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Editor's Note

Meron Zeleke (PhD)

This ninth volume of the Ethiopian Journal of Human Rights brings together a collection of scholarly articles that interrogate the evolving human rights landscape in Ethiopia through intersecting themes of institutional accountability, legal reform, identity politics, and gender justice. The contributions in this issue are interlinked by their critical engagement with the structural and institutional drivers of human rights violations and justice deficits, as well as their efforts to propose normative and practical pathways toward more inclusive and rights-respecting governance.

In their article "*From Weak Social Capital to Exclusionary Ethnofederalism: A Root of Majang-Highlander Conflicts and Rights Violations in Gambella Region*," Dessalegn and Seyoum provide a deeply contextualized analysis of the underlying social and institutional dynamics that have fueled intercommunal conflict in southwestern Ethiopia. Drawing on the analytical framework of social capital, the study argues that long-standing social fragmentation between the Majang and settler communities in Gambella region, combined with the institutionalization of ethnic boundaries through federal restructuring, has contributed to recurrent conflict and systemic rights violations. This article foregrounds the relationship between weak horizontal cohesion and ethnopolitical exclusion, contributing to a broader understanding of how federal arrangements can either mitigate or exacerbate localized tensions and human rights risks.

The contribution by Abreha entitled "*Examining the Roles of National Human Rights Institutions in Implementing Peace Agreements: A Case Study of COHA in Ethiopia*" examines the role of national human rights institutions (NHRIs), particularly the

Ethiopian Human Rights Commission and the Institution of the Ombudsman, in the implementation of the 2022 Cessation of Hostilities Agreement (COHA) following the Tigray conflict. The article critically assesses the limitations and potentials of NHRIs within a hybrid peacebuilding architecture, revealing the institutional gaps and coordination challenges that hinder effective post-conflict human rights oversight. It makes an important normative intervention by advocating for clearer mandates and cooperative modalities between domestic, continental, and international human rights actors in transitional contexts.

Helen's contribution entitled; "The *Response of the Judiciary to Intimate Partner Violence in Addis Ababa City Administration*", assesses how the judiciary responds to Intimate partner Violence Against Women (IPVAW). While examining this theme, the paper pays closer attention to the adjudication process, judicial decisions, case timelines, and available protective measures as variables and capitalizes on a qualitative study conducted in selected courts in Addis Ababa.

Sisay's contribution entitled "*Women's Rights to Access to Justice: Challenges and Opportunities at Grassroots Level in Oromia Regional State*" turns attention to the intersection of gender, customary law, and legal pluralism. Using a human rights-based approach, it evaluates the gender sensitivity of legislation and practices governing customary courts, uncovering structural and normative barriers that impede women's full and equal participation in justice mechanisms.

The contribution by Meron entitled, "*Ethiopia's Reservations to the Maputo Protocol: A Compatibility Analysis with the Protocol's Object and Purpose*," undertakes a rigorous legal analysis of Ethiopia's interpretive declarations and reservations upon ratifying the Maputo Protocol. The article situates Ethiopia's reservations within the broader debate on state compliance with international

women's rights instruments and evaluates their compatibility with the Protocol's object and purpose under the Vienna Convention on the Law of Treaties. It offers a valuable normative critique of the limitations that such reservations impose on the domestic realization of women's rights, particularly in areas of reproductive autonomy, marriage, and gender-based violence.

In their article entitled; *"Witness Protection Measures in Transitional Justice Processes: Lessons for Ethiopia",* Awet and Abreha take a closer look and analysis of the legal frameworks governing witness protection measures accenting the need to balance witness safety with the right to a fair trial. They examine the prospects and challenges pertaining to the Ethiopian Transitional Justice Policy (ETJP) by drawing on the experiences of other African countries. The authors strongly recommend the need to have a dedicated witness protection law and institutional structures in order to ensure the protection of the rights of both witnesses and victims.

One article in this volume focuses on access to justice, particularly in multilingual and plural legal contexts. In his article entitled "*The Right to Court Interpretation in Federal and Oromia Regional State Courts*" Muluken examines the disjuncture between legal guarantees and actual practice concerning language rights in civil proceedings. This piece reveals how systemic shortages in qualified court interpreters and the absence of institutional frameworks undermine the procedural rights of litigants, particularly in a multilingual federal system.

To sum up, the contributions in this volume reflect a shared concern with how institutional, legal, and normative frameworks shape the protection or violation of human rights in Ethiopia. Thematically, the volume emphasizes the importance of inclusive governance, legal clarity, and institutional responsiveness in upholding human dignity in complex socio-political settings. By drawing on diverse methodologies ranging

from empirical fieldwork to doctrinal and normative analysis these articles enrich ongoing academic and policy discussions on conflict, federalism, gender justice, and the rule of law in Ethiopia and the broader African context.

We hope that this volume will serve as a critical resource for scholars, practitioners, and policymakers committed to advancing human rights and legal reforms in Ethiopia and beyond.

Editor-in-Chief,

Meron Zeleke Eresso
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From Weak Social Capital to Exclusionary Ethnofederalism: A Root of Majang-Highlander Conflicts and Rights Violations in Gambella Region

Desalegn Amsalu and Seyoum Mesfin [1]

Abstract

The Majang Nationality Zone (MNZ) is an administrative unit in Gambella Region of Ethiopia having communities that are identified as indigenous (who are mainly Majang) and Highlanders (also known as settlers). This article aims to investigate into a structural underpinning of tensions and violent conflicts between these two communities, as well as ensuing rights violations. The article argues that prior to the implementation of ethnic federalism in 1991, the Majang and settler communities already exhibited low levels of social capital. Cultural and physical differences between the groups resulted in minimal integration and limited mutual trust. The introduction of ethnic federalism further deepened these divisions by institutionalizing a dichotomy between "indigenous" Majang and "Highlanders" (also called "settlers"), thereby entrenching identity boundaries. This structural separation not only reinforced existing social fragmentation but also laid the groundwork for intercommunal conflict. The article employs the concept of social capital as an analytical framework, suggesting that its presence can foster peaceful coexistence, while its absence or erosion may contribute to conflict. The study's data were drawn from both literature review and fieldwork primarily conducted in 2011, with follow-up investigations in 2023 to assess changes relative to the original findings.

Keywords: Indigenous-settler dichotomy, social capital deficit, ethnic federalism, conflict, Majang.

[1] Dr Desalegn Amsalu is based at the Institute of Ethiopian Studies, Addis Ababa University and Dr Seyoum Mesfin is an independent consultant.

Introduction

For many decades, the Majang Nationality Zone (MNZ) in Ethiopia's Gambella Region became a focal point of interethnic tension, shaped by broader patterns of conflict across the region and the country. Among others, Gambella has been marked by recurring violence between indigenous groups such as the Anywaa, Nuer, and Majang, and already existing or incoming highlander populations, often driven by competition over land, resources, and political representation (Ojulu 2025; Jal 2018).

MNZ consists of two *woredas* (districts), i.e., Godere and Mengesh, with Meti town serving as the zonal administrative capital. It has thirty-one localities known as *kebeles*. The Zone is home to various ethnic groups but predominantly inhabited by Majang – referred to as indigenous – and the Highlanders constituting the non-indigenous ethnic groups. Pursuant to Article 47(1) of the 2002-revised constitution of Gambella Peoples' Regional State, the founding ethnic groups of the region are Anywaa, Nuer, Majang, Opo and Komo.

The term "Highlanders" refers to people from the highland part of Ethiopia, including from the north. Gambella is a lowland region that contrasts the neighboring western highlands. These people are also known as "settlers" because – though the contact between the Majang and the Highlanders dates to the second half of the 19th century (Seyoum 2015)– they moved through government sponsored resettlement in the 1980s or self-initiated migration from Amhara, Tigray, Oromia and southern Ethiopia. Although Majang are the indigenous inhabitants in MNZ, they are not the majority. According to the latest census of the country, the Highlanders constitute 80 per cent and the Majang are only 20 percent of MNZ population (CSA 2008)[2].

[2] By deducing 12,277 totals Majang number from the total Zonal population number, the number of Highlanders in MNZ is 46,950.

Since 1991, collective violence has frequently erupted between Majang and Highlanders due to seemingly minor triggering factors, often escalating into full-fledged inter-group conflict (Seyoum 2014b, 86). Disputes over farmland and coffee plantations have intensified, with Majang communities perceiving Highlander settlement as a threat to their cultural survival and territorial rights (Abate 2025). In fact, these localized grievances mirror the wider Gambella conflict landscape, where state policies, weak governance, and militarized responses have exacerbated ethnic divisions and undermined coexistence (Tadesse 2023; Teshome 2020).

The purpose of this article is to explain such conflicts within the framework of social capital deficit – which is also referred to as "weak" or "low" social capital referring to a condition in which individuals or communities lack the networks, relationships, and shared norms necessary to access resources, coordinate actions, or foster mutual trust (Claridge 2023). The Majang and Highlanders had already weak social capital developed ever since the contact between the two communities and within this context, the ethnic politics formally introduced since 1991 has exacerbated the problem.

Several scholars have conceived "social capital" in a related way. Putnam (1993, 35), defines it as "properties of social institutions, such as networks, norms, and trust that allow action and collaboration for mutual gain." Social capital increases the amount (or probability) of mutually beneficial cooperative behavior by accumulating "different sorts of social, psychological, cognitive, institutional, and associated assets" (Uphoff 2000, 188). It is a "glue that holds society together" (Sergeldin 1996, 196). As a result, the density of social networks and interactions, as well as the degree to which people associate regularly with one another in diverse situations based on relative equality, trust, reciprocity, and group specific values, define the level of social capital (Hall 2002, 22).

Some academics use the concept of social capital as an indicator to determine how cohesive a society is in a variety of forms and levels ranging from the individual to communities, regions, or states (Tzanakis 2013, 2). The preceding concepts suggest that social capital is of paramount significance in terms of peace building among diverse societies. Local associations and networks have favorable impacts on social cohesiveness and the promotion of institutional frameworks for conflict resolution. As Genge (2001, 14-15) argues, insufficient social cohesion increases the likelihood with which social institutions collapse, minorities get excluded, disorganized, and violent conflict erupt for human rights violations to occur.

As a result, the level of social cohesiveness and tolerance is dependent on social capital and is extremely important especially in a diverse society. Putnam (1993a, 63) highlights the importance of a full and lively associational life for long-term relationships. According to Uphoff (2000), the higher the extent to which vertical linking and horizontal bridging occur, the more a sense of integration and cohesion is generated, leading to inclusive mediation procedures and reducing the possibility for violent confrontations, and vice versa.

In addition to the social capital deficit theory, various explanations are put forward to explain what really causes the violence in MNZ. From the point of view of the Majang themselves, the conflicts are caused by the intent of the government and Highlanders to evict the "indigenous" people from their fertile tropical forest land (Obong 2014). Many Majang key informants believed that the federal government ignored their petition since it had a vested interest in facilitating highlander occupation of their land. A foreign-based Nilotic people opposition party racializes the issue: "the indigenous Nilotes are not enjoying freedom and equality as they continue to suffer discrimination because of their color and race" (GNUM 2014; cited in Seyoum 2014b, 89). The party argued that "They

[Indigenous Peoples in Gambella] are seen as inferior, low-grade citizens and sub-humans who do not deserve any right to own properties and show prosperity as other citizens- even on their own lands".

In contrast, the Highlanders explain the root cause of the conflict being the Majang's illegal claim of Highlanders' long-held land in MNZ and their chauvinist attitude. From the government's side, the officials during the 2011 fieldwork attributed the cause of the conflict to "rent-seekers", "agents of foreign enemies", "terrorists", "messengers of *Genibot 7*[3]", and "narrow-minded forces" (MOFA Report 2014; cited in Seyoum 2015). Tesfaselassie Mezgebe, Director of Conflict Early Warning and Early Response Directorate in the Ministry of Federal Affairs (MoFA), in Feb 2015, related the root cause with sabotages by G*inbot 7* and a few rent-seekers.

Scholarly works in their own have extensively documented case-based research within frameworks such as ethnic federalism, cross-border conflicts, and identity politics. However, few works have explicitly engaged with the intersection of ethnic federalism and social capital. While scholars like Desalegn (2016) have examined intergroup relations – particularly between Gumuz communities and Highlanders – their analyses seldom foreground social capital as a central conceptual lens. As such, the integration of social capital into studies of ethnic federalism remains underexplored and presents a valuable analytical gap.

This article draws upon a combination of fieldwork and a review of existing literature. The initial phase of field research was conducted in 2011, with further visits to the study site in 2023 to enrich and update the findings. The fieldwork took place in the MNZ, where interviews were conducted with men and women

[3] "Ginbot 7" movement for Unity and Democracy is a political party outlawed by the government as a "terrorist organization", which is now engaged in a guerrilla struggle from its base in Eritrea.

from both the Majang community and Highlander groups, from the different sections of the community and government officials. The article begins by presenting the social capital deficit between Majang and Highlanders – first by investigating socio-cultural lines and then economic dimensions. It then examines how Ethiopia's ethnic federalism has contributed to deepening the social divide, particularly by undermining social capital and communal cohesion. The article concludes by synthesizing these insights and offering reflections on the broader implications for intergroup relations, as well as academic and policy discourse.

1. Majang and Highlanders: Social Capital Deficit

As mentioned briefly earlier, a social capital deficit occurs when a community lacks sufficient norms of reciprocity, trust, and inclusive networks to enable members to collaborate toward shared goals. In conflict-affected or divided societies, such a deficit undermines peace building by eroding the very relationships and mutual confidence needed for dialogue, reconciliation, and joint problem-solving (Cox 2008). When bridging social capital between opposing groups is weak, mistrust deepens, civic participation dwindles, and negotiated settlements lose legitimacy, it perpetuates cycles of violence and segregation (Kilroy 2021). Research from Ethiopia (e.g. Berhutesfa 2018) demonstrates that inadequate inter-ethnic ties and limited platforms for cross-community interaction hinder efforts to forge a resilient national identity and peaceful coexistence, making purposeful social cohesion initiatives indispensable.

1.1. Socio-cultural Aspect

The socio-cultural domain of inter-ethnic relations has many aspects. It is difficult to examine all of them in this section. In this article, therefore, we examine the salient features in the context of the communities in question such as religion, language, skin color, dining, lifestyle and settlement pattern. To begin with, there was a less powerful – during the time of the fieldwork – but significant

religious difference between the two-groups. The overwhelming majority of the indigenous Majang are protestant Christians while the Highlanders are fundamentally Muslims and Orthodox Christians. Though religion is not a key divider that caused conflict in the study area, it significantly affected other social sites such as traditional institutions due to the absence of cross religious cleavage. Given that almost all the Majang are followers of Protestant (born again Christians), they did not attend in the same traditional institutions such as *mahiber* and *senbete* with the Highlanders. These religious institutions provide important avenues for socialization among the Highlanders.

Majang do not use informal saving institutions called *iquib* and *idir* (both in Amharic). While *iquib* functions as a cash-pooling mechanism that offers access to cash outside the formal financial sector, *idir* is a community-based institution primarily established to support bereavement rituals and offset burial expenses for its members. When members gather to make regular contributions for *iquib* and select recipients through a rotational draw, or attend funerals and bereavement gatherings following the loss of a family member of an *idir* participant, they engage in social activities such as coffee ceremony or sharing local food and drinks. These interactions foster familiarity, strengthen friendship ties, and enhance trust and tolerance within the group. However, the Majang people do not participate in these institutions. Informants suggested that this is partly due to the absence of saving culture among the Majang. One informant told the authors, "Majang people who have modern bank account are very few. They have neither traditional nor modern saving culture".[4] Moreover, Highlanders are perceived as distrusting of the Majang and often exclude them from traditional saving institutions, claiming that the Majang are "extravagant" in their spending habits.[5] This distinction also carries economic consequences.

[4] Interview with Alemseged Hailemariam, Goshene, 13 May 2013.
[5] FGD with Highlanders, Gelishi, June 2014.

Highlanders tap into *iquib* as a financial source, allowing them to build capital and launch small-scale investments. As a result, they enjoy a clear economic edge over the Majang community.

The Majang and Highlanders also significantly differ in drink and dietary traditions. In Ethiopia, both in rural and urban areas, coffee (*bunna* in Amharic) ceremony is an important way of life for socialization. It serves as the main platform for sharing of ideas, knowing and informing each other. In MNZ, coffee ceremony is an integral part of Highlanders' social, cultural and spiritual life. Informants have similarly indicated that attending coffee ceremony is considered as a means of strong bondage among people of blood relations as well as among neighbors. Apart from such socialization in the neighborhoods, Highlanders – either mainly Orthodox Christians or Muslims – socialize and meet their friends, co-workers, and family in a coffee shop. In this regard as well, Majang and Highlanders have a distinct culture and practice. According to the researchers' observations and interview results, the Highlanders used coffee bean .

On the other hand, Majang prefer using wild coffee to drink, but they use leaves rather than the beans. They prepare a daily traditional drink called *chemo* or *kari* (in Majang language) from the infused scorched leaves of coffee trees flavored with other spices such as red pepper, ginger and herbs. The Majang consider the wild coffee tree as scared. On the other hand, most of the highlander informants do not drink *chemo*, for it is considered to have very hot and spicy content. The Highlanders prefer to drink their traditional *bunna* made from the coffee beans served with either sugar/salt and/or butter.

As to the dietary habits, there is also difference between the Highlander and Majang communities. While *injera* (in Amharic) is a staple food for the Highlanders, porridge is a staple food for the Majang, which is especially visible in rural areas. *Injera* – a flatbread with distinctive spongy texture made out of *teff* flour –

is a traditional dish eaten nearly in every household of the Highlanders. Porridge made of maize and sorghum flour is on the other hands common among the Majang and eaten daily in virtually every household. On top of this, wild edible plants and animals are part of the regular meal of the Majang (Asseffa and Tadese 2010, cited in Pact Ethiopia, *Socio-economic*, and 2012, 14). They use wild fruits, vegetables and nuts such as *gamiak* tree (nut), *aime* (fruit), mushrooms, yam (*kawun*), *jongee* (spinach-like greens) for food (Stauder 1971, 24). For the Majang, "with the exception of a few kinds of creatures…any animal is regarded as edible…" (Ibd, 14-15). Highlanders consider wild animals as "unclean foods" due to religious conviction and dietary restrictions. They eat "clean foods" which appears to have been influenced by the Old Testament dietary laws (Leviticus 11, the New King James Version)[6]. Hence, the possibility for both groups to visit each other for coffee drinking and dining together is very low. These make it very exigent to establish friendly relationship with each other.

The language barrier between the two groups is also substantial. In urban areas, some of the Majang speak Highlanders' language such as Amharic, Afan Oromo, and Shekicho. However, the Highlanders both in rural and urban areas do not speak the language of the Majang.

Majang in rural areas especially in Mengesh *woreda* can barely communicate in Highlanders' language either. In Mengesh *woreda* where the Majang are a majority, few Highlanders speak the Majang language well. This is largely due to lack of interest for the Highlanders to learn the local language because they see it as an inferior language, as indicated by informants (Seyoum 2015, 208). Second, Amharic is the working language of the region as well as in the zone.

[6] The Bible designates an animal that has a divided and that chews the cud (such as cow, sheep) as clean food and pig, camel, etc. designated as unclean food.

Amharic language skill is often used as a measure of modernization, literacy and opportunity for work and appointment. This gives the Highlanders the advantage to communicate in their language while creating a disincentive to learn Majang. The Majang, however, have the interest to study Amharic since it is a working language of the regional state government and is the lingua franca. Hence, the indigenes are under pressure to study Amharic to conform linguistically. Yet, in private settings, the Majang communicate in their own mother tongue, which belongs to a Nilo-Saharan language of the Surmic cluster.

Social distance is also displayed in their segregated pattern of settlement. The previously mentioned issues are also further solidified by the existing segmented settlement pattern. When the researchers asked them why they do not socialize, often informants would cite segmented settlement pattern in addition to dietary differences. Generally, the Highlanders are concentrated in the east of MNZ whereas the Majang in the west. Majang and Highlanders settlement pattern is also different not only in rural areas but also in towns. They settled in mutually separate places in every *kebele*. In terms of population distribution, while the Highlanders are largely concentrated in Godere district constituting 82 per cent of the total population of the zone, the Majang resides in Mengeshi district constituting 78 per cent of the population. Within the district, they have also segregated neighborhoods across *kebeles.*

In Godere, the Highlanders inhabited 9 *kebeles* in the east of the district where as the Majang concentrated in 5 *kebeles* located in the west of the district. Likewise, in Mengeshi district, while the Highlanders dwell in 5 *kebeles* in the east of the *woreda*, the Majang live in the west in the rest of the *kebeles*. Furthermore, even in the zone capital, Meti, most of the local people are mainly concentrated in a place called Stadium, while the highlanders reside in the rest of the town. The researchers asked informants

why the settlements are isolated.

A Majang informant responded, "We have different culture". A Highlander (cited in Seyoum 2015) on the other hand said, "It is because Majang do not want to live in a mixed settlement with Highlanders. They are the ones who distance themselves from us. Whenever we approached them, they would go and settle in another place." Consequently, even in public and workplaces, they have a limited social relationship. This separate settlement made both groups easy target during the violence.

Skin color is the most visible boundary of the two groups. The Highlanders are referred to as "red people", as opposed to the indigenous "black" due to their skin colors. This makes it easy for everyone to distinguish between Highlanders and Majang in everyday life and social encounter. In addition to skin color, physically the Majang are relatively short coiled hair, and have flat noses whereas the highlanders have looser hair textures, straight noses and are taller . This influences people to develop a biased judgment in their day-to-day relationship. This skin color boundary has significant implications. The Highlanders look down the Majang as darker-skinned people. This racialization of social relations has an implication in a wider political and social context i.e., the parameters of Ethiopian national identity – too black to be Ethiopian[7]. The Majang specifically call the highlanders "*galen*" (in Majang language). According to our informants, *galen* means "red people" who have a cunning behavior. The Majang believed that the *galen* used to trick and swindle them since their first contact. *Habesha* is a self-description used by Highlanders. The Highlanders also call the Majang people as "*tikurochi*' (blacks in Amharic). The Majang were also known by their neighbors by the various names "Mesango", "Masongo", "Mesengo", "Ujang" and

[7] A similar discourse on color is made socially relevant in the neighboring Benshangul-Gumuz regional state. See Wold-selassie Abbute, 2002.

"Tama" (Stauder 1971, 1). The "Majangir" call themselves- "Majang"[8] in the singular or adjectival (Ibid). Sato (1997) too mentioned that "Majangir" means a plural noun ("the people of our kind") while "Majang" a singular ("a person").

The two groups are also different in their livelihoods. While the Majang are hunter-gatherer and prefer mobile lifestyle, the Highlanders have a settled agricultural way of life. Livestock rearing, which doesn't include poultry, is not the mainstay of the economic activities of the Majang except for few Highlanders (Pact Ethiopia 2012, 132-133, cited in Seyoum 2015). The Majang believe that their culture, attachment with their forest and modes of livelihood is determined in the "mythical past". Their life is associated with the lot of the Majang "to cultivate, hunt and keep bees; but not to keep cattle or goats or sheep" as they are ordered by the *ler*, the father of all men (Stauder 1971, 14).

As a result, the Majang do not own livestock. They are shifting cultivators, for the most part, farming is based on hand tools. The Majang grow crops such as *makale* (maize), *ngiding* (sorghum) by the method of shifting cultivation that anthropologists call 'slush and burn'. They had "…a never ending cycle of slush and burn, staying in one place for a few years, abandoning it to grow over again, and moving into a newly cleared site" (Ibid).

Apiculture is one of the major activities, means of livelihoods

[8] The Majangir Zone National Council has formally changed the name of the ethnic group from Majanjir to Majang. The Regional council also after deliberation ratified the proposed change of the name of the ethnic group in the July 2011 (Seyoum 2015). Hence, they have changed the name implies some other meaning. According to the nationality council, the rationales behind changing the name are basically three. First, the name or the term Majangir does not have any meaning in the Majang language. The letter to the regional council states" we have reached that the term Majangir does not have any meaning in the language of the nationality". Second, thus, the term or the naming Majangir does not fully describe and represent the identity of the people. Thirdly, it is a derogatory name given by our neighboring people such as the Oromo.

and cultural practice for the Majang given that honey is one of the most valued products of the Majang people. Hence, they make an extensive use of honey from the wild bees in the forest. A single Majang may have as many as a hundred hives placed high in the trees" Stauder (1971, 204). Honey has a spiritual and material benefit to the local community. It is their only 'cash crop'. Stauder (1971, 18) observed, "The interest and efforts that Majangir put into hunting and fishing is greatly surpassed by that they put into producing honey (*etet*)".

In contrast, the Highlanders are engaged in sedentary livestock, coffee and cereal production. Largely, almost all the Highlanders' livelihood sources are crop production by clearing the forest. They practice highland system of agriculture, i.e., oxen as means of production. Some Highlanders are also using mechanized farming (tractors) as a means of production.

The issue is not only differing lifestyle and means of livelihood but associated stereotypes. The Highlanders especially referred the mobile lifestyle of the Majang as "backward". Informants also stressed that Highlanders considered themselves superior to the local population in terms of literacy, culture, language, and way of life. In this regard, a Majang informant, 72, who lived in Kumi, is stronger in his comments, "The Highlanders do not see the local people as equal. They undermine our culture and way of life. They consider, for example, our forest-based culture as backward"[9]. Corroborating this, Sommer (2005 22, 23) wrote that the Highlanders have a tradition that is not free from the concept of supremacy in relation to the local population (indigenous people). This has further inflamed the Majang-Highlanders relations. In view of the above background, one of the key tools for social integration is missing in Majang-

[9] Actually, the view of the government and key political elites is also the same. In this regard, we can cite the late Prime Minister Meles Zenawi's speech in 2011 pastoralist day, he said, "…pastoralists no more remain research sample to showcase primitive lifestyle."

Highlanders relation.

Lastly yet importantly, social distance is also observed in marriage institutions which is one of imperative institutions to create peaceful relationship among diverse people. It is an indispensable instrument to avoid violent conflictual relations between various groups during conflict situation. In sociology, inter-marriage is expected to increase social cohesion in a given society and reduce the likelihood of violent conflicts among those groups (see for example, Blau and Schwartz 1984; Merton 1941).

Many informants alike indicated that intermarriage between the indigenes Majang and the migrant Highlanders is a rare practice. Informants estimated that in MNZ there were only 12 couples between the two communities. In these marriages, the Majang were male-givers while the Highlanders were female givers. It was only one Majang woman who was wedded to a Highlander. Most of the Majang who were married with Highlanders were also political elites, zone and regional level higher officials, who resided in the towns. In addition, these Majang officials had other Majang wives, mostly in the rural areas. In contrast, most of the Highlanders were from the low profile of the community. Majang-Highlanders marriage in rural areas is nearly nonexistent.

When asked why inter-marriage between the two communities is uncommon, informants provided various factors. For the most part, the Majang want to preserve their ethnic purity and ownership of the zone, and hence, discourage inter-marriage with Highlanders. Interview findings indicated that a Majang woman marrying a Highlander man would be disowned by her family and would constantly be harassed and scolded within Majang community. A Majang woman informant told her own story related to this. There was one Majang female – named Tihut Beniam – who was married to a Highlander teacher in

Meti. She faced a serious criticism from her family and community. Tihut told to the authors that, "Most members of my family did not accept our marriage. The social sanction is very harsh, but I do not care as long as I love my husband". Nevertheless, she faced rejection and isolation owing to the mere fact of marrying a Highlander.

Many Highlander women interviewed were also not willing to marry Majang men for "racial" reason (Seyoum 2015). Highlander men informants indicated that dowry was very expensive in Majang community, which could cost up to 15,000 ET Birr. The amount of payment was growing year after year. Highlanders were required to pay an exorbitant bride price to Majang families.

A Majang man could easily marry a Highlander woman because of little bride wealth obligation. That means there is an incentive for Majang men to marry Highlander women. Conversation with Highlanders also revealed that the Highlander men were also afraid of the Majang officials to marry Majang women. They said that the leadership is extremely unhappy and may harm them in different ways. A Highlander informant remarked, "In the past there was no marriage between individuals from the two groups. We as Highlanders were especially scared of the Majang that they could kill us when they get drunk. In the past, they used to kill each other when they get drunk".[10] Moreover, the Highlanders emphasized that HIV/AIDS is rampant among the Majang (Seyoum 2015)[11].

1.2. Economic Aspect

In addition to socio-cultural boundaries as discussed above, there is a visible economic gap between the two groups which

[10] Interview M, 35, Goshene, 19 May 2013.

[11] According to data obtained from the zone HIV Secretariat (2014) while the national and regional average of HIV/AIDS prevalence is 1.5 % and 6.5 % respectively, the MNZ is more than 13 %.

partly arises from differing means of production. The Majang are economically impoverished both in relative terms as compared to the Highlanders and in absolute terms owing to a meagre land ownership and loss of access to forest-based livelihoods such as honey production (Seyoum 2015). An educated Majang told (cited in Seyoum 2015), "While a native person has 1-4 hectares of farmland, the Highlander has up to 30 hectares of farmland". The Highlanders dominated the economic sector in MNZ[12]. For instance, according to data obtained from the Godere *woreda* Trade and Industry Office (2013), 99 percent of the traders and those engaged in business activity were Highlanders. All coffee exporters were Highlanders too. This exclusion of Majang from the economy forced some of the Majang to commit crimes and held grudge against Highlanders (Seyoum 2015, 230). As a result, "the indigenes regard the economic success of the Highlanders with consternation" (Dereje 2009, 651).

Above all, the continued large influx of Highlanders into MNZ further enhanced the social distance between the two groups. The indigenous people openly and strongly resented the Highlanders' unprecedented movement to their territory. The Majang believed that this inexorable migration threatened their survival. Consequently, they tried to expel 12,000 Highlanders in 2010 though not successful (Seyoum 2015). The Majang people's attitudes were also reflected in their speech across various occasions. During fieldwork, informants described a newly adopted expression that had recently gained popularity: "Let Highlanders be returned to where they came from in the same foot they came to our areas" and "Highlanders did not come here carrying a land, let them leave from our land".

According to the charge file submitted by the federal prosecutor to the Federal Higher Court's 19th Criminal Bench on December

[12] They also provide 50 per cent of the skilled work force of the region government (Dereje, 2008: 64).

31, 2014, the suspected Majang convened around an agenda titled: "The Highlanders should share the farmland and coffee plantations in the Majang Zone with the Majang ethnic group. And if they are not willing to do so, they should leave the area"[13]. As mentioned in the introduction section, the extreme form of this hatred was manifested in the 2014 deadly conflict. This violent incident has seriously strained the already complicated difference of the two communities.

2. How Ethnic Federalism Exacerbated the Social Capital Deficit

Following the fall of the Derg regime in 1991, the Ethiopian People's Revolutionary Democratic Front (EPRDF) initiated a major restructuring of the Ethiopian state, transitioning from a centralized system to an ethnic-based federal arrangement. Ethnicity became the central organizing principle for this transformation, aimed at constructing a multicultural federal polity. As a result, Ethiopia was reorganized in 1995 into nine regional states—three of which are multi-ethnic (Benishangul-Gumuz, Gambella, and the former Southern Nations, Nationalities, and Peoples' Regional State [SNNPRS])—and six largely ethnically homogenous regions (Afar, Amhara, Tigray, Oromia, Somali, and Harari), along with two chartered city administrations (Addis Ababa and Dire Dawa).

In line with this federal framework, the Gambella Regional State Constitution (Article 47[1]) formally recognizes five indigenous ethnic groups – the Nuer, Anywaa, Majang, Opo, and Komo—as the "owner nationalities" of the region. Based on their territorial presence and demographic weight, the region was subdivided into three administrative zones (Anywaa, Nuer, and Majang) and one special woreda known as Itang aimed at accommodating Opo and Komo. The designation of the Majang

[13] The Reporter, "Gambella's Commander of Special Police force along with other high ranking officials is charged with". Addis Ababa: 04/01/2015.

Zone reflects the status of the Majang as one of the region's "owner nationalities." The concept of "owner nationality" implies a deep-rooted attachment to a specific territory, from which political and resource-based rights are derived. As Clapham (2002, 29) notes, "a political unit owned by one group could not be owned by another." This notion facilitates privileged access to power and resources. Being an "owner nationality" confers a dominant position to indigenous groups, prompting efforts to recalibrate the balance of power in their favor.

Interviews in the MNZ revealed that this designation has sparked local tensions between indigenous and non-indigenous residents. Although marginalized minorities have gained formal recognition as "owner nationalities," non-titular groups – particularly the Highlanders – believe that they have become politically disenfranchised. Scholars also attest to this argument. Asnake (2012, 100), for example, observes, "The Highlanders are, for all practical purposes, removed from the region's politics" (see also Assefa 2008, 277–278). Seyoum (2015) also argues that the policy has contributed to political exclusion and growing social distance. Indigenous groups are granted political legitimacy as "owners," while Highlanders are left without meaningful representation.

The Majang, for their part, perceive the Highlanders as a demographic and political threat. Although the Majang hold formal political majority status, they fear that the numerical dominance of Highlanders – who now constitute approximately 80% of the MNZ population – could undermine their leadership (Seyoum 2014b). This demographic imbalance, exacerbated by continued Highlander migration, has generated anxiety among Majang political elites.

To preserve their dominance, Majang leaders have staffed key government positions almost exclusively with members of their

own ethnic group. In cases where qualified Majang candidates are unavailable, they have recruited Majang or Sheko individuals from neighboring zones in SNNPRS (Sheka and Bench-Maji Zones), rather than appointing Highlanders. This solidarity-driven strategy – such as the "importation" of educated Majang and Sheko from neighboring Teppi – aims to counterbalance Highlander demographic growth.

Political party affiliation in MNZ is also ethnically segmented. The Majang are organized under the Gambella Peoples Liberation Movement (GPLM), the regional party for indigenous groups, while Highlanders tend to affiliate with national parties such as the EPRDF or other opposition groups. Although some Highlanders hold seats in zonal, *woreda*, and *kebele* councils, they typically represent the ruling party rather than their own communities.

This dynamic illustrates how Ethiopia's ethnofederal system has become a divisive force at the local level. As Odoemene (2008, 237) argues, the distinction between "settlers" and "indigenous" groups is fundamentally a question of citizenship – an inherently exclusionary and contested domain. Indigenous groups often seek to exclude those labeled as settlers, while settlers resist exclusion by asserting long-term residency and national citizenship. Abbink (2006, 391) similarly notes that the Ethiopian Constitution and its implementation foster "boundary thinking" between ethnic groups. Preferential treatment of certain ethnicities can reinforce or create new social divisions (Nagel 1994, 157). Assefa (2008, 277–278) contends that the federal system has produced exclusionary currents by privileging "mother state" nationalities. Tsegaye (2010, 64) adds that federal arrangements can trigger conflict by heightening group self-awareness and encouraging vertical and horizontal claims to power and resources.

In Gambella, these dynamics have manifested in various forms of ethnic conflict and rights violations, including indigenous–settler tensions, intra-indigenous disputes, indigenous–investor clashes, and society–state confrontations (Dereje 2009; Medhane 2007). The region has become "volatile" (Monika 2005), with inter-group relations increasingly defined by conflict (Dereje 2009, 641). Violence has often erupted due to both objective grievances and subjective ethnic animosities, resulting in displacement, insecurity, and loss of life.

One of the most devastating conflict events occurred already in 1991 following the withdrawal of Derg forces. Anywaa villagers attacked Highlanders with rifles and spears (Regassa 2010; Medhane 2007, 16). In 1992, armed Anywaa reportedly massacred around 200 Highlanders in Ukuna hamlet (Kurimote 1997, cited in Dereje 2009, 644). In retaliation, Highlanders indiscriminately killed indigenous residents. A major conflict in 2003 claimed approximately 200 lives (Dereje 2009; Regassa 2010; Medhane 2007). On December 13, 2003, a deadly ambush in Gambella town triggered a three-day rampage.

On September 11, 2014, violent clashes erupted between Majang and Highlanders in MNZ – a region previously known for relative calm. The conflict, rooted in long-standing land disputes, escalated into brutal violence. Armed groups from both sides used spears, machetes, and AK-47s. The discovery of a burned pregnant woman's body intensified the violence, leading to retaliatory attacks. Eyewitnesses reported at least 20 deaths in Meti town, with some estimates reaching 30. Official figures indicate 79 deaths in Mengesh and Godere woredas, 27 injuries, 273 homes destroyed, and 13,034 people displaced (The Reporter 2015). According to the U.S. State Department, 600 households were relocated in September alone.

Since 2018, Ethiopia has witnessed a dramatic escalation in ethnic and regional conflicts, marking a turbulent chapter in its

political history. In Gambella Region and its Majang Zone too, the national crisis has exacerbated existing tensions between indigenous communities and settler populations, deepening mistrust and social fragmentation. The Majang–Highlander conflict is also affected in this broader climate of instability, underscoring the fragility of Ethiopia's ethno federal experiment and the urgent need for inclusive peace building mechanisms. ACLED's EPO database shows that 215 political violence events have been reported in various areas of Gambella throughout the years from 2000 to 2023. However, most of the conflicts occurred after 2018. From 2015 violent conflict events, 122 (58%) of them occurred since 2018. For NNZ, the same database has recorded, conflicts such as the following:

> *On 6 September 2023, and for a third day, unidentified gunmen (likely ethnic Majang/Majangir militias due to the location and similar attacks by the group) shot and killed 9 civilians (likely ethnic Amhara farmers due to their settlement) in Akashi kebele, Godere woreda (Mejenger, Gambela), and in Gelesha kebele over land disputes. The armed group also attacked and killed four civilians in Goshene kebele during the same period and nine fatalities split between 2 locations during three days (4 - 6 September)*[14].

3. Conclusion

The Majang–Highlander relationship in the Majang Zone exemplifies the deep-rooted social fragmentation and political exclusion that can emerge under an ethnically defined federal system. The absence of meaningful socio-economic and political engagement between the two groups has fostered minimal social interaction, entrenched ethnic boundaries, and widened social distance. These divisions – manifested in marriage practices, residence patterns, language use, and cultural norms – have eroded trust, undermined social capital, and fueled mutual stereotyping and resentment.

