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Preface

Hawassa University Journal of Law (HUJL) advances legal scholarship by publishing double-blind, peer-reviewed research on legal issues, policies, theories, and problems. It covers Ethiopian, Horn, and African legal scholarship in the form of articles, reflections, comments on judicial, legislative, and administrative laws and decisions, as well as book reviews. HUJL is a diamond open-access journal, providing an open platform for researchers, lawmakers, judges, practitioners, and policymakers. Over the past nine volumes, the journal has published open-access contributions from these stakeholders. This volume features ten articles, a reflection, a case comment, and a book review, all submitted in the last quarter of 2025.

This volume's peer-reviewed articles collectively explore Ethiopia, Nigeria, ECOWAS, and Africa's legal and policy landscape, with a focus on economic and land issues. The first four articles examine Ethiopia's key economic legal issues, including AI copyright, agricultural finance via warehouse receipts, social cooperatives, and tax policies. They deepen understanding of Ethiopia's legal landscape on AI copyright regulation, inclusive agricultural finance through warehouse receipts, the role of social cooperatives, and tax avoidance policies. In addition, this volume includes two regionally focused articles involving economic legal issues. One, based on Nigerian experience, analyses the challenges in cross-border recovery of looted assets, contributing to international and national asset recovery efforts. The other examines legal standing before the ECOWAS Court to uphold rights, highlighting jurisdictional issues within ECOWAS.

The remaining four articles in this volume cover land issues at Ethiopia's national and local levels, including informal settlements, politics of eviction in urban land administration, land fragmentation and consolidation, and gender dynamics in customary land dispute resolution. Two of these manuscripts examine the dynamics of the technocratic state approach and exclusionary practices towards informal settlers in Ethiopia's urban land administration system, vis-à-vis a human rights-based approach. A contribution highlights land consolidation as a policy option to address rural land fragmentation, and, finally, an article contributes to understanding the gendered power structure embedded in the normative and practical dynamics of a customary land dispute resolution mechanism, namely *shimgilina*.

In addition to these research-based articles, this volume also encompasses a reflection, a case comment, and a book review. The reflection critically analyses Ethiopia's BIT; the case comment offers critical insights into the interpretation of the Convention on the Rights of Persons with Disabilities within the Ethiopian judiciary, and the book review discusses the arguments and contributions of Philippe Sands concerning the topics of genocide and crimes against humanity.

At this juncture, I wish to express my sincere appreciation and gratitude to all contributors, both internal and external reviewers, language editors, and members of the Editorial Board. Your collective efforts have been indispensable in realising this publication and ensuring HUJL's continued quality, ethical integrity, and scholarly success.

Yidneckachew Ayele Zikargie (PhD)
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The Evolving Landscape of Copyright: Lessons from the UK, China, and South Africa for Regulating AI-Generated Works in Ethiopia

Alemu Balcha Adugna*

Abstract

The meteoric rise of artificial intelligence (AI), or more particularly the ability to generate novel content, poses a powerful and new challenge to conventional copyright. Traditionally, copyright has been founded upon the theory of human authorship, an anthropocentric system that rewards and inspires human creativity. But the modern generative AI systems are currently producing sophisticated works without or with minimal human contribution, which leaves a legal gap and raises fundamental questions as to who, if anybody, should be the owner of these works. Ethiopia's existing legal regime, predominantly the Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 and its amendment Proclamation No. 872/2014, is based on the human model and lacks any solitary special provision concerning AI-generated works, which presents a fundamental obstacle to their protection. In a bid to bridge this critical issue, this article provides a comparative doctrinal and legal discussion of the distinctive approaches of the United Kingdom, China, and South Africa. These jurisdictions offer useful lessons: the UK's realistic approach of assigning authorship to the person who takes the "necessary arrangements" in a computer-generated work; China's innovative, case-by-case "human-in-the-loop" approach that grants copyright for human creative input; and South Africa's potentially broad, yet so far untested, legal foundation for computer-generated works. From this set of experiences, this article derives some key recommendations for Ethiopia, including clarifying authorship, creating a system of training data in AI, and establishing a flexible legal and judicial infrastructure to respond to the complex future of copyright law in the digital age.

Keywords

AI; AI-generated works; copyright; anthropocentric approach.

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* LLB, LL.M, Assistant professor, Madda Walabu University, Bale Robe, Ethiopia, Email: alexbalcha08@gmail.com ORCID No.: 0000-0002-4679-6150

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1. Introduction

The rapid evolution of artificial intelligence (AI) has presented a fundamental challenge to the underlying principles of intellectual property (IP) law, namely copyright.[1] Copyright has been premised on the doctrine of human authorship, the idea that a work must be an expression of human intellectual creativity to be eligible for protection.[2] Yet, AI programs are now generating sophisticated works of art, music, and writing with minimal human input, raising difficult questions about who, if anyone, should own these creations.[3] The debate over the protection of works created by artificial intelligence is not new; it is the latest iteration of an ancient struggle between copyright law and technological advancement.[4] Historically, copyright law has responded to new technologies, such as the printing press, photography, and movie-making, by expanding its reach to include these new means of expression.[5] However, the arrival of AI raises a particular and existential threat as it affects the core principle of human authorship.[6]

Conceptually, the central issue is that copyright, as evolved over centuries, is an anthropocentric regime.[7] It is meant to reward and promote human creativity by providing authors with a temporary monopoly over their creation. An "author" is a "natural person" whose original intellectual contribution and creative choices are incorporated in the final work. This is the "spark of creativity" which copyright must protect.[8] Due to recent AI, particularly generative AI, systems are now capable of producing sophisticated and stunning works of art, paintings, musical pieces, or written content nominally or even without explicit human creative input.[9]

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[1] Ryan Abbott, 'The Artificial Inventor Project: An Idea to Promote Innovation and Harmonization' (2018) 39 Cardozo L Rev 2487, 2488–89.
[2] Peter Jaszi, 'Toward a Theory of Copyright: The Metamorphoses of "Authorship"', Duke Law Journal, Vol. 1991, No. 2, Jun. 1991, P.458
[3] James Grimmelmann, 'The Elephant in the Room: The Human Author Requirement for Copyright', Journal of Intellectual Property Law, Vol.30, No.1, 2023, P.131–133.
[4] Jane C. Ginsburg, 'The Concept of Authorship in an Age of Automated and Autonomous Creation', Columbia Journal of Law & the Arts, Vol.30, No.1, 2007, P.119.

[5] William Patry, *the Story of Copyright: From Gutenberg to the Google Book Search Settlement* (2010).
[6]Andres Guadamuz, 'Artificial Intelligence and Copyright' (WIPO Magazine, October 2017) https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html accessed 8 December 2025
[7] Temitope O Oloko, 'Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape', Asian Journal of International Law, Vol.5, No.1, 2024, P.1–28.
[8] Mark A. Lemley, 'How Generative AI Turns Copyright Upside Down', Columbia Science and Technology Law Review, Vol.25, No.1, 2024, P.21.
[9] Ibid.

The history of this argument traces back to the mid-20th century. Despite the 1956 coinage of the term "artificial intelligence," the early disputes regarding "computer-generated works" began during the 1970s.[10] It had been argued that the individual creating the code or the person typing in the data was clearly the author, as the machine was simply an extension of the human will, much like a camera or a pen.[11] The British Copyright, Designs and Patents Act of 1988 was the first to accomplish this by an express provision, creating a category of "computer-generated works" in which the author was "the person by whom the arrangements necessary for the creation of the work are undertaken".[12] This legislative effort, while progressive for its time, still anchored authorship to a human actor.

However, the contributions of AI have since moved far beyond such simple tool use. The AI models based on machine learning and neural networks are able to learn from vast datasets and come up with novel content based on independent decisions. [13] The debate revived and intensified this shift from a simple tool to a more autonomous "creator". The essential question is no longer who holds the copyright on a work produced using a computer but whether a work produced by a computer with minimal or no human creative input can be copyrighted at all.[14] This has resulted in a divergence of legal and academic opinion, with some nations adopting a more malleable, case-by-case basis that emphasises the degree of human control, while others rigidly stick to the conventional human authorship requirement.[15]

Coming to the context of Ethiopia, the Copyright Proclamation 410/2004[16] and its amendment proclamation 872/2014,[17] as well as its corresponding regulation, did not have any specific rules on the protection of AI-created works. The existing legal framework is based on the principle of human authorship, which serves as a major barrier to protecting content generated solely by AI. Further, in the absence of a specific legal framework, the question of who owns the copyright to an AI-

[10] Andres Guadamuz, *supra note* 6
[11] Ibid.
[12] Ibid.
[13] Mark A. Lemley, *supra note 8*
[14] Ryan Abbott, *supra note 1*
[15] Jane, C, *supra note 4*
[16] Copyright and Neighboring Rights Protection Proclamation, Proc No. 410/2004, Negarit Gazeta, 10th Year, No. 55, (2004)) (herein after called Copy right proclamation 410/2004)
[17] Copyright and Neighbouring Rights Protection (Amendment) Proclamation No. 872/2014, Fed. Negarit Gazeta, 20th Year, No. 20 (2015) (here in after called Copyright amendment proclamation 872/2014)

created work is unclear. Is it the developer of the AI, the user who provided the prompt, or the AI itself? This ambiguity also extends to liability. If an AI system generates content that infringes on an existing copyrighted work, who is legally responsible for the infringement? Accordingly, the general objective of the study is to critically examine the existing gaps in Ethiopia's copyright law through a comparative analysis of international experiences to draw lessons for the future of Ethiopian intellectual property law in the digital age. To achieve this objective, doctrinal legal research methodology is employed, accompanied by a comparative approach. As far as comparison is concerned, China, South Africa, and the UK are purposively selected as they have good experiences in relation to regulating the issues of AI-generated works.

This article is organised into six sections. The first section presents introductory matters. The second section provides debates against and in favour of the protection of AI-created works. The third section presents the experiences of selected countries on the protection of AI-created works. The fourth section presents the status of AI-created works under the Ethiopian copyright system, while the fifth section presents lessons from other jurisdictions and the need for protecting AI-created works in Ethiopia. The sixth section provides concluding remarks.

2. Debates Underlying the Protection of Works Generated by AI: Arguments for and Against

The debate over the copyrightability of AI-generated work is intense, with each side presenting tight arguments. The most important question involves what constitutes an "author" and the general purpose of copyright law itself. The arguments against and in favour of the protection of works generated by AI are presented as follows:

2.1. Arguments against the protection of works generated by AI

As noted above, there are various arguments against copyrighting works generated by AI. One of the strong arguments against copyrighting works generated by AI pertains to the Lack of Human Authorship. The most compelling argument against copyright protection of works generated by

AI is that AI is not a human being.[18] That is, copyright law is actually meant to protect the intellectual works of human beings.[19] Under the civil law tradition, a work must have an imprint of the personality of the author in order to be worthy of copyright protection. AI systems lack personality and consciousness, and therefore, their products cannot meet this requirement.[20] Further, the distinction between the "Tool" and "Creator" matters**.** While the AI can be used as a tool by a human designer, a paintbrush, or a camera, the legal landscape changes if the AI takes ownership of creative decisions.[21] In the vast majority of legal systems, copyright is a right to a "creator" or "author," something which has always been assumed to mean an individual human being. An AI system, however sophisticated, cannot possess creative intent, emotion, or consciousness, which are held to be critical for "authorship.[22]

The second argument is based on the risk to Human Creativity and Economic Incentives. The very purpose of copyright law is to encourage human creativity by granting creators monopoly rights over their work, thereby creating an economic incentive for authors. In light of this, granting copyright protection for AI-generated work might deny this basic principle. If copyright is granted in work produced by AI, it might devalue human artists, writers, and musicians' work.[23] The ability of AI to produce work at speed and scale could be stifling to the market, making it unachievable for human creatives to compete and earn a living.[24] Furthermore, awarding copyright to works without a human author would detract from the incentive for human creativity. Instead of protecting human creativity, it would be protecting the output of machines, which could stifle, as opposed to encourage, the creative work.[25]

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[18] Adnan Masood, 'Intellectual Property Rights and AI-Generated Content — Issues in Human Authorship, Fair Use Doctrine, and Output Liability', Vol. 10, No. 1, 2025, P. 123.
[19] Ibid.
[20] Creative Commons, Artificial Intelligence and Creativity: Why we're Against Copyright Protection for AI-Generated Output (Aug. 10, 2020), https://creativecommons.org/2020/08/10/no-copyright-protection-for-ai-generated-output/ [https://perma.cc/example accessed 8 June 2025
[21] USC, *AI, Copyright, and the Law: The Ongoing Battle over Intellectual Property Rights*, USC, https://sites.usc.edu/iptls/2025/02/04/ai-copyright-and-the-law-the-ongoing-battle-over-intellectual-property-rights/ accessed 6 August 2025.
[22] Adanan Masood, supra *note 18*
[23]Copyright and Generative AI, *The Regulatory Review*, June 7, 2025, https://www.theregreview.org/2025/06/07/seminar-copyright-and-generative-ai/ accessed 6 August 2025.
[24] Ibid.
[25]WIPO, *Artificial intelligence and copyright*, WIPO Magazine, May 2017, https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html accessed 6 August 2025.

The final argument against the protection of AI-generated works comes from the vantage point of the use of copyrighted works for training AI. AI models train on enormous datasets, riddled with an enormous amount of copyrighted content, without the consent of the authors. This raises significant issues of copyright infringement.[26] Copyright law aims to enhance human creativity by giving a temporary monopoly to authors over their creations. Since an AI does not need to be motivated to create, giving copyright to its works would not satisfy the inherent purpose of the law. The process of "data mining" or "scraping" copyrighted content to train an AI model can be considered an infringement of the copyright owner's exclusive right of reproduction of his/her work.[27] In addition, when AI-generated content largely reproduces the style, themes, or even specific details from the copyrighted materials it has been trained on, it ends up arguably performing derivative work without any permission. This, in itself, damages the market for the original work and makes it unfair competition.[28]

2.2. Arguments in Favour of the Protection of AI-generated Works

As it has been stated earlier, there are different arguments that argue against the protection of AI-produced works. On the contrary, there are different arguments that support the protection of AI-produced works. The main argument for the protection of AI-produced work is that it would encourage the creation and utilisation of AI technology itself.[29] The copyright law is essentially designed to promote the "Progress of Science and useful Arts" through granting authors an exclusive right in their work for a limited period of time.[30] By providing eligibility for protection to works generated by AI, the same incentive would be provided to users and developers of AI systems. Without a guarantee of exclusive rights, it might happen that the enormous financial and intellectual effort required to build, train, and utilise advanced AI systems would be lost. This

[26] Simon Chesterman, 'Good Models Borrow, Great Models Steal: Intellectual Property Rights and Generative AI', Vol.44, No.1, 2024, P.23
[27] Ibid.
[28]Built In, AI-Generated Content and Copyright Law: What We Know (2025), https://builtin.com/artificial-intelligence/ai-copyright accessed 6 August 2025.
[29] Diplo, 'AI-generated Content and IP Rights: Challenges and Policy Considerations' (Diplo, 1 January 2025) https://www.diplomacy.edu/blog/ai-generated-content-and-ip-rights-challenges-and-policy-considerations/ accessed 8 May 2025.
[30] Joshua Landau, 'Artificial Intelligence and Intellectual Property, Part III: IP Protection for AI-Assisted Inventions and Creative Works', American University Business Law Review, Vol.14, No.1, 2025, P.811.

would deter innovation and retard the creation of AI technology as a whole.[31] It would also provide a clear avenue for commercialising such works, facilitating an opportunity for a revenue stream to be invested further in research and development.[32]

A second core argument is grounded in human-in-the-loop authorship. According to this stance, even with sophisticated generative AI, there is always a human creator, and that creator's creative work needs to be recognised and preserved. The argument establishes a comparison between AI and other creative tools that have been granted copyright protection, such as cameras and other photographic equipment.[33] The human who uses the tool by providing the prompt, refining the output, or crafting the finished work is the true writer. The activity is considered to be more like "authorship" than, say, a camera for a photographer or a movie director for a team of cameramen and actors. The AI is just a tool to an end, an exceedingly sophisticated instrument that executes the human creator's intent.[34] This discussion counters the rigid definition of a "physical person" being the sole creator and instead focuses on the creative ownership and intellectual labour of the human user. The level of human control and creative input should determine whether the work can be copyrighted or otherwise.

In the landmark case of Burrow-Giles Lithographic Co. v. Sarony, the Supreme Court ruled that a photograph was eligible for copyright because the photographer had creative control over composition, lighting, and arrangement.[35] Supporters of the copyrightability of AI-created work argue that a human user's creativity, the entering of a very highly specified prompt, the selection of parameters, and iterative adjustment of the output are the same type of creative control and intellectual effort. From this view, the AI is merely the medium through which a human's creative output is conferred upon.[36] Certain legal traditions, like China, have already signed up to this view, as a court ruled that a picture created using text-to-image software could potentially be protected

[31]Dentons, AI and intellectual property right (2025),https://www.dentons.com/en/insights/articles/2025/january/28/ai-and-intellectual-property-rights accessed 8 May 2025.
[32] Ibid.
[33] Pamela Samuelson, 'Allocating Ownership Rights in AI-Generated Works', Santa Clara Law Review, Vol.69, No.3, 2019, P.342.
[34] James Grimmelmann, *supra note 3*
[35] Peter J. Wiedenbeck, 'Copyright and the Creative Photographer: Burrow-Giles v. Sarony', Journal of the Copyright Society of the USA, Vol. 45, No. 1, 1998, P. 209
[36] Bird & Bird LLP, 'Copyright Protection for AI generated works - Recent Developments' (2024) [https://www.twobirds.com/en/insights/2024/china/copyright-protection-for-ai-generated-works-recent-developments accessed 8 june2025

as the human operator had positively designed the individual elements and composition via prompts.[37]

Another justification for the protection of AI-generated work is resolving Legal Uncertainty and Promoting Harmonisation.[38] The lack of a clearly defined legal regime for AI-generated works creates much legal uncertainty for the public and for companies.[39] If not protected by copyright, AI-generated works could be viewed as public domain and therefore subject to unregulated use and exploitation. This lack of a well-defined ownership structure makes it difficult for companies to demarcate their rights vis-à-vis competitors, potentially delaying their ability to monetise their AI-generated content.[40] The World Intellectual Property Organisation (WIPO) acknowledged that there existed a worldwide demand for debate on this issue, as the divergent nature of law across nations can derogate such protection quite significantly.[41] By establishing a system that protects AI-generated works, either by traditional copyright or a completely new sui generis (specialised) legal framework, policymakers can provide much-needed clarity. This would benefit creators and businesses as much as it would advance international intellectual property law harmonisation, a necessary component of a global digital economy.[42] Some countries, like the UK, have already started doing so by amending laws to cover computer-generated works in cases where there is some human input involved, paving the way for others.[43]

3. Experiences of other Jurisdictions

As it has been mentioned in other parts of the article, the world communities are grappling with the issues of AI-generated works, as the debate on the protection of such work continues. Because of the complexity of the issues that left most of the scholars in a dilemma, different countries have begun to develop distinct approaches. The experiences and the approach of the selected country are presented as follows:

[37] Ibid.
[38] Temitope O. Oloko, *supra note 7*
[39] Ryan Abbott, *supra note 1*
[40] Adnan Masood, *supra note 18*
[41] Bird & Bird LLP, *supra note 36*
[42] Virtus Interpress, *The Legal Protection of Artificial Intelligence-Generated Work: The Argument for Sui Generis Over Copyright* (Virtus Interpress 2023) 15
[43] Temitope O. Oloko, *supra note 7*

A. South Africa

South Africa has the most interesting and progressive position in Africa on AI and intellectual property. Looking at the existing legal framework of South Africa, South Africa's Copyright Act has a provision that can be construed to cover computer-generated works.[44] A person is referred to as an "author" under Section 1(iv) of the Copyright Act in terms that, when the work is computer-generated, are "*the person by whom the arrangements necessary for the creation of the work are undertaken*".[45] While the provision was originally drafted to protect works made by previous computers, legal experts argue that the provision may be applied to current AI-generated work. This definition matters because it shifts the focus from the activity of material production to the human effort that goes into architecting the system. It acknowledges the fact that the person who initialises the AI, provides the prompts, and monitors the creative process is the person who must be seen as the author. In other words, the aforementioned provision is extremely crucial as it does not necessarily oblige the author to be the person directly creating the work. Instead, it grants authorship to the individual who sets up, configures, or programs the computer system.[46] This places South Africa in a relatively small group of jurisdictions worldwide that have legislation that can be interpreted as giving protection to works created by AI, assuming one is in a position to locate a human who made the necessary arrangements.

