a result, the warming of the planet and the adverse consequences of climate change-related impacts continued to threaten the enjoyment of human rights in the different corners of the world. In this connection, it is maintained that if all states with pledges to reduce GHGs under the framework of the Paris Agreement succeed in realizing their respective targets of emission reductions, it will not cumulatively prevent the Earth from warming in order of 2.7 to 3.5 degree centigrade, which is beyond what is regarded as a "dangerous threshold" (IPCC 2023, 57; Arezki, Bolton, El Aynaoui, and Obstfeld 2018; UNEP 2015). It seems to follow from this, therefore, that the adverse effects of climate change are still threatening the effective enjoyment of almost all human rights.

Subsequently, it has been argued that viewing climate change as a human rights issue could more effectively address the problem. This approach shifts the focus towards the sufferings of the lives and livelihoods of individuals and communities (Knur 2022), attends to the voices of most vulnerable and marginalized social groups (SIDA 2015), and effectively realizes a sustainable development in which human rights of both current and future generations are safely realized (Fisher 2014). It facilitates equity in international decisions making (Limon 2009), promotes principles of accountability and democratic decision making and emphasizes international cooperation (Mahadew 2021; Limon 2009). This is inherently because the human rights-based framing of climate policy is normatively based on the international human rights standards and

operationally directed towards promoting and protecting human rights (OHCHR 2009). Under the human rights framing of climate change which alternatively is known as the Human Rights –Based Approach to Climate Change (HRBA), obligations, inequalities and vulnerabilities are analyzed and discriminatory practices and unjust distribution of power that compromise rights are addressed (OHCHR 2009).

Under the HRBA, "plans, policies and programs are anchored in a system of rights and corresponding obligations established by international law" as can be discerned from the foregoing discussions (OHCHR 2009). In line with the human rights-based approach (HRBA) that UN agencies agreed to follow, the main objectives of policies and programs should be to fulfill human rights. Furthermore, the approach entails clearly identifying right holders and their entitlements, as well as duty bearers and their obligations. Additionally, capacities for claiming rights and fulfilling duties should be strengthened. (OHCHR 2009). Moreover, principles and standards derived from the international human rights treaties should guide all policies and programming in all sectors and in all phases of the process (OHCHR 2009). In the context of climate change, the HRBA allows States to respect, protect and fulfill human rights in the process of meeting their climate change obligations.

The approach is also in tandem with the precautionary principle as stated under article 3(3) of the UNFCCC where states are urged to take "precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects" (UNFCCC 1992, 9). HRBA to climate change "rests on ensuring a just transition for all and upholds the rights of communities most affected including Indigenous Peoples and the traditional knowledge, minorities, migrants, older persons, those living with disabilities, informal workers, as well as women, girls, and the youth" (OHCHR n.d., 1). It also includes the promotion and protection of social and economic rights and their related international labor standards (OHCHR, n.d.). This approach emphasizes human rights obligations relevant to climate mitigation projects. It uses human

rights standards to guide project planning and implementation, engages with rights implications as obligations, builds the capacity of right-holders and duty bearers, enables the fulfillment of rights for the most vulnerable, and allows access to justice and redress for violations (IUCN 2008). This is true, for example, in the context of climate mitigation strategies such as the CDM (Olawuyi 2013). The HRBA to carbon markets and international cooperation under article -6 of the Paris Agreement emphasizes that projects are better designed and more sustainable when affected people are fairly consulted as well as safeguards and accountability mechanisms including monitoring and evaluation are in place (OHCHR n.d.). Human rights obligations of States in the context of cooperative approaches to climate action, commitment to inclusive and participatory approaches and the establishment of redress mechanisms have all been affirmed and committed to by states at COP26. In this connection, Filzmoser et al. (2015), argue that HRBA to the CDM is directly relevant and instrumental in terms of ensuring the sustainable development contribution of mitigation projects, ascertaining public participation in decision making and rights protection via the provision of grievance redress mechanism which they show the CDM rules and procedures are lacking. So HRBA could be more effective by ensuring that local people secure co-benefits other than the reduction in GHGs via the provision of accountability mechanism and safeguarding their indiscriminate participation in the determination and fulfillment of the benefits. Probably a very important contribution of HRBA to CDM projects is the provision of a grievance redress mechanism where rights violations could be adjudicated and project proponents could be held accountable before they have their projects registered by the CDM Executive Board.

The other key advantage of HRBA to climate mitigation is the provision of access to institutions where compliance with inter-States obligations to climate mitigation horizontally as stipulated by the climate treaties (the UNFCCC and the Paris Agreement) and human rights obligations in the context of the implementation of climate mitigation projects such as the CDM are "adjudicated"

(Mayer 2021; Mahadew 2021). This is true as the mechanisms of the Human Rights Council and the Committees provide platforms where issues of obligations to climate mitigations could be debated, and the Universal Periodic Review (UPR) and individual complaint procedures could be used to resolve issues of non-compliance with obligations as set both in the climate treaties and the human rights law. And finally, the HRBA also makes available a legal framework for citizens to hold non-state actors such as project proponents or multinational corporations that fund climate change projects accountable for human rights violations. It also allows the public to demand transparency and accountability from corporations that sponsor and benefit from mitigation projects that violate human rights (Olawuyi 2013). Endorsing the benefits of the HRBA to climate change, this article also argues that reliance on the international human rights standards recognized in the respective human rights treaties and their principles does not only sufficiently address the climate justice concerns in climate policy development but also prevent human rights violations in the context of implementation of strategies thereof. In light of the foregoing discussions, the article uses, more specifically, the universal declaration on the right to development and the international human right to a clean, healthy and sustainable environment as available theoretical tools to address the injustice in the climate policy development and generally the HRBA as a solution to deal with rights violations of local people where CDM projects are implemented.

Human Rights Implications of Carbon Trading

The Kyoto protocol to the UNFCCC introduced what are called "market–based flexible mechanisms" of meeting the legally binding GHGs emission reduction targets assigned to 38 industrialized countries in the commitment period of 2008-2012. And inherent in the "flexible" nature of the emission reduction commitments is the allowance of buying pollution permits either from companies or governments which have not exhaustively used their allowances or saved it through installations of efficient technologies under the "cap and trade" system or investing in projects in other countries

which are meant to offset the domestic emissions via enhancement of carbon sinks or sequestrations under "carbon offsetting" system (Gilbertson and Reyes 2009). Carbon trading is, thus, a market–based mechanism for trading pollution credits encompassing a range of policy instruments aimed at assisting industrialized countries (Annex-1 countries) to achieve their emission reduction targets by allowing reductions to take place via the cheapest means (Reddy 2011).

These policy instruments are emission trading taking place under the "cap and trade system" and Joint Implementation and CDM being implemented as "carbon offsetting" mechanisms (Castro 2014). Joint Implementation is different from the CDM in that it involves an annex -1 country investing in clean projects in countries with economies in transition or another industrialized country to offset its pollution through saved emissions resulting from the clean projects in hosting countries (Laurence, Yvan and Sebastien 2014; Bachram 2004). The CDM involves Annex-1 country investing in clean projects or enhancement of carbon sinks in developing country to compensate for its pollution within its territories. Both Joint Implementation and CDM projects are meant to generate results –based payments for saved GHGs emissions in host countries. Accordingly, it is the carbon credits generated through adoption of clean technologies or conservation of carbon sinks in the case of Afforestation / Reforestation CDM projects that are exchanged for results–based payments. A unit of CO_2 e (carbon dioxide equivalent) is used to measure the amount of carbon credits that projects generate and prices are calculated in carbon markets (Pearse and Bohm 2014).

Carbon trading was introduced to the Kyoto negotiations by the US negotiators not motivated by the need to introduce a just mechanism of distributing obligations among states globally to mitigate climate change but to create enabling conditions for industries and companies in the US to continue profitably growing by avoiding strict compliance to emission reduction commitments under the protocol (Reyes 2012; Lohmann 2006; Pearse and Bohm

2014; Cabello 2022). It was designed in such a way that industries and companies could cheaply buy GHG emission permits without harming their profitability and productivity thereby providing them with flexibility in meeting their targets (Roht-Arriaza 2010).

The Kyoto Protocol's ruling to reduce greenhouse gas emissions by 5.2% based on 1990 levels created an unfair distribution of climate mitigation responsibilities. This approach ignored the principle of sovereign equality of states (Reyes 2012; Althor, Watson and Fuller 2016), compromised the right to development for poor developing states (Mboya 2018), and favored neoliberal approaches that perpetuate inequality and human rights violations (Bohm et al. 2012; Lohmann 2006). As has already been indicated, "the United States wrote carbon markets into the 1997 Kyoto protocol but then famously failed to ratify the treaty" (Gilbertson and Reyes 2009, 9-12). In disregard to the principles of sovereign equality of states of the UN Charter, and the principle of Common but Differentiated Responsibilities and Respective Capacities of States enshrined under the UNFCCC (Dehm 2016), the negotiation process fell under United States influence which forced market–based flexible mechanisms into a climate mitigation strategy in the face of potentially "fair" proposals from developing countries like Brazil (La Rovere et al. 2002).

The fact that the US literally wrote the Kyoto climate solution substantiates a breach of both the sovereign equality of states principle enshrined in the UN Charter as the resultant global climate policy development did not involve equal participation of sovereign States which are parties to the UNFCCC. Furthermore, in the context in which poor member states contributed insignificantly to the problem but are the hardest hit by the climate impacts, those with the greatest contribution to the problem and most resilient to adverse impacts succeeded in determining the mechanisms of distributing obligations globally in a manner that allowed their economies triumph while perpetuating inequity and curtailing development efforts of countries in the global South. In this connection, Mboya (2018) maintains that "the purchases,

by the developed world, of additional emissions space from the developing ones through CDM and JI projects, even though providing developing country with income they could potentially use for development, effectively amounts to developing countries selling off their right to development" (Mboya 2018, 64). She argues that by trading away their carbon spaces for other countries, they are limiting their ability to industrialize using the cheapest form of energy from fossil fuels (Mboya 2018).

The problem that the poor developing states are faced with, in such a context, relates to affordability of clean technologies that will enable them industrialize at a pace that will not prolong the poverty they are currently faced with. This is key because many of such countries "face huge economic challenges realizing basic rights - food, clean water, education, and basic sanitation to name a few" (Burke 2012). So, the money they make goes to such priorities instead of supporting the processes of industrialization. In the meantime, Agarwal (2002) argues, in the face of the underdevelopment of cost-effective alternatives to fossil fuel-based industrialization and the need to limit GHGs emissions from these energy sources in the future climate regime, non –industrial states that are selling-off their emission space today will find their development options limited in the future.

The other critique of carbon trading maintains that carbon trading is a neoliberal political –economic tool that is designed to work on the climate mitigation target set under the UNFCCC without harming economic growth and expansion of the capitalist world (Bohm et al. 2012). In this connection, the critiques of carbon trading argue that carbon trading is based on two fundamental assumptions: 1) that free trade regimes and high economic growth rates are not only compatible with but are important preconditions for environmental sustainability, and 2) that market-based tools are the most appropriate instruments to apply in effort to achieve that goal (Bernstein 2002, 101).

Having identified its fundamental assumptions, they maintain that carbon trading is ineffective and corrupt, apart from its negative

social, economic and environmental outcomes (Lohmann 2006), that it creates perverse incentives for exploiting the under –privileged (Bond 2007) and identify it as neo-colonialism or CO2 onialism (Bachram 2004). It is ineffective for two important reasons: 1) there is no scientific evidence verifying the claim that "biotic carbon" is the same as "fossil carbon" and also that "emission by sources" is verifiably compensated by "removal by sinks" of GHGs which is the underlying principle of A/R CDM and REDD+ projects (Cabello 2022; Lohmann 2006). It is very difficult to establish the "additionality" of A/R CDM and REDD+ projects (Voigt 2008). Additionality is the environmental integrity requirement of both A/R CDM and REDD+ projects. A project is said to have effectively met the additionality requirement when it actually brings about a reduction in GHGs emission relative to a business as usual scenario at the project site (Reyes 2009, 275). This means that a project is considered additional if it leads to actual emission reductions that would not have occurred without the project's implementation. This has often been said to be almost impossible to verify (Campbell, Klaes and Bignell 2010; Voigt 2008).

Moreover, grassroots indigenous and climate activists critiqued carbon trading mechanisms such as REDD+ as "land grabbing false solutions to climate change" that privatizes air, "use forests, agriculture and water ecosystems in the Global South as sponges for industrial countries pollution", "will bring trees, soil and nature into a commodity trading system." (IEN 2015, 11). They see it as a new form of neo-colonialism or CO2 onialism that appropriates land in the global South and shifts the material responsibility and site of climate mitigation in the South for ostensible environmental ends. On a different front, the very architecture of the governance of carbon trading has been criticized as lacking accountability mechanisms where complaints are addressed and human rights abuses are adjudicated. It is well –substantiated that the CDM EB (Executive Board) has often decried allegations of human rights abuses associated with the implementation of CDM projects saying that it doesn't have the mandate to address human rights abuses in the context of the implementation of CDM projects (Eva et

al,2015; Carbon Markets Watch, 2013). Neither were human rights considerations incorporated in the modalities and procedures of CDM policy. This seems to explain the fact that many CDM projects had been documented to have violated the human rights to life, security of a person, housing, means of livelihoods, land, culture and development (Schade and Obergassel 2014; Obergassel et al. 2017). An example of such human rights infringements associated with the implementation of CDM projects in Ethiopia is documented as follows.

The Human Rights Implications of Carbon Offsetting Projects: The Case of Humbo A/R CDM Project.

Humbo is a wereda51 level administrative hierarchy of the Welayita zone of the South Ethiopia Regional State. It is bordered by Kindo Kosha district in the East, Sodo Zuria district in the North, and Boloso Bombe district in the South. Humbo wereda is located 25 km from the regional capital Sodo, and about 430 km from Addis Ababa (the capital of Ethiopia). Astronomically, the district is located between 6°46´ 48.47 North and 6° 41´ 04.28 North Latitudes and 73° 48´ 35.44 to 73° 55´ 14.5 East Longitudes.52

The Humbo community-managed reforestation and natural regeneration of forestry development project is located in Humbo district some 5-10km South-east of Tebella town, the capital of Humbo district and lies surrounded by seven rural Kebele53 administrations which are Abela Longena, Hobicha Badda, Bola Wanche, Bosa Wanche, Hobicha Bongota, Abella Gefeta, and Abella Shoya. The enclosed site of the project area extends over 2,728 hectares. Massive mountain and chains of hills interspersed with small valleys, gullies, rocks, and flat plains characterize the topography of the area.

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51 An administrative hierarchy, in Ethiopia, that is larger than a Kebele and lower than a Zonal administration.

52 Project Design Document (PDD) of the Humbo Project

53 Kebele is the lowest tier of the Ethiopian government administrative hierarchy

The project participants are the Federal Democratic Republic of Ethiopia, the Governments of Canada, Spain, Japan, Italy, France, Luxemburg, World Vision Ethiopia and the International Bank for Reconstruction and Development as a trustee of Bio Carbon Fund.[54] The project began in 2006 with the proposed contribution to the sustainable development of the host country in the regeneration of the native forests, enhancement of GHGs removals by sinks, promotion of native vegetation and biodiversity, reduction in soil erosion and flooding, maintaining water supply from subterranean streams, and provision of income stream for communities through sustainable harvesting of forest resources.[55] The project sought to achieve these via restoration of the bio -diverse natural forest over 2,728 hectares of land in the Humbo Wereda using indigenous and naturalized species, community management of public land with multiple objectives of promoting natural resource management, poverty alleviation, and biodiversity enhancement, development of a model of community land use that would enhance GHGs removal by sinks from regenerating native vegetation, and formation of cooperatives and granting them legal titles to manage the land by developing constitution and bylaws[56]. Furthermore, the project is said to have established an institutional structure with the right to Certified Emission Reduction (CERs), a system to monitor the carbon stocks and the environmental and social issues associated with the project.

The Procedural Rights Implications of the Implementation of Humbo A/R CDM project

In the context of the implementation of climate policies, states are duty bound to respect, protect and fulfill such procedural rights as the right to get access to information, public participation in environmental decision making, and access to administrative, judicial and other remedies (UNEP 2015). Articles 19 of both the ICCPR and the UDHR recognize the right of all persons to "seek,

[54] PDD of Humbo A/R CDM Project
[55] Ibid
[56] PDD of *Humbo A/R CDM project*

receive and impart information."57 The right is also recognized under Article 9 of the African Charter on Human and Peoples Rights (ACHPR) and Article 29(3) of the Ethiopian constitution. General Comment No. 34 of the Human Rights Committee (a treaty body for the ICCPR) further underlines that at a minimum, the ICCPR and the UDHR require states to provide public access to any government information of public interest.58 It is contended that the rights to public participation in environmental decision making and access to remedies are dependent upon or conditioned by the right to access information (UNEP 2015). Apart from this, the right of citizens to public participation "in the government of his/ her country or conduct of public affairs" that includes environmental decision making is also recognized under article 21 of the UDHR and article 25 of the ICCPR. The right is also recognized under Article 13 of the ACHPR and Article 38(1) (a) of the FDRE's constitution. They recognize the fundamental right of everyone to take part in the government of their country and conduct of public affairs.

On top of this, governments are duty-bound to facilitate public participation in environmental decision-making to make sure that the human rights of their citizens are protected from environmental harms.59 Otherwise, the UNFCCC obliges states to promote and facilitate "public participation in addressing climate change and its effects and developing adequate responses."60 Furthermore, the right to get access to administrative, judicial and other remedies in the context of human rights violations resulting from environmental harms is recognized under the international human rights law where States are obliged to provide "effective remedies" in cases of rights violations.61 In this regard, article 37 of the FDRE Constitution recognizes the right of everyone to bring a justiciable matter before the court of law and have the matter adjudicated.

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57 Articles -19 of both the ICCPR and the UDHR

58 Human Rights Committee (HRC), General Comment No. 34, pp.18-19, UN doc. CCPR/C/GC/34 (Sept.12, 2011).

59 See CESCR, General Comment No. 15, p.56, UN doc. E/C.12/2002/11 (January 20, 2003).

60 Article -6 of the UNFCCC

61 Article -2(1) of the ICCPR ; Article -8 of the UDHR and Article -2 of the ICESCR

On the other hand, indigenous peoples are endowed with the right to free, prior and informed consent prior to the approval of any project that affects their land, territories and resources under the UN Declaration on the Rights of Indigenous Peoples.62 An important question, here, relates to whether or not local people in Humbo Wereda qualify the definition of Indigenous People. Article 1 (1) and (2) of the Indigenous and Tribal Peoples Convention, 1989 (No.169) qualify ;

> *people in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community with their status being regulated by their own traditions or customs or special laws, or people in independent countries who are regarded as indigenous on account of their descent from their populations which inhabited the country or its geographical region to which the country belongs at the time of …establishment of the present state boundaries retaining some of their distinctive social, economic, political and cultural institutions as indigenous peoples.*[63]

In accord with the convention, therefore, local people in Humbo Wereda clearly qualify the second definition of indigenous people since more than 90% of the research participants replied that they are descendants of their forefathers or claim ancestral origins in the area when they are asked to describe the nature of their settlement during field research64. Hence, "they are entitled to the right to a free, prior, informed consent prior to the approval of a project affecting their land, territories or other resources particularly in connection with the development of …resources".65 Below will be discussed the procedural rights implications of the plan and implementation of Humbo A/R CDM projects.

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62 Art.32 (2) of the UN Declaration on the Rights of Indigenous Peoples.

63 Article -1 sub-articles 1& 2 of Indigenous and Tribal Peoples Convention, 1989 (No.169)

64 Survey research tool

65 Article-32(2) of the UN Declaration on the Rights of Indigenous Peoples

Implications for the Right to Get Access to Information, Public Participation and Free, Prior Informed Consent (Fpic).

The Humbo A/R CDM project was introduced in 2006 to the local people of Humbo Wereda of Wolyita Sodo zonal administration of South Ethiopia Regional State. As regards getting access to information about the plan of implementing the project, divergent responses have been obtained from field research. The survey questionnaires asked local residents if they were informed about the plan of the project. The result shows that 98.5%, 97% and 95% of the residents in Bosa Wanche, Abela Longena, and Hobbicha Badda respectively said that they were informed about the plan of the project.66 This shows that residents of Humbo Wereda were well aware about the plan of implementing the project. In-depth interviews and FGDs held with residents, cooperatives established under the project and people at different levels of the administrative hierarchies of the Wereda elicited information contrary to what was found out via the survey method. An in-depth interview with the Kebele administrative leader of Abela Longena who took part in the initial steps of communicating the plan of the project with his Kebele residents along with World Vision Ethiopia's project coordinators and expert staff recollected how fierce the opposition of the local people was against the plan of the project. He recapitulates:

> *When the project idea was introduced to the local people, it was met with fierce resistance because it entailed enclosure of 2,728 hectares of mountainous land the local people used to use for various purposes. For instance, the opposition to the project idea in Abela Longena was so fierce that in the initial meetings held with the Kebele residents, the residents came with local swords (locally called Gejera) in trying to kill the World Vision Ethiopia expert who only managed to escape with my help in which I facilitated his safe way out of the Kebele. The threat was not only to his life but also to my life. Having heard that the project involved enclosure of the area,*

[66] Survey Questionnaire

the residents got angered, left a meeting hall, tried to block our way out of the Kebele and tried to kill us. I had to sleep hiding in nearby banana plantations for six days in trying to save my life before I left the Kebele safely.[67]

According to the above account, while local people and residents were aware of the plan of the project, they fiercely opposed its implementation since it entailed enclosure of the 2,728 hectares of a chain of mountainous land which they had traditionally relied on as a grazing field, a site for collecting fuel woods, a place where they find woods for making charcoal and woods for the construction of houses. Therefore, it cannot be said that local people were informed about the plan of the project. FGDs held with the cooperative leaders of Bosa Wanche Kbeble elicited that there had to be conducted three repeated discussion sessions with the residents of the Kebeles to convince the community about the goals of the project.[68] After these discussions, individuals who accepted the project ideas and were willing to take part in the initiatives were threatened with their lives and even told to leave the Kebele suggesting that the majority of the population didn't agree with the project idea.[69] When not all residents agreed with the project plan, World Vision Ethiopia made early attempts to recruit and train "pioneers". These pioneers were intended to convince other residents about the "benefits" of implementing the project.[70] In addition, it has also been learnt that World Vision Ethiopia used church leaders, community elders, senior people and the youth in trying to have local people be convinced about the project and its importance.[71]

In addition, in-depth interviews held with women in Bosa Wanche Kebele and FGDs held with high school students of Abela

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67 In-depth interview held with the then *Abela Longena Kebele Administration leader.*

68 FGDs held with cooperative leaders of *Bosa Wanche Kebele*

69 In-depth interview with the previous leader of *Abelan Longena Kebele Administration.*

70 In-depth interview with an environmental and climate change risk specialist serving World Vision Ethiopia as a liaison officer in *Wolayita Sodo of the South Ethiopia Regional State.*

71 Ibid

Longena[72] elicited information about how participatory the public discussions were. A woman in Bosa Wanche Kebele, for example, said that she did not have any idea about what was happening and nobody told her planned public discussion on Humbo A/R CDM project.[73] The same was the response received from FGDs held with the high school students of Abela Longena who said they had not known about such event happening in their Kebele.[74] This shows that the public discussion and consultation processes didn't include important segments of the public.