[14] See https://epo.acleddata.com/, accessed 07 March 2025

The lack of crosscutting institutions and inclusive local governance structures has further exacerbated tensions, transforming latent grievances into violent conflict. Cultural incompatibility and the absence of structural and cognitive dimensions of social cohesion are evident in the Majang–Highlander context. Ethnic labeling practices – such as "*galen*" and "*bariyawochi*" – symbolize the lack of mutual respect and cooperation, reinforcing in-group/out-group boundaries and obstructing peaceful coexistence. While ethnic federalism is not the sole driver of conflict, it has undeniably contributed to the crystallization of group identities and the institutionalization of exclusion.

The Majang Zone case challenges the assumption that ethnofederalism is a suitable governance model for managing complex diversity at the local level at least in its current model. Without deliberate efforts to foster inclusive governance, build trust, and promote inter-group engagement, the region risks further polarization and recurrent violence. The article suggests the importance of deliberate efforts to cultivate social capital as a foundation for peaceful coexistence. Such efforts must be complemented by targeted interventions to dismantle legal and political barriers that hinder inclusive governance and equitable inter-group relations.

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Examining the Roles of National Human Rights Institutions (NHRIs) in the Implementation of Peace Agreements: The Case of CoHA of Ethiopia

Abreha Mesele [15]

Abstract

Peace agreements and treaties end armed conflicts by bringing parties to negotiate and stop hostilities. The Pretoria Agreement on Cessation of Hostilities (CoHA) entered between the Ethiopian Federal Government and the Tigray People's Liberation Front on 3 November 2022 at Pretoria, the Republic of South Africa ended the Tigray war, creating a Joint Committee for monitoring compliance. National Human Rights Institutions (NHRIs) like the Ethiopian Human Rights Commission (EHRC) are increasingly vital in overseeing peace agreement enforcement. This article highlights NHRIs' role in protecting human rights post-conflict and the benefits of including them in implementation frameworks. It notes challenges such as unclear operational guidelines for NHRIs at various levels, which limits effectiveness. The article calls for coordinated frameworks to strengthen the enforcement of CoHA in Ethiopia, advocating for expanded mandates and institutional reform of the EHRC. It suggests renegotiating CoHA's implementation architecture to formally integrate the EHRC after vetting, enhancing institutional roles and promoting peace agreement success.

Keywords: *peace agreements, implementation mechanisms, human rights, CoHA, human rights institutions, NHRIs, and Ethiopia.*

[15] Abreha Mesele Zinabu: LLM (Addis Ababa University), LLB (Mekelle University), Assistant Professor of Human Rights Law at Mekelle University, School of Law. He can be reached at email: abreha.mesele@mu.edu.et, ORCID**:** **https://orcid.org/0009-0003-6706-637060**

Introduction

The majority of violent conflicts that happen within the territories of sovereign states have terminated by way of peace agreements (Bell, 2006) made between the warring parties; usually central governments and armed groups. Peace agreements are made by peace processes (ICHRP, 2006) which are aimed at ending conflicts and thereby ensuring lasting peace and the respect of human rights if the implementation of the peace agreements succeed. This is true because a peace agreement is not peace implementation (Hehn, 2011) and for sustainable peace to happen, the roadmap (the peace agreement) should be properly implemented by national actors according to the outline provided by the peace agreement. Peace agreements are incrementally considered to be one of the main ways of trying to move societies away from violent conflicts (Bell, 2006).

The Tigray War which erupted on November 4, 2020, concluded after the signing of the Permanent Cessation of Hostilities Agreement (CoHA) signed between the Federal Government of Ethiopia (hereinafter called FGE) and the TPLF in Pretoria, South Africa on November 3, 2022. The agreement was facilitated by the AU High-Level Panel led by the former president of Nigeria Olusegun Obasanjo, supported by the former president of Kenya Uhuru Kenyatta, and former Deputy President of South Africa Dr. Phumzile Mlambo-Ngeuka, and the Republic of South Africa, which hosted the Peace Talks.

Although TPLF was the political party administering the Tigray region before the war, its status during the war and after the agreement is unclear. On one hand the license of TPLF as a political party was revoked by the National Election Board of Ethiopia and on the other hand the designation of the party as a terrorist organization was de-proscribed by the House of Peoples Representatives after the agreement. Moreover, the CoHA created

an Interim Administration for Tigray region, although the composition of the Interim Administration are dominantly individuals from TPLF, including the president of the Interim Administration. Because of these confusing conditions of TPLF, it is unclear who owes the burden to implement the CoHA (TPLF or Interim Administration). In addition to this, it is also unclear who should negotiate the implementation of the CoHA in the future rounds of negotiations.

The monitoring, verification, and compliance mechanism (MVCM) was to be handled by a Joint Committee of representatives from each party, a representative from the Intergovernmental Authority on Development (IGAD), and chaired by the AU High-Level Panel and then to be assisted by African Experts (one expert from each party to the agreement).

The CoHA aimed to halt the conflict in Tigray to avoid further destructive consequences of the war that affected human lives and livelihood. To create a path to sustainable peace, the CoHA lays the foundation for further dialogue and the promotion and protection of human rights by rejecting violence as a means of solving disputes between the parties and embracing peaceful settlements of disputes. The rejection of violence as a means to settle disputes is connected with the AU Agenda 2030-Silenceing the Guns. The agreement underscored the importance of using African solutions for African problems as a framework for resolving conflicts.

Although the AU theoretically advocates for "African solutions to African problems"—a phrase that powerfully reflects the importance of ownership and agency in addressing the Continent's challenges—in practice, this ideal often remains little more than a slogan, with limited real-world application. The overall objective of the Agreement was to restore the constitutional mandates, structures, and constitutional principles to both parties; the FGE and the regional government of Tigray

led by TPLF. The agreement stated that the Ethiopian Peoples' desire to live in peace and dignity, an inclusive democratic society based on justice, equality, respect for *human rights, and the rule of law* are grand principles on which the agreement is anchored. The need to respect, promote and protect human rights is encapsulated under article 2(c) cum article 4(1) of the peace agreements. Beyond this, the peace agreement recognizes the AU's values on democracy, election, and governance coupled with the use of the AU Transitional Justice Policy Framework (AU-TJPF) for the accountability and justice processes in relation to violations committed during the war as a path to resolve the conflict.

The CoHA never mentioned the roles of National Human Rights Institutions (NHRIs) like the Ethiopian Human Rights Commission (EHRC) that could play greater roles in the implementation of the agreement as these institutions are major stakeholders in the process of upholding rule of law and promotion of human rights. However, the roles of these institutions are concealed under the phrase of "restoring the constitutional order" in the sense that when the constitution is restored, the constitutional mandate of these institutions will come into play. The institutional mechanism for implementing the agreement is hidden behind the wall of the restoration of the constitutional order.

This article therefore aims to examine the roles of the NHRIs in the implementation of the CoHA by distilling experiences from other countries that operated within the context of conflict and post-conflict situations. The article determines the nature, content, and legal status of the CoHA in light of peace agreements and peace treaties under the Vienna Convention on Laws of Treaties of 1969 and 1986, the International Court of Justice (ICJ) statute, and human rights instruments. Moreover, the article examines the importance of the use of human rights institutions in peace agreements and situates how the EHRC could play its respective

roles in the implementation process of the CoHA. Concerning this, the article explores the challenges of enforcing the CoHA in the absence of a clear road map as regards the roles of human rights institutions like EHRC in the Pretoria Agreement in the future. Peace agreements need to clearly outline the path of peace implementation by creating new human rights institutions or broadening the mandates of the existing human rights institutions so that the possibility of successfully implementing the peace agreement would increase against the probability of the reversal to war.

The study investigates the roles of NHRIs in the implementation of peace agreements and seeks to answer the following questions: 1) What roles do NHRIs have in implementing peace agreements? 2) What shortcomings exist in the implementation strategy of the CoHA? 3) What lessons can be drawn from other countries' experiences in utilizing NHRIs as mechanisms for implementing peace agreements?

1. Brief Note on Research Methods

The study on the role of NHRIs in the implementation of a peace agreement employed a qualitative method, utilizing a triangulation of approaches and data collection tools for verification of the findings. Document analysis involved reviewing relevant documents such as the CoHA, reports of the African Union's Monitoring, Verification and Compliance Mission (AU-MVCM), statements of TPLF and the federal government, and legal documents to understand the role and mandate of NHRIs in the CoHA context. Additionally, cases from different countries, selected based on the nature of the relevant peace agreement, were examined where NHRIs have been involved in peace agreements, identifying common trends, challenges, and best practices.

The study also utilizes the peace agreement database of the University of Edinburgh[16] to distill experiences from other countries. The triangulated data was analyzed using content, thematic, and document analysis, as well as case analyses, to synthesize available data.

2. The Nature of the Armed Conflict in the Tigray War

The armed conflict is referred to as the "Tigray War" because the parties involved were the Tigray Special Forces, led by the TPLF, and the FGE. The author chose this title to reflect the main actors in the conflict. It is important to distinguish between a war and a battle: while the fighting may have extended to neighboring regions such as Amhara and Afar, the principal warring parties remained the Tigray Special Forces under the leadership of the TPLF and the FGE. This is, however, outside the scope of this article.

Armed conflicts could be either international/internationalized wars or non-international (Cullen, 2010). The non-international armed (usually termed as civil war) is a war within the territory of a sovereign state (Kolb &Hyde, 2008) usually between the central government and armed groups either for more independence from the central government or self-governance and inclusion into the federal power. By contrast, an international armed conflict is a conflict between two or more sovereign states (Kolb &Hyde, 2008).

Sometimes, however, non-international armed conflict can be internationalized if a sovereign state participates in the conflict against the central government which is usually the federal government in states having federalism as state structure. Due to evolving circumstances during a conflict, a war that begins as a civil war may transform into an international armed conflict in its conclusion. For instance, the conflict between Sudan and the

[16] For details see https://www.peaceagreements.org/.

Sudan People's Liberation Army (SPLA) started as a civil war but ended with the establishment of a new state, South Sudan. Consequently, the agreement between the parties was a peace treaty rather than a peace agreement.

The Tigray War is hard to characterize on the basis of the aforementioned categories for two reasons. The first reason is the involvement of Eritrean forces which could have made the conflict international armed conflict but the Eritrean government was not fighting with the federal government. The Eritrean forces[17] were invited to support the Ethiopian federal government to fight the TPLF.

Despite the involvement of foreign forces of sovereign states, the nature of the conflict was intrastate conflict, which refers mainly to conflicts within a state's borders as per article -3 common to all the Geneva Convention of 1949 and Additional Protocol II of the 1977 (Bell et al, 2023). Article 1 of Additional Protocol 1977 defines non-international armed conflict as that which; "…takes place in the territory of High Contracting Party between its armed forces and dissident forces or other organized armed groups which under responsible command exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operation."[18]

From these points of view, the Tigray War was a civil war –non-international armed conflict which indicates the internal dimension of the war fought between the FGE and TPLF. Therefore, the actors in the peace process will follow the same argument later in deciding the legal status of the peace agreement: the CoHA.

[17] Eritrean forces cannot be considered as mercenaries as the criteria set out under article 47 Additional Protocol II, 1977, 1989 Mercenary Convention, and the 1977 OAU Convention for the Elimination of Mercenarism in Africa define and prohibit such acts.

[18] Additional Protocol II of the 1977 on non-international armed conflict.

Was the Tigray War a territorial conflict or a non-territorial conflict? The Tigray War was a non-territorial conflict because the war was a power struggle between the regional government and its federal counterpart. The *Peace Agreement Access Tool PA-X*[19] characterizes the conflict as both government and territory which indicates that the parties were at dispute due to ideological or political disputes and issues of self-determination including secession elements not at the start of the war but transformed in the course of the war. Be this as it may, the concern of this section is to identify the warring parties because it has a bearing on the peace agreement and its implementation process and the respective obligations of actors in the implementation of the peace agreement: the CoHA.

3. The Nature, Content, and Legal Status of the CoHA

A peace agreement is defined as a formal, publicly available document, produced after discussion with conflict protagonists and *mutually agreed to by some or all of them*, addressing conflict with a view to ending it (Bell, 2017). It is important to know the nature of a conflict to characterize the nature of peace agreements. From this prism, the nature of a conflict can emanate from government (ideological or political dispute), territorial dispute or both government and territory, inter-group, and other causes (Bell, 2017).

More broadly but without determining the legal status of peace agreements, the Centre for Humanitarian Dialogue research defines a peace agreement as: "[A] *formalised legal agreement* between two or more hostile parties—either two states or between *a state and an armed belligerent group (sub-state or nonstate)*—that formally ends a war or armed conflict and sets forth terms that all parties are obliged to obey in the future" (Vinjamuri & Boesenecker , 2007:56).

[19] Available on; www.peacegreements.org.Accessed on February 10, 2024.

The other definition of peace agreements is given by the Uppsala Conflict Database (UPCD) website in the following manner: "A peace agreement should address the problem of the *incompatibility*, either by settling all or part of it or by clearly outlining a process for how the warring parties plan to regulate the incompatibility." [20]

Peace agreements can be classified using stage-function classification such as pre-negotiation, framework/substantive, and implementation/renegotiation agreements (Bell, 2008). The pre-negotiation is an agreement on how to proceed with the negotiation process (the agenda, the participants, security concerns, means of transportation, and venue); it is a talk about talks (Bell, 2008). The framework/substantive agreements (partial or comprehensive) deserve to be labelled as proper peace agreements because such agreements contain basic issues on how to address the root causes of the conflict. Uniquely, implementation agreements involve "new negotiations and in practice often undergo a measure of renegotiation as parties test whether they can claw-back concessions made at an earlier stage" (Bell, 2008).

The nature of the war between the FGE and TPLF was caused by ideological and territorial perspectives. This is why the parties to the CoHA were only determined to be the federal government and TPLF forces with the aim of peace agreements between a state and armed groups do not qualify the requirements of a peace treaty keeping such agreements in a gray area concerning its legal status.

Therefore, the CoHA cannot be characterized as a peace treaty because the Vienna Convention on the Law of Treaties states that a treaty is an agreement concluded between States and

[20] Uppsala Conflict Database, Definitions available on ; https://www.pcr.uu.se/research/ucdp/definitions/#tocjump_09027843289922743_38 . Accessed on February 17, 2024

International Organizations or between International Organizations which exclude armed group ending the conflict permanently.

To complement this, The UN has noted that since the 1990s, about 50% of civil wars have ended through peace agreements. Currently, the number of peace agreements is increasing as internal conflicts continue to rise (Caspersen, 2019). And "peace agreements continue to be signed and remain one of the main ways of trying to move societies away from violent conflict" (Bell, 2008).

The major sources of international law, *inter alia*, include treaties as per article- 38 of the ICJ Statute. Of course, there is no clear indication that article- 38 of the ICJ statute is a source of international law (Koivurova, 2014) but from the implicated reading of this article, if the ICJ uses in its adjudication provisions from treaties or others, where states are the only parties in the adjudication process, then treaties and others are sources of binding authoritative decision-making mechanisms under international fora. Treaties in general are regulated by the Vienna Convention on the Laws of Treaties 1969 and 1986. As per article -1 of the Convention, the scope of treaties is either between two or more states, one or more international organizations, or between international organizations.

The Convention defines a treaty as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular design" (Vienna Convention, 1969: Art 2). Armed groups are, therefore, outside the scope of the treaty-making process. Moreover, article -2(1)(a) of the Convention stipulates those treaties are international agreements governable by international law. However, article -3 provides a state of exceptions to article-2(1)(a) that must be construed narrowly. Articles- 3(ii & iv) cum

3(a, b & C) of the convention are exceptions to the state-centric provision of article 2(1a); it allows non-states actors other than international organizations to be a party to a peace treaty. Peas from being subjects of international law as per article- 1 and 2 respectively.

Yet the 1986 Second Vienna Convention under its article- 3 headed as *"International agreements not within the scope of the present Convention"* ambiguously states in the following manner:

> …to international agreements between subjects of international law other than States or international organizations; shall not affect:
>
> (*a*) the legal force of such agreements;
>
> (*b*) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention.

The above provision is about agreements concluded between subjects of international law *other than* states and international organizations and further elaborates that the Convention will not affect such agreements and their application.

The structure of the CoHA is similar to legal documents; having a preamble, objectives, principles, effective date, and amendment procedure in the agreement. In the preamble of the agreement, commitment to the African Union's Agenda of Silencing the Guns by 2030 was reiterated. Moreover, the efforts of the AU High-Level Panel are recognized in the preamble. Articles- 1 and 2 are on objectives and principles respectively that must be upheld during the implementation of the agreement. Articles -3 to 13 are substantive (partial framework peace agreement provisions) dealing with different issues to be addressed in the implementation phase of the peace agreement.

The CoHA is mainly aimed at addressing Disarmament, Demobilization and Reintegration (DDR), protection of civilians, gender-based violence, and access. The substantive provisions are on children/youth, elderly/age, refugee/IDPs, women, girls and gender issues, DDR, constitutional restoration, and family.

In terms of the content, the CoHA has two big categories of objectives: short-term goals and long-term goals. Some provisions of the agreement are aimed at attaining short-term goals. These goals include immediate and permanent stoppage of hostilities, silencing guns, guaranteeing security, and humanitarian assistance, and rejecting violence as a method of resolving political differences. Some other provisions of the CoHA are aimed at long-term goals including addressing matters arising out of the conflict, ensuring accountability, reconciliation, and rehabilitation, facilitating economic recovery and reconstruction, DDR, and addressing political differences through dialogue. Generally, the CoHA is purely and simply a restoration of the constitutional order.

The CoHA is a peace process without any new substantive provisions created during the agreements. All aspects were subsumed into the already existing constitutional framework; reiterating the constitutional mandate between the federal government and the regional constituent. Therefore, the CoHA is a peace agreement aimed at facilitating a peace process whereas peace treaties are treaties between sovereign states with new substantive provisions (Caspersen, 2019). Peace agreements are peace processes aimed at maintaining constitutional values or inserting certain values into the constitution whereas peace treaties are international law that imposes obligations upon the parties (sovereign states).

The CoHA is a peace agreement and cannot be qualified as a peace treaty. This is not because of the parties that signed the agreement but the substantive provisions stipulated under the

CoHA clearly show that the peace agreement is a domestic law-restoring the constitutional provisions by acknowledging the mandate of the federal government and regional constituent. Moreover, there are no new substantive obligations imposed upon the parties that could upgrade the status of the peace agreement into a peace treaty so that it will be governed by VCLTs 1969 and 1986 for compliance and execution phases. In addition, the CoHA is a peace agreement aimed at establishing a platform for further discussion on the already existing constitutional values without impacting the mandates of each party to the agreement under the Federal Democratic Republic of Ethiopia (hereinafter called FDRE) Constitution. Therefore, the CoHA is an instrument of the peace process, not a new substantive peace treaty. This is said without forgetting that CoHA was signed outside Ethiopia and by third-party mediators (international organizations) who had facilitated the agreement.

For all practical purposes, the CoHA is a domestic law because it has restored the constitutional power of the parties to the agreement. Therefore, the compliance and execution have to follow the domestic law mechanisms of implementation (Bell, 2006) on enforcement and monitoring. The CoHA has accepted all the structures and laws of the already existing frameworks. Therefore, like other domestic laws that oblige either the federal government or regional constituents, the CoHA resumed the existing obligations of the federal government and the government of the regional state of Tigray by restoring the constitutional obligations assumed by the parties before the war. The CoHA could be better implemented in its status as domestic law (like the constitution) than to be a peace treaty that will base itself on the consent of states for its implementation.

Therefore, any noncompliance by either of the parties under the CoHA could be held responsible and accountable by using ordinary courts or any structure under the federal arrangements.

The restoration of the constitutional order by the CoHA will enable NHRIs like the EHRC to engage in supporting the peace process for a better peace-building process in the country and thereby assist the parties in the accountability processes for the violations of human rights during the conflict. When peace agreements embrace human rights provisions, human rights institutions have to look backward (for abuses of the past) and forward (for better protection and promotion of human rights) (Bell, 2006). Human rights responses to past abuses including transitional justice under the CoHA reinforce better peace building and thereby ensure better protection and promotion of human rights in the future.

4. The Need to Institutionalize Peace Agreements: CoHA in Focus

Reaching an agreement on conflicts by the warring parties was considered as an end in itself in the early 1990s but research suggests that: "a significant number of peace agreements break down within five years (the United Nations uses a figure as high as 50%), more within a ten-year period, with many of the remainder entering 'no war no peace' limbo whose evaluation is difficult" (United Nations, 2005:114).

For the successful implementation of peace agreements, human rights institutions play an indispensable role (Bell, 2003). These human rights institutions could be international, regional, or national human rights institutions. Some peace agreements recognize human rights institutions in peace agreements and integrate them as one component of the peace agreement. Moreover, human rights institutions, particularly at the national level, could catalyze the process of constitutionalism and democratization process into the future (Bell, 2003).

Peace agreements create an opportunity for human rights institutions to take deep root and ensure the protection and respect of human rights thereby ensuring lasting peace to

prevail. In addition to these, some peace agreements create new institutions and structures that could further boost the promotion and protection of human rights nationally. For example, the Lomé Agreement, which aimed to resolve the conflict in Sierra Leone, established a Human Rights Commission empowered to seek technical and material support from the UN High Commissioner for Human Rights, the African Commission on Human and Peoples' Rights, and other relevant international organizations (Lacatus & Nash, 2019). Additionally, in Uganda, Sierra Leone, and Burundi, the mandates of their respective national human rights institutions were expanded to address post-conflict situations following peace agreements (Sean, 2021).

When peace agreements are reached, third parties either beginning from pre-negotiation or during the substantive peace agreement, participate as signatories, witnesses, or observers. Concerning this, Bell explained in the following manner: "the majority of peace agreements employ third-party states and *international organizations* as signatories to agreements, either through direct signature or signature in the capacity of 'witnesses,' 'guarantors,' or 'observers'' (Bell, 2006).

In the CoHA, the third parties directly signed the peace agreement next to the parties to the conflict in the capacity of witnesses. However, when we look into the details of the content of the CoHA, its provisions reveal that AU has influenced some provisions and can be considered as normative negotiators or normative influencers. This is because articles such as 2 (e & f), 10, and 11 and the preamble provide that the CoHA has to be interpreted in light of the principles of the AU. Moreover, the AU and IGAD were made to be regional organizations that could assist in the monitoring, verification, and compliance process of the peace agreement entered by the parties. Moreover, Kenya, the Republic of South Africa, and Nigeria are third parties in the CoHA by their representatives Uhuru Kenyatta,

Dr. Phumzile Mlambo-Ngeuka, and Olusegun Obasanjo respectively.

a. International Institutions

International institutions like the UN could participate as mediators[21] in the process of pre-negotiation to help parties reach a deal called peace agreements or treaties. Moreover, international institutions like the UN could participate in the monitoring, verification, and compliance of the peace agreement as a guarantor (Arbour, 2006) when the peace process is between sovereign states. Beyond this, such organizations may put pressure on the parties, especially in peace treaties between states to recognize international human rights and international law[22] standards in the peace treaty-normative promotion/normative influencer.

Coming to the CoHA, the UN participated by sending a representative to observe the peace process held in Pretoria, South Africa. Therefore, it can be said that the UN had no substantive engagement in the peace process as the peace process was between the FGE and TPLF (TPLF combatants (article 6(b, e and f) of the CoHA).

b. Regional Institutions

Regional institutions are mentioned in a small number of cases and are rarely used to implement human rights commitments found in peace agreements (Lacatus & Nash, 2019). However, negotiating parties in peace agreements prioritize the creation of NHRIs over other forms of institutionalization of human rights

[21] Assistant Secretary-General for Human Rights, Ilze Brands Kehris remark available on; https://www.ohchr.org/en/speeches/2022/06/role-human-rights-peace-and-mediation-processes Accessed on 3 November,2023.

[22] Article 1(1) of the UN Charter which states that … to bring about by peaceful means, *and in conformity with the principles of justice and international law*, adjustment or settlement of international disputes or situations which may lead to a breach of the peace.

protection (Lacatus & Nash, 2019).

As reiterated and recognized under the CoHA preamble, the African Union, which is a regional organization on the African Continent, had played a very essential role in helping the parties reach an agreement. The peace process was even facilitated by the AU High-Level Panel led by Olusegun Obasanjo. Unlike the UN, the AU together with the IGAD was given the mandate to monitor, verify, and put in place compliance mechanisms for the effective implementation of the CoHA under Article 11. However, there is no mention of the roles that could be played by regional human rights institutions like the African Commission in the CoHA.

The AU had also the opportunity to influence the peace agreement substantively. For example, article10(3) of the CoHA obliges the FDRE government to implement a comprehensive national transitional justice policy that is aimed at ensuring accountability, truth-seeking, reparation, reconciliation, and healing. This national transitional justice policy however has to be consistent with AU Transitional Justice Policy Framework. In addition to this, the African Charter on Democracy, Elections, and Governance is recognized as a grand principle underpinning the CoHA to guide during implementation and further peace process into the future. The African Charter on Democracy, Election, and Governance is a framework that has to be applied to the political dialogue sought to be made between the Federal Government and the regional government in Tigray for the power-sharing between them.

The broad engagement and influence of the AU were for two reasons: 1) African solutions to African problems which is reiterated under the CoHA preamble paragraph three, and 2) the conflict had happened in a country that is a founding member and seat of the African Union that creates sort of belongingness by the parties.

Even though the CoHA entrusted monitoring, verification, and compliance to AU and IGAD, such organizations were inappropriate organs due to their inherent participation in the war supporting the federal government (Mulugeta, 2022). Monitoring and verification mechanisms help conflict actors overcome commitment problems and information asymmetries through the reporting of *credible* information in the post-agreement setting (Madhav et al, 2015). However, the act of monitoring and reporting on levels of compliance can promote either peace or conflict depending on what is being reported (Madhav et al, 2015). Taking these risks into account, the reports of compliance by the two intergovernmental organizations will have a negative impact on the peace process and may compel parties to return to war. This holds true as there is no trust towards such institutions by the TPLF.

C. The Roles of NHRIs in the Implementation of Peace Agreements

Depending on an array of factors, NHRIs may either promote or hamper the implementation of peace agreements in post-conflict settings, and thereby make the transition smooth or difficult. The factors include the "*institutional design of an NHRI*, the *degree of autonomy from the government*, and the *level of expertise* needed to navigate the post-conflict landscape" (Sean, 2021).

In many peace agreements, the inclusion of human rights institutions into peace agreements are believed to contribute positively to the successful implementation of peace agreements (Sean, 2021). Moreover, the inclusion of NHRIs is seen as key contributors to democratization processes, the promotion of respect for the rule of law, and the transition to durable peace (Lacatus & Nash, 2019). Most peace agreements that excluded human rights institutions from their substantive provisions have failed in the implementation phase and reverted to war (ICHRP, 2006). The inclusion and exclusion of human rights institutions

into the peace agreement is part of the political bargaining (Kolb & Hyde, 2008).

For instance, in Nepal, the National Human Rights Commission (NHRC) had previously exposed the brutality of the conflict and prepared the ground for international interest in resolving the human rights crisis there. Moreover, a UNDP/Office of the High Commissioner for Human Rights Toolkit (UNDP and OHCHR 2010) outlines how in Burundi the National Human Rights Commission played a cooperative role in reviewing transitional justice-related processes on an ongoing basis, including attending and preparing reports on human rights aspects of many of these processes. Similarly, Sajjad explains how in Morocco, following pressure from victims and human rights organizations, the Human Rights Consultative Council (CCDH) issued a report on 112 disappearance cases and proposed the establishment of a mechanism to provide financial compensation for victims (Sajjad, 2009).

Moreover, in post conflict situations, a number of NHRIs have been established as part of peace agreements, for example in El Salvador in 1992. The peace agreements of Guatemala, Bosnia-Herzegovina, Sierra Leone, Northern Ireland, South Africa, Rwanda, and Afghanistan also included provisions relating to NHRIs (Andrea &Anna, 2017).

For NHRIs to be effective in the implementation of peace agreements, they need to be *independent, have a plural composition, transparent, and mandates that enable them to carry out a wide range of functions (*Arbour, 2006). Both the 2015 Kyiv Declaration and the 2010 Toolkit for NHRIs of the United Nations Development Programme (UNDP) and OHCHR underscored the importance of NHRIs in the implementation of peace agreements in post-conflict contexts. The Kyiv Declaration for example states in the following: "[I]n conflict and post-conflict situations the actions required of a National Human Rights Institution differ from

usual activities of human rights promotion and protection in peacetime.

The Paris Principles do not provide sufficient guidance on National Human Rights Institutions' role in conflict or post-conflict situations."[23] In a similar vein, the 2010 Toolkit for NHRIs of the UNDP and OHCHR states that, NHRIs can *monitor* and *record violations* during both conflict and authoritarian rule and transitional periods. These efforts can support future prosecution initiatives, truth-seeking and truth-telling bodies, reparations measures, and vetting processes. It also notes that NHRIs can assist victims by ensuring that they have equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. NHRIs can also assist victims and witnesses with measures such as relocation and resettlement.[24]

On top of these guidelines, the 2009 Rabat Declaration on the Network of African National Human Rights Institutions (NANHRI) stated that NHRIs could assist peacebuilding and transitional justice efforts and implementation of peace agreements by navigating post-conflict terrains.

To substantiate the importance of using NHRIs in peace agreements for better implementation, we can see peace agreements that assign NHRIs a role in helping to implement aspects of a peace agreement. For instance, in South Sudan, the 2005 Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Army/Sudan People's Liberation Movement

[23] The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations Kyiv, Ukraine,21-22 October 2015

[24] UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010

provides that the Human Rights Commission shall monitor the human rights and fundamental freedoms contained in the agreement (Naivasha Agreement, 2005: 31). The 1996 Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (Abidjan Accord, 1996: 8), and the 2006 Comprehensive Agreement concluded between the Government of Nepal and the Communist Party of Nepal do the same.

In Uganda, the parties to a June 2007 agreement between the government and the Lord's Resistance Army consider that the Ugandan Human Rights Commission and the Uganda Amnesty Commission are capable of implementing relevant aspects of the agreement (Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, 2007: 7). In Nepal, according to the 23-Point Agreement between the Top Leaders of the Seven-Party Alliance (2007), the National Human Rights Commission was tasked with monitoring aspects of the agreement.

In summary, involving NHRIs in the implementation phase of peace agreements is crucial for their success and for preventing a relapse into conflict. Moreover, NHRIs help ensure local ownership of the peace process by contextualizing the agreement throughout its implementation. This is especially relevant when the peace agreement is negotiated between a central government and insurgent groups.

5. The Potential Roles of EHRC in the Implementation of the CoHA

NHRIs like the EHRC are the most prevalent formal bodies with human rights mandates in peace agreements (Lacatus & Nash, 2019). As a result of this, most peace agreements rely primarily on NHRIs and to a lesser extent on international human rights institutions as part of peace implementation processes (Lacatus

& Nash, 2019). The reason that peace agreements rely primarily on NHRIs is due to the fact that such institutions could localize and facilitate the implementation of the peace agreements. In addition to this, NHRIs' geographical proximity enables them to monitor the national implementation of human rights obligations more closely than regional and international institutions (Kolb & Hyde, 2008). NHRIs are thus positioned between civil society and the state and between the national, regional and international level.

Although the CoHA does not include provisions regarding NHRIs as implementing bodies, the agreement contains several clauses addressing human rights issues, including the rights of children and youth, women and girls, the elderly, equality, democracy, and transitional justice. However, this section aims to highlight the gap in the CoHA's implementation strategy, specifically its failure to incorporate human rights institutions such as the EHRC. The EHRC was established by proclamations enacted under the authority of the Ethiopian House of People's Representatives (HPR), in accordance with Article 55(14) of the FDRE Constitution. Based on this constitutional provision, the EHRC was originally founded by a proclamation in 2000, with an amendment introduced in 2020.

The EHRC was established under Proclamation No. 210/2000 and later amended by Proclamation No. 1224/2020, with Articles 5 and 6 outlining its core mandate to promote, protect, and ensure the full enforcement of human rights in Ethiopia. The Commission is empowered to take necessary actions when human rights violations occur, including conducting investigations based on complaints or on its own initiative. It also provides opinions on human rights reports submitted to international bodies, contributing to Ethiopia's compliance with global human rights standards. The 2020 amendment further expanded the EHRC's responsibilities, explicitly including monitoring of elections and overseeing situations involving

states of emergency.

Additionally, Article 6(14) of the amendment allows for the possibility of broadening the Commission's mandate if such expansion would better serve the protection and promotion of human rights. The EHRC operates independently, with a nationwide presence, and plays a vital role in educating the public about human rights, reviewing laws for constitutional compliance, making policy recommendations, and engaging with international human rights mechanisms. Its work is recognized as essential in addressing human rights abuses and fostering accountability in Ethiopia.

In accordance with its foundational purpose, the EHRC could potentially support the implementation of the CoHA, even though the agreement itself does not specify any role for the institution in enforcing its provisions. Regarding the EHRC's involvement in enforcing the CoHA, two main arguments emerge. First, since the EHRC is not explicitly designated as an implementing body within the CoHA, some argue that its involvement is unnecessary. Second, critics—including some officials from Tigray—contend that the EHRC was complicit in the conflict by supporting the federal government, one of the parties to the war, which raises concerns about its perceived independence from the perspective of the TPLF, a negotiating party.

The first argument, however, could be contested by referencing the CoHA's commitment to constitutional restoration and the amended proclamation, specifically article 6(14), which may expand the EHRC's mandate and enable its involvement in the process. If the constitutional order is to be restored, even though such institutions are not explicitly named in the CoHA, this would imply the reinstatement of their mandates. Since the majority of the substantive provisions of the CoHA fall within the responsibilities of this institution, expanding their mandates

and properly vetting them could significantly enhance the implementation process, especially regarding the long-term goals of the agreement. Regarding the second argument, while the position is faced by counter-arguments and needs a thorough substantiation, some argue that the EHRC did not act independently and was instead complicit with the federal government in investigating and documenting human rights violations during the Tigray war (Abadir, 2023). Even so, with thorough vetting and further institutional reform, the EHRC could assume a constructive role in supporting the CoHA's implementation moving forward.

While the EHRC has been actively monitoring, investigating, documenting, reporting human rights violations across the country, including in the Tigray region, its findings have often been challenged and disputed. Notably, the EHRC collaborated with the Office of the United Nations High Commissioner for Human Rights (OHCHR) to produce a joint investigation report detailing violations of human rights and humanitarian law during the conflict, which some media outlets from the federal government have referred to as the "Northern Ethiopia" war. This partnership demonstrates the EHRC's ability to work with international organizations and contribute to the investigation and documentation of human rights abuses—an essential element for ensuring accountability within the transitional justice process outlined in the CoHA. Additionally, in February 2024, the EHRC released a monitoring report on the situation in Tigray following the signing of the CoHA, offering an evaluation of the progress made in implementing the agreement's provisions.

Given these engagements, it is strongly recommended that institutions such as the EHRC be actively integrated into the ongoing implementation of the CoHA. This integration should be supported by comprehensive institutional reforms and an expansion of the EHRC's mandate to better equip it for this

critical role. Moreover, to enhance the effectiveness and legitimacy of the peace process, the EHRC should be formally recognized and included as an implementing body in any future negotiations related to the CoHA. Such formal inclusion would align with Article 15 of the agreement, which emphasizes the importance of robust enforcement mechanisms.

By strengthening the EHRC's institutional capacity and formally involving it in the peace process, Ethiopia can ensure more effective monitoring, enforcement, and promotion of human rights throughout the implementation of the CoHA. This approach would not only support accountability and transparency but also contribute to building lasting peace and reconciliation in the country.

In summary, although the CoHA does not explicitly designate the EHRC as an implementing institution, its foundational purpose and expanded mandate provide a strong basis for its involvement in the peace process. Addressing concerns about independence and ensuring institutional reform could enable the EHRC to play a vital role in advancing the agreement's goals and supporting sustainable peace in Ethiopia.

6. Conclusion

Most peace agreements incorporate NHRIs, either by establishing new ones or by expanding the mandates of existing institutions as a key mechanism for implementing peace agreements. The involvement of NHRIs in peace processes can have both positive and negative impacts. To maximize their positive contributions, NHRIs must be independent, pluralistic in composition, transparent, and empowered with broad mandates that enable them to perform a wide range of functions. For example, NHRIs have played constructive roles in the peace agreements of South Sudan (2005), Sierra Leone (1996), Nepal (2006), and Uganda (2007). Conversely, these institutions can have detrimental effects if they lack independence and are

aligned with government interests. In such cases, they may undermine peace efforts by presenting distorted accounts of the progress in implementing peace agreements, potentially contributing to a resurgence of conflict.

From this perspective, the CoHA lacks a dedicated institutional enforcement mechanism, assigning the responsibility for overseeing implementation—such as monitoring, verification, and compliance—to the African Union (AU) and the Intergovernmental Authority on Development (IGAD). This approach is problematic for two main reasons: first, these institutions have been accused, particularly by the TPLF, of complicity in the conflict and have never condemned the federal government's actions; second, they lack experience in monitoring, verifying, and ensuring compliance in peace agreement implementation, making them ill-suited for this role.

As a result, the CoHA's implementation framework is fundamentally flawed. Therefore, it is essential for the parties to negotiate an additional agreement specifically addressing the mechanisms for implementation. This new agreement should include key stakeholders, notably NHRIs such as the EHRC, with an expanded mandate and strengthened structure. Incorporating these institutions will help ensure effective monitoring of the parties' obligations under the CoHA, thereby promoting sustainable peace, advancing democratization, upholding human rights, and reinforcing the rule of law in the country's future.

Including NHRIs as implementing institutions will bolster the transitional justice initiatives agreed upon by the parties to effectively address human rights violations committed during the war. Additionally, expanding the mandates of the EHRC could enhance the implementation process, as this body is primarily tasked with monitoring government actions related to human rights protection and promotion in general. This

institution also serves as a vital platform for upholding the rule of law.

The responsibility for monitoring, verification, and compliance should be entrusted to national institutions such as the EHRC. Granting this mandate to NHRIs like the EHRC will significantly strengthen the implementation of the CoHA, particularly in achieving its long-term objectives.