Furthermore, the Companies and Intellectual Property Commission (CIPC) of South Africa made global headlines in 2021 when it granted a patent to an invention created by an artificial intelligence (AI) program named DABUS.[47] While it was a patent, not a copyright, it revealed a willingness on the part of a South African government agency to recognise a non-human entity as an inventor. Although this decision has been highly debated and rejected in most other countries,

[44] Copyright Amendment Act 125 of 1992 of Copyright Act 98 of 1978 § 1, Section 1(iv) available at https://www.gov.za/sites/default/files/gcis_document/201409/act125of1992.pdf accessed 8 june2025
[45]Ibid.
[46] Burger Huyser Attorneys, How Digital Art And AI Affect Ownership And Copyright In South Africa, (Aug. 6, 2025), available at https://www.burgerhuyserattorneys.co.za/how-digital-art-and-ai-affect-ownership-and-copyright-in-south-africa/ accessed 8 june2025
[47] Ryan Abbott, *supra note 1*

it reflects a more progressive approach within South Africa's administrative and legal system than exists in many other countries.[48]

So far, no specific court rulings in South Africa exist that specifically address the protection of creative works made by AI under copyright law. There have, however, been several notable court cases regarding the misuse of AI technology in legal trials that demonstrate the conservative attitude of the courts to the technology. For instance, in cases like Northbound Processing v SA Diamond Regulator and Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs, courts sternly rebuked legal teams for citing non-existent case law generated by AI tools.[49] Such verdicts equate to an express warning to legal practitioners about the ethical and professional obligation to verify all AI-generated content.[50]

Despite the provision above, the South African legal system remains a "grey area." [51] In the absence of explicit court rulings on the matter, there is no authoritative judicial precedent to provide guidance on how the provision would be interpreted in a modern context. Therefore, while South African law offers a potential line of protection, the practical result and enforcement would likely hinge on the facts of each case, and most importantly, the amount of human input and creative control.[52]

B. China

Among Asian countries, China is the benchmark jurisdiction in regulating the protection of works created by AI with a series of trailblazing court decisions. While China's Copyright Law of the People's Republic of China is devoid of provisions in favour of works created by AI, its courts

[48] Carina van der Berg, 'South Africa Becomes First Country to Grant a Patent to an AI Inventor', De Jure, Vol.4, No.1, 2021, P.1.
[49] Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal, [2025] ZAKZPHC 2
[50] Herbert Smith Freehills, The Pitfalls of AI in Legal Research: A South African Perspective, (Apr. 14, 2025), https://www.hsfkramer.com/notes/africa/2025-posts/the-pitfalls-of-ai-in-legal-research-a-south-african-perspective accessed 8 June 2025.
[51] Spoor & Fisher, Is AI Sufficiently Contained by Intellectual Property Laws?, (Sept. 7, 2023), available at https://spoor.com/is-ai-sufficiently-contained-by-intellectual-property-law/ accessed 8 June 2025.
[52] Wen Dean, 'Copyright v Grey Goods in South Africa, Australia and Singapore', Vol.126, S Afr L J, 2009, P.745.

have interpreted existing law to grant copyright to works on a case-by-case basis.[53] This pragmatic approach focused on human creative effort rather than on the technology itself. Chinese courts have been progressive in that they have understood that AI can be used as a tool of human expression, such as with a paintbrush or a camera. The deciding factor is a human author having sufficient creative control and making unique aesthetic decisions in the process of creation.[54]

From recent rulings, there are two landmark cases that have made an impact on the Chinese courts' position regarding the protection of works created by AI. These judgments have adopted a "human-in-the-loop" policy in which the test for copyright protection is the level of human creative contribution and not just the use of an AI instrument. In a landmark 2020 case, Tencent v. Shanghai Yingxun, the Beijing Internet Court shielded a copyright for an article written by a Tencent AI program.[55] The court held that although the article was written by AI, it was the output of a human's creative choices in constructing and setting up the AI system. The court considered the AI as a device, and the person who commissioned the process to be performed was deemed the author. The case further became rooted in more modern precedent when a human was granted copyright of a photo created by an AI. The court put significant emphasis on the human's significant creative contribution in selecting the prompts, parameters, and ultimately, the end product, to express a personal aesthetic vision.[56] China's approach is a lesson in a legal framework in which the law is interpreted in a dynamic way to accommodate technological innovation.

This legal framework is further supported by the Interim Measures for the Administration of Generative Artificial Intelligence Services (GAPM), which is not a copyright law itself but became operational in 2023.[57] Article 4 and Article 12 of the GAPM require that generative AI services "respect intellectual property rights" and that AI-generated content must be labelled to prevent

[53] Dan L Burk, 'Copyright and AI: China's Pragmatic Approach', Journal of Intellectual Property Law & Practice, Vol.18, No.1, 2020, P.52.

[54] Haochen Sun, 'The Chinese Approach to Copyright Protection of AI-Generated Works', Journal of Legal Studies, Vol. 6, No. 1, 2020, P. 5.

[55] *Tencent v Shanghai Yingxun Tech. Co.* (2019) Shenzhen Nanshan Dist People's Ct (2019) Yue 0305 Min Chu No 14010

[56] Ibid.

[57] Interim Measures for the Management of Generative Artificial Intelligence Services (promulgated by the Cyberspace Administration of China, et al., July 13, 2023, effective August 15, 2023) (P.R.C.).

confusion.[58] These steps solidify the government's commitment to creating a regulated environment that balances technological innovation and protection of intellectual property rights.

Another noteworthy case is that of Li v. Liu (2023)**.** It was a case relating to a picture produced through AI based on the "Stable Diffusion" model.[59] A Beijing court ruled that the picture was copyrightable and that the plaintiff, who had created the picture by entering prompts and adjusting parameters, was the author. The court's justification was that the plaintiff's creative process, including selection of prompts, organisation of elements, and aesthetic sense, was sufficient human intellectual input.[60] This case solidified the "human-in-the-loop" doctrine, establishing a human user's creative effort in generating a prompt for an AI that can be enough to meet copyright protection requirements.[61] This decision was a stark departure from the strict "human-only" authorship requirement in other countries.[62]

In light of such landmark rulings, the current position of Chinese law on AI-generated works is not based on a new special law but on the judicial flexibility in applying the current copyright law. The Chinese legal framework, through judicial precedents, has thereby created a path for the protection of AI-assisted creations ahead of China's position as a more AI-friendly jurisdiction in the creative industry than most Western countries.

C. United Kingdom

In Europe, the United Kingdom is an exception to the broad European principle of requiring human authorship for copyright protection. The UK law has a special provision for computer-generated works that was put into place many years ago, before the recent boom in AI. The UK's Copyright, Designs and Patents Act 1988 is one of the very few legal frameworks in the world that specifically addresses computer-generated works. It clearly states:

[58] Linklaters, China Publishes Interim Measures for Generative AI Services, Linklaters Client Alert (Jan. 1, 2024), https://www.linklaters.com/en/insights/blogs/china-publishes-interim-measures-for-generative-ai-services accessed 8 June 2025.
[59] *Li v. Liu*, (Beijing Internet Court, 2023)
[60] He Jing, 'Beijing Internet Court's First Case on AI-Generated Images' Copyright Protection', *Journal of World Intellectual Property*, Vol.10, No.42.5, 2023
[61] Pamela Samuelson, *supra note 33*
[62] Ibid.

> "In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."[63]

This provision defines a "computer-generated work" as a work created "in circumstances where there is no human author of the work". The law intended to ensure that even such works in which a human did not contribute directly to the final product could be copyrighted. This legal fiction gives the title of authorship to the person who created the system or the program that produced the work.[64] This could be the programmer, whoever created the AI, or the user who provided the stimulus, depending on how much creative input and control are made.[65]

While the provision was initially drafted with respect to earlier forms of computer-aided creation, it remains the primary legal basis for the protection of works generated by AI in the UK.[66] However, its relevance to modern generative AI, which is capable of generating highly complex pieces with minimal intervention from humans, has been questioned and consulted upon by the UK Intellectual Property Office.[67] Some feel the law is outdated and does not effectively react to the nuance of modern AI, but others see it as a practical solution that ensures the economic value of AI-generated works.[68]

There are only a few UK court decisions to directly consider the copyright protection of works produced by AI. But even the one notable case, Nova Productions Ltd v Mazooma Games Ltd (2007), does contain some judicial explanation of the law to be applied.[69] The issue was about the copyright in images that were made in the course of a computer game. The High Court ruled that the images produced by the computer were original artistic works under UK copyright law, and

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[63] Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (Eng.), Section 9(3)
[64] Jonathan L. Hardisty, 'Authorship and AI: The UK's Pragmatic Approach to Computer-Generated Works', *Journal of Intellectual Property Law & Practice*, Vol. 4, No. 1, 2020, P. 5.
[65] Phillip Johnson, 'Computer-Generated Works and the Creative Spark: A Comparative Analysis of UK and US Copyright Law', Vol. 10, No. 1, 2011, P. 7.
[66] Sim Intellectual Property Office, Consultation on Copyright and Artificial Intelligence (2025), available at https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence accessed 8 June 2025
[67] Intellectual Property Office, Consultation on Copyright and Artificial Intelligence (2025), available at https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence accessed 8 june2025
[68] Authors Alliance, The UK's Curious Case of Copyright for AI-Generated Works: What Section 9(3) Means Today, (May 19, 2025), https://www.authorsalliance.org/2025/05/19/the-uks-curious-case-of-copyright-for-ai-generated-works-what-section-93-means-today/accessed 28 may 2025
[69] Nova Productions Ltd v. Mazooma Games Ltd., [2007] EWCA Civ 219, [2007] RPC 14.

the coder who wrote the code was the author as he had created the "arrangements necessary" for their production, not the player.[70]

In short, the UK position is a firm outlier among significant jurisdictions, primarily because of a specific provision in its copyright law. This represents a radical departure from the EU and US form, which requires a work to be the product of a human's "own intellectual creation" and a reflection of his/her personality. Unlike the UK model, the rest of the European Union, including Germany and France, follows the dogma of human authorship of EU law, as the Court of Justice of the European Union (CJEU) has construed, requires that a work must be an "author's own intellectual creation" and must convey the "personality" and "free and creative choices" of a human being.[71] Therefore, a work created exclusively by an AI with no input of human creativity would not be qualified for copyright protection per the laws of most EU member states. The new EU AI Act, in governing AI systems, is more concerned with openness and data usage than with the creation of a new legal right over AI works.[72]

4. The Status of AI-Generated Works under Ethiopian Copyright Law

Ethiopia's copyright legal regime is relatively modern and has been shaped by the need to protect creative works in a globalised world. The traditional foundation of intellectual property in Ethiopia was initially addressed in the 1960 Civil Code, but it was not until the post-1990 constitutional era that comprehensive, determinative legislation was passed. The primary legislation addressing copyright is the Copyright and Neighbouring Rights Protection Proclamation No. 410/2004, as later amended by Proclamation No. 872/2014. This piece of legislation, like most traditional copyright systems globally, is based on the fundamental principle of human authorship. It presupposes that a work must be a product of human intellectual effort and creativity to be eligible for protection. This "anthropocentric" approach to copyright is deeply embedded within the law's

[70] Catherine Davies, 'Authorship and Originality in Computer-Generated Works', Journal of Intellectual Property Law & Practice, Vol.5, No.1, 2010, P.4.
[71] Annette Kur, 'The European Union and Copyright in the Age of Artificial Intelligence', Journal of Intellectual Property Law & Practice, Vol.10, No.6, June 2015, P.455.
[72] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2017/2109, and repealing Directive (EU) 2015/1535, 2024 O.J. (L 2024/1689) 1.

structure and wording, making it challenging to apply to works produced by autonomous AI systems.

There is no specific provision in Ethiopian law for the protection of works produced by AI. The existing legal framework is based on the theory of human authorship, and this is the principal hindrance to the protection of content that is produced solely by AI. Copyright and neighbouring rights proclamation 410/2004 and amendment proclamation 872/2014 did not recognise the works produced by AI. The stringent scrutiny of this proclamation tells us that it only serves to safeguard original works written by human authors. This is clear from the definition of authors as envisioned under this proclamation. Accordingly, the Ethiopian copyright and neighbouring rights protection proclamation number 410/2004 had defined the term Author as "the person who has intellectually created a work and, in case of a computer program, the person who has created the program".[73] We can conclude from this article that the copyright owner of a computer program is the creator of the program.

To make the issue clearer, the proclamation defined a computer program as a set of instructions, couched in words, codes, schemes, or otherwise, which can, when loaded into a machine-readable medium, cause a computer to perform or achieve a particular task or result.[74] Such definitions convey that the Ethiopian copyright law confers the ownership right of copyright to natural persons. The Provisions of the legislation, including those concerning moral rights (for example, the right of authorship assertion and opposition to the mutilation of one's work), are necessarily bound up with a human author. The legislation protects works on grounds of originality and fixation in a material form, yet the author must be human.

Again, the amendment Proclamation No. 872/2014[75] primarily sought to strengthen enforcement actions, for instance, regarding collective management societies, and did not introduce any provisions that would expand the definition of authorship to include non-humans. Some writers suggest that AI-generated works can be assimilated into orphan works and treated like works without masters. The concept of "works without masters" is primarily governed by Article 2(2) of

[73] Copy right proclamation 410/2004, article 2(2)
[74] Ibid, article 2(7)
[75] Copyright amendment proclamation 872/2014

the Copyright and Neighbouring Rights Protection 410/2004[76] and Article 2(34) of the amendment Proclamation No. 872/2014[77]. According to this article, works without masters include those creations whose author is not known or traceable, or creations that do not have any owner at all but have significance for the nation culturally and artistically. The inclusion of this term was mainly done by the Ethiopian legislative body to provide an avenue for the government to manage such works that would otherwise be out of legal purview.

The "masterless" nature of AI-generated content provides a compelling, albeit theoretical, entry point for its inclusion under this provision. Per Ethiopian law, legal personality can only be vested in natural persons or legal entities, and since an AI lacks both features, it cannot be considered an author or owner in accordance with copyright laws. Thus, the AI-generated work is said to be technically "authorless." It has been suggested that the copyright amendment Proclamation No.872/2014 can fill this gap by enabling the state to regulate these digital products, which are not owned by anyone, as orphan works.

However, per the findings of the previous works, the important legal limitation is that extending the law in this way is highly improbable in the current judicial environment. The consensus among most legal experts and commentators is that the phrase "works without masters" was created to protect Cultural Heritage and Traditional Knowledge, like the weaving techniques used by indigenous peoples or their folklore.[78] Such works constitute communal representations of cultural heritage rather than being digital products that could be sold for financial gain.[79] Above all, Article 2(34) of the Copyright Amendment Proclamation No.872/2014 defines work without a master as a work which has been declared by the court of law as a work without a master. All AI-generated works should be declared so by the court, which makes it difficult for the courts to handle such issues, as thousands of works could be produced within seconds. Therefore, following the current legal setup in Ethiopia, a work created entirely by an AI without any significant human creative input is likely not to be entitled to the benefit of copyright, and, with the evolving AI technology

[76] Copy right proclamation 410/2004, article 2(2)
[77] Copyright amendment proclamation 872/2014, article 2(34)

[78] Simret G/tsadik Araya and Berhanu Belayneh Beyene, 'Effect of cultural appropriation on the cultural garment weaving industry: the case of weavers in Addis Ababa, Ethiopia', Cogent Social Sciences, Vol.10, No.1, 2024.

[79] Ibid.

to generate original literary pieces, it raises the issue of how the law of copyright applies to the same.

5. Lessons From Other Jurisdictions and the Need for Regulating AI-Generated Works in Ethiopia

Drawing from the approaches of the United Kingdom, China, and South Africa, Ethiopia can learn several key lessons regarding the regulation of AI-generated work and copyright. Ethiopia's current legal framework, while having a foundation in the Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 as amended by Proclamation No. 872/2014, does not specifically address the complexities introduced by AI. Therefore, the experiences of these three countries offer valuable insights.

The first important lesson is about the meaning of authorship and originality in the context of AI. The UK's Copyright, Designs and Patents Act 1988 (CDPA) is more generous in outlook by expressly covering "computer-generated works." The Act defines the author as "the person by whom the arrangements necessary for the creation of the work are undertaken."[80] This is pragmatic since it grants protection for the owner of the AI process even if there is no human creativity in the traditional sense. This provides a clear legal basis for copyright protection of works created by AI without any human intervention. Conversely, Chinese courts, in a case like Li Yunkai v. Liu Yuanchun, have leaned towards the granting of copyright for AI-generated works where a human user demonstrates significant intellectual contribution and creative choices through his/her inputs and parameter adjustments.[81] This focuses on the human as a creative director and not just an operator.

For Ethiopia, the takeaway is the need to clarify who owns the copyright in AI-generated works. Should it be the AI developer, the user who provides the prompt, or should such works fall into the public domain? The absence of clear regulation gives rise to legal uncertainty and a potential vacuum where creators', users', and the public's rights are not suitably protected. With Ethiopia's digital revolution that is going on, the absence of a legal framework for AI creations would

[80] Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).
[81] Li Yunkai v. Liu Yuanchun, (2023) Jing 0491 Min Chu No. 11279, Beijing Internet Court (China).

inevitably cause an immense challenge, and it is necessary to regulate matters. There must exist a clear legal environment delineating authorship in this case. Without this, one cannot claim ownership, which further prevents one from licensing, selling, and exercising rights over AI-generated work. This ambiguity can dissuade innovation, as authors and businesses will not have a tangible path to commercialising their work. Ethiopia may adopt the hybrid approach: determining the human user as author where such use of the AI tool exhibits superior levels of competence and creativity, and establishing work rules produced with minimal human input. This will prevent the legal vacuum and encourage the utilisation of AI tools as a new creative medium.