Furthermore, asked about their assessment of public participation in giving their consent to the implementation of the forest rehabilitation and development project, 64.4 % of the respondents said all Kebele residents were adequately informed and gave their consent for the project while about 34.3% of them said it was only those who were selected to take part in the public discussion that gave their consent.[75] The percentages of those who said all Kebele residents had adequate information and gave their consent in Abela Longena and Hobbicha Bada are 66 and 63 respectively[76] Whereas those who said "it was only those who were chosen to participate that gave their consents to the scheme" constituted about 34 % and 37 % in Abela Lonegna and Hobbicha Bada respectively.[77] Thus, one thing is clear from these responses: the public participation in the environmental decision making procedure that World Vision Ethiopia and Kebele leaders employed did not include all residents of the Kebeles substantiating the fact that the procedure did not adequately comply with the right to public participation in environmental decision making in violation of article -21 of the

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72 Most of the highschool students of *Abela Longena , who took part in the FGDs, were older than the age that would have been expected of a regular high school student. The oldest being about 49 years of age and most are in their late 20s.*

73 In- depth interview with a resident of *Bosa Wanche Kebele.*

74 FGDs with high school students of *Abela Longena*

75 Survey questionnaire

76 Ibid

77 Ibid

UDHR and 25 of the ICCPR.[78] Thus, it is difficult to say that the implementation of the project is rooted in the informed consent given not all households actually took part in the public discussions about hosting the project. Needs be mentioned, here, is that several of the sporadic conflicts between Kebele residents and leaders of primary cooperatives established under the project in the Kebeles and resultant measures of setting fire to the forested space effectively signal the fact that the project is rather imposed upon the local people instead of being willfully embraced.[79] Hence, it is difficult to say that the project respected the right of the local people to a free, prior and informed consent recognized under the UN Declaration on the Rights of Indigenous People.[80]

Implications for the Right to Get Access to Administrative, Judicial and Other Remedies

During the implementation of the project, the local people faced serious challenges that compromised their right to adequate standard of living (specifically their right to food). This happened due to the restoration of forests in the enclosed project site and the resultant restoration of wildlife including monkeys, baboons, pigs, hyena, lions and the like. Households near the edges of the project

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78 Human Rights Law entitles all human beings with the right to participation in environmental decision making processes . In depth interview with the previous project coordinator elicited that there were called on assemblies of all Kebele residents in the discussions held about the project and its approval and this has also been verified with the response to the KII held with the National Coordinator of REDD+ program . Thus, it is expected that the public consultations include all affected residents and failure not to include any number of residents , in the Kebele assemblies , would clearly amount to excluding their voices and interests.

79 In –depth interview held with a forest –resources management and mobility specialist in EPA office of *Humbo Wereda reveals that local residents often come in conflict with cooperative leaders of primary cooperatives in each of the Seven Kebeles involved when residents let their cattle graze in the enclosed forested space which the project prohibits.*

80 Article- 32(2) of the UN Declaration on the Rights of Indigenous and Tribal People -169 (1989). In the light of strong evidences involving Kebele residents threatening project proponents with their lives , attempting to block their way out of meeting halls , repeatedly observed deliberately set forest fires and consistently observed problem of the youth entering into the forest and making charcoal for sale, it is difficult to say that the project is implemented having obtained the free, prior and informed consent of the residents .

site couldn't harvest their crops because wild animals from the jungle destroyed them.[81] According to a Kebele agriculture and rural development officer, in Bosa Wanche alone, about 316 households have suffered from destruction of crops they cultivated and the resultant food insecurity since the enclosure of the project site.[82] In this connection, 15 elderly households were forced to abandon their farm fields and engage in livelihoods as daily laborers, as guards of Wolayita Sodo University in Sodo and even became street beggars.[83]

As the problem worsened, residents of the Kebeles (numbering 490 households) near the project site met and decided to present their complaints to Welayita Sodo Zonal Office of EPA and the Administration of the Zone. However, they only received "solutions" like planting fruits trees such as banana, mango and avocado in the nearby forest to provide food for the destructive wild animals as monkeys and baboons.[84] They were also advised to build fences using a dense growth of a specific tree species around the project site to keep the animals away from their farm fields.[85] These have been dubbed by the environmental and climate change risks specialist serving as the liaison officer of World Vision Ethiopia(WVE) as "agro-ecological solutions" to the problem.[86] In this connection, it has been learned that when the local farmers presented the complaint to people in WVE, they were promised solutions that were never fulfilled, i.e., to build fences around the project site.[87]

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81 In-depth interview with an agricultural and rural development officer at *Bosa Wanche Kebele of Humbo Wereda.*

82 Ibid

83 Ibid. While wildlife destruction of crop harvests is a problem indiscriminately faced by households that share boundaries with the fringes of the enclosed mountainous project site , different households respond differently to the problem with the significant number of them (316 in *Bosa Wanche* alone) seriously affected , these elderlies make up those segments of the residents who are the hardest hit, others forced to change the seeds they sow, or the vegetables they grow while the rest of the residents compelled again to protect their harvests throughout the night . So wildlife destructions of crop harvests conspicuously a major problem that residents face as an indirect consequence of the enclosure of the project site .

84 In-depth interview with the leader of *Humbo Wereda*

85 Ibid

86 In-depth interview with the environmental and climate change risk specialist of WVE.

87 FGDs held with high school students of *Abela Longena Kebele* Administration.

Two key points emerge from the discussions. First, the project's governance lacks ongoing monitoring and built-in complaint redress mechanisms. Second, state agencies failed to meet their human rights obligations by not providing administrative remedies during the implementation of the climate policy tool. This violates Article 2(1) of the ICCPR, Article 8 of the UDHR, Article 2 of the ICESCR, and Article 37 of the FDRE's constitution.

In another instance, members and leaders of primary cooperatives asked about the management and saving of administrative and emergency funds from the sale of carbon credits. Their inquiries were not answered in a transparent and trustworthy manner. [88] The previous leader of Humbo agro-forestry and forestry development union explained that at the start of the project, local people were told that of the total revenue that would be obtained from the sale of carbon credits,15% would be deducted for covering the project administration cost and 5 % of the revenue would be deposited on behalf of the local people for covering emergency costs.[89] The money meant for covering possible emergency costs was promised to be saved annually. But, after more than 10 years of the project's life span, the local people via their representatives asked about the whereabouts of the accumulated emergency funds, but they were not given a clear response. [90]

In fact members of the local people and leaders of the primary cooperatives who repeatedly asked these questions were intimidated in meetings and also were labelled as those with negative attitudes about the project.[91] Whenever they asked for clarity on why revenues from carbon credits varied across different protected forestry areas and where the accumulated emergency fund was, they did not receive clear justifications or adequate responses.[92] In addition, local people were told that each unit of carbondioxide equivalent sold

88 In-depth interview with the previous *Humbo agro*-forestry and forestry development union and leader of *Abela Longena Kebele administration.*

89 Ibid

90 Ibid

91 Ibid

92 Ibid

at "the international but fixed market" is sold for initially $4, later $10, and later $11.[93] This shows that, according to the CDM project design document, the primary cooperatives of the Kebeles were the owners of the income from the sale of carbon credits. However, they were unaware of how, at what price, and to whom their carbon credits were being sold. They also did not have the opportunity to negotiate the prices with the buyers of the carbon credits. The primary cooperatives were unable to seek remedies fearing that if they pursued formal litigation against the implementer (which is Word Vision Ethiopia) that the NGO will cease all the agreements altogether and the annual revenues from the sale of carbon credits will be stopped.[94] The same fear was shared by the Zonal EPA office leader in *Wolayita Sodo*. This demonstrates that the government is unable to effectively protect the rights of local people to seek remedies for the loss of their rights to carbon benefits.

Implications for the Right to Adequate Standard of Living of Local People of the Humbo A/R Cdm Project

The right to adequate standard of living is recognized under the UDHR, ICESCR and FDRE's constitution. Article 25 of the UDHR states that "everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family including food, clothing, housing, medical care and necessary social services and the right to security in the event of …lack of livelihood in circumstances beyond his control."[95] Article 11 of the ICESCR extends the recognition of this right to "…the continuous improvement of living conditions…" and also adds that every individual has the right to freedom from hunger. The African Charter on Human and Peoples' Rights (ACHPR) protects the right to an adequate standard of living through its protection of the right to life, health, property, the protection accorded to the family, liberty and work and the right to economic and social development (ACHP, n.d.). In Ethiopia, the

[93] In –depth interview held with an environmental and climate change risk specialist serving as a liaison officer of WVE.
[94] Interview with the leader of Zonal EPA office of *Wolayita* Sodo .
[95] Article -25 of the UDHR

FDRE Constitution recognizes the right under Article 41 (1) stating that "Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory."[96] Sub-article 2 of the same article further states that "Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession."[97] So both international and national human rights instruments protect the right to an adequate standard of living including the right to food, clothing, and housing. The right is how the life, security and dignity of human beings are guaranteed and human survival secured, and is, therefore, fundamental to all human beings. Thus, it is indispensable that all kinds of policy responses that aim at protecting the climate be guided by and orientated to realize it.

In this connection, the implementation of Humbo A/R CDM project has been found out violating the rights of local people to adequate standard of living both directly by enclosing the 2,728 hectares of land and indirectly as a result of wild animal destructions of crops located along the mountainous project site. In this regard, the majority of respondents indicated that before the project site was enclosed, they used the area for various purposes: as a source of fuel wood (89.7%), a grazing field (91.9%), a source of wood for making charcoal (89.9%), a farm field (1.4%), and a place to collect construction wood (86.8%).[98] The level of dependence on the forest based resources of the enclosed project site is the same also for residents of Abela Longena and Hobbicha Bada Kebeles. In Abela Longena, 82%, 79%, 94% and 72% percent of respondents replied they used the land as a source of fuel wood, woods for making charcoal, as a grazing field and woods for constructing houses respectively.[99] In Hobbicha Bada, 80% of the respondents reported collecting fuel woods from the land, 79% used to making charcoal, 95% utilized it as a grazing field, and 70 % collected construction

[96] Article -41 (1) of FDRE's Constitution
[97] Article -41 (2) of FDRE's Constitution
[98] Survey Questionnaire
[99] Ibid

wood from the enclosed land.[100] Here, it is important to note that the respondents used to use the enclosed project land for many purposes at the same time. This shows how enclosure of the mountainous site compromised livelihoods of local residents without adequately compensating for their loss. This is also in direct violation of article 2(1) of the right to development where the human person is viewed as "the central subject of development and should be the active participant and beneficiary of the right to development" (UDRD, 1986). As discussed earlier, the implementation of Humbo A/R CDM project, apart from violating the right to adequate standard of living, prioritized the generation of carbon credits over respecting the local people's means of livelihood. This approach disregarded the centrality of human beings and their needs in the project's implementation. The violation of article 2(1) of the universal declaration on the right to development becomes illuminated when considering the critique that carbon offsetting projects are bent on false premises (there isn't such a commodity called emission reduction credits) and that they cannot be verified.

In accordance with the Kyoto Protocol to the UNFCCC, a CDM project is said to have triple goals: allowing annex -1 countries to live up to their GHGs reduction targets cheaply, contributing to the ultimate objective of the convention, and promoting sustainable development in project hosting countries. So, it is the sustainable development contribution of the Humbo project that is meant to compensate for the loss of livelihoods of residents due to the enclosure of the land. The Humbo project is designed to compensate for the loss of livelihoods by providing income streams from the annual sale of carbon credits. Field research revealed that the income from these sales has been used for various purposes: constructing grain mills and grain storage houses, building shops owned by primary cooperatives established under the project, paying the salaries of guards to protect the forest against "illegal" intrusions, and serving as a revolving fund for loans to cooperative members..[101] Here, it is

[100] Ibid

[101] FGDs held with the cooperative *Bosa Wanche Kebele*

important to note that the grain mills, at least in two of the *Kebeles* were presently not functional, guards often complained that their salaries got delayed, non –members of primary cooperatives did not benefit from the income, and that even those who got access to loans are relatives and were favored by leaders.[102] Otherwise, the project claims to compensate for the lost livelihoods by providing job opportunities (which have been found to be temporary), and provision of technical training both related to forest rehabilitation and conservation as well as those that enable residents to develop entrepreneurial skills.[103]

As has already been indicated, the job opportunities the project created are temporary involving the local youth in planting seedlings, watering seedlings, weeding, and building sheds for seedlings in nurseries.[104] The local youth have been engaged in these activities beginning from January through July. [105] The daily payments for engagement in such type of works in the year 2006 was eight birr/day which later became 13 in 2008 and 15 in 2010.[106] These temporary jobs were available during the first six years of the project's life time. On the other hand, the project tried to develop entrepreneurial skills among local residents by providing technical training for selected members of primary cooperatives under the project whose maximum number was fifteen young people. On average, 10-15 people were chosen from each of the *Kebeles* involved in the project, and they were given technical trainings in the areas of tailoring, business, animal ranching, bee keeping, and agro-forestry.[107] Having received the training, the people were given "initial capital" both in kind and cash to engage in their respective businesses. However, it was learned from field research that those

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102 FGDs held with the high school students of *Abela Longena Kebele*

103 In-depth interview with an environmental and climate change risk specialist serving world vision Ethiopia as liaison officer in *Wolayita Sodo.*

104 FGDs with members of the committee of the leading team of *Bosa Wanche* Primary cooperative

105 Ibid

106 Ibid

107 In-depth interview with the leader of *Humbo* forest rehabilitation and development union

who received sewing machines gave away the machines for their relatives, those who received initial capital to run businesses were struggling, and those engaged in animal ranching have not succeeded in expanding their businesses.[108] The only area where success stories were being told is in the area of bee-keeping where several farmers have succeeded in continuously earning income from their products.[109]

As can be understood from the foregoing discussion, the CDM climate policy tool being implemented in Humbo Wereda of Wolayita Sodo Zone does not adequately compensate for the foregone livelihood strategies of the local people. It rather provided only ostensible alternative livelihood strategies to few members of primary cooperatives in Kebeles and even these apparently alternative livelihood strategies were, by and large, not successful and, therefore, do not meet the sustainable development contribution required of the CDM project. Human rights are entitled to everyone. They are not exclusive. But the local people in Humbo had to lose their traditional livelihood strategies, as households are restricted from entering the enclosed forested space for any of the uses it traditionally provided. This restriction violets Article 25 of the UDHR, Article 11 of the ICESCR, and Article 41 (1) and (2) of FDRE Constitution. The local residents' right to adequate standard of living has also been indirectly infringed upon, as previously discussed, due to the destruction of cultivated crops by wild animals along fringes of the mountainous project site. This has, in turn, compromised the rights of 316 households in *Bosa Wanche Kebele* only to an adequate standard of living, as they were unable to harvest their crops due to monkeys, baboons, and wild boars. This problem is well-known among all households sharing boundaries with the mountainous project site indirectly violating the local residents' right to an adequate standard of living.

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[108] In-depth interview with an agricultural and rural development officer of *Bosa Wanche Kebele*

[109] Ibid

Conclusion

This article discussed how carbon trading, unjustly devised and adopted as a climate mitigation solution, allows those primarily responsible for the problem to evade their obligations to stabilize the climate. And this often happened in a context in which the implementation of carbon offsetting projects in the global South compromised both procedural and substantive human rights. The article argued, that the negotiating processes that led to the development of the climate mitigation solution were undemocratic and not observant of the principles of sovereign equality of states enshrined in the UN Charter. These processes were characterized by the influence of powerful States in determining substantive contents of "climate solution" in violation of Article 5 of the UDRD and produced climate strategies that rewarded the businesses of their industries and companies while at the same time producing rights violations where they are implemented.

In addition, this article made an effort to show that carbon trading provides an ineffective solution. Many of the CDM projects are not "additional" and it is very difficult to establish the additionality of a CDM project. Furthermore, the "CDM governance architecture does not have mechanisms for addressing human rights abuses associated with the implementation of CDM policy tools", as would have been the case had the climate policy upheld the right–based approach in its development. The article also substantiated the fact that market-based climate solutions such as A/R CDM projects are associated with violations of both procedural and substantive human rights.

Thus, rights violations both at the level of the development of global climate policy and the implementation of specially the climate mitigation mechanisms in the global South, as highlighted in the foregoing discussions, do concurrently constitute compromises of article -1(2) and article -2(3) of the declaration on the right to development.

On the other hand, the critique that carbon offsetting provides false solution and has proved to be ineffective in terms of bringing about climate stabilization as shown in the foregoing discussions implies a breach by States of the international human right to a clean, healthy and sustainable environment. In this connection, though Ethiopia abstained in voting for the adoption of the international human right to a clean, healthy and sustainable environment, its adoption by the majority of the states and its constitutional recognition in Ethiopia via article -44(1) makes the duty of the state to respect, protect and fulfill the right a matter of customary international law internationally but forcefully binding the Ethiopian state as it is anchored in its constitution. Thus citizens could legitimately call on their respective States to comply with their duty to fulfill their right to a clean, healthy and sustainable environment by way of introducing deeper and meaningful cuts in the emission of GHGs in the short run and gradually switching away from reliance on fossil fuels as energy sources in the long run.

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Representation of Slavery and Class in Kafa Proverbs

Mesfin Wodajo[110]

Abstract

Slavery and class-based subjugation are key elements of human rights violations. They deprive the dignity of human beings and disrupt the fundamental human rights. This paper argues that violation of human rights is reflected in everyday use of language, such as proverbs in Kafa. Although proverbs maintain accepted socio-cultural values of a given society, they can be deliberately misused to spread prejudices and stereotypes that result in rights violations. Through informal interviews with selected informants from Kafa Zone, this study examined how proverbs in Kafa language serve as a means of communication in the community to show social hierarchy. Proverbs focusing on slavery were collected and translated into English, and then they were classified and analyzed. As the analysis shows, in the Kafa proverbs, people whose roots are traced to "slave" families and to a lower tribal class called *Sheraaro* are considered as those on the lower social strata hence imposing differential treatment. In the traditional Kafa society, there were class differences. These differences were based on economic and political power, and such differences were observed in Kafa proverbs. Other than clan/tribal differences, the Kafa people were categorized into three classes: the royal class (*Iraasho*), the ordinary clans (*Sharaaro*) and the slaves (*Guuno*). Based on these class differences, the Iraasho undermines both the Sharaaro and Guuno while the Sharaaro in turn disrespects the Guuno. Some of the Kafa proverbs maintain such a stereotypical category and stand against international and national human rights declarations.

Keywords: *class, slavery, proverbs, Kafa, culture, oral literature*

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Introduction

Humans were treated as mere possessions or properties of the privileged under the system of slavery and class-based differences (Kevin 2004). Of course, slavery and socioeconomic-based subjugation have existed since the dawn of civilization. Slave labor was extensively used in ancient Egypt and Akkadian Mesopotamia more than 4,000 years ago. Since that time, most human societies, if not all, have adopted slavery in some form or another (Angele 2011). Slavery is a global phenomenon with a long and strong history associated with sub-Saharan Africa. From the Senegal River to the high plateau of Angola, a sizable portion of the continent specialized in the capture, distribution, and sale of slaves (Angele 2011; Drescher 2011). Consequently, both African and European slave traders engaged in the buying and selling of Africans. The institution of slavery and the slave trade persisted in the eastern part of Africa until the middle of the 19th century, despite the British actively intervening to put an end to it in the middle of the 18th century (Seid 2015).

Ethiopia was one of the African nations where Ethiopian slave traders engaged in the lucrative business. Up until the first half of the 20th century, slavery was firmly entrenched in Ethiopia and the Horn of Africa. The Fiteha Negest [111], the traditional legal code of Ethiopia translated from the 13th-century "Coptic" document based on Biblical and Roman Law, gave it legal recognition accepting it on the condition that those who were captured in battle maybe enslaved. Numerous Ethiopian emperors, including Emperor Menilek (1889–1913), largely accepted the Fiteha Negest's teachings. Some of the techniques included capture, whether it occurred during battle or while riding, sentencing criminals to labor, outright purchase, etc. (Ibid).

[111] The Fetha Negest is the Ethiopian theocratic legal code compiled around 1240 by the Coptic Egyptian Christian writer Abu'l-Fada'il ibn al-Assal in Arabic.(https://en.wikipedia.org/wiki/Fetha_Negest)

Slaves were acquired in different ways in various Kingdoms of Ethiopia. Kafa was one of the ancient kingdoms in Ethiopia (Bekele 2010). In Kafa Kingdom, royal classes/ feudal classes had the right to own slaves. The royalties of the Kingdom, dehumanized their indigenous slaves, and this slavery issue has been reflected in Kafa oral literature in general and proverbs in particular. Proverbs offer unique insights into the social and cultural values of a community, often preserving aspects of history not documented elsewhere. Studying Kafa proverbs can reveal information about the lived experiences of enslaved people, class structures, and power dynamics within Kafa society. In addition to slavery, there were clan and economic-based classes in Kafa traditional society in which subjugation and human rights violations have been depicted. In such class-based differences, the privileged ones dehumanize those in lower classes.