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The Response of the Judiciary to Intimate Partner Violence in Addis Ababa City Administration

Helen Abelle [25]

Abstract

In Ethiopia, cases of intimate partner violence against women (IPVAW) are frequently adjudicated using the same procedures as ordinary criminal cases, despite their distinct nature. This practice, lacking a human rights-based approach, heightens the risk of secondary victimization. This article assesses how the judiciary responds to IPVAW cases, focusing on the adjudication process, judicial decisions, case timelines, and available protective measures. A qualitative research approach was employed drawing on data from survivors, actors within and outside the legal system, and relevant IPVAW court cases in selected courts in Addis Ababa. The research identified significant challenges to an effective judicial response such as absence of specialized procedures, protracted case resolutions, lenient sentencing, and insufficient measures to ensure the dignity, safety, and privacy of survivors. Based on these findings, the article recommends reforms that prioritize survivors' rights and safety throughout the court process. Key suggestions include providing specialized training for judges and court personnel and implementing targeted strategies to ensure that survivors are protected from further harm.

Keywords: Courts, Ethiopia, Human Rights-Based Approach, Intimate Partner Violence, Women

[25] PhD Candidate ; Lecturer at Hawassa University, College of Law and Governance, School of Law. Email: abellehelen@gmail.com
ORCID: https://orcid.org/0009-0008-3495-137X
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Introduction

Intimate partner violence against women is a pervasive global issue that transcends social class, race, ethnicity, and nationality. The repercussions of IPVAW are far-reaching. Victims may endure severe physical injuries, prolonged psychological trauma, compromised reproductive health, and, in extreme cases, fatal outcomes. Beyond individual suffering, IPVAW inflicts profound societal and economic costs by destabilizing families, perpetuating cycles of intergenerational violence, and imposing heavy burdens on healthcare systems, productivity, and social welfare resources (Sophie & Eleni 2019).

As guardians of justice, the judiciary holds the potential to shape legal and social norms. It is expected to protect the vulnerable and deliver justice with fairness and impartiality. The judiciary must adopt a progressive and just stance by condemning all forms of violence and creatively enforcing laws to provide justice for women who suffer abuse (Shalu 2022). By ensuring survivors'[26] safety, holding perpetrators accountable, and preventing re-victimization, the judiciary sends a clear message that all forms of VAW, including IPVAW, are taken seriously (Council of Europe 2016).

In Ethiopia, the judiciary constitutes a fundamental branch of the state (Aderajew & Kedir 2009). The FDRE Constitution establishes comprehensive principles governing the organization and responsibilities of the judiciary.[27] Like courts worldwide, Ethiopian courts bear the crucial task of delivering justice. They are expected to

[26] This article uses the term 'survivor' instead of 'victim' when referring to individuals who have experienced IPVAW. This is because the term 'survivor' emphasizes their strength and agency in overcoming their experiences of violence.

[27] The Federal Democratic Republic of Ethiopia, *The Constitution of the Federal Democratic Republic of Ethiopia*, 21 August 1995. Proclamation No. 1/1995. And Article 79(1) and The Federal Democratic Republic of Ethiopia, *Federal Courts Proclamation*, 26 April 2021. Proclamation No 1234/2021. Article 78.

be accessible in financial, physical, and procedural terms and to uphold the human rights of all who appear before them. Moreover, the judiciary must enforce citizens' rights against violations, whether committed by individuals or by the state itself (Tsegaye 2009).

Given the critical role of the judiciary, it is imperative to examine what transpires when an IPV case is brought before a court. This examination requires not only considering substantive and procedural laws but also scrutinizing actual judicial practices. Despite the high prevalence of IPVAW in Ethiopia, adjudication of these cases often faces numerous challenges that significantly impair the judiciary's capacity to respond effectively. Such challenges include a prolonged decision-making process, a lack of specialized handling of cases involving women, and inadequate measures to protect survivors' dignity, safety, and privacy. Additionally, it is claimed that IPVAW cases frequently result in low conviction rates, minimal sentencing, and the secondary victimization of survivors during court proceedings (Immigration and Refugee Board of Canada 2020). Furthermore, the adjudication process of IPVAW cases and the protective measures available to survivors remain under-researched in the study area. Therefore, this article aims to explore the judiciary's response to IPVAW cases and examine its role in meeting survivors' needs by investigating judicial decisions, the promptness of proceedings, and the protective mechanisms available.

Data for this research were collected from five purposively selected first instance courts, five city court divisions, and one high court division in five sub-cities of Addis Ababa City Administration.[28] Key actors[29] were purposively selected based on their positions and relevant experiences. 72 respondents participated in the research. Data

[28] The five sub-cities purposively selected for this research based on the number of VAW cases they have adjudicated were Arada, Bole, Kolfe-Keranio, Lideta, and Nifas-Silk.

[29] These consist of judges, prosecutors, police officers, defense attorneys, experts from shelters, one-stop centers, Addis Ababa city administration Bureau of Women, Children, and Social Affairs, Ethiopian Women Lawyers Association (EWLA), as well as community elders and religious leaders.

were collected from 33 female survivors of IPV who navigated the justice system. The survivors were purposively selected considering factors such as age, socio-economic status, the type of violence they had encountered, and the final judgments given on their cases. Furthermore, 97 purposively selected IPVAW closed case files adjudicated by the selected courts were reviewed.[30]

Semi-structured in-depth interviews, focus group discussions, courtroom observations, and court case analysis were employed for data collection. Interviews continued until data saturation was reached. Additionally, international, regional, and domestic legal frameworks also served as primary sources of data. Furthermore, secondary sources such as literature (both published and unpublished), official reports, and websites were consulted.

This article is organized into six sections. Following the introduction, the second section frames IPVAW as a human rights violation. The third section addresses the unique nature of IPV cases in general, while the fourth examines the adjudication processes in the study area. The fifth section explores the measures the judiciary is in a position to employ to protect IPVAW survivors from further harm and prevent secondary victimization. The final section offers concluding remarks.

2. Intimate Partner Violence as a Human Rights Violation

Depending on its nature, frequency, and severity, IPVAW constitutes a violation of fundamental human rights (Megersa 2014). These include the right to life, liberty, personal security, physical and mental integrity, dignity, the highest attainable standard of health, and freedom from torture or cruel, inhuman, and degrading treatment.
Recognizing IPVAW as a human rights violation underscores the obligation of states under international law to uphold, protect, and

[30] Data collection was conducted in three rounds: the first from June 1 to November 14, 2022; the second from January 25 to March 24, 2023; and the third from April 8, 2023 to April 6, 2024 (These data were gathered for the purpose of the authors' PhD study).

fulfill individual rights. Even though states are not direct perpetrators of IPVAW, their failure to prosecute offenders or safeguard victims constitutes complicity, subjecting them to international scrutiny (Alda 2002). While individual perpetrators remain criminally liable, states bear the responsibility to enact systemic measures to prevent and redress such violations (Amnesty International 2004).

Early human rights instruments–such as the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)–did not explicitly reference IPVAW or VAW, but their provisions remain applicable. For example, both the UDHR[31] and the ICCPR[32] guarantee the right to life, liberty, and security of a person. Similarly, the ICESCR[33] affirms the right to the highest attainable standard of physical and mental health. These protections are critical in addressing IPVAW, as such violence directly violates women's rights to bodily integrity, liberty, security, health, and–in extreme cases–their lives.

Further, the UDHR[34] and ICCPR[35] explicitly prohibit torture or cruel, inhuman, or degrading treatment. The Convention Against Torture (CAT) defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted" for purposes of, for example, obtaining information, punishment, intimidation, coercion, or any reason based on discrimination.[36] While such acts are

[31] UN General Assembly, Resolution 217A (III), *Universal Declaration of Human Rights*, A/RES/217(III), December 10, 1948 Article 3

[32] UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966. Articles 6 and 9

[33] UN General Assembly, *International Covenant on Economic, Social, and Cultural Rights.* Treaty Series, vol. 999, p. 171, Dec. 1966. Article 12

[34] UDHR. *Supra* note 7, Article 5

[35] ICCPR. *Supra* note 8, Article 7

[36] Un General Assembly resolution 39/46, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), Article 1

generally committed by public officials, a state may also be held responsible if it acquiesces to such acts.[37] The Committee Against Torture has clarified that state inaction against gender-based violence–including rape, domestic violence, female genital mutilation, and trafficking–constitutes a breach of CAT obligations (Committee against Torture, General Comment No. 2). Consequently, IPVAW, which infringes upon multiple rights of women, can be argued as qualifying the definition of torture under international law.

While these broad human rights frameworks provide a basis for addressing IPVAW, scholars and advocates argue that they inadequately conform to the gendered dimension of such violence. Although existing provisions can be interpreted to cover VAW, critics emphasize that general norms lack specificity to address systemic inequalities rooted in women's biological and social roles (Bonita 2021). This gap underscores the need for tailored legal protections that account for the unique vulnerabilities and structural barriers faced by women.

Accordingly, since the 1980s, sustained advocacy has driven the international community to reframe such violence as a pressing human rights concern (Bonita 2021). This paradigm shift spurred the adoption of critical instruments, including UN resolutions, recommendations by the Committee on the Elimination of Discrimination Against Women, the UN Declaration on the Elimination of Violence Against Women, the Vienna Declaration and Programme of Action, the Beijing Declaration; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

These frameworks have redefined societal attitudes, transforming violence against women from a private issue shrouded in impunity to a matter of public responsibility. Crucially, they have established the prohibition of violence against women as a cornerstone of

[37] ibid

international human rights law, mandating systemic efforts to prevent, address, and eradicate such violence (Bonita 2021).

3. The Uniqueness of Intimate Partner Violence Cases

IPV is defined as any act of violence, whether singular or recurrent, occurring within an intimate relationship and perpetrated by a current or former spouse, or cohabiting or non-cohabiting partner. IPV encompasses physical aggression, sexual coercion, psychological abuse, and controlling behaviors that result in physical, sexual, or psychological harm (World Health Organization 2017). It can manifest in various forms such as battering, rape, restrictions on freedom of movement, control over financial resources, intimidation, stalking, and image-based abuse.

In patriarchal societies, IPVAW stands apart from other forms of violence due to its unique and deeply entrenched power dynamics. This type of violence often occurs within the supposed sanctuary of the "home," a place typically associated with safety and security. A central feature is the perpetrator's socially sanctioned role as "protector and provider," which creates a perverse inversion of trust. The victim's emotional, material, and economic dependence on the abuser further entrenches this inequality, making escape incredibly difficult (Shalu 2022).

IPVAW frequently extends beyond the couple, drawing in other family members and complicating the web of harm. The inherent intimacy, sexuality, and romantic attachment within the relationship magnify the violence, as emotional betrayal deepens the trauma far beyond what is typically seen in other violence. Critically, IPVAW is sustained within an intersecting culture of patriarchy and violence that systematically denies women's rights while legitimizing male dominance and punishment (ibid).

The adversarial nature of the criminal justice system has traditionally

struggled to address the complexities of family relationships. Criminal proceedings involving family violence can have disruptive consequences for both the survivor and the accused. Families may experience separation, altered living arrangements, restricted communication between partners, limited contact with children, and increased financial burdens (Joseph, Erin & Breese 2012).

Because IPV typically occurs within the home, it often lacks sufficient evidence, making investigation and prosecution difficult. This lack of evidence is a major obstacle faced by women survivors of IPV in their pursuit of justice and the protection of their human rights (UNECA & African Centre for Gender and Social Development 2010). Additionally, since the defendant and survivor share a personal relationship, the defendant and, by extension, the defense attorney often have more intimate knowledge of the survivor compared to cases where the parties are unrelated. This familiarity provides the defense with additional means to discredit the survivor's testimony during the trial (Carol 2024).

Women seeking judicial protection may feel conflicted about having their partners arrested, especially if they rely on them financially to support themselves and their children. Moreover, research shows that one of the main reasons survivors hesitate to seek help is fear of retaliation from the offender. Threats from an intimate partner are more credible, as the offender usually has access to the survivor and may have previously acted on such threats. Furthermore, women often seek legal action after physically separating from their partner, which is when they are at the greatest risk of harm (Carol 2024).

Prosecutors frequently face challenges in IPV cases, as complainants may recant their statements or become uncooperative. This behavior often results from the cycle of violence and intimidation inherent in abusive relationships. Prosecutors must carefully evaluate recantations, distinguishing between genuine ones and those caused by intimidation or coercion. Delays in reporting the abuse can also create obstacles during the trial (Joseph, Erin & Breese 2012).

Therefore, the unique and complex dynamics of the emotional, economic, and sexual relationship between partners, along with the power imbalance and the repetitive and secretive nature of the abuse, make adjudicating these cases particularly difficult.

4. The Adjudication of Intimate Partner Violence Cases in the Study Area

To evaluate the effectiveness of IPVAW case adjudication in the study area, a human rights-based approach (HRBA) is used as the standard. This approach is critical for assessing the judiciary's response to IPVAW cases. It seeks to protect the rights of all parties involved while acknowledging the needs and well-being of survivors who have experienced trauma. This balanced interpretation of the law upholds justice and respects the dignity of all individuals involved in the criminal justice system (Sidra, Muhammad & Usman 2024).

Applying HRBA means treating survivors of IPVAW with respect, dignity, and sensitivity. Communication with survivors should be empowering, helping them in overcoming the trauma of violence and intimidation, providing comprehensive information to facilitate informed decision-making, and supporting them throughout the legal process (Sidra, Muhammad & Usman 2024). In recent years, there has been a growing emphasis on human rights-based judicial processes, supported by international legal standards. The Updated Model Strategies and Practical Measures urge member states to review, evaluate, and update criminal procedures in line with international legal instruments.[38] The goal is to ensure that women subjected to violence can testify in criminal proceedings with adequate protections, which include safeguarding their privacy, identity, and dignity,

[38] The UN General Assembly, *Strengthening crime prevention and criminal justice responses to violence against women,* March 2011, A/RES/65/228. Annex. Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. paragraph 15(c)

ensuring their safety during legal proceedings, and preventing secondary victimization.[39]

Similarly, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power highlights the need for judicial and administrative processes to be responsive to survivors' needs by minimizing inconvenience, protecting privacy, and ensuring the safety of survivors, their families, and witnesses from intimidation and retaliation.[40] These instruments call on states to create a safe and supportive environment for survivors, ensuring they are shielded from further harm during legal proceedings.

Despite the unique characteristics of IPVAW cases, the procedural rules applied to them in the study area often mirror those governing ordinary criminal cases. This approach frequently neglects a human rights-based framework, resulting in a lack of specialized treatment or tailored psychosocial and legal support for survivors.

The legal process is structured as an adversarial proceeding[41] between two parties: the prosecutor and the accused (or his defense counsel), with the survivor typically serving as a witness for the prosecution.[42]

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[39] Ibid

[40] UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,* resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34, Article 6(d)

[41] Ethiopia's criminal justice system, governed by the 1961 Criminal Procedure Code, is theoretically a hybrid model. While the system is primarily adversarial, the Code grants judges inquisitorial-style powers to actively guide proceedings. *See* Gashaw Sisay. "Admissibility of Hearsay in Criminal Trials: An Appraisal of the Ethiopian Legal Framework." *Haramaya Law Review,* Vol. 5, No.1, 2016, PP.116-143. p.127 In practice, however, this authority is rarely used. Judges typically remain passive, placing the responsibility for presenting evidence and examining witnesses on the opposing parties. As a result, the trial process functions as a fundamentally adversarial contest between the prosecution and the defense. *See* Alemu Meheretu. Introducing Plea Bargaining in Ethiopia: Concerns and Prospects. (DPhil thesis), University of Warwick, 2014, P.68

[42] For more details on the trial process for IPVAW cases in the study area, please see Helen Abelle Melesse. 2024. "Intimate Partner Violence Survivors and the Criminal Justice System: A Case Study of Addis Ababa City Administration."

This use of public, adversarial trials–the same as those for ordinary crimes–is poorly suited to the needs of traumatized survivors and fails to meet international human rights standards. Consequently, the current system lacks a human rights-based approach, which significantly increases the risk of secondary victimization for survivors.

4.1 Nature of Judgements and Sentencing in Intimate Partner Violence Cases

The ultimate goal of criminal prosecution is to render a judgment either convicting or acquitting the accused. A conviction occurs when the evidence convinces the court beyond a reasonable doubt that the accused committed the alleged crime. Conversely, if the defense raises a reasonable doubt regarding the prosecution's evidence, the court must acquit the accused, releasing him from custody if detained. Judges are required to provide clear reasons for their decisions (Aderajew & Kedir 2009). Based on the data obtained from case analysis, 37 cases resulted in convictions, one in acquittal, while the remainder were closed for various reasons, including mediation and the disappearance of witnesses and/or defendants.

Upon conviction, the court moves to sentencing, guided by Article 88(2) of the Criminal Code. In Ethiopia, punishment is determined by considering factors such as the degree of guilt, the offender's background, standard of education, the gravity of the crime, and the circumstances of its commission.[43] If the case falls under the Sentencing Guideline No. 2/2013, sentencing is calculated accordingly; otherwise, the court refers to Article 19 of the Guideline to assess the severity of the crime and give appropriate punishment. Aggravating and mitigating factors presented by both the prosecutor and the defendant are also taken into account, with the court retaining

Hawassa University Journal of Law, Vol.8, p.25-27

[43] The Federal Democratic Republic of Ethiopia, *The Criminal Code of the Federal Democratic Republic of Ethiopia,* 9 May 2005, Proclamation No. 414/2004. Article 88(2)

discretion to accept or reject them.[44]

Among the cases where conviction occurred, nine resulted in prison sentences ranging from one day to eleven years, sixteen in fines, two in both imprisonment and fines, and ten in suspended penalties. Some informants expressed concern about the effectiveness of certain punishments in achieving the objectives outlined in the Criminal Code. In some of the reviewed cases involving severe violence, such as burning a survivor, repeatedly stabbing a survivor on the head with a screwdriver and biting off her figure, biting off the survivor's ear, and threatening a survivor with a lethal weapon (placing a loaded gun to the survivor's head and threatening to kill her), etc., perpetrators were released on two-year probation after conviction. In a case where a perpetrator struck the survivor in the head with a metal rod, resulting in serious physical injury, the case was closed due to mediation. In another case, despite the Criminal Code stipulating a minimum term of 10 days for simple imprisonment,[45] a perpetrator convicted under Article 640(1)(a) for distributing pornographic videos of a survivor received a one-day prison sentence and a 500 birr fine.

4.2 Perspectives on Punishments

The judiciary plays a critical role in holding perpetrators accountable, and its judgments reflect societal attitudes towards IPVAW. When offenders are not adequately punished, public faith in the justice system erodes. Perpetrators who perceive leniency, for example, routinely suspending IPVAW sentences, may continue their violent behavior, believing it is tolerated. Being able to avoid punishment reinforces the perpetrator's belief in his right to use violence to establish power and control over his partner, as well as his perception that such violence will not be punished (Council of Europe 2016).

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[44] The Criminal Procedure Code of Ethiopia, 1961, Proc No. 185/1961, *Fed. Neg.Gaz. 32nd Year*. Article 149 (3 & 4)

[45] The Criminal Code of the Federal Democratic Republic of Ethiopia. *Supra* note 19, Article 106(1)

Despite a significant number of survivors expressing dissatisfaction with court rulings in their cases–often feeling justice was not served–legal professionals emphasize that sentencing in IPVAW cases involves nuanced considerations. One informant noted that while survivors and the public may equate harsher punishments with better justice, courts must weigh multiple factors to ensure proportionality and rehabilitative impact. An effective sentence balances retribution with education, he explained, but severity alone does not guarantee justice or deterrence.[46]

Another informant highlighted the Criminal Code's broader objectives, which extend beyond punishment to include rehabilitation and societal reintegration. She argued that lengthy prison terms do not always foster behavioral change; in some cases, restrictive measures (e.g., suspended civil rights) may prove more transformative.[47] Another informant also believed that fear of incarceration alone is insufficient, she noted, citing instances where defendants reform after mere indictment–and others who reoffend despite prolonged imprisonment, sometimes even while incarcerated.[48] The interviewed experts further stressed that public critiques of judicial decisions often overlook the complexities inherent in sentencing. Key factors–such as applicable legal statutes, evidentiary strength, mitigating or aggravating circumstances, and the foundational aim of criminal law–shape rulings.

4.3 Promptness of Proceedings

The duration of a case in a criminal court is typically measured from the date the file is opened to the date of the final decision on all charges. Timely processing is vital in IPV cases due to family dynamics. This is because, after leaving an abuser, survivors face a long and difficult process of rebuilding their lives, often dealing with

[46] Interview with HJ-12 conducted on 20 October 2022
[47] Interview with HJ-16 conducted on 27 October 2022
[48] Interview with HJ-17 conducted on 28 October 2022

post-separation abuse, financial insecurity, and often prolonged civil court proceedings. When the judiciary fails to adjudicate IPV cases swiftly, survivors may remain in dangerous and unstable situations for extended periods of time (OSCE 2024). Cases that are repeatedly adjourned become drawn out, leading to what is often referred to as "justice delayed is justice denied" (Mabel & Obraori 2021).

The standard for what constitutes a 'reasonable time' to handle criminal cases varies depending on the nature of the crime. However, delays in criminal proceedings have a significant detrimental impact on access to justice (Menberetshai 2010). The FDRE Constitution mandates that criminal cases be handled within a reasonable period after the charge,[49] and under the Federal Courts Proclamation, presidents of federal courts are tasked with supporting victims of gender-based violence through "rapid court decision and professional support".[50] Despite these provisions, several factors contribute to delays in the study area. Information from case files indicates common causes that included high caseload, judicial caseload imbalance, judicial non-attendance, frequent reassignments necessitating file reviews, disappearance of accused persons, and uncooperative survivors/witnesses.

During a focus group discussion, participants noted that while civil cases have guidelines on timeline, no such framework exists for criminal cases. They acknowledged that criminal cases are inherently complex, with complications arising from complaints, delayed evidence from institutions, and the need to carefully protect human rights. Additionally, judges working on these cases may experience mental fatigue, burnout, or secondary trauma, sometimes requiring breaks to maintain their resilience and capacity to handle sensitive matters effectively.[51]

[49] The FDRE Constitution. *Supra* note 3, Article 20(1)
[50] Federal Courts Proclamation. *Supra* note 3, Article 19(1.g)
[51] FGD-3 with judges conducted on 23 March 2023

Regarding the duration of court proceedings in the cases reviewed, the shortest case closed by courts for various reasons (e.g., failure of the accused, witnesses, or prosecutor to appear) lasted eight days, while the longest took over six months. For cases proceeding to trial, the shortest lasted one month, while the longest extended over two years. It is important to note that dissatisfied parties have the right to appeal judgments. Appeals–particularly those escalating to the Supreme Court–can significantly prolong resolution before a final decision is reached.

To address these challenges, the Draft Criminal Law Procedure and Evidence Code of Ethiopia under Article 242 sets a procedural timeframe: minor offenses should be resolved within three months, medium offenses within six months, and grave offenses within twelve months from filing. The court may extend these periods by up to half their length for sufficient cause. However, in any case, grave offenses must be completed within two years. The Federal Supreme Court is tasked with issuing case-flow management rules based on the seriousness and complexity of cases.[52]

5. The Role of the Judiciary in Protecting Survivors of Intimate Partner Violence from Further Harm

Survivors of IPVAW may face ongoing risks not only from the offender but also from his family and friends. For those who have experienced chronic or repeated violence, security is often a paramount concern. The perception or reality of inadequate protection can deter survivors from reporting such crimes (UNODC 2019). Fear for their own safety, as well as for the well-being of their children and family members, is a common reason survivors withdraw from the criminal justice process (United Nations Office on Drugs and Crime 2014).

[52] The Federal Democratic Republic of Ethiopia, Draft Criminal Law Procedure and Evidence Code of Ethiopia, 2020, Draft Legislation, Ministry of Justice, Addis Ababa, Article 242

This unique risk dynamic in IPVAW cases places a special responsibility on the judiciary, which is not often shared by other courts handling ordinary criminal matters. Courts adjudicating these cases must prioritize survivor safety and implement measures to prevent future victimization (Monica 2013). Judges and prosecutors are urged to adopt specific safeguards aimed at preventing re-victimization by the perpetrator and minimizing secondary victimization during the legal proceedings. Such safety measures should extend beyond protection from physical violence to include shielding survivors from harassment, threats, hostile encounters, and potential secondary victimization during investigations and trials. These measures may be immediate or part of long-term strategies for managing high-risk cases involving women (Council of Europe 2017). However, judicial responses are often inconsistent and tend to prioritize offender accountability over survivor safety (Monica 2013). In Ethiopia, the Revised Criminal Code[53] does not adequately address survivor protection, and the 1961 Criminal Procedure Code provides only limited rights for survivors during adjudication.

Nonetheless, some informants noted that, while explicit legal provisions obligating courts to protect survivors may be lacking, courts–as key institutions mandated to uphold human rights–can act when evidence indicates that survivors, often key witnesses for the prosecution, are in danger either within or outside court premises. They explained that although courts cannot unilaterally initiate protective measures, they can act upon complaints by issuing rulings that document the perpetrator's conduct, ordering further investigations, and directing prosecutors, police, or community policing units to provide protection. Additionally, they may issue warnings or conduct proceedings in closed benches. Yet, the informants added that the implementation of such measures varies significantly depending on individual judges' understanding and commitment to survivor safety.[54]

[53] The Criminal Code of the Federal Democratic Republic of Ethiopia. *Supra* note 19

[54] FGD-2 with judges conducted on 10 November 2022

Accordingly, courts have the potential to adopt measures that enhance survivor safety during criminal proceedings without compromising the accused's right to a fair trial. These measures may include pre-trial detention, formal warnings, and the use of specialized benches.

5.1 Pre-Trial Detention

"Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law."[55] However, even before trial, courts at the pre-trial stage may order detention or impose stricter conditions for release as strategies to enhance survivor safety. Judges must consider all relevant facts regarding the defendant's potential for violence against the survivor, and any concerns raised by the survivor regarding her safety should be taken into account. Pre-trial detention should be enforced when a judge determines there is a significant risk of violence or doubts about the defendant's compliance with release conditions (Council of Europe 2020).

5.1.1 Bail Requests

Defendants held in custody may request bail, which entails release under conditions, such as attending court or reporting to a police station. Bail may also be granted under terms like requiring a security payment that is forfeited if the accused fails to appear in court, or the involvement of a guarantor (Aderajew & Kedir 2009). While the defendant's right to bail must be protected, it must be balanced against the survivor's right to safety. Prosecutors need clear guidelines for opposing bail in cases of VAW, especially where there is a risk of further harm. They should employ risk assessment standards and rely on research concerning the likelihood of continued violence (United Nations Office on Drugs and Crime 2014).

[55] ICCPR. *Supra* note 8, Article 14(2)

In Ethiopia, Article 67 of the Criminal Procedure Code grants defendants the right to bail unless they are unlikely to comply with bail conditions, likely to commit further offenses if released, or likely to interfere with witnesses or tamper with evidence. Consequently, anyone charged with a crime[56] may request bail if they can afford it or present a guarantor. The selection of the guarantor and the amount guaranteed are determined by the court, which must consider the seriousness of the charge, the accused's likelihood of appearing in court, the potential danger to public order, and the resources available to the accused and his guarantors.[57] An important addition in the draft Criminal Law Procedure and Evidence Code is that where the applicant is suspected of crimes involving brawls, quarrels, or violence against women or children, or similar offenses, courts may require a guarantee of good conduct as a precondition to bail.[58]

Data collected for this study indicates that in some IPVAW cases involving severe physical abuse, judges may deny bail, in accordance with legal provisions, to protect survivors from further attacks. One informant noted that in instances of severe violence, courts often refuse bail requests.[59] Another informant added that courts may deny bail when there is a legitimate fear that the accused may commit further violence, often considering the accused's criminal history and the nature of the violence.[60] Additionally, an informant highlighted that prosecutors assess the likelihood of reoffending and present their findings to the court to advocate for bail denial. However, he believes that this assessment can be subjective and is often subject to appeal.[61] On the other hand, some informants indicated that judges typically do

[56] As long as, in line with Article 63 of the Criminal Procedure Code, the offence with which the accused is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.

[57] The Criminal Procedure Code of Ethiopia. *Supra* note 20, Article 69

[58] The Draft Criminal Law Procedure and Evidence Code of Ethiopia under, Article 142

[59] Interview with PP-15 conducted on 24 October 2022

[60] Interview with HJ-11 conducted on 20 October 2022

[61] Interview with HJ-19 conducted on 31 October 2022

not deny bail unless there is strong evidence demonstrating the suspect's violent nature. They mentioned that bail is rarely refused, even though releasing the accused can have severe consequences for the survivor, especially if they share a residence, increasing the risk of further violence.[62] One informant expressed that courts often prioritize the rights of suspects regarding bail, frequently dismissing prosecutors' requests for denial, citing insufficient evidence. This trend, she noted, significantly compromises survivor safety.[63] In most cases analyzed for this study, bail was granted to the accused, and prosecutors rarely contested this right if the accused had a permanent residence.

It is notable that the Criminal Procedure Code does not explicitly allow bail to be denied solely on the ground of protecting the survivor. Of all the cases assessed for this study, only one instance involved bail denial explicitly to safeguard the survivor.[64] According to an informant, when bail is granted, courts typically do not impose conditions prohibiting contact or intimidation.[65]

Bail proceedings in the reviewed cases focused primarily on securing the accused's future court appearance rather than prioritizing survivor safety. Informants noted that many accused individuals often lack permanent addresses, making them difficult to locate once released. As a result, judges may require the presentation of a guarantor, expecting the guarantor to assist in locating the accused if he fails to appear on the specific date before the court.[66]

In the cases assessed, the bail amounts requested by courts ranged from 200 to 2000 birr, with exceptional cases setting bail at 10,000 Birr. In approximately 16% of the cases where a bail request was granted, the accused absconded after release. Courts then ordered the police to

[62] FGD-3. *Supra* note 27
[63] Interview with HJ-3 conducted on 19 July 2022
[64] Public Prosecutor v. Mohammod Fereja, File Number 305080, Lideta Division, Federal High Court, 2024
[65] Interview with HJ-1 conducted on 21 June 2022
[66] FGD-3. *Supra* note 27

locate and detain the accused for 24 to 48 hours and bring him before the court. If the accused cannot be found due to a false or unknown address, courts will, after several adjournments, order bond forfeiture and close the file. This action, however, reserves the prosecution's right to reopen the case should the accused be located in the future.

5.2 Judicial Warnings

Judges can positively impact the handling of IPVAW cases by engaging with the parties involved. Research shows that judicial warnings or reprimands to defendants about the severity and inappropriateness of their violent behavior can sometimes lead to improved future conduct (Gail 1986). One informant emphasized the difficulties judges face due to the unique nature of IPVAW cases and the need to issue warnings in some cases. He mentioned that judges frequently issue warnings to defendants and advise survivors to report any further violence to the police immediately.[67] Another informant observed that, beyond warnings, advice, and admonitions, judges often lack additional measures to effectively protect survivors.[68]

While some informants noted that judges may warn defendants when granting bail or when punishments are reduced to probation, stating that such decisions could be revoked for misconduct, conditions of release in the cases examined do not include specific stipulations such as no contact with the survivor or restrictions on returning to the family home. Judges typically do not provide detailed warnings in such instances. In cases resolved through mediation, final judgments often note that a warning has been given to the defendant not to repeat the offense. However, the specific content of these warnings was not documented in the case files.

[67] HJ-19 *Supra* note 37
[68] FGD-3. *Supra* note 27

5.3 The Level of Utilization of Special Benches

While contact between the survivor and the perpetrator should be avoided at all stages of legal proceedings, survivors of IPVAW are often required to participate in criminal cases as witnesses. Some jurisdictions may even compel survivors to testify if it is deemed necessary for the proceedings. In these situations, special measures, such as testifying from a separate room, recording the survivor's testimony, and appearing via videoconference, should be considered. It is important to acknowledge that, even if the court case centers on a single incident, survivors may have endured years of abuse and coercive control, making any contact with the perpetrator highly traumatic (Council of Europe 2016).

The Committee on the Elimination of Discrimination against Women has urged state parties to "ensure that the physical environment and location of judicial and quasi-judicial institutions, as well as other services, are welcoming, secure, and accessible to all women" (CEDAW General Recommendation No. 33). The Committee emphasized the necessity of special measures to "protect women's privacy, safety, and other human rights" and called for the adoption of gender-sensitive court procedures and witness protection measures (CEDAW General Recommendation No. 33 & No. 35).

Specialized courts, such as domestic violence courts, exist in countries like the United States, Brazil, Spain, and Ghana, providing an environment where survivors can testify without the fear of facing an audience or the perpetrator. These courts not only improve the efficiency and outcomes of cases but also minimize re-victimization and ensure the protection and safety of survivors. They offer a private and supportive atmosphere for handling IPVAW and other related cases (UN Women 2010).

Thus, the judiciary's duty to protect survivors goes beyond delivering a sentence that incapacitates, deters, or rehabilitates the defendant if found guilty; it includes preserving their privacy, dignity, and well-being throughout the trial process. Survivors of IPVAW face unique

risks that make privacy a crucial aspect of safety. Unlike others, who may particularly experience embarrassment or humiliation, these survivors may additionally face potential physical harm stemming from their interactions with the judicial system. In these cases, the right to privacy is inextricably linked to the right to personal security (UN Women 2010).

The Ethiopian Criminal Justice Policy mandates the development of legislation for the special treatment of survivors of gender-based violence.[69] It also supports the establishment of specialized units within the police, prosecutor's office, and courts to aid in crime prevention, investigation, prosecution, and the provision of support services for women, children, and people with disabilities.[70]

The women and children benches established in the study area for adjudicating sexual and other forms of violence against women and children implement case-sensitive procedures. These include the use of closed-circuit television (CCTV) and third-party intermediaries, such as trained social workers, to shield survivors from hostile or intimidating questioning by the defense.

While in practice, this protective procedure is primarily applied in cases involving children, it can be extended to female witnesses over 18 if a judge determines that the case's sensitivity requires it.[71] This approach enables survivors to testify in a more comfortable setting, avoiding direct confrontation with the accused while preserving the defendant's right to cross-examine. This reduces the psychological and emotional stress that survivors experience.

However, only two of the IPVAW cases reviewed in this study (both involving sexual violence) utilized special benches. In one of these cases, the presiding judge noted that "although the case did not

[69]Ministry of Justice. (2011). *The Federal Democratic Republic of Ethiopia Criminal Justice Administration Policy.* Available at: http://www.ethcriminalawnetwork.com/system/files/FDRE%20Criminal%20Justice%20Policy%20%28Amharic%29.pdf accessed on 9/9/2024. Section 6.2.1

[70] Id, Section 6.5

[71] Interview with I-1conducted on 8 November 2022

typically warrant the use of a special bench", she deemed it essential as it may contribute to protecting public interest and morality. This case involved the distribution of pornographic videos, requiring explicit testimony from the survivor. This testimony, delivered from a special bench, necessitated the survivor to provide explicit details about the recorded sexual act, including her behavior at the time and her sexual history, to answer the questions raised by the defense and the prosecutor in front of a judge. However, despite the sensitive nature of the case, psychologists or social workers were not involved in the adjudication process. Consequently, in both cases where special benches were used, survivors endured invasive questioning without the benefit of psychological support.

The absence of specific provisions for IPVAW cases has resulted in the underutilization of special benches for such matters, leading to their exclusive application in cases of sexual violence and juvenile offenses. According to an informant, IPVAW cases are treated like any other ordinary criminal case, without special procedures or designated benches.[72] Another informant noted that the absence of expert involvement, such as psychologists, negatively impacts the adjudication process and may contribute to secondary victimization.[73] Furthermore, in Ethiopia, accused individuals are entitled to a public trial by an ordinary court within a reasonable time after having been charged.[74] However, the Constitution provides for exceptions where cases can be heard in closed sessions to protect privacy rights, public morals, or national security.[75] Similar grounds for utilizing closed sessions are outlined in Proclamation No. 1234/21 and the Draft Criminal Law Procedure and Evidence Code of Ethiopia.[76]

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[72] Interview with PP-1 conducted on 20 June 2022

[73] FGD-3. *Supra* note 27

[74] The FDRE Constitution. *Supra* note 3, Article 20(1)

[75] ibid

[76] Federal Courts Proclamation. *Supra* note 3, Article 32(2) similarly, Article 12 of the Draft Criminal Law Procedure and Evidence Code of Ethiopia also states that although "all criminal cases shall be heard in a public trial the proceedings shall be held in camera only with a view to preserve the right to privacy of the accused or the victim, public moral or national security".

Thus, in cases involving sensitive issues of privacy and public morality, trials may be conducted in closed sessions. In such instances, only the judge, prosecutor, and defense attorney are present. An informant explained that, while the accused has the right to a public trial, this right can be overridden when the case involves embarrassing or immoral details, subject to the prosecutor's request.[77] Another informant stated that while IPVAW cases are adjudicated in open court, prosecutors occasionally request closed courts depending on the nature of the case, and judges generally cooperate in this regard.[78]Another informant mentioned that judges are not mandated to use closed benches for these cases, but if they involve public morality, the trial will occur in a closed setting. Conversely, cases involving sexual violence or violence against children are adjudicated using special benches.[79]

The study highlights the necessity of specialized benches for IPVAW cases. Ordinary courts lack the appropriate environment, knowledge, and skills to handle these sensitive cases effectively. One informant noted that the intimidating atmosphere of ordinary courtrooms inhibits survivors from testifying fully and freely, especially if the perpetrator is present, causing significant psychological distress. He added that despite this, trials often proceed in open court, adhering to standard procedures.[80] Another informant emphasized the privacy concerns associated with open trials, where survivors are forced to reveal personal family matters publicly, potentially harming their reputation and well-being. Yet, judges often feel obligated to conduct these trials openly.[81] One informant highlighted that since IPVAW cases are adjudicated in open court, survivors may lack the confidence to testify openly, fearing public judgment and societal pressure to tolerate abuse.[82]

[77] Interview with HJ-6 conducted on 23 July 2022
[78] Interview with PP-10 conducted on 22 August 2022
[79] Interview with HJ-4 conducted on 20 July 2022
[80] Interview with HJ-10 conducted on 20 October 2022
[81] PP-1. *Supra* note 48
[82] Interview with PP-2 conducted on 20 June 2022

Another informant pointed out the challenges in providing support services, noting that there is often no psycho-social support available throughout the investigation, prosecution, and adjudication process.[83] A coordinator from the Social Work department at one of the courts confirmed that they do not handle IPVAW cases, as such cases follow regular procedures.[84] This was exemplified by an incident during the study when a survivor[85] in need of psycho-social support regarding her case was denied assistance by the department. According to the department's experts, they exclusively serve child survivors.