The second crucial lesson involves the legal status of using copyrighted material to train AI models. The UK has grappled with this issue, considering an exception to copyright law for text and data mining for commercial purposes.[82] This has put AI developers, who seek broad access to data, at odds with copyright holders, who want to be compensated for the use of their work. A proposed "rights reservation model" in the UK would render copyright holders "opt-out" to prevent their content from being used to train AI, a step that has been criticised by creator groups.[83] The legal landscape in South Africa provides another perspective. The current Copyright Act 98 of 1978 follows a closed-list "fair dealing" approach, narrower than the "fair use" doctrine of other countries.[84] It would thus appear that the utilisation of copyrighted material for the purposes of training an AI model would not fall within fair dealing and would accordingly be a copyright infringement.

Ethiopia can learn from these two divergent models. The UK's consideration of a broad exception for AI training demonstrates the balance required between promoting innovation and protecting the rights of creators. The inhibitive approach of South Africa, on the other hand, demonstrates how technological innovation may be hampered where the law is not being updated. Ethiopia should consider creating an explicit, targeted exception for text and data mining to facilitate the development of its own AI industry, as well as a way for creators to control and be compensated for the use of their work. That means Regulations should be established to provide a threshold for

[82] The UK Government, Copyright and Artificial Intelligence: Consultation on Proposals (Dec. 2024), available at https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence accessed 28 may 2025
[83] Ibid.
[84] Copyright Act 98 of 1978, c. 98, § 12 (S. Afr.).

originality in the case of AI, as well as to combat copyright infringement by AI. This is crucial in a bid to protect human creators' rights and ensure their works are not utilised without their consent or compensation.

Furthermore, all three countries demonstrate that there is a need to create a legal framework that can evolve with technology. The UK's Copyright, Designs and Patents Act 1988, while out of date, is a basis that courts have been compelled to interpret in the context of present-day AI.[85] China's judiciary has been bold, making decisions that are sometimes inconsistent, but attempting to establish the legal landscape on a case-by-case basis.[86] South Africa is on the verge of adopting a Copyright Amendment Bill that includes a wider "fair use" provision, a sign of its attempt to modernise its law.[87] In Ethiopia's case, that would mean early legislation is valued, but it should also pay attention to creating a system that can grow. This might mean creating a specialised intellectual property court or a regulatory agency with the power to issue guidelines and interpret the law as new AI technologies arise. Ethiopia also has to ensure coordination between the Ethiopian Intellectual Property Authority, the Ethiopian Artificial Intelligence Institute, and all other stakeholders to ensure that any new law is well-informed, balanced, and in favour of creators' rights and technology development.

To wind up, Ethiopia can take lessons from nations that have already addressed the issue before it, such as China and the UK. The country can design a visionary legal framework that balances the interests of technology creators, human creators, and the public. Ethiopia's newly ratified National AI Policy and the Ethiopian Artificial Intelligence Institute (EAII) demonstrate a government commitment to addressing these issues and can be used as a platform for future legislative revisions.

6. Concluding Remarks

Navigating the uncharted territory of AI-generated content and its relationship with copyright law is a pressing challenge for Ethiopia. The country's current legal framework, rooted in the traditional

[85] UK Copyright, Designs and Patents Act 1988, c. 48
[86] Dan L Burk, *supra note* 53

[87] Carina van der Berg, *supra note* 48

concept of human authorship, is ill-equipped to handle the complexities introduced by modern artificial intelligence. While the Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 and its subsequent amendment have served their purpose, they do not provide a clear pathway for protecting works created by AI. This legal vacuum and uncertainty could hinder technological innovation and leave creative works vulnerable to exploitation.

To address these challenges, Ethiopia must draw lessons from international experiences, particularly from jurisdictions that have begun to address the issues. The United Kingdom's pragmatic approach of assigning authorship to the person who makes "the arrangements necessary" for a computer-generated work offers a clear, if debated, model for a legal fiction. In contrast, China's judicial precedents, which emphasise the "human-in-the-loop" model, provide a more nuanced framework that prioritises human creative input. Meanwhile, South Africa's evolving legal landscape, which includes a specific, though broad, provision for computer-generated works, highlights the potential for a more flexible and forward-thinking approach.

In light of the above conclusion, the article recommends the following: First, Ethiopia should undertake a comprehensive review and amendment of its Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 to specifically address the perplexities between Copyright and AI-generated works. The existing definition of "author" as a "person who has intellectually created a work" is a significant barrier to the protection of AI-assisted creations. Drawing from the experiences of the UK and China, Ethiopia could adopt a legislative model that differentiates between fully autonomous AI creations and those where a human provides significant creative input.

Further, the Ethiopian government, in collaboration with the Ethiopian Intellectual Property Authority (EIPA) and other relevant bodies, should establish a clear policy on the use of copyrighted material for AI training. This would ensure that creators are fairly compensated for the use of their work as training data, while also allowing the Ethiopian AI industry to access the necessary resources to grow.

Conflict of Interest

The author declares no conflict of interest.

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Revisiting the Ethiopian Legal Regime of Warehouse Receipts (WRs): Toward Inclusive Agricultural Finance and Food Security

Bisrat Mulugeta Zewdu*

Abstract

Food security remains a global priority, calling for innovative approaches to, among other things, increase food crop production and enhance efficient utilisation of harvests. The lack of inclusive access to agricultural finance is a major structural barrier limiting the sector's ability to support food security in Ethiopia. Warehouse Receipts (WRs) contribute to tackling both challenges by, inter alia, unlocking credit and reducing post-harvest losses across food crop value chains. However, the uptake of WRs in Ethiopia has yet to reach a scale sufficient to deliver the expected outcomes. This article employs a qualitative, comparative doctrinal method to assess Ethiopian law governing the legal status, transferability, and pledging of WRs – particularly Proclamation No. 372/2003 and related instruments – against international best practices reflected in the UNCITRAL–UNIDROIT Model Law on Warehouse Receipts (MLWR). The analysis identifies lacunae and ambiguities on (i) the legal status of WRs, (ii) issuance and governance of electronic WRs, and (iii) rules on "holder" status and transfer mechanics. It further maps how secured-transactions rules interact with WR-based lending and highlights points where clearer legislative design is needed to support predictable collateralization and enforcement. The article proposes targeted statutory amendments and complementary policy measures to scale adoption while maintaining inclusivity during digitisation, and it also cautiously draws lessons from India on scaling inclusive uptake of WRs.

Keywords

Warehouse Receipts; Electronic Warehouse Receipts; Secured Transactions; Financial Inclusion; Food Security.

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* LLB, LLM, MA, PhD Candidate, School of Law, Hawassa University, Hawassa, Ethiopia. Email: bisrat36@gmail.com ORCID No: 0009-0008-1738-3825

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1. Introduction

Food security is a pressing global agenda with profound implications for poverty eradication, health, peace, and climate resilience. More than 600 million people worldwide are projected to face chronic food insecurity in 2030.[1] The United Nation's Global Report on Food Crisis (GRFC) indicated that 295.3 million people worldwide already faced high levels of acute food insecurity in 2024, with Africa, including Ethiopia, among the affected regions.[2] Tackling food insecurity requires multifaceted interventions aimed at ensuring a stable and sufficient food supply, while also improving access, affordability, and sustainability at local and regional levels.[3] Boosting agricultural production and improving post-harvest handling practices across food crop value chains in developing nations like Ethiopia are among the key interventions that can play a crucial role in addressing food insecurity.[4]

Financial inclusion has also emerged as another global priority, attracting growing attention from governments worldwide for its role in promoting economic growth, employment, poverty reduction, gender equality, and resilience.[5] It is particularly vital for the agricultural sector, which is the backbone of many developing economies, including Ethiopia.[6] Ethiopia's agriculture is dominated by smallholder farmers (SHFs), who cultivate about 95% of the country's farmland, largely relying on rain-fed cultivation.[7] SHFs also account for nearly 95% of the nation's production of major crops—including cereals, pulses, oilseeds, vegetables, root crops, fruits, and cash crops.[8] This centrality of SHFs underscores the need for an inclusive approach when

[1] United Nations Department of Economics and Social Affairs, Sustainable Development Goal 2 (SDG 2), End hunger, achieve food security and improved nutrition and promote sustainable agriculture. https://sdgs.un.org/goals/goal2 Last visited May 12, 2025

[2] FSIN and GNAFC, Global Report on Food Crises (Rome, 2025), https://www.wfp.org/publications/global-report-food-crises-grfc. Last visited September 30, 2025

[3] FAO, IFAD, UNICEF, WFP, and WHO, The State of Food Security and Nutrition in the World 2024 – Financing to End Hunger, Food Insecurity and Malnutrition in All Its Forms (Rome: FAO, 2024), https://doi.org/10.4060/cd1254en. Last visited May 12, 2025

[4] Kumar, Anil, Chiragbhai Sureshbhai Prajapati, Khan Chand, Poonam Abrol, Gurwinder Singh, Sneh Gangwar, Sudha Darbha, and Rita Fredericks. 2025. "Sustainable Post-Harvest and Value Addition Practices in Agriculture: A Review". Journal of Experimental Agriculture International 47 (6):172-93. https://doi.org/10.9734/jeai/2025/v47i63480.

[5] World Bank, Global Financial Development Report 2014: Financial Inclusion (Washington, DC: World Bank, 2014).

[6] In Ethiopia, agriculture sector accounts for 32.1% of the GDP, 67% of jobs, and about 88% of the export earnings. (See the NBE Annual Report 2022/23 and the World Bank data on Employment in Agriculture.)

[7] F. Ademe et al., "Rainfall Analysis for Rain-Fed Farming in the Great Rift Valley Basins of Ethiopia," Journal of Water and Climate Change 11, no. 3 (2020): pp. 812–828; See also A. S. Taffesse, P. Dorosh, and S. A. Gemessa, "Crop Production in Ethiopia: Regional Patterns and Trends," in Food and Agriculture in Ethiopia, ed. P. Dorosh and S. Rashid (Philadelphia: University of Pennsylvania Press, 2012), 53–84.

[8] C. Shiferaw, B. Alemu, and E. Adgo, "Challenges of Smallholder Farming in Ethiopia and Opportunities by Adopting Climate-Smart Agriculture," Agriculture 11, no. 3 (2021): p.192.

designing financial services for the agricultural sector. Although financial inclusion is a broad concept covering a wide range of financial products and services tailored to clients' needs, access to credit remains at its core.[9] The lack of inclusive access to agricultural credit is one of the major structural barriers facing Ethiopian agriculture, limiting the sector's ability to fully realise its potential to improve production and productivity and, in turn, contribute to food security.[10]

WRs are an innovative trading instrument and form of financial collateral that contribute to addressing both food security and financial inclusion challenges. WRs enhance inclusive agricultural finance by unlocking new sources of credit for the sector by converting agricultural produce, the most widely accessible asset for farmers, into bankable collateral.[11] The additional financing pouring into the sector can strengthen farmers' capacity to grow, store, and market their products, thereby supporting broader efforts to achieve food security. In Ethiopia, improved access to finance, particularly for credit-constrained SHFs, has been shown to increase yields per hectare by up to 60%.[12] Moreover, the professional storage services and inventory management introduced through WRs improve poor post-harvest practices, which contribute to significant losses in grain value chains - estimated at 30% of annual production.[13] Reducing the post-harvest losses (PHL) not only preserves significant volumes of food and contributes to food security but also mitigates the climate impacts associated with food waste.[14]

Ethiopia is among the earliest African countries to incorporate WRs into its legal system. Both the Civil Code and Commercial Code of Ethiopia, promulgated back in the 1960s, comprised provisions on WRs, although in a fragmented and limited manner.[15] Ethiopia enacted a more comprehensive WRs legislation in 2003: the Warehouse Receipt System Proclamation No

[9] World Bank *Supa* note 5
[10] Adamon N. Mukasa, Anthony M. Simpasa, and Adeleke O. Salami, "Credit Constraints and Farm Productivity: Micro-level Evidence from Smallholder Farmers in Ethiopia," Working Paper No. 247, African Development Bank, (2017) p. 27
[11] The United Nations Comision on International Trade Law, UNCITRAL – UNIDROIT Model Law on Warehouse Receipts (2024) https://uncitral.un.org/en/mlwr
[12] Mukasa et al. *supra* note 10
[13] Food and Agriculture Organization, Postharvest Loss Assessment of Maize, Wheat, Sorghum and Haricot Bean (Rome: FAO, 2017).
[14] PHL contribute to climate change by, *inter alia*, generating greenhouse gases, such as methane, when spoiled or decomposing food releases emissions. Food and Agriculture Organization, *The State of Food and Agriculture 2019: Moving Forward on Food Loss and Waste Reduction* (FAO, 2019) https://www.fao.org/3/ca6030en/ca6030en.pdf).
[15] See Articles 2806-2824 of the Civil Code of the Empire of Ethiopia, Negarit Gazeta Extraordinary Issue, 19th year, No. 2, Addis Ababa 5th May 1960. See also Article 732 of the Commercial Code. The Civil Code designates Warehouse receipt as 'Receipts and Vouchers' whereas the Commercial Code refers to it as 'Warehouse Goods Deposit Certificate. (See Articles 2813 and 732 of the Civil Code and the Commercial Code, respectively).

372/2003 (WRS Proclamation), which was followed by the issuance of the long-awaited directive: the Warehouse Receipt System Directive No. 835/2021 (WRS Directive). The enactment of the WRs laws, along with the other related comprehensive legal reform Ethiopia undertook on secured transaction law through the promulgation of the Movable Property Right Proclamation (MPSRP),[16] paved the way for the operationalisation of the WRs at the national level.

The first successfully national WRS pilot was launched during the 2021-22 harvest season with the participation of farmers, farmer organizations and agro-processors.[17] In parallel with the national system, the Ethiopia Commodity Exchange (ECX) has also recently relaunched its electronic receipt-based WRS primarily to benefit farmers and farmer organisations.[18] Data obtained from the Movable Collateral Registry (MCR) Office indicates that between 2024 and mid-2025 alone, ETB 2.5 billion in bank credit was disbursed using WRs as collateral under the national framework and the ECX system.[19]

Despite notable progress, the potential of WRs to expand post-harvest finance for farmers and other value-chain actors – and to support storage and marketing practices relevant to food security – has not yet been realised at scale in Ethiopia. Gaps and ambiguities in the legal framework governing WRs may be among the factors constraining the next steps towards scale-up. This study examines Ethiopia's legal framework governing the legal status, transferability, and pledging of WRs and asks which legal design gaps most directly constrain the use of WRs, particularly electronic warehouse receipts (eWRs), as transferable documents of title and reliable collateral.[20]

The study argues that scaling inclusive uptake of WRs requires, inter alia, (i) an operational definition of WRs as documents of title with clear third-party effects; (ii) modernised transfer and protected-acquisition ("protected holder") rules to reduce transactional uncertainty; and (iii) an electronic functional equivalent of possession ("control") aligned with secured-transactions rules on perfection and priority. The study contributes to the limited Ethiopia-focused scholarship by providing a doctrinal analysis of the relevant legal instruments, assessed against international

[16] Movable Property Security Right Proclamation No. 1147/2019.
[17] Bisrat Mulugeta Zewdu (2025). "Agriculture Inventory Financing (AIF) in Ethiopia: Legal and Operational Overview", 19(2) Mizan Law Review: 217-254
[18] Ibid.
[19] The data were obtained from the National Bank of Ethiopia (NBE), Collateral Registry Office, which is mandated to manage the national registry of movable collateral, including WRs. The data are on file with the author.
[20] This paper does not address the regulatory dimensions of WRs, particularly the licensing and supervision of WRs-issuing warehouses, which remain important areas for future research.

benchmark approaches reflected in the MLWR.[21] It also draws on selected Indian[22] policy instruments aimed at scaling WRs uptake, while outlining Ethiopia-specific feasibility constraints. Methodologically, the study applies qualitative, comparative doctrinal legal research to identify gaps and propose reforms. [23]

In using the UNCITRAL–UNIDROIT Model Law on Warehouse Receipts (MLWR) as a comparative benchmark, this study does not assume that "best practice" implies wholesale legal transplantation. The MLWR is used principally because it synthesises transaction-focused private-law rules for warehouse receipts and their electronic equivalents, including third-party effects, protected acquisition, transfer mechanics, and functional equivalents of possession. For purposes of this article, a "gap" is identified where Ethiopia's framework is silent on a transaction-critical rule (for example, issuance, transfer, or control of electronic receipts), where provisions are ambiguous, internally inconsistent, or scattered in a way that increases uncertainty for depositors, transferees, or secured creditors, or where the WR framework is misaligned with secured-transactions rules on perfection, priority, or enforcement. The benchmark is applied as an evaluative tool for the private-law design questions addressed in this article, while adoption considerations are assessed separately in light of Ethiopia-specific institutional constraints.

The article proceeds as follows. Section 2 presents the conceptual foundation of WRs and their development as a commercial instrument. Section 3 reviews international benchmarks to the legal frameworks governing WRs and policy tools for scaling their inclusive uptake. Section 4 evaluates Ethiopia's WRs laws against international best practices to identify gaps and propose reforms. Section 5 examines policy instruments promoting WRs adoption in Ethiopia, drawing lessons from India. The paper concludes with key findings.

[21] UNCITRAL – UNIDROIT Model Law on Warehouse Receipts (2024) https://uncitral.un.org/en/mlwrThe MLWR is benchmarked for the legal analysis because it's the first soft law instrument on WRs that has been adopted by the UN General Assembly, to which Ethiopia is also a member. (See The UN General Assembly Res 79/118, Model Law on Warehouse Receipts of the United Nations Commission on International Trade Law, 76th Session, UN Doc A/RES/76/95 (12 December 2024))

[22] India is chosen as a benchmark for its success in promoting the adoption of WRs (both electronic and paper-based) in a similar agrarian context dominated by SHFs and rainfed cultivation. In 2023-24 fiscal year alone a record high ₹ 3,962 crore (39.62 billion) financing has been facilitated against WRs. For more details see *infra*-section 3.2

[23] Comparative legal study is a well-established and widely used legal research method that is meant to deprovincialize researchers' mind set and facilitate "cross-fertilization" of laws and best practices between jurisdictions. See Gunter Frankenberg, "Critical Comparisons: Re-thinking Comparative Law," Harvard International Law Journal 26, no. 2 (Spring 1985): pp.411–455.