Slavery and Human Rights

There is a close connection between human rights violations and slavery. Slavery can be understood as the possession and control of people as property, depriving them of their fundamental human rights and dignity (Drescher 2011). The dehumanization and exploitation of those under slavery have been a consistent practice throughout history, even though the practice has taken on different forms in different countries. Part of the violations of rights committed under slavery include separation from their families and communities, sexual exploitation, forced labor, and physical and psychological abuse (Kevin 2004; Seid 2015).

A number of fundamental human rights are directly violated by slavery, including the rights to life, liberty, and personal security; freedom from torture and other cruel, inhuman, or degrading treatment or punishment; freedom of movement; the right to work under fair and comfortable conditions; and the freedom from slavery and servitude (Anton and Joseph 2009). The abolitionist movement, which gained strength in the 18th and 19th centuries, battled against the system of slavery, worked for its eradication and defended every person's human rights. Adopted by the United Nations in 1948, the

Universal Declaration of Human Rights unequivocally denounces slavery and affirms the intrinsic worth and equal rights of every individual (Angele 2011).

Anton and Joseph (2009) stated that the legacy of slavery does, however, still have an impact on modern society, and this must be acknowledged. The rights of millions of individuals worldwide continue to be violated by a variety of contemporary forms of slavery, including forced labor, debt bondage, and human trafficking. In order to effectively fight slavery and protect human rights, a multifaceted strategy that incorporates legal frameworks, social awareness, education, and economic empowerment is needed (Drescher 2011).

The fight to eradicate slavery, genocide, prejudice, and tyranny by the government gave rise to the contemporary period of human rights. In order to safeguard the most fundamental human freedoms and rights, a number of academics, activists, and even national leaders called for the League of Nations to be established as well as the practice be clearly denounced. The Second World War's atrocities demonstrated the inadequacy of earlier attempts to protect individual rights and limit the authority of governments to infringe upon them. The moment was right for adopting an international agreement that codified these principles. With the creation of the United Nations, the Universal Declaration of Human Rights was formed (Kevin 2004; Bayeh 2015), and Article 4 of the Declaration states that 'No one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms'. Anton and Joseph (2009) contended that human rights as a legal concept and the codification of human dignity came late to Africa. Yet, the development of human rights in Africa can be related to the internal struggles of African countries during the colonial and post-independence periods. The role of the Organization of African Unity (OAU) and its successor Africa Union (AU) is also recognized here. Since the establishment of the OAU in 1963, several organizations, instruments and mechanisms have appeared that aim to promote and protect human rights in the continent (Ibid).

The African Charter on Human and Peoples' Rights in 1981 is a milestone in this regard, as well as the establishment of a Commission of the People and the People of Africa people's rights and the related African Court on Human Rights and People's Rights. In addition, regional economic associations created their own organizations and instruments aimed at promoting human rights in their respective territories. These regional and continental regulations should not hide the fact that no country in the world is considered the main factor in promoting and protecting people's rights: the benchmark of any civilized society is the commitment of that state to protect the dignity of its citizens (Anton and Joseph 2009; Seid 2015). Thereby, African Charter on Human and Peoples' Rights as well as related laws and regulations have been contributing, stimulating, and safeguarding human rights.

According to Bayeh (2015), the introduction of human rights in Ethiopia has undergone a multifaceted and dynamic evolution. Throughout the years, Ethiopia has experienced notable transformations in its approach to human rights, demonstrating both advancements and persistent obstacles. In more recent times, the Ethiopian Constitution of 1995 has played a pivotal role in establishing a comprehensive legal structure for safeguarding human rights. This Constitution ensures a wide array of fundamental rights and liberties, encompassing the entitlement to life, freedom, fairness, and respect. Additionally, it explicitly prohibits any form of torture, cruel, inhumane, or degrading treatment or punishment (Adem 2011). Consequently, provisions of human rights in the current Constitution of the Federal Democratic Republic of Ethiopia have lifted up the practice and development of human rights protection in the country.

Ethiopia signed various international human rights treaties, including the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, which highlights the country's recognition of the significance of human rights. Nonetheless, there have been instances of human rights violations in Ethiopia, including restrictions on freedom of expression,

assembly, and association, as well as allegations of excessive use of force by security forces (Adem 2011; Bayeh 2015). Bayeh (2015) stated that the involvement of civil society organizations, activists, and international partners is crucial in advocating for human rights and supporting Ethiopia's on-going endeavors.

Class-based Violation of Human Rights

Class-based oppression and infringement upon the rights of individuals is an issue that has a profound impact on numerous societies across the globe. This phenomenon is defined as the circumstance in which individuals or collectives endure oppression, discrimination, or the negation of fundamental human rights due to their social standing or economic status (Anna 2019). According to Vladimir (2012), this form of subjugation can materialize in diverse manners, including but not limited to, unequal access to education, healthcare, employment opportunities, and political representation. Moreover, it frequently results in the perpetuation of impoverishment, restricted social mobility, and a scarcity of prospects for individuals belonging to lower social echelons.

Violations of human rights based on class differentiation encompass a wide range of transgressions, such as coerced labor, employment of minors, acts of prejudice, exploitative treatment of individuals, and even physical aggression targeting those belonging to lower socioeconomic strata (Anton and Joseph 2009). These actions not only encroach upon their fundamental human rights, but also perpetuate a cycle of imparity and societal injustice. The rectification of class-based subjugation and human rights infringements necessitates a comprehensive approach that encompasses legal reforms, social policies, and endeavors to enhance awareness and advocate for equality. Governments, international organizations, civil society, and individuals all bear responsibility for addressing these concerns and striving towards a more impartial and equitable society (Anna 2019). Vladimir (2012) also stated that it is of utmost significance to acknowledge and confront the institutional frameworks that sustain the oppression based on social class and violations of fundamental

human rights while advocating for strategies and behaviors that foster parity, fairness, and reverence towards human rights for each individual, irrespective of their societal position or financial standing.

In sum, although efforts have been made to end the multifaceted human rights violation at the international level as well as in the Ethiopian context, incessant work should be done devotedly to create a world in which human rights are fully functioning, and every human being irrespective of sex, color, nationality, economic and social status, and so on should be dignified and respected. The violation of human rights is not only exercised in action but also in everyday language use like in proverbs. Despite proverbs are used as essential summaries of experience and are very effective in exercising social control as well as convenient standards for assessing the nature and quality of behavior of the approved norms, they can be deliberately misused to propagate prejudices and stereotypes (Mesfin 2012) that lead to violation of human rights. In light of this, the research at hand aims at collecting and analyzing Kafa proverbs that deal with slavery and class issues.

Brief Conceptualization of Proverbs

Proverbs are brief, humorous and persuasive sayings so that they can be easily memorable, and contain some important fact of experience that is taken as true by many people. However, it has been evidenced that a thorough definition and categorization that might include all-important characteristics of proverbial phenomena cannot be verbalized in a single description, despite efforts by researchers from throughout the world to do so. Folklore academics have made an effort to define it, though.

A proverb is a brief, widely understood utterance of the people that "contains wisdom, truth, morals, and traditional views in a metaphorical, fixed, and memorable form and is handed down from generation to generation." (Mieder 1993, 5). Proverbs were described as "a traditional, conversational, didactic genre with general meaning, a potential free conversational turn, preferably

with figurative meaning" (Norrik 1985, 78). Similarly, Finnegan (1970, 49), defined proverb as "a saying in more or less fixed form marked by shortness, sense and salt and distinguished by the popular acceptance of the truth tersely expressed in it". According to Fasiku (2006, 51), a proverb is "a powerful rhetorical device for the shaping of moral consciousness, opinions and beliefs".Dundes (1975, 103) also defined proverb as "a traditional saying that sums up a situations, passes judgment on a past matters, or recommends a course of action for the future". It can be inferred from the definitions given above that proverbs are succinct, amusing, and persuasive sayings. They contain some significant experience-based facts that many people consider real and are concise and readily recalled. Proverbs are, in essence, terse, succinct, indirect, enigmatic, and relatively fixed rhetorical devices that are rich in wisdom.

Proverbs are one of the oldest and most intimate genres of oral literature (Daskin and Hatipoglu 2020). They do not always come with formulas. There are no rules as to when they should be used (Mesfin 2012). Therefore, the place and time for performing proverbs are unstable. Likewise, a proverb can have many different functions. For example, a proverb used to advise can be used to criticize. In short, proverbs do not have special occasions and can have many functions. However, collectors should note its original intended use, but go beyond that and think of other potential uses (Bascom 1965; Mieder 1993).

When language is utilized for communication, whether as an art or a tool, proverbs have been observed to occur on all occasions (Daskin and Hatipoglu 2020). They can be used for counseling, instruction, complaints, and protests. The main benefit, according to Bascom (1965, 297), is that they perform "a specific and important intellectual function that of subsuming the particular under the general". Proverbs typically play a significant role in daily interpersonal communication. They make speeches engaging and stunning by strengthening human interaction by being cited in regular sociocultural gatherings of people. Beyond their literary function, proverbs have frequently served as a vehicle for didacticism and,

more generally, the presentation of widely held beliefs and pearls of wisdom. They preserve the cultural heritage of a people, their traditions, their history, their wisdom and their ethics.

However, apart from the aspects already mentioned, proverbs bear to some extent, rather serious dimensions when they are deliberately misused to propagate certain views and beliefs. Thus, proverbs may contribute to the spread and reinforcement of prejudices and stereotypes of any kind (Mercy 2021). Similarly, Jeylan (2009) argued that proverbs in general should not be taken as signs of wisdom. Some proverbs especially in Africa have been used to maintain slavery and class-based subjugation. Likewise, Mercy (2021) confirmed that folk ideas or worldviews as expressed through folklore, particularly through proverbs, have their negative sides regarding ethnic, sex, minority and national stereotypes. In *Kafi Noonoo* (the language of the Kafa people), some proverbs deal with slave and class issues. Proverbs can express both dominant ideologies and subtle forms of resistance. Analyzing how slavery and class are represented in proverbs can uncover how power operated and how individuals navigated their positions within the social hierarchy. However, such proverbs have not been analyzed yet. Thus, the central point in this research is how Kafa proverbs represent issues of slavery and class. In other words, the current research aims to reveal the ways that the Kafa proverbs represent slavery and class differences.

The Study Setting and Methodology

The Kafa people are currently located in the Kafa Zone of the Southwest Ethiopia Peoples Region[112]. Kafa Zone is bounded by the Sheka Zone in the northwest, by Bench Sheko and West Omo Zones in the southwest, by Illuababor and Jimma Zones of Oromia Regional State in the northeast and by the Konta Zone in the southeast. It has a total area of 80816 square kilometers with an average altitude of 500 meters above sea level (Zegeye 2017) the

[112] Before the establishment of Southwest Ethiopia Peoples Region in November 2021, Kafa had been ruled under South Nations, Nationalities and Peoples Region.

current average temperature of Kafa rests between 21 to 25 degree cent grades. Although most parts of Kafa is highland, locally called *Angesho,* it is an area with mixed altitudinal range including an area of mid altitude called *Guddifo* and low land called *Worefo*. These three type of whether conditions are suitable for growing various types of plants that serve for making folk medicines, constructions, agricultural equipment, furniture, and fuel consumption. In addition, the weather condition of Kafa is convenient for different types of animal and bird species (Mesfin 2012). Kafa Zone has twelve districts (woreda administrations) and five town administration. While there are many ethnic groups residing in the area, Kafecho, Naa'o, and Chara ethnic groups are considered indigenous.

The *Kafacho*[113] ethnic group is divided into more than 238 tribes. These tribes are also classified into various categories based on their social status and occupations (Bekele 2010). According to Tekle (1993), based on the nature of their language, the people of Kafecho, Shekacho, Bosha (Garo), Enarya, Anfillo (Bushashe), and Shinasha (Boro) are put under the umbrella of Gonga. The legendary roots of these people were in Egypt and Yemen. Citing Beber, Johnson and Lange, Bekele (2010) stated that this set of emigrant Gonga population first settled in the northern part of Ethiopia following the valleys of the Abay River. Later, due to the Oromo expansion and Ahmed Gragn's war, part of these people separated and moved to southwest part of Ethiopia, except for the Shinasha people, who are now found in the northern Ethiopia, in Metekel Zone of Beneshangul Gumuz Regional State (Bekele 2010)[114]. Of the South Gonga peoples, Anfillo (Bushashe) are currently found in Oromia Regional State, West Wollega, Bosha (Garo) and Enarya in the eastern and northern parts of Jimma, and Kafecho and Shekacho in the Southwest Ethiopia Peoples Regional State (Bekele 2010; Tekle 1993).

[113] The people are called Kafecho and their language is called Kafi Noonoo which is grouped under Omotic Language Family

[114] See Bekele Woldemariam (2010)

The Kafa people had very strong political, historical, social and cultural values until the downfall of the Kafa Kingdom in 1897. Lange (1982) stated, "Kafa strongly influenced nearly all major historical developments of the Gonga and other peoples south of the Blue Nile…To fully know Kafa is to gain an invaluable insight into the culture-history of all Africa."(Lange 1982, 180). In addition, the Kingdom of Kafa had a well-organized and powerful military force, which had strongly survived Minlik II's force until 1897. In line with this, Marduak (1959) quoted in Bekele (2010, 190) noted "…with the exceptions of the Great Wall of China and possibly a few sections of Imperial Rome's frontier defenses, no other people have lavished such effort in military protection". However, due to the expansion of Minlik II to the south and southwestern parts of Ethiopia, Kafa lost its political and cultural power (Bekele 2010; Zegeye 2017). Nevertheless, these days, there are attempts to restore the lost cultural values in accordance to the 1995 Constitution of the Federal Democratic Republic of Ethiopia, which gave the people the right to develop their indigenous culture.

The Kafa livelihood is predominantly based on agriculture (Tadesse 2020). The farming practices of the Kafa are connected to forest-based farming techniques including forest coffee , *inset* (Uuxo[115]), and spices cultivation. The Kafa people's main source of food is *inset*, and Kafa is known for being the birthplace of coffee. Additionally, *teff*, barley, wheat, and maize are the main crops grown in Kafa. In addition, in Kafa many domestic animals like cows, horses, and sheep are also herded (Bekele 2010; Mesfin 2012). Furthermore, the Kafa people are well known for their production of forest honey. According to Bekele (2010), a competent farmer can harvest honey three times a year. Due to these reasons, the Kafa people highly value and consider forests to be one of their most precious assets. Writers and visitors to Kafa such as Beber and Max Grul (as quoted in Bekele 2010, 22), noted the landscape saying: "Kafa is the pearl of Ethiopia" and "Kafa is an alpine terrain with the palm trees."

[115] Uuxo in Kafi Noonoo refers to the plant from which the common food of the Kafa People called qocco which serves to make various kinds of dish is made.

Most importantly, one of the main tea plantation sites in Ethiopia, Wushwush tea, and other spices are found in Kafa Zone.

The Kafecho speak a language referred to as *Kafi Noonoo*. This language is grouped under the Omotic language family which embraces the Shinashigna, Shekigna, Garo and Mao languages (Mesfin 2012). Until the downfall of the Kafa Kingdom, this language served as the working language of the kingdom. However, later it was replaced by Amharic and became considered the language of a non-literate rural population until the downfall of Derg regime (Bekele 2010). In 1994, using the opportunity given by the constitution of the Federal Democratic Republic of Ethiopia, which gave the people the right to develop indigenous culture and to learn in one's language, Kafi Noonoo became the medium of instruction in elementary schools and has been taught as a subject in secondary schools as well as in colleges. Kafi Noonoo has been established as an academic department at Bonga College of Teachers' Education, offering diploma in the language. Besides, it is also being established as department at Bonga University.

This study used a qualitative method of literary analysis engaging a thorough discussion of the Kafa proverbs from the perspectives of class and slavery. Since it discusses how slavery and class issues are represented in the texts of Kafa proverbs, it can be classified as a method of textual analysis. The proverbs were gathered from the Kafa Zone through informal interviews with informants who were identified based on their knowledge of the oral traditions, and social, cultural, and historical realities of the Kafa people. The communicative approach was used to translate all of the amassed proverbs into English to make them readable for readers who do not speak Kafi Noonoo. Because Kafa proverbs emerged from Kafa cultural environment and are metaphorical and symbolic in nature (Mesfin 2012), the communicative approach to translation was used to translate the proverbs into English. The proverbs were translated into the target language (English) using the same or related messages. Because of this, words in the target language retained their original meanings (Kafi Noonoo). Following that, the translated proverbs were classified into themes according to

the Kafa socio-cultural context in which they were used. After that, interpretations and analyses were made.

Proverbs Dealing with Slaves (Guuno)[116]

Proverbs serve as a mirror to the values, beliefs, and experiences of a society. They possess the ability to offer a glimpse into the problems of slavery and human rights violations. Although not explicitly addressing these matters, proverbs can still reveal the repercussions and ethical implications of such actions. Hence, there are Kafa proverbs that deal with the issues of slavery in the given socio-historical context. This is exemplified in such proverbs as: "*Guuno itteyaache/ buuxo dukkeeyaache*." ("It's impossible to feed porridge with someone else's hand, as it's impossible to respect a slave.")

This proverb underscores the inequality of slaves with an average human being stating that slaves not deserving dignified treatment as average human beings. The message violates Article 24[117]:1 of the Constitution of Federal Democratic Republic of Ethiopia (1995, 8) that states "Everyone has the right to respect for his human dignity, reputation and honour". According to an informant from Saylem[118], given the fact that porridge is served warm, one can only use their own hand to eat it. In the culture of Kafa, while eating together, one can feed another (putting food in other's mouth, in Amharic known as *gursha*) as an expression of love and care; but this cannot be normally done for porridge. According to the proverb, respecting a slave is as culturally impractical as feeding porridge to other. This is due to the fact that when a slave is respected, they become proud and believe that they are on par with other members of the community.

[116] Guuno means slave in Kafa Language (Kafi Noonoo)

[117] Article 24 of the 1995 Constitution of Federal Democratic Republic of Ethiopia declares "Right to Honour and Reputation"

[118] Besha Cheneto (a key informant who knows the Kafa socio-cultural realities well) in discussion with the author, March 2021.

People believed to be descendants of slaves in Kafa society are looked down upon and badgered without taking into account their current intellectual or social standing. The proverb thus exposes the class prejudice that ignores slaves. Such proverbial expressions are violations of human rights. Article seven of Universal Declaration of Human Rights states that "all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." Thereby, such proverbs, violating the above declaration, reinforce the discrimination and disrespect towards people who are attributed to be slaves or are their descendants. For instance, "*Guunoch mulloo aalle/ akashooch damoo aalle*." **("A slave has no a thinking mind/good heart as an ant has no blood.")**

The proverb maintains the subjugations of slaves in Kafa socio-cultural realities that extend to their intellectual immaturity. By counting the forefathers and foremothers of people, particularly the Kafa people who belong to non-slave ancestors pester and vanquish those whom they consider from slave background. The prejudice extends to such domains as intellect as the proverb above clearly shows. The above proverb compares slaves with ants as it metaphorically states that slaves did not have human hearts and minds as ants lack blood because if they had human hearts and minds, they would not have been bought and sold as commodities by human beings. In addition, as an informant[119] noted, if the slaves were wise, they would have not submitted themselves to serve another human being throughout their lives, hence referring to the submissive nature of slaves and their lack of agency. Even though they were sold vehemently, they would have struggled to free themselves if they had a thinking mind and strong heart. Therefore, this proverb serves as a tool to deny human rights declared both in the Universal Declaration of Human Rights and the Constitution of Ethiopia. Specifically, such expression stands against Article 18 of

[119] Abebe Archafo (a key informant who knows the Kafa socio-cultural realities well) in discussion with the author, May 2020.

the Constitution of the Federal Democratic Republic of Ethiopia[120]. Slaves were represented as animal in some Kafa proverbs as it can be referred from the following popular proverb.

"Guunonaa kuroona ikkoone." **("A slave and alike a donkey.")**

The donkey in this proverb is compared to a slave because the donkey works hard for its owner rather than for itself. Likewise, slaves are prone to abuse by their owners like donkeys. The person or owner benefits from the donkey's laborious work. Similarly, a slave must work arduously to serve the interest of its master. Drescher (2011) claims that the dominant social groups in slave societies relied much more on the wealth produced by slave labor. It was more difficult for enslaved people in their large-scale production facilities to free themselves, let alone join the slave-owning class. Even if this proverb attests to the severe mistreatment of slaves by their masters, it can be used to dishonour people from their slave ancestors. Indeed, in the Kafa dominant social group, slaves had been disrespected and such diminishing acts can be seen these days as a general truth as the following proverb indicates. *"Gumooch neexeetaache; Guunoch nooreetaache."* ("It is unrealistic to offer a seat to a slave, as it is land in the sky.")

According to the cultural etiquette of the Kafa as it is the case in most parts of Ethiopia, it is often considered politeness to stand up when someone who is highly respected or of higher status enters a room.[121] This is done for people who are elders or whose tribe belongs to the respected class or those who are wealthy. However, such respect cannot be offered or extended to those people believed to be of slave origin regardless of their economic class and age. Hence, the proverb metaphorically conveys that as it is impossible for people to stand on the top of the sky, there is no room to respect slave in the traditional Kafa socio-cultural context. As a result, this proverb is used to represent the positions of slavery in the traditional

[120] Article 18 of the 1995 Constitution of Federal Democratic Republic of Ethiopia declares "Prohibition against Inhuman Treatment"

[121] Besha Cheneto (a key informant who knows the Kafa socio-cultural realities well) in discussion with the author, March 2021.