6. Conclusion

The Judiciary plays a crucial role in shaping the justice system's response to IPVAW. As the final authority in criminal matters, its decisions profoundly impact survivors, perpetrators, and their families. While Ethiopia's adversarial legal system provides important procedural safeguards to protect the rights of the accused, upholding the defendant's right to a fair trial must not come at the expense of overlooking the rights, safety, and dignity of survivors. Ensuring the fairness of criminal proceedings requires striking a delicate balance between the rights of the defense, the public interest in proper prosecution, and the protection of survivors' rights.

This article has highlighted significant challenges that undermine an effective judicial response to IPVAW cases. These include the absence of specialized handling of such cases, the imposition of minimal or inadequate sentences, and delays in reaching a decision. Moreover, despite the distinct and complex nature of IPVAW, the current legal framework does not provide the necessary procedures to protect survivors from further harm. As a result, existing procedural law lacks clear provisions that empower courts to adopt measures safeguarding the dignity, safety, and privacy of survivors throughout judicial proceedings.

[83] FGD-3. *Supra* note 27
[84] Interview with I-5, conducted on 17 June 2023
[85] Interview with S-32 conducted on 4 May 2023

Fear of inadequate protection may deter survivors from reporting crimes; therefore, prioritizing their safety and rights during court proceedings is essential. Enhancing the judicial response to IPVAW requires implementing targeted strategies. Such measures could include pre-trial detention of offenders, issuance of warnings, and the use of specialized benches. For instance, specialized benches can protect survivors from additional harm when they provide testimony. For specialized benches to function effectively, personnel must receive appropriate training focused on human rights and gender sensitivity. Such training should build their capacity to address gender-related issues and violence against women.

Additionally, judges and court staff should ensure that all legal and practical measures are taken during trials to prevent further trauma and mitigate intimidation. There is also a need for provisions that explicitly allow the issuance of protection orders and outline related legal remedies.

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Women's Rights to Access to Justice: Challenges and Opportunities at the Grassroots Level in Oromia Regional State

Sisay Kinfe [86]

Abstract

Women face barriers to access justice that emanate from the absence, inadequacy or manipulation of evidence presented to formal courts, as well as limited participation and representation in the customary justice system and concomitant discriminatory customary laws and practices. This article examines the legislative mechanisms of addressing barriers to women's access to customary justice and its implementation at the grassroots level in the Oromia regional state of Ethiopia. Using a qualitative research approach, the study explored the gender sensitivity of the legislative mechanisms designed to enhance access to customary justice at the grassroots level and their implementation. Legislation on customary court enacted by the Oromia regional state, empirical data collected using observation, interviews, and reports from Gelan ,Handode districts and the Gelan sub-city of Sheger City, are the data sources. The study uses a human rights-based approach to access to justice and the principles of gender- sensitive legislation as the theoretical framework. Gaps in using gender sensitive language in framing legislation on customary courts is one factor that inhibits women's equitable representation and participation in the customary justice system during the implementation of the legislation. The paper argues that gender-sensitive approach in making legislation on customary courts contributes to gender sensitive implementation addressing barriers to women's access to justice.

Key Words: Women**,** Access to justice, Customary Court, Gender sensitive legislation

[86] Sisay Kinfe Gebrewold (PhD) is an assistant Professor at the Center for Federalism and Governance Studies of Addis Ababa University. She can be reached at sisay.kinfe@aau.edu.et. The author would like to give the highest gratitude to Ato Mekonen Regasa who assisted in the collection of data .

Introduction

Women face barriers to access justice both in the formal and customary justice system in legally pluralistic society where state and non-state legal system co-exists (Harper, 2011; Harper, Wojkowska, and Cunningham, 2011). The barriers to access justice emanate from the absence, inadequacy, or manipulation of evidence presented to formal courts, and limited participation and representation in the customary justice system and concomitant discriminatory customary laws and practices. Though customary justice system is accessible and preferred at grassroots level, absence or limited regulation of customary justice system contributes for perpetuation of barriers for women's effective access to customary justice. This is due to limited participation and representation of women in customary courts, discriminatory customary laws, weak procedural safeguards and enforcement of decision of customary courts, absence of accountability mechanism, and lack of monitoring and support mechanisms (Wojkowska, 2006; Harper, 2011; Harper, Wojkowska, and Cunningham, 2011; Assefa, 2012; Jemaneh, 2014; Ahmad and Wangenheim, 2021).

To address barriers to access justice, states adopt different strategies in the administration of non-state justice that link the customary/non-state justice system with the formal justice system, depending on the mode of existence of legal pluralism.[87] These strategies includes repression, bridging, harmonization, subsidization and incorporation (Swenson, 2018). Except the strategy of repression which is aimed at eliminating customary justice system, the other strategies directly and indirectly accommodate customary justice system at various degree.

[87] The mode of existence or operation of legal pluralism in a state can be combative (the normative systems are hostile to each other), competitive (informal actors retain substantial autonomy but the states autonomy is not challenged), cooperative (there is no major clashes between the different normative system), and complementary (the informal system is structured and subordinated by the formal system). See, Swenson (2018: 442-445).

Prior to the 1990s, customary justice institutions in Ethiopia had limited state recognition in a context in which the formal justice system was not accessible to the majority of people of the country who lived in rural areas. There was an attempt to replace customary laws with the 'modern' state law in civil and criminal matters (repressive strategy), which reached its climax in the 1950s and early 1960s with the adoption of the Ethiopian Penal Code and Civil Code respectively (Assefa, 2012: 12). In spite of the attempts made by the State to centralize the legal system, customary justice remains the most accessible and relevant institution to resolve disputes at grassroots level both in civil and criminal matters (Assefa, 2012; Fiseha, 2014; Assefa, 2020).

With the change of regime in 1991, the customary justice system has been given State recognition. Particularly, the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution gave recognition to customary laws and courts to operate along with the State's legal system in the areas of family and personal matters. In this regard, the FDRE Constitution Article 34/5 states that "[t]his Constitution shall not preclude the adjudication of disputes relating to the personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute." In addition, Article 78/5 of the FDRE Constitution states that "[p]pursuant to Sub-Article 5 of Article 34, the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts."

Though there are amateur advocates of women's rights in Ethiopia who consider the constitutional recognition of customary justice institutions to resolve personal and family disputes as insensitive to women's situation and rights, there are many scholars who argue for better recognition of the customary justice system, including in broader areas of civil matters and on some criminal issues.

Proponents of better recognition, taking into account the federal dispensation and the Constitutional recognition of customary dispute

resolution mechanisms, focus on how gaps seen in the formal justice system in the provision of justice such as inaccessibility, case overload and limited legitimacy can be filled by customary justice system by having legislation on customary courts to ensure observance of human rights standards including women's rights in the customary justice system (Assefa, 2012; Fisseha, 2014; Assefa, 2020). They argued that having legislation for formal recognition and establishment of customary courts either at the federal or regional level contributes to addressing barriers to women's access to justice. However, neither the federal parliament nor any regional states that have the power to enact laws for the recognition and establishment of customary courts did so until recently. Following the 2018 political reform, Oromia regional State enacted legislation that recognizes and establishes customary courts at the grassroots level in the region (Oromia regional state Customary Courts Proclamation No. 240/21; hereafter Proclamation No. 240/21).

This contribution engages with the question: Was the legislation for the recognition and establishment of customary courts in Oromia regional state framed and implemented in gender sensitive manner to address barriers to women's access to justice? The purpose of the study is to explore to what extent the Oromia regional state's legislation on customary courts is framed and implemented to address barriers to women's access to justice. A qualitative research approach is used to collect and analyze data.

The primary sources of data are regional legal documents, observation, interviews, and reports of customary courts. The Oromia regional state Customary Courts Proclamation No. 240/21 is the main legal document critically analyzed, adopting a gender perspective on the matter. Observation of *Gaaddisa* (place where customary courts discharge their official duty), including materials used to find the truth in customary courts, was held in Gelan and Adonde districts, and the Gelan sub-city of Sheger city. Interviews were held with secretaries and elders of customary courts, focal person of customary courts in the formal court of Gelan sub-city and its ex-president, Culture and

Tourism Office officials, and clients of customary courts. Hence, a total of sixteen persons, eight women and eight men, were interviewed for the study leading to this publication.

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The paper is organized into five sections including the introduction. Section two is a literature review on the rights to access to justice and a human rights-based approach to women's rights to access to justice in a legally pluralistic society, as well as the meaning and duty to enact gender sensitive legislation in human rights instruments. Section three presents an overview of the purpose and main contents of Oromia regional State's legislation on customary courts, and identifies mechanisms set in the legislation to address barriers to women's access to justice, and the extent of its gender sensitivity. Section four analyses the practical opportunities brought by the legislation on customary courts to access to justice, and unaddressed challenges to women's access to justice at the grassroots level in Gelan sub-city of Sheger city which will be followed by a concluding section.

2. Women's Access to Justice in Legally Pluralistic Society: Conceptual and Theoretical Framework

2.1. The Rights to Access to Justice and the Human Rights-based Approach

Guarantee of the rights to access to justice for all emanates from the virtue of provisions guaranteeing the right to equality before the law, a right to fair hearing, the right to liberty and security of the person, and the right to an effective remedy, which are recognized in various international human rights instruments.[88] Access to justice as a process

[88] The right to equality before the law is guaranteed in Articles 7, 8, and 10 of the Universal Declaration of Human Rights; and Articles 14/1 and 26 of the ICCPR. The right to fair hearing is guaranteed in Article 14 of ICCPR, Article 12 and 40 of the Convention on the Rights of the Child; Article 5/a of the Convention on the Elimination of All Forms of Racial Discrimination; Article 15/2 of the CEDAW; and Article 13 of the Convention on the Rights of Persons with Disabilities. The right to liberty and security of the person is guaranteed in Article 5/b of the Convention on the Elimination of All Forms of Racial Discrimination;

of getting remedies for grievances based on the rule of law can be conceptualized based on its more formalistic use and based on substantive consideration of getting just and equitable remedies to ensure social justice (Wojkowska, 2006; Jemaneh, 2014). Formally, access to justice is a right that refers to judicial remedies to violations of rights and/or resolution of disputes which includes procedural elements such as access to courts, the right to fair hearing, access to legal services, adequate redress, and timely resolution of disputes. Substantively, access to justice is a comprehensive/broader conception of justice that aims at achieving overall social justice, i.e., just and equitable justice for all. Encompassing both the formal and substantive approaches, access to justice can be defined as "the ability of people to seek and obtain a remedy through formal and informal institutions of justice, and in conformity with human rights standards" (Wojkowska, 2006).

In a human rights-based approach, human rights determine the relationship between individual and groups with valid claims (right-holders) and states with correlative obligations (duty-bearers). The legal and normative character of rights enables and empowers individuals to claim their rights (Jemaneh, 2014: 30). justice is about fairness, and human rights standards are the parameters of fairness from three dimensions of justice: normative, procedural and structural (Jemaneh, 2014; Ubink and Rooji, 2011).

The normative aspect requires that the substantive set of rules protect the needs and concerns of all sections of the society, in particular the poor and vulnerable. The procedural dimension requires that disputes be adjudicated by independent and impartial bodies in a transparent and fair process. The structural aspect of justice requires effective public participation in and accountability of the justice system: the

Article 37/d of the Convention on the Rights of the Child; and Articles 12/4 and 14 of the Convention on the Rights of Persons with Disabilities. The rights to effective remedy is guaranteed in Article 3 of the ICCPR; Article 5/b of the Convention on the Elimination of All Forms of Racial Discrimination; and Articles 12-14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

justice system should not directly or indirectly reinforce existing discrimination or marginalization of disadvantaged groups such as women (Jemaneh, 2014: 33).

In the human rights-based approach to access to justice, the availability of the option of a justice system (informal/customary and formal) that respects human rights standards creates an opportunity for customary legal empowerment, and contributes to addressing the barriers for women's access to justice (Harper, Wojkowska and Cunningham, 2011: 174-182). Customary legal empowerment is a "processes that: i) enhance the operation of customary justice systems by improving the representation and participation of marginalized community members, and by integrating safeguards aimed at protecting the rights and security of marginalized community members; and/or ii) improve the ability of marginalized community members to make use of customary justice systems to uphold their rights and obtain outcomes that are fair and equitable" (Ubink and Rooij, 2011:17).

In Ethiopia, both formal and substantive notions of access to justice are embedded in the FDRE Constitution (Jemaneh, 2014: 41). The narrow and formalistic approach to access to justice is provided under the title of the rights to access to justice in Article 37/1 of the FDRE Constitution. This provision states that "[e]veryone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power." As per this provision, only justiciable matters get remedies through judicial and quasi-judicial bodies, which is not considerate of the situations of the poor and disadvantaged groups. However, there are also parameters in the Constitution that lay the foundation for substantive justice, which include the overall framing of the Constitution that establishes a political society based on the rule of law (FDRE Constitution, Preamble para 1).

The Constitution also guarantees international human rights that are interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, international covenants on human

rights, and human rights instruments adopted by Ethiopia (FDRE Constitution, Article 13/2). These are the foundations for effective access to justice. In addition to these, the specific provisions of the Constitution that underpin the substantive justice are the extension of protection for disadvantaged groups such as women (FDRE Constitution, Article 35) and the recognition of the need for the regulation of customary and religious forms of dispute resolution mechanisms.[89] Particularly, the constitutional recognition of the use of customary laws and courts based on the consent of disputing parties empowers individuals to choose a justice system and influence the functioning of the customary justice system to operate respecting procedural and substantive safeguards for the observance of human rights standards.

2.2. Measures Required to Ensure Access to Justice for Women

In a legally pluralistic society that accommodates a customary justice system, access to justice for women, unlike access to justice for men, requires the prohibition of all forms of discriminatory norms, customs, and practices against women, as well as a gender-sensitive approach in legislation that states enact for the realization of human rights principles and standards. The following section discusses the required measures prescribed in international human rights instruments to address barriers to women's access to justice .

[89] See FDRE Constitution, Article 34/5, and 78/5 as well as the 2001 Revised Oromia regional State Constitution Article 34/5 and 62. Other FDRE constitutional provisions that underpin substantive justice as extension of protection of disadvantaged groups include the guarantee of public participation in the crafting of government policies (Article 43/2), the guarantee of fair trial (Article 20), the establishment of independent judiciary (Article 78), the right to be represented by legal counsel of one's own choice or to be provided with legal representation at the state's expense (Article 20/5), and the recognition of the right to equality before the law (Article 25).

2.2.1. Elimination of Direct/Indirect Discrimination and Accommodation of Customary Justice

The international human rights instruments, particularly the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), put an obligation on state parties to eliminate discriminatory norms, customs, and practices that inhibit women from the enjoyment of their human rights. The CEDAW prohibits both direct and indirect discriminations against women via its definition of discrimination against women in its Article -1 as "…any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

A similar definition of discrimination against women is put forth in the Protocol to the African Charter on Human and Peoples' Rights (ACHPR) on the Rights of Women in Africa (Maputo Protocol).
Regarding specific measures required, the CEDAW in its Article -2 states that "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end [……] take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Article- 5 of CEDAW also requires States parties to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Moreover, the 2015 CEDAW General Recommendation No. 33 on women's access to justice noted about the importance of plural justice systems, stating "a range of models [exist]

through which practices embedded in plural justice systems can be harmonized with the Convention in order to […] guarantee that women have access to justice" (para. 63). Similarly, Protocol to the ACHPR on the Rights of Women in Africa recognizes the importance of tradition and customs as far as they do not contravene women's rights (IDLO, 2020: 08). The human rights instruments make clear that the obligation of the State is not only in recognizing customary justice system but also in terms of taking measures including legislation that guide the State to uphold human rights standards. To this end, legally pluralistic states use different strategies to bring just legal order, which include bridging, harmonization, incorporation, subsidization, and repression (Swenson, 2018).

In the bridging strategy, legal jurisdictions are allocated to formal and customary justice systems by law based on the appropriateness of the venue and participants' preference. Often, non-violent and small claims are left to the customary justice system. Bridging strategy functions well when there is increased demand for formal justice and the formal justice system is inaccessible, as well as when actors in the customary justice system are willing to accept and facilitate referral to the formal justice system (Swenson, 2018: 446). Harmonization strategy, on the other hand, attempts to make the output of the customary justice system consistent with the values of the formal justice system by incorporating and legitimizing the customary justice system to some extent (Ibid).

Using an incorporation strategy, the state eliminates the distinction between the informal and customary justice systems. As per this strategy, customary justice system's decisions are incorporated and regulated by the formal justice system. The regulation of customary justice system is expressed by explicitly establishing customary courts through the state's law, and the formal courts serve as first instance or a venue for appeal from the customary justice system (Swenson, 2018: 447).

In the subsidization approach, the customary justice system is often

left alone and restricted, but the formal justice system receives assistance from the customary justice system to enhance its capacity, performance, and public engagement and legitimacy (Ibid: 448). Repression is a destructive engagement that basically targets to eliminate the customary justice system in a relatively peaceful environment as a manifestation of the supremacy of the formal justice system (Ibid).

The Ethiopian State has adopted a repressive strategy prior to 1991. However, since 1991, the accommodation approach is adopted, which is a mixture of the remaining four strategies (bridging, harmonization, incorporation, and subsidization) with the intent of bringing a just legal order at various degrees and became no longer repressive (Ayana, 2023). Moreover, the FDRE Constitution as well as the 2001 Oromia Regional State Revised Constitution prohibits the application of discriminatory norms, customs and practices.[90]

These Constitutions underline the significance of having detailed legislation for the operation of the customary justice system in Article 34/5 and Article 78/5 of the FDRE Constitution as well as Article 34/5 of Revised Oromia Regional State Constitution. In this regard, Article 62/1 of the Revised Oromia Regional State Constitution states that "[p]ursuant to Sub-Article 5 of Article 34 of this Constitution, religious and customary courts may be established or recognition be given to them." Accordingly, the Oromia Regional State Council (Caffee Oromia) enacted a law that recognizes and establishes customary courts in the region in 2021 with the overall objective of addressing barriers to access justice, including barriers to women's access to justice, as discussed below in section three. To address barriers to women's access to justice, the legislation shall be gender sensitive, as can be inferred from international women's human rights instruments.

[90] See, the FDRE Constitution Article 9/1, the Revised Oromia Regional State Constitution Article 9/1

2.2.2. Gender Sensitive Legislation

Gender-sensitive legislation gives effect to States' international obligations on women's rights and promotes gender equality (Suteu, Draji and Klibi, 2020: 24). In this regard, international human rights instruments define the role of legislation for the realization of rights. For example, ICCPR Article 2/2 stipulates the duty of the States "to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant." Similarly, ICESCR under its Article 2/1 mentions the duty of the state to realize rights in the Convention progressively using specific mechanisms such as legislative measures.

More explicitly, CEDAW leaves the obligation on member states to eliminate all forms of discrimination against women and guarantee women's equality rights with men by taking legislative measures in its Articles 2 and 3. The underlying assumption of gender sensitive legislation emanate from the abstract form of rights in human rights instruments and the national constitution with the details to be elaborated through legislations.

Legislation are tools to implement constitutionally guaranteed rights to equality and non-discrimination. Since the constitutional principles are more general, they need detailed legislation for their implementation. "States' constitutions still need to rely on legislation for the practical implementation of their principles" (Suteu, Draji and Klibi, 2020: 22). Constitutional guarantees of rights to equality and non-discrimination are implemented or limited in accordance with detailed laws/legislation. In addition, women have different interests than men related to their nature and reproductive rights. In this context, explicitly addressing women's rights requires gender sensitive legislation that identifies, takes seriously, and addresses women's specific needs (Ibid, 21).

The other important factor why gender sensitive legislations matter is to redress and correct historic and ongoing discriminations against

women (Suteu, Draji and Klibi, 2020: 17). Historically women have been systematically excluded from decision making, access to opportunities and resources, and the law is complicit to these discriminations either by being overtly discriminatory or being silent on women's plights to end discrimination or by not providing explicit protection (Ibid, 18).

The ongoing discrimination against women can be direct or indirect discrimination. Indirect discrimination occurs when the law seems neutral, but is affected by pre-existing inequalities and is practically discriminatory. If the law fails to recognize structural and historical patterns of discrimination, indirect discrimination exacerbates existing inequalities (Ibid). Hence, gender sensitive legislation is a means to redress both direct (de jure) and indirect (practical) discrimination. Moreover, it is stated that [g]ender-sensitive laws can play an important role in addressing discriminatory customs rooted in culture, religion, or tradition. Such customary practices may have a strong pull on the population and appear immutable. Law, however, can and should act as a tool for progress and push the equality agenda forward, even where this agenda might clash with pre-established customs (Suteu, Draji and Klibi, 2020: 19). In sum, gender-sensitive legislation/law is a powerful tool for addressing historic and ongoing discrimination against women entrenched in the name of custom.

3. Access to Justice in the Oromia Regional State Legislation on Customary Courts

The council/parliament of the Oromia Regional State (Caffee Oromia) enacted legislation recognizing and establishing customary courts in the region under Proclamation No. 240/2021. Resolution of disputes based on parties' consent to the dispute using customary laws and values, and enhancing effective access to justice. Justice is one of the primary purposes of the legislation. The customary courts of Oromia region are described as "accessible, effective in fact finding and dispensation of justice, follow simple and flexible procedures, and capable of strengthening social relationships" (Preamble of

Proclamation No. 240/2021).

Contributing to the observance of human rights and rule of law is also part of the objectives of the legislation on customary courts (Article 6/3 & 4). Apart from the provision of accessible and effective justice at the grassroots level, developing the culture of the Oromo people along with the modern justice system and democratic governance is envisioned in the legislation. This is why the legislation is not limited to recognition and establishment of customary courts but also contains mechanism that contributes for addressing barriers to the rights to access to justice for disadvantaged groups, though whether the mechanisms is adequate enough or not to address barriers to women's access to justice is part of the research question of this study.

The legislation on customary courts in the Oromia regional state contains five main parts. The first part of the legislation deals with, inter alia, the scope of application of the legislation. Basically, the legislation applies to any person living in the region who consents to recognized customary courts by the legislation (Proclamation no. 240/21, Article 4).

Part two of the legislation deals with the establishment, recognition, objectives, structure, and jurisdiction of customary courts (Proclamation No. 240/2021, Article 5-8). Social institutions that settle disputes based on customary laws get recognition as customary courts by the district (formal) court of the region, which is given the power to do so by the legislation.[91] The legislation structures customary courts as the first instance customary court, and the appellate customary courts. The third part of the legislation contain provision about actors (elders) of customary courts (criteria about their selection, number of elders of a customary court, procedure of selection, oath of elders, term of office, removal, resignation and replacement, functional independence, duty and power of customary court staffs, and accountability) (Proclamation No. 240/21, Article 9-22).

[91] See, Oromia region customary court Proclamation No. 240/21, Article 37/2

Part four of the legislation explains the *Gaaddisa* (where customary courts conduct their official duty) and mechanisms of safeguarding human rights standards. It specifically deals with time and place of conducting *Gaddisa*, working language, proof of consent, applicable law, applicable procedure, hearing of witness, oath, ascertaining of cases by observation, procedure of giving judgement, type of judgment, appeal, executing judgement or order given by the customary court (Proclamation No. 240/21, Article 23-34). The last part of the legislation, part five, contain miscellaneous provisions such as source of income of customary court, utilization of income, obligations and role of district and supreme court of Oromia region, about the role of the *Kebele* administration and Culture and Tourism Bureau of the region, duty to give support, plenum of customary courts, penalties, power to issue regulation and directives, inapplicable laws and effective date (Proclamation no. 240/21, Article 35-45). In sum, the legislation on customary courts in Oromia regional state regulates the customary justice system in the region, and links it with the formal legal system of the state.

3.1. Mechanism to Address Barriers to Women's Access to Justice

As indicated in the introduction section, the barriers to women's access to justice include limited participation and representation of women in customary courts, discriminatory customary laws, weak procedural safeguards, and the enforcement of rights. Mechanisms set to address these barriers to women's access to justice in the Oromia regional state legislation for establishing and recognizing customary courts (Proclamation No. 240/21) are discussed below.

Participation and Representation of Women in Customary Courts

The legislation that establishing customary courts in Oromia regional state contains provisions that contribute to addressing the limited participation and representation of women in the customary justice system. These mechanisms are first, as stated in the gender reference provision of the legislation, "any expression in the masculine gender

includes the feminine" (Proc. No. 240.21, Article 3). Secondly, elders of customary courts are selected following a democratic process based on detailed eligibility criteria for capacity and ethical competency, which have the potential to participate women in the process (Proclamation no. 240/21, Article 9-11). Thirdly, the legislation declares that at least one of the elected elders of customary courts shall be women (Proclamation no. 240/21, Article 10/3); and encourages the inclusion of Hadhe Sinqe[92] among the nominees of elders for customary courts (Ibid, Article 11/4). Fourth, the legislation clearly states ethical problems and capacity limitations as the main grounds for the removal of customary court elders at any time when the case is proven (Ibid, Article 13/2-4); and refraining from gender-based discrimination is one of the duties of customary court elders (Ibid, Article 17/2).

Applicable Customary Laws

The legislation on customary courts in Oromia defines customary laws and contains provisions that determine applicable customary laws in customary courts. Article 2/13 of the Proclamation no. 240/21 defines customary law as "a customary law of the Oromo People found in the specific locality where the customary court is situated that is not incompatible with the Constitution [Oromia Regional State Constitution], public morality and natural justice." Similarly, Article 26/1 of the Proclamation states that "[t]he laws which the Customary Court ought to apply shall be the customary law of the place where it carries out its function." This provision recognizes the diversity (plurality) of customary laws, which may vary from place to place, and all types of customary laws are recognized and allowed to function.

However, as per Article 26/2 "[…..] the customary law shall not be applicable where it has anyone of the following shortcomings: (a) Where it contravenes natural justice; or (b) Where it doesn't respect equity of human justice; or (c) Where it negates moral and morality; or (d) Where it discriminates between people based on religion, sex,

[92] Hadhe Sinqe is women only customary institution of the Oromia people. See, Kassahun, 2021.

appearance, age, disability, race, political attitude, wealth, or any other grounds; or (e) Where it violates any human rights." Hence, customary laws that contravene natural justice, negate moral and morality, undermine equity of human Justice, discriminate between people, and violate human rights shall not be applicable. But as per Article 26/3 of Proclamation, customary laws and practices that favour the rights of women, children, people with disability, and other vulnerable segments of society are applicable in customary courts. The provision on applicable customary laws gives recognition for the plurality of customary laws in the region.

Procedural Safeguards for the Enforcement of the Right to Access to Justice

The procedural safeguards for enforcing the rights to access to justice include the right to choice the justice system and the right to appeal to higher courts. The rights to choose a justice system is provided under Article 4/1 and 8/2 of Proclamation no. 240/2021, which stipulate that the jurisdiction of customary courts is limited to individuals who have given their consent to be tried by such courts. The plaintiff's consent is guaranteed when he/she presents his/her case to the customary court.

At the same time, the defendant is asked their consent before presenting his/her defense (Proclamation No. 240/21, Article 25/1-2). After giving consent to the jurisdiction of the customary court, the disputing party aggrieved by the decision of the first instance customary courts may appeal to the Appellate customary court (Ibid, Article 33/1). And disputing party dissatisfied by the decision of the appellate customary court may appeal to formal courts if the case is related with undermining the rights to equality, overlooking the rights to be heard or essential evidence, or the application of customary laws that violate human rights. In this regard, Article 33/2 states the following.

A person who is aggrieved by the decision of the Customary Court of Appeal may take his appeal to district Court if his grievance is related

to one of the following:

> (a) Applying customary law which undermines the right to equality of disputing parties; (b) Overlooking the rights to be heard or important evidence presented by a disputing party; (c) Applying customary law or practice which violates human rights and basic freedoms recognized under the Constitution and international human rights instruments ratified by our country [……].

This provision makes clear that the process of access to justice and the justice outcome shall be in line with human rights standards. In addition to this, Article 33/11 of Proclamation No. 240/21 states that ; "[a]ny person aggrieved by the decision or order of the District Court given […….] may file his complaint to a Court having jurisdiction."

Aggrieved parties' right to appeal to formal courts is not restricted to the first instance/district court, instead it may go to higher hierarchies of formal courts.

3.2. Is the Framing of the legislation on Customary Courts Gender Sensitive?

Gender sensitivity of legislation on customary courts can be analysed based on the extent of prohibition of direct and indirect discrimination against women, in terms of its language use, participation and representation of women in customary courts, applicable customary laws, and enforcement of procedural safeguards. From the language use perspective, throughout the legislation on customary courts of Oromia regional state, the masculine gender is used rather than referring to both genders: men and women. Though there is a provision in the legislation that declares "any expression in the masculine gender includes the feminine" (Proclamation No. 240/21: Article 3), these needs to be reflected in the legislation itself either by using noun and pronoun that indicates both gender or gender neutral language (if any) rather than using only masculine noun and pronoun throughout the text of the legislation.

Given the history of customary courts, which men exclusively constituted, the use of only the masculine gender in the text of the proclamation constitutes an indirect discrimination that inhibits the realization of women's rights to equality by denying attention to the promotion of women's rights. Inadequate attention to the use of gender sensitive language is an indicator of inadequate attention given to a gender-sensitive approach in the framing of the legislation on customary courts.

Given the number of women in the community, which is not less than fifty percent, the guarantee of women's representation in the customary court of elders is ensured by the phrase "at least one of the elders of customary court shall be women" [93] out of five elders of the customary court inhibits the promotion of gender equality. A gender-sensitive approach addresses direct historic discrimination against women and promotes gender equality using different strategies such as gender quota (Suteu, Draji and Klibi, 2020). The legislation on customary courts of the Oromia regional state also does not contain a provision that guarantees participation and representation of women in institutions that monitor and support the operation of the customary justice system.[94]

In this regard, for example, having a provision that requires the inclusion of women in a committee established by the district court for the coordination and selection of elders of customary courts[95] or making women's and children's affairs offices part of the institutions that monitor and support customary courts enhances women's participation and representation. It contributes to addressing barriers to women's access to justice by allowing the perspectives of women to be heard. However, there is no provision in the proclamation that highlights the significance of inclusion of women in the committees or

[93] See, Proclamation No. 240/21, Article 10/3

[94] The institution who has been given power to recognizes, monitor and support customary justice system in the region are formal courts, *Kebele* Administration and Culture and Tourism Office. See Proclamation 240/21, Article 37-39

[95] See, proclamation no. 240/21, Article 11/1

institutions that monitor and support the proper operation of customary justice system. This is another indicator of inadequate emphasis given to a gender-sensitive approach in the framing of the legislation on customary courts.

The encouragement of the applicability of customary laws that favour women and other disadvantaged groups,[96] the guarantee of the rights to choice of justice system,[97] and the establishment of appellate customary courts as well as rights to appeal to formal courts hierarchically enhances women 's access to justice;[98] and manifestations of gender sensitive provisions in the legislation on customary courts that contribute for improving women's access to justice.

4. Opportunities and Challenges to Women's Access to Justice in the Districts of Gelan Sub-city of Sheger City

The data for this section is collected using observation, interview, and reports from the first instance customary courts of Gelan and Andode districts, the appellate customary court of the districts of Gelan sub-city, women clients of customary courts, the first instance district (formal) court, and the Culture and Tourism offices of Gelan sub-city of Sheger city. The interviewed individuals includes elders of customary courts, secretary of customary courts, first instance district court focal person for customary courts, and ex-President of the court, official of Culture and Tourism Office of the Gelan sub-city, and women clients of customary courts of Andode and Gelan districts. The total number of persons interviewed was sixteen, eight men and eight women. The collected data were translated and transcribed from Afaan Oromo into English, and reflectively analyzed as opportunities to access to justice and barriers to women's effective access to justice.

[96] See, Proclamation 240/21, Article 26/3
[97] Ibid, Article 25
[98] Ibid, Article 33/1-2

The formal establishment and recognition of customary courts by legislation in Oromia regional state strengthened the opportunities and hope for the community to find the truth and resolving disputes where there is no or limited evidence or in situations of manipulate of evidences.[99] To find the truth and resolve disputes procedurally, the existence of consent among disputing parties on the jurisdiction of the customary court is ensured. Elders of the customary court ask the defendant whether he/she accept or reject the suit brought against him/her by the plaintiff. If he/she accepts the suit, then they enter into resolving the dispute accordingly by negotiation, consensus, and reconciliation; if he/she rejects the suit, the defendant is taken to the process of oath (*Kaakuu).* The process of Oath (*Kaakuu*) is the main mechanism of finding the truth of the disputing parties.[100]

The oath takes place based on materials/things that represent curses and blessings in human life as per the culture of the Oromo in the locality where customary courts are established. The materials/things used for the oath include stone, gourd/calabash, bone, ash, barley, and holy books. Ash and calabash represent a curse that would happen to the defendant and his/her family if he/she falsely testifies, while barley signaling loss of blessings in life.

Before making the oath, the defendant is duly informed about the curses, the oath believed to bring against him/her and his/her families/ clans; and he/she also told to inform and call all significant members of his/her families/clan such as his/her wife/husband, child/ren, brother, sister, clan leader etc. And the families of the defendant advise the defendant to tell the truth (if there is a truth they also know) and not to enter into Oath and bring curse to the families/clan. As per my informants, after being duly informed about the problem that they believed resulted from the oath, with limited exception, the defendant prefers to speak the truth rather than make the oath.

[99] Interview with elders of appellate customary court of districts of Gelen sub-city, 28 July 2025, Gelan
[100] Ibid

After speaking the truth, the elders of the customary court resolve the dispute through negotiation, consensus, and reconciliation, and often the defendant pays what he/she borrowed, returns what he/she took unfairly, or pays reparations or compensation if the case requires that.[101] There are also clients of the customary court who come only to make the truths known, rebuild broken family relations between husband and wife, expectant mother and a father, a child and father, etc. Most of these kinds of cases are brought to the customary court by a woman, and they are effectively resolved by the customary courts without the need to enter into the oath or take a paternity test.[102]

Our informants concur that the oaths entered before customary courts are believed to bring curses if done in lies, than the oath using holy books (Bible or Quran) in formal courts. And this is why customary courts are more respected by the community than formal courts. In this regard, one of my informants stated that "formal courts are feared but not respected, unlike customary courts."[103]

Moreover, our informants concur that the halves manipulate evidences in the formal courts, and there is high probability of giving justice based on fabricated evidence. As a result, there are clients of customary courts who bring their suit to customary courts after they get a final decision from the formal courts based on limited or manipulated evidence.[104] They bring the suit to the customary court to find the truth and get justice based on the truth. In this regard, we found three women whose cases were decided by formal courts, but came to customary courts to make their truth be known and get justice

[101] Interview with Elders of appellate customary courts of districts of Gelan sub-city, 28 July 2028, Gelan
[102] Interview with elders of first instant customary court of Gelan district, 07 August 2025, Gelan
[103] Interview with ex-president of districts of Gelan sub-city, 01 August 2025, Gelan
[104] Interview with secretary and clients of first instant customary court of Andode district, 29 July 2029, Andode.

accordingly.[105]

However, in these kinds of suits, the defendant may not appear in the first summons of the customary courts,[106] or even if he appears, he will not consent to the jurisdiction of the customary courts. With regard to defendants who refuse to consent to the jurisdiction of the customary court, there is a situation in which he/she is advised to consent, which emanates from the zeal of finding the truth of the plaintiff as well as respecting the culture of the community.[107]

Appreciating the method used to find the truth among disputing parties in customary courts, first instance district (formal) courts of Gelan sub-city started to request witnesses in the court to make oath using the customary material used in customary courts in addition to the holy books (Bible or Quran).[108] Among others, the customary materials used for making oath in the district court include roasted barley stone, coal, bone, and bullet/cartridge. The literary meanings for roasted barley is to let my family lose its life s, let me be like a stone, coal and bone, not a human being, and let me die by a bullet, not a natural death. However, the oath using customary objects in formal courts is performed based on the witness's consent, unlike the oath using the holy books (Bible or Quran).[109]

In sum, the methods used for fact findings and resolving disputes in

[105] Interview with the women in Andode district customary court 29 July 2025, Andode.
[106] As per the legislation on customary courts if a defendant did not appear in the first summon of the customary court, he/she will be second time, and other appropriate measures will be taken if he fails to appear following the second summon according to the custom of the locality which include notifying the district (formal) court to execute the order of the customary court. See, Proclamation No. 240/21, Article 27/5-7, and Article 37/2h.
[107] Interview with elders of Appellate Customary court of districts of Gelan sub-city, 28 July, 2025, Gelan
[108] Inteview with Customary Court Focal person and ex-President of Gelan districts courts of Gelan sub-city of Sheger city. Gelan, 1 August 2025.
[109] Interview with ex-president of districts of Gelan sub-cty court, 01 August 2025, Gelen

customary courts contributed to enhancing opportunities for access to Justice at grassroots levels. However, stereotypes and prejudices against women and abuse of power, particularly on issues related to land and inheritance, are raised by our informants as a barrier for women's access to justice. The stereotype and prejudice against women are expressed either in terms of getting the defendant appear in customary courts or elongation and abuse of the process of justice. In this regard, a woman plaintiff in the Andode customary court states, "the customary court sent a summons to the defendant to appear to the court for the third time, so far I came twice and he did not appear, and I returned wasting my time."[110]

The author found the informant waiting for the appearance of the defendant for the third time. And if the defendant did not appear, the plaintiff requests that the customary court write a letter for the formal court.[111] Abuse of power in a context in which the defendant is a member of a customary court elder is also raised as one of the barriers to access to customary justice. In this regard, one of my female informants from the former *Dawarre Dhino Kebele* states that "my brother is the elder of the customary court, and he is the one who is hindering me from getting justice by protracting the process at the village level as well as electing his friends as elders at the village level."[112] In this regard, one of our informants states that, though elders of customary courts are directly elected by the people and believed to have good manners, there is a possibility of electing customary court elders who have behavioral problems. In this situation, when there is a complaint against a customary court elder, he/she will be dismissed/removed, and a new one will be elected

[110] Interview with women client of first instant customary court of Andode District, 29 July 2025, Andode

[111] Interview with customer of first instant customary court who come from Echu Kebele of Andode district, 29 July 2025

[112] Interview with client of Andode district first instant customer court, 29 July 2025, Andode.

before the end of the term of office of the elder.[113]

The author also found limited attention given to women's rights to representation among the elders of customary courts. In this regard, one of our informants in the Gelan district first instance customary court states that "since the law (legislation on customary courts) says one of the elders of the customary court shall be a woman, only one *Hadhe sinqe* is elected in our district."[114] In the Andode district first instance customary court, all (five) elders of the customary court were male. Lack of experience and will to serve as an elder of customary courts among women due to responsibilities at home are raised as reasons for the absence of women's representation among customary court elders.[115] In the appellate customary court of the districts of Gelan sub-city, the elected women (H*adhe sinqe*) often did not appear in the days of the *Gaaddisa* (the place where the customary court conducts its official duty), and due to this, she was replaced with a new one.[116] Of the four customary courts in Gelan sub-city, the secretaries of three of the customary courts are women.[117] However, the confusion seen about the number of women representatives, even among members of customary courts, and the limited representation of women in customary courts, are indicative of the significance of a gender-sensitive approach that promotes equality between men and women in framing legislation for the operation of the customary justice system.