2. Conceptual Framework: WRs as Documents of Title and Collateral

WRs are documents issued by warehouses certifying that goods of a specified type, quantity, and quality have been deposited on behalf of the depositor or another rightful claimant.[24] Depending on the jurisdiction's legal framework, WRs may be used to transfer ownership over the underlying goods or offered as collateral to obtain credit from lending institutions.[25] The use of documentary instruments, to signify ownership or control of goods in storage or transit, dates back to antiquity.[26] In ancient Mesopotamia, throughout the third millennium B.C., grain emerged as a strategic resource for expanding palace and temple institutions, with storage facilities serving as a means of institutional control and symbols of economic power and political authority. The storage facilities used proto-cuneiform[27] tablets dating from 3100–2900 BC as evidence for deliveries and distribution of grains such as barley and emmer wheat.[28] These perhaps represent one of the earliest "receipts" or written documents signifying ownership or control of goods in storage.[29]

In the early 19th century, WRs emerged as integral part of the modern commercial transactions when companies started issuing dock warrants for stored goods. In Britain, the West India Dock Company, established in 1803, pioneered large-scale commercial warehousing by issuing dock warrants for goods received for storage before shipment or importation.[30] These warrants were transferrable, and the company honoured deliveries to the warrant holders or transferees.[31] Although the transfer of title through dock warrants initially faced judicial scepticism, their widespread commercial use gradually gained traction, supported by British case law.[32] Parliamentary recognition of dock warrants and warehouse keepers' certificates as title documents,

[24] J. Coulter and G. Onumah, "The Role of Warehouse Receipt Systems in Enhanced Commodity Marketing and Rural Livelihoods in Africa," Food Policy 27, no. 4 (2002): pp.319–337.
[25] John Hanna, "The Protection of a Holder of a Warehouse Receipt," Minnesota Law Review 15 (1930): pp.1 - 2. Lending institutions may include banks, microfinance institutions, Saving and Credit Cooperative Societies (SACCOSs) and other non-bank formal lending institutions
[26] T. S. Paulette, Grain Storage and the Moral Economy in Mesopotamia (3000–2000 BC) (PhD diss., University of Chicago,2015).https://isac.uchicago.edu/sites/default/files/uploads/shared/docs/Research_Archives/Dissertations/Paulette_2015_dissertation%20%28small%29.pdf
[27] Proto-cuneiform is recognised as the earliest form of writing developed in ancient Mesopotamia. See Ibid.
[28] The Met. 'Cuneiform tablet: administrative account concerning the distribution of barley and emmer Sumerian ca. 3100–2900 BCE'. https://www.metmuseum.org/art/collection/search/327384. Last visited July 26, 2025
[29] Despite the strong evidence on the representation of stored goods by written documents it should be noted that the absence of verbs in early writings makes it difficult to understand the text with certainty. See Ibid.
[30] Michael J. Vaughn, "Warehousing Security Transactions: Progeny of Twyne's Case," Baylor Law Review 20 (1968). p. 1
[31] *Ibid*
[32] *Ibid* pp. 13 -14.

although in a limited sense, also strengthened their status.[33] Nevertheless, contemporary English courts have taken a restrictive approach, treating WRs simply as evidence of a bailment relationship, not a title document *per se*.[34]

WRs have also had a long history tied up with grain trade in the United States.[35] The receipts particularly gained momentum in the mid-19th century with the transitioning of Chicago from a fur-trading outpost to a hub for commodity trading.[36] The growth in trade spurred the construction of grain elevators, which began issuing tradable WRs to facilitate futures trading and enhance market efficiency.[37] However, by the late 1860s, elevators' malpractices of over-grading grains and over-issuance of WRs as well as traders' speculations called for regulation.[38] The state of Illinois, where Chicago is located, was among the first movers to enact laws regulating the grain elevators and WRs, followed by many other states adopting similar legislation.[39]

Over time, the US has developed a comprehensive legal framework for WRs, making them one of the country's most effective security devices for facilitating credit in agriculture and other sectors.[40] WRs have long been recognised as a reliable representation of the underlying goods in the US system.[41] Currently, the US Warehouse Act (USWA) of 1916 and Article 7 of the Uniform Commercial Code (adopted in 1951) are the primary laws governing WRs. The USWA creates a voluntary licensing regime for warehouse operators under the Secretary of Agriculture.[42] UCC Article 7 provides a harmonized legal framework for commercial transactions with documents of

[33] See Section 1(4) of the 1893 Sale of Goods Act
[34] *Natixis SA v Marex Financial Ltd* [2019] EWHC 2549 (Comm) https://www.twentyessex.com/wp-content/uploads/2019/11/Approved-Judgment-Natixis-SA-.pdf. August November 3, 2025.
[35] Coulter (2009) *supra* note 24
[36] T. Leslie, "Chicago's Other Skyscrapers: Grain Elevators and the City, 1838–1957," Journal of Urban History 48, no. 1 (2022): pp.3-34.
[37] *Ibid*
[38] *Ibid.;* See also Barry Mohun, "The Effect of the Uniform Warehouse Receipts Act," Columbia Law Review 13 (1913): 202–205.
[39] Leslie (2022 *supra* note 36
[40] Hamilton, N. D., & Looney, J. J., Federal and state regulation of grain warehouses and grain warehouse bankruptcy, South Dakota Law Review, Vol 27 no. (1982) pp. 334- 336. See also Tibor Tajti, "The Resurrection of Field Warehousing: The Booming Hungarian Field Warehousing Sector, the Incomplete English Narrative and the Unexplored Field Warehousing Law of the United States," Acta Juridica Hungarica 55, no. 3 (2014): 185–188.
[41] Substantiating the representation of stored goods by WRs, the US court noted that "The transfer of receipt is not a symbolical delivery; it is a real delivery to the same extent as if the goods had been transported to another warehouse named by the pledgee*"* See Union Trust Co. v. Wilson, 198 U.S. 530 (1905). https://supreme.justia.com/cases/federal/us/198/530/ Accessed August 3, 2025.
[42] D. L. Kershen (1994) "Comparing the United States Warehouse Act and U.C.C. Article 7," Creighton Law Review 27, no. 3: p. 735. The United States Secretary of Agriculture is mandated with the power of licensing and regulating agricultural warehouses by virtue of the 1931 Amendment to the Act.

titles including WRs.[43] The US Congress also approved an amendment to the USWA in early 1990s, which authorized the digitisation of WRs.[44] This marked a breakthrough in the WRs development by enhancing transparency, efficiency and security of WRs transactions.[45]

WR has also been used in other parts of the world. In Europe, it had been used for financing of internationally traded commodities in the early days.[46] WRs are also widely used as an agricultural financing instrument in Eastern Europe, Latin America, and parts of Asia, although publicly available data on their performance remain limited.[47] From Asia, India stands out as one of the most successful in operationalizing and scaling the WRS.[48] In Africa, many countries, including Ethiopia, have introduced WR as a financing device to the agriculture sector although the implementation modalities and the levels of success are different.[49] South Africa has the most advanced WRF scheme on the continent which uses electronic Silo Certificate.[50] The South African WRF scheme was developed by the private sector linking it with the Johnsburg Securities Exchange (JSE) following the liberalization of grain trade in the mid 1990s.[51]

Recent initiatives to expand the use of WRs as security device and trading instruments are largely driven by the goal of improving agricultural finance and strengthening post-harvest handling practices in developing economies.[52] As a security device, WRs convert agricultural produce, assets that are readily accessible to farmers, into bankable collateral, enabling farmers and other

[43] M. H. Ruud, "Warehouse Receipts, Bills of Lading, and Other Documents of Title: Article VII," Arkansas Law Review 16, no. 1 (1961): pp.81-97.
[44] Kershen (1994) *supra* note 42
[45] Vlado Kovačević, Vladimir Zakić, Miloš Milovanović, Jonel Subić and Marko Jeločnik, "Electronic Warehouse Receipts Registry as a Step from Paper to Electronic Warehouse Receipts," Ekonomika Poljoprivrede 63, no. 3 (2016): p,801–815.
[46] Frank Höllinger and Lamon Rutten, The Use of WRF in Agriculture in ECA Countries (EBRD and FAO, 2009). p. 7. Belgium and France are mentioned among the major countries widely using warehouse receipt, in the form of field warehousing, to unlock financing.
[47] *Ibid*
[48] For more details see *infra*-section 3.2
[49] Anthony Aboagye (2023) "Structuring African Warehouse Receipt System to Succeed," Athens Journal of Business & Economics 9: 1–2, https://doi.org/10.30958/ajbe.X-Y-Z. Ethiopia, South Africa, Tanzania, Uganda, Kenya, Burkina Faso, Cameroon, Cote d'Ivoire, Ghana, Madagascar, Malawi, Mozambique, Niger, Senegal, and Zambia are among the countries that have introduced WR at different times.
[50] Gideon E. Onumah (2012) Warehouse Receipts and Securitization in Agricultural Finance to Promote Lending to Smallholder Farmers in Africa: Potential Benefits and Legal/Regulatory Issues," Uniform Law Review 17, no. 1 pp 351-368; F. Höllinger, L. Rutten, and K. Kiriakov, The Use of WRF in Agriculture in Transition Countries (FAO, 2013), https://openknowledge.fao.org/items/ee5b4786-69bf-49de-9f46-41036708e0db.. p. 143 and Aboagye *supra* note 49 p.2
[51] Höllinger and Rutten *supra* note 46 p. 143.
[52] Balikisu Osman, 'WRS in Sub-Saharan Africa: Making Progress in Finance, Market and Post-Harvest Risk Management' Comparative Policy Brief (PARM, IFAD, 2017). pp 1- 4

value-chain actors to access short-term credit against the receipts.[53] WRs enable farmers to escape the distress sale during harvest and access more remunerative market for their produce later in the season.[54] This generates higher income for the farmers and serves as an incentive for increased investment in production and productivity. It also addresses the financing needs of farmers to cover the costs of agricultural inputs and advanced technologies for the next cropping season. From the aggregators' side, WRs play a crucial role in addressing the working capital shortages faced by farmer organisations and agro-processors during harvest, when much of their capital is tied up in the stock. Aggregators can obtain additional working capital through WRF by offering their existing stocks as collateral to aggregate more during the peak season when prices are lower, and the produce is fresh, coming almost directly from the farm.

The warehouse issuing the receipt undertakes an obligation to redeliver the goods specified on the WRs to the rightful claimant.[55] The custodial arrangement offered by the warehouse may mainly take either the public or private warehousing models.[56] The public warehousing custodial arrangement is a more inclusive approach allowing the participation of multiple small-size depositors while the private warehousing model is catered to bigger players having large volume stocks.[57] Regardless of the warehousing model, the historical development shows successful adoption of WRs requires a conducive policy and legal regime enabling their use as both trading and security devices.

3. International Benchmarks

A legal framework that recognises and supports WRs as instruments of trade and security is typically essential for their effective use in the market.[58] Indeed, WRs may be utilised in the market even in the absence of a robust policy and legal framework; however, in such a situation, the transaction costs and risk of using the receipts would be higher, undermining the accessibility of

[53] P. Varangis and J. S. Geours, Warehouse Finance and WRS: A Guide for Financial Institutions in Emerging Economies (Washington, DC: World Bank, 2013). pp. 1-2. See also, Vaughn *supra* note 30 p. 1
[54] *Ibid.*
[55] Vaughn *supra* note 30
[56] Robert H. Skilton, 'Field Warehousing as a Financing Device: The Warehouseman Goes to the Storer: Part I,' Wisconsin Law Review, no. 2 (1961): p 224
[57] J. Coulter, 'Review of Warehouse Receipt System and Inventory Credit Initiatives in Eastern & Southern Africa (UNCTAD: All ACP Agricultural Commodities Programme, 2009).
[58] Höllinger and Rutten *supra* note 46; See also Coulter & Onumah (2002), *supra* note 24; Onumah (2012) *supra* note 50 and Coulter (2009) *supra* note 24

the instrument for small-scale actors and deterring lenders from financing the receipts.[59] A well-designed and enabling legal framework for WRs that clearly defines rights and obligations of participating parties as well as ensures the integrity of the system can significantly increase the benefits and accessibility of the WRs by building trust in the instrument.[60] The laws governing WRs shall, *inter alia*, cover the legal status, transferability and pledging of the receipts.[61]

Effective use of WRs also requires a coherent, enabling policy environment that supports market-based solutions and limits government intervention in agricultural markets to predictable and minimal levels.[62] Ad hoc and unpredictable policy interventions aimed at stabilising food markets or advancing other governmental priorities often risk eroding market actors' confidence in WRs and restraining adoption.[63] Beyond avoiding policies detrimental to the effective operationalisation of WRs, policymakers should also devise policy measures targeted at driving market adoption of WRs, with a particular focus on expanding access for marginalised segments of the agricultural value chain, especially SHFs.[64] This section explores international best practices in the legal framework and implementation of WRs, focusing on the MLWR and India's inclusive policy instruments.

3.1. The UNCITRAL- UNIDROIT Model Law on WRs (MLWR)

As the relevance and uptake of WRs increases across the world, the UNCITRAL, in collaboration with the UNIDROIT, developed the MLWR, which is assumed to reflect the best international practices and guide the legal reforms taking place in member states towards modernising and creating a conducive legal framework for WRs.[65] The MLWR primarily aims to facilitate commercial transactions involving stored goods while also enabling their use as collateral to unlock short-term financing in the agriculture sector.[66] The MLWR covers only the private law

[59] FAO, Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends (Rome: FAO, 2015).See also Ibid
[60] Ibid
[61] R. Lacroix and P. Varangis, "Using Warehouse Receipts in Developing and Transition Economies," Finance and Development 33, no. 3 (1996) pp. 36-39 https://www.imf.org/external/pubs/ft/fandd/1996/09/pdf/lacroix.pdf; See also Höllinger and Rutten *supra* note 46
[62] Ibid
[63] Höllinger and Rutten *supra* note 46
[64] For instance, in US government guarantee was provided through the US Department of Agriculture to enable farmers use WR as collateral to get post-harvest inventory financing (See Lacroix & Varangis, *supra* note 61). As it will be further discussed in Section 3.2.3 below, countries like India have also followed similar approach by providing government credit guarantee scheme for WRF to encourage lending against WRs.
[65] *Ibid*
[66] UNCITRAL & UNIDROIT. (2024). UNCITRAL-UNIDROIT Model Law on Warehouse Receipts with Guide to Enactment. United Nations.

aspects of the WRs, which are confined to laying down the rights and obligations of parties to "a WR in a transactional context".[67] The regulatory aspects, which constitute a sine qua non element of a comprehensive legal framework for WR, remain unaddressed.[68] However, for this paper, which focuses on legal status, transferability and pledging of WRs, the MLWR provides substantial coverage of the relevant issues, except for pledging, which falls under secured transaction law.

The MLWR provides a framework that allows issuance and transfer of both paper-based and electronic warehouse receipts (eWRs), consistent with its objective of expanding access to agricultural finance, particularly for farmers who are not yet ready for fully digitised WRs. [69] While the benefits of eWRs - greater transparency, efficiency, and fraud mitigation - are crystal clear, effective digitisation in rural economies requires substantial investment in infrastructure, awareness creation, and trust-building. Until these conditions are met, the coexistence of paper and electronic WRs ensures that rural households in developing economies are not left out.[70]

The MLWR clearly defines a 'holder' of WRs, both in electronic and paper form, which is a point that remains insufficiently articulated in the legislation of many jurisdictions, including Ethiopia.[71] It also provides for the requirements for claiming a status 'protected holder' of negotiable WR, which includes the notion of the 'holder in due course' status that is incorporated in the Ethiopian WRs legislation.[72] The model further lays down the standard for determining the reliability and integrity of an electronic WRS, which is crucial for countries heading to digitisation.[73] The MLWR recognises both the single-receipt system, where the property rights in the stored goods are represented by a single document of title often referred to as WRs, and the dual system, where the stored goods are represented by two documents: one represents a title document conveying

[67] Ibid. page 25.
[68] Although the regulatory part is not included in the model law, Guide to the Enactment of the MLWR has covered matters that should be covered by the regulatory provisions. The regulatory aspects of WRs include the warehousing business licensing requirements and procedure; the regulatory structure, power and mandates of the authority in charge of overseeing the WRS; and other enforcement mechanisms related to offense, penalties and other administrative measures. See *Ibid*. Paragraph 195 et seq.
[69] MLWR, Chapter II and III
[70] Kovačević et al (2016) *supra* note 45
[71] MLWR, Article 2(3) of the
[72] Ibid., Article 17 and WRS Proclamation, Article 2(12)
[73] MLWR, Article 6 and 7

ownership rights while the other is a pledge bond representing security rights in the underlying goods.[74]

Although the MLWR incorporates numerous best practices, some provisions merit further scrutiny. For instance, the provisions providing for the WR's content put storage fees and quality of stored goods on the optional list.[75] The exclusion of storage fees in the WR may prejudice the interests of both lenders and transferees because they would not have the information about the outstanding claim or lien of the warehouse operator.[76] The same is true with a WR lacking the quality of the goods. Especially for agricultural products, if WR does not specify the quality of the goods, neither transferees nor lenders would accept the receipt since they can hardly determine the market value of the receipt without accurate information about the quality of the goods. In fact, Article 11(3) provides that if the goods covered by the receipt are fungible and their quality is not stated on the receipt, it shall be assumed to have average quality. This somehow reduces the information asymmetry, but may not necessarily gain wider market adoption as the notion of "average quality" may be contested in markets like Ethiopia, where widely accepted quality standards and quality-based trading are underdeveloped.

Another point that may undermine tradability and collateral use of WRs is the introduction of a separate storage agreement between the depositor and warehouse operators, in addition to the WRs.[77] The very existence of a separate document outlining rights and obligations may prompt parties to review it before accepting WRs for trade or collateral, thereby undermining their seamless negotiability. Indeed, the MLWR stipulates that the storage agreement cannot be invoked against a negotiable receipts holder if the terms and conditions of the storage agreement are inconsistent with the express contents of the WRs.[78] This may help parties to mitigate the uncertainty by checking all essential information is expressly included in the WR; however, the risk of encountering unforeseen obligations arising from the separate storage agreement on matters not covered by the WR may still persist, particularly for less experienced market participants. To

[74] This means that in the dual system one is assumed to have unencumbered ownership rights in the stored goods only when he/she is in possession of both documents. If the depositor wants to pledge the stored goods, he/she shall hand over to the creditor only the pledge bond while retaining the document of title. Many Latin American countries have adopted the dual system. Although a single system may appear more efficient, it requires a more rigorous review of both systems to determine which is truly better.
[75] MLWR, Article 11
[76] Ibid., Article 25
[77] Ibid., Article 9(1)
[78] Ibid., Article 9(2)

overcome similar challenges, the Ethiopian WRs legislation recognised the WRs themselves as contractual documents that define the rights and obligation of the parties rather than introducing additional mandatory storage agreement underlying the WRs.[79]

Since the MLWR is based on best international practices drawn from diverse jurisdictions, the above-mentioned provisions may align with the legal systems and markets of certain economies. Nevertheless, in developing countries like Ethiopia, where the agricultural sector and market systems remain at a rudimentary stage, these provisions may barely constitute a perfect fit and may require some customisation to local realities. Overall, the MLWR is a valuable international document that can promote the adoption and expansion of WRs as trading and security instruments, offering comprehensive guidance on private law aspects that can be adapted locally while preserving harmonisation principles.