Kafa society and maintains the denial of human right in this case the cultural right that other members of the society enjoy.

"*Gonnee toommo bi doonji toommo." ("***A slave does not have their own clan, they take the clan of their owner.")**

This proverb is related to the clan or identity of slaves. According to Mesfin (2012), the Kafa people are categorized into about 238 clans, and each clan has a leader who belongs to the royal family. As an informant[122] described, every person takes the clan of their father and identifies their identity based on that clan. Most slaves in the Kafa Kingdom were not natives to the kingdom or are not originally from Kafecho ethnic backgrounds (Ibid). Nonetheless, because slaves were sold to people who lived far away from their parents, those who were sold into slavery did not have the right or access to connect with their respective families, so they did not inherit their clan identity from their biological fathers/mothers. In the view of the proverb, a person whose ancestry could be traced to a slave family is considered only a member of their slave master's clan. As a result, those with a slavery background are believed to be people without identity and hence are named after the clans of their respective masters. Even though such assimilation allows the slaves to integrate into the clan of their owner, it may create identity crises. This disregard in society denies people of slave roots the cultural right to define their own identity to have their own true clan. The following proverb also further maintains how the traditional Kafa society disregarded and affronted slaves.

*"Baakke aafoo qelloch, guuch mullo gabiyooch." ("***A hen sees only what is in front of it as a slave always wants to go to the market.")**

The above proverb accents the view that people with slave descent are viewed as being foolish and slothful in Kafa society. Farmers in the Kafa culture are expected to work hard in their fields rather than wasting time elsewhere. The diligent farmers spend a lot of

[122] Aboge Shawo (a key informant who knows the Kafa socio-cultural realities well) in discussion with the author, March 2021.

their time in the field and are believed to be farsighted in terms of planning their farm activities ahead of time and saving for the future. They never visit the market for purely recreational purpose unless they have important tasks to complete there. Strong farmers work hard to ensure a bright and prosperous future for themselves, and they are aware that such a future is only possible through hard work. On the other hand as it is accented in the proverb, a hen is short sighted and only looks for a grain to fill its belly. People with slave backgrounds are believed to be lazy spending their days at a marketplace rather than working in their farm fields because they lack wisdom and are short- sighted like a hen. As a result, they frequently continue to live in poverty and are unable to secure a bright future for themselves and their families.

As the central messages of the six proverbs quoted above clearly state, in traditional Kafa, social inequality existed between those who are believed to be slave decedents and those believed to be of non-slave background. The level of inequality is believed to extend to intellectual capability as it is accented in proverbs number five and six above. In some cases the level of inequality is framed along a social respect extended to individuals as it is connoted in proverbs number 4 and 3 which is an exclusive cultural right extended to those with non-slave backgrounds in traditional Kafa.

Proverbs Dealing with Class Issues (Iraasho and Sharaaroo)

In a traditional Kafa society, there were class differences. These differences were based on economic and political power. Other than clan differences, the Kafa people were categorized in to three classes. These were the royal class (Iraasho[123]), the ordinary clans (Sharaaro[124]), and the slaves (Guuno[125]). The Iraasho were the

[123] Besha Cheneto (a key informant who knows the Kafa socio-cultural realities well) in discussion with the author, March 2021 said "Iraasho in Kafi Noonoo stands for the ruling classes of various hierarchy of power including clan leaders in the Kafa Kingdom"

[124] Ibid, Sharaaro in Kafi Noonoo means ordinary clans who have been engaged in occupational works such as black smith, pottery, tanner and the like

[125] Guuno in Kafi Noono stands for slaves

landlords who controlled both the economic and political powers. The Sharaaro were poor peasants but led their independent life cultivating crops on the lands of the lords from which more than half were given to the lords. The Guuno were the servants of the lords and lived in the compounds of the lords. Although the Sharaaro were inferior to Iraasho, they had better positions than the Guuno. Based on these class differences, the Iraasho undermines both the Sharaaro and Guuno while the Sharaaro in turn disrespects the Guuno. Besides, every Kafecho clan is categorized under either the Yiito,[126] Hinnaaroo[127] or Maawoo[128] clan group. Hence, among these groups there are always stereotypical views of one another. Analysis of proverbs dealing with these class issues are presented below.

"*Sharaaree baakkee bashoo/ shabaatte giyooch waayeehe*." **("An ordinary man's slaughtering of a cock is heard by his seven neighbors.")**

Literally, this proverb means that when an ordinary family wants to eat chicken, the family cannot afford to buy all the necessary spices that are needed for preparing the chicken. As a result, the family is forced to get help from the neighbors and thus the story can easily be heard to neighbors. However, even if a man from the royal class slaughters a bull, the story cannot be heard by anyone because of their ability to afford all the necessary materials. Beyond its literal meaning, the proverb praises the royal classes and disregards the ordinary ones.

"*Sharaaro showoo qeejjaache/ hicewoo shaacoo bayaache*." **("An ordinary person never administers a land just as much as a salt never fills an empty stomach.")**

The aforementioned proverb is related to the royalties' depiction of the lower class. The majority of ordinary members of the clan

[126] Aboge Shawo (a key informant who knows the Kafa socio-cultural realities well) in discussion with the author, March 2021 stated that Yiito in Kafa culture means clans recognized as wise and prophets.

[127] Ibid, Clans under the Hinnaaroo group are associated with the Enarya tribes of the Gonga people.

[128] Ibid, Maawo is also an umbrella term for certain clans in Kafa Society.

have been ruled by a leader (the *Iraasho)*. The Iraasho consider themselves as having exceptional leadership qualities (Tadesse 2020). So the proverb says that an individual from an ordinary (the *Sharaaro*) background never acquires leadership qualities and thus can never be given an opportunity to rule as much as one would not pick on salt when feeling hungry. This proverb thus emphasizes the supremacy of the royal family to administer land and property and in contrast it undermines people from ordinary background regardless of their personal talent and economic class. However, these days, such an attitude and stereotypical view of the Sharaaro class has vanished so that many individuals from ordinary classes have granted the right to rule though the proverb still functions to undermine even those from the ordinary class, but upholds political and economic power in the community.

"*Taateeno kexooch giyati amoona ketate biya giyaane amoona gibate iyane wonee."* **("One who lives in a palace wants to leave while one who has never lived wishes to get into the king's house.")**

This proverb illustrates that it is believed that the king's family or royal family leads a very comfortable life. Thereby, every ordinary person wishes to live in such a house and serve the royal family so as to share from such a comfortable life. However, in reality a house of the king/ royal family is not comfortable for slaves or other servants of such a family. In other words, the proverb literally means that outsiders always think that the king's house is comfortable for servants, and they wish to lead such life, but the one who practically resides in the royal house as a servant wants to leave the house. This is due to the fact that servants cannot be treated as proper people by the family of a king, and one who serves the king's family does not have the right to get their personal needs met. Hence, those who have such experience do not want to stay with royal family. Therefore, the proverb exposes how ordinary people who served the royal family were exploited and disregarded in the traditional feudal system.

"*Gochit gattoo bu'oo maatee/ goyaanee kunaanee kosho maahan."* **("The ox that tills the land eats straw/ the dog eats bread".)**

In this proverb, the speaker takes the truth, which he sees explicitly that the crop product that an ox is permitted to consume is straw. However, the dog, that makes little/no contribution to the growth of crops, consumes bread because it has an access as it lives close to its owner's homes. As a result of their reliance on agriculture and the ox's role in plowing land for cultivating crops, the Kafa people value ox as a very valuable asset. Beyond its literal meaning, the proverb was meant to make a statement about unfair taxes that landlords during the feudal system unfairly collected according to an informant[129]. The landlords (Iraasho) were extremely autocratic and made little/no contributions to crop cultivation. The ox is a prized possession in Kafa society and is treated with respect, and it is not permitted to leave its owners yard. Dogs, on the other hand, are less significant and are permitted to enter in houses other than their owners in search of food. Thus, the proverb implies allegorically that the peasant (represented by the ox), who is essential to the crop's production, received a meager supply of inferior goods. Despite playing little or no role in the production process, the landowners (referred to as "dogs" in this case) received a large quantity of high-quality products.

Moreover, the landlord, represented by a dog, had the right to use both his own property and those of other peasants., In contrast, a poor peasant, represented by an ox, had no right to use even his own property. . In Ethiopian history, the Kafa peasants were obligated to perform physical labor for the landlords in addition to paying high taxes. According to the informant from Saylem[130], the peasants were in charge of preparing food, collecting wood for fuel, and plowing the lord's land at least twice a week. A peasant would be punished by the lord if they skipped such work. The Kafa people use a symbol from their perceptions of domestic animals in this proverb to convey their political and economic views on feudalism.

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[129] Abebe Archafo (an informant who discerns the Kafa socio-cultural realities well) in discussion with the author, March 2021.

[130] Ibid

This proverb is still in use when the Kafa people wish to criticize those who irrationally want the property of others.

Conclusion

Class-based human rights violations and slavery are intertwined issues that have been around for centuries. As it is shown in the everyday lives of the Kafa, slavery is the practice of owning and controlling people as property, depriving them of basic human rights and exposing them to different forms of abuse and exploitation. The social hierarchy among the Kafa is coined around historical socio-economic inequality whereby people from lower or marginalized social classes were considered inferior to people from higher social classes. The class-based oppression deprived people of basic human rights such as freedom, dignity, and independence. Although slavery has been abolished in most of the world, its effects continue to affect societies today. Class-based violations can take many forms, including forced labor, trafficking in human beings, debt slavery, child labor, and other forms of human rights violations that disproportionately affect people of lower social classes.

Slavery and class-based human rights violations in contemporary society with a long history of slavery must be addressed through the enforcement of basic legal frameworks, and furthermore, there needs to be a major intervention targeting existing social norms. Part of the potential legal interventions that can be taken to bring about meaningful change include: strengthening laws and regulations to fight these practices, punishing perpetrators and supporting victims. It is also important to raise awareness and pro-motivational education about the history of slavery and the effects of class-based oppression to challenge social norms and attitudes that sustain these violations. In places with long history of slavery, addressing the underlying causes of slavery and advancing a worldwide culture that upholds and defends the rights of every person are imperative. The promotion and protection of human rights necessitate a collective commitment from all stakeholders to foster a society that upholds the dignity and rights of every individual.

The sociocultural values and ideologies of the society as argued in this paper are embodied in the Kafa proverbs. This means, the Kafa proverbs are a reflection of the people's wisdom, moral principles, and life experiences. Not all Kafa proverbs, though, can be regarded as indications of wisdom and positive ideas. In other words, some proverbs are examples of racial and social stereotypes. By intentionally fostering class disparities, such proverbs undermine those with enslaved ancestry and those from lower classes. The examination of the aforementioned proverbs demonstrates that, regardless of their personalities and intellectual standings, people whose ancestors were slaves were oppressed and relegated. Proverbs of these kinds violate human rights declarations at both national and international levels. Likewise, some of the Kafa proverbs carry discriminatory meanings in a way that subjugates people whose family backgrounds have been regarded as inferior. Such proverbs, beyond suppressing undignified classes are disagreement instigators among various classes of the society.

Literature in general and oral literature in particular plays an important role in communicating societal norms and traditions as well as transmitting cultural values to newer generations. However, some elements of such literature can also serve as a tool of exploitation. Furthermore, as the case material from Kafa presented in this paper clearly shows, proverb/oral literature maintains a violation of human rights in many aspects.

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Constitutional Adjudication of Rural Women's Land Rights in Ethiopia

Anchinesh Shiferaw[131]

Abstract

The legal regime on rural land rights in Ethiopia is decentralized, having the federal and regional land administrative legislations. Though many aspects of these laws are similar, there are few aspects of these legislations that vary in terms of substance and level of implementation. When analyzed from a gender perspective, the legislations differ in the scope and extent of promotion of gender justice in administration, control, transfer, and use of land rights of women. Questions arise as to the extent to which the diversity/ difference envisaged under these legislations affects women's constitutional rights to use, transfer and administer land. This article analyzes landmark decisions rendered by the Council of Constitutional Inquiry (CCI) and the House of Federation (HoF) regarding disputes affecting women's rural land rights. The article discusses the implications of a lack of uniform gender sensitive/ responsive approaches in the adjudication of rural women's rights to land in Ethiopia. The methods of data collection and analyses include a dogmatic analyses of laws, case, and the literature, as well as key informant interviews. The article provides insights for policy makers and stakeholders working on gender equality.

Keywords: *rural women's land rights, gender-sensitive constitutional interpretation, legislative power on land laws, Council of Constitutional Council*

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Introduction

Ethiopia has established a federal system of governance since 1995 upon the adoption of the FDRE Constitution. The federal system established two tiers of government at the federal and regional levels with their own legislative, executive, and judicial branches. The Constitution determined the division of powers between the different tiers of the government in addition to laying down the foundation for the protection of human rights by devoting one-third of its content to human rights. The enforcement of human rights is to be overseen by all organs of the government.[132]

Ethiopia, under the FDRE Constitution, has opted for a constitutional interpretation to be undertaken by the second chamber of the legislative organ, i.e., the House of Federation (HoF) rather than judicial review of constitutional matters by the judicial organs. This centralized form of constitutional interpretation has granted the HoF the power to decide on all constitutional disputes.133 The HoF is assisted by the Council of Constitutional Inquiry (CCI) which is composed of eleven members consisting of six legal experts, the president and vice president of the Federal Supreme Court and three representatives from the HoF.134 It reviews applications for constitutional interpretation when the constitutionality of any law, customary practice, or decision of the government organs or officials is questioned and provides recommendations for the approval of the HoF.135 Constitutional review can be initiated by government bodies, private parties or a judicial referral requesting the Council of Constitutional Inquiry (CCI) to review the constitutionality of the contested legislation, decision or conduct.136 Furthermore, Article 84 (2) of the FDRE constitution provides that when a constitutional

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132 Article 9 (2) of the FDRE Constitution.

133 Article 83 (1) of the FDRE Constitution.

134 Article 84 of the FDRE Constitution and Article 15 of Proclamation no. 798/2013 to Re-enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the FDRE.

135 Article 3 (1) of Proc. 798/2013.

136 Takele Soboka Bulto, 2011, "Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory", *African Journal of International and Constitutional Law*, Vol. 19, p. 104.

issue arises involving a contestation of Federal or State laws before a court, the court may refer the case to the CCI. Thus, the constitution envisages a non-restrictive access to constitutional interpretation mechanisms in Ethiopia.

This article investigates the implications of the diverse rural land laws at the federal and regional state levels on the protection of the constitutional rights of rural women in Ethiopia by reviewing decisions of the CCI/HoF. The article also investigates the various barriers to women's access to constitutional adjudication mechanisms in Ethiopia.

The study relies on cases collected from CCI/HoF with an informed intention to show diversity in the reasoning of the decisions from a gender perspective. The researcher focused on analyzing the decisions of CCI/HoF since a high number of cases on rural women's land rights have been entertained by these organs,137 the importance of the decisions of the HoF as they have equal status with the constitutional provisions and all organs of the government are required to enforce them.138 Overall, the researcher reviewed more than thirteen published and unpublished cases including those that are published in the journals of CCI and HoF. These cases are analyzed systematically to show trends in the triggering factors and grounds of constitutional interpretation of cases related to rural women's land rights. Furthermore, interviews were conducted with two key informants at CCI to understand the trends in cases brought before these organs for constitutional adjudication. The study also applies a dogmatic method to analyze the laws and cases. The analysis is informed by legal formalism and legal realism approaches which examine what the law on paper and law in action is respectively. Law in action reveals how the law is actually used

[137] Among 1917 cases brought by female applicants before CCI by April 2023, 1468 (76.5%) cases are brought based on the violation of Article 40 of the constitution which is concerned with property rights including cases on common property in marriage, inheritance, and rural land rights.

[138] Article 80 of Proclamation No. 1261/2021- A Proclamation to Define the Powers and Functions of the House of Federation of the Federal Democratic Republic of Ethiopia.

and applied in real-life situations, rather than just what is written in books. It investigates the practical application of the law in the Ethiopian legal system.

The article is organized as follows. The second section that follows this introduction investigates the meaning and scope of access to justice. The third section investigates women's land rights under the constitution. The fourth section discusses the division of power between the federal and regional governments to enact laws concerning land rights. The fifth section gives an overview of federal and regional rural land legislations on rural women's land rights. The sixth section gives a specific attention to constitutional enforcement of rural women's land rights and examines the constitutional interpretation mechanisms, trends and triggering factors for constitutional adjudication of rural women's land rights and the barriers the rural women face in accessing constitutional adjudication. The article ends with a conclusion in its last section.

Meaning and Scope of Access to Justice

There is no single definition of the term access to justice.139 It has a narrow and broad meaning which has evolved over time and varies depending on context.140 In its narrow sense, it refers to access to courts. This notion of access to judicial institutions was first developed by Prof. Mauro Cappeletti back in the 1970s. The notion passed through three waves in the late 1970s. The first wave aimed to make legal services accessible to the poor. It resulted in an improved provision of legal aid services to the indigent. The second phase brought about public interest litigations with the aim of protecting certain interests such as the environment and consumers. This has improved civil litigations and brought changes

139 Introduction' in Access to justice for a new century: the way forward (Bass Bogart and Zemans eds) (2005) 2; 'Civil justice on trial - the case for change'. Report by the Independent Working Party set up jointly by the general Council of the Bar and the Law Society (1993) 6 cited in Estelle Hurter, 2011, "Access to Justice: To Dream the Impossible Dream?", *The Comparative and International Law Journal of Southern Africa,* Vol. 44, No. 3, p. 413.

140 Hurter, id, p. 408.

in procedural principles such as standing, *res iudicata*, and the role of judges.141 The third wave has introduced the broader notion of access to justice by introducing new justice institutions or "dispute-processing institutions" as an alternative form of justice to the formal justice system.142 This wave is all-encompassing in that it sought to create dispute resolution mechanisms that engage both formal and informal justice institutions and processes.143 Eventually, this resulted in broadening the meaning of justice to encompass beyond the one that is dispensed by the formal judicial institutions and mechanisms. It expands justice to be delivered not only by legal experts but community representatives who have an indigenous knowledge on dispute resolution mechanisms.

Thus, in its broader sense, access to justice is defined as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards."144 This meaning demonstrates that access to justice is not only about access to formal or informal judiciary institutions, but it is a human right to be respected and protected by the state.145 The human rights approach to access to justice goes beyond making the courts accessible to people. It requires the adjudication of cases to be based on the principles of justice and fairness.146 It is in this light that the CEDAW Committee stated "access to justice is understood not just as the mere access to the dispute resolution bodies but more

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141 In case of public interest litigation, collective interest is litigated, and all of the members of the affected community should not be in court. Furthermore, in civil matters, the outcome of the litigation depends on the litigants especially in adversarial systems. However, in public interest litigation, the judge/s are expected to play an active role.

142 Mauro Cappeletti, 1981, Introduction in *Access to Justice and the Welfare State,* p. 4. See also Cappelletti and Garth 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1977-1978), Buffalo Law Review, Vol. 27, p. 181.

143 Hurter, *supra note* 8, p. 410-411.

144 Alain Aime Ndedi, and Mau Kingsly, *The Role of the Rule of Law in a Developmental State in the African Context* (February 7, 2017). Available at https://ssrn.com/abstract=2912828 Accessed on 23 June 2023.

145 Francioni, Access to Justice as a Human Right (2007) Vol XVI/4 1; Grossman and Sarat, 'Access to Justice and the Limits of Law' in Gambatta May Foster (eds.) Governing Through Courts, p. 77.

146 Hurter, *supra note* 8, p. 413.

broadly i.e. in terms of guaranteeing that the legal system delivers legal and judicial outcomes that are just individually and to society as a whole".[147]

With this in the backdrop, the next sections elucidate the constitutional guarantees of women's land rights under the FDRE Constitution as well as the federal and regional laws on rural women's land rights respectively which are followed by a discussion on constitutional enforcement of women's land rights in Ethiopia.

Constitutional Guarantees on Women's Land Rights in Ethiopia

Women's access to justice should not only refer to their access to the courts, but it should also be related to their access to the chain of justice system in an equal and effective manner.[148] This chain of justice starts with the Constitution.

The FDRE Constitution which was adopted after Ethiopia ratified CEDAW in 1981 recognizes both formal and substantive equality of women. The Constitution under Article 25 guarantees equality before the law without any discrimination on the grounds of sex, race, religion, political or other opinion, property, nation, nationality and other social origin, birth and other status. Article 35 which is a specific provision dedicated to women's rights not only requires women's equal rights but also provides for affirmative actions. This is to remedy the "historical legacy of inequality and discrimination suffered by women in Ethiopia".[149] It also ensures women's equal rights in marriage and divorce.[150]

The FDRE Constitution has given recognition to women's land rights by stipulating that women should have equal rights with men with respect to use, transfer, administration and control of land.[151] Further, it provides that women shall enjoy equal treatment

147 CEDAW rec. on women's access to justice, 2015.
148 Frances Raday, Access to Justice, HRC Mandate Holder, WG Discrimination against Women in Law and Practice.
149 Article 35 (3) of the FDRE Constitution.
150 Article 34(1) and 35 (2) of the FDRE Constitution.
151 Article 35 (7) of the FDRE Constitution.

in the inheritance of property during divorce.[152] Land ownership is left to the state while individuals have the right to use, control and access land rights. Individuals are only deprived of the right to sale land.153 They have all other rights on the land related to *usus, fructus*, and *abuses*154 including the ability to transfer land through donation, inheritance, rent/lease and benefit from the fruits of the land. The responsibility for land administration is reserved to regional governments.155 Initially, a provision was drafted for land redistribution which was later abandoned since land redistribution in the past led to "a continued tenure insecurity which undermined investment in land by users and was a major contributory factor to land degradation and a decline in agricultural productivity."156 Finally, the Constitution under Article 40 (4) (8) guarantees protection from eviction for peasants from the land they possess except in case of expropriation for public purpose with the payment of compensation.