[113] Interview with Ex-President of districts of Gelan sub-city court and Focal person regarding customary courts in the districts of Gelan sub-city court, 01 August 2025, Gelan

[114] Interview with Gelan district first instant customary court elder, 07 August 2025, Gelan

[115] Interview with Andode district first instant customary court secretary, 29 July, 2025, Andode

[116] Interview with elders of Appellate Customary court of Gelan sub-city Districts of Shegar city, 28 July, 2025, Gelan

[117]Interview with districts of Gelan sub-city court Focal person for customary courts, 29 July 2025, Gelan

5. Conclusion

In legally pluralistic society that accommodates a customary justice system, having legislation for the recognition and establishment of customary courts contributes for the observance of human rights standards, the rule of law, and addressing specific challenges to women's access to justice. Given long-lived societal bias, prejudice, and stereotype against women, addressing challenges to women's access to justice requires, among other things, gender sensitive framing of legislation for the operation of the customary justice system that prohibits not only direct discrimination but also indirect (practical) discrimination, and shall promote gender equality.

The legislation on customary courts of Oromia regional state contains provisions that address direct discrimination against women and create an opportunity to access justice in situations where there is no or limited evidence, or in situations where evidences are manipulated. However, there are gaps in relation to the prohibition of indirect discrimination and in having provisions that promote equality between men and women in terms of participation and representation in the customary justice system.

The gaps seen in the legislation on customary courts are empirically reflected in the interpretation of minimum requirements set in the legislation for representation of women in customary courts as law rather than exception aimed at addressing historic injustice, and stereotypes and prejudices some women face in accessing to justice in the study area. Hence, the article argued that women's effective access to justice shall be strengthened by addressing barriers for the observance of human rights standards and rule of law in the legislation on customary courts as well as making the overall framing of legislation gender sensitive that addresses indirect discrimination against women, and promotes gender equality.

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Ethiopia's reservations to the Maputo Protocol: A compatibility analysis with the Protocol's object and purpose

Meron Eshetu [118]

Abstract

In July 2018, following fifteen years of lobbying, the government of Ethiopia ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Despite the delayed ratification, it was widely regarded as a pivotal addition the national framework for protecting women and girls against widespread and systematic human rights violations. Nevertheless, upon ratification, Ethiopia entered six reservations and seven interpretative declarations, which hindered Ethiopian women and girls from fully benefiting from the provisions. The analysis in this paper centres on the three reservations and interpretative declarations on Articles 4(2)(a), 6(b) and 6(d), which respectively prohibit violence against women in the private sphere; set 18 as the minimum age of marriage and require mandatory registration of marriage. This raises a critical question as to their compatibility with the object and purpose of the Protocol, potentially risking their nullification under the Vienna Convention on the Law of Treaties (VCLT). This paper explores both the object and purpose of the Protocol, as well as Ethiopia's stated rationale for entering reservations and interpretative declarations at the time of ratification. Central to the discussion is a critical assessment of whether these reservations and interpretative declarations are compatible with the Protocol's object and Purpose.

Key words; Maputo Protocol, VCLT, object and purpose, compatibility, Ethiopia

[118] Meron Eshetu is a legal researcher at the African Commission on Human and People's rights, based in The Gambia.

Introduction

The Maputo Protocol was adopted by the African Union (AU) in July 2003, pursuant to Article 66 of the African Charter on Human and Peoples' Rights (African Charter), with the objective of strengthening the protection afforded to women and girls across the Continent. Its swift entry into force, merely 18 months after its adoption, positioned it as the most rapidly ratified human rights instrument in Africa, garnering acclaim as 'bill of rights for African women' (Budoo-Scholtz 2018). Drawing upon existing international human rights norms, the Maputo Protocol establishes a comprehensive legal basis that addresses the unique challenges confronting African women and girls (Viljoen 2012).

Ethiopia affirmed its commitment to promoting women's rights by signing the Maputo Protocol in June 2004 and ratifying it in July 2018, with the instrument of ratification deposited with the AU in September 2019. It was later incorporated into national law through Proclamation No. 1082/2018, commonly referred to as the Maputo Protocol Ratification Proclamation. At the time of ratification, Ethiopia entered six reservations and seven interpretative declarations, thereby delimiting the scope of its obligations under key provisions of the Protocol.

This paper focuses specifically on three articles: Article 4(2)(a), which prohibits violence against women (VAW) in both private and public settings;[119] Article 6(b), which calls 18 as the minimum marriageable age; and Article 6(d), concerning marriage registration. The selection of these provisions is deliberate, given that they represent prevailing challenges that have long confronted African women and girls, and constitute the progressive essence of the Protocol. It is, therefore, imperative to assess whether these reservations are compatible with the object and purpose of the Maputo Protocol, as incompatibility provides grounds for nullification. To unravel this, the paper employs a doctrinal method, which involves analysis of primary sources, including the

[119] Maputo Protocol Ratification Proclamation art 3(2)(a).

Maputo Protocol, Maputo Protocol Ratification Proclamation No. 1082/2018, and parliamentary minutes, alongside relevant international legal instruments such as the Committee on the Elimination of Discrimination against Women (CEDAW) and the Vienna Convention on the Law of Treaties (VCLT). These are supplemented by secondary sources, including, explanatory notes, official reports, scholarly books, journal articles and research studies, which provide additional contexts to the assessment.

The paper is organized into six sections. The first section introduces the paper. The second section explores reservations to human rights treaties and their compatibility with the object and purpose of such instruments. The third section unpacks the object and purpose of the Maputo Protocol. The fourth section assesses the rationale behind Ethiopia's reservations and interpretative declarations to the Maputo Protocol. The fifth section, which forms the core of the article, assesses the compatibility of these reservations and declarations with the object and purpose of the Protocol. The sixth and final section provides the conclusion.

1. Reservations to Human Rights Treaties and Compatibility with Object and Purpose

The VCLT regime on reservations is contained in articles 19-23, which, along with the definitional article, establishes what constitutes a reservation, the requirements it must meet to be accepted, and the consequences it will have. Article 2(1)(d) of the VCLT defines a reservation as a "unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".[120]

As opposed to reservations, the concept of interpretative declarations is not expressly defined by the VCLT. This lacuna is

[120] Vienna Convention on the Law of Treaties (VCLT) 23 May 1969 art 2(1)(d).

addressed by the International Law Commission (ILC) Guide (Pellet 2023), which defines them as a unilateral statement of a state or international organisation party to a treaty, 'whereby that state or that organisation purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.'[121] The primary distinction between a reservation and an interpretive declaration thus lies on the intention of the state, rather than the nomenclature of the statement.[122] A statement of a state to exclude or modify certain provisions, regardless of what it is called, is considered a reservation. Conversely, it is not a reservation if a so-called 'reservation' merely clarifies the state's interpretation of a provision without excluding or altering it.[123] Despite the conceptual clarity, its practical distinction and application is often ambiguous, leading to statements that blur these lines (Wei 2001). This issue is particularly relevant in an Ethiopian context, where the so-called interpretative declarations have been employed in a manner that arguably alters provisions of the Maputo Protocol.

The VCLT takes a liberal approach to the right to make reservations as a matter of principle (Wei 2001). However, there are three exceptions: the first is when a treaty expressly prohibits reservations (article 19(a)); the second is when a treaty restricts reservations to particular matters (article 19(b)); and the third is when a reservation is inconsistent with the object and purpose of the treaty (article 19(c)). Among these, the object and purpose test is particularly relevant in assessing the permissibility of reservations, even when the treaty remains silent in the matter. The first step in applying the compatibility test is by determining the object and purpose of a treaty, which is not an easy task. To demonstrate this difficulty, Buffard and Zemanek (1998) describe a treaty's object and purpose as 'truly something of an enigma.' The VCLT, which uses

[121] ILC Guide to Practice on Reservations to Treaties 2011 (ILC Guide) 1.2.
[122] The United Nations Human Rights Committee General Comment 24 (1994) on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant (HRC GC 24) para 3.
[123] Ibid.

the phrase 'object and purpose' eight times,[124] neither defines what a treaty's 'object and purpose' are, nor does it offer any guidelines or methods for doing so. According to the ILC Guideline 3.1.5, a reservation is said to be incompatible with the object and purpose of a treaty when it affects an essential element of the treaty that is necessary to its general tenor, in such a way that the reservation impairs the *raison d'être* of the treaty.'[125]

The International Court of Justice (ICJ), which established the test for the first time, did not provide comprehensive criteria that help to identify the object and purpose of a treaty (Hamid 2006). However, a look at its case laws suggest that the purpose and object of a treaty can be identified among other things based on a treaty title, preamble, provisions that establish the treaty's objective, and the article of the treaty that reveals 'the major concern of each contracting party' when the treaty was signed.[126] because it includes 'disparate elements' that are considered 'sometimes separately, sometimes together.'[127]

Recognising the complexities, the ILC stated that articulating 'a single set of methods' for identifying the object and purpose of a treaty is difficult given the potential variations of situations and their proclivity to change over time.[128] Consequently, it recommends the determination of object and purpose to be made in light of the VCLT rules of interpretation, which *inter alia* require a treaty 'to be interpreted in good faith in accordance with the ordinary meanings of its terms in their context and in light of its objective'. Once that is determined, it is critical to ensure that any reservations made to the treaty in question do not affect its object or purpose, or any clause vital to the attainment of the object or purpose, even if the clause is not part of the object or purpose of the

[124] VCLT arts 18, 19(c), 20 31, 33, 41, 58(1) & 60.
[125] ILC Guide 3.1.5.
[126] ILC Commentaries on the Guide to Practice on Reservations to Treaties (2011) Commentary on Guideline 3.1.5 Incompatibility of a reservation with the object and purpose of the treaty (Commentary on Guideline 3.1.5) para 3.
[127] Commentary on Guideline 3.1.5.1 para 4.
[128] Commentary on Guideline 3.1.5.1 para 2.

treaty (Jonas & Saunders 2010).

2. Unpacking the object and purpose of the Maputo Protocol

The question of whether Ethiopia's reservations and 'interpretative declarations' to the Maputo Protocol are 'compatible' with the Protocol's object and purpose hinged on the question of what its object and purpose are. It is thus important to identify the purpose and object of the Maputo Protocol. The overarching goal that motivated the adoption of the Maputo Protocol, as can be inferred from its preamble, was the recognition that, despite international human rights treaties having been ratified, African women and girls continue to suffer discrimination and harmful practices (Viljoen 2012). Responding to these assumptions and acting as a change agent, the Maputo Protocol seeks to achieve two interconnected goals. The first goal is to improve the implementation and fill normative gaps in existing women's rights standards, which is expected to contribute to the achievement of the second ultimate goal, which is to combat discrimination against women in Africa (Numadi 2024).

To begin with the first, the Maputo Protocol seeks to improve African women's actual enjoyment of relevant rights by consolidating existing women's rights standards for African countries, allowing the governments to meet their agreed-upon commitments, and expounding on specific and unique experiences of African women through the introduction of innovative provisions. In this light, it is reasonable to conclude that the Maputo Protocol seeks to strengthen the protection of women's rights already provided by existing instruments such as the CEDAW and the African Charter on the Rights and Welfare of the Child (African Children's Charter). States cannot, therefore, compromise their existing obligations by reserving the Maputo Protocol, as this would contradict the Maputo Protocol's goal of reinforcing existing standards (Banda 2006).

The non-regression principle in international human rights law, as reflected in Article 31 of the Maputo Protocol, prioritizes applying

any pre-existing standards that better support women's rights, whether found in domestic laws or other international or regional treaties binding on state parties. Article 31 emphasizes two main points: first, the Maputo Protocol seeks to advance and enhance protections for women; second, it opposes any actions that could undermine existing protections. Consequently, any steps related to the Protocol, including ratification, reservations, or interpretative declarations, must not reduce the level of protection already provided under other human rights treaties, such as CEDAW and the African Children's Charter, that apply to the states involved.

The overall objective and purpose of the Maputo Protocol, as implied by its preamble and substantive provisions, is the abolition of all forms of discrimination against women. All of the rights enshrined therein, which include civil, political, economic, social, and cultural rights, are woven together by the principle of equality and non-discrimination, which runs through them like a thread in confronting the continual discrimination, abuse and marginalisation of African women. The words "equality" and "non-discrimination" appear 24 times in the Maputo Protocol, either separately or together, including 9 times in the preamble and 15 times in the substantive provisions, demonstrating this. Article 2, the Maputo Protocol's core provision aimed at eliminating discrimination against women, calls on member states to take the necessary legislative, administrative, and other measures to eradicate all forms of discrimination against women, including corrective and positive action in areas where discrimination against women exists in law and in practice.

The goal of achieving gender equality is specifically realised in the elimination and modification of harmful practices that risk the health and general well-being of women, as well as any other practices that are founded on the notion that one sex is superior to the other, as reflected in articles 2(1)(b), 2(2) and 5 of the Maputo Protocol. To remove any doubt about its stance on harmful

traditional practice (HTP), the Maputo Protocol states that women have equal rights as men in marriage and divorce and re-emphasises the minimum age for marriage as eighteen years. As emphasised in the African Commission on Human and Peoples' Rights (African Commission) and African Committee of Expert on the Rights and Welfare of the Child (ACERWC) Joint General Comment on Child Marriage, the principle of gender equality and the elimination of discrimination serves as the foundation for interpreting all the Maputo Protocol's provisions, many of which recognise gender inequality as a root cause of women's discrimination. As a result, reservations to the Maputo Protocol's core provision, article 2, or to any other provisions that give specific application to its object and purpose, that is, fighting discrimination, are not permitted.

In light of the foregoing discussion , the following reservations to the Maputo Protocol provisions are incompatible with its object and purpose, and thus are not permissible:

- Any reservation to the entire sub-provisions or a portion of article 2 of the Maputo Protocol, which is its core provision aimed at eliminating gender discrimination;
- Any reservation made to any other provision or clause that is essential to prevent, address or remedy discrimination, whether as a cause or a result;
- Reservation to any Maputo Protocol's provision or clause that undermines existing women's protection in a state's domestic legislation or other global or regional treaties in force for that state party, even if that specific provision or clause has nothing to do with article 2, which prohibits discrimination against women, because the Maputo Protocol seeks to improve, not undermine, existing protection.

3. The justification behind Ethiopia's reservations and interpretative declarations to the Maputo Protocol

While the Maputo Protocol Ratification Proclamation does not specify the reasons for Ethiopia's ratification of the Maputo Protocol, the discussions that preceded its ratification provide

valuable insights into this decision. The explanatory note from the Ministry of Foreign Affairs (MoFA) and the minutes from the Women's, Children's, and Youth's Affairs Standing Committee, as well as the Legal, Justice, and Democracy Affairs Standing Committee, highlight several key reasons for Ethiopia's ratification of the Maputo Protocol. First, ratifying the Maputo Protocol is seen as a crucial step in assisting the state to achieve the objectives outlined in the second National Human Rights Action Plan of Ethiopia.[129]

Second, this ratification acts as a commitment to comply with recommendations from the African Commission, which has urged Ethiopia to adopt the Maputo Protocol.[130] Third, it serves as a guideline to protect women and girls from various forms of violence while stimulating the country's commitment to achieve gender equality.[131] Fourth, the Maputo Protocol is in compliance with national legislations, meaning that no additional obligations, budgets, or institutional structures are required.[132]

Fifth, the ratification of the Maputo Protocol will not undermine the country's traditions and cultural beliefs, as the House of People Representative (HoPR) proposed reservations and 'interpretative declarations'.[133] Sixth, it supports the achievements of the state in implementing the United Nations (UN) and AU campaigns aimed at promoting girls' education and eradicating child marriage and female genital mutilation (FGM).[134] The seventh reason is that , the periodic report will be similar to the one that will be submitted to the CEDAW Committee and the African Commission, preparing

[129] Ministry of Foreign Affairs 'Explanatory note to the Draft Proclamation to Ratify the Maputo Protocol' (2017) 9.
[130] Ibid.
[131] MoFA Explanatory Note 10.
[132] The Women's and Children's Affairs Standing Committee & the Legal, Justice, and Democracy Affairs Standing Committee to the HoPR (Standing Committees) 'Conclusions and recommendations of the joint committee on the draft proclamation to ratify the Maputo Protocol' (2018) 2; MoFA Explanatory Note (n 58) 10.
[133] Ibid.
[134] MoFA Explanatory Note 10.

the periodic report will not be an additional burden.[135] Finally, since the country is the host of the headquarters of the AU, and being under international pressure to ratify core human rights treaties, the Ministry states that the ratification will contribute to the reputation and image of the country.

It is reflected in the above justifications that the country is not willing to ratify human rights treaties that contradict with the national laws, and traditional beliefs. The justifications given by the MoFA and the Standing Committees also indicate hesitancy to accept human rights treaties that impose additional and costly obligations. Moreover, it is apparent from the documents that ratification of human rights treaties is more closely linked to the reputation of the country than addressing the situation of human rights. In this regard, Tornius (2023) argues that 'Ethiopia's incentive to ratify the Maputo Protocol are rather symbolic (solidarity with African solutions to African problems) than material (financial or security).'

With its extensive reservations to the provisions of the Protocol, Ethiopia depicts both its desire to become party to the treaty while at the same time seeking to exclude certain provisions perceived as being antithetical to its traditions and national laws. This section is thus devoted to provide an overview of the justifications that Ethiopia raised in entering reservations to the provisions of the Maputo Protocol. Although each of the reserved and declared provisions merits compatibility assessment, the scope of this paper is confined to registration of marriage, minimum marriageable age and prohibition of violence in the private setting, for the following reasons. Firstly, these provisions directly affect the lived experiences of Ethiopian women and girls and have spillover effects on the realization of other rights, including health, bodily autonomy, economic empowerment, and education. Second, these areas are widely contested and are central to advocacy not only in Ethiopia but across the continent. Finally, they often intersect with cultural and religious beliefs, which are frequently invoked to

[135] MoFA Explanatory Note 10.

legitimize violations.

3.1 Mandatory registration of marriage

Ethiopia has placed reservation on article 6(d) of the Maputo Protocol, which states that for a marriage to be legally recognised, it must be recorded and registered in line with national laws.[136] Article 28 of the Family Code and Registration of Vital Events and National Identity Card Proclamation No. 760/2012 requires every marriage, including a customary and religious marriage to be registered before the Officer of Civil Status. Moreover, article 94 of the Family Code requires marriage to be proved by presenting a legally valid certificate of marriage drawn up at or after the marriage ceremony.[137] The above requirements for marriage registration appear to be the same as article 6(d) of the Maputo Protocol. Nevertheless, the MoFA explanatory note stated that despite the provisions of the Proclamation and the Family Code, failure to register a marriage does not affect its validity. Therefore, the reservation over this particular provision is justified by the fact that every marriage that fulfils the essential conditions stipulated in the Family Code is valid regardless of registration.[138]

In support of this reservation, some scholars contend that compulsory marriage registration may negatively affect women who are legally married under customary or religious laws without any registration (Birhanu 2019). They, therefore, assert that this particular reservation prevents the dissolution of unregistered marriages, which most Ethiopian women are involved in. On the contrary, others argued that the mandatory registration of marriage is a vital step in eradicating early marriages, which are usually formed under customary and religious law (Ashine 2020). It is pertinent to emphasize that as an instrument adopted to address the plight of African women, its provision on mandatory marriage registration was not incorporated to affect those married under religious or customary laws. The provision instead envisaged to

[136] Maputo Protocol Ratification Proclamation 3(1)(b).
[137] The Revised Family Code of Ethiopia (the Family Code) (2000) art 94.
[138] MoFA Explanatory Note 4.

eradicate child marriages and ensure that the consent of the intending spouse is free and informed. Accordingly, the author echoed the second point of view that the reservation to article 6(d) of the Maputo Protocol contributes to the prevalence of child brides in Ethiopia.

3.2 Prohibition of violence against women in the private sphere

The Maputo Protocol brings about, among other things, progress by eradicating all forms of VAW, both in the public and private sphere. VAW is defined in article 4(a) of the Maputo Protocol in a comprehensive manner, which includes acts or threats of violence in both public and private realm.[139] Despite absence of explicit mention of marital rape, the prohibition of forced and unwanted sex in the private sphere in the Protocol , they can be considered as a direct reference to marital rape (Stefiszyn & Prezanti 2009). Moreover, the African Commission in its Guidelines for Combating Sexual Violence and its Consequences in Africa (Niamey Guidelines) affirmed that the definition of sexual violence applied regardless of the victim's relationship with the perpetrator.[140]

Despite the prevalence of marital rape in Ethiopia, article 620 of the Criminal Code criminalises rape committed outside wedlock, clearly excluding rape perpetrated by a marriage partner. Against this backdrop, Ethiopia placed a reservation on article 4(2)(a) of the Maputo Protocol stating that:[141]

> "article 4(2)(a) shall be applicable in accordance with article 620 of the Criminal Code of Ethiopia that defines rape to be a forced sexual intercourse that occurs out of wedlock."

During the discussion preceding the ratification of the Maputo Protocol, two pertinent questions were posed in relation to this particular reservation. The first is, according to articles 9(4) and 13(2) of the Constitution of the Federal Democratic Republic of

[139] Maputo Protocol art 4(2)(a).
[140] The Guidelines on Combating Sexual Violence and its Consequences in Africa (2017) 15.
[141] Maputo Protocol Ratification Proclamation art 3(2)(a).

Ethiopia (FDRE Constitution), international agreements ratified by Ethiopia are part and parcel of the laws of the land, and Chapter three of the Constitution shall be interpreted in conformity with international human right treaties adopted by Ethiopia, which places the Maputo Protocol on an equal footing with national legislations including the Criminal and Family Code.

So what legal basis is used to interpret the provisions of the Maputo Protocol in conformity with the Criminal Code? was the first question.[142] Further, given the significance that criminalising sexual violence in the private sphere has on the realisation of gender equality and women empowerment, why should the government of Ethiopia amend its national law to better protect and promote women's rights instead of entering a reservation? was the second question.[143]

In response to the questions and entering the reservation, it was argued that even though the Criminal Code neither encourages nor reinforces marital rape, there is no applicable law that applies to rapes committed inside of marriage, preventing the provision from being implemented in Ethiopia.[144]

However, it is argued that the reservation will likely be withdrawn if a law that criminalises marital rape is adopted. There was also an argument that marital rape is a foreign concept that cannot be implemented in Ethiopia, as more than a million of women live in the rural areas and rely on their husbands for survival. It was further argued that since sexual intercourse is one effect of marriage, as stated in article 53 of the Family Code, criminalising marital rape has a negative effect on respect within the family, undermines the sanctity of marriage, and promotes divorce.[145] The reservation was, thus, entered to maintain the definition of rape enshrined in the Criminal Code.

It is clear from the above argument that the dignity and integrity of

[142] Minutes of the Women Parliamentarians caucus (2018) 12.
[143] Ibid.
[144] MoFA explanatory note 7.
[145] MoFA explanatory note 3, minutes of the Women Parliamentarians Caucus 11.

women are sacrificed in order to safeguard the sanctity of marriage and the private nature of marital interactions. In this respect, the exclusion of marital rape from the Criminal Code and this particular reservation reveal patriarchal overtones that are firmly ingrained in the legal system, which has the effect of accepting the violation of women's rights as an unattainable subject.

3.3 Minimum age of marriage

The Maputo Protocol under article 6(b) urges states to enact appropriate legislative measures that set the minimum age of marriage to be 18. The provision condemns early marriage and prohibits any exception that lowers the minimum marriageable age with the aim of protecting children. Following the same logic, the Family Code of Ethiopia under article 7 provided that 'neither a man nor a woman who has not attained the full age of 18 shall conclude marriage.' Despite this, the same provision granted the Ministry of Justice the power to grant a dispensation for no more than two years upon the application of the future spouses, parents, or guardians. However, there is no definition of what constitutes a serious cause, rather it is left to the discretion of the Ministry of Justice. It is also worth mentioning that, while most of the regional family codes of Ethiopia align with the federal family code provisions, Afar and Somalia regional states have yet to enact family law.

The delay has been largely attributed to customary and religious marriage practice, which continue to sustain high prevalence of child marriage in these regions (McGavock 2021). Against this background, Ethiopia has made a reservation to Article 6(b) of the Maputo Protocol to maintain its Family Code that allows marriage to be performed at the age of 16 in exceptional cases.[146]

This African-driven provision was specific about the absolute prohibition of child marriage and adequately captures the challenges that African girls face on a daily basis (Makau 2024). In *Association Pour le Progrès et la Defense Des Droits Des Femmes*

[146] Maputo Protocol Ratification Proclamation art 3(2)(b).

Maliennes(APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Republic of Mali case (2018), the African Court noted that the Malian Family Code, which allows the administrative authority to grant permission for girls to get married at the age of 15, is discriminatory, and violates article 6(b) of the Maputo Protocol and articles 2, 4(1), and 21 of the African Children' Charter. Although the provision in the Family Code of Ethiopia is gender neutral, due to the fact that early marriage disproportionately affects girls, it accelerates women to be child brides as early as 16. This undermines the provision's potential to help eradicate child marriage across the continent. Furthermore, as minors are often unable to provide informed consent, lowering the marriageable age results in unions that may lack the element of free and informed consent

4. The compatibility of the reservations and 'interpretative declarations' with the Maputo Protocol's object and purpose

Building on the preceding discussions on the object and purpose of the Maputo Protocol and Ethiopia's reservations to the provisions of the Protocol, this section seeks to assess whether Ethiopia's reservations to articles 4(2)(a), 6(b) and 6(d) of the Protocol are compatible with its object and purpose. It has been discussed in the previous section that reservations may jeopardise the object and purpose of the Maputo Protocol in at least three ways. First, if the reservation seeks to exclude or modify the protections provided by article 2, which aims to eliminate gender discrimination; second, if the reservation seeks to exclude or modify other provisions of the Maputo Protocol that give specific application to article 2; and third, if the reservation excludes or modifies any other protection under the Maputo Protocol when it was not previously made regarding the same rights under another human right treaties applicable to the state, even if it does not directly affect article 2.

A. Assessing the compatibility of Ethiopia's reservation to the criminalisation of marital rape

Ethiopia's reservation to article 4(2)(a) of the Maputo Protocol concerns the scope of the duty to prohibit and eradicate all forms of

VAW. Article 4(2)(a) expressly includes unwanted or forced sex in both the private and public spheres, thereby implying the prohibition of marital rape. Research by the Ethiopia Central Statistical (2016) Agency shows that 34% of married women have been emotionally, physically, or sexually abused by their spouses, with 10% reporting sexual abuse. Similarly, a survey conducted by the World Health Organisation (WHO) (2010) found that 59% of Ethiopian women are victims of sexual violence committed by their partners.

Despite these figures, Ethiopia entered a reservation stating that 'Article 4(2)(a) shall be applicable in accordance with Article 620 of the Criminal Code,' which, in effect, exempts a husband from prosecution for raping his wife. This reservation is particularly concerning in light of the high prevalence of intimate partner violence in the country.

In this context, the Author turns to an analysis of whether Ethiopia's unilateral statement, effectively preserving the marital rape exemption, contradicts the Maputo Protocol's dual and interrelated objectives: first, to combat all forms of discrimination against women (compatibility test one), and second, to enhance rather than dilute the existing protections of women's rights that States are obliged to uphold (compatibility test two).

i. Compatibility Test One: Fighting discrimination against women

To determine whether marital rape perpetuates discrimination against women and thereby undermining the Maputo Protocol's goal of eliminating discrimination, one first needs to understand the concept of discrimination, as well as how marital rape affects victims and plays a role in perpetuating discrimination. The Maputo Protocol defines discrimination against women as:[147]

"Any distinction, exclusion, restriction or any differential treatment on the basis of sex that has the objectives or effect of undermining or reversing the recognition, enjoyment, and exercise by women,

[147] Maputo Protocol art 1(f).

regardless of their marital status, of human rights and freedoms in all spheres of life."

Three important observations are crucial here. First, the definition encompasses direct discrimination, when women's rights are eroded or negated because of differential treatment, and indirect discrimination, which occurs when a general policy or measure, though framed neutrally, has disproportionately prejudicial effects on women, thereby affecting or nullifying women's rights in a particularly discriminatory manner. Second, to constitute discrimination, the difference in treatment or the distinction, exclusion or restriction must impair or nullify a woman's rights. Finally, the Maputo Protocol expressly states that a woman's marital status has no bearing on the definition of discrimination against her.

When viewed against this backdrop, there is no doubt that rape, whether within marriage or outside, is well within the ambit of discrimination against women. First, the marital rape exemption formulated by Ethiopia constitutes 'distinction, exclusion, restriction or differential treatment on the basis of sex.' As it is clear from the Maputo Protocol Ratification Proclamation, Ethiopia is willing to comply with the content of article 4(2)(a), provided that such compliance does not run counter to article 620 of the Criminal Code. This provision of the Criminal Code states:[148]

> "Whoever compels a woman to submit to sexual intercourse *outside wedlock* [emphasis added], whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years."

This provision exempts a man from prosecution for raping his wife, denying married women legal protection. Turning to the provision that deals about rape committed by a woman, it provides that a 'woman who compels a man to sexual intercourse with herself, is punishable with rigorous imprisonment not exceeding five

[148] The Criminal Code of the Federal Democratic Republic of Ethiopia (the Criminal Code) 2004 art 620(1).

years.'[149] This provision, unlike the provision dealing with rape committed by men, does not establish the marital rape exemption. This begs the question of why the exemption is available only to men who rape their wives and not to women who rape their husbands. The author argues that married women face 'distinction, exclusion, restriction, or differential treatment on the basis of sex' due to the marital rape exemption.

Having discussed the existence of 'distinction, exclusion, restrictions, or differential treatment based on sex,' the next question is whether this exclusion and differential treatment impair or nullify a woman's rights. This necessitates an examination of the impact of marital rape on women's human rights. Researches indicate that marital rape has a variety of physical and psychological impact on victims ranging from depression to suicide (Devries et al.2013). Although historical myths persist, it was established that marital rape victims suffer long-lasting psychological or physical injuries that are as severe as or greater than those suffered by stranger rape victims, including humiliation, fear, torn muscles, fatigue, and injuries to private organs (Robinson 2017). Furthermore, miscarriages, stillbirths, infertility, and HIV infections are some of the gynecological consequences of marital rape (Belay and Yilak 2025). The marital rape exemption, which in effect allows the man to use force until the wife becomes submissive, thus restricts not only article 4(2)(a) of the Maputo Protocol, but also several of its provisions, regardless of whether they expressly mention violence. It jeopardises the right to dignity, the right to life, the integrity and security of the person, the right to equality in the family, the right to liberty, equal protection under the law, and non-discrimination, health and reproductive rights, the right to privacy, and freedom from cruel, inhuman, and degrading treatment, among other things.[150] Permitting men to rape their wives, for example, renders women's rights to control one's fertility, to decide whether to have children, the number of children, and

[149] The Criminal Code art 621.

[150] CEDAW General Recommendation 19 on Violence against Women para 7.

their spacing, to choose any method of contraception, and to self-protection and protection against sexually transmitted infections, including HIV/AIDS, illusory.[151]

It also makes the woman's freedom from cruel, inhuman, and degrading treatment as provided under article 4(1) of the Maputo Protocol a chimaera rather than a reality. First, marital rape inflicts severe pain and suffering on the victim by causing long-lasting psychological or physical injuries. Second, the pain and suffering are inflicted for a prohibited purpose that includes coercion, intimidation, or discrimination (Randall & Venkatesh 2015).

Furthermore, the marital rape exception, which views marriage as a license to rape one's wife and thus treats women as a form of sexual property of the husband, inhibits women's ability to enjoy equality in marriage and family relations as provided under article 6 of the Maputo Protocol (Randall & Venkatesh 2015). After all, it is impossible to have equal rights in a marriage where one is being subjugated through forced sex disguised as conjugal right (Segal 1996). Furthermore, the marital rape exception denies women from exercising their right to get equal protection and benefit of the law as recognised under article 8 of the Maputo Protocol. Indeed, there is nothing less rational than denying people protection from violent crime based solely on their gender and marital status (West 1990). In light of the above discussion, one can understand that the exclusion of married women from the protection of the law nullifies almost all rights recognised by the Maputo Protocol.

Marital rape, which impairs or nullifies the enjoyment by women of all the rights specified above, is thus discrimination as per the meaning of article 1(f) of the Maputo Protocol. Accordingly, the exemption of marital rape by Ethiopia implies discriminatory treatment in several ways. First, it legitimises a type of violence that disproportionately affects women. It condones men's illegitimate control over women, even allowing routine sexual assaults on them in order to maintain this control (Bajpai 2022). It, thus, preserves women's inferiority in the country and fortifies the inequality

[151] Maputo Protocol art 14.

between men and women. Second, it discriminates between violence experienced by women and other types of violence (Randall & Venkatesh 2015). Third, it discriminates between violence experienced in the private sphere and violence experienced in the public sphere. It transgresses the right to equality and equal protection of law by discriminating between married and unmarried women. What could be more irrational than a law that prosecute and punishes sexual assault, unless the victim and assaulter are married? After all, how the dignity of a married woman is different from that of an unmarried woman?

By insulating and protecting a separate political system of subordination and violence against a separate class of women who are married, and thereby denies them protection of the laws available to others, the exemption reflects and perpetuates women's social subordination and discrimination. Taking a closer look at Ethiopia's justification for continuing to exempt marital rape from prosecution also exposes a very archaic understanding hidden behind the iron curtain of marriage: wives belong to their husbands, and marriage contracts provide an entitlement to sex. Ethiopia argues that criminalising marital rape would violate Ethiopian tradition and the sanctity of the family, and it would also be hard to prove.[152] These arguments are not only against the very objective of the Maputo Protocol but also, they are fallacious.

The first argument, which concerns the desire to maintain the integrity of Ethiopian tradition, is at odd with the Maputo Protocol, which sets clear criteria to distinguish cultural values that should be preserved from those that should be changed or eliminated. The Maputo Protocol defines 'positive African cultural values' as 'those founded on the principles of equality, peace, freedom, dignity, justice, solidarity, and democracy.'[153] It then calls 'any practice that

[152] UN Statement 'CEDAW Committee Considers report of Ethiopia' Available on https://www.ohchr.org/en/statements/2019/02/committee-elimination-discrimination-against-women-considers-report-ethiopia . Accessed 21 October 2024.

[153] Maputo Protocol preamble para 10.

hinders or endangers the normal growth and affects the physical and psychological development of women and girls' to be eliminated.[154]

Specifically, article 2, which is the core provision of the Maputo Protocol, reiterates the prohibition of HTPs that endanger women's health and general well-being, as well as all other practices that emphasise the inferiority or superiority of one sex over the other, including, wife abuse and child marriages.[155] Article 5, another provision that gives effect to the principle of non-discrimination, also prohibit and condemn all forms of harmful practices which negatively affect the human rights of women. Thus, the argument of Ethiopia's government not to criminalise marital rape, which is rooted in patriarchal values and gender norms, cannot stand in light of the Maputo Protocol's purpose of eliminating all forms of discrimination and harmful practices against women.

The second justification provided by the Ethiopian government to exempt marital rape claims to maintain the sanctity of marriage i.e., the emotional and psychological unity between the spouses. However, the reality is far from this. The EDHS and WHO survey mentioned above shows that majority of marriages in the country are nothing but structures of violence for women. As to the third argument, it claims that marital rapes are difficult to prove. However, this argument does not hold water for two reasons. First, a crime cannot be condoned simply because it is difficult to prove. Second, leaving the implementation issue aside, criminalisation of marital rape would have a deterrent effect on prospective rapist husbands.

In light of the preceding discussion, the author contends that Ethiopia, by making an exception for sexual assault within marriage, shackles the very foundation of the Maputo Protocol, which is to eliminate all forms of discrimination and harmful practices against women.

[154] Maputo Protocol preamble para 13.
[155] Maputo Protocol art 2(1)(b) & 2(2).

ii. Compatibility test two: The prohibition not to take regressive measure

The Maputo Protocol seeks to strengthen the protection of women's rights already provided by existing instruments like CEDAW and the African Children's Charter, as is evident from its preamble. Meaning, it forbids any action of states, including ratification and reservations, from having the impact of rolling back or limiting the rights that women already enjoy in the relevant state. Therefore, using the Maputo Protocol as a vehicle, Ethiopia cannot compromise its current obligations under any other applicable global or regional treaties, as this would go against the Maputo Protocol's object of strengthening existing protection.