3.2. India as a Policy Comparator: Scaling Uptake of WRs

Agriculture plays a sizeable role in the Indian economy.[80] The sector is dominated by SHFs who produce around 60% of the total food grains largely relying on rain fed cultivation.[81] After going through several policy changes and revolutions (green, white, blue….), the agriculture sector has made huge strides over the last decades making the country the world's second largest sugar exporter and the second largest producer of food grains, fruits, and vegetables.[82] The enormous growth of the agriculture sector is partly attributable to consistent government policy support which, *inter alia*, centred on improving access to agricultural finance.[83] Over the years, the government has implemented multiple policy tools aimed at improving access to agricultural finance which resulted in a remarkable change in India by reducing the share of non-institutional credit in the agriculture sector from 90% in 1950 to 23.40% in 2021-22.[84]

[79] WRS proclamation, Article 3(2)
[80] Agriculture accounts for 42.3% of jobs and 18.2% of the Indian GDP. See the Ministry of Finance, Economic Survey of 2023-24 presented to the Parliament, 22 July 2024, Release ID: 2034943.
[81] Sunil Kumar D. U. M. Rao, Pratibha Thombare and Pandurang Kale 'Small and Marginal Farmers of Indian Agriculture: Prospects and Extension Strategies' Indian Research Journal of Extension Education Vol 20 no 1, 2020.
[82] India Brand Equity Foundation (IBEF), Agriculture and Allied Industry Report, August 2024, https://www.ibef.org/industry/agriculture-india. Accessed December 10, 2024.
[83] Supriya Gautam and L. C. Mallaiah, 'Potential and Expansion Strategies for Small and Marginal Farmers in India Agriculture' IJFMR Vol 6, no. 2 (2024).
[84] The 2023-24 Economic Survey of India indicated that the total amount loans disbursed to the agriculture sector until January 2024 has hit ₹ 22.84 lakh Crore (near to ₹ 22.84 trillion). See the Ministry of Finance, Economic Survey 2023-24, 22 July 2024, (Release ID: 2034945)

WRs have been among the financing instruments promoted by the government to extend financial access to the last mile of agricultural value chains. In 2023-24, the amount financing facilitated using WRs as collateral hit a record high ₹ 3,962 crore (USD 39.62 billion) while the number of registered warehouses issuing electronic WRs reached 5854 warehouses with a storage capacity of around 41.1 million tons.[85] This is part of the results of the various public policy measures that are carefully crafted and implemented to promote agricultural financing in general and WRF in particular. Narrowing the scope to policy instruments enabling to drive agricultural financing from the supply side, five major policy tools are discussed below.[86]

3.2.1. The Multi-agency Approach

India's shift to a multi-agency approach was a key strategic move aimed at expanding the rural reach of financial service providers in order to meet the growing demand for agricultural financing.[87] This approach entails the involvement of multiple types of financial service providers in the rural areas to extend financial services to the last mile.[88] The multi-agency approach not only expands outreach and access of financial services in the rural areas but also diversifies credit sources, enhances healthy competition and drives financial inclusion.[89]

The network of multiple agencies operating in the India's rural credit landscape include: Regional Rural Banks (RRBs), established in 1976 to finance SHFs and other small rural enterprises; NABARD, created in 1982 to channel small-size rural loans through Self-Help Groups; and a broad network of Scheduled Commercial Banks, Rural Cooperative Banks, Non-Banking Financial Institutions (NBFIs), Microfinance Institutions (MFIs), and Small Finance Banks (SFBs) serving diverse customer segments.[90] Despite the proliferation of several financial institutions, commercial banks retained the highest share of formal credit to farmers, covering 75% of

[85] WDRA, Annual Report of 2023-24, November 2024. https://wdra.gov.in/documents/20143/139675979/WDRD+ANNUAL+REPORT+ENGLISH+23-24.pdf/8ff1a439-22f7-ba3b-586a-0534a256ddcd

[86] From the demand side, Kisan Credit Card (KCC) is among the popular approach that is introduced in 1998 to provide farmers with easy access to agricultural inputs and cash for their production needs. (See Government of India, Press Information Bureau (PIB), 'Strengthening Agricultural Finance and Welfare - CGS-NPF to enhance post-harvest financing and agricultural support', Release ID: 2086154. (December 19, 2024). https://pib.gov.in/PressReleasePage.aspx?PRID=2086154)

[87] N. Sandhu, 'Dynamics of Banks' Lending Practices to Farmers in India' Journal of Small Business and Enterprise Development 28, no. 1 (2021) pp. 68–85.

[88] Ashok Gulati and Ritika Juneja, 'Agricultural Credit System in India: Evolution, Effectiveness and Innovations' ZEF Working Paper Series, no. 184 (Bonn: University of Bonn, 2019).

[89] Sandhu, *supra* note 87

[90] *Ibid*., see also Gulati and Juneja, *supra* note 88

disbursement in 2017.[91] The commercial banks in India are required to open four branches in unbanked rural or semi-urban areas for every new branch opened in areas where there are already one or more branches.[92]

The introduction of NBFIs has been particularly important, allowing warehouse operators to leverage economies of scope. Many warehouse operators and collateral managers in India have set up NBFIs as sister companies to expand their service to lending at lower marginal cost by leveraging existing infrastructure, information (quality, quantity and condition of the inventory collateral) and collateral control and enforcement mechanisms. [93] Particularly, the collaboration of warehousing corporations and collateral managers with commodity markets has enabled them to do collateral valuation and facilitate the agricultural produce trading more efficiently.[94] This has also facilitated a more convenient, one-window service (both storage and lending) to the farmers.[95]

3.2.2. The Priority Sector Lending (PSL) Policy

The Priority Sector Lending (PSL) policy has been popular in India since 1969.[96] The PSL policy initially required banks to allocate 33% of their lending portfolio to priority sectors, including agriculture, and later the target was raised to 40%.[97] In 1980, additional sub-sector specific target was introduced requiring banks to allocate 16% of lending to agriculture and allied sectors, later raised to 18%.[98] In the effort to take it to the last mile, a revised guideline was issued in 2015 to introduce a new sub-target requiring banks to channel 8% (from the 18% target) of lending to SHFs.[99]

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[91] *Ibid*
[92] *Ibid*
[93] Shalendra, M.S. Jairath, Enamul Haque and Anu Peter V.., "Issues Limiting the Progress in Negotiable Warehouse Receipt (NWR) Financing in India," Agricultural Economics Research Review 29, no. 1 (2016), https://doi.org/10.5958/0974-0279.2016.00018.5.
[94] Asokan, S. R., and Anita Arya 'Scope for Warehouse Receipts Financing of Commodity Markets in India' Productivity Vol 52, no. 2–3 (July–December 2011).
[95] S. M. Deshpande and D. Pillai, 'Warehouse Receipt Financing for Farmers: Challenges and Way Ahead' Journal of Rural Development Vol 40, no. 5 (2021) pp.741–750, https://doi.org/10.25175/jrd/2021/v40/i5/170709.
[96] Reserve Bank of India, 'Trend and Progress of Banking in India 2020-21' (2021). 68. <https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/0RTP2020CF9C9E7D1DE44B1686906D7E3EF36F13.PDF>
[97] Reserve Bank of India, *Report of the Internal Working Group to Review Agricultural Credit (September 2019)* https://www.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=942. See also Gulati and Juneja, *supra* note 88. 21.
[98] *Ibid*
[99] *Ibid*

Another innovative part of the policy is the PSL Certificates system, which enable overachievers, banks which exceeded the PSL target, to sell the excess PSL obligations to underachievers, banks which are not able to meet the PSL target.[100] Put differently, the certificates facilitate 'buying for shortfall and selling for overachievement of PSL targets without corresponding transfer of loan, cash flows or risk.'[101] The certificates are traded on an electronic platform known as e-Kuber, which is set up by the RBI.[102] The PSL trading system not only provides agriculture-focused or rural banks with additional income and supports sector specialisation but also prevents other banks from being forced to divert resources to priority areas where they may lack efficiency.

RBI strictly enforces the PSL policy to make sure that all banks meet the financing targets. Banks which failed to meet the target are required to deposit the shortfall amount in the Funds dedicated to financing underserved groups. If the banks fail to deposit the shortfall, RBI takes the next measure of imposing fines. For instance, in November 2024, RBI imposed a penalty of ₹ 10 million on Lalbaug Co-operative Bank Ltd. for failing to meet the PSL target as well as for the non-compliance with subsequent instruction of shortfall deposit.[103] Besides fines, the banks may also face reputational risks and stricter regulatory scrutiny. Lending against electronic negotiable warehouse receipts (eNWR), has been made eligible for the classification of the PSL to encourage banks to provide credit against eNWRs.[104]

3.2.3. Credit Guarantee Scheme

Besides pushing financial institutions to expand agricultural lending, the government offers risk-sharing facilities to offset the sector's inherent risks. The 'Credit Guarantee Scheme for e-NWR Based Pledge Financing (CGS-NPF)' is a recently approved government's risk-sharing facility of ₹10 billion for loans extended against eNWRs that are issued by warehouses registered with the WRs regulatory authority.[105] The guarantee scheme is intended to prevent farmers distress sale

[100] Reserve Bank of India, Master Directions – Priority Sector Lending (PSL) – Targets and Classification. Master Directions FIDD.CO.Plan.BC.5/04.09.01/2020-21 (As updated as on April 29, 2021) https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MDPSL803EE903174E4C85AFA14C335A5B0909.PDF
[101] *Ibid*
[102] *Ibid*
[103] RBI, Press Release:2024/2025 1509 https://www.rbi.org.in/commonman/English/scripts/PressReleases.aspx?Id=3666
[104] RBI Directive, RBI/FIDD/2020-21/72, Master Directions FIDD.CO.Plan.BC.5/04.09.01/2020-21 https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11959
[105] PIB *supra* note 86

and improve post-harvest practices by encouraging banks to lend against WRs.[106] Leveraging the CGS-NPF, the government targets to boost WRs-based lending to ₹ 5.5 lakh crore (5.5 trillion) in the next ten years.[107]

3.2.4. Interest Subvention Policy

Studies indicate that one of the barriers to farmers' participation in the WRS is the high cost of credit, particularly in the form of elevated interest rates.[108] Interest subvention is a smart subsidy targeted to reduce the cost of lending for farmers. India started providing interest subvention back in 2006 to make agricultural credits affordable. Multi-layer interest subsidy programmes have been provided to farmers. The central government offers 2% interest subvention to crop loans and additional 3% subsidy[109] (prompt repayment incentive) to farmers who repaid on or before the maturity date.[110] In addition to central government subsidies, several regional states (Bhanot et al. list more than ten regional states)[111] offer additional subsidies that have in some states, such as Madhya Pradesh, pushed the interest rate down to zero.[112] WRF is among the lending products qualifying for the interest subvention scheme.[113] Although its feasibility in resource-constrained countries like Ethiopia remains doubtful, the evidence from India indicate that interest subvention is one means of improving accessibility of affordable financing for marginal section of the rural community.

Despite their contribution to reducing lending costs, the subsidy is criticized for undermining efficiency.[114] However, experts suggest the use of smart subsidies supporting dissemination of innovative technologies and agricultural inputs to farmers, particularly in the SSA countries where the utilization of inputs is one of the lowest, in order to fuel agricultural intensification and reduce

[106] *Id*., See also *The Hindu, 'Govt to launch ₹1,000 cr Credit Guarantee Fund to boost pledge financing for farmers' September 18, 2024* https://www.thehindu.com/news/national/govt-to-launch-1000-cr-credit-guarantee-fund-to-boost-pledge-financing-for-farmers/article68656448.ece. accessed February 19, 2025.
[107] Ibid
[108] Deshpande and Pillai *supra* note 95
[109] Disha Bhanot, Vivek F. Farias, and Deeksha Sinha, 'Interest Subvention for Crop Loans in India: Win-Win or Win-Lose' (2021), 1–3, https://ssrn.com/abstract=3846070. Bhanot et al. indicated that the prompt repayment incentive scheme alone cost the central government USD 2.89 billion in 2021.
[110] Gulati and Juneja, *supra* note 88
[111] Bhanot et al. (2021). 2
[112] Gulati and Juneja *supra* note 88
[113] PIB *supra* note 86
[114] Gulati and Juneja, *supra* note 88

poverty.[115] Indeed, for the subsidy to reach the intended beneficiaries, prevent loan diversion, and encourage farmers to eventually graduate to market rates, it should operate within a governance structure in which policy objectives, eligibility criteria, and subsidy levels are clearly defined, among others.

Overall, the combination of the above-mentioned policy interventions has remarkably increasing agricultural lending in India through WRs and several other lending products mainly driven by the supply side efforts to comply with regulatory requirements and take advantage of the incentives offered by the government.[116] Nevertheless, despite the remarkable achievements the financial needs of the agriculture sector are yet to be met. [117] The SHFs still face challenges pertaining to limited access to credit, formal markets, and high-quality inputs like seeds, and farming equipment.[118] Moreover, some flaws have been reported with the implementation of the policy instruments. For instance, the credit subsidies have, at times, led to market distortion and diversion of funds to non-agricultural activities.[119] Importantly, politically driven interventions like a general debt waiver often announced ahead of elections not only result in inefficient use of financial resources but also distort the credit market by undermining the culture of repayment among farmers, who may come to expect the ability to default without consequence.[120] Therefore, while adapting some of the policy instruments of India caution has to be taken not to replicate the downsides as well.

[115] Innovative Financing to Fund Development Leading Group, Innovative Financing for Agriculture, Food Security and Nutrition: Report of the High-Level Expert Committee to the Leading Group on Innovative Financing for Agriculture, Food Security and Nutrition, International Expert Report (Permanent Leading Group Secretariat, 2012), pp.7 - 8, http://www.leadingroup.org. accessed May 1, 2022.

[116] Vikas Shrotriya and Arvind Kumar Yadav, "Analysis of Kisan Credit Card Scheme (A Case Study of Rajasthan)," Skit Research Journal 7, no. 2 (2017). Other government programmes such as Kisan Credit Card that are more focused on input financing have also played crucial role in improving access to agricultural and rural finance in India.

[117] Gyanendra Mani and P. K. Joshi, "Financing Agricultural Value Chains: An Overview of Issues, Lessons Learnt, and Policy Implications," in Financing Agriculture Value Chains in India: Challenges and Opportunities, ed. G. Mani, P. K. Joshi, and M. V. Ashok (Singapore: Springer Nature, 2017).

[118] Gautam and Mallaiah *supra* note 83

[119] A. Hoda and P. Terway, "Credit Policy for Agriculture in India: An Evaluation," Working Paper No. 302, Supporting Indian Farms the Smart Way (2015).

[120] The first major general debt waiver was announced in 1990. In the subsequent year, banks reported a decline in loan recoveries which resulted in the reluctance banks to continue lending to the agricultural sector due to concerns over rising default risks. (See. Ibid.)

4. The Legal Framework of WRs in Ethiopia: Lacunae and Proposed Reforms

The WRS Proclamation, which superseded the Civil Code provisions on WRs,[121] establishes the legal framework governing the financial and commercial functions of WRs in the Ethiopian market.[122] The WRS proclamation is complemented by the relevant provisions of the Civil and Commercial Codes.[123] Particularly the provisions of the Civil Code on Contracts in General, Contracts of Bailment and compensatory sales are applied to WRs whenever necessary.[124] The long-overdue implementing legislation – the WRS Directive - was enacted in 2021 after almost two decades of legislative gap.[125] The directive fully operationalized the national WRS for the first time by addressing several crucial issues, such as the types and levels of insurance coverages and the amount and modality of posting performance bonds, which are left in the Proclamation to be determined by subsidiary legislation.[126] Alongside the specific WRs laws, the MPSRP also forms an essential part of the broader legal regime governing the creation and enforcement of security interests in WRs.

This section mainly analyses the provisions of the WRS Proclamation relating to the legal status, transferability and pledging of WRs through a comparative legal lens, drawing on the UNCITRAL-UNIDROIT Model Law to inform potential enhancements to Ethiopia's legal framework.

4.1. Legal Status of WRs

In Ethiopia, WRs function as legally recognised documents of title that formalise and codify ownership claims over the underlying goods. This can be inferred from the first paragraph of the WRS Proclamation's Preamble which states that depositors shall be able to receive a document of title[127] upon delivery of their agricultural products to the warehouseman. This is further reinforced by the second paragraph of the same Preamble which envisages transfer of ownership over the stored goods by mere delivery of WRs. Nevertheless, the absence of a provision in the

[121] Article 2806 to 2824 of the 1960 Civil Code are expressly repealed by the WRS Proclamation, 2003. (See Article 46(1) of the WRS Proclamation)
[122] WRS Proclamation No. 372/2003
[123] WRS Proclamation, Article 4(2)
[124] Ibid., Articles 7(2) and 17(3)
[125] WRS Directive No. 835/2021.
[126] WRS Proclamation, Article 31; WRS Directive Articles 15,16 and 17. The specifics of the insurance coverages and performance bond are crucial because both are set as requirements for issuing warehousing license.
[127] Definitional provision of the law states that a document of title confers the entitlements "to receive, hold and dispose of the document and the goods it covers'. Seet Article 2(7) of the WRS Proclamation. Article 2(20) the Proclamation also implies that the receipt is evidence for storage of goods belonging to the depositor.

Proclamation expressly defining WRs as documents of title, combined with Article 7(1) of the Proclamation, which is captioned "legal status" but merely states that WRs constitute valid contracts, creates ambiguity regarding their actual legal status. Thus, a dedicated provision explicitly recognising WRs as documents of title is essential to enhance clarity.[128]

Ethiopia had previously a double-receipt system where stored goods were represented by two separate documents called 'voucher' and 'receipt' as provided under the Civil Code.[129] The 'receipt' confers a bare ownership title while the 'voucher' confers pledge or security rights over the stored goods represented by the document.[130] However, with the enactment of the 2003 WRS Proclamation which superseded the provision of the Civil Code governing WRs,[131] it has switched to a single-receipt system where the stored goods are represented by a single document known as a 'Warehouse Receipt'.[132] While further investigation is warranted, the single-receipt system appears to offer greater efficiency in facilitating WRs transactions. As discussed earlier, the MLWR recognises both the single and double receipts systems.

In Ethiopia, WRs can be issued only by a warehouse operator registered/ licensed under the WRS proclamation to provide warehousing service and issue WRs.[133] As this matter falls under the regulatory aspects, it is not covered in the MLWR. But looking at the experience of comparable jurisdictions like India, a similar approach is employed by restricting the right to issue WRs only to registered and regulated warehouses to ensure integrity of the instrument.[134] However, the scope of restrictions in Ethiopia and India is different. Ethiopia prohibits issuance of any type of WRs, be it negotiable or non-negotiable, electronic or paper-based, by unlicensed warehouses. In contrast India confines the prohibition to negotiable WRs only, allowing non-negotiable WRs to be issued by unregistered/unlicensed warehouses.[135]

Confining the registration/licensing requirements to warehouses issuing negotiable WRs may create a space for the proliferation of alternative warehousing businesses, such as collateral

[128] For instance, the Indian and Tanzania laws explicitly recognise WRs as title document. (See Section 32(2) of the Indian WR Act and Section 11 of the Tanzanian Warehouse Act, 2007)
[129] Civil Code, Article 2813
[130] *Ibid.*, Articles 2817 and 2820
[131] WRS Proclamation, Article 46(1)
[132] *Ibid.* Articles 2(20) and 24
[133] *Ibid.* Article 5
[134] Article 3 of the Warehouse Act, 2007.
[135] See the discussion on Indian experience in Chapter 3

managers which provide custodial services for specific depositor and lender under a private tripartite agreement, known as Collateral Management Agreement, without the need be licensed under the WRS Proclamation to issue negotiable WRs.[136] In many jurisdictions, collateral management companies operate alongside licensed warehouses, providing an alternative mechanism for obtaining loans secured by agricultural products.[137] However, such flexibility will not come without cost. It may, at least, keep a large number of warehouses managing huge volume of stocks under private CMA out of the regulatory oversight as it is the case in India.[138]

In Ethiopia, where the WRs are at the early stage of operationalization, letting non-negotiable WRs to be issued by unlicensed warehouses may also cause unnecessary confusions in the market, undermining the credibility of negotiable WRs as well. Hence, Ethiopia would be better off retaining the mandatory licensing requirement for warehouses issuing all types of WRs. This is unlikely to significantly impede the growth of parallel collateral management businesses, as they can continue issuing functionally, though not legally, equivalent documents, such as Goods Received Notes (GRNs), to acknowledge receipt of goods, consistent with current practice.[139]

The WRS Proclamation recognises eWRs, adopting similar approach of the MLWR that allows electronic and paper-based receipts to coexist.[140] Nevertheless, the Proclamation does not address the basic matters related to issuance, control and transfer of eWRs.[141] The only provision in the Proclamation (Article 40) that attempts to lay the foundation for the issuance of eWRs also presents certain drafting limitations. The provision seems to imply that a system provider issues eWRs.[142] This contradicts other provisions of the WRS Proclamation and the MLWR which spell out that

[136] In this arrangement, the WR is mainly intended to serve simply as a confirmation for the bank that a certain stock is under the control of the warehouse operator. The parties have no the intention to use the receipt as tradable device in the market or offer it as collateral to another lender through a simple procedure. Hence, non-negotiable serves the purpose of such transactions and warehouse may choose pursue this kind of transaction without the need to go through the registration/ licensing process under the WRS legal regime. This is a common type financing arrangement in India. Forn instance, National Bulk Handling Corporation (NBHC), which is one of the leading collateral managing company in India, reported rendering collateral management services to 54 banks and other lending institution in January 2022. (See NBHC Press Release in the website

[137] Bisrat (2025) *supra* note 17

[138] *Ibid.*

[139] *Ibid.*

[140] WRS Proclamation, Articles 2(20) and 40

[141] In fact, back in 2003 Indeed, when the Proclamation was first drafted, electronic WRs were in their infancy and had not yet gained widespread legal or operational recognition.