Division of Power to Legislate on Rural Women's Land Rights in the Federal System

The FDRE constitution gives the federal government the power to legislate on land utilization and conservation while authorizing the regional states to administer the land that belongs to the region.157 Thus, the administration of rural land is decentralized based on the FDRE constitution. Whether this entitlement can also be translated to the power to adopt legislation on the administration of rural

152 Ibid.

153 Article 40 (3) of the FDRE Constitution

154 *Usus* (the right to use land), *Abuses* (the right to change the land) and *Fructus* (the rights to use the fruit of the land). Usus includes access and withdrawal rights while Abuses refers to management and transformations rights and Fructus refers to the right to make profit and loss. *Usus* and *abuses* rights form what is termed as possessory rights. C. Doss & R. Meinzen-Dick, 2020, Land Tenure Security for Women: A *Conceptual Framework*, Land Use Policy, Vol. 99, p. 2.

155 Article 52 (2(d)) of the FDRE Constitution

156 Chiara Romano, Land and Natural Resources Learning Initiative for Eastern and Southern Africa (TSLI-ESA), Case Study Report: Strengthening Women's Access to Land in Ethiopia, 2013, p. 5.

157 Article 51 (5) and 52 (2 (c) of the FDRE Constitution, Proclamation No. 1/1995, *Federal Negarit Gazeta,* 1st year No. 1.

land has been a controversial issue in literature. The Amhara regional state was the first regional state to adopt a rural land proclamation in 1996 as Proclamation 16/1996 amended 17/1996. This Proclamation was enacted before the federal government adopted Proclamation No. 89/1997 on land use and administration. In this connection, a case was brought before CCI challenging the constitutionality of the 1996 Amhara Rural Land Proclamation on Land Allocation and Redistribution. CCI held the Proclamation is constitutional on the grounds that states have residual power to enact such a law and the federal rural land proclamation (adopted in 1997) has given them the power to adopt such law.[158] This decision indicates that regional states have the power to adopt laws on the administration of land, land allocation and redistribution based on the retroactive application of the 1997 Federal Rural Land Administration Proclamation. However, the CCI's reliance on the 1997 federal government Proclamation confirming the power of the states to adopt legislation on land administration is not the right approach as it implies the federal government's legislation is the source of the states' power to adopt legislation on the administration of rural land. This diminishes states' power and puts them under the whim of the federal government that bestows them with the power to legislate on land administration which may be revoked at any given time. Scholars argued that their power should be seen to emanate from the Constitution directly rather than from a federal legislation.[159] On the other hand, one may argue that regional states do not have the power to enact land administration laws based on Article 52(2(d)) of the Constitution which enshrines the power of regional states is "… to administer land and other natural resources in accordance with Federal laws". They suggest that the term "... in accordance with federal laws" implies that regions possess solely administrative authority, and that this administration should be

[158] *Biyadglegn Meles et al. v. the Amhara Regional State,* petition, Miazia 30, 1989 E.C. (unpublished) cited in Assefa Fiseha, (2017), Constitutional Adjudication through Second Chamber in Ethiopia, *Ethnopoltics,* Vol. 16, No. 3, p. 299.

[159] Habtamu Sitotaw, Muradu Abdo and Achamyeleh Gashu, 2019, Power of Land Administration under the FDRE Constitution, Journal of Ethiopian law, Vol. 31, p. 95.

per federal laws. Thus, unless the federal government delegates its power to enact land laws to the regional governments as per Article 50(9) of the same constitution, the regional governments cannot enact laws on land administration. However, this second argument is not convincing when read with Article 52 (1), which reserves all power not given to the federal government to the state. The Constitution reserved the power to enact "….laws for the utilization and conservation of land" to the federal government.[160] This implies that the power to enact laws on the administration of land is the residual power of regional states. Thus, the cumulative reading of Articles 52 (1) and 55 (5) implies that the Federal law on land serves as a framework legislation and regions are expected to enact legislation on the administration of land in conformity with this legislation.[161]

The federal government under the current federal system is given the power to legislate on land utilization and conservation because the framers of the constitution believe that this will bring uniformity in the regulation of land tenure at the national level.[162] The federal government in particular should determine the right to access land to vulnerable groups of the society including women.[163] This entails that the constitution has thought about uniform protection of women's land rights at the national level. However, it should also be noted that the constitution envisaged decentralizing land legislation with a view to give attention to local context, needs and concerns in land administration in addition to its being an expression of self-determination. Furthermore, it allows for the state to have proximity in the execution of land governance closer to the community. An exemplary case that needs decentralized approach

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160 Article 51 (5) of the FDRE Proclamation.

161 Gedion T. Hessebon and Abduletif K. Idris, 2017, 'The Supreme Court of Ethiopia: Federalism's Bystander Chapter in Courts' in Nicholas Aroney and John Kincaid (eds.), Federal Countries: Federalists or Unitarists? University of Toronto Press, p. 176.

162 The Constitutional Minutes, Deliberation on Article 40, House of Peoples Representatives Library, Addis Ababa cited in Habtamu Sitotaw et al, *supra note* 28, p. 97.

163 Habtamu Sitotaw et al., *supra note* 28.

is the mechanism of land dispute resolution which can be designed based on the context of regional states without compromising due process of law.[164] Be that as it may, the federal and regional governments have adopted their own respective land laws which are discussed below.[165]

Federal and Regional State's Legislations on Rural Women's Land Rights

With this as a backdrop, both the federal and regional states' Rural Land Administration Laws have provisions regarding women's equal access to such critical resources. Though these laws are fundamentally similar, there are instances where they depart from each other. Accordingly, farmers who are above the age of eighteen and interested to engage in agricultural activities are entitled to the right to access and use agricultural land regardless of sex. Furthermore, women are one of the vulnerable groups who are given priority during the distribution of land.[166] Some of these laws protect female heads of household by ensuring their rights to obtain land certificate in their own name.[167] Few of these laws, furthermore, uphold that rural land that is held jointly by a husband and wife should be registered in the name of both.[168] Some of these

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164 Habtamu Sitotaw et al, *supra note* 28, p. 99.

165 These proclamations are Federal Rural Land Administration and Use Proclamation No. 456/2005, Tigray Regional State Rural Land Administration and Use Proclamation No. 239/2014; Amhara Regional State Rural Land Administration and Use Proclamation No. 252/2017, Oromia Regional States Proclamation No. 248/2023, Sidama Regional State Proclamation No. 27/2023, Benishangul Gumuz Regional State 's Rural Land Administration and Utilization Proclamation No. 152/2018, Afar National Regional State Rural Land Administration and Use Proclamation No. 49/2009 and Regulations No 4/2011, Somali region Rural Land Administration and Use Proclamation No 128/2013 and SNNP regional States Proc. No. 110/2007 (since SNNP Regional State does not anymore exist, this proclamation will be in operation until it is replaced by legislations to be adopted by the newly established regional states i.e. Southwest Ethiopia Peoples' State, South Ethiopia Peoples' State, Central Ethiopia State) .

166 Article 5(1(c)) of proclamation 456/2005, Article 5 (2) (4) of proclamation No. 27/2023, Article 5 (1) (7) of Proclamation 152/2018, Article 5 (2) (6) of Proclamation No. 252/2017, Article 5 (2) (3) of Proclamation No. 110/2007

167 Article 8 (8) of Proclamation 27/2023, Article 5 (6) of proclamation No. 110/2007.

168 Article 6 (4) of proclamation 456/2005, Article 8 (5) of Proclamation No. 27/2023

laws provides that jointly certified rural land can only be leased or exchanged or donated upon the consent of both husband and wife.[169] If the consent of one of these parties is missing, the lease or exchange contract will be null and void. Some of these laws also protect women whose husband is away to use the rural land and obtain land certificates in their own name.[170]

However, they have different provisions on whether a woman could be entitled to share equal division of rural land that is acquired before marriage. As marriage in Ethiopia is virilocal/patrilocal, the Rural Land and Administration Regulation of SNNPR entitles a husband and wife to jointly use land they possess before their marriage.[171] A certificate with a joint land holding right is issued for the land they held before marriage.[172] It also entitled them to jointly use a land they inherited.[173] The recently adopted proclamation of the Sidama regional State also stipulates that land acquired before marriage is considered as common property unless the spouses conclude a special agreement to make it personal property.[174] However, in the Amhara regional state's law, land acquired before marriage is considered as personal property unless the spouses agree to make it a common property.[175] It rather allows a landless woman in conjugal relationship to acquire land on her own behalf.[176] This manifests variation in the subsidiary laws of regions which affects the rights of women.

The other gap in the law is that some of the regional laws entitle inheritance rights to land to family members.[177] Family members are defined in the legislation as those who permanently live with

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169 Article 10 (3) and 12 (5) of Proclamation 27/2023, Article 8 (2) of SNNP Rural Land Use and Administration Proclamation No. 110/2007 and Article 8 (1(a)) of Rural Land Administration and use regulation No. 66/2007.

170 Article 8 (8) of Proclamation 27/2023, Article 5 (7) and 6 (6) of Proc. No. 110/2007.

171 Article 5 (2(A)) of Regulation No. 66/2007.

172 Article 6 (4 (b)) of regulation No. 66/2007.

173 Article 5 (2 (B)) of Regulation No. 66/2007.

174 Article 5 (7) of Proclamation 27/2023.

175 Article 35 (4) of Proclamation No. 252/2017.

176 Id. Article 10 (3).

177 Article 2 (5) and 8 (5) of Proclamation No. 456/2005, Article 8 (5) of Proclamation No. 110/2007 and Article 2 (5) and 17 (5) of Proclamation 152/2018.

the head of the household sharing the income of the landholder.[178] This implied excluding daughters who move to their husband's place from inheriting the use right of land. The recently adopted revised regional states' land laws have taken a different approach and provide that land can be inherited testate and intestate without any condition. Accordingly, the Amhara regional state law provided that the landholder can bequeath their land to whomever he/she wants provided that he/she does not disinherit their children.[179] Similarly, the Sidama regional state allows landholders to transfer their land through inheritance.[180]

Another controversial issue is the practice of joint titling during polygamous marriage. The prevalence rate of polygamous marriage at the national level is 11%, having the highest prevalence in rural areas.[181] The FDRE constitution guarantees equal rights of spouses during marriage under Article 35 (1). Thus, the practice of polygamy violates the constitutionally protected rights of women. However, it is also important to protect the property rights of women in polygamous marriages without giving recognition to the marriage. Thus, the certification program in Oromia and SNNPR has jointly registered wives with their husband in polygamous marriages. Nevertheless, when disputes arise on the property division during divorce, it does not get an easy solution and has made its way to the highest level of courts and CCI.

The other variation in the laws is related to land dispute settlement mechanisms. Some of the regional rural land legislations authorize a local land administrative and use committee (LAC) to resolve land disputes before a case is taken to court.[182] Some others make

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178 Article 2 (5) of Proclamation No. 456/2005, Article 2 (5) of Proclamation 152/2018 and Article 2 (7) of Proclamation No. 110/2007.

179 Article 17 (3) of Proclamation No. 252/2017.

180 Article 11 of Proclamation no. 27/2023.

181 The prevalence rate in rural area is 12% while it is 5% at the national level. Central Statistical Agency (CSA) [Ethiopia] and ICF. 2016. Ethiopia Demographic and Health Survey 2016. Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF. p. 66.

182 Article 12 of Proclamation No. 456/2005, Article 32 of Proclamation No. 27/2023, Article 12 of Proclamation 110/2007,

it optional for the case to be resolved by arbitrators selected by the parties to the dispute before a case is taken to court.[183] The alternative dispute settlement mechanism is encouraged for land-related disputes between peasants while in the case of disputes between the state and the peasants, such as land expropriation, the judicial mechanism is preferred to resolve such disputes.[184] As LAC is composed of elders, there is the likelihood that local norms are applied to women's land rights issues when elders handle such cases. The Amhara Regional State law[185] states that any grievance about the decision of the land administration authority can be reviewed in the appropriate court of law. However, a similar provision lacks in other regional states' proclamations on land use and administration.

The other difference is that some of the regional states' proclamations provide quota for women's participation in the Rural Land Administration and Use Committee (LAC) while some other proclamations lacked a similar provision.[186] Thus, the implications of the differences and gaps in these laws are analyzed in the subsequent sections as they have triggered the constitutional cases brought to CCI/HoF as discussed in the section below.

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183 Article 52 (1) of Proclamation No. 252/2017 and article 37 of Proclamation No. 152/2018.

184 The Federal Supreme Court cassation decision in the case of *Wonji Sugar Factory vs Ato Bacha Alemu* confirms that when a case involves an investor and a peasant, such case can go to courts directly without resorting to alternative dispute resolution mechanism as first resort. See *Wonji Sugar Factory* vs *Ato Bacha Alemu* file No.102406 (18 November 2016) the Federal Supreme Court Cassation Decisions, Vol.21 (Addis Ababa, Federal Supreme Court of Federal Democratic Republic of Ethiopia, January 2018) cited Brightman Gebremichael Ganta, 2018, The Post-1991 Rural Land Tenure System in Ethiopia: Scrutinizing the Legislative Framework in View of Land Tenure Security of Peasants and Pastoralists, PhD dissertation, p. 318.

185 Article 52(6) of Proclamation No. 252/2017.

186 Article 5 (4) of Proclamation No. 239/2014 of Tigraye Regional States requires a minimum of two members of LAC out of five to be women. However, some proclamations such as the SNNP rural land administration and utilization proclamation do not provide for quota.

Constitutional Enforcement of Rural Women's Land Rights

The enforceability of rural women's land rights through a constitutional mechanism requires an enabling environment for rural women to access this mechanism. To assess this, first the nature of the institutional mechanism to review land related decisions and laws are analyzed. Then, trends and triggering factors for constitutional adjudication of women's land rights is discussed. Subsequently, a discussion on gender implications of constitutional adjudication based on selected cases is made. The last section dwells on women's access to constitutional mechanisms in Ethiopia.

Synopsis of Constitutional Adjudication Mechanism in Ethiopia

The FDRE Constitution embraces a non-judiciary constitutional review mechanism by bestowing the power to interpret the constitution to the HoF, which is a political organ representing Nations, Nationalities, and Peoples of Ethiopia. This is preferred by the framers of the Constitution because of the ethnic federal system, which puts Nations, Nationalities and Peoples as the owners of the constitution and therefore its interpreter. In addition, the framers wanted to prevent "judicial dictatorship".[187] Lack of a well-functioning judiciary trusted by the people in the previous regimes is also believed to be the other reason to deprive the judiciary from having the power to interpret the Constitution.[188]

The HoF can entertain individual human rights cases involving constitutional disputes. As said hitherto, since the judiciary is stripped of the power to interpret the constitution, it is expected to refer a case to the HoF whenever there is a need for constitutional interpretation. This is unusual for democratic states to adopt a non-judicial constitutional review mechanism. It is only in few countries

[187] Assefa Fiseha (2007), 'Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation *(HoF)', Mizan Law Review*, Vol. 1, No. 1, pp. 10 & 11.

[188] Chi Mgbako and et al, 2008, Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights, *Fordham International Law Journal,* Vol. 32, Iss. 1, p. 268.

such as Bahrain, Congo, Cuba, and North Korea where there is non-judicial constitutional review system.[189]

Some scholars argue that HoF is not the appropriate organ for constitutional adjudication because of its lack of independence from the executive and also of expertise in legal matters. This has precluded the HoF from passing decisions against the government in several cases.190 Contrary to its position on politically sensitive cases, the HoF is comfortable in deciding individual cases that do not involve the government.[191]

The HoF/CCI jurisdiction is triggered in two scenarios. The first is when there is a decision of government organs, statute or customary practice which is contrary to the Constitution.[192] . In this case, any person whose rights are violated by the final decision of a government organ can apply to CCI for the review of the decision.[193] The other scenario is when courts entertain cases, the court or any interested party can refer the specific issue that needs constitutional interpretation to CCI.[194] The CCI, in its analysis, should not go into the facts of the matter but rather address the constitutional interpretation issues referred to it by the courts.

The FDRE Constitution recognizes human rights in line with international laws and principles. It included individual rights and collective rights of Nations, Nationalities and Peoples and a comprehensive and detailed list of rights and freedoms in a great departure from previous constitutions of the country. The

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189 Mgbako and et al, *Ibid*, p. 278.

190 See CUD case *(Coalition for Unity and Democracy vs. Prime Minister Meles Zenawi Asres,* Fed. First Instance Ct., Lideta Div., File No. 54024 (Decision of 3 June 2005) (26 Ginbot 1997 E.C.)), Melaku's case (Melaku's case, File no. 1421/07, Council of Constitutional Inquiry) and Negaso's case (The case of the former FDRE President Negasso in House of Federation, Journal of Constitutional Decisions, 2009 E.C. (2017), Vol. 2 (2), p. 36-41). A detailed discussion is made in Anchinesh Shiferaw Mulu, 2019, 'The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia', *Mizan Law Review*, Vol. 13, No. 3, pp. 419-441.

191 Mgbako and et al, *supra note* 57, p. 287. See also Anchinesh Shiferaw Mulu, Id.

192 Article 3 (1) of Council of Constitutional Inquiry (CCI) Proclamation No. 798/2013.

193 Article 5 (1) of CCI Proc. No. 798/2013.

194 Article 4 (1) of CCI Proc. 798/2013.

constitution makes ratified international human rights agreements part and parcel of the law of the land.[195] The HoF is required to interpret the Constitution in conformity with these ratified international instruments.[196]

The fact that the Ethiopian federal system prioritizes the rights of Nations, Nationalities and Peoples including their cultural rights gives the impression that it has contributed to creating conflicting rights between the rights of women and cultural rights which might contravene the human rights of the former.[197] The HoF which is established with the idea that state sovereignty resides in Nations, Nationalities and Peoples, and therefore should interpret the constitution, might have adversely affected women's rights. However, the constitution has tried to minimize this impact by empowering CCI, composed of legal experts and court personnel i.e. the President and the Vice President of the Federal Supreme Court, to provide recommendations on matters of constitutional interpretation. Thus, it is important CCI plays its key role in balancing group rights and individual rights in its constitutional adjudicatory role.

Trends in Constitutional Cases on Women's Land Rights

Rural Women's land rights are frequently brought to CCI. Based on the data obtained from CCI, among 7665 files opened until April 2023, 1917 (25%) cases were done so by women applicants while 4125 (54%) and 1623 (21%) cases by men or jointly by men and women respectively. As shown in the table below, the number of rural women's land rights cases are among the top cases brought to CCI by women applicants. There are various reasons for the

[195] Article 9 (4) of the FDRE Constitution.

[196] Article 14 of Proclamation No. 1261/2021.

[197] Dereje Feyissa, 2020, 'The Praxis of Combating VAW in Ethiopia: A Political Interpretation', *DIIS Working* paper 2020:10, p. 13-14. Article 39 (2) of the constitution protects the cultural rights of Nations, Nationality, and People of Ethiopia while Article 34 (5) and 78 allows for family and personal matters to be adjudicated by customary and religious courts with the consent of the parties to the case. However, there are customary norms that go against rural women's inheritance and land rights in various part of the country.

high number of rural women's land cases to be brought before CCI. Some of them relate to legal gaps while others are related to frequent violation of this right by using cultural norms as pretext to prevent women from accessing land and land inheritance.[198]

Table 1: Type of cases brought by female applicants as of April 2023

No.	*Case type*	*Number*
1.	*Article 40- Property rights (including common property in marriage, inheritance, rural land rights)*	*1468*
2.	*Article 37- Access to Justice*	*352*
3.	*Article 35- Women's right*	*23*
4.	*Article 25- Equality before the law*	*26*
5.	*Labor rights*	*16*
6.	*Criminal cases*	*17*
7.	*Child maintenance cases*	*12*
8.	*Others*	*2*
Total		*1917*

Source: CCI Case Flow Management Directorate

Most of the rural women's land rights cases brought to CCI/HoF arise in the context of marriage and concern the sharing of marital property. Most of the women applicants cited Articles 25, 35 and 40 of the Constitution as a basis for their claims. Cases related to irregular union, inheritance and polygamous marriage are also frequently brought before CCI.[199]

Among the 7665 cases brought before CCI, 3927 (51%) of them were rendered decision while 3738 (49%) were still pending. This shows a high case backlog. Among the cases rendered decision, 3822 (97%) were rejected on the ground that they lack a merit for constitutional interpretation. It is 105 (2.6%) of the cases that were found to be appropriate for constitutional interpretation.

Table 2: Number of cases decided before April 2023

[198] Interview with Yadeta Gizaw Amenti, Constitutional Teaching and Awareness Creation Team Leader of the Secretariate of the CCI on 3 March 2023.

[199] Interview with W/ro Rahel Berhanu, Case Flow Management Directorate Director on of the Secretariate of the CCI on 3 March 2023.

Decided cases		*Decided cases submitted by women*	
Rejected	***Interpreted***	***Rejected***	***Interpreted***
3822 (97.4%)	*105 (2.6%)*	*957 (95%)*	*50 (5%)*
Total	***3927***	***Total***	***1007***

Source: CCI Case Flow Management Directorate

The number of rural land cases being filed before CCI had decreased in the past two years from 2023 because of security concerns which prevented applicants from pursuing their cases by traveling from remote rural area to Addis Ababa. In addition, COVID-19 pandemic in 2020-22 resulted in reduction of the number of cases submitted to CCI.[200] The next section illustrates the triggering factors for the cases brought before CCI.

Triggering Factors for Constitutional Adjudication of Rural Women's Land Right

The factors that trigger the constitutional adjudication of rural women's land rights can be categorized as legal gaps, gaps in legal awareness and implementation gaps.

a. Legal gaps

Some of the legal lacunas that are discussed in the previous section are the reasons that triggered constitutional interpretation. For instance, the legal provision that grants "members of a family" – who are dependent on the landholder and permanently reside with the head of the family – the right to inherit the use rights of the land has been a contentious issue.[201] In the case of *Wubalem Derib vs. Shibabaw Temesgen*, the applicant, who was the stepdaughter of the land holder, claimed inheritance of land as a member of family. However, the respondent argued that he is entitled to inherit the land since the land belonged to his grandfather. However, CCI rejected the case arguing that it is the grandson who is entitled to

[200] Ibid.