Evaluating Ethiopia's reservation to the criminalisation of marital rape against this purpose of the Maputo Protocol, it is evident that the reservation is actually backward-looking. Without making explicit reference to marital rape, various human right treaties (HRTs) to which Ethiopia is a party including the ICCPR, CEDAW and African Charter provide protection for women against VAW including marital rape (Randall & Venkatesh 2015). For instance, the CEDAW Committee has consistently condemned gender-based violence, including rape within the family, interpreting it as a form of discrimination.[156]

In its General recommendation No. 35, it specifically reaffirmed that gender-based violence constitute a systematic form of discrimination and emphasized that its prohibition has evolved into a principle of customary international law.[157] Grounding on its stance, the Committee, in its concluding observations expressed its concern about Ethiopia's failure to criminalise marital rape.[158]

Likewise, the HRC has repeatedly stated that VAW, including intimate partner sexual assault, is a form of discrimination that

[156] CEDAW General Recommendation 19 on Violence against women para 1.
[157] CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 para 2.
[158] Concluding observations on the combined sixth to seventh periodic report of Ethiopia, CEDAW Committee (27 July 2011), UN Doc CEDAW/C/ETH/CO/6-7 (2011) para 20.

requires appropriate criminal remedies. Similarly the Committee against Torture noted that states bear responsibility to prevent and protect victims from gender-based violence, such as rape, domestic violence, FGM, and trafficking.'[159] In addition to this, several soft law instruments including the Declaration on the Elimination of Violence against Women (DEVAW) provides protection for women against violent act that occurs either in public or private life. Pursuant to the DEVAW, marital rape is a kind of VAW that forces women into a subordinate position to men.

From the above discussion, it is clear that Ethiopia was already under obligation to provide protection for woman against violence committed both in the public and private sphere. Thus, by formulating a marital rape exception to the Maputo Protocol, Ethiopia takes a regressive measure that is clearly against the Maputo Protocol's object of strengthening existing protection. To recap, Ethiopia's reservation to the criminalisation of marital rape is not compatible with the object and purpose of the Protocol as it undermines the two interconnected goals of the instrument i.e. strengthening existing women's rights standards and combating discrimination against women in Africa.

B. Assessing the compatibility of Ethiopia's reservation to the mandatory registration and minimum age of marriage

The Maputo Protocol's tough stance on eradicating child marriage on the continent is reflected in articles 6(a) and 6(d), which explicitly prohibit marriage under the age of 18 and require every marriage to be recorded in writing and registered in accordance with domestic law respectively. These provisions have the triple benefit of preventing early marriage, ensuring the free and full consent of the prospective spouse, and providing legal certainty about the existence of marriage that fulfils all the essential conditions (Banda 2006). Despite the protective intent of these provisions, the reality on the ground reveals a significant gap between legal commitments and practice. According to the Ethiopian Demographic and Health

[159] Committee against Torture, General Comment 2 on Implementation of article 2 by States parties' para 18.

Survey (EDHS) (2016) 40% of women aged 20-24 were married before they turned 18, while 60% of girls aged 15-19 were married before they turned 15 (Gavrilovic 2020). These figures point to entrenched social norms and systemic challenges, including poverty, gender inequality, and lack of enforcement of national laws prohibiting child marriage (UNICEF 2020).

Despite the widespread prevalence of child marriage, Ethiopia has entered reservations on both key provisions of the Maputo Protocol, which poses the question of whether the Protocol's object and purpose have a chance of being realised upon Ethiopia's ratification or has risked being achieved through the reservations. The author attempts to address this question through the lens of two compatibility tests.

iii. Compatibility Test One: Fighting discrimination against women

The absence of marriage registration and exceptions to the minimum marriageable age create loopholes that disproportionately expose girls to child marriage which results in the violation of their fundamental rights (Lee-Rife 2012). There is also a broad consensus on the compulsory registration of marriage, concern remains that requiring mandatory registration of marriage leads to the invalidation of unregistered marriage, to the disadvantage of women. Nevertheless, article 6(d) of the Maputo Protocol, which requires mandatory registration of marriage, is not designed to annul unregistered marriages, but to ensure that the essential elements of marriage, such as consent and age are fulfilled across all forms of marriage, including religious and customary marriages (Hanmer and Elefante 2016).

It, therefore, plays a crucial role in ensuring that child marriage does not go unnoticed. This position is further endorsed by the CEDAW Committee in its General Recommendation on Article 16 of the CEDAW, which underscores that states parties should establish a legal requirement of marriage registration and conduct effective

awareness-raising activities to that effect.[160] Despite this, many African countries have failed to make marriage registration compulsory, often citing various practical challenges, including lack of awareness, weak infrastructure and prevalence of customary and religious practises (Musembi 2023). Yet, these challenges cannot excuse states from fulfilling this obligation, as failing to do so would compromise one of the most potent measures introduced by the Maputo Protocol to eradicate child marriage.

It is, therefore, worth noting that the requirement of mandatory registration of marriage under the Maputo Protocol, given the prevalence of child marriage across the continent, is deliberately structured to facilitate its eradication. The Protocol's purpose, therefore, should not be interpreted as invalidating unregistered marriages, as such an approach would hinder the overall objective of eliminating discrimination against women as expressed under article 2 of the Protocol. A reading of Article 6 (a)(b) and (d) in tandem offer a comprehensive legal basis for tackling child marriage. To further underscore the Maputo Protocol's objective of protecting women from discrimination through article 6(b) and (d), it is essential to address child marriage as both a by-product of and a driver of discrimination.

To begin with child marriage as a direct result of discrimination, it is imperative to examine why an exception to the legal age of marriage has been incorporated into the Family Code. A public consultation conducted during the revision of the Family Code informed that there were oppositions to the lifting of the legal age of marriage for women from 15 to 18 (Belay 2016). The public opinion to maintain 15 as a legal marriageable age was justified by a prejudiced fear that, because a large number of Ethiopian women live in rural areas without access to education, prohibiting them from getting married until they turn 18 would negatively affect them and their families (Belay 2016). This indicates that marriage was considered as a tool for parents to delegate the responsibility of

[160] CEDAW General recommendation on article 16 of on Economic consequences of marriage, family relations and their dissolution para 26.

raising their daughter to a man who had the means to do so.

Although the legal marriageable age has been raised to 18, the Ministry of Justice has given the authority to excuse two years with the production of serious causes.[161] Despite the appearance of the dispensation as being gender neutral, given the negative public reaction and the reality in the country, the exception in the Family Code disproportionately targets girls and is strongly influenced by discriminatory norms that place women in inferior roles to men. The impact of allowing dispensation is further exacerbated by non-registration of marriages, which leads to marriages being consummated despite not meeting the prerequisites.

Meanwhile, child marriage is the toxic outcome of gender inequality and discrimination that disproportionately affects girls (Packer 2002). The tradition of dowry, which is often provided by the groom to the bride's family, for instance, is an impulse for many African parents to marry off their daughters instead of their sons (Nour 2009) Furthermore, African women's lives are insecure and predisposed to violence, which forces parents to resort to child marriage in order to escape the embarrassment that results from their daughter losing her virginity or getting pregnant out of wedlock (Getu et al. 2021). Likewise, the gender role assigned to women and the stereotype associated with the education of girls are proven to discriminately expose females to child marriage at a higher rate than their male counterparts.[162] These demonstrate child marriage to be the direct result of discrimination, which disproportionately affect women.

Child marriage, on the other hand, results in discrimination that robs girls of their childhood and future, making them prone to prejudice of different kinds.[163] From the inception of the marriage,

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[161] The Family Code art 7(2).

[162] Human Trafficking Search 'Contributing factors to child marriage in developing countries' 2017 .
Accessible on ; https://humantraffickingsearch.org/2017530contributing-factors-to-child-marriage-in-developing-countries/ .Accessed on 20 October 2024.

[163] United Nation Human Rights office of the high Commission . Accessed on ;

child brides are denied the right to choose when and with whom to be married. And, due to a persistent practice of denying child brides the opportunity to pursue education and employment, girls who are married as minors are more likely to have a lower position in society (Kammerer 1918). Girls' capacity to negotiate safe sexual lives and assert autonomy over their bodies and their sexual and reproductive health is also hampered by power dynamics driven by age disparities.[164] This subjected young girls, among others, to marital rape, early and unwanted pregnancy, maternal mortality, school dropout and significantly heightened the likelihood of women contracting HIV compared to men.[165] It is evident from this that the practice of child marriage violates not only article 6 of the Maputo Protocol but also restricts the application of all of its provisions, resulting in the violation of women's rights to education (article 12), economic and social welfare (article 13), dignity (article 3), reproductive health (article 14), and life, integrity, and security (article 4), among others.

It goes without saying that child marriage is the most noxious manifestation of asymmetrical relations between men and women, which leads to the violation of the principles of gender equality and non-discrimination that serve as the guiding principles for interpreting the provisions of the Maputo Protocol. Despite the extensive discrimination associated with it, Ethiopia's reservation to the provision specifying the minimum age for marriage and requiring mandatory marriage registration enables children as young as 16 to get married.

This compromises the protections provided by the Maputo Protocol for African girls by infringing upon article 2 of the Maputo Protocol, which calls on states to combat all forms of discrimination

https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings .Accessed on 17 September 2024.

[164] Human Rights Watch 'No way out: Child marriage and human rights abuses in Tanzania' 2014. Accessed on ; https://www.hrw.org/report/2014/10/29/no-way-out/child-marriage-and-human-rights-abuses-tanzania#_ftn30 .Accessed 20 October 2024.

[165] Ibid

that endanger the lives of women and girls, mainstream gender in policies and legislations, take corrective and positive measures to eliminate *de facto* and *de jure* discrimination, modify traditional practices that manifest the superiority of one gender over the other, and encourage regional and global efforts aimed at eliminating discrimination.[166] In this light, Ethiopia's reservation to articles 6(b) and (d) of the Maputo Protocol impugns article 2 of the document, which is the core provision that gives effect to the overall object and purpose of eliminating discrimination against women and girls.

iv. Compatibility Test Two: The prohibition not to take regressive measure

Given the risks child marriage poses to the development and well-being of children, particularly for girls, several international HRTs place a high priority on its abolition (Arthur 2018). For instance, article 16 of the CEDAW calls for state parties to prohibit betrothal, impose a minimum age for marriage, and make marriage registration mandatory. Although not explicitly addressing child marriage, the Convention on the Rights of the Child (CRC) exhorts states to take all necessary measures to eradicate all traditional practices detrimental to children (Deane 2021). Compared to the CRC and CEDAW, the African Children's Charter is a progressive regional instrument that explicitly proscribes the minimum age of marriage to be 18 and makes registration of marriage compulsory.[167]

Despite the recognition of women's rights in the above HRTs, the Maputo Protocol embraces the threshold set out in the African Children's Charter and reiterates marriage registration as a legal requirement (Viljoen 2009).

This incorporation, as outlined in the preamble, seeks to strengthen the implementation of women's rights, which still continue to be violated despite the existing HRTs being ratified. Having said that, since one of the objectives of the Maputo Protocol is to advance and reinforce the protection of women's rights already provided in existing HRTs, using a reservation as a tactic to circumvent the

[166] Maputo Protocol art 2.
[167] African Children's Charter art 21.

existing obligations contradicts the Maputo Protocol's goal of strengthening existing standards.

Alongside, with a view of combating child marriage in Africa, the ACERWC and the African Commission, jointly asserted the interrelatedness and interdependence of children's and women's rights, requiring the complementarity of the African Children's Charter and Maputo Protocol in eradicating child marriage.[168] Furthermore, by explicitly defining 18 as the minimum marriageable age, the Maputo Protocol eliminates the loophole created by article 16(2) of the CEDAW, which fails to do so. Considering the above, it is valid to argue that the specification of the minimum age for marriage and the requirement for compulsory marriage registration in the Maputo Protocol are intended to strengthen the protection of women's rights in existing HRTs.

Against this background, Ethiopia's reservation to article 6(b) and (d) of the Maputo Protocol that contain analogous provisions of other HRTs, which the state has ratified without reservation, runs against the Maputo Protocol's goal of strengthening existing standards. In addition, Ethiopia's reservation, which compromises the existing obligation of the state, contradicts the non-regression principle of international law that is enshrined in article 31 of the Maputo Protocol.

5. Conclusion

Although Ethiopia took significant step by ratifying the Maputo Protocol after fifteen years of delay, accompanying the ratification with reservations and interpretative declarations dilutes the Protocol's potential to fully realize the rights of women and girls across the country. This concern further is heightened because some of the reservations, particularly those examined in this paper, constitute the progressive and innovative aspect of the Protocol. It is particularly evident that the justifications for nearly all reservations and interpretative declarations are grounded in the

[168] Joint General Comment of the African Commission and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage para 15.

desire to uphold the provisions of the national laws, which create an institutional environment that permits traditional and religious practices, often characterized by discrimination. Central to the foregoing argument is the fact that, despite the silence of Maputo Protocol on reservation, the VCLT permits reservation only if it is compatible with the object and purpose of the treaty.

Grounded in this principle, the assessment of the selected reservation made by Ethiopia reveals that the reservations central to this paper, namely minimum marriageable age, compulsory marriage registration and prohibition of violence in the private sphere, are indeed incompatible with the object and purpose of the Protocol, which among other things is to eradicate discrimination that has historically been associated with the plights of African women. This raises critical questions about the effectiveness of the Maputo Protocol in responding to the persistent and unique challenges faced by African women and girls. It also highlights concerns about the government's commitment to implementing progressive and innovative standards that could shield women from violations embedded in traditional and religious practices. The government of Ethiopia should, therefore, give due consideration to the withdrawal of these reservations, as such a step would represent a crucial step toward strengthening the Protocol's capacity to achieve its intended impact across the country.

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Witness Protection Measures in Transitional Justice Processes: Lessons for Ethiopia

Awet Halefom and Abreha Mesele[169]

Abstract

Witness protection is a critical concern in the prosecution of perpetrators in ordinary criminal proceedings as well as transitional justice processes involved in serious human rights violations, including war crimes, crimes against humanity, and genocide. This article offers a thorough analysis of the legal frameworks governing witness protection measures across international, regional, and national contexts, emphasizing the need to balance witness safety with the right to a fair trial. By examining the existing legal and institutional frameworks, this research finds that Ethiopia's current laws address only ordinary criminal proceedings, prioritizing "public interest," the typical focus of criminal law. Moreover, while the Ethiopian Transitional Justice Policy (ETJP) outlines the institutional set-up for various bodies under the policy, it fails to provide any policy framework for witness protection. Drawing on the experiences of other African countries, this study further reveals that separate legal and institutional frameworks are essential to the success of transitional justice processes, particularly in societies marked by polarized ethnic tensions and fragile state–society relations. Accordingly, the article recommends the establishment of a dedicated witness protection law and institutional structures that safeguard the rights of both witnesses and victims.

Keywords*:* Witness protection, Ethiopian transitional justice policy, human rights violations, conflict, victims

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[169] Awet Halefom Kahsay, Africa Fellow @ Harry Frank Gugienhime Foundation, New York; Former SVNP scholar at the Wilson Center, Washington D.C, email: awet.halefom@aau.edu.et
Abreha Mesele Zinabu: LLM (Addis Ababa University), LLB (Mekelle University), Assistant Professor of Human Rights Law at Mekelle University, School of Law. Email: abreha.mesele@mu.edu.et

Introduction

In any criminal litigation, evidence whether direct or indirect is not only fundamental to making decisions but also essential to the integrity of the justice process and the fairness of the procedure. Among the various forms of oral evidence, factual witnesses hold the highest probative value (Oyakhire 2023). In certain crimes, the testimony of such witnesses is crucial for establishing criminal accountability when gross human rights violations are committed. Without witnesses and in the absence of any other alternative evidence, it becomes difficult to substantiate the commission of some offenses.

The inability to provide proof often results in widespread impunity, which subsequently promotes injustice. On one hand, states have the obligation to protect individuals and provide remedy for rights violations and to prosecute perpetrators in order to uphold the public interest. On the other hand, they are equally responsible for respecting and ensuring the rights of suspects to a fair trial. Throughout this process, witnesses play a crucial role in the administration of justice.

Witnesses in ordinary criminal justice cases differ from those involved in the prosecution of perpetrators of gross human rights violations, which are part of the broader transitional justice (TJ) framework aimed at establishing judicial truth. Often, witnesses responding to gross human rights violations through TJ are themselves victims of these violations, including conflict-related sexual crimes.

Due to this, witness protection constitutes a foundational pillar of any credible TJ process, particularly when addressing serious crimes such as genocide, war crimes, and conflict-related Sexual and Gender Based Violence (SGBV). Its significance is heightened in contexts where witnesses are also victims of the crimes under scrutiny. The urgency becomes most acute in cases involving SGBV survivors, who face heightened risks of re-traumatization, stigmatization, and retaliatory violence. In African contexts, where oral testimony often constitutes the principal form of evidence, testimonial processes can expose

victims[170] and witnesses to personal and physical threats. Mahony (2010) warns that in many African TJ processes, protection is too often an "afterthought," resulting in fragmented, ad hoc arrangements that collapse under political pressure or resource scarcity. In fact, this is not new to Africa. The tension—between the need for robust evidentiary participation and the imperative of ensuring safety—lies at the heart of comparative debates on witness protection in TJ processes. The absences of robust witness protection policy worsen the situation in Africa. Yet, despite its otherwise expansive vision, the Africa Union Transitional Justice Policy(AUTJP) notably omits explicit provisions for witness protection. This silence reflects a wider lacuna in African TJ frameworks, where the legal and human rights dimensions of protection are acknowledged but rarely operationalized into practical safeguards.

This is not an abstract concern; the consequences of inadequate protection are already evident in past African experiences. In Rwanda as Mahony observes, "[t]he ICTR's[International Criminal Tribunal for Rwanda] design suffered from an absence of witness protection consideration… resulting in 99 witness murders" (Mahony 2010,x). Similar patterns were documented during the *Gacaca* courts process, where attacks on witnesses included poisoning, assault, rape, arson, and in some other cases the murder of family members or the destruction of their property.[171] Such incidents demonstrate how testimonial processes, if not accompanied by credible safeguards, can expose victims and their families to renewed victimization. For Ethiopia, a country where ethnic polarization and political division remain acute, these precedents sound a warning. In societies fractured by ethnic mistrust, the risks of reprisal and stigmatization are magnified, particularly for vulnerable groups that already bore the

[170] In this research we prefer to use the term victim to survivors because the term survivor hides, *inter alia,* the gross human rights violations that attracts accountability.

[171] Following the Kenya election violence in 2007 and the ICC witness testification process, the similar incidents reported see Families of Kenya violence witnesses threatened: ICC, December 3, 2010 available at Families of Kenya violence witnesses threatened: ICC | Reuters

brunt of war.

In Ethiopia there were prior attempts to transitional justice. During the downfall of the Derg regime, Ethiopia arguably experienced some trials related to transitional justice. Although the prosecution of former Derg officials was often described as victor's justice, it incorporated elements of TJ through prosecution (Marshet 2018). There were no special arrangements for witness protection. However, the Special Public Prosecutor Office (SPO) did not have any mechanism to protect witnesses. Notably, nearly all witnesses who testified in the Derg trials were factual witnesses rather than victims.[172] The second phase of Ethiopia's attempt at TJ arguably occurred with the rise to power of Abiy Ahmed, marked by the establishment of the Ethiopian Reconciliation Commission in 2018 by Proclamation No.1102 /2018. However, it ultimately proved to be an unsuccessful effort with no outcome.

Ethiopia has developed a new 'holistic 'transitional justice policy in 2024 encompassing four key components: prosecution, truth-seeking, reconciliation and amnesty, reparations, and institutional reform. Additionally, the country is currently working on a legal framework to establish transitional justice mechanisms aimed at addressing the grave human rights violations committed during the past and current conflicts including those related to the Tigray war. Witnesses are expected to play a crucial role in the implementation of TJ (ICJ, 2011). However, many of these witnesses are often victims of the conflict, which presents unique challenges. Existing scholarly literature addresses witness protection primarily from the perspective of ordinary criminal law and criminal justice administration rather than through the lens of transitional justice (Tadesse 2018; Wekgari 2017). Therefore, it is essential to evaluate and strengthen witness protection mechanisms within Ethiopia's TJ process, drawing on the experiences and best practices from other countries.

The first section of the article examines the legal framework for

[172] According to Marshet 2018, the wife of the celebrated Ethiopian Author, Bealu Girma, who testified for her husband, was the only exception.

witness protection at multiple levels; international, regional, and domestic. It reviews various human rights instruments to identify the specific rights underpinning witness protection. Essentially, this section assesses witness protection from a human rights perspective within the broader context of TJ mechanisms. The second section focuses on witness protection in TJ processes, drawing insights from the experiences of other jurisdictions such as South Africa and Sierra Leone. It aims to extract relevant lessons that can inform Ethiopia's TJ effort, which is currently addressing widespread human rights violations in the country. In the third section, the article analyzes Ethiopia's TJ processes with particular attention to their approach to witness protection beyond the mechanisms established under domestic laws for criminal justice administration. The final section highlights the fundamental pillars of witness protection in the context of TJ that Ethiopia should consider as it seeks to respond to the serious human rights abuses through its TJ policy framework.

1. Witness Protection in International and Regional Legal Frameworks

A witness is defined as any person "who sees, knows, or vouches for something; one who gives testimony under oath or affirmation in person, by oral or written deposition or by affidavit" (Garner 2009). A witness can simply either be a person who observed the commission of a crime or is a victim of the crime. There are three categories of witnesses: 1) justice collaborators, 2) victim witnesses, and 3) other types of witnesses, including innocent bystanders, expert witnesses, and others (UN 2008). As a result of the importance of witnesses in criminal justice administration in general and TJ specifically, they deserve protection by states from physical, psychological, or any other threats.

Since the late 1980s and early 1990s, TJ mechanisms have increasingly become the preferred approach in most post-conflict states, particularly in Latin America and Eastern Europe, as a response to widespread human rights and humanitarian law violations (Zunino, 2019). Among the various TJ toolkits, prosecution and truth-telling can be carried out, in part, through the use of witness testimony.

These witnesses may be victims of the crimes or individuals who have observed their commission. In many cases of widespread human rights violations during conflict, the witnesses are often victims of the same severe abuses. The responsibility to prosecute perpetrators of gross human rights violations and provide remedies to victims through various mechanisms, including TJ, lies with the state in implementing TJ processes.

In brief, we will examine the different rights of victims who may serve as witnesses in TJ processes, as well as the extent of protection granted to them under international, regional, and domestic human rights laws and instruments.

1.1 International legal frameworks

The International Covenant on Civil and Political Rights (ICCPR) under article 2(3a) states that each state party to the present covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. To ensure the right to an effective remedy[173] when individuals' rights are violated, witnesses including victim-witnesses play a crucial role in the judicial process.

Each state party has the responsibility to prosecute offenders and provide remedies to victims, using evidence while respecting the perpetrators' right to a fair trial. The Human Rights Committee has also recognized the vital role that witnesses play in fulfilling the right to fair trial and has recommended that effective witness protection mechanisms be established as part of the State's obligation to protect these rights. Protection measures also play a key role in protecting an accused's right to a fair trial and a victim's right to an effective legal remedy (ICJ 2011).

Furthermore, the Human Rights Council resolution A/HRC/RES/21/7, which addresses the right to know the truth

[173] UN General Assembly Resolution 16 November 2005, A/RES/60/147 also recognizes victims' rights to an effective remedy against gross human rights violations.

about gross human rights violations and serious breaches of international humanitarian law, can be upheld through testimony from witnesses, who are often victims of these violations themselves. If there is a recognized right to know the truth, there must be individuals capable of revealing it; these individuals are victim-witnesses.

To ensure the truth is uncovered, each state has an obligation to implement measures that protect witnesses from harm, safeguarding both their physical and psychological well-being. In addition, UN General Assembly Resolution A/RES/60/147, adopted on 16 November 2005, offers comprehensive protection to victims who may also serve as witnesses in judicial or quasi-judicial proceedings. It states that state should take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victim.

Another international human rights instrument relevant to witness protection is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 13 of the Convention states that each state party shall take steps to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or *any evidence given (*emphasis added*)*. The phrase *any evidence given* certainly includes witness testimony to any judicial or quasi-judicial organs to prove or disprove the alleged facts.

In addition to the above human rights instruments, Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and its Optional Protocol encompasses provisions on witness protection. States are required to prevent, investigate and remedy acts of violence against women, and ensure that women have equal access to remedies, specifically in relation to acts of gender-based violence (CEDAW 2008).

The CEDAW is very much relevant in witness protection because most witnesses in conflict related gender-based violence are victims themselves. In cognizance of this, States Parties are required to incorporate a gender perspective in the design and implementation of witness protection measures (ICJ 2011).[174] Moreover, in a number of concluding observations, the Committee explicitly called for adequate witness protection measures, identifying witness protection as an essential element in efforts to realize the right to a remedy.[175] In addition to the main treaty, the Optional Protocol to CEDAW, which created an individual complaint mechanism, explicitly obliges States Parties under Article 11 to protect individuals who submit complaints to the Committee.

The Convention on the Rights of the Child (the CRC), the treaty-monitoring body attached to the CRC, the Committee on the Rights of the Child, has found witness protection mechanisms to be essential for preventing the violation of the rights of child witnesses.[176] The Committee has also emphasized a child's right to special protections during court proceedings, including those who are victims or witnesses.[177] Other instruments that incorporate witness protection measures include the International Convention for the Protection of All Persons from Enforced Disappearance (ICED), the Convention Against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, and the Protocol Against

[174] International Commission of Jurists. (2011). Witness Protection in Nepal: Recommendations from International Best Practices.p25

[175] CEDAW Committee, *Concluding Observations on Mongolia,* 2008, CEDAW/C/MNG/CO/7, paras. 27 and 28; *Concluding Observations on Russia,* UN Doc. A/57/38 (SUPP) (2002), para. 396; *Concluding Observations on Surinam,* UN Doc. A/57/38(SUPP), (2002), para. 50 bis; *Concluding Observations on Mongolia,* UN Doc. CEDAW/C/MNG/CO/7, (2008) para. 27; *Concluding Observations on Iceland,* UN Doc. CEDAW/C/ICE/CO/6, (2009), para. 23; *Concluding Observations on Nigeria,* UN Doc. CEDAW/C/NGA/CO/6, (2008), para. 26; and *Concluding Observation on Cameroon,* UN Doc. CEDAW/C/CMR/CO/3, (2009), para. 31.

[176] Committee on the Rights of the Child, *Concluding Observations on the Philippines,* UN Doc. CRC/C/PHL/CO/3-4, (2009), para. 52(d).

[177] Committee on the Rights of the Child, *Concluding Observations on Sierra Leone,* UN Doc. CRC/C/OPSC/SLE/CO/1, (2010). 38(b).

the Smuggling of Migrants by Land, Sea, and Air.

In addition to biding human rights treaties, there are also soft laws such as declarations, resolution, principles, and guidelines that include witness protection measures. These soft laws include the United Nations Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power, United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions[178], the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,[179] the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Guidelines on Justice in Matters involving Child Victims and Witnesses, the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers states, and the UN Basic Principles on the Role of Prosecutors**.**

In brief, most human rights instruments, some containing specific provisions and others reflected through committee concluding observations and general comments, recognize the need for witness protection and affirm the State Parties' duty to provide such measures to victims and witnesses, both in court proceedings and other contexts requiring the presentation of evidence.

1.2. Regional Legal Frameworks

The African Charter on Human and Peoples' Rights, adopted on June 27, 1981, and entering into force on October 21, 1986, encompasses various human rights provisions rooted in African values. While the Charter does not include specific provisions for the protection of victims and witnesses, there are a number of provisions protecting

[178] E.S.C. Resolution 1989/65, Annex, 1989 U.N. ESCOR Supp. (No. 1), p. 52, UN Doc. E/1989/89 (1989), Principle 15; and UN Principles on the Investigation of Torture, U.N.G.A. Resolution 55/89, Annex, UN Doc. A/Res/55/89 (22 February 2001), Principle 3(b)

[179] Which provides that effective measures shall be taken to ensure the security, physical and psychological well-being, and, where requested, the privacy of victims and witnesses who provide information to the commission.

rights of individuals during criminal justice administration including article 7 of the Charter where the issues of victim and witness protection is anchored. The fair trial principles are elaborated by another Guideline.[180]

Beyond this, the Rules of Procedure of the African Commission on Human and Peoples' Rights (2010) article 101(7) provides that [t]he Commission shall take the necessary measures to protect *the identity of experts, witnesses or other persons* if it believes that they require such protection and in instances where *anonymity* is specifically requested by such expert or witness (emphasis added). Moreover, this Rules of Procedure to the African Commission in article 103(3) stipulates that [t]he Commission shall ensure that State Parties grant the necessary guarantees to all persons who *attend a hearing* or who in the course of a hearing provide information, *testimony or evidence* of any type to the Commission. While not formally a binding instrument, the African Union Transitional Justice Policy Framework (AUTJPF), adopted in 2019, does not contain specific provisions on witness protection. Instead, it offers a form of protection specifically for children as vulnerable participants in criminal proceedings and victims in general.

Overall, the regional human rights instruments mentioned above acknowledge the presence of victim and witness protection mechanisms. However, these protections are not comprehensive and are primarily limited to the administration of criminal justice within the specific mandates of their respective institutions. Furthermore, there is no clear guidance on whether these protection measures apply to TJ processes. A discussion on protection mechanisms for victims and witnesses in the context of TJ will be provided in the following sections.

1.3.Witness protection measures in *ad hoc* tribunals and the ICC

The International Criminal Tribunal for the former Yugoslavia (ICTY)

[180] The African Commission on Human and Peoples' Rights', Principles and Guidelines on the Rights to a fair Trial and Legal Assistance in Africa, DOC/OS (XXX) 247 (2001).

was created in 1993 through United Nations Security Council Resolution 827, followed by the establishment of the International Criminal Tribunal for Rwanda (ICTR) in 1994 under Resolution 955. They addressed severe human rights abuses, including genocide, war crimes, and crimes against humanity, which occurred in the former Yugoslavia and Rwanda.

The ICTY Statute under article 22 clearly recognizes the need for the protection of victims and witnesses. In addition to the substantive provisions, the rules of procedure and evidence of the Statute[181] include measures for the protection of victims and witnesses.[182] Under Article 14 of its Statute, the ICTR adopted the procedures of the ICTY Statute for its own use, with any necessary modifications. Similarly, the Statute of the Special Tribunal for Lebanon established by an Agreement between the United Nations and the Lebanese Republic pursuant to Security Council resolution 1664 (2006) of 29 March 2006 provides greater protection to victims and witnesses. According to Article 12(4) of the statute, the Victims and Witnesses Unit (VWU) shall provide measure "to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses."

Within the domain of international criminal law, witness protection has come to be viewed as an essential component of the justice process (ICJ 2011,34). Unlike the *ad hoc* tribunals established by UN Security Council resolutions, the International Criminal Court (ICC) is an independent, permanent court created by the Rome Statute in 1998. Article 43(6) of the Rome Statute of the ICC required the Registry to set up a VWU to provide, in consultation with the Office of the Prosecutor, "protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses (UN 2002: Art 43(6)). Moreover, Article 68 of the Rome Statute sets out some of the assistance and protection mechanisms available such as *in camera* and video-link hearings. Sub Article 1 of

[181] Articles 15, 18(2), and 20(1) of the ICTY Statute
[182] Articles 17, 19, and 21 of the ICTR Statute

this Article requires that measures not be "prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." This article also stipulates that the Court take appropriate measures, not only in regard to the physical security of victims and witnesses but also to protect their "psychological well-being, dignity and privacy."

2 Witness protection in domestic legal framework: in search of broader protection?

Ethiopia has laws that govern witness protection. According to the FDRE Constitution, international conventions ratified by the country are considered an integral part of the national legal framework (FDRE 1995).[183] Additionally, the Constitution offers an interpretative framework concerning the human rights it recognizes (FDRE 1995). Furthermore, Chapter Three of the Constitution, which addresses human rights, explicitly acknowledges the rights of accused individuals in criminal justice, including the right to a fair trial.

To begin with, Article 20(4) of the FDRE Constitution guarantees the rights of accused persons to have full access to any evidence presented against them and to examine the witnesses testifying against them. Meanwhile, the Ethiopian Criminal Justice Policy establishes mechanisms for protecting witnesses and their families, outlining the justifications for providing such protection (FDRE 2011). The Policy also defines the extent of protection, which can continue even after judgment. This protection includes ensuring the physical security of witnesses, safeguarding their property, allowing changes to witnesses' identities, maintaining their anonymity/concealing, and permitting trials via video or in-camera sessions. The overarching goal of these protections is to ensure the effective and meaningful enforcement of criminal law and to bring suspects to justice. According to the Policy, witness protection is determined by the importance and length of protection required, along with the relevance of the testimony to promoting the public interest. Such protective measures may be implemented in cases involving crimes

[183] Article 9(4)

against the constitution and constitutional order, corruption, terrorism, and organized crime.

On one hand, refusing to assist justice is a crime under Article 448 of the FDRE Criminal Code (FDRE 2004). On the other hand, according to Article 444 of the same code, *assaulting, suppressing, or harming any person* who gives *information* or *evidence* to justice authorities or a *witness in criminal cases* is a punishable offense (emphasis added). The law aims to balance the duty of individuals to assist justice with the risk of harm that witnesses may face as a result of their involvement in criminal cases, which necessitates protection. However, the law also allows for justifiable reasons for failing to assist justice, which can exempt a witness from criminal liability by demonstrating sufficient cause for refusing to appear and testify in court. It remains unclear whether the lack of witness protection mechanisms qualifies as sufficient cause to refuse to testify.

Proclamation No. 699/2010 is a law specifically dedicated to protect witnesses and whistleblowers of criminal offenses. Additionally, certain criminal laws include provisions for witness protection. For example, the Anti-Terrorism Proclamation No. 652/2009, under Articles 10(1) and 32, offers protection to individuals who may serve as witnesses in terrorism cases and the court is empowered to decide on the application of witness protection either on its own initiative, upon the request of the public prosecutor, or at the witness's request if there is a credible threat to the witness's life. The court may then take necessary measures to withhold the name and identity of the witness.[184]

The witness protection law dedicated to protecting witnesses and whistleblowers of criminal offenses seeks to strengthen the criminal justice system by safeguarding oral testimony as a crucial form of

[184] The measures it takes may include holding of the proceedings at a place to be decided by the court; avoiding of the mention of the names and addresses of the witnesses in its orders, judgments and in the records of the case; issuing of any directions for securing that the identities and addresses of the witnesses are not disclosed; and ordering that all or any of the proceedings pending before the court shall not be published or disseminated in any manner.

evidence. It offers protection to witnesses and whistleblowers because of their vital role in preventing crime by exposing offenses that pose serious threats to the public. Consequently, this protection is not an inherent right of victims or witnesses but serves as a tool for crime prevention.[185]

The scope of the protection is applicable with respect to testimony or information given or investigation undertaken on a suspect punishable with rigorous imprisonment for ten or more years or with death without having regard to the minimum period of rigorous imprisonment: a) where the offence *may not be revealed or established by another means otherwise than by the testimony of the witness or the information of the whistleblower* ; and b) where it is believed that a *threat of serious danger exists to the life, physical security, freedom or property of the witness*, the whistleblower or a *family member of the witness or the whistleblower (emphasis added) (*FDRE 2010:Art.3).

The proclamation provides over twenty kinds of protective measures including physical protection of persons and property (FDRE, 2010:Art.4). Although the protection measures outlined in the proclamation are extensive, they are primarily designed to extract evidence or ensure the testimony of witnesses regarding the commission of crimes, nothing less nothing more. Furthermore, these protection measures are provided based on an agreement, rather than being grounded in the state's obligation to safeguard witnesses who are often victims themselves.

Therefore, the protection mechanisms provided to witnesses are not only inadequate but also narrowly confined to the realm of criminal law enforcement aimed at prosecuting and punishing offenders. This highlights the need for a legal framework beyond criminal law—one grounded in human rights and based on the government's duty to provide remedy and protection. Additionally, witness protection in the context of TJ differs from that in strictly criminal matters, requiring measures that also address other relevant areas, including the role and safeguarding of witnesses within TJ processes. This is

[185] From the careful reading of the preamble of the proclamation no. 699/2010

especially true because TJ involves not only prosecution but also truth-telling, reconciliation, amnesty, reparations, and institutional reform, all of which require the participation of victims who may also serve as witnesses.

3 Witness protection measures in Transitional Justice processes

The TJ process has increasingly become a policy priority for states seeking to address historical grievances and resolve ongoing conflicts. However, the concept, relevance, and effectiveness of TJ remain deeply contested in both scholarship and practice (Kymlicka 2011; Yusuf and Hugo 2022). In the Ethiopian context, where the Tigray war and ongoing conflicts in other regions have left legacies of atrocity and mistrust, a new TJ policy is now in place with the objective of addressing "recurring problems and ensure sustainable peace and justice, to overcome the structural challenges and threats posed by the unaddressed issues of the past" (FDRE 2024).

While the legal and human rights dimensions of witness protection have been examined in the first sections of this article, this section situates protection within the institutional frameworks of TJ. It does so through a comparative lens, drawing mainly on the Sierra Leonean experience supported by South African experiences, before turning to the emerging Ethiopian process.

The Sierra Leonean process, particularly through the Special Court, has been widely recognized for establishing one of the continent's most robust witness protection frameworks, often praised as a "legacy" for African states. By contrast, the South African experience, though less prosecutorial in orientation, is among the most extensively studied for its reconciliation-centered approach to addressing past atrocities and guiding the transition beyond apartheid. These comparative experiences are relevant to Ethiopia as the current TJ policy adopts both reconciliation and court processes.

4 Sierra Leone Transitional Justice process and Witness protection Measures

The Sierra Leone TJ process emanates from two arrangements. The first arrangement relates to the establishment of Special Court for

Sierra Lone (SCSL) to address massive human rights violations during the Sierra Leone civil war from 1991 to 2001. The Court was established by Security Council resolution 1315 (2000) of 14 August 2000 with the agreement of the UN and the Government of Sierra Leone. The SCSL was mandated to try those "bearing the greatest responsibility" for crimes against humanity, war crimes, other serious violations, and crimes under Sierra Leonean criminal law, as provided in the Court's establishing statute. On the restorative track, the Truth and Reconciliation Commission (TRC) was established in 2000 to promote healing and reconciliation related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement" (TRC 2000,6).

Both arrangements contained provisions on witness protection, though the SCSL developed far stronger rules and procedures. The TRC Establishment Act contained only a single sub-article on witness protection. It required the Commission to take into account "the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may wish to recount their stories in public," and further mandated the implementation of special procedures "to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations" (TRC 2000,7).