[142] See WRS Proclamation, Article 40 reproduced herein

> A warehouse receipt may be created by means of electronic records and *may be issued to a bailer or his transferee by a system* provider appointed by the Ministry or its designate in line with procedures to be established for this purpose. [Emphasis added]

WRs, be it electronic or paper-based, shall be issued by a warehouse operator only.[143] Normally, the role of the system provider shall be to create the technology platform enabling the warehouse operator to electronically issue WRs.[144] Read together, Articles 40 and 2(20) suggest that only warehouse operators issue WRs; however, Article 40 should be redrafted for clarity.

The WRS proclamation rightly refers detail technical issues related to eWRs to be determined by secondary legislation or operational manuals.[145] However, it also omits major issues that require primary legislative attention. For instance, the Proclamation does not provide the basic standard the electronic system shall meet to protect the interest of all parties involved. This gap can be addressed by adopting the MLWR provision that requires an electronic system to meet three basic standards: 1) the system must enable clear identification of each eWR; 2) it must allow full control of the eWR from issuance to extinction; and 3) it must retain the integrity[146]of the eWR.[147] The MLWR also contains provisions that allow converting WRs from paper to electronic receipts or vice versa upon the request of the depositor without affecting the rights and obligations of parties.[148] This offers depositors the flexibility to convert a WR into their preferred medium at any time. It may also incentivize holders to adopt the electronic system, knowing that they retain the option to revert to a paper format anytime. The provisions offering such flexibility are also worth considering to incorporate into Ethiopian law.

4.2. The "Holder" of WRs

The WRS Proclamation provides definition for a 'holder' of WRs though it lacks clarity.[149] In defining the requirements for a 'holder' status, the Proclamation fails to distinguish between negotiable and non-negotiable WRs, let alone between electronic and paper-based formats.[150] For instance, the WRS Proclamation appears to consider possession as a requirement for a holder of

[143] See Ibid., Article 5 and MLWR, Article 5
[144] For instance, the Indian Warehouse Act, 2007 clearly states that eWRs shall be issued by a registered warehouse operator (See Article 2(u) of the Act)
[145] WRS Proclamation, Article 40
[146] As per MLWR, Article 6(2) 'integrity' refers to the capability of the system to retain and protect the original information contained in the eWRs and prevent any unauthorized changes to eWRs except those transactions happening legally based on the procedure set out for the purpose.
[147] MLWR, Articles 6(1) and 7
[148] MLWR, Article 14
[149] WRS Proclamation, Article 2(11)
[150] Article 2(11) defines holder as "a person who is in possession of a WRs issued or endorsed to him or to his order or to bearer or in blank." See *Ibid*

all types of WRs, including the non-negotiable receipts.[151] This would be misleading as possession may not be a determining factor to qualify as a holder of non-negotiable WRs.

To avoid such confusions, the MLWR sets out a distinct, more precise and clearer requirements for each type of receipt which Ethiopia can adopt. The requirements to be a holder of negotiable WRs are divided into two. In cases where the negotiable WR is issued to a bearer or endorsed in blank any person can qualify as a 'holder' of the WR simply by possessing it.[152] However, if the WR is issued to the order of a named person, it is only the named person or the most recent endorsee who can qualify to be a 'holder' by having possession of the WR.[153] When it comes to non-negotiable WRs, the MLWR does not at all provide possession as a requirement to qualify as a holder of the receipt. It rather defines a 'holder' of non-negotiable WR as "a person to whom delivery of the goods is to be made in accordance with the terms of the receipt".[154]

The MLWR also provides definition for a holder of an eWR, which is another missing point in Ethiopian law. Unlike Ethiopia's WRS Proclamation, which offers only a generic, possession-based definition of a "holder," the MLWR provides a more nuanced and functionally appropriate definition for holder of eWRs. [155] Recognising the dematerialized nature of eWRs, the MLWR replaces the traditional notion of physical possession with the concept of "control"[156] to establish legal entitlement.[157] This distinction is critical from a property rights perspective, as it ensures that rights over digital assets are clearly defined and enforceable. Adopting the relevant provisions of the MLWR can resolve the lack of clarity and legal ambiguities in Ethiopia's WRS law regarding the definition of the 'holder' across different types of WRs.

[151] *Ibid.*
[152] MLWR, Article 3(a)(ii)
[153] MLWR, Article 3(b)(ii)
[154] MLWR, Article 3(c)
[155] WRS Proclamation, 2(11) and MLWR, Article 3(a)(i) and (b)(i)
[156] MLWR spells out that a person is assumed to have *control* when 1) she exercises exclusive control over the eWR; 2) the electronic system identifies her as a person having control of the eWR; and 3) that she can transfer control over the receipt to another person. See MLWR, Article 6(3)
[157] MLWR further provides three requirements to determine the person having control of the receipt. A person is assumed to have control when 1) she exercises exclusive control over the eWR; 2) the electronic system identifies her as a person having control of the eWR; and 3) that she can transfer control over the receipt to another person. See Article 6(3) of the MLWR

4.3. Transfer Mechanics of WRs

Clearly delineated and enforceable procedures for the transfer of both negotiable and non-negotiable WRs are crucial for the institutional integrity of the WRs, as they ensure a reliable and efficient transfer of property rights in the market. Even though the Ethiopian law does provide mechanisms for the transfer of both negotiable and non-negotiable WRs, the existing legal framework suffers from ambiguities and occasional inconsistencies. To begin with negotiable WRs, Article 20(4) of the WRS Proclamation sets out "endorsement and delivery" as requirements of valid transfer. The conjunction "and" used in the provision appears to make endorsement and delivery cumulative conditions for valid transfer of all types of negotiable WRs, be it a receipt issued to the order of a named person or to the bearer.[158] In contrast, Article 2(13) of the Proclamation states that negotiable WRs can be transferred by endorsement or delivery implying the possibility for transfer of certain negotiable WRs by delivery alone. The two provisions are not only contradictory but also lack clarity about which types of negotiable WRs can be transferred by delivery alone or by both endorsement and delivery.

The Proclamation's Preamble further complicates the matter by envisaging transfer of rights over stored goods by mere delivery of the WRs, regardless of the type of WRs.[159] Moreover, the very nature of 'endorsement and delivery', which presupposes physical handling of the receipts render it inapplicable to dematerialized eWRs. Those legal texts combined together make the procedures of transfer of negotiable WRs ambiguous and inconsistent.

The MLWR offers well-crafted provisions addressing the aforementioned gaps and limitations, which Ethiopia may consider adopting. The MLWR first categorizes negotiable WRs into two based on their unique features affecting the procedure for their valid transfer. These are WRs issued to 'the order of a named person' and WRs issued to the bearer.[160] If a negotiable WR is 'issued or endorsed to the order of a named person', it shall be transferred by endorsement and delivery

[158] Article 20(4) reads as follows:

> *A negotiable warehouse receipt may be transferred to third parties by endorsement and delivery [empahsis added]. A provision in a negotiable warehouse receipt that limits negotiability shall be of no effect.*

[159] WRS Proclamation, Paragraph 2.

[160] MLWR, Article 2(4)

because it bears a name of specific person.[161] But if the negotiable WR is 'issued to bearer' or 'endorsed in blank or to bearer', it can be validly transferred by delivery alone.[162]

Regarding negotiable eWRs, Article 15(2) of the MLWR appropriately replaces the traditional requirements of 'endorsement and delivery' with the notion of 'transfer of control,' which is suitable for the digital systems. In line with the MLWR approach, it is recommended that the Ethiopian law (i) clearly recognise the two categories of negotiable WRs, and (ii) outline the procedures for valid transfer in each category separately. The Ethiopian law should also incorporate the notion of 'transfer of control' in lieu of 'endorsement and delivery' for the transfer of eWRs.

Unlike negotiable WRs, which involve more complex but institutionally robust transfer procedures, non-negotiable WRs follow a relatively straightforward yet less efficient and more traditional mode of transfer. The Ethiopian law sets out that non-negotiable WRs shall be transferred only "in accordance with rules governing sale or those on ordinary assignment".[163] The limited transferability of non-negotiable WRs constrains the flexibility and liquidity of property rights, thereby impeding their broader economic utility. Indeed, non-negotiable WRs may effectively work in private contract-based arrangements, such as CMA, where the WRs are not needed for broader trading and financing transactions.[164]

Under the Ethiopian law, valid transfer of WRs confers the transferee with the rights of the transferor over the underlying goods represented by the WRs.[165] But when the transferee is a *bona fide* purchaser of negotiable WRs, the law extends addition protection by enabling the transferee to "enforce his right in the instrument free from all previous claims and defects".[166] Although the provisions of the WRS Proclamation precisely spelt out the three essential elements of the transaction that the buyer shall acquire the WR in good faith, for value and without notice of any defect or adverse claim, the inclusion of a 'possession' requirement in the definition renders it incompatible with dematerialized WRs.[167] The MLWR overcomes this limitation and embraces eWRs by replacing 'possession' with a general requirement of the transfer of the negotiable WRs

[161] MLWR, Article 15(1)(a)
[162] MLWR, Article 15(1)(b)
[163] WRS Proclamation, Article 20(3)
[164] For more discussion on CMA-based financing See Bisrat (2025) *Supra* note 17
[165] Article 20(6) of the WRS Proclamation
[166] Ibid.
[167] Article 2(12) of the WRS Proclamation states that the person shall be in possession of the WRs.

in accordance with the relevant law.[168] If the WRs is electronic, it shall be transferred to the acquirer based on the procedure laid down under law for the transfer of eWRs and if its physical WRs it shall follow the provisions on physical WRs transfer.[169]

Similarly, when it comes to the scope of protection of a 'holder in due course' the WRS Proclamation indicates that the person shall have full ownership over the goods represented by the WRs free from any previous defects.[170] Although this reflects the main corpus of the legal protection, the Proclamation would benefit from replacing the existing scattered and less comprehensive provisions by the explicit and robust scope of protection provided under Article 18 of the MLWR.[171] The legal text of Article 18 is compatible with the existing Ethiopian law since it leaves a room for the exceptional limitations the WRS Proclamation imposes on the rights of the holder in due course.[172] Ethiopia may also consider adopting the clearer terminology of 'protected holder,'[173] as used in the MLWR, in lieu of 'holder in due course,' to enhance legal clarity and simplicity, particularly to facilitate easier understanding within the farming community, which is intended to be a primary targeted beneficiary of WRs in Ethiopia.

4.4. Pledging WRs

In Ethiopia, the security rights created in WRs are governed by the Movable Property Security Rights Proclamation No. 1147/2019 (MPSRP), which establishes a streamlined procedure for the creation, perfection and enforcement of a security rights in movable assets. Article 4(1) of the MPSRP stipulates that security rights in movable assets, including WRs, shall be created by a written security agreement. This marks a major shift from the Civil Code which requires the

[168] MLWR, Article 17(1)(a)
[169] Article 15 of the MLWR provides separate procedures for valid transfer of paper-based and eWRs
[170] WRS Proclamation, Articles 9 and 20(6)
[171] Article 18 of the MLWR provides for two options of legal texts the enacting states may consider. Option 1 provides the following comprehensive description on the scope of protection of holder in due course:

> *A protected holder [holder in due course] of a negotiable warehouse receipt acquires ownership of the receipt and the goods covered by the receipt, and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, free of any right, claim or defense of the warehouse operator or any other person, other than any right, claim or defense that arises under the terms of the receipt or under this Law.*

[172] Articles 13(2)(a) and 23 of the WRS Proclamation respectively dictate that warehouse operator lien and the claims of a bona fide purchaser of the physical goods stored in the warehouse shall prevail over the rights of the holder in due course. The last phrase of the legal text recommended in the MLWR (Article 18) leaves a room for exception by states that "*other than any right, claim or defense that arises under the terms of the receipt or under this Law [the WRS proclamation]*." See *Ibid*.
[173] MLWR, Article 17 and 18

grantor's dispossession of collateral for valid creation of security rights in movable assets.[174] Under the MPSRP, a farmer may grant a security right in agricultural products merely by signing a security agreement, thereby avoiding the need for transfer of possession and related logistical costs for moving, storing, and handling large inventories. [175] Likewise, security rights in WRs can be simply created by a security agreement without the need to transfer possession of receipt.

The MPSRP has also introduced an electronic system[176] through which lenders shall easily perfect their security rights by a simple procedure of filling notice of the security interest on the Movable Collateral Registry Office's (MCRO) website (https://emcr.nbe.gov.et), set up within the National Bank of Ethiopia.[177] Exceptionally, security rights in negotiable WRs can also be perfected by taking possession of the documents.[178] In this case, the grantor would technically relinquish possession of the collateral, but with far less inconvenience than would be involved in the physical transfer of possession of goods. The law further strengthens protection for holders of negotiable WRs by granting priority to security interests perfected through possession of such WRs over competing interests perfected by any other method.[179] Although the MPSRP incorporated possession as alternative method of perfecting security rights in negotiable WRs, it has omitted to include equivale notion of 'control' that is compatible for digital setting (eWRs).[180] In this regard the MPSRP is suggested to adopt the notion of "control" enshrined in MLWR.

The MPSRP offers lenders a more favourable enforcement pathway - both in terms of speed and procedural flexibility - relative to the enforcement mechanisms provided to immovable collateral.

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[174] Ethiopian Civil Code, Article 2825

[175] MPSRP, Article 4(5)

[176] The electronic registration system not only prevents fraud and unnecessary bureaucracy but also promotes efficiency and transparency of the security rights enforcement system. However, the accessibility of the system is questioned due to limited coverage of electricity and internet services, particularly in the rural areas. (See Asress Adimi Gikay, (2018) "Examining Suitability of the Draft Ethiopian Personal Property Security Rights' Law to the Local Context," Hawassa University Journal of Law 2)
Yet, as far as banks and other formal lending institutions are concerned, the system has turned out to be quite convenient and efficient.

[177] The notice registration is designed as a simple notice filing system that can be completed by the lender alone without the need for the approval or authentication of the MCRO. Normally, the registration becomes effective at the moment the lender finishes the notice filing process. (See Article 13(1) of MPSRP and the NBE Directive No. MCR-01-2020).

[178] MPSRP, Articles 18(2). Although the MLWR doesn't cover detail procedures for pledging WRs, it recognises both registration and possession as alternative methods of perfecting security rights in negotiable WRs, similar to the Ethiopian approach. (See MLWR, Article 19)

[179] MPSRP, Article 64(1)

[180] Article 13(1) and (2) of the MPSRP. Indeed, Article 13(3) of the MPSRP incorporated "control" as a perfection method but that is specifically for a deposit account and electronic security. Per Article 2(15) electronic securities refers to shares and bonds registered and transferable electronically.

For instance, MPSRP allows a secured creditor to automatically take possession of the collateral upon default of the borrower without the need to serve notice or apply to the court, provided that the parties agreed for the same in the security agreement.[181] If the secured creditor faces resistance in the attempt to possess the collateral, it can seek for the assistance of the MCRO, which is mandated to order the police force to execute possession.[182] By contrast, the foreclosure of immovable collateral requires the creditor to provide a notice of at least 30 days before initiating any enforcement measures. [183]

The MPSRP likewise imposes a duty of notice, but only for collateral disposal, not for dispossession.[184] The MPSRP also shortens the minimum notice period to 10 days and provides for a wider room for waiving the notice requirement.[185] For instance, if the movable collateral will be sold in a recognised market like the ECX, the creditor can directly proceed with the disposal without the need to serve notice.[186] If the movable collateral perishes within 10 working days or its value deteriorates rapidly, these circumstances also constitute sufficient ground for waiving the notice requirement.[187] The provisions of the MPSRP on disposal methods and procedures are also crafted in a manner favourable for secured creditors lending against movable collateral.[188]

5. Policy Options for Ethiopia: Scaling Uptake among SHFs

WRs have long been recognised as financial instruments within Ethiopian legal and policy frameworks, evidenced by their incorporation in Ethiopia's Civil and Commercial Codes back in the 1960s. Notably, the promulgation of a dedicated WRs legislation (WRS Proclamation) marked

[181] MPSRP, Article 81(1)
[182] MPSRP, Article 81(3). Asres noted forceful dispossession may expose the debtor to extrajudicial deprivation of the constitutional property rights. See Asress supra note 176. Tajti also sharply criticizes adoption of self-help repossession in the civil law legal system like Ethiopia. See Tibor Tajti 'The efficient enforcement challenge of secured transactions law reforms in civil law systems—self-help repossession, strict foreclosure, and other methods for the acceleration of enforcement of security interests' Uniform Law Review, 2024, 29. 139
However, on the flip side, it should be noted that the debtor may also prejudice lender's interest by easily relocating or transferring the movable collateral, rendering the security rights enforcement almost impossible. Unless effective mechanism, such as self-help repossession, put in place to mitigate the risk, lenders uptake of asset-based lending could remain very low. The dispossession after default can also be viewed as a more favourable condition the MPSRP offered to the debtor as compared to the older law which generally set dispossession as validity requirement for creation of security rights.
[183] Article 3 of the Proclamation No. 97/1998. A Proclamation to Provide for Property Mortgaged or Pledged with by Banks. Federal Negarit Gazeta, 4th Year No. 16 Addis Ababa. 19th February 1998.
[184] MPSRP, Article 83
[185] *Ibid*, Article 83(1)
[186] *Ibid*, Article 83(5)(c)
[187] *Ibid*, Article 83(5)(a) and (b)
[188] *Ibid*, Artcle Art 82

a stronger recognition of WRs as a policy tool to tackle the financial and marketing challenges in the agriculture sector. The WRS Proclamation's Preamble, which is assumed to reflect policy objectives, emphasises the need to protect farmers from price volatility and distress sales at harvest by creating access to formal credit using WRs as collateral. The Proclamation also seeks to advance other broader policy objectives, including enhancing the efficiency of agricultural marketing, promoting the trading of standardized agricultural produce, and facilitating financial transactions within the sector.[189] The 2019 secured transactions law (MPSRP) also represents another major policy measure that reinforces the use of movable assets, such as WRs, as collateral to unlock agricultural financing by expanding the collateral menu.[190]

WRs also feature in other policy documents and development plans. For instance, the ten-year agricultural development plan and the national agriculture-focused investment plan indicate WRs as a means of improving agricultural financing.[191] However, neither document provides a detailed account of the policy, strategic framework, nor broader enabling environment required to support the effective operationalization and scaling-up of WRs within the agricultural sector. It is only recently that Ethiopia has put in place a more detailed and concrete framework for the promotion of WRs and related agricultural lending products, with the issuance of the National Agricultural Finance Implementation Roadmap (NAFIR) in 2025, representing a late but significant shift toward more comprehensive and structured agri-finance framework.[192] NAFIR not only recognises WRs as strategic instruments for scaling agricultural finance, but also incorporates selected policy tools somehow similar with that of India to drive uptake of WRs and other agricultural lending products. Some of these policy tools are highlighted in the discussion below, in the context of the lessons Ethiopia can draw from India.