[201] Article 2 (5) and 8 (5) of Proclamation No. 456/2005, Article 8 (5) of Proclamation No. 110/2007 and Article 2 (5) and 17 (5) of Proclamation 152/2018

inherit.[202] This shows that there is no consensus on who is a family member. Though CCI tried to provide criteria of a family member as one who is permanently living with the landholders, sharing the latter's income, its application has been controversial. Again, in the case of *Enat Belete vs. Mebrat Beza,*[203] the applicant claimed that the respondent had taken her land which she was plowing with her deceased husband while living together with her deceased mother-in-law under the same roof. The land belonged to her mother-in law who has now passed away. On the other hand, the respondent argued that she and her children were registered as "family members" of the deceased on the landholding title and they are entitled to inherit the land under the land administration law. However, CCI decided in favor of the applicant on the grounds that she has a constitutional right not to be evicted from her land. In addition, the evidence has shown that the respondent has her own land, and the landholding title does not list the name of the family members, rather it indicates that there are four family members. Thus, it did not recognize the respondent's claim that she is entitled to inheritance rights.

In most of the rural parts of the country, marriage is patrilocal which means that women move to their husband's land or to his family house when marriage is concluded. Thus, this excludes them from inheriting land from their natal family as they no longer permanently live with them.[204] In a case decided by CCI,[205] an applicant, who was raised by her grandparents, used to benefit from plowing the land of her grandparents with her husband. When her grandparents passed away, she brought a case before the Amhara Regional Courts, and she was denied inheriting that land by the courts that relied on

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202 Forum of Federations, 2022, *Land Inheritance Rights of Women and Girls in Ethiopia: A Desk Review,* p. 22 and 29.

203 *Enat Belete* Vs. *Mebrat Bez*a in Secretariat of Council of Constitutional Inquiry, 2018, Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional issues,* Vol. 1(1), case No. 1327/07, p. 17.

204 Abebaw Abebe Belay and Tigistu G/meskel Abza, 2020, Protecting the Land Rights of Women through an Inclusive Land Registration System the Case of Ethiopia, *African Journal of Land Policy and Geospatial Sciences,* Vol. 3, No, 2, p. 36-37.

205 *W/ro Zemede Wagawe* Vs. *Ato Habetamu Wagagwe et al*, Case No. 2562/2010, Feb. 26, 2021, FDRE Council of Constitutional Inquiry.

Article 2 (6) of the Regional Rural Land Administration and Use Proclamation on the ground that the applicant's family membership is disconnected when she got married and moved. Accordingly, the applicant contested this decision and brought a case before CCI claiming she is entitled to land inheritance and the courts' judgment violates her constitutional right under Article 40 which protects her against eviction from rural land. She stated that following her divorce and the death of her grandfather, she moved to another town. In its landmark decision, CCI asserted that the decision of the courts to deny the applicant inheritance of landholding is based on the interpretation of the regional law that appears to imply a woman who has left her family through marriage will never come back to join the family. Accordingly, the CCI has commented the judgment of the regional Supreme Court by stating that the patrilocal practice in the countryside dictates that women would move out with their natal family and join her husband or his family. No law prohibits anyone who left the family due to marriage or any other situation from returning to the family. Thus, the Regional Supreme Court's decision to disinherit the applicant reasoning that she is not a family member due to the fact that she left her family when she was married contravenes the constitutional principles enshrined on the rights of women and the right to marry and start a family. Thus, the CCI decided, unanimously, that the judgment given against the applicant that disallowed her inheritance is unconstitutional and, hence, null and void. This decision considered the contextual factors that affects women from accessing land. Such a decision can be considered as gender sensitive in its articulation as it tries to tackle the social norm that exclude women from inheritance when she moves in with their husband.

The other cases brought are based on legal gaps related to cases involving polygamous marriage. The division of land in divorce cases and in the case of the death of a spouse in a polygamous marriage have been a key issue for some of the cases brought before CCI/HoF. In the case of *Fatuma Hamdu vs. Hussen Tuffa et*

al,[206] Fatuma brought the case claiming that rural land and other properties belong to her upon divorce from Hussen. Hussen had two other wives who also intervened in the case claiming their share of the land. The lower court decided the land to be equally divided among the three wives. However, a higher court decided to allocate the rural land considering who was using the land. The decision has resulted in the exclusion of the applicant whose marriage remains intact while the other spouses are entitled to divide the property. CCI argued that this arrangement goes against Articles 34 and 35 of the Constitution which protects family and women's rights during divorce. However, HoF dismissed the cases saying it does not involve a constitutional issue. Similar challenges are observed in other cases such as in the case of *Jamaye Wonde vs. Workinesh Itich*.[207]

The other controversial issue is whether a rural land owned previously by one of the married couples and used jointly should be considered as a common property during divorce. The SNNPR Rural Land and Administration Regulation entitles a husband and wife to jointly use a land they possess before their marriage and a certificate is issued for them as joint landholders.[208] It also entitles them to jointly use a land they inherited.[209] This provision has been the basis of CCI's argument that the land which was acquired before marriage by one of the spouses is considered a common property and will be subject to equal division between the spouses upon divorce. This argument is supported in the case of *W/ro Kassaye Eshete vs. W/ro Askale Zemedkun* by CCI which argued that a woman

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[206] *W/ro Fatuma Hamude* vs. *Ato Hussien Tuffa,* House of Federations 5th parliament 4th year 1st council meeting, case no. ፌዴሬም/አፍ/5/308, Nov. 10, 2019.

[207] *Jamaye Wonde* Vs. *Workinesh Itich* cited in Forum of Federations, *supra note* 71, p. 22 & 30. The case involved the two wives who were litigating over the land they jointly owned with their diseased husband. The court decided the widows to share the land. However, CCI dismissed the case arguing it does not involve a constitutional issue.

[208] Article 5 (2(A)) and 6 (4 (b)) of Regulation No. 66/2007.

[209] Article 5 (2 (B)) of Regulation No. 66/2007. According to the family law of the region, the property that each spouse possesses on the day of their marriage, or that an individual spouse acquires after their marriage by succession or donation, remains their personal property unless they decide otherwise. The law furthermore recognizes "community of property" regarding property acquired after marriage, and the joint administration of family property.

should get an equal share of the land based on her contribution to the development of the land during marriage though the land was acquired by her husband before marriage.[210] The decision also took into account the fact that women have a very limited opportunity to acquire land as the custom dictates land inherence through a patrilineal line and redistribution of land has not been undertaken for long. However, the decision was reversed by the HoF arguing that the respective regional state law maintains that personal property acquired before marriage including land remains as personal property even though the husband and wife have jointly used the land. In this case, whether women's constitutional rights to equally acquire, transfer and use land should have been considered. It is also important to consider whether the law ensures women's substantive equality and not only formal quality. Though the difference in applicable laws of regional states is expected as the Constitution has given a residual power to enact land laws to regional states, such laws should not contradict the constitutional rights of women.

Similarly, in the case *W/ro Halima Mohamed vs. Ato Adem Abdi*,[211] HoF maintained that a husband who inherited his brother's wife after his death should not be entitled to equally divide the land that the wife jointly acquired during the previous marriage. The HoF argued that equal division of the land which was acquired during the previous marriage would deprive the woman of her right to access, administer and control land and also affect the best interest of the children from the previous marriage. However, CCI, contrary to its decision in *W/ro Kassaye Eshete vs. W/ro Askale Zemedkun*, maintained that the land should be considered as personal property by pointing out that the husband has another land acquired through succession in his second marriage with another women. This shows that CCI's approach in this matter has been inconsistent with its previous decision.

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[210] *W/ro Kassaye Eshete* vs. *W/ro Askale Zemedkun (guardian of TsehayeTameri), September,* 2011 E.C (2018), FDRE House of Federation 4th year ordinary Meeting, p. 3.

[211] W/ro Halima Mohamed vs. *Ato Adem Abdi;* File No. 713/04 in House of Federation, *Journal of Constitutional Decisions,* 2009 E.C., Vol. 2 (2).

b. Implementation gaps

Most of the constitutional dispute cases were brought to CCI/HoF by applicants dissatisfied with final court decisions. A small number of cases were referred to by courts for constitutional interpretation while the cases are pending before them.[212] Most of the cases were brought by applicants because of errors in evidentiary evaluation by the courts. Thus, among the cases brought, only around 3% were reviewed for constitutional interpretation. The rest did not pass the test for constitutional interpretation. The reason for this is that most people do not bring cases with an understanding of the mandate of the CCI. They are not also supported with legal experts when they initiate cases.[213]

Furthermore, some of the issues brought to CCI/HoF are based on the gaps in the implementation of the joint registration and certification of rural land which has been implemented in Ethiopia since 1998. The first level titling involved using local materials to measure and demarcate the land. The certificate gives the name of the neighbors and did not demarcate the land accurately with the land map. The second level land registration resolves this problem by indicating the exact size of the land and physical location of the land on the certificate through coordinates. In both cases, joint land certificates in the name of the husband and wife are issued.[214] The advantage of the land registration and certification program is that it helped the establishment of land administration structures starting from region up to the Woreda level. However, the recording and recording keeping of documents and updating of records whenever land transactions occur were not properly done. Thus, the first level of certification gave rise to land disputes which were resolved by local land administrative committees and courts while some cases ended up before CCI/HoF.[215]

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[212] The courts referred six out of 72 cases reviewed by the CCI until April 2019 cited in Anchinesh Shiferaw Mulu (2019), supra note 59, p. 423.

[213] *Supra note* 68.

[214] Mintewab Bezabih and Dagye Goshu, 2022, Land Issues in Ethiopia: Trends, Constraints and Policy Options, *Policy Working Paper 06/2022,* Ethiopian Economic Association (EEA), p. 44.

[215] *Supra note* 67.

Though a joint registration and certification of rural land in the name of husband and wife has been carried out, the registration process was more accessible for men because they have more access to relevant information and because of their customary role in administering land. This resulted in the absence of the spouse's name or fraudulent acts of registering other female relatives instead. Consequently, the number of cases brought to courts and later to the CCI increased. However, the land registration was successful in certifying female headed households in their own name.[216]

The majority of the cases involving women's land rights brought before CCI are concerned with land transfer. Despite the constitutional provision which provides land is owned by the Nations, Nationalities and Peoples, individuals engage in unconstitutional transfer of land rights through sale. Most of these cases are first taken to the local land administration committee and then to the courts. However, courts decide based on the sale agreement which calls for constitutional adjudication. For instance, in the case of *Banchamlak Dersolign vs. Abebaw Molla,*[217] the parties concluded a contract of antichresis. The defendant argued that the contract should not be taken as sale of land and the court decided supporting this argument. The CCI rejected the court's decision and held that the sale of land is unconstitutional based on Article 40 of the FDRE Constitution.[218] Similarly, *Aliya Dawe vs. Mumad Adem* case involved the sale of land which the applicant requested to be returned. The Court accepted the validity of the sale. However, HoF nullified the sale of the land for the same reason. In the case of *Hasay Doye vs. Tinsaye Kutale et.al*, the HoF nullified a court decision that

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216 *Supra note* 67.

217 *Banchamlak Dersolign vs. Abebaw Molla in* House of Federation, *Journal on Constitutional Decisions,* Vol. 3, p. 10- 11. It is also available on Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, *Journal on Constitutional issues,* Vol. 1(1), Case No. 1110/06, p. 10-13 (ኢ.ፌ.ዴ.ሪ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ ጽ/ቤት የተዘጋጀ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ የውሳኔ ሐሳቦች፣ ሕገ መንግሥታዊ ጆርናል፣ ቅፅ ፩፣ ቁጥር ፩፣ መስከረም ፳፬፱ ዓ/ም

218 Forum of Federations, Desk Review on Women's Land Inheritance Rights: The Right of Women to Access to Justice on Constitutional Adjudication in Ethiopia: With Focus on Access to Information.

validated a sale of rural land in a similar fashion.[219] The other cases, *Kelebe Tesfa vs. Ayelegn Derbew*, and *Muyedin Yunis vs. Nazi Aliye et. al.* also involved the sale of rural land which was held unconstitutional based on the provision of the Constitution prohibiting the sale of land. In these cases, CCI/HoF relied on the literal application of the constitutional provision which provides that land is the common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange. In adjudicating these cases, CCI/HoF used textual interpretation of the constitution to invalidate the sale contracts.[220]

The other cases involved the protection of women from eviction. The case of *Ato Ketefo Gebreeyes vs. W/ro Denekenesh Jima,*[221] involves donation of land by the applicant. The applicant donated the land to the respondent believing that the latter will support him in his old age. When the contract was concluded, the applicant assumed it was a contract of donation in return for assistance. CCI invalidated donation of land given by the applicant who has no other means of livelihood based on Article 40(4) of the Constitution which provides that Ethiopian peasants have the right to be protected from any eviction from their possession of rural land. In most cases, the CCI and HoF invalidated various private dealings on land that resulted in the eviction of the original holders of the land for the same reason.

The other kind of cases brought to CCI are disputes that relate to land rental by women. In such cases the statute of limitation for

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[219] The other cases, *Kelebe Tesfa vs. Ayelegn Derbew, and Muyedin Yunis vs. Nazi Aliye et. al* also involved the sale of rural land which was held unconstitutional based on the provision of the Constitution prohibiting sale of land.

[220] Anchinesh Shiferaw Mulu (2019), *supra note* 59, p. 432. See also Mustefa Nasser (2018), Methods of Constitutional Interpretation in Constitutional Dispute Settlement in Ethiopia, (unpublished LL.M thesis), School of Law, Addis Ababa University, p. 29-30. The textual interpretation model endorses that the interpretation of a constitution should focus on what the law basically asserts through the literal and technical meaning of its provisions.

[221] *Ato Kitifo Gebreyes and W/ro Deneknesh Jimma vs. Besufikade Ayele*, 2009 E.C (2017), File No. 1663/08 in Secretariat of Council of Constitutional Inquiry (2018), Recommendations of Council of Constitutional Inquiry, Journal on Constitutional issues, Vol. 1(1) (ኢ.ፌ.ዴ.ሪ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ ጽ/ቤት የተዘጋጀ የሕገመንግሥት ጉዳዮች አጣሪ ጉባዔ የውሳኔ ሐሳቦች፣ ሕገ መንግሥታዊ ጆርናል፣ ቅፅ ፩፣ ቁጥር ፩፣ መስከረም ፳፬ ዓ/ም), p. 14-16.

such contacts is at issue. In the case of *Alemitu Gebre vs. Chane Desalegn,*[222] the applicant requested the return of land rented to the respondent for five years while the latter argued he has rented it for fifty years. The Federal Supreme Court Cassation bench endorsed the lower court decision which decided for the respondent stating that he has been using the land for more than fifty years and it is barred by fifteen years period of limitation as per Article 1168(1) of the Civil Code. Nevertheless, the CCI overturned the court's decision, arguing that the land rental caused the eviction of the applicant against Article 40(4) of the FDRE Constitution. This case demonstrates an erroneous interpretation of the law by courts.

Thus, the above cases demonstrate that gaps in the implementation of laws or their interpretation by lower courts can trigger constitutional cases concerning rural women's land rights.

c. Lack of legal awareness

Legal awareness refers to one's knowledge of rights and obligations and the mechanism to claim these rights.[223] Accordingly, for a person to claim their rights, they should be aware of the rights and be able to recognize their infringement.

Most cases of rural land are related to the disguised sale of land. This relates to the lack of awareness of the prohibition of land sale under the Constitution. A desk review on women's land inheritance rights conducted by Forum of Federations shows that among the 18 reviewed cases brought before CCI, most of the cases focus on the sale of land which were held unconstitutional.[224] Accordingly, the cases arise because of the lack of awareness of the prohibition of the sale of land by the parties to the dispute.[225] In addition, the lack of awareness of the formality requirements (i.e. land transactions should be in a written form and concluded before the authorized organ) is a common cause of the disputes.

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[222] *Alemitu Gebre vs. Chane Desalegn*, 130 File No. 913/05, Sene 26, 2007 E.C., 1(1) *Journal of Constitutional Cases* 26 (2011 EC).

[223] T. Geraghty and D. Geraghty, 'Child Friendly Legal Aid in Africa' in Child Friendly Legal Aid in Africa, UNICEF and UNDP, UNDOC, 2011, Executive Summary, p. 9.

[224] Forum of Federations, *supra note* 71, p. 27-30.

[225] Forum of Federations, *supra note* 71, p. 22.

Furthermore, rural women are not aware of their rights to inherit the land, their land rights during polygamous marriages and their rights when they enter into various types of contracts such as rental as demonstrated in the cases discussed in the previous section.

Barriers to Women's Access to Constitutional Adjudication

Women's access to justice is affected by the existing normative and institutional frameworks in addition to structural and systemic social and political barriers. These barriers include physical barriers, digital divide, urban and rural divide, cost of legal services, lack of social network, infrastructural and transportation barriers, lack of legal awareness etc.[226] Though legal formalism intends to bring justice through the uniform application of laws, it has also unintended consequences. The incompatibility between the ideals of justice through the formal justice system and the social realities on the ground has resulted in unequal access to justice for the various groups of the society including women. Inequality in wealth, opportunities, and social and political status has been the main factor in the limited access to justice by women. The formalization of the legal system has sometimes resulted in protecting the rights of those who are socially and economically better off.[227]

Women's access to constitutional bodies is important since constitutions are reflections of the embodiment of equality of men and women. Though the constitution guarantees unrestricted access to CCI/HoF whenever there is a constitutional dispute, it has been observed rural women and other vulnerable groups face challenges in accessing this mechanism. Women's access to CCI/HoF is limited because of various social or institutional barriers. Some of these barriers may not be unique for women, although they disproportionately affect them. The barriers can be summarized as lack of awareness of how the mechanism works, procedural

[226] OECD, 2016, "Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All", *Issues 2016 Brief*, p. 8.
[227] Jerold S Auerbach, 1984, *Justice Without Law*?, p. 143-44.

multiplicity, accessibility, and protracted time for decisions.[228] Women lack awareness of how to apply a case before CCI/HoF including the possibility to submit applications by post or email.[229] There is also procedural multiplicity that requires women to exhaust the formal justice system that range from Woreda courts up to the highest appellate court of cassation divisions of Federal/State Supreme Court before a case reaches the CCI.[230] Furthermore, rural women face insurmountable problem to physically access CCI since the secretariat of CCI is located in Addis Ababa without having any branch offices in the country. Furthermore, CCI is not financially accessible because of the costs of transport, accommodation and other legal service fees an applicant incurs to access the office and its services. Another barrier is the protracted period that takes CCI/HoF to decide on a case which is on average extended to three years. Although HoF is required to decide on constitutional disputes within 30 days upon receiving recommendations of CCI on the matter under the FDRE Constitution,231 the recent Proclamation requires the House to make its decision in a short time.232 Given the fact that the House meets twice a year,233 it is not tenable for the it to make decision in time. Similarly, the law on the power and responsibilities of CCI does not provide the span of time within which a case has to be entertained and decided by CCI. Thus, these factors have resulted in delays in decision making processes.

Despite these barriers, CCI gives priority to cases that are brought by women and provides free photocopy services. It has also referred to some cases for legal aid support to various institutions though it has not yet established a formal referral system. Though this is

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228 Forum of Federations, 2022, Policy Brief: Land Inheritance Rights of Women and Girls in Ethiopia, p. 2.

229 *Supra note* 68.

230 Brightman Gebremichael Ganta, *supra note* 53, p. 322.

231 Article 83 (2) of the FDRE Constitution and Article 13 the previous Proclamation which is now repealed (Proclamation 251/2001) provides that the HoF shall decide a constitutional dispute within 30 days upon receiving CCI's recommendations on the matter.

232 Article 18 of Proclamation No. 1261/2021.

233 Article 68 of Proclamation 1261/2021.

a good practice, it needs to be accompanied by other legislative and institutional measures to make CCI physically and financially accessible to women and ensure speedy decisions.

According to Charles Epp, "support structure for legal mobilization" is necessary to realize access to justice.234 These structures include "right advocacy organizations, right advocacy lawyers and source of financing".235 These support structures include NGOs and rights advocates who can provide services by bringing actions on behalf of vulnerable groups or whenever there is a need for strategic litigation aiming to bring structural changes including through public interest litigation or class action. The constitution and the subsequent laws do not prohibit public interest litigation and allow any individual or association to bring a case in the interest of the public. The experience of CCI demonstrates that this has been utilized in various cases such as in the case of *Kedija* where Ethiopian Women's lawyers Association (EWLA) brought a case against the constitutionality of Sharia Court decision which was not based on expressed consent of the applicant when a case was adjudicated before the Sharia court.

Measures to improve access to justice also require other non-legal actions to ensure social inclusion. This implies that removing various social, economic, and political barriers is necessary to ensure access to justice. These barriers may involve financial, educational, and gender-related problems as well as other issues social status. These barriers cannot be solved only through litigation. Litigation has no power to address these barriers unless it is supported by actions of the government and non-governmental organizations.236

234 Charles Epp, 1998, The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective (Chicago, IL: University of Chicago Press), p. 3.
235 Epp, ibid, p. 2-5.
236 Hurter, *supra note* 8, p. 416.

Conclusion

The adoption of regional laws on land has resulted in discrepancies in the protection of women's land rights. The lacunae in the laws, lack of legal awareness and gaps in the implementation of rural women's land rights have resulted in CCI to be overloaded with rural land related cases. Some of these cases could have been corrected by courts based on the constitutional rights provided to them under the Constitution. The CCI should not have acted as an organ for judicial review mechanism including enquiring about the evidence presented in the courts.

The legal gaps observed relate to women's land inheritance rights, land as common/personal property during marriage and the effects of polygamous marriages on women's land rights. It is important that land laws are reviewed to make them gender responsive by analyzing their implication for gender equality. Though the CCI has been applying a gender responsive approach and an intersectional approach in some of its decisions as constitutional interpretation methods, this should be supported through various measures including legislative amendment and adoption of an elaborated gender responsive constitutional interpretation methods.