In the case of the SCSL, witness protection was governed by two key instruments: the Court's Statute and its Rules of Procedure and Evidence (RPE) (Jalloh, 2014). Witness protection was firmly embedded in the SCSL's legal framework and carried out through its Witnesses and Victims Support Section (WVS) (UN 2002). The Statute mandated that the WVS "shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses," and further required staffing "to include experts in trauma" to address cases of sexual violence and child victims (UN 2002,16(4)). The Rules of Procedure and Evidence

(RPE) strengthened these provisions by directing the WVS to design both short- and long-term protective measures "for their protection and support," and to ensure that witnesses "receive relevant support, counseling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children" (SCSL 2003,34).

Rule 69 of the RPE authorized anonymity "either of the parties may apply … to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise" and the Rules placed a presumption on public proceedings but, under Rule 79, permitted closed sessions where necessary. This obligation also extends to the trial and appeal chambers that they should ensure the trail process gives due regard for the protection of victims and witnesses.

In the Charles Taylor, former president of Liberia, case , the Trial Chamber articulated a three-part test solution for closing sessions: there must be a "real and specific risk to the witness and/or his family"; any protective measure must not impair "the rights of [the] accused to have [a] fair and public trial"; and "no less-restrictive protective measures can adequately deal with the witness's legitimate concerns." These standards were especially salient given the Court's proximity to witnesses, their families, and affected communities—proximity that "exposed them to intimidation and similar acts," and, at times, placed friends or relatives of both prosecution and defense witnesses at risk (Easterday 2010; also, DiBella 2014).

In practice, protection had been provided to witnesses across the pre-testimony, trial, and post-testimony phases. At the pre-trial stage, several mechanisms were employed to ensure the protection of witnesses. The WVS provided safeguards based on a comprehensive security threat assessment that considered factors such as the witness's status, level of exposure, and potential access by hostile actors. Protective measures included relocation to secure safe houses, financial assistance in the form of allowances, reimbursement of expenses (including medical costs), and, in high-risk cases, armed

protection (Simon *et al* 2008). In addition, the pre-testimony phase incorporated psychosocial support which involved both psychological counseling and familiarization with courtroom procedures.

During the trial stage, the institutions established under the founding statute provided a range of protection for witnesses. The most significant safeguard adopted by the SCSL was anonymity where "either of the parties may apply to a Judge of the Trial Chamber or the Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise" (SCSL 2003, 69). On the basis of this enabling rule, once anonymity was ordered by the Court, the witness's identity was withheld so that testimony was delivered behind a screen and excluded from public filming. Special protective measures were also provided for child witnesses, including closed sessions or the use of video links from a waiting room.

The third mechanism concerned post-testimony protection, which constitutes a critical but often overlooked phase of the witness protection process. The risks at this stage emerge in two principal ways: first, when confidentiality is breached or existing protective measures prove inadequate, thereby exposing witnesses to retaliation; and second, when the institutional framework itself ceases to function. During the operation of the SCSL, relocation was the principal measure employed when confidentiality was compromised, including transferring witnesses from Sierra Leone to other jurisdictions when security threats became acute. To address possible institutional lacuna, after the SCSL mandate expired, the UN and the Government of Sierra Leone jointly established the Residual Special Court for Sierra Leone (SCSL) in 2010. The court is empowered to carry out the functions of the SCSL including providing protection for witnesses and victims (Sierra Leone 2011).

Based on such practices and legal frameworks, SCSL provided better witness protection than other similar international tribunals. Mahony (2010, 77) stated that "while 25 per cent and 75 per cent of witnesses at the ICTY and the ICTR respectively were provided protection, 95 per cent of SCSL witnesses are provided some form of protection."

Anonymity, in particular, was a widely used measure which has been used to "protect around 95 per cent of witnesses before the SCSL without serious incident." It is worth noting that the limited mandate of the SCSL—targeting only top-level actors—created incentives to recruit insider witnesses, since their likelihood of facing prosecution was comparatively low.

A similar arrangement was set in the South African Transitional Justice process. A new witness protection was promulgated in 1996 specifically for the TNC process (South Africa, 1996). Like the Seira Leone case, protection is available "prior to, during, and after giving evidence at any hearing of the Commission" (South Africa 1996,8). The regulations safeguarded witnesses through relocation (including abroad), strict anonymity, and daily security oversight, while also providing material and psychosocial support. This included allowances, reimbursement of lost income, school expenses, clothing, medical care, and psychological or psychiatric counseling, with further aid for moving belongings and, in some cases, continued services after discharge.

The regulation addressed the issue of post dissolution protection states that "All protected persons still under protection upon the date of the dissolution of the Commission shall be further protected under the witness protection program of the Department of Justice" (South Africa 1996,15). These protections are accorded not only to the witness but also to the family of the witness. The best practices as well as the challenges during the process are identified by the TRC report. The engagement of NGOs at the grassroot level was successful in protecting witnesses whereas "the assignment of VIP protectors to protect witnesses in their own homes saved the costs of obtaining safe houses and ensured that witnesses' lives were not disrupted." Besides, unofficial nodal points and local structures were established to assist in the gathering of intelligence (TRC 1998).

Some of the notable lessons from the TRC's witness protection program included the relocation of certain high-risk witnesses beyond South Africa's borders, the strategic use of intelligence in security planning, resource allocation that enabled the protection of

approximately 600 witnesses for more than a year, and the engagement of non-state actors such as NGOs and community organizations to supplement state capacity. The Commission's reliance on intelligence was particularly innovative.

There were, however, important limitations in the TRC's witness protection program, many of which were acknowledged by the Commission itself. As the Commission candidly observed, "victims are unwilling to lay charges because of fear of reprisals from the persons whom they implicate. The current system of witness protection is dysfunctional and inhibits successful prosecutions," calling for the establishment of a more adequate program as a matter of urgency (TRC 1998,325).

At the end, despite its challenges, the TRC collected 21,296 testimonies and received over 7,000 amnesty applications, of which 2,500 were heard in public proceedings lasting 1,632 days (TRC 1998:202). While the TRC was widely criticized for failing to address the socioeconomic legacies of apartheid and for not holding its beneficiaries accountable, it is still recognized for its symbolic and practical contributions to national reconciliation. The SCSL is remembered for its "legacy" of accountability through prosecutions of those bearing the greatest responsibility.

5. Transitional Justice and Witness Protection in Ethiopia

5.1 Short background to Transitional Justice in Ethiopia

While the full package of transitional justice is new to Ethiopia, there have been attempts to implement certain elements of it. After the EPRDF came to power, a Special Prosecutor's Office (SPO) was established to bring accountability for atrocities committed during the Derg period. The SPO was mandated to record human rights violations and ensure accountability with the stated purpose of preventing "the recurrence of such a system of government" (TGE 1992, preamble). However, no special courts or benches were created, nor were there specific procedures or evidentiary rules tailored to this process. Instead, prosecutions were carried out "in Ethiopia, by Ethiopians under Ethiopian statutory law with very little assistance –

except right at the beginning – from jurists from the international community" (Tronvoll et al, 2009,10).

The salient feature of this process was its exclusive focus on accountability, with no parallel process of reconciliation (Yacob 1999; Marshet, 2018). According to Tronvoll (2009,8) "From the beginning, the TGE rejected the option of amnesty as a mechanism to deal with the violations of the Derg regime" on the grounds of the state's obligation to fight against impunity. The preamble of the proclamation reinforced this stance, leaving no door open for reconciliation. The government's subsequent response confirmed this approach. For instance, in 2004, Derg officials requested the prime minister "to accept our genuine request and to grant us a forum whereon we, on behalf of all those who stood on our side, and on our own behalf, can ask for forgiveness from our wronged compatriots," yet no response was given (The new Humanitarian, 2004). Over fourteen years, the process dealt with the cases of 5,119 accused persons, of whom 3,589 were found guilty and sentenced to death, life imprisonment, or fixed-term prison sentences (Isaac 2010).

The process attracted significant critiques, often dismissed as a form of "victor's justice," with concerns raised about the independence of the judiciary and the inadequacy of the Public Defender's Office to match the overwhelming number of accused (Marshet 2021). Among the most serious criticisms was that the process entirely ignored reconciliation and failed to provide meaningful reparations to victims of the Derg era (Befekadu, 2025). Witness protection was another major gap: no special arrangements were made despite 8,047 witnesses being heard and 15,214 pages of evidence collected (Isaac 2010).

The limited literature available rarely addresses how witnesses were safeguarded, and in practice, the issue appears to have been overlooked. On the prosecution side, the need for protection may not have been perceived as pressing, since the state itself, which controlled the prosecutorial machinery, was unlikely to allow reprisals against its own witnesses. Yet, what remains strikingly underexplored is the vulnerability of defense witnesses, especially those testifying on behalf of accused senior Derg officials. Even among critics of the trial who

often highlight questions of fairness, due process, and political influence, there is almost no issue of witness protection in these studies.

The second attempt at transitional justice in Ethiopia pursued the opposite approach prioritizing reconciliation over prosecutions, through the establishment of a Reconciliation Commission. The proclamation stated its aim was to foster reconciliation "based on truth and justice" by identifying and ascertaining "the nature, cause and dimension of the repeated gross violation of human rights," and to provide "victims of gross human rights abuses in different time and historical event with a forum to be heard and perpetrators to disclose and confess their actions as a way of reconciliation and to achieve lasting peace" (FDRE, 2019:preamble). Despite these ambitions, the commission produced no meaningful outcomes in either reconciliation or documentation. The process was flawed from the outset, as it was undertaken without genuine public consultation and lacked a proper institutional framework. The commission had no decision-making power and was limited to making recommendations to the public and government, which further undermined its effectiveness (Neima 2019).

Referring to the existing literature is important to demonstrate the availability of studies on transitional justice (TJ) and witness protection in Ethiopia. In addition to those mentioned above, a significant number of works have examined both the 1993 process and the post-2018 initiatives. In particular, numerous articles and theses have been published concerning the 1993 (see, e.g., Dadimos 2000; Jima 2013) as well as on the post-2018 TJ processes (Yohannes, 2025;.Henock, 2024). These studies have produced valuable insights into the broader prospects for justice peacebuilding as well as limitations and challenges of TJ in Ethiopia, thereby enriching the overall field. However, despite this substantial body of research, there has been no comprehensive assessment of witness protection from a TJ perspective, leaving a major gap in both scholarship and practice.

5.2.The 2024 TJ policy and witness protections

As the country case studies illustrate, TJ processes have generally taken two approaches to witness protection. Some have relied on existing domestic laws, which in most cases proved inadequate to address the realities on the ground. Others developed special witness protection programs tailored to the TJ process, arrangements that later helped shape or strengthen domestic jurisprudence on witness protection. Sierra Leone reflects both patterns: the Special Court established a dedicated protection unit with robust safeguards, while the TRC relied mainly on confidentiality clauses under ordinary law, leaving significant gaps. South Africa's TRC similarly exposed the limitations of relying on existing systems, prompting the enactment of a dedicated regulation on witness protection in 1996 originally designed for the transitional process, but later expanded into a broader domestic regime.

From these experiences, two precedents emerge. Where TJ is pursued through special courts or internationalized tribunals, it has become the norm to provide a specialized witness protection arrangement. By contrast, processes oriented primarily toward reconciliation and amnesty, such as truth commissions, tend to rely on domestic law, often with inadequate results. This divergence highlights a recurring weakness: while judicial mechanisms create precedents for long-term protection systems, reconciliation-based models frequently leave witnesses exposed, undermining both participation and legitimacy.

Taking these comparative experiences into account, it is evident that the institutional design of a TJ process often determines whether a separate legal framework for witness protection is needed. Under the ETJP, there are three institutions who runs the TJ process. Accountability is to be pursued through a special court established within the existing Federal High Court system. The policy explicitly prohibits the creation of separate, internationalized, or *ad hoc* tribunals, allowing foreign actors to contribute only technical assistance. For truth-seeking, disclosure, and reconciliation, the ETJP provides for the establishment of a Truth Commission, with a mandate that extends

beyond fact-finding to include the granting of amnesty and recommendations on reparations (FDRE 2024).

A third institution envisaged under the ETJP is a body tasked with leading institutional reforms, requiring a new law to establish its legal foundation. In terms of temporal jurisdiction, the special court is limited to prosecuting crimes committed since 1995, whereas the Truth Commission and related institutions may extend their inquiries further back, as far as information and evidence is available (FDRE 2024). The policy also recognizes the role of traditional institutions as a fourth pillar in the TJ process, entrusting them with supportive functions in truth-seeking, reconciliation, reparation, and even accountability. Notably, the ETJP makes no reference to the institutional set-up of witness protection or to directions on where such structures should be located. Nor does it contemplate the possibility of enacting a separate law to govern witness protection, even though it explicitly mentions the creation of new legal frameworks for other institutions.

As it mentioned in the first section of the article, there is no adequate legal protection for witnesses and victims in the context of TJ in Ethiopia. While the details of witness protection package of the TJ is yet to be seen in the coming establishing laws, the TJ policy hinted a direction about witness protection. Within its definitional section, the policy situates truth-seeking as a process dedicated to uncovering and disclosing the underlying causes, scope, and nature of gross human rights violations. This definitional grounding signals an intention to prioritize victims' narratives and place them at the center of the truth-seeking process. The policy does not operate in how victims and witnesses, particularly those testifying against perpetrators, will be protected in practice.

The rationale of the policy further reinforces this tension. It underscores the absolute necessity of implementing a comprehensive TJ framework that seeks truth, facilitates amnesty under defined preconditions, enables reconciliation, establishes reparations, and

reforms in ways that center victims. This holistic approach aligns with the best international practices, yet it embeds a contradiction: the demand for public truth-telling is highlighted as a core objective, but the risks this poses to victims and witnesses are not systematically addressed. Public disclosure, while vital for acknowledgment and collective memory, can expose victims especially of SGBV to renewed harm, stigmatization, or retaliation. In this sense, the Ethiopian framework privileges public truth over confidential safety, a prioritization that may discourage victims who are potentially witness to participate and ultimately undermine truth-seeking itself.

The policy offers a more direct recognition of this challenge by requiring that the TJ process ensure the security of all participants and protects them from harm, revictimization, or susceptibility to violence. This clause represents a commendable acknowledgment of the risks associated with participation in TJ mechanisms. However, no institutional arrangements, standards, or enforcement mechanisms are specified.

The strongest reference to witness protection emerges under the prosecution pillar of the policy. It stipulates that a comprehensive framework must be developed to protect and support victims and witnesses testifying against key perpetrators, ensuring their safety from retaliatory actions. The inclusion of such a framework marks an important step forward compared to other contexts, such as Sierra Leone's TRC, which struggled to safeguard witnesses effectively. Yet the ETJP remains vague: it does not clarify whether this framework will be implemented through an independent witness protection unit, whether it will rely on existing judicial institutions, or hybrid of them yet to be seen.

6. Witness Protection in Ethiopia: Issues for Considerations

Having examined both the existing legal provisions and the practice of witness protection in Ethiopia, the following section turns to the issues that demand special attention in light of the TJ policy. In this context,

it is essential to identify key gaps and propose considerations for the drafting of laws and institutional frameworks that will follow from the policy.

The first critical point relates whether Ethiopia needs a sperate legal regime on witness protection. Witness protection in Ethiopia's TJ framework currently lacks a dedicated mechanism, being limited to provisions applicable in ordinary criminal proceedings. Yet witnesses play a critical role in all TJ pillars. Comparative experiences confirm that TJ processes with a dedicated protection system—such as the Special Court for Sierra Leone—were more effective in safeguarding both victims and witnesses. In Ethiopia, the devastation of the Tigray war and ongoing conflicts elsewhere have eroded the social fabric and deepened mistrust between state and society (Abel 2023). This reality underscores that witness protection cannot be entrusted to compromised or overstretched institutions. Moreover, the parties to the recent conflict are expected to participate in the current transitional justice process, where each side could potentially face prosecution or be involved in other transitional justice mechanisms. What is needed is a separate, legally entrenched protection regime tailored to TJ, one that acknowledges the centrality of witnesses, operates independently of security organs implicated in abuses, and is capable of restoring trust in the process.

On institutional frameworks, Ethiopia's existing witness protection mechanisms remain embedded within state security and justice organs -Ministry of Justice or Federal Ethics and Anti-Corruption Commission. For TJ, these institutions cannot be relied upon—not only because they lack the capacity to meet the demands of victims and witnesses in transitional contexts, but also because such institutions may be implicated in past human rights abuses or subject to institutional reforms as part of the TJ process. Comparative experience demonstrates that independent protective institutions are not merely technical add-ons; they serve as political signals of autonomy and credibility. The country requires its own framework—one that insulates protection from partisan state organs and draws legitimacy from communities. Ethiopia's deep ethnic polarization and

recurring ethnic conflicts make this imperative even more urgent. The ETJP itself acknowledges the need for institutional reform, implicitly recognizing the failures of existing structures (FDRE 2024, 2.5). As the saying goes 'we cannot solve our problems with the same thinking we used when we created them,' equally applicable to the reliance on compromised institutions for witness protections.

The current legal framework for witness protection in Ethiopia is limited to criminal proceedings and primarily treats witnesses as instruments for gathering criminal evidence, as clearly outlined in Proclamation No. 699/2010, the Ethiopian Criminal Justice Policy, and the FDRE Criminal Code. This approach neglects the human rights dimension of witness protection, where the government's responsibility extends beyond evidence collection to include providing healing and support services for witnesses, many of whom are victims of serious human rights violations targeted by TJ processes. Consequently, there is a need not only for a dedicated witness protection mechanism but also for expanding its scope to encompass protection within the broader objectives of Ethiopia's TJ framework. Such mechanisms must consider the sensitive and volatile nature of ethnic issues during victim-witness disclosures, especially in the current era of social media, which can amplify risks and complicate protection efforts. Therefore, a comprehensive witness protection system should safeguard witnesses within the specific context of TJ, addressing both the underlying causes and nature of human rights violations amid the challenges posed by social media platforms.

Primary TJ processes should begin by establishing a platform that enables victim participation not only in the lawmaking process but also in the development of TJ policies. When developing policies on witness protection, it is essential to involve victims, allowing them to provide input on the types of protection measures needed. Victims should also have a say in defining the criteria for protection, as well as the sanctions for those who violate witness protection rules. The process of creating witness protection measures must ensure the meaningful and effective participation of victims in identifying key

areas of protection and determining who qualifies for such safeguards.

Witness protection in criminal proceedings is primarily aimed at securing evidence from witnesses, often relying on their testimony when no other evidence is available. If the necessary evidence can be obtained through other means, the witness may no longer receive protection. This creates a quid pro quo dynamic, where the government provides protection in exchange for the witness's disclosure against perpetrators. However, such a transactional approach should not apply within TJ processes. In TJ, the government has a broader obligation to protect victims as rights holders, regardless of whether they testify or not. The design of witness protection in TJ must reflect the overall objectives of TJ, which encompass more than just punishing wrongdoers by extracting evidence from witnesses, but also address the diverse and comprehensive goals of TJ mechanisms. Therefore, witness protection measures should be seen as fundamental human rights of victims of gross human rights violations in TJ processes including the ETJP.

7. Conclusion

The success of TJ depends not only on the adoption of general principles but also on a shared understanding of the process, clear governing laws, credible institutions, and a genuine commitment to endure what is often a difficult but ultimately constructive path. TJ cannot be imposed; it derives its legitimacy from inclusivity, consensus, and the extent to which its outcomes reflect the participation and protection of victims. Witness protection must be integrated into this process rather than treated as an afterthought. This study finds that Ethiopia's existing legal protections are confined to ordinary criminal proceedings, where institutions align with the narrow logic of criminal law rather than the broader needs of TJ. While the ETJP enumerates new institutional arrangements for truth-seeking, reconciliation and amnesty, accountability, and reform, it makes no equivalent provision for witness protection.

Comparative experiences demonstrate that separate witness protection frameworks significantly shape outcomes. Ethiopia, facing the legacies of the Tigray war and ongoing conflicts in other regions, cannot credibly pursue TJ without a dedicated legal and institutional framework for protecting witnesses—who are often also victims of human rights violations. Establishing such a framework would not only safeguard participation but also signal independence, rebuild trust between state and society, and ensure that TJ in Ethiopia achieves both legitimacy and durability.

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The Right to Assistance of an Interpreter in the Federal and Oromia Regional State Courts: An Assessment of the Legal Recognition and Practice During Civil Proceedings

Muluken Kassahun[186]

Abstract

This article critically examines the legal frameworks regulating language interpretation and its practice in selected federal and Oromia Regional State regular courts across different tiers. The paper employs a qualitative research approach, gathering data from Addis Ababa and Adama cities through interviews, observations of court proceedings, case analysis, and legal and literature reviews. The federal courts use Amharic, while the Oromia region courts use Afaan Oromo as their working languages. The Federal Courts Proclamation and directives recognize the right to qualified interpreters at the state's expense during civil proceedings. However, in practice, there is a shortage of qualified interpreters in federal courts. As a result, courts often rely on volunteer administrative workers and individuals from outside the court staff. There are no competency certification or monitoring standards in place to ensure the quality of interpretation. Although the federal court establishment proclamation promised to set up interpreters' office, no such office has been established to date. In Oromia, there is no law that clearly enjoins the state to provide interpreters in civil lawsuits. In practice, litigants represented by an attorney often overcome the language barrier. The courts also provide interpreters for litigants who cannot secure their own. In certain circumstances, courts conduct oral hearings in Amharic to expedite trials. Hence, linguistic accessibility in civil proceedings requires both legal and practical reforms.

Keywords: civil proceedings, language interpreter, state obligation, Federal courts, Oromia courts

[186] PhD Candidate, Addis Ababa University Center for Human Rights, Email-mulkas2003@gmail.com.

Introduction

In the judiciary, courts use language to adjudicate cases and interpret laws and facts regardless of whether in civil or criminal proceedings. Litigants use a language to present and defend their cases. Access to justice thus depends on the linguistic accessibility in court proceedings (Grabau et al 1996). Without understanding the language and context, litigants cannot properly present or defend their cases.

As Namakula emphasizes "trial is a communicative process", effective communication is essential for accessing and delivering justice (Namakula 2012). Courts handle cases using a state's working language, which is often selected because it offers better communication and linguistic access to public. However not everyone understands the working language of the court. The provision of interpretation services thus is one of the key techniques used to address language barriers faced by non-speakers.

In Ethiopia, the Federal Democratic Republic of Ethiopia's (FDRE's) Constitution establishes a three-tier court structure at both federal and state levels: First Instance Court, High Court, and Supreme Court.[187] Each court handles civil and criminal cases. In the country , the working language of the federal government and states government is also the working language of federal and state courts, respectively. Currently, a monolingual approach is employed in federal and regional courts, with the exception of the Harari region.[188] The working language at each level of the judiciary is used by litigant parties for pleadings and by courts for hearing them, covering all proceedings from the preliminary hearing to the final resolution of

[187] See FDRE Constitution, Federal Negarit Gazette, Proclamation No. 1/1995, Article 78 (2-3).

[188] Amharic is the working language in federal courts and six regions (Amhara, Benishangul-Gumuz, Central Ethiopia, Gambela, South West Ethiopia, and Southern Ethiopian regional States). In other regions, Afar (Afarigna), Harari (Harari and Afaan Oromo), Oromia (Afaan Oromo), Sidama (Sidamu Afoo), Somali (Caf Somali) and Tigray (Tigrigna) serve as court working languages, respectively.

cases.
The federal and regional constitutions, along with other laws, explicitly recognize the right to a state-funded free interpretation for criminally accused individuals in accordance with international human rights instruments ratified by Ethiopia.[189] However, while access to language is equally important in civil proceeding litigations, there is no uniformity in recognition of the right to state funded interpretation in federal and regional courts. The denial of linguistic accessibility in civil cases not only does threatens equality before the courts but also undermines access to justice overall.

This article explores the legal recognition and practice of state funded interpretation services in selected federal and Oromia courts in civil proceedings. Using a qualitative approach, it focuses on the experiences of the courts and their clients. Addis Ababa and Adama were chosen based on federal structure, linguistic diversity, state working languages, and legal frameworks for court language services. Federal Courts in Addis Ababa use Amharic, while Oromia courts use Afaan Oromo. Although no official data exists, both cities host multilingual populations. Addis Ababa, the country's capital, is home also to thousands of foreigners. This raises the issue of whether and how they cater to their residents who do not speak the cities' working languages.

The study selected Akaki and Lideta First Instance Court (FFIC), Lideta Federal High Court (FHC), and Federal Supreme Court (FSC). Akaki FFIC was chosen for its potential as a site with a significant number of non-speakers, located on the outskirts of Addis Ababa adjacent to Oromia, fostering a multilingual community. Lideta FFIC and FHR were selected because they are the major centers of administration of court services including provision of court interpretation services. Additionally, Lideta FHC frequently hears cases involving court clients that need foreign language interpretation services. The FSC entertains final appeals and has cassation power on

[189] See the relevant provisions of the federal and regional state constitutions of Ethiopia dealing with the right of accused persons.

cases that come from federal courts, in addition to handling regional courts that operate in Amharic and other regional working languages. This study selected Oromia State Supreme Court (SSC), Adama City State High Court (SHC), and Adama City Bole Sub-City State First Instance Court from the Oromia region. In Adama city, although Oromia courts operate in Afaan Oromo, according to key informants, more than 85 percent of cases are heard between non-speakers of the state's working language at both first instance and high court levels.[190] Oromia SSC has final appellate and cassation power on regional matters. The court also has appellate power over federal first instance jurisdiction entertained by Oromia state high courts and constitutionally delegated first instance jurisdiction on FHC power.

The data collection is guided by saturation of data to answer key research questions. The data sources of this research cover 82 interviews, 12 court observations, and 26 case analyses, supplemented by secondary sources. Interviews with key informants at the sites of sampled courts cover 13 judges, 15 court interpreters, six court registrars and legal officers, six court human resource department staff, eight attorneys, 24 litigant parties, and 10 court transcribers. Each interviewee was selected based on their affiliation with interpretation issues.

The author personally conducted interviews with Amharic, English, and Afaan Oromo speakers, while assisted by volunteer interpreters for interviews with other language speakers. Data collection was principally conducted between December 21, 2023, and May 29, 2024. The study is guided by relevant research ethics principles in collecting, analyzing, and writing the research report.

[190] Confidential Interview with Private Attorney at Oromia and Federal Courts, March 13, 2024, *Addis Ababa*; Interview with Milkesa Bekele, Adama City SHC Vice President, March 26, 2024, *Adama*; Interview with Dereje Tesfaye, President of Adama City Bole Sub- City SFIC, March 20, 2024, *Adama*.

1. Linking the Right to Access to Civil Justice and Access to the assistance of an Interpretation Services

According to Hazel Genn, civil justice encompasses substantive civil laws, civil procedure rules, courts, and the judiciary (Genn 2009). Civil litigation includes a wide range of claims, such as family disputes, inheritance, contracts, commercial suits, torts, labor disputes, land and property matters, and other related concerns. Civil lawsuit seeks to compensate the victim for wrongdoings in the form of monetary compensation, restitution, or reinstatement to their initial position.

In many international human right instruments, the right to access civil justice does not exist as a stand-alone right; it is often deduced from broader rights such as the right to an effective remedy,[191] the right to a fair trial[192], the right to access justice[193], and the right to redress, compensation, or reparation. Despite such fact, Hazel Genn stressed that access to "civil justice is a public good that serves more than private interests", as it is crucial for peaceful dispute resolution and maintaining social order, similar to criminal matters or any other matters of public interest (Genn 2009).

The right to access to civil justice may not be fully realized without guaranteeing linguistic accessibility for the litigant parties. However, the right to language services in civil proceedings has not been recognized under most of the international human rights instruments, unlike criminal trials. Even the international instruments acknowledging the right to interpretation for civil proceedings limit it to members of vulnerable populations who cannot understand or

[191] See UDHR (Article 8), ICCPR (Article 2(3)), CMW (Article 83), ICERD (Article 6), Enforced Disappearance Convention (Articles 8 and 20), Maputo African Women Protocol (Article 25), African Persons with Disability Protocol (Articles 9(3) and 10 (3).

[192] See ICCPR (Article 2 (1) and 14), ACHPR (Article 7) and ECHR (Article 2 (1) and 6(1).

[193] See CRPD (Article 13), ACHPR Person with Disability Protocol (Article 13), Maputo Women's Protocol (Article 8), and ACHPR Older Persons Protocol (Article 4).

speak the court's working language.[194] States bear no automatic international obligation to guarantee the right to interpretation for individuals in civil proceedings. States are, therefore, at liberty to recognize it as a right or otherwise.

Thus the right to assistance of an interpretation[195] is a subsidiary right of the right to access justice and facilitates the enjoyment of other fair trial rights for those who do not speak the language with which the court conducts its business. Provision of interpretation ensures the right to equality before courts, judicial impartiality and independence, the right to be informed and understand the content of the case, the right to adequate time and facilities to prepare a defense and communicate with counsel, the right to be tried within a reasonable time, the right to be present, and the right to defend and examine witnesses (Christos 2004).

2. The Legal Recognition of Interpretation Service Provision During Civil Proceedings in Federal and Oromia Regional State Courts

2.1 The Rights of non- Speakers of Court Working Language in Ethiopia

Studies show that 63 percent of Ethiopia's population are monolingual, facing linguistic barriers to communicate in other languages (Ronny et al 2023). However, the number and percentage of the monolingual population differ based on place of residence, ethnic community, age, and other factors. For instance, 85 percent of Sidama, 71 percent of Afar, and 68 percent of Amharic mother tongue

[194] For instance, see Article 12 of ILO Indigenous and Tribal Peoples Convention (1989); Article 22 (3) CMW (1975); Article 13 (1) of the CRPD (2006); the ACHPR PWD Protocol (2018) and Article 9 of the European Charter for Regional or Minority Languages (1992).

[195] In this paper, the term "court interpretation" or "interpretation" refers to oral interpretation of language for a person who is unable to communicate in court working language. It does not refer to legal interpretation of laws by courts.

speakers are monolingual (Ibid).

In this regard, monolingual speakers who are unable to communicate in the working language of the state need interpreter to communicate with speakers of other languages, especially in accessing public services. In relation to court cases, the federal and regional states' constitutions guarantee free interpretation at state's expense solely for criminally accused persons. The 2020 Ethiopian Language Policy follows a similar approach, except for its recognition of Afar, Afaan Oromo, Somali, and Tigrigna as additional federal working languages (Ado 2023).[196]

The federal and regional constitutions and relevant policies are silent on providing the same language service, offering the right to free interpretation at state's expense for civil litigants, unlike for criminally accused persons. Despite this, the FDRE Constitution guarantees "everyone's right to access justice" (Article 37), "equal access to publicly funded social services (including courts)" (Article 41(3)), "non-discrimination on the ground of language" (Article 25), and "equality of all languages" (Article 5). Similar provisions are also included in all regional states' constitutions.

Litigants encounter difficulty in accessing justice if they are unable to effectively understand, present, and defend their cases. The party who speaks the court's working language would have a communication advantage, over those who do not, which makes the court a partisan weapon (California Commission on Access to Justice 2005). To overcome such dilemmas, the above constitutional provisions serve as a basis for asserting the right to access language services, particularly interpretation in civil matters, especially for vulnerable groups of the population who cannot afford to afford their own interpreter.

Additionally, the FDRE's Constitution states that the rights and freedoms specified in Chapter Three of the Constitution must be "interpreted in a manner conforming to the principles of the Universal

[196] See FDRE Language Policy (2020), Section 6.

Declaration of Human Rights, International Covenants on Human Rights, and international instruments adopted by Ethiopia."[197] Several UN human rights monitoring bodies provide authoritative interpretations for human rights provisions guaranteed under Ethiopian constitutions. For instance, the UN Human Rights Committee General Comment No. 32 on the right to a fair trial (Article 14 of the ICCPR) guarantees that indigent parties in civil lawsuits are provided with a free interpreter to avoid miscarriages of justice.[198]

Similar provisions are found in other soft human rights instruments adopted by Ethiopia, such as ICERD General Comment No. 31 (2005), CRC General Comment No. 11, CEDAW General Comment No. 33 (2015), and CEDAW General Comment No. 39 (2022) (Amid 2024). These commentaries target offering of interpretation service during civil proceedings to vulnerable group population. In this instance, the interpretation of the right to access justice under Article 37 of the FDRE Constitution and regional constitutions at least should follow such approach to pledge the right to access interpretation services in civil lawsuits at state's expense in federal and regional courts.

2.2 Federal Courts

At the federal level, Article 31 (2) of the Federal Court Proclamation No. 1234/2021 obliges federal courts to provide competent interpreters for individuals who do not understand Amharic. State-funded interpreters are provided at every level of federal courts, regardless of whether the matter is civil or criminal.[199] The purpose of this provision is to facilitate effective communication between litigants and the courts. Accordingly, so long as the litigants can communicate in the court's working language, there is no need for an interpreter (Arzoz 2010).

[197] See FDRE Constitution, Note 2, Article 13.
[198] See General Comment No. 32, Article 14: 'Right to Equality before Courts and Tribunals and to a Fair Trial', U.N. Doc. CCPR/C/GC/32 (2007) (2007), para. 13.
[199] See Federal Court Interpreters Service Fee Determination and Payment Directive (Federal Courts Interpreters Directive), Directive No. 6/2020, FSC of Ethiopia (2020), Section 1.4.

Article 31 (2) of the proclamation states that a language interpreter is provided for "a person who does not understand Amharic." Language proficiency can be measured by the ability to hear, understand, speak (communicate), read, and write the language. In this regard, different human rights instruments provide inability to speak as alternative grounds to claim the right to interpretation for criminally accused persons.[200]

As court litigation is a communicative process, the ability to understand and speak is equally important to effectively present and defend one's case. The Federal Court Interpreters Service Fee Determination and Payment Directive No. 6/2020 states that "a trial conducted in a language that litigant parties are unable to understand and [speak] constitutes a trial in absentia." [201] The author also observes that in court proceedings, several court litigants understand the spoken language but encounter challenges in properly articulating their speech or responses due to fluency disorders, limited vocabulary, and inability to find the right words or form grammatically correct statements.[202]

The limited proficiency in speaking a court's working language impairs a litigant's effective communication, unlike native or proficient speakers of the court. To avoid such complications, recognizing both the inability to understand and speak the court's working language as grounds for claiming the right to an interpreter is crucial under the proclamation (Leung 2019). Luckily, the above directive addresses the gap in the proclamation.

The federal Court proclamation further requires the court to "provide a competent interpreter." The method for providing interpreters is left to the court's discretion. The court can provide interpreters by either hiring a permanent interpreter or assigning an *ad hoc* interpreter to assist individuals in need. Here, the term "a competent interpreter" is

[200] See Article 14 (3f) of ICCPR, Article 6 (3f) of ECHR and Article 8(2a) of American Convention on Human Rights.

[201] See Federal Courts Interpreters Directive, Note 14, Section 2.2.

[202] Personal Court Observation, FSC, Contract Case, January 24, 2024; Akaki Kality FFIC, Family Case, March 18, 2024, *Addis Ababa*; Adama City Bole Sub-City SFIC, Succession Case, March 20, 2024, *Adama*.

generic. Mikkelson emphasizes that successful interpreting requires mastery of both interpreting skills and legal vocabulary (Gonzalez et al 2012). In USA, for instance, interpreter's competency test includes written exam that tests language ability, legal vocabulary, and interpreter ethics, whilst the oral exam analyzes the three types of interpretation services: simultaneous, consecutive, and sign interpretations (Chochrane 2009).

In Ethiopia, however, there is no such specification. Permanent interpreters are hired from among the graduates of language and literature , while there are no criteria for ad hoc interpreters other than self-declaration of competency.[203] The Federal Courts' Interpreters Directive mandates the court's registrar office to cross-check the competency of interpreters by setting its own standards.[204] In practice, permanent interpreters are assessed based on the civil servant hiring manual, which includes both written and oral exams. [205]

Concerning ad hoc interpreters, the court registrar searches for a native or fluent speaker of the language from its court staff or outsources the service to undertake the interpretation task. [206] Ad hoc interpreters' competence is typically assessed by bilingual judges or litigants during proceedings rather than by the court registrar.[207]

If an interpreter repeatedly misinterprets, the judge may halt their services. Courts also review complaints from litigants or attorneys about interpreters' incompetence or inconsistency.[208] Permanently

[203] Interview with Zinashwerk Haileyesus, Human Resource Officer at FSC of Ethiopia, January 23, 2024, *Addis Ababa*.
[204] See Federal Courts Interpreters Directive, Note 14, Section 3.3.5.
[205] Interview with Zinashwerk Haileyesus, Note 18.
[206] Interview with Zeineb Behonegn, Director of FSC Bench Service Directorate, January 31, 2024, *Addis Ababa*; Interview with Alemayehu Legese, Vice Chief Registrar of FHC, March 12, 2024, *Addis Ababa*; Interview with Tilahun Mulatu, Akaki FFIC Judge, March 18, 2024, *Addis Ababa*.
[207] Interview with Asres Abune and Behailu Tewabe, Judges of Lideta FHC, February 14, 2024, *Addis Ababa*.
[208] Interview with Hana Gebremichael, Judge at Lideta FFIC, March 22, 2024, *Addis Ababa*.

hired court staff and ad hoc interpreters from within the court system generally perform better, while external interpreters often struggle with legal jargon.[209] The issue worsens when non-professionals, like volunteer court attendants, are assigned.

Article 31 (2) only mandates the courts to provide a court interpreter. There are differing opinions on whether litigants can provide their own court interpreters. Some scholars argue against allowing litigants to provide their own interpreters due to potential conflicts of interest and issues of competency (Lebese 2013). Because an interpreter must be unbiased in performing interpretation tasks, allowing a litigant to provide their own interpreter could undermine the impartiality of the interpretation service.

Conversely, some argue that sometimes courts struggle to find interpreters for diverse languages. In such circumstance, if litigants furnish their own interpreters, the burden on the court would be reduced (Chochrane 2009). The right to interpreter assistance further allows individuals to choose between a state-provided interpreter or hiring their own at personal expense, similar to hiring private legal counsel. Therefore, the court's responsibility is to assess and ensure the interpreter's competency and impartiality, rather than requiring the exclusive use of a state- assigned interpreter.

Ethiopia's Federal Supreme Court has issued various directives that address the issue of interpretation services. Among other things, the Federal Court Interpreters Service Fee Determination and Payment Directive No. 6/2020 regulates the assignment, service, and allowances for temporary interpreters. The directive outlines the rights and obligations of interpreters, as well as the powers and duties of the court trial bench, registrar's office, and other internal actors. [210] The directive emphasizes that the physical presence of a litigant is not equated with full presence unless the litigant is mentally present or understands the language of the court proceedings.