Despite a broadly favourable policy environment for using WRs as collateral, especially with the approval of NAFIR, Ethiopia has yet to adopt targeted policy measures/instruments that fully harness the huge potential of WRs to advance financial inclusion and food security. As a result, the strategic role that WRs could play in the agricultural sector has been under-explored,

[189] *Ibid.*, Paragraph 4 of Preamble and Article 3(3)
[190] MPSRP, The Preamble
[191] See the Ten-Year Agricultural Sector Perspective Plan 2021-30 and National Agricultural Investment Plan (NAIP) 2021-30. https://faolex.fao.org/docs/pdf/eth236072.pdf
[192] NBE and MoA, 'National Agricultural Finance Implementation Roadmap (NAFIR)', July 2025 https://nbe.gov.et/wp-content/uploads/2025/07/NAFIR.pdf

warranting deliberate policy attention to elevate and integrate WRs more effectively into national development priorities. Ethiopia should therefore consider repositioning WRs within its socio-economic development agenda, not merely as another lending product, but as a strategic intervention in the agricultural sector.

Doing so enables the country to unlock agricultural finance for SHFs and other value-chain actors at a scale, raise rural incomes, reduce post-harvest losses, enhance product quality, and ultimately advance financial inclusion, food security, poverty reduction, and export competitiveness. Particularly, focusing on smallholder farmers, the Indian experience demonstrates that promoting the adoption of WRs, both among SHFs and more broadly across agricultural value chain actors, requires implementation of tailored and coordinated policy instruments that drives agricultural lending from the supply side while also mitigating sector-specific credit risks for the lenders and lowering borrowing costs for target beneficiaries.

In Ethiopia, physical accessibility remains a significant barrier for improving rural financial access in general.[193] Ethiopia should consider adopting the Indian multi-Agency approach to diversify and increase the number of financial institutions operating in the rural credit market, thereby increasing physical accessibility of financial institutions. Based on the Indian experience the multi-agency approach can be implemented in two ways.

The first one is encouraging existing banks and microfinance institutions to gradually improve their rural presence by imposing a modest requirement of urban-rural branch network balancing directive.[194] For instance, initially banks could be required to comply with the requirement of opening one branch in rural areas for every new branch opened in already banked/urban areas. Indeed, the rapid expansion of digital financial services over the last few years may downplay the role of physical branch networks. The Indian experience also shows that well-designed digital systems can broaden access to agricultural finance despite socio-cultural and infrastructural barriers.[195] However, in the Ethiopian context where a large share of the rural population is still unbanked, it is difficult to leapfrog directly to fully digital finance and achieve rapid digitisation

[193] Mohammed Seid Hussen and Mustafe Abdi Mohamed 'Impact of Financial Inclusion on Household Welfare in Ethiopia' Future Business Journal 2023, 9(1):67 https://doi.org/10.1186/s43093-023-00243-y accessed August 12 2025

[194] See the discussion *supra*-section 3.2.1.

[195] N. S. Aishwaryalaxmi and Pralhad Rathod, "Digital Financial Inclusion and Rural Transformation Through Internet Banking," Journal of Informatics Education and Research 5, no. 3 (2025): pp.12–29.

of trust. A modest but deliberate improvement of physical accessibility of financial institutions remains essential to advance financial literacy, build trust at the grassroots level, and lay the foundation for broader adoption of digital financial services. The rural branches need not necessarily match the scale of urban branches, which entail higher upfront and operational costs. These can be designed as satellite outlets or retail touchpoints that provide basic banking services, coordinate banking agents, and support broader rural penetration efforts, while fostering customer engagement and the digitisation of financial trust.

The second approach would be to consider establishing or providing attractive incentives for establishment of agriculture sector-specific financial institutions similar with the Indian NABARD, RRBs, SFBs that shall exclusively focus on serving the SHFs and other underserved customer segments in the rural areas.[196] Particularly, creating enabling environment for NBFIs is crucial in Ethiopia not only to diversify agri-focused financial institutions but also to improve accessibility of warehousing services in rural areas. As discussed in Section 3.2.1, in India NBFIs are usually established by warehousing companies as a sister company facilitating one window service for SHFs and enabling to leverage economies of scope. However, it is worth noting that adopting a multi-agency approach that diversifies lenders and products in rural markets should be complemented by strengthening the central bank's sector-specific regulatory capacity to ensure effective supervision and close potential consumer protection gaps.

Beyond improving physical access, it is also essential to ensure that agricultural finance receives a fair share of financial institutions' lending portfolios, particularly those of banks, in a manner that reflects the sector's sizable role in the economy. In Ethiopia, agricultural finance accounted for only 6.4% of the fresh bank loans disbursed in the 2022-23 fiscal year.[197]As discussed in Section 3.2.2. India has managed to improve similar financing gaps not only in agriculture but also in other priority sectors by implementing the PSL policy. Ethiopia has also started adopting a similar approach by issuing a Directive that requires banks to allocate at least 5% of their annual credit disbursement to the agriculture sector or micro, small and medium enterprises (MSMEs) taking only movable collateral.[198] Although this is a step in the right direction the policy

[196] *Ibid*
[197] National Bank of Ethiopia (2024). 'Financial Stability Report' April 2024. https://nbe.gov.et/wp-content/uploads/2024/04/Finacial_Stability_Report.pdf accessed on May 16, 2024.
[198] National Bank of Ethiopia, Operationalization of Movable Collateral Registry, Directive No. MCR/01/2020. (See Article 19.1)

intervention doesn't seem to achieve the desired goal of increasing agricultural financing using movable assets, such as WRs, as collateral.[199] One of the main reasons is that agriculture, which is viewed as risker by the lenders, had to compete with MSMEs which are mostly incorporated business entities with relatively better cash flow.

Learning from the Indian experience, Ethiopia should consider revising the percentage from time to time (the sub-sector target for agriculture is 18% in India) and set sector-specific targets to make sure that the agriculture sector will not be left out. Moreover, to reach the last mile of the agriculture value chain and benefit SHF, Ethiopia shall also consider setting customer segment specific target (for SHFs), which is currently 8% in India.[200] The PSL shall be complemented by the surplus lending certificates trading system where financial institutions that exceed their PSL targets will be able to sell credits to those falling short.[201] The trading system offers more efficient, market-based compliance pathway for banks, often lacking comparative advantage in agriculture, to meet their regulatory obligations while ensuring flow of the mandated level of financing to priority sectors.[202] It also promotes and incentivizes specialization by enabling financial institutions actively engaged in agricultural lending to generate additional income through the trading of surplus lending certificates.[203] NAFIR has adopted a similar system of inter-bank markets that would enable the trading of available loanable funds for Agri-credit among financial institutions.[204] Nevertheless, based on the lessons from India, for the trading system to serve the purpose it should be backed by mandatory sector and sub-sector specific targets as well as a dedicated surplus lending certificates trading system.

Ethiopia should also complement the above supply-side interventions with targeted and carefully designed risk-sharing guarantees and interest-subvention schemes, policy instruments that have been crucial to India's significant progress in expanding agricultural finance to the grassroot level (SHFs).[205] These two policy interventions are, indeed, resource-intensive and may be difficult to

[199] So far, only 1 percent of the registered collateral is agricultural products. See NAFIR (2025) *Supra* note 192
[200] See the discussion in Section 3.2.2.
[201] *Ibid*
[202] Sambhavi Dhingra, Arpita Agarwal, and Snehal S. Herwadkar "Priority Sector Lending: The Indian Experience" RBI Bulletin, September 20, 2024. See also Dhananjay Ashri & Muskan Kaur & Bibhu Prasad Sahoo, 2025. "Priority sector lending by the Indian public banks: impact on capital formation and NPAs," Global Business and Economics Review, Inderscience Enterprises Ltd, vol. 32(4), pp.441-463
[203] *Ibid*
[204] See NAFIR (2025) *Supra* note 192. p.16
[205] See the discussion in Sections 3.2.3 and 3.2.4.

implement under Ethiopia's current economic conditions.[206] Nonetheless, even partial adoption, whether supported by development partners or financed fully by the government, would signal a strong government commitment to expand agricultural finance. In line with this, NAFIR has introduced the National Agricultural Finance Accelerator (NAFA), which offers a combined solution of re-financing and risk sharing mechanisms for agricultural credit.[207] NAFA is designed to pool resources from various sources to make loanable funds available specifically for agricultural lending and provide structured risk sharing.[208] Although the proposed de-risking tool is not exclusively dedicated to WRs, unlike in India, it nonetheless constitutes a scheme that covers WRs as well.

To ensure that risk-sharing facilities achieve their objectives of increasing the flow of agricultural credit and preventing unintended market distortions, such schemes should incorporate minimum safeguard mechanisms. These include objective eligibility criteria, coverage caps, risk-sharing ratios, monitoring and evaluation mechanisms, and a clear governance structure. In this regard, NAFIR has incorporated the best practices in the area by adopting, *inter alia*, some eligibility criteria for financial institutions benefiting from the risk-sharing facility, which include having specialized agri-finance product design, emphasis on promoting agricultural assets as collateral, promoting data-driven lending, robust loan lifecycle procedures, and the application of fair but also commercially-based loan pricing for farmers.[209]

The interest subvention policy is also often contested for distorting the market; however, such concern can be mitigated by strictly targeting the most vulnerable actors, such as SHFs, and by structuring the subsidy to reward timely repayment.[210] India's approach, which combines an upfront interest reduction with additional incentives for on-time repayment, demonstrates how such design can strengthen repayment discipline and improve overall debt recovery. From the Indian experience, another major concern with subvention policy has been the political misuse of the policy (for example, loan-waiver schemes) as electoral tools. Ethiopia shall avoid similar pitfalls from the outset by ensuring that any debt-relief measures or other forms of subsidy are rule-based, transparently targeted, and insulated from political cycles. NAFIR appears to mitigate

[206] Bhanot et al. *supra* note 109
[207] See NAFIR (2025) *Supra* note 192. pp. 14 -18
[208] Ibid.
[209] Ibid. p.15
[210] See the discussion in Section 3.2.4.

the risks associated with interest subvention by avoiding direct interest subsidies and instead relying on more market-based incentives, such as refinancing and risk-sharing facilities, which can ultimately reduce loan pricing by lowering risk exposure and lending costs. However, without objective governance and high levels of transparency, market-based incentives may also be equally vulnerable to political interference and market distortions. Hence, where resources allow, similar with India, Ethiopia may consider providing direct interest subventions for targeted sub-segments, such as SHFs trapped in poverty, provided the programme is supported by a governance framework of high integrity.

6. Conclusion

WRs are innovative financial and trading instruments representing goods stored in a warehouse. They mainly play two complementary roles. First, WRs enhance financial inclusion by unlocking new source of finance for farmers and other value-chain actors using stored agricultural products as collateral; this financing, together with the income earned through orderly marketing, allows farmers to invest in improved inputs and technologies, thereby boosting yields in subsequent seasons. Second, they also enhance food security not only by reducing post-harvest losses and improving crop quality, but also by increasing potential future harvests through better utilization of inputs and technologies financed via WRs. The use of documentary instruments, such as WRs, to evidence ownership or control of goods has a long-standing historical precedent, tracing back to ancient Mesopotamia. In the modern times, WRs have been widely used as a security device to unlock financing for the agriculture sector and beyond in many parts of the world. Especially in the United States, WRs have been one of the most successful financing instruments, historically marked by low default rates.

The effective and widespread use of WRs presupposes an enabling legal framework that clearly defines, *inter alia*, the legal status, transferability and pledging of WRs. Besides the legal framework, in countries, like Ethiopia, where the agriculture sector is dominated by SHFs, it is imperative to consider devising public policy instruments that can promote and support the market adoption of WRs with a particular emphasis on reaching the underserved agricultural value chain actors, including the SHFs. The Ethiopian law recognises WRs (be it electronic or paper-based) as documents of title, despite the need for more legislative clarity. The WRs legislation also aligns with the MLWR in permitting the coexistence of both electronic and paper-based receipts, thereby

maintaining system inclusivity while facilitating a smooth and gradual transition to a more efficient electronic framework.

However, the WRS proclamation has left unaddressed several issues that need primary legislation attention mainly related to accommodating the dematerialized nature of eWRs. For instance, the law does not incorporate the concept of "control" for eWRs, the functional equivalent of 'possession' for paper-based WRs. To address this and several other gaps in the operationalization of eWRs, Ethiopia should adopt the relevant provisions of the MLWR. Likewise, ambiguities in the Proclamation concerning the definition of a WR "holder," the notion of a "holder in due course," and the rules governing transferability should be clarified by drawing on MLWR provisions that reflect international best practice.

Despite the broader legal recognition, WRs are yet to gain wide scale market acceptance and benefit the various actors across the agriculture value chains, including the SHFs. The Indian experience shows that expanding the reach of agricultural finance, in general, and driving market adoption of WRs, in particular, demands implementing well-designed and coordinated policy instruments that are aimed at driving agricultural lending from the supply side, while also mitigating sector-specific credit risks for the lenders and lowering borrowing costs for target beneficiaries. In this regard, the recent approval of NAFIR represents a late but significant shift toward more comprehensive and structured agri-finance framework. Nevertheless, it is recommended to reinforce the policy tools incorporated in NAFIR by adapting the Multi-Agency Approach, mandatory and agriculture specific PSL scheme, credit guarantee scheme dedicated to WRs, and interest subvention to expedite the scale up of the WRS and extend its benefits to the last mile of the agriculture value chains. In adapting these policy instruments, Ethiopia should draw on India's experience to avoid known pitfalls and to enhance the overall impact and sustainability of the interventions.

More importantly, it is emphasised that the strategic role that WRs could play in the agricultural sector seems to be understated, warranting deliberate policy attention to elevate and integrate WRs more effectively into national development priorities. WRs should be repositioned in the policy dialogue, not merely as another lending product, but as a strategic intervention in the agricultural sector that can contribute to enhancing financial inclusion, supporting food security, boosting farmers' incomes, easing agro-industries' working capital constraints for raw materials

aggregation, and promoting overall efficiency across agricultural value chains. Finally, it should be noted that this article is confined to a selected set of legal and policy issues that are critical for promoting the inclusive uptake of WRs. However, the effective implementation and large-scale operationalization of the WRS require a far broader range of regulatory, institutional, and operational conditions that warrant systematic examination in future research.

Conflict of Interest

The author declares no conflict of interest.

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Socialising Cooperatives in Ethiopia: The Quest for Social Cooperative

Desalegn Deresso *
Solomon Abay**

Abstract

With the emergence of the social enterprise business model, the service horizon of cooperatives has expanded beyond their members to address humanity's pressing concerns. The new wave of social entrepreneurship in the cooperative sector has forced countries to develop regulatory responses, such as creating a social cooperative form or labelling cooperatives with a primary social purpose as "social enterprise". In Ethiopia, social enterprise is growing within the cooperative sector, although it lacks a distinct form or label. The use of the cooperative form by social enterprises raises the question of whether existing cooperative law is sufficient to accommodate and promote social business or whether a special legal regime is needed. Against this background, using doctrinal and empirical analyses, this article revealed that the existing law is not prohibitive; however, it is inadequate in creating a clear legal identity, addressing regulatory concerns, and fostering a supportive ecosystem. Therefore, this article recommends introducing a social cooperative through either a dedicated special law or an amendment to existing cooperative law, in a manner that adequately addresses the special regulatory concerns posed by its hybrid nature.