Women's access to constitutional adjudication should also be improved by giving priority to cases involving women's rights not only to cases that are applied by women. Based on support structure for legal mobilization doctrine, access to constitutional adjudication can be realized when there are non-restrictive standing rules, removal of barriers to access including physical and financial barriers and through speedy/expedited disposition of cases. Legal awareness at grassroots level on rural women's land rights provided by government organs and legal institutions should be strengthened. It is also imperative to facilitate the availability and accessibility of legal assistance to rural women. Strengthening the implementation of land governance and administration to address challenges related to recording and verification systems is also an important step towards the protection of rural women's land rights.

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A Glimpse of Normative Framework of Physical Accessibility for Persons with Disability in Ethiopia and the Key Advocacy Areas by CSOs: The Case of Addis Ababa

Wubishet Girma[237] and Yilikal Hasabe[238]

Abstract

The main objective of this article is to make an overview of the existing normative standards and norms on the right to physical accessibility of Persons with disability (PWD) and the practical challenges faced by them in the built environment in Addis Ababa. Besides, the article identifies key advocacy areas by civil society organizations (CSOs) to address both the legal and practical challenges which PWDs encounter in their day to day lives. Desk review, key informant interviews, and observations were employed for data collection. The findings show that the majority of public buildings, hospitals, schools, workplaces, and the transport system including pavements and sidewalks of Addis Ababa are inaccessible for PWDs, which is mainly attributed to the absence of exclusively enacted accessibility legislation. The existing building laws neither are insufficient to comprehensively address accessibility issues nor are they properly implemented. To mitigate the challenges, the article suggested revision of laws, commitment to their implementation, and the advocacy role of CSOs in general and organizations of peoples with disabilities (OPDs) in particular. The changes are also required in the areas of budget allocation, access to justice and new institutional setup for disability affairs.

Keywords: *disability, physical accessibility, CSOs/OPDs, advocacy interventions*

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Introduction

The right to accessibility for PWDs is a novel right that had never been stated or recognized in the international human rights instruments prior to the Convention on Rights of Persons with Disability (CRPD). The right to accessibility becomes part of the convention on the rights of PWDs taking into account the barriers that this group of people face as a result of a lack of adjustments in the physical environment, transportation, information and communication, and public facilities and services. It also imposes a duty upon State parties to "adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers."[239] On the other hand, inaccessibility of the physical environment, among others, is one of the serious challenges that PWDs face even to enjoy any other disability rights.

This study purposively focused on the capital Addis Ababa because the problem is worse in the city. It is common to see buildings rendering public services in Addis Ababa that do not comply with the guidelines set out in the Building Directive No. 01/2005, which came into effect in 2005. Despite Ethiopia taking a few legislative measures to comply with the duties demanded by CRPD, such as incorporating provisions within the building proclamation to ensure physical accessibility, these measure remains insufficient.

The study assessed the existing international, regional and national normative frameworks towards the right to physical accessibility of PWD along with the practical challenges faced in the built environment in Addis Ababa. It also explored the role of CSOs in advocating for physical accessibility, and suggested possible general and specific advocacy intervention areas to overcome the challenges of an inaccessible built environment.

[239] CRPD Committee. 2014. *General Comment No. 2 to Article 9 of the CRPD*, Para. 33.

Concept of Key Terms: Disability and Physical Accessibility

The recent and most significant UN convention on the rights of PWDs does not define the word "disability". Indeed, the Preamble acknowledges that "disability" is an evolving concept.[240] This may be because any definition would necessarily include some people and not others, and that over time, the definition may change in a way that would exclude people who may not now be considered as members of the group of PWDs which complies with the dynamic and evolving nature of disability.[241] Moreover, by not including a specific definition of disability, the CRPD recognizes that a person may be considered as having a disability in one society, but not in another, depending on the role the person is assumed to take in their community and the barriers that limited them from participating in a given society.[242]

The CRPD rather prefers to state that "PWDs include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[243] This evidences that no rigid view of the notion is imposed, which rather assumes a dynamic approach that allows for adaptations over time and within different socioeconomic settings.'[244] Hence, this is not an exhaustive definition of the subjects of the protection under the Convention; nor does this definition exclude broader categories of PWDs found in national law, including persons with short-term disabilities or persons who had disabilities in the past. When we come to the concept of "physical accessibility", the term 'access' could be understood as "a freedom to enter, to approach, to communicate with, to pass to or from, or make use of physical,

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240 United Nations General Assembly. 2006. *Convention on the Rights of Persons with Disabilities (CRPD)*. Adopted December 13. Preamble, Para. (e).

241 Kanter, Arlene S. 2007. "The Promise and Challenge of the CRPD." *Syracuse Journal of International Law* 34: 287-288.

242 Ibid

243 CRPD, Article 1.

244 Andrew, B., and B. Len, eds. 1995. *Disability and Society: Emerging Issues and Insights*. Longman.Ingstad, B., and S. Whyte, eds. 1995. *Disability and Culture*. Berkeley, CA: University of California Press.

environmental and societal structures, goods and services, systems and processes regardless of type and degree of disability, gender or age."[245] The concept of accessibility stated under article 9 of the CRPD has 4 aspects namely: physical, transportation, public facilities and services and information and technology accessibility. The physical environment may encompass both the built environment and natural or recreational places.[246]

Having this in mind, most urban and rural areas are often filled with barriers in public spaces, transportation systems, and buildings, particularly for PWDs denying their fundamental right to movement when they want to go freely from one place to another.[247] By contrast, accessibility right to the built environments is a key factor in PWDs achieving autonomy, inclusion and participation.[248]

The term accessibility right in general means "the right to use and obtain an equal benefit from the provisions of goods, services, facilities, and accommodations generally available to the public without discrimination by PWDs".[249] Accessibility differs from personal mobility as it deals specifically with access to the built environments, public services, and facilities, while personal mobility deals with the individual support services a person needs to be able to move such as personal assistance, assistive devices, interpreter services, and rehabilitation.[250] Making built environments accessible is not therefore just a question of building access ramps. Instead, it is about facilitating movement with a vision of the whole chain

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245 Lawson, Anna. 2018. "Article 9: Accessibility." In *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, edited by Ilias Bantekas et al., 258-286. Oxford: Oxford University Press.

246 Ibid

247 Jarlegan, Eric. 2008. *How to Build an Accessible Environment in Developing Countries.* Handicap International France, Cambodia, 6.

248 National Disability Authority. 2011. Built *Environment Accessibility: The Irish Experience.*

249 Hosking, David L. 1994. *Accessibility Rights for Disabled People*. LLM thesis, British Columbia University.

250 Disability Monitor Initiative. 2009. "Unbreakable Chain of Movement." *Journal for South East Europe.*

of movement.[251] Hence, PWDs, regardless of their impairments, should be able to move freely inside any housing units, collective residential buildings, from housing or residential building exits to the facilities and buildings, and across various modes of transport systems.[252]

In general, the built environments with their respective indoor and outdoor spaces include: roads and streets, administration offices, schools, places for worshipping, workplaces, health centers, recreational areas, marketplaces, different modes of transport systems, and the like.[253] Since these areas form a major part of the living environment, it is crucial to significantly improve to ensure that PWDs have the opportunities to act independently or naturally in society.[254]

International Human Rights Normative Framework towards the Right to Physical Accessibility

The right to physical accessibility was not explicitly mentioned in the core human rights instruments that had been in place before the CRPD. Rather, it was elaborated by the jurisprudence developed by the ICESCR committee. The CRPD is the first legally binding international human rights instrument, which sets out the rights of PWDs aiming to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all PWDs and to promote respect for their inherent dignity"[255]

Accessibility is a key aspect of the CRPD which aims to remove barriers and ensure access to and equal opportunities for the realization of other rights. In the CRPD, Article 9 is linked to all other provisions and acts both to ensure equal opportunities to the realization of those rights as well as being a right in itself. The

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251 Royon Plantier, E. 2008. *How to Design and Promote an Environment Accessible to All*? Handicap International.

252 Ibid

253 Council of Europe. 2004. *Accessibility: Principles and Guidelines*. Council of Europe Publishing, 9-13.

254 Ibid

255 Supra note 9.

interconnectedness of rights that are fundamental to the CRPD is hence critical for the free movement of PWDs thereby allowing them having the proper support services, an accessible home, accessible transport, and accessible environments to create an unbreakable chain of movement in which they can move seamlessly to any destination.

In addition to Article 9, Article 20 deals with the more personal and specific situation of each person with a disability. This provision acknowledges the need to ensure accessibility and reasonable accommodation for PWDs in their daily and ordinary activities. Thus, the CRPD requires State Parties to take effective measures to ensure personal mobility with the greatest possible independence for PWDs, as well as providing some guidelines on how this obligation should be achieved.

According to this provision, state parties are required to "facilitate the personal mobility of PWDs in the manner and at the time of their choice and affordable cost; to facilitate access to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries; to provide training in mobility skills to both PWDs and staff working with them and to encourage entities producing mobility aids, devices, and assistive technologies to take into account all aspects of mobility for PWDs."[256] Therefore, State Parties must review their existing laws and practices in matters such as adapted modes of transport systems, wheelchairs, personal assistance, and other mobility devices.

State Parties are also obliged to adopt all appropriate legislative, administrative, and other measures complying with the accessibility provision.[257] Crucially, Article 4 of the CRDP requires state parties to consult with and involve PWDs in developing and implementing laws, policies, in decision-making processes and formulation of accessibility standards.[258] By the same token, the CRPD imposes

[256] Id, Article 20.
[257] Id, Article 4(1) (A).
[258] Id, Article 4(3).

upon States, unique of all other core human rights instruments, duties regarding implementing, promoting and monitoring disability rights. State parties are obliged to establish focal points or coordination mechanisms for implementing CRPD rights, including compliance with Article 9 of the CRPD. They must also set up independent mechanisms for National Human Rights Institutions to promote, implement and monitor CRPD rights. Additionally, Civil Society Organizations (CSOs) particularly those representing PWDs should be enabled to monitor the proper implementation of the CRPD rights.[259] The monitoring should assess both the steps taken and the results achieved in eliminating barriers to effective access. National strategies, policies, and plans should use appropriate indicators and benchmarks in operationalizing the accessibility obligations.[260]

African Human Rights Normative Framework towards the Right to Physical Accessibility

The African Charter on Human and Peoples' Rights which is the basic instrument of the African human rights system specifically guarantees special measures of protection for the aged and PWDs to keep their physical or moral needs.[261] Furthermore, the African Charter on the Rights and Welfare of the Child (ACRWC) "entitles every child who is mentally or physically disabled the right to special measures of protection in keeping with his physical and moral needs and under conditions that ensure his dignity, promote his self-reliance and active participation in the community".[262] States Parties are required "to ensure, subject to available resources, to a disabled child and to those responsible for his care, assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment

[259] Id, Art.33.
[260] Id, Article 33.
[261] Organization of African Unity. 1981. African Charter on Human and Peoples' Rights, Article 18 (4).
[262] African Union. 2007. African Youth Charter, Article 13 (1)

and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development".[263]

In addition to the above human rights instruments, in July 1999, the Organization of African Unity (OAU) Assembly of Heads of State and Government proclaimed the epoch 1999-2009 to be the Decade of African Disabled Persons.[264] The goal of the Decade is full participation, equality and empowerment of PWDs[265] to attain this goal, a Continental Plan of Action was adopted with objectives that cover a wide range of themes that are of critical importance to improvement in the lives of PWDs.

In due course, looking at the human rights instruments of Africa, it is possible to say that there is a degree of progress from initial silence about disability to eventual inclusion.[266] However much has remained to be done to ensure the inclusion of the human rights of PWDs in the human rights system of the region. At heart, determined action is required to develop accessibility laws, policies, and guidelines to create a continent accessible to all.

The Right to Physical Accessibility of PWDs in Ethiopia and the Practical Challenges in Addis Ababa

The FDRE Constitution

The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE), stipulates the issue of PWDs to some extent. As provided under Article 41 (5), the state must allocate resources to provide rehabilitation and assistance to the physically and mentally disabled within its available means. The phrase 'within its available

263 Id, Article 13 (2).

264 African Union. 2002. *Continental Plan of Action for the African Decade of Persons with Disabilities: 1999–2009*. African Union, Pretoria, South Africa, Preamble, Paragraph 1.

265 Id, Preface.

266 Combrinck, Helene, et al. 2011. "The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 Years." *Sur International Journal on Human Rights* 8 (14): 132.

means' also seems to be a pretext for authorities not to do what they are expected in rehabilitating and supporting PWDs. In addition to the constitution, both currently amended 1064 Civil Servant and 1156 labor proclamations lay down little coverage towards the right of PWD.

Proclamation No.568/2008 on the Right to Employment of PWD

Apart from these scattered constitutional and subsidiary laws' provisions, the right to employment of PWDs is protected and specified under Proclamation No. 568/2008. This proclamation is fully devoted to complying with the country's policy of equal employment opportunity, providing reasonable accommodation for PWDs and laying down simple procedural rules that enable them to prove before any judicial organ discrimination encountered in the employment field.[267] The proclamation also outlaws any law, practice, custom, attitude or other discriminatory situations that impair the equal employment opportunities of PWDs in workplaces.[268]

Notably, this proclamation seeks to address the issue of accessibility by incorporating the concept of reasonable accommodation. It defines reasonable accommodation as "an adjustment or modification related to workplace equipment, job requirements, working hours, business structure, and work environment to enable persons with disabilities (PWDs) to gain employment."[269] Additionally, it considers the refusal to provide reasonable accommodation as a form of discrimination, similar to the provisions in the CRPD.[270]

Furthermore, the Proclamation is significantly applicable to an employer in which it has been defined as any federal or regional government office or an undertaking governed by the Labor Proclamation.[271] This shows that the proclamation is vertically

[267] Federal Democratic Republic of Ethiopia. 2008. *The Right to Employment of Persons with Disabilities Proclamation No. 568*, Preamble, Paragraph 3
[268] Id, Article 5 (1).
[269] Id, Article 2(5).
[270] Id, Article 5 (3).
[271] Id, Article 2 (3).

and horizontally applicable to the public and private sectors. In circumstances where such protection does not extend beyond the public domain, the ability of PWDs to participate in their community activities and to realize their full potential as active members of the society will be severely constrained. In general, except for the rights of PWDs to employment as outlined in the Proclamation, the legal protection of this section of the society in Ethiopia is limited to a few legal provisions that are incorporated into general-purpose laws. Consequently, one cannot find a comprehensive legal instrument specific to PWDs. This also results in poor implementation of the rights of PWDs.

The Building Proclamation No.624/2009

The 2009 Building Proclamation No. 624 is the first national legal instrument to address the issue of accessibility. "In any public buildings there shall be a means of access suitable for use by physically impaired persons, including those who are obliged to use a wheelchair or who can walk but who are unable to negotiate steps". In addition, "where toilet facilities are required in any building, as an adequate number of such facilities shall be made suitable for use by physically impaired persons and shall be accessible to them".[272]

Though the issue of accessibility has been included slightly in this proclamation, the article that talks about it is too vague and lacking detail compared with Article 9 of the CRPD. Furthermore, the proclamation discriminates PWDs since it gives emphasis only to those with physical impairments. It overlooks other types of disabilities such as visual and hearing impairments which also require specific accommodations. On the other hand, the proclamation does not apply to any building completed on or before its effective date, or any building under construction with a building permit issued before that date.[273] In this case, the scope of the application fails to be in line with the concept of initial accessibility at early stages reflected

[272] Federal Democratic Republic of Ethiopia. 2009. *Ethiopian Building Proclamation No. 624*, Article 36 (1 and 2)

[273] Id Article 3 (2) (A and B)

in Article 9 (2)(H) of the CRPD. This issue can also contradict Article 4 (F) of the same convention on universal design, which states that environments, facilities, products, and services should be designed to make them usable by all persons, to the greatest extent possible, minimizing the need for particular adaptations or special designs. If such contradiction persists, it is difficult to consider accessibility in the existing buildings when their modifications are undertaken. In addition to the above limitations, there is no regular system to reject plans that do not comply with accessibility standards in their construction works, either with criminal or civil sanctions. Following the proclamation, the 2011 building Regulation No.243 has addressed accessibility issues in its few Articles. Under Article 2 of the building regulation and directive, a public building has been defined as any building such as a theatre hall, public library, conference hall, recreational place, academic institution, medical center, market, or any other similar building serving the public. In this definition, private buildings, roads, and transport are not included even if their purpose is to serve the public at large.[274] Because of this, the essence of public buildings established under the regulation and directive differs from that of Article 9 (1)(A) and (2)(B) of the CRPD. In both of these sub-articles, state parties are required, firstly, to ensure that PWDs access on an equal basis with others to the buildings, roads, transportation, and other indoor and outdoor facilities. Secondly, they must ensure that private entities offering facilities and services to the public take into account all aspects of accessibility for PWDs.

Overall, the provisions outlined in the proclamation, regulation, and directive are inadequate to fully address the accessibility concerns as outlined in the CRPD. As a result, the principle of designing built environments that are suitable for persons with disabilities (PWDs) is in conflict with the current practices in construction. In this regard, the authors' observation reveals that the built environments are full of uncertainties, anxieties, and dangers for persons with impairments. These persons daily encounter many obstacles

[274] Council of Ministers. 2011. *Building Regulation No. 243*, Article 2.

that prevent them from moving freely and safely everywhere they choose. Therefore, such barriers to the built environments have a great impact on the realization of the basic constitutional rights and fundamental freedoms of PWDs recognized under many international human rights instruments ratified by the country.[275] The Ministry of Urban Development and Construction demonstrated that it is underway to revise the building laws of the country. It has also released a draft of the new building proclamation that would repeal the existing building proclamation No. 624/2009. The draft proclamation has come up with a few changes that would be beneficial to ensure accessibility. For instance, it has expanded the scope of the proclamation to apply to buildings that require renovation for access by PWDs, even if they are built before the entry into force of the proclamation.[276]

Addis Ababa City Government Building Regulation No. 17/2004

There are few legal provisions considering accessibility in the construction sphere at the Addis Ababa level. According to the Addis Ababa City Government building regulations no. 17/2004, constructions for public services shall be undertaken in a manner accessible to PWDs.[277] Nonetheless, this regulation is not detailed in addressing the issue of accessibility. Rather, the details have been left to be determined in a directive issued by the government infrastructure development and civil works authority. However, the expected Directive No. 1, which was supposed to address the access needs of PWDs in detail, was issued in 2005 without adequately addressing the issue as a whole. The directive simply tries to measure accessibility in terms of ramp stairs in public buildings to be accessible for wheelchair users.[278] In this respect, compared

[275] Sisay, Amare. 2012. 'Towards Ensuring Accessibility Right to the Built Environment for Persons with Disabilities in Ethiopia', Master's Thesis, Addis Ababa University 50-51.

[276] Draft Building Proclamation, Art. 3/4//a/.

[277] Addis Ababa City Government. 2004. Addis Ababa City Government Building Regulations No. 17.Article 10.

[278] Addis Ababa City Government Infrastructure Development and Civil Works Authority. 2005. Directive no. 1, Article 3.3.5.5

to the regulation, the directive›s role in advancing the accessibility of built environments is minimal. Thus, both the regulations and the directive should be amended to be inclusive of all accessibility issues, further enhancing the access needs of PWDs.

To further understand more about the problem of accessibility, it is also crucial to look into the road and transport systems of Addis Ababa. In both of these systems, PWDs experience numerous barriers daily to moving freely. The authors' observation noted that the Addis Ababa City transport system is the most inaccessible and has remained unfriendly for PWDs. Most of the taxis, buses, bus stops, and stations do not accommodate the access needs of people with impairments. But the recent transport buses have tried to install lifts for wheelchairs and crunch users to step up the stairs with ease.[279] Correspondingly, bridges built on the ring roads for pedestrians are constructed without alternative crossing lines for wheelchair users. Sidewalks that are unpaved, poorly maintained, crowded by vendors and final construction residues are common across the city to limit the free movement of pedestrians with disabilities. Traffic lights and zebra crossings have still no special signal for visually impaired persons.[280]

The authors' observations revealed that, in most cases, the majority of public buildings, hospitals, schools, and workplaces are inaccessible to PWDs. Most of the buildings do not have elevators with braille signs, ramps, and lifts reaching all floors for wheelchair users, signage for the deaf, or any other support systems. The corridors, toilets, and bathrooms are often too narrow or tiny to be inaccessible to PWDs. The pavements, sidewalks, traffic lights, and the condition, and width of the city roads as well are not conducive for PWDs, especially for people using wheelchairs, crutches, and white canes.[281] The transport system is also unquestionably inaccessible. It is almost impossible for people in wheelchairs and people walking

[279] Supra note 38
[280] Ibid.
[281] Interview with Mr. Ayele Kassa Abreham and Ms. Seada Nuru Hussen, visually impaired persons (November 22, 2023)

with crutches to get on any mode of transportation.[282] With this daily experience, the Addis Ababa city dwellers with disabilities are denied their right to access services and opportunities provided to everyone else.

The Advocacy Role of CSOs

The role of CSOs is diverse depending on the purpose or objectives they are established. Literature generally identifies the roles of CSOs such as service provision, advocating or campaigning for human rights, monitoring government activities and building active citizenship.[283] The reading of these roles of CSOs reveals that the promotion of human rights is one of the major purposes of CSOs which enables them to advocate for human rights-friendly legislations and practices be established by the government. It follows that human rights activists, through the CSO arrangements, serve as the voice for the oppressed and the underprivileged, organizing them, taking collective action on their behalf, and fighting for their rights.[284]

The CSOs/OPDs Mandate under the CRPD

Organizations for people with disability (OPDs) are also specific types of CSOs that are predominantly established to defend or advocate for disability rights. Having this in mind, it is worthwhile discussing the mandate of OPDs and other CSOs under the CRPD concerning advocating and monitoring disability rights. Several articles of the CRPD emphasize the need and relevance of consulting disabled persons' organizations whenever States are developing and implementing disability rights. Article 4(3) of the CRPD reads "in the development and implementation of legislation and policies to implement the present Convention, and in other decision-making

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[282] Ibid

[283] Cooper, Rachel. 2018. What is Civil Society, Its Role and Value in 2018? University of Birmingham.