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[209] Personal Court Observation, FSC, Contract Case, January 24, 2024; Lideta FHC, Commercial Case, March 12, 2024, *Addis Ababa*.

[210] See Federal Court Interpreters Directive, Note 14.

The directive specifies the service fee payment for interpreters. Domestic language interpreters are entitled to 250 birr allowance per case for a half-day service and 500 birr allowance for a full-day service.[211] For foreign languages, interpreters are paid 500 birr per case for a half-day and 1,000 birr for a full-day task. There is no additional payment for transportation and other expenses. Although the regulation does not specify an allowance for sign language interpreters, courts apply the same standards as for local languages. The directive requires the court finance department to pay interpreters immediately upon completion of their duties. [212]

In this instance, it is important to note that the difference in payment between local and foreign language ad hoc interpreters leads to language discrimination and goes against the notion of "equal pay for equal work." Federal Court officials argue that the shortage of foreign language interpreters justifies this gap.[213] However, the same problem exists for minority local languages and sign language interpreters, who are also hard to find.[214] This inconsistency shows that the courts' justification for the pay disparity is speculative.

The Federal Courts Court Proceeding Directive No. 13/2021 stipulates that interpreters must be fluent in both the interpreted language and the court's working language, Amharic. The directive defines the ethical code of conduct for interpreters.[215] Additionally, the Federal Courts Civil Cases Flow Management Directive mandates judges to identify the need for a language interpreter before beginning the hearing of a case.[216]

2.3 Oromia Regional State Courts

Like the federal Constitution, the Oromia Regional State's Constitution

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[211] See Federal Courts Interpreters Directive, Note 14, Section 3.4.5.
[212] Ibid, Section 3.4.12.
[213] Confidential Interview with FSC Official, February 08, 2024, *Addis Ababa*.
[214] Interview with Zeineb Behonegn, Note 21; Interview with Alemayehu Legese, Note 21.
[215] See Federal Courts Court Proceeding Directive No. 13/2021, Article 23.
[216] See Federal Courts Civil Cases Flow Management Directive, 08/2013 (2021), Article 17 (11/2).

recognizes everyone's right to access justice.[217] The constitution establishes three levels of regular court structures. The Oromia Regional SSC and State High Courts are further authorized to exercise the jurisdiction of the FHC and FFIC respectively. The regional constitution prohibits discrimination based on language and guarantees the right to an interpreter for those who have been arrested or accused.[218] However, there is no equivalent or conditional guarantee for civil proceeding.

The Oromia Regional State Courts Proclamation No. 216/2018 establishes Afaan Oromo as the courts' working language and mandates interpretation services for litigants who do not understand the language. [219] However, the English and Afaan Oromo versions differ: the Afaan Oromo text limits state-funded interpreters to criminally accused individuals, while the English version refers broadly to "defendants" (criminal or civil). Since the Afaan Oromo version holds legal precedence, the right to a state-provided interpreter in Oromia applies only to criminal defendants. Consequently, civil cases—whether under regional or federal jurisdiction—proceed in Afaan Oromo without guaranteed interpretation. [220]

The Oromia Supreme Court Directive on Courts Proceeding Ethics defines an "interpreter" as a person assigned to assist criminally charged individuals, meaning regular courts in Oromia have no obligation to provide interpreters for non-criminal cases.[221] There is also no regulatory framework for interpreters in civil litigation. However, Customary Courts Proclamation No. 240/2021 requires customary courts to appoint community interpreters, and the Oromia Sharia Court Proclamation No. 53/2002 guarantees the right to a state-

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[217] See Revised Oromia Regional State Constitution, Magalata Oromia, Proclamation No. 46/2001, Article 37.

[218] Ibid, Article 25, 19 (1) and 20 (7).

[219] See Oromia Regional State Court Proclamation, Magalata Oromia, Proclamation No. 216/2018, Article 36.

[220] Interview with Oliyad Yadesa, Oromia Supreme Court, President of the Office, February 07, 2024, *Addis Ababa*.

[221] See Oromia Supreme Court Directive on Courts Proceeding Ethics, Directive No. 16/2022, Article 2 (8).

funded interpreter in civil cases, particularly those involving family and personal matters. [222] Customary courts use community interpreters to ensure trust, inclusivity, and participatory customary dispute resolution. [223]

Conversely, while Sharia Courts acknowledge the right to an interpreter to ensure linguistic accessibility and typically have a lighter caseload than regular courts, they lack both a permanent and an ad hoc interpreter system due to budget constraints.[224] Consequently, litigants are often required to provide their own interpreters at their own expense. In some instances, Sharia Courts request assistance from regular interpreters—who are usually hired for criminal cases—to provide interpretation service during Sharia Court proceedings.[225]

The Oromia Regional Courts Proclamation's "veil of ignorance" regarding civil litigant parties' access to interpreters threatens the linguistic accessibility aspects of the right to access courts and justice. The law offers a litigant party who speaks the court's working language a communication advantage over those who are unable to understand or speak it. This creates a judiciary that acts as a partisan institution, accessible only to speakers of the court's working language.

Oromia region court officials cite resource scarcity and "the defense of undue burden on states" as reasons for the failure to officially recognize the right to an interpreter in civil proceedings.[226] However, the scarcity of resources or the notion of progressive realization is not a valid defense for the state's total denial of fulfilling its obligations regarding civil rights, including access to courts due to language barriers (Amid 2024). States bear an immediate positive obligation to

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[222] See Oromia Customary Court Proclamation, Magalata Oromia, Proclamation No. 240/2021, Article 24 (2); Oromia Sharia Court Proclamation, Magalata Oromia, Proclamation No. 53/2002, Article 15 (2).
[223] Confidential Interview with Legal Expert at Oromia SSC, February 07, 2024, *Addis Ababa*.
[224] Interview with Haji Gobana Sheik Kedir, Kadi (Judge) of Oromia Region Sharia SSC, February 09, 2024, *Addis Ababa*.
[225] Ibid.
[226] Confidential Interview, Note 38.

guarantee equal access to justice, including accessibility of court language. However, they may prioritize state-funded interpreter entitlements in civil cases to avoid undue burden of claims on the pretext of resource constraints.

In the USA, for instance, courts prioritize vulnerable groups and family issues—including indigent cases, parental rights, guardianship, maintenance support, and domestic violence—when providing language services, particularly in situations where funding or resources are limited (Amid 2025). Therefore, litigants should not be systematically denied equal access to court due to their inability to speak the court's working language or afford the expense of an interpreter.

3 Administration and Provision of Interpretation Services During Civil Proceedings

This section examines the administration and provision of interpretation services in federal and Oromia regional state regular courts.

3.1 Federal Courts

3.1.1 Administration of Interpretation Services

The federal courts guarantee the provision of interpretation services in civil proceedings. The Federal Courts Proclamation No. 1234/2021 mandates all federal courts to organize an Interpreters Office with comprehensive services.[227] The establishment of a separate Interpreter's Office within courts is intended to ensure professionalism, quality, and accessibility of interpretation services. However, the Interpreter's Office has yet to be established.[228] The details of the problem is elaborated in section 5.2.

The provision of interpretation services in federal courts is structured into local and foreign language interpreters.[229] Languages spoken

[227] See Federal Courts Proclamation, Federal Negarit Gazette, Proclamation No. 1234/2021, Article 31 (4).
[228] Interview with Zeineb Behonegn, Note 21.
[229] Interview with Zinashwerk Haileyesus, Note 18.

within Ethiopia's borders by various nations, nationalities, and peoples—including Ethiopian Sign Language—are considered local/domestic languages.[230] Languages not spoken in Ethiopia are classified as foreign languages. Cross-border languages fall under the category of local languages (Ronny et al 2023).[231] For instance, an interpreter who offers Tigrigna language services for Eritrean citizens is paid based on the local language payment rate.[232]

The Federal Courts recruit, hire, and administer interpreters in accordance with the laws and standards set by the Federal Civil Service Commission. Courts do not have the authority to autonomously formulate rules and criteria for selecting their own interpreters.[233] In this regard, the federal parliament passed the Federal Court Administrative Employees Regulation No. 1/2023 to facilitate the autonomous administration of court administrative staff. This regulation encompasses recruitment, hiring, deployment, promotion, transfer, training and education, occupational safety and health, salary increments, benefits, disciplinary matters, grievance handling, and other relevant subjects for court administrative (non-judicial) workers.

3.1.2 Provision of Interpretation Service

The interpretation service can be offered for litigants, witness or expert witness who are unable to properly communicate in Amharic.[234] In Federal Courts, judges are mandated to identify the need for language interpreter services before starting preliminary hearings and

[230] See Federal Court Interpreters Directive, Note 14, Section 1.3.2.
[231]Ethiopia has at least 17 cross-border languages spoken in Ethiopia and other adjacent countries. These are Afaan Oromo, Afar, Anywa, Baale, Berta, Burjii, Dhasanac, Ganza, Gumuz, Komo, Kwama, Nyangatom, Nuer, Opuo, Sahoo, Somali and Tigrigna.
[232] Interview with Kasech ---, Tigrigna Language Ad Hoc Interpreter, Akaki Kality FFIC, March 18, 2024, *Addis Ababa*.
[233] Interview with Zinashwerk Haileyesus, Note 18.
[234] Sintayehu Bahiru (12 Persons) v Elbunyan Food, 107107 (Akaki Kality FFIC, March 1, 2023); Tsigereda Hidri v Tekle Kelati, 110412 (Akaki FFIC January 09, 2024).

scheduling testimonies.[235] Judges identify the need for interpretation services through different mechanisms. First, judges identify the need for the provision of interpretation if the litigant or witness is unable to effectively communicate in Amharic.

Second, if a litigant party requests an interpreter because he or his witness is unable to effectively communicate in Amharic, the court orders the assignment of an interpreter. In doing so, the litigant party's declaration of being unable to speak the language is used as a standard to determine and assign an interpreter.[236] A key informant confirms that judges request and assign interpreters to them when they are unable to properly communicate in the Amharic language.[237]

Once the need is identified, the judge's order their respective court registrar's office to assign the interpretation service sought on the date scheduled. In the absence of a permanently employed interpreter, the court appoint an *ad hoc* interpreter from its administrative staff, a police officer, or any volunteer.[238] The court registrar may outsource the provision to media journalists, prisoners, embassy translators, private translation service workers, court attendants and others.[239] As a last resort, courts may request that litigants furnish their own interpreters. Due to shortage of permanent interpreters, federal courts rely heavily on *ad hoc* interpreters.[240] In circumstances where a language interpreter is unavailable in court, cases are frequently

[235] See Federal Courts Civil Cases Flow Management Directive, Note 31, Article 17 (11/2).
[236] Interview with Hana Gebremichael, Note 23.
[237] Interview with Adhan Abdurahman, Litigant Party, Lideta FFIC, March 14, 2024, *Addis Ababa*; Interview with Aster Mengistab, Litigant Party, Akaki Kality FFIC, March 19, 2024, *Addis Ababa*; Interview with Kenesa Galalcha, Litigant Party, FSC, February 01, 2024, *Telephone Interview*.
[238] Interview with Alemayehu Legese, Note 21; Interview with Zeineb Behonegn, Note 21.
[239] Interview with Alemayehu Legese, Note 21.
[240] Ibid.

adjourned, which causes delays and incurs unintended costs for litigants.[241]

A person assigned as an interpreter can deliver the service either in person or remotely via a virtual system.[242] Interpreters are required to undertake an oath to interpret truthfully before starting to provide their services. They undertake interpretation services during the first hearing, trial witness examination, judgment reading, appellate and cassation proceedings, as well as during the execution of court judgments.[243] The provision of interpretation is particularly crucial during the initial hearing of a case compared to appellate phases, as it facilitates witness testimonies and the examination of evidence/ facts at that stage.[244]

Courts use different modes of interpretation depending on the nature of each case (Gonzalez et al 2012).[245] Interpreters usually provide the services through word-by-word consecutive interpretation during first hearing, when hearing witness and other phases of oral

[241] Interview with Zeyid Berhe, FSC Litigant Party, February 07, 2024, *Telephone interview*; Interview with Selam Abebe, Litigant Party, Adama City Bole Sub-City SFIC, March 26, 2024, *Adama*; Interview with Ebrahim Kalil, Litigant Party at Lideta FHC, March 13, 2024, *Telephone Interview*.
[242] Interview with Zeineb Behonegn, Note 21.
[243] Ibid
[244] Interview with Mebrat Gebrehiwot, Litigant Party, FSC, February 14, 2024, *Telephone Interview*; Confidential Interview with Litigant Party, FHC, March 14, 2024, *Addis Ababa*.
[245] Court interpretation modes can be classified into simultaneous interpretation, consecutive interpretation, summary interpretation, and relay interpretation. Simultaneous interpretation occurs when the interpreter provides interpretation services at the same time as the speaker. The interpreter is required to instantaneously reproduce oral speech from the source language into the target language. Consecutive interpretation involves interpreting from the original language into the target language after the speaker completes their utterance. This mode allows the interpreter to take notes while interpreting. Summary interpretation condenses and paraphrases key points from the source language into the target language. Sight translation involves rendering interpretation services by reading documents and translating them into the target language. The interpreter read written documents and orally translate to beneficiary.

litigations.[246] During judgments and interlocutory orders, however, the interpreter interprets the summary of key issues of the judgment to the concerned the relevant party.

Relay interpretation (intermediary interpretation), is another mode of interpretation used in exceptional circumstances where it is difficult to find an interpreter who can directly interpret from the source language into the court's working language. Relay interpretation applies when one interpreter interprets into another language, and a second interpreter then interprets that speech into the target language used in court.[247] This method requires at least two interpreters: the first interpreter translates for the second, who then translates into the final target language. For instance, the first interpreter interprets from Chinese to English, and the second interpreter interprets from English to Amharic.

Monitoring the quality of interpretation services is another task for judges. First and foremost, bilingual judges play a crucial role in monitoring the quality of interpretation.[248] A bilingual judge can easily identify errors in interpretation and direct the interpreter to correct mistakes that the latter made during interpretation. The federal court usually assigns bilingual/multilingual judges to monitor the quality of interpretation.[249] The key informants, litigant parties, also state that they have more confidence when the case is handled by a bilingual judge, as the judge can intervene and request clarity in the event of inconsistencies.[250] However, finding a bilingual judge for most foreign and local languages is difficult.

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[246] Interview with Asres Abune and Behailu Tewabe, Note 22.

[247] Interview with Shewangizaw Hailu, FSC Foreign Language Interpreter, January 24, 2024, *Addis Ababa*; Interview with Gedion, Lideta FHC Foreign Language Interpreter, March 14, 2024, *Addis Ababa*.

[248] Interview with Habtamu Kabtyimer, Judge at FSC of Ethiopia, February 08, 2024; Interview with Roba Tilahun, Judge, Akaki Kality FFIC, March 18, 2024, *Addis Ababa*.

[249] Interview with Aster Mengistab, Note 52; Interview with Shambal Shifarra, Litigant Party, Akaki Kality FFIC, March 18, 2024, *Addis Ababa*.

[250] Interview with Shambal Shifarra, Note 64; Interview with Ambessa Mulu, Litigant Party at Akaki Kality FFIC, March 15, 2024, *Telephone Interview*.

Judges usually depend on objections or complaints from the opposing litigant party or their attorneys regarding the accuracy of interpretation, if none of them understand the language in question.[251] In such cases, the judge requests a clarification from the interpreter and the other litigant party regarding the objection. Judges also monitor the quality of interpretation by evaluating inconsistencies in the interpreter's statements and the confused facial expressions of either the interpreter or the litigant parties regarding the interpreted statements. Courts may also order an independent interpreter to verify the recorded audio or video of the interpretation.[252]

If the interpreter commits an unintentional minor interpretation error, the judge orders him or her to correct the statement.[253] However, if the interpreter poorly performs in providing the interpretation services repeatedly during the trial, the judge would order the removal of that interpreter from providing interpretation services and orders that they be replaced by another interpreter.[254] The interpreted statement is also nullified. If the judge finds or suspects that the interpreter intentionally misleads the interpretation, they can refer the case for criminal or administrative liability investigation.[255] In practice, however, judges refer such concerns for investigation only upon complaints from the concerned litigant party.

3.2 Oromia Regional Courts

In Oromia, the law requires parties to a civil litigation to provide their own interpreter at their. In practice, the Oromia regular courts sometimes offer interpreters in civil proceedings for indigent individuals who need free legal counsel to prevent miscarriages of

[251] Confidential Interview, Note 5.
[252] Interview with Asres Abune and Behailu Tewabe, Note 22.
[253] Interview with Hana Gebremichael, Note 23.
[254] Interview with Ermias Name, Court Interpreter at FSC, January 24, 2024, *Addis Ababa*.
[255] Interview with Hana Gebremichael, Note 23.

justice.[256] Administrative court staff or any volunteer also provide free interpretation services in civil proceedings without payment or service fees.[257]

The service is offered either based on a judge's order or a referral from the court's free legal aid division for interpretation.[258] However, according to key informants, the decision to offer free interpretation is depends on the discretion of the judge.[259] Some judges require evidence that demonstrates that a person indigent, while others allow it by considering mere declaration of litigant party's inability to present his own interpreters.

In other circumstances, judges conduct oral litigation in Amharic, but formal records and rulings are written in Afaan Oromo. The courts in Adama often do so.[260] Although the judges' actions contravene the rule of regional courts' working language , they ensure linguistic accessibility for court litigants and enhance the efficiency of handling cases. Such an approach is more preferable for parties in a litigation who cannot speak Afaan Oromo.[261] Additionally, the private attorney representing the litigant party simultaneously addresses the language barrier of the litigant party during oral litigations and communicates court orders and verdicts to their own clients.[262]

The process of identifying the need for and assigning interpreters, the

[256] Confidential Interview, Note 38; Selam Abebe v Getu Melka, 01362 (Adama City Bole Sub- City SFIC March 26, 2024).
[257] Interview with Kifle Asfaw, Oromia SSC Registrar Officer, February 06, 2024, *Addis Ababa*.
[258] *Selam Abebe v Getu Melka,* Note 71.
[259] Interview with Kassahun Beyene, Litigant Party, Adama City SHC, March 28, 2024, *Adama*; Interview with Sisay Tamene, Litigant Party, Adama City Bole Sub-City SFIC, March 21, 2024, *Adama*.
[260] Interview with Lense Sinqee, Adama City SHC Judge, March 26, 2024, *Adama*; Confidential Interview, Adama City Bole Sub City SFIC, March 26, 2024, *Adama*.
[261] Interview with Sisay Tamene, Note 74; Interview with Bethelihem Daniel, Litigant Party, Adama SHC Judge, March 27, 2024, *Adama*.
[262] Interview with Jafar Aliyi, Private Attorney at Oromia and Federal Courts, December 20, 2023, *Addis Ababa*; Confidential Interview, Note 5.

mode of delivering interpretation services, and the monitoring techniques for the quality of interpretation in Oromia courts, is similar to the processes and practices of federal courts discussed in the above subsection. In addition, the selection, benefits, promotion, grievance handling, and disciplinary procedures of permanent interpreters are governed by civil service laws and standards, similar to those of the federal court interpreters. However, the Oromia interpreters are accountable to the vice presidents of the courts,[263] as the registrar office system is currently abolished in the Oromia region's court structure.

4 Challenges of Providing Quality Interpretation Services

4.1 Legal Restriction and Gaps

The right to a court interpreter is essential from the opening of the file to the decision and its enforcement. In Oromia, however, regular court laws do not explicitly require courts to provide court interpreters in civil cases at the expense of the regional state . Hence, litigants are required to bring their own interpreters at their own expense. As discussed earlier, offering interpretation in civil proceedings is at the discretion of the courts.[264]

At federal level, the Federal Court Proclamation guarantees interpretation during civil proceedings but does not specify whether it applies in only courtrooms or extended to outside courtrooms. The Federal Court Interpreters Service Fee Determination and Payment Directive, however, restricts such service to courtrooms.[265] In practice, also, the provision of interpretation is limited to courtroom services.

Outside of courtroom interpretation is equally important for facilitating effective communication, such as during file openings, appointment date notifications, and other related services provided by registrar office or administrative personnel. Sometimes, litigants fail to

[263] Interview with Milkesa Bekele, Note 5.
[264] Confidential Interview, Note 38.
[265] See Federal Court Interpreters Directive, Note 14, Section 1.4.1.

appear on the appointment date due to miscommunication.[266] The judges also acknowledge the importance of language interpretation outside of the courtroom.[267] However, resource constraints, including a lack of personnel, limit the provision of interpreters to the courtroom only.

Another area of legal lacuna is that the delegation of federal court jurisdictions to regional court do not mandate regional courts to hear federal cases using the federal court's working language. There are scholars who claim that the delegation of federal jurisdictions to state courts should be entertained using federal courts' working language.[268] In contrast, the regional constitutions, including that of Oromia, and court laws require regional courts to operate using the regional state's working language. There is no legal basis to claim that Amharic should be the working language when seeing cases that fall within federal jurisdiction . Besides, mandating regions to operate using federal working language threatens state's autonomy and the right to self- rule in federal system of government.

Currently, in Oromia, courts use Afaan-Oromo even when seeing cases that fall within federal jurisdiction. The federal courts use Amharic when the cases are brought to them by way of appeal.[269] In such circumstances, the litigant is responsible for providing their own interpreter before Oromia Courts and must cover the cost of translation to appeal to federal courts, which entails a significant financial burden. Key informants note that the high cost of interpretation and translation is one of the factors restricting parties' rights to appeal and seek cassation before the Federal Supreme Court,

[266] Interview with Soliana Bereket, Litigant Party at Akaki Kality FFIC, March 15, 2024, *Telephone Interview*; Interview with Aklilu Dube, Litigant Party, Lideta FHC, March 14, 2024, *Addis Ababa*.
[267] Interview with Habtamu Kabtyimer, Note 63; Interview with Roba Tilahun, Note 63.
[268] Confidential Interview, Note 5.
[269] Interview with Habtamu Kabtyimer, Note 63.

in addition to court fees and other related expenses.[270]

4.2 Structural Problems

Currently, the administrative workers, which includes court interpreters , of federal and Oromia region's courts are governed by civil servant statutes. The civil service system is not compatible with court administration system and its staff benefits. The civil service administration system jeopardizes the court's independence to manage its employees and creates barriers to maintaining a conducive working environment for administrative staff as opposed to judicial personnel. The system also results in court staff being administered by two separate administrations: judicial appointees by court laws and Judicial Administration Council, and non-judicial personnel by civil service laws.[271]

In regard to this, Article 39 of the Federal Courts Proclamation No. 1234/2021 enables federal courts to independently recruit and manage administrative court staff to address these issues. The proclamation directs the House of Peoples' Representatives to enact regulations that facilitates the autonomous administration of court administrative staff. The Federal Supreme Court is authorized to issue directive that facilitate the enforcement of the above regulation. [272]

Based on the proclamation, the federal parliament adopted the Federal Courts Administrative Employees Regulation No. 1/2023 after a three-years delay. The new regulation aims to enhance the structural and institutional independence and impartiality of federal courts, as well as their ability to address administrative staff complaints. Despite this progress, the enforcement of such law has been delayed to date.[273] The Oromia region also drafted the same law at the regional level, but not

[270] Interview with Sara Yohannes, Litigant Party, FSC, January 24, 2024, *Addis Ababa*; Interview with Amir Abdurahman, Litigant Party, FSC, December 21, 2023, *Addis Ababa*.
[271] Interview with Zinashwerk Haileyesus, Note 18.
[272] See Federal Courts Proclamation, Note 42, Article 55 (2).
[273] Interview with Zinashwerk Haileyesus, Note 18.

yet adopted.[274]

Additionally, the federal court establishment proclamation promised to set up interpreters' offices. The establishment of such an office would facilitate the professionalization of the court interpretation system and the provision of high-quality language interpretation services in courts. Unfortunately, the Interpreter's Office has yet to be established, and its formation remains an unfulfilled promise.[275]

The officials of the Federal Supreme Court responded that they were previously waiting for parliamentary approval of Federal Court Administrative Employees Regulation No. 1/2023, which restructures the administration of non-judicial personnel in the courts, including court interpreters.[276] Following the adoption of the law, the process of enforcing the regulation has also been delayed for unknown reasons by the government. As a result, all levels of federal courts currently offer court interpretation services through the Court Registrar's Office.[277]

4.3 Standardization Problem and Quality of the Service

Standardization of services helps ensure quality, consistency, efficiency, and customer satisfaction. Unfortunately, court interpretation services at both the federal and Oromia level are not standardized in many different dimensions. First, there are no standardized education and training criteria to produce qualified personnel for court interpretation.

The federal and Oromia regional courts require a BA degree in language or literature to hire a permanent court interpreter, but there are no legal education/ training criteria for hiring court interpreters.[278] In other systems, such as in the USA and South Africa, a potential

[274] Interview with Diriba Fayera, Head of Oromia SSC Judicial Administration Commission, February 12, 2024, *Addis Ababa*.
[275] Interview with Zeineb Behonegn, Note 21.
[276] Confidential Interview, Note 28.
[277] Interview with Zeineb Behonegn, Note 21.
[278] Ibid; Interview with Mulu Berhanu, Director of Human Resource Department at Oromia SSC, February 07, 2024, *Addis Ababa*.

candidate is required to hold a certification in court interpretation (Amid 2025). Mastery of a language is insufficient to qualify for court interpretation services due to unique legal jargons and ethical codes of conduct.

Secondly, the court interpretation service in the country lacks a certification and licensing system, as well as a responsible institution to manage it. Currently, the service is provided by any volunteer layperson through self-declaration of competency, with no inclusionary or exclusionary criteria for serving as a court interpreter. This trend causes distorted or poor interpretation, threatening the goal of delivering quality interpretation services.[279] Although the Federal Supreme Court's five-year strategic plan (2021-2026) promised to develop a standard and certification system for court interpreters[280], the process of standardization and certification has not yet begun.

Additionally, the standardization of a court's working language is still in its infancy in the country. Language standardization facilitates uniform and effective communication during court proceedings. Currently, the Federal Law and Justice Institute, in collaboration with Addis Ababa University, has initiated the development for bilingual Amharic and Afaan Oromo dictionaries.[281] This initiative contributes to fostering a standardized and uniform working languages of courts.

4.4 Unattractive Working Environment

The existing court interpretation system is not attractive g and conducive so as to retain court interpreters. First, there is no attractive salary and benefits system for court interpreters. In federal courts, a diploma holder with two years of experience earns 6, 485 Birr ($47)per month; a BA degree holder in Language or Literature in all tiers of

[279] Confidential Interview, Note 5; Interview with Soliana Bereket, Note 81.
[280] FSC. 2021. Federal Courts Third Strategic Plan (2021-2026).
[281] Addis Ababa University. AAU Agrees to Create Law and Justice Bilingual Dictionary, October 25, 2024, https://www.aau.edu.et/blog/aau-agrees-to-create-law-and-justice-bilingual-dictionary/; Addis Ababa University. AELC, JLI and JFA-PFE Sign Memorandum of Cooperation," October 25, 2024, https://www.aau.edu.et/blog/aelc-jli-and-jfa-pfe-sign-memorandum-of-cooperation/.

courts earns 6, 940 birr ($50.4) per month.[282] In Oromia, a BA holder court interpreter is paid 7424birr ($54) per month.[283] This salary is not only insufficient but also inadequate to cover personal and household expenses.

In both tiers, court interpreters receive no additional benefits unlike judicial staff who are entitled to transport allowances, mobile cards, annual medical and clothing allowances, training, educational scholarships, and other benefits.[284] Even though permanent court interpreters have equivalent workloads to court registrar officers and judges, they are not entitled to appropriate salaries and benefits.

Moreover, courts hire interpreters who can alternatively find employment in public or private schools that pay more than double the salary of court interpreters for the same qualification.[285] Federal and regional courts also lack a system of promotion or salary increment for those who upgrade their educational qualifications or expertise, unlike schools. Court interpreters are paid the same salary regardless of their educational status, as far as they satisfy the position's minimum level of education.[286]

Similarly, in federal courts, ad hoc interpreters are entitled to service fee payments. As discussed before, the payment for local language interpretation is 250 birr for half a day and 500 birr for a full day. Foreign language interpretation is charged at twice the local language rate. Although these service fees were increased from previously lower payments, professional language interpreters from outside complain about the inadequacy of payment. The payment does not account for transportation costs, waiting time in courts, or market rates for professional services outside of court.[287] Payments are also made after

[282] Interview with Zinashwerk Haileyesus, Note 18. The dollar conversion is based on OANDA rate.
[283] Interview with Mulu Berhanu, Note 93.
[284] Interview with Zinashwerk Haileyesus, Note 18; Interview with Mulu Berhanu, Note 93.
[285] Interview with Itenesh, Oromia SSC Interpreter, February 06, 2024, *Addis Ababa*; Interview with Gedion, Note 62.
[286] Ibid.
[287] Interview with Ermias Name, Note 69; Interview with Kasech, Note 47.

several adjournments, further wasting the time and cost of ad hoc court interpreters.

As a result, many competent individuals are uninterested in joining the profession and delivering court interpretation services. Key informants from both Oromia and federal courts state that although courts frequently announce hiring for new court interpreters, no one is interested in competing for the positions primarily due to unattractive benefits and working conditions.[288] Above all, there is a high turnover of court interpreters in the courts. For instance, the Federal Supreme Court has only one foreign language interpreter; FHC have no permanent interpreters, and FFIC have only five interpreters who work across eleven first instance courts in Addis Ababa. Other interpreters have left the job due to the unattractive benefit system.

Consequently, most court interpretation services in federal courts are provided by unqualified ad hoc interpreters. In such circumstances, judges are overburdened with monitoring or supporting court interpretation services, in addition to their regular duties of handling cases and interpreting laws. Court interpretation often doubles the time required for regular case handling. The absence of competent interpreters further contributes to delays and inefficient handling of cases.[289] Although existing court interpreters hope for reform under the new court administrative regulation, the delay in implementing the new structure places workers in a dire situation.

4.5 Extent of Accommodating Language Diversity

Language diversity is natural across the globe. However, it is challenging for courts to balance linguistic diversity with the need to safeguard everyone's right to effective communication. Court interpretation services face unique challenges due to the difficulty of

[288] Interview with Zinashwerk Haileyesus, Note 18; Interview with Mulu Berhanu, Note 93.

[289] Interview with Zeineb Behonegn, Note 21; Interview with Tolosa Hirko, Oromia SSC Judge, February 09, 2024, *Addis Ababa*; Interview with Ebrahim Kalil, Note 56; Interview with Zeyid Berhe, Note 56.

hiring interpreters for diverse local and international languages on the one hand, and the sporadic nature of the work, on the other. Moreover, internal diversity within a single language can lead to dialect and pronunciation differences among speakers, necessitating some form of interpretation (Leung 2019).

In this regard, both the federal and Oromia regional courts lack standards to determine which languages require permanently hired interpreters and which can be accommodated by ad hoc interpreters. Both tiers of courts also lack a comprehensive documentation system to regularly record and update the demand for and supply of court interpretation services across a variety of languages.[290]

Federal courts typically use ad hoc interpreters' payment sheets to identify the language services offered, but there is no equivalent system for monitoring demand and supply for permanent interpreters in federal and Oromia regional courts.[291] Without credible data on the demand and supply gap for court interpretation services, it is difficult to implement intervention mechanisms or corrective measures.

In federal courts, the need for hiring permanent interpreters is determined by the human resources department based on the frequency of demand for language services. Currently, federal courts have the structure to hire permanent interpreters for the Afaan Oromo local language and English as a foreign language.[292] In Oromia, there is no differentiation for court interpretation positions between local and foreign language interpreters. In most cities, court interpreters are at least required to speak Afaan Oromo, the working language of Oromia, and Amharic, the federal working language.[293] In border areas of the region, the local languages of border region is also considered to hire court interpreters.

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290 Personal Court Observation, FSC, January 24, 2024; Adama City Bole Sub-City SFIC, March 26, 2024, *Adama*; Akaki Kality FFIC, March 18, 2024, *Addis Ababa*.

291 Personal Court Observation, FSC, January 24, 2024, *Addis Ababa*; Akaki Kality FFIC March 18, 2024, *Addis Ababa*; Lideta FHC March 12, 2024, *Addis Ababa*.

292 Interview with Zinashwerk Haileyesus, Note 18.

293 Interview with Mulu Berhanu, Note 93.

However, it is difficult to accommodate the needs of several languages spoken by a large number of people through court interpretation. For instance, according to key informants, more than 85 percent of court clients in Adama city are unable to communicate in Afaan Oromo, the Oromia courts working language.[294] Consequently, the majority of litigant parties are represented by attorneys who simultaneously handle language barriers and legal representation.

Similarly, federal courts in Addis Ababa, located adjacent to Oromia region's borderlines , receive a high number of cases from Afaan Oromo speakers, making it challenging to address these needs solely through state-funded court interpreters.[295] In such situations, introducing bilingual courts or trials is crucial to bridge the significant gap between the demand for and supply of language services.

In contrast, the needs for court interpretation in many local and foreign minority language speakers rarely emerge . According to federal and Oromia regional civil service standards, designating a certain job as a permanent position requires undertaking tasks for eight hours a day and 39 hours a week.[296] In this context, most occasionally requested language needs do not meet the standard for hiring a permanent language interpreter, in addition to impossibility of hiring court interpreters for all languages. Consequently, the majority of court interpretation needs, irrespective of demand levels, are met through unqualified and uncertified ad hoc interpretation services.

4.6 The Role of Non-Interpreters in Court Interpretation Services

Various actors play significant roles in offering and transcribing court interpretation services. During court litigation, bilingual judges and attorneys play crucial roles in overcoming language barriers for court litigants. Judges are primarily responsible for identifying the need for interpretation, ordering the assignment of court interpreters, and

[294] Interview with Milkesa Bekele, Note 5; Interview with Lense Sinqee, Note 75; Confidential Interview, Note 5

[295] Interview with Tilahun Mulatu, Note 21.

[296] Interview with Zeineb Behonegn, Note 21; Interview with Mulu Berhanu, Note 93.

monitoring the quality of interpretation.

Beyond that, bilingual judges in federal and Oromia courts, sometimes conduct oral litigation in the language understood by the litigant parties and record litigant party responses in the court's working language, especially in the absence of a court interpreter.[297] By doing so, they differentiate between the language of oral litigation and the language of court recording to address language barriers and facilitate efficient case handling. However, this practice may undermine the judges' impartiality and adds an additional burden as they manage language issues along with legal matters. Judges have no authority to serve simultaneously as a court interpreter and judges. Judges volunteer gap-filling services also violate the working language rule of courts.

Private attorneys also play an important role in fixing language barriers. While representing litigant parties in federal and Oromia courts, they effectively address the language challenges faced by litigants. Sometimes, attorneys provide pro bono services to indigent litigants who cannot afford to hire private attorneys and who are unable to communicate in the court's working languages.[298] In such cases, they manage both the legal and language concerns of the parties they represent. Bilingual attorneys facilitate better the two-way communication between their clients and the courts. However, they are not assigned as court interpreters in their own cases to avoid conflicts of interest.[299] Additionally, they also monitor quality of interpretation offered by the court or the opposing party.

Court transcribers also play an invisible role in monitoring court interpretation while converting audio transcriptions of court trials into written text. In cases involving court interpretation, court transcribers are required to transcribe the words of the interpreter, not the speech

[297] Interview with Tilahun Mulatu, Note 21; Interview with Sheik Kadir Haji Gobana, Note 39; Interview with Lense Sinqee, Note 75; Confidential Interview, Note 38.
[298] Interview with Juhar Mohamed, Head of Justice Office at Adama City Bole Sub-City, March 26, 2024, *Adama*; *Selam Abebe v Getu Melka,* Note 71.
[299] Confidential Interview, Note 5.

of source language speaker. Several court transcribers are bilingual and identify errors during interpretation. In federal courts, court transcribers fully transcribe the words of the interpreter, regardless of whether the interpretation contains errors. They justify this by stating that their mandate is solely to transcribe audio into written text, and correcting errors in interpretation is the judge's responsibility.[300]

In Oromia courts, transcribers who note errors in interpretation correct the wording during transcription and inform the concerned judge handling the case to cross-check the credibility of the interpretation.[301] They argue that most interpreters are laypersons with no familiarity with legal terms, and their interpretations become meaningless if transcribed verbatim. Consequently, they correct transcribed interpretations and inform judges for further review. This practice highlights that transcribers play an invisible role in monitoring the quality of interpretation while transcribing audio into written texts.

5 Conclusion

The right to court interpretation is essential for accessing justice and ensuring fair trial rights. Trials conducted in a language unfamiliar to litigants equate to trials in absentia, denying justice. While international law mandates court interpretation in criminal cases, it does not require it in civil proceedings. In Ethiopia, federal courts provide interpretation for civil cases at state expense, but this is not explicitly mandated in the Oromia region. Sometimes Oromia courts offer interpretation services and conduct oral litigation in Amharic, while recording proceedings in Afaan Oromo.

Both federal and Oromia courts face systemic challenges: unqualified interpreters, lack of training and certification, poor benefits, and reliance on ad hoc interpreters. This burdens judges, attorneys, and litigant parties, causing delays and undermining judicial integrity.

[300] Confidential Interview with Transcribers of Lideta FHC, February 05, 2024, *Addis Ababa*.

[301] Confidential Interview of Transcribers of Court Proceeding at Oromia SSC, February 07, 2024, *Addis Ababa* and Interview with Konjit _, Adama City SHC, March 26, 2024, *Adama*.

Hazel Genn stressed that access to civil justice is a public good that serves more than just private interests, as it is crucial for peaceful dispute resolution and maintaining social order. Hence, resource limitations should not justify the denial of free court interpretation services in civil proceedings.

Federal and regional courts should consider formalizing the distinction between oral proceedings and judicial records of languages, as occasionally practiced in Adama courts and jurisdictions like India. In line with the new FDRE multilingual policy proposals, the federal and regional governments should consider constitutional amendments to recognize additional court working languages based on local realities and resource capacities. Alternatively, Oromia could adopt federal-style interpretation services for civil cases. Resource scarcity could be addressed by prioritizing the service to vulnerable and indigent groups or introducing free professional court interpretation services, similar to free legal aid, through volunteerism.

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