Keywords

Social Enterprise; Social Business; Sustainable Business; Social Cooperative

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* LL.B, LL.M, PhD Candidate, School of Law, Addis Ababa University, Addis Ababa, Ethiopia, Email: desalegn.deresso@aau.edu.et ORCID NO.:0000-0003-4326-757

** LL.B, LL.M, PhD, Associate Professor, School of Law, Addis Ababa University, Addis Ababa, Ethiopia, Email: solomon.abay@aau.edu.et ORCID NO.:0009-0000-9723-1339

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1. Introduction

As a form through which humans cooperate for common interests, the cooperative has evolved significantly over the last 200 years.[1] As defined by the International Co-operative Alliance (ICA), it is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.[2] The 2016 Cooperative Proclamation of Ethiopia similarly defines a cooperative as an autonomous association with legal personality, democratically controlled by persons united voluntarily to meet their common economic, social, and cultural needs and other aspirations that cannot be addressed individually, through an enterprise jointly owned and operated in accordance with cooperative principles.[3] As the name implies, the foundation of a cooperative lies in cooperating to address the common needs and concerns of members. As described by Altman, a cooperative is a voluntary network of individuals who own or control a business that distributes benefits to members.[4]

Although indigenous cooperatives, such as *Iqub*, *Idir*, and *Debo,* have a long history in Ethiopia, formal cooperatives are a recent development of the twentieth century.[5] Indigenous cooperatives, such as *Iquib*, *Idir*, *Debo*, *Senbete*, and *Mahabir*, respectively, have characteristics comparable to modern savings, insurance, labour, spiritual, and solidarity cooperatives.[6] Even though Ethiopia has a longstanding tradition of cooperative practices, cooperatives established under cooperative

[1] Morris Altman, 'History and Theory of Cooperatives', in *International Encyclopedia of Civil Society* (2010), pp. 563–568.
[2] ICA, ICA Statement on the Cooperative Identity (1995), pp.1-3.
[3] Cooperative Societies Proclamation No.985/2016.Art.2(1).
[4] Altman, *supra note* 1 at 563–566.
[5] Dejene Aredo, 'The Informal and Semi-Formal Financial Sectors in Ethiopia: A Study of the Iqqub, Iddir and Savings and Credit Co-Operatives', (1993), pp. 1–10.
[6] Iquib (Equb) mean traditional rotating savings and credit association while Idir mean traditional association for mutual aid during emergencies. Debo means collective labour where community members help one another on rotating basis. Senbete and Mahabir is faith-based mutual association that provide spiritual solidarity and social support. See also Aredo *supra note 5* at 9–35; Dejene Aredo, 'The Iddir: An Informal Insurance Arrangement in Ethiopia', Savings And Development, Vol. 34, 2010, pp.50–57; Kau Veerakumaran G, *Ethiopian Cooperative Movement*, 1–15, https://www.academia.edu/9873353/Ethiopian_Cooperative_Movement (last visited Sept. 17, 2025); Alula Pankhurst & Damen Haile Mariam, 'The "Iddir" in Ethiopia: Historical Development, Social Function, and Potential Role in HIV/AIDS Prevention and Control, Northeast African Studies', Vol. 7, 2000, pp. 35–40; Dagne Mojo, Terefe Degefa & Christian Fischer, 'The Development of Agricultural Cooperatives in Ethiopia: History and a Framework for Future Trajectory', Eth. J. Soc. Sci. Hum', Vol. 13, 2018, pp. 49–50; Delelegne Tefera, Jos Bijman & Maja Slingerland, 'Agricultural Co-Operatives in Ethiopia: Evolution, Functions and Impact, Journal of International Development, Vol. 29, 2016, pp. 29–30.

law are primarily inspired by Western models rather than indigenous cooperatives.[7] Due to the country's failure to recognise, incorporate, formalise, and modernise them, traditional cooperatives continue to coexist alongside formal cooperatives. Since the imperial period, cooperative societies have undergone several legal reforms under subsequent regimes.[8]

Cooperatives have evolved over centuries from informal mutual aid practices into a worldwide movement spanning diverse sectors.[9] While cooperative practices existed long before, the modern one emerged in the 19th century following the formation of cooperatives based on principles formulated by the Rochdale Society of Equitable Pioneers (UK) in 1844.[10] In the late twentieth century, globally, cooperatives underwent significant reform, including the creation of social cooperatives, which typically focus on serving the interests of a broader community rather than the traditional member-centred model.[11] The idea that cooperatives can serve as social institutions that address society's socio-economic and environmental problems is foundational to social cooperatives.[12] A social cooperative is a cooperative for the benefit of society, not just its members. However, it is not donation-dependent like traditional charities. Since its first formal appearance in Italy in 1991 with the adoption of a law creating a specific legal form for it, social cooperatives have become a new type of co-operative in various countries, including Portugal (1996 and 1998),[13] Spain (1999), France (2001), Poland (2006), Greece (1999 and 2011), and South Korea

[7] Habtamu Girma, 'The Legal Status and Nature of Cooperative Societies in Ethiopia: A Critical Study of the Existing Legal Frameworks' (LL.M Thesis, Haramaya University, 2019), pp.35-50; Adugna Wodajo and R. Karunakaran, 'Willingness of Informal Shoe Shiners to Join Cooperatives: Evidence from Hawassa City, Ethiopia, Journal of Rural Development', Vol.44. No.1. pp. 1-14.

[8] Girma, *supra note* 7 at 23-26.

[9] Vera Negri Zamagni, 'A Worldwide Historical Perspective on Co-Operatives and Their Evolution' in Jonathan Michie et al.(eds), *The Oxford Handbook of Mutual, Co-Operative, and Co-Owned Business* (Oxford University Press, 2017), pp. 97–113.

[10] Altman, *supra note* 1 at 563-570; Flávio Luiz Von Der Osten et al., 'What Does the 7th Cooperative Principle (Concern for Community) Really Mean?, Manag Rev Q', Vol. 75, 2025, 1813–1815; International Cooperative Alliance, Guidance Notes to the Co-Operative Principles, 1–13, https://ica.coop/sites/default/files/basic-page-attachments/guidance-notes-en-221700169.pdf accessed on 16 January 2025.

[11] Jacques Defourny & Marthe Nyssens, 'Social Cooperatives: When Social Enterprise Meets the Cooperative Tradition, Journal of Entrepreneurial and Organizational Diversity', Vol. 2, No. 2, 2013, pp. 11-33.

[12] Daniel Hernández Cáceres, 'Social Enterprises in the Social Cooperative Form' in Henry Peter et.al. (eds)), The *International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Geneva, 2023), pp. 173-177.

[13] Portuguese Cooperative Code No. 51/96 and Law No. 119/2015; Legal Regime of Social Solidarity Cooperatives Decree-Law No. 7/98; Framework Law on the Social Economy Law No. 30/2013.

(2011).[14] Some countries, including Belgium (1995), Finland (2003), Lithuania (2004), the United Kingdom (2005), Italy (2005), and South Korea (2007), follow a more open approach that labels and regulates cooperatives with explicit and primary social aims as a "social enterprise".[15]Creating a social cooperative as a special legal structure for social enterprise businesses and labelling cooperatives with an explicit and primary social aim as a "social enterprise" are among the regulatory approaches adopted by countries.[16]

In Ethiopia, a social cooperative is not recognised as one type of cooperative. At the same time, there is no labelling of a cooperative with a primary social mission as a social enterprise. The idea that cooperatives are dedicated to serving the common needs of their members is central to Ethiopia's cooperative laws.[17] Despite some social orientation that can be inferred from guiding principles and values, legally, cooperatives are defined as associations of members for the benefit of their members. Despite this, the idea of combining business and social objectives has been growing across sectors, including cooperatives. As a British Council study shows, cooperatives, which account for 10% of all social enterprises, are the most common legal form adopted by social enterprises in Ethiopia.[18] Although they are not formally registered or recognised as such, cooperatives that adopt the social enterprise business model are *de facto* social cooperatives. Due to market and government failures, various socio-economic and environmental problems remain unaddressed. Due to its social focus, the social business model enables cooperatives to address the needs and concerns of the wider community that traditional economic actors have left unaddressed. The existence of social enterprises within cooperative structures raises the question of whether the existing cooperative regime is sufficient to accommodate and promote the development of social

[14] Spanish Cooperatives Law 27/1999; Polish Social Cooperatives Act; Development and Modernization of Mental Health Services Law 2716/1999; Social Economy and Social Cooperative Enterprise Law 4019/2011; South Korea Framework Act on Cooperatives; Defourny & Nyssens *supra note* 11 at 11-33.
[15] Law of 13 April 1995 Company with a Social Purpose; Social Enterprises Act No. 1351/2003; Law on Social Enterprises of the Republic of Lithuania Law No. IX-2251; The Community Interest Company Regulations 2005 (SI 2005/1788), enacted pursuant to Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004; Law No. 118 of 13 June 2005 Delegating the Government concerning the Regulation of Social Enterprise; South Korea Social Enterprise Promotion; Defourny & Nyssens *supra note* 11 at 13-15.
[16] Defourny & Nyssens *supra note* 11 at 11–13; Antonio Fici, 'Models and Trends of Social Enterprise Regulation in the European Union' in Henry Peter et.al. (eds), The *International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Geneva, 2023), pp. 153; Daniel *supra notes* 12 at 173.
[17] Farm Workers' Cooperative Decree No. 44/1960; Cooperative Societies Proclamation No. 241/1966; Cooperative Societies Proclamation No. 138/1978; Agricultural Cooperative Societies Proclamation No. 85/1994 Art.2; Cooperative Societies Proclamation No. 147/1998, Art.2; Cooperative Societies Proclamation No. 985/2016, Art.2.
[18] British Council, *The State of Social Enterprise in Ethiopia* (British Council, Addis Ababa, 2017), pp. 1–23.

enterprises, or whether there is a need to amend the existing cooperative law or introduce a specific legal framework for social cooperatives to foster social enterprise within the cooperative industry. To answer these interrelated questions, the study primarily employs a normative approach to examine the adequacy of existing cooperative legal texts in relation to potential regulatory concerns. Additionally, an empirical approach is employed to illustrate the current state of social cooperatives in Ethiopia.

This article is divided into four major sections, each with a title and subtitle, maintaining a cohesive thread. The first section defines the research problems and the relevant methods used to answer the questions. The second section provides the conceptual framework of cooperatives and social cooperatives, including their fundamental principles, history, and state of development in Ethiopia. Additionally, it illuminates what is meant by 'social cooperative,' its relationship to the concept of social enterprise, and the current state of its global legal development. Section three is the core of the article, which is dedicated to answering the researcher's questions. This section addresses whether existing law is adequate to accommodate and promote the business model of social cooperatives. Additionally, it examines the social cooperative regulatory model that best fits Ethiopia based on the country's context and international experiences. The last section provides concluding remarks and recommendations based on the study's findings.

2. Conceptual Frameworks

2.1.Evolution of Cooperatives

A cooperative is a member-centred organisation in which resources are pooled to pursue common socio-economic objectives. In both its informal and formal settings, it has long been a vital player in Ethiopia's socio-economic development. Over time, it underwent several phases shaped by socio-economic and political factors.[19] The historical development of cooperatives in Ethiopia can be broadly classified into two major phases: pre-modern and modern. The pre-modern and modern eras, respectively, refer to the periods preceding and following the introduction of formal

[19] Mojo, Degefa, and Fischer, *supra note* 6 at 51–55.

cooperative law. The adoption of the first cooperative law (Decree No. 44/1960) marked the transition from the ancient to the modern era of cooperatives.[20]

2.1.1. Pre-Modern Era (Before 1960)

Although its formal appearance is recent, cooperating and working together have been part of Ethiopia's long history through traditional self-help institutions.[21] Such cultural or indigenous cooperatives, based on the principles of reciprocity, mutual assistance, and solidarity, reflect the longstanding tradition of mutual aid and self-help in Ethiopian societies. *Equb, Edir, Debo (Jiggi/Wonfel), Senbete, and Mahiber* are the most common cultural cooperatives in Ethiopia. *Equb* is a long-standing, traditional, and community-based rotating savings and credit cooperative that predates modern banking.[22] Although the formal start date is unknown, studies indicate that it has been practised in urban and rural Ethiopia for centuries as a collective savings and credit system.[23] Currently, it is used by millions throughout the country as an indigenous bank alongside the modern financial system.[24] Another indigenous cooperative is *Edir*, a traditional insurance association that provides its members with necessary financial and non-financial support in the event of death, accidents, and other life events.[25] Its emergence dates back to the early twentieth century, and it continued to operate as the most common financial and social institution throughout the country. Cooperative efforts for mutual support during times of need form the foundation of social capital in Ethiopia, fostering social cohesion, reciprocity, and trust. *Debo* is another traditional cooperative, especially in rural Ethiopia.[26] It refers to a collaborative arrangement in which members make voluntary labour arrangements on a rotating basis to carry out activities such as ploughing, harvesting, or house construction for the benefit of all members. *Senbete* is another cultural cooperative, which is primarily a religious association among followers of a specific religious group.[27] Members of this cooperative usually meet on weekends to share spiritual and

[20] Mojo, Degefa, and Fischer, *supra note* 6 at pp. 49–77.
[21] Aredo, *supra note* 5 at 1–10.
[22] Abbi M Kedir, 'The Economics of Rotating Savings and Credit Association: Evidence from Ethiopia, International Conference on African Development Archives. 93', 2005, pp. 1–15.
[23] Girma Begashaw, The Economic Role of Traditional Savings and Credit Institutions in Ethiopia / Le Role Economique Des Institutions Traditionnelles D'epargne Et De Credit En Ethiopie, Savings and Development', Vol.2, 1978, pp.249.
[24] *Ibid,* 249–255; Kedir, *supra note* 22 at 5–7.
[25] Dejene Aredo, *The Informal and Semi-Formal Financial Sectors in Ethiopia: A Study of the Iqqub, Iddir and Savings and Credit Co-Operatives*, 28–30 (1993).
[26] Veerakumaran, *supra note* 6 at 5–6.
[27] Kiros Habtu, 'Classifying Informal Institutions in Ethiopia' (Termpaper, Wageningen University, 2012), pp.20-25.

social affairs and assist members in need. In addition to its economic benefits, it facilitates spiritual and social support among members. To conclude, the longstanding traditional cooperatives have laid the groundwork for modern cooperatives and continued to operate in parallel with them.[28]

2.1.2. Modern Era (Post 1960)

Although Ethiopia has a long history of cooperative practices, the modern cooperatives were not the result of the evolution of cultural cooperatives.[29] Instead, just like other laws transplanted from Western legal traditions in the 1960s, cooperative law was also a result of the transplantation of the Western model in the twentieth century, inspired by the need to modernise economic activities. Since then, cooperative societies have undergone several legal reforms.[30]

Imperial Era (1960-1974)

Farm Workers' Cooperative Decree No. 44/1960 was the first cooperative law to introduce and institutionalise agricultural cooperatives. The membership of these cooperatives was limited to farmers with large landholdings, primarily from the feudal class.[31] The exclusion of landless and smallholder farmers, who constitute the majority, from membership was a significant flaw of the law.[32] The cooperatives' services were also limited to richer farmers and to areas with cash-crop cultivation, excluding poor farmers and other regions.[33] To address shortcomings and modernise the sector, the Cooperative Proclamation No. 241/1966 was enacted as the first comprehensive law of cooperatives, allowing various types of cooperatives. Unlike its predecessor, which was limited to farmers, it introduced five types of cooperatives: multipurpose, savings and credit, consumer, artisan, and farm workers.[34] In addition to legal reform, the government established an independent regulatory body and training institution and arranged a cooperative investment fund within the

[28] Mojo, Degefa, and Fischer, *supra note* 6 at 49–50.
[29] Mojo, Degefa, and Fischer, *supra note* 6 at 50–53.
[30] Yimer A. Gebreyesus, 'Saving and Credit Cooperative Societies in Ethiopia: A Quest for Comprehensive Laws', International Journal of Cooperative Law', Issue III, 2022, pp.62-79.
[31] Bezabih Emana, 'Cooperatives: a path to economic and social empowerment in Ethiopia' ILO Working Paper No. 9, 2009, pp.4-10.
[32] Cooperative Proclamation No 241/1966, Art. 2 &5; Mojo, Degefa, and Fischer, *supra note* 6 at 52.
[33] Kifle T. Sebhatua and et.al, 'Exploring variability across cooperatives: economic performance of agricultural cooperatives in northern Ethiopia, International Food and Agribusiness Management Review', Vol.24, Issue 3, 2021, pp-401-403.
[34] Mojo, Degefa, and Fischer, *supra note* 6 at 52-53.

Development Bank of Ethiopia.[35] Despite efforts to modernise and promote cooperatives, by the end of the imperial regime, there were 149 cooperatives.[36] Cooperatives of the imperial era were subject to limitations, including closed (restrictive) and compulsory membership, excessive dependence on government support, a lack of autonomy, and a top-down approach to cooperative establishment.[37] The membership also lacked inclusivity and genuine voluntarism.[38] For instance, an agricultural cooperative was limited to landowning members, excluding landless individuals. Despite these shortcomings, the Imperial era set the first legal foundation for cooperatives.

The Derg Era (1974-1991)

Following the end of the imperial era, the Derg regime (1974-1991) abolished all formal cooperatives, except urban saving and credit cooperatives.[39] Derg abolished private land ownership and subsequently adopted Cooperative laws (Pro. No. 71/1975 & Pro. No. 138/1978), organising cooperatives based on Marxist principles to end exploitation by the feudal system. The regime primarily utilised cooperatives as instruments for mass mobilisation, equitable resource distribution, branding, and the adoption of socialist principles.[40] As a result, rather than exercising autonomy, cooperatives were used by the government to organise peasants, control prices, levy taxes, and extend government control over the people.[41] Coop Pro. No.71/1971 primarily aimed to achieve a socialist agricultural transformation and a socialist marketing system by mobilising and equitably distributing resources. The law established a peasant association (mandatory for all farmers), an agricultural producer cooperative (for smallholder producers), and a services cooperative. Because of strong political control and compulsory membership, cooperatives became an instrument of the socialist political movement rather than an autonomous organisation. The scope was also limited to agricultural cooperatives.

[35] Mojo, Degefa, and Fischer, *supra note* 6 at 52.
[36] Mojo, Degefa, and Fischer, *supra note* 6 at 53-55.
[37] Mojo, Degefa, and Fischer, *supra note* 6 at 53.
[38] Mojo, Degefa, and Fischer, *supra note* 6 at 51–53.
[39] Emana, *supra note* 31 at 3-6.
[40] Negussie Efa Gurmessa et al., 'Partial credit guarantee and financial additionality for smallholders' coffee cooperatives: experience from Ethiopia, Development in Practice', Vol.32, Iss. 8, pp.1049–1062.
[41] Engdawork Desta, 'Agricultural Producer Cooperatives: Some Lessons of Experience from Ethiopi*a*, GeoJournal' 36, 1995, pp. 353–360.

Hence, Proclamation No. 138/1978 was enacted to include other types of cooperatives (such as housing, credit, and handicraft). Like its predecessor, this law left cooperatives at odds with their principles; instead, they were used as political tools. Generally, the sector was subject to several limitations, including involuntary membership, unregulated government interference, and unfairly regulated output prices. At its peak, cooperatives numbered 10,524, of which 80% were agricultural cooperatives.[42] Forced by socio-economic and political factors, the Derg, in its last days, introduced a mixed economic policy, and most cooperatives, particularly producer cooperatives, were dissolved due to their initial socialist orientation and compulsory membership. In the early 1990s, there were 3,841 cooperatives in the country.[43] Following the fall of the regime, most of those who survived the economic policy reform were looted.[44]

The Present Era (1991- Present)

The fall of the socialist regime in 1991 marked a new beginning for cooperatives in Ethiopia. During the transition, the government viewed cooperatives with suspicion because of their ties to the Derg regime. At the same time, the public perceived cooperatives as socialist associations with low incentives to create private property. It took some years for the government to change this view. The people were also suspicious of the cooperative's sustainability in the new, primarily capitalist political order. Amidst this confusion, the adoption of the Agricultural Cooperative Societies Proclamation No. 85/1994 marked a turning point, changing the fear and suspicion surrounding the sustainability of cooperatives under the new regime.[45] Unlike its predecessors, this law adopts several key principles of cooperatives, including voluntary membership, distribution of profits in proportion to members' contributions, and autonomy.[46] However, the Proclamation was primarily limited to agricultural cooperatives to address the problem farmers faced in accessing inputs and markets.[47] Subsequently, to modernise the law and facilitate the formation of various types of cooperatives, Cooperative Proclamation No. 147 was issued in 1998. This proclamation is the first cooperative law to incorporate all modern cooperative principles,

[42] Mojo, Degefa, and Fischer, *supra note* 6 at 54.
[43] Mojo, Degefa, and Fischer, *supra note* 6 at 53.
[44] Mojo, Degefa, and Fischer, *supra note* 6 at 54.
[45] Tefera, Bijman and Slingerland, *supra note* 6 at 431–453.
[46] Agricultural Cooperative Societies Proclamation No. 85/1994, Art.2-5.
[47] Agricultural Cooperative Societies Proclamation No. 85/1994, Art.2 and 5.

including the principle of concern for the community.[48] The law of 1998 and its amendment (Proclamation No. 402/2004) recognised cooperatives as voluntarily formed, democratically governed, and autonomous institutions with legal personality. Besides, it broadens the activities of cooperatives beyond agriculture to include saving and credit, housing, artisanal, consumer, fishery, and mining. The modernisation of the law and the expansion of cooperative activities have led to the growth of cooperatives and the emergence of higher-level cooperatives, including unions and federations.[49]

Finally, Cooperative Proclamation No. 985/2016 was enacted to provide a modern, flexible, and comprehensive framework for the cooperative sector. In addition to re-embracing modern principles of cooperatives, the new law is transformational