[284] Zafarullah, Habib, and Mohammad Habibur Rahman. 2002. "Human Rights, Civil Society and Nongovernmental Organizations: The nexus in Bangladesh: *Human Rights Quarterly* 24.

processes concerning issues relating to PWDs, States Parties shall closely consult with and actively involve PWDs, including children with disabilities, through their representative organizations." Article 29(b) (ii) also requires States Parties to promote actively an environment in which PWDs can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and to encourage their participation in public affairs, including in the formation and joining of organizations of PWDs to represent PWDs at international, national, regional and local levels. Another relevant provision of the CRPD in this respect is also article 33 headed as national implementation and monitoring. Article 33(3) reads "civil society, in particular PWDs and their representative organizations, shall be involved and participate fully in the monitoring process." Not only State Parties required to consult and actively involve PWDs through their representative organizations in Article 4, "General Obligations", but Article 33, "National Implementation and Monitoring", specifically mandates that "Civil society, in particular PWDs and their representative organizations, shall be involved and participate fully in the monitoring process" of their human rights. Additionally, Articles 29, 34, and 40 also refer to the role of disabled persons organizations (OPDs) in the interpretation, implementation, and monitoring of their rights. In short, a rights advocacy role for civil society organizations made up of or representing PWDs is written into the Convention itself.

The intended effect of the inclusion of PWDs and their representative organizations in a monitoring role in the CRPD is to ensure that there is both bottom-up (as well as top-down) pressure upon states to not only ratify the CRPD but to actively implement it.[285] As a result, after the adoption of the CRPD, multilateral organizations and international NGOs have started promoting the CRPD by partnering with grassroots OPDs around the world and supporting

[285] Meyers, Stephen. 2016. NGO-Ization and Human Rights Law: The CRPD's Civil Society Mandate." *Law, Societies & Justice Program*, University of Washington, 5.

their human rights advocacy activities.[286] However, two challenges are postulated. First, local OPDs in developing countries are supposed to have prioritized self-help and social service provision over and above human rights advocacy. Second, "many PWDs view human rights with suspicion, associating its ideology with the legacy of Western intervention in the Global South."[287]

These challenges could be redressed by creating local networking among CSOs exclusively working on human rights and local OPDs mainly by extending technical and professional support to the latter. The CSOs exclusively working on human rights could have exposure to understanding the context of the implementation level of disability rights and best intervene in the advocacy activities of disability rights owing to their professional and technical capacities. This would be true if such CSOs exclusively working on human rights could delve into the disability rights discourse and collaborate with OPDs in their advocacy efforts.

CSOs Legal Regime in Ethiopia

Ethiopia has undergone in repressive and curtailing CSO law, particularly for those who want to contribute to the advocacy of human rights. In this regard, the most criticized aspect of the Charity and Society's Proclamation No. 621/2009 is its inhibition of the role of CSOs in advocating for human rights. It does this by forcing them to register as Ethiopian associations and prohibiting them from generating funds from foreign sources. The Organizations of Civil Societies Proclamation No.113/2019 is an outcome of this law reform.

Unlike its predecessor, Article 62(4) of the new CSO proclamation, under the heading of "operational freedom", empowers every organization of the civil society to "...propose recommendations for the change or amendment of existing laws, policies or practices, or issuance of new laws and policies of those which have a relationship

[286] Ibid
[287] Ibid

with the activities they are performing." On the other hand, any CSO duly registered and seeking to promote human rights could also advocate for the realization of disability rights and the legislative reform on disability rights as well. It can be understood that this article seeks to widen the democratic space of CSOs in their effort to advocate for human rights. However, recalling the principle of representation set out in the CRPD, governments are obliged to consult OPDs on policies and legislations that may directly or indirectly affect disability rights.[288] Besides, CSOs exclusively working on human rights should collaborate with OPDs and voice the voice of OPDs together. Hence, the following section addresses key focus areas for advocacy in the right to physical accessibility for PWDs that CSOs could potentially work with OPDs.

Focus Areas for Advocacy in the Right to Physical Accessibility for PWDs

The concept of advocacy generally encompasses a range of activities aimed at influencing policies and decision-making of the government to ensure the true implementation of human rights. With this in mind, advocacy issues emanate from the gaps in the legal and institutional frameworks including the poor implementation thereof. The same is true for advocating for disability rights in general and the right to physical accessibility in particular. Accordingly, it is possible to recommend advocacy issues that CSOs could potentially embark regarding the right to the physical accessibility of PWDs. This involves closely examining the gaps identified in the preceding section on the realization of the right to accessible built environment for PWDs. These advocacy issues are categorized into two. The first is generally interventional but related to physical accessibility in one or another way. The second type is advocacy issues specific to the right physical accessibility. In the following sections, these advocacy intervention areas are discussed.

[288] See mainly the CRPD Committee, General Comment No. 7, Para. 18.

Advocate for Constitutional Amendment and Comprehensive Disability Law

The FDRE Constitution has incorporated one provision referring to PWDs. Article 41(5) provides assigning resources, within available means, to provide rehabilitation and assistance for the physically and mentally disabled among other disadvantaged groups such as the aged and children left without parents or guardians. It is mostly argued that the language of this constitutional provision which is found within the socio-economic rights section is charity-based and does not fully and effectively address the needs of PWDs including the right to the physical accessibility for constitutional protections. Comparatively speaking, other constitutions mostly incorporate an article solely for the protection of disability rights.[289] It is also the recommendation of various researchers that the constitutional guarantees are inadequate concerning PWDs and the FDRE constitution should be amended in this respect to incorporate an article on disability rights and to mainstream disability rights appropriately.[290]

On the other hand, Ethiopia has already ratified and made the CRPD part of its laws.[291] The CRPD requires Member States to take legislative and policy reforms to realize that they comply with their duties of the CRPD.[292] However, Ethiopia has not yet taken comprehensive legislative measures by conducting legal audit on disability and by adopting comprehensive laws on the rights of persons with disabilities pursuant to the requirements of Article 4 (general obligations of States). Even the recent law reform council established within the General Attorney did not touch the disability area to comprehensively respond to the CRPD. Rather, the council is simply focusing on minor and trivial disability mainstreaming provisions in the reformed laws of the country. As a result, except

[289] See for instance Kenyan constitution Art. 54.

[290] Oticho Oro, Dawit. 2019. *The Place of the Rights of Persons with Disabilities under the 1995 FDRE Constitution*. Thesis submitted in partial fulfilment of the degree of Master of Laws (LLM) in Human Rights Law to the School of Law, Addis Ababa University.

[291] See the CRPD Ratification Pro. No. 676/2010.

[292] See the CRPD, art. 4.

few considerations of the needs of PWDs in the general purpose laws, no comprehensive disability law is yet available. The only disability-specific legislation in Ethiopia is the right to employment of persons with disability Proclamation No. 568/2008 with only 14 articles. Consequently, there are no laws fully addressing the issue of physical accessibility for PWDs. Therefore, CSOs could potentially intervene to advocate for a comprehensive disability law for the true realization of disability rights in Ethiopia in general.

Advocate for Access to Justice

Another intervention area for CSOs to ensure physical accessibility is advocating for the accessibility of the justice sector. The rationale why this advocacy area comes into the picture is access to justice facilitates possibilities for victims of inaccessible physical environments to seek justice and be redressed. In this respect, Ethiopia has not yet taken measures to ensure the accessibility of the justice sector for PWDs. The issue of access to justice encompasses, among others, the physical accessibility (buildings, entrances, streets, etc. of the justice sectors), assignment of assistants for clients and employees with disabilities, using appropriate means of communication tailored to the specific needs of PWDs, and raising the awareness of experts within the justice sector on disability rights. The feedback of the CRPD committee to the State Report of Ethiopia also indicates that Ethiopia is far from ensuring the right to access justice for PWDs. As a result, the CRPD committee has recommended that Ethiopia provide appropriate training on disability for the law professionals in the justice sector. Additionally, they should provide reasonable and procedural accommodations in the law enforcement and justice sectors to ensure that PWDs have the right to access justice.. However, though the recommendation was made in the year 2016, Ethiopia has not yet taken significant steps. Therefore, CSOs could potentially advocate for the rights of PWDs to the right of access to justice. The intervention could vary from giving training on disability rights for the justice sector to lobbying the justice sector to take appropriate measures for the realization of the right to access to justice for PWDs.

Advocate for Budget Allocation

The true inclusion of PWDs happens with the commitment and actions during planning and budgeting. Under Article 10(1)(e) of Proclamation no.1097/2018, each minister has the power of planning, budgeting and implementing same upon ratification. Article 10(2) also restates the powers of each minister to investigate the budgets and programs of other government institutions made accountable to it by law and send them for approval. Above all, each minister has to ensure that PWDs are beneficiaries of equal opportunities within its mandate. At the top of all, under article 16(1)(e) of the Proclamation No. 1097/2018, the Ministry of Finance prepares the budget of the federal government and follows up on the implementation of the same upon approval. Throughout these processes, the issue of PWDs should be focused and a budget should be allocated to finance the needs of PWDs.

To achieve the effective inclusion of PWDs in the budgeting processes, some requirements shall be met based on well-researched findings. The first understanding of disability is the economic case for equality.[293] This would be relevant to show why inclusion and equality of disability are fundamental rights from the perspective of finance. It also overcomes the biases around the costs of disability support services. The second relates to the inclusive decision-making processes thereby calling for substantive and meaningful participation of PWDs represented by their OPDs. The third and still very important is the identification of disability services to be fulfilled by the government budget. The last would be identifying the existing data and information including the lived experiences of PWDs for budgeting.

However, the current trend of budgeting both by each ministry and the minister of finance does not fit the requirements mentioned above. PWDs are not also benefiting from equitable budgeting concerning

[293] See Inclusion Counts: The Economic Case for Disability Inclusive Development. Available at https://www.unisdr.org/conference/2019/globalplatform/programme/platform/assets/pdf/5cd579c1277c0Economic_case_Disability_Inclusive_Development_cbm2016_accessible.pdf, accessed on 04/06/2024.

public services and other government policies and programs. Here, it is worthwhile to recall that the renovation of existing buildings and streets to create conducive physical environment for PWDs requires huge budgeting. Without a separate line of budgeting for this purpose, it is hard to realize the physical accessibility for PWDs given the fact that the existing building Proclamation No. 624/2009 does not apply to buildings before it and there are no laws at all setting standards for the accessibility of streets and other related issues. Therefore, SCOs could advocate for equal and disability-inclusive budgeting with the strict follow-up of the requirements mentioned above.

Advocate for New Institutional Setup Responsible for Disability Affairs

The CRPD ratification proclamation no.676/2010 entrusts the power to undertake all acts necessary for the implementation of the CRPD to the Ministry of Labor and Social Affairs (MoLSA) which is now restructured as the Ministry of Women and Social Affairs (MoWSA). It could be deduced that the phrase "all acts necessary for the implementation of the CRPD" denotes the power to take measures whenever the CRPD provisions are violated or are not well respected. Nonetheless, the international organizational structure and the power listed for MoLSA under the proclamation to define the powers and responsibilities of the executive organs did not explicitly reflect the power of MoLSA to undertake all acts necessary for the implementation of the CRPD. Rather, even the newly promulgated Proclamation No. 1097/2018 to define the powers and responsibilities of the executive organs defines the power of MoLSA, to the rights of PWDs, only under the social protection section and to enable PWDs to benefit from equal opportunity and full participation.

Understanding this fact, OPDs used to struggle for the establishment of a separate organ that is solely responsible for ensuring the full protection of the rights of PWDs. This struggle brought the establishment of a new directorate within MoLSA directly and solely responsible for disability. However, the duties and responsibilities entrusted to the new directorate by its establishment

document still concentrate on raising awareness of disability among governmental organs. It does not have the power to take measures in cases when governmental organs fail to mainstream disability or violate disability rights. Foreign practices show that such kind of governmental arrangements do have the power to take actions to ensure disability mainstreaming. For instance, the US Department of Justice enforces the American Disability Act through lawsuit and settlement agreements to achieve greater access, inclusion and equal opportunity for PWDs.[294] The National Council for Persons with Disabilities in Kenya is entrusted with the power of taking adjustment orders and issuing summons requiring the attendance of everyone to enforce disability rights in the Persons with Disabilities Act of 2023.[295] Therefore, it is believed that there is a need for a robust institutional setup within the government apparatus with the power to effectively ensure the implementation of the CRPD including the power of hearing and administering complaints. It could be either by establishing a new ministry or an independent government organ of different structure solely on disability or by strengthening the power of the new directorate within MoLSA to that effect. Therefore, CSOs could join OPDs in the advocacy efforts to call for an institutional measure that would ensure the effective implementation of the CRPD.

Specific Advocacy Intervention Areas

Advocate for the Inclusion of Robust Provisions within the Draft Building Proclamation

It is explicit from the discussion in the preceding section that the existing building proclamation carries only one article concerning accessibility rights of PWDs for public buildings. Though there are standards set out in the building directive issued right after the proclamation, they are not complete enough to address the needs of different types of disabilities. On the other hand, it is clear from

[294] See the United States Department of Justice, enforcement. Available at .Cases | ADA.gov Accessed on July 04, 2024.

[295] The Persons with Disabilities Bill, Kenya Gazette Supplement, National Assembly Bills. 2023. Section 36(1)(b)(d).

the provisions of the building laws that the focus is only on physical disability, overlooking the needs of other types of disabilities. Moreover, there are no laws that establish standards for accessibility regarding streets, installations, parking, pavements, sidewalks, and signs, among others. Meanwhile, the Ministry of Urban Development and Construction which is now restructured as the Ministry of Urban and Infrastructure was underway to amend the building proclamation and released the draft in 2019.[296] Therefore, there is a potential intervention area to elaborate the draft building proclamation in such a way that it incorporates disability-friendly provisions. Issues to be considered in the new draft building proclamation include:

1. Provisions for the enforcement of the proclamation on the public buildings that are already built in an inaccessible way for PWDs. It is to be noted that the building Proclamation No. 621/2009 did not apply to buildings completed or are under construction during the adoption of the proclamation. Given the fact that most public services are being delivered in facilities built a long time ago and the fact that the scope of the proclamation is countrywide[297], the inapplicability of the building proclamation on buildings constructed before its enactment and to those for which permit license has been obtained prior to its enactment, undermines the purpose of article 36 of the building proclamation that addresses accessibility of public buildings.

2. Consideration of the needs of various types of disabilities in the development of provisions that would warrant accessibility of public buildings: Note that the building proclamation No.621/2009 focuses only on physical disability. Nonetheless, public buildings should be accessible for those who have visual and hearing impairments as well as those with intellectual disability. For instance, public buildings should have clear visual signs for those with hearing impairments and appropriate signs

[296] See the Draft Building Proclamation.

[297] See Ethiopian Building Proclamation, Proc. No. 624/2009, Fed. Neg. Gaz., year 15, No. 31 Art. 3.

and braille and physical indicators of directions for the visually impaired. The new building proclamation should explicitly mention the needs of different types of disabilities.

3. Putting a clear and precise definition for the term public buildings so that the proclamation applies to any kind of building that provides public service: note that Building Proclamation No.621/2009 did not define the term public buildings. Instead, it classifies buildings into three categories 'A', 'B', and 'C'. The definition of these categories shows that the term building refers to those that have two or more floors. Unfortunately, challenges faced by PWDs are not limited only to buildings with two or more floors. Indeed, most buildings that are provide public services in Ethiopia do not have floors. Hence, the new draft building proclamation should have provisions that apply to any public building regardless of the number of floors.
4. Expansion of the applicability of the building proclamation beyond buildings: It seems that the building proclamation applies to the physical features of a given building. Nonetheless, it should be noted that a building is not an isolated entity where people arrive and remain. Rather it is an extension of the roads heading to it. Therefore, the building proclamation should also include provisions to ensure accessibility measure on the pavements within the compound of a given public building and its connections to the main road around it.

Advocate for Proper Implementation of the Building Proclamation

Having accessibility standards in place does not suffice unless backed by appropriate enforcement mechanisms. According to the building Proclamation No. 624/2009 Art.57 and 2(2), the power to prepare codes, design of buildings, and follow up the proper implementation of the proclamation is vested in the Urban Development and Construction Ministry. However, the authority to issue building permits and to supervise their compliance is

entrusted to the building officer.[298] However, it is hardly possible to conclude that building officers are properly enforcing even the existing building law concerning ensuring accessibility for PWDs. Personal observation of buildings built after the enactment of the building proclamation testifies that accessibility is not within the focus of the building officers. It is to be noted that a couple of months ago, a man with a visual impairment died after falling into an empty elevator shaft, allegedly due to the lack of proper supervision by the building officers.[299] This reveals a clear problem associated with the poor implementation of the building proclamation, even up to its current standard and the impact thereof.

The building directive tries to put minimum standards on the general features of a public building: steps, ramps, elevators, entrances, doors, toilets, and parking. For instance, concerning elevators, the directive requires a public building to have sound to announce the door opening and closing as well as the number of floors and braille sign on the buttons for persons with visual impairment.[300] Similarly, the directive requires an elevator of a public building to start from the ground floor and provide access to each floor.[301] The researchers' observations, however, show that most public buildings do not meet these requirements in place. This might be attributed to low attention accorded to the accessibility measures by the building officers and lack of appropriate expertise in accessibility measures as well as lack of proper supervision.[302] Therefore, CSOs/OPDs could intervene in filling the gap with the following measures:

1. Providing training for building officers and contractors on the building laws and the impact on disability rights;
2. Providing training for those who manage or administer public

[298] See Building Proclamation, Arts.2(3) and 11

[299] Interview with Gebre Teshome, Public Relation Head, Ethiopian National Association of the Blind (24 March 2024).

[300] See Building Directive Number 5/2011, Art. 33(4)(6).

[301] See the building proclamation, Art. 33(4) (3).

[302] Note that the building officer has a responsibility to supervise whether buildings comply with the building and other relevant laws under the building proclamation, Art. 11(3).

buildings on their legal responsibilities to comply with the building laws and the impact on disability rights;

3. Communicating with and lobbying the Ministry of Urban Development and Construction to properly enforce the building proclamation, at least up to its current standards, by assigning appropriate accessibility experts and by employing accessibility audits.

Development of Accessibility Standards

The building directive incorporates Article 33, which provides several accessibility standards, including the general features, steps, ramps, elevators, entrances, doors, toilets, and parking. However, these standards are not complete enough to ensure the accessibility of public buildings for PWDs. For instance, as mentioned above, the directive does not have any standard on the pavements within the compound of a given public building. Therefore, the Ministry shall develop sufficient and comprehensive accessibility standards according to the overall power entrusted to it under Article 57(2) of the proclamation. This power should also be clearly stated in the proclamation that the Ministry prepares national accessibility standards.

Concluding Remarks

Accessibility is one of the eight general principles of the CRPD. The CRPD has also a stand-alone article dedicated to PWDs' rights to accessibility. More than that, accessibility is something that crosscuts other disability rights. The physical accessibility concerns the built environment that includes; bit is not limited to, roads, pavements, installations, and buildings.

Ethiopia has ratified the CRPD and made part of its law. Nonetheless, the country has not yet taken effective and comprehensive legislative measures to realize the full implementation of the CRPD. It issued building Proclamation No. 624/2009 one year before the ratification of the CRPD. As discussed hitherto, this proclamation lacks several elements to ensure physical accessibility. First, it does not apply to

buildings that had been completed before its adoption. Second, it applies only to buildings with two or above floors. Third, it focuses only on physical disability and does not give sufficient attention to the needs of people with other types of disabilities. Fourth, it lacks a proper enforcement mechanism, particularly concerning accessibility. Fifth, the accessibility standard set out under the building directive is not comprehensive enough to include various issues such as pavements within and around compounds of public buildings.

The assessment and personal observations revealed that there are serious physical barriers in Addis Ababa for PWDs. Needless to mention, the city is the capital of Ethiopia as well as the seat of AU and a variety of regional and international organizations. It is the city where thousands of nationals with disabilities live as well as where a large number of foreigners visit for various reasons. However, the majority of public buildings, hospitals, schools, workplaces, and the transport system including pavements and sidewalks are inaccessible for PWDs. Inaccessible built environment often undermines the equitability of opportunities and the full participation of PWDs. It is an agreed fact that the CRPD has come up with the mandate of CSOs in general and OPDs, in particular, to participate in the development of disability legislation and to monitor the effective implementation of disability rights in their States. Nonetheless, given the current status of OPDs, local OPDs in Ethiopia may not have the technical and professional capacities to effectively advocate for disability rights. In addition, networking among CSOs working on human rights makes the advocacy effort more effective. Therefore, CSOs with technical and professional expertise could collaborate with OPDs and make advocacy efforts for disability rights. However, it is important to consider the role of mass-based societies representing PWDs in Ethiopia, as well as other CSOs working on disability. Though it requires deep research work to identify how these two stakeholders could collaborate in the advocacy processes, it seems clear that the issue identification and investigation of the extent of their concern should be reserved for the mass-based societies of PWDs. Nevertheless, other CSOs

could establish partnerships with them. As these CSOs often possess the required expertise, they can complement the gaps of the OPDs in this regard. CSOs could also collaborate with OPDs in Ethiopia to build their technical capacities and organizational structures, enabling them to become the best advocates for disability rights.

Specific to the right to physical accessibility of PWDs, CSOs can give a voice to PWDs by calling the government to undertake general and specific measures. The general measures relate to the revision of the constitution and taking legal and institutional measures to address disability rights. Specific measures also relate to the revision of building laws in Ethiopia so that they become disability friendly. Whatever the case, CSOs should recognize the mandate of OPDs entrusted to them under the CRPD and should collaborate with OPDs in their disability rights advocacy efforts.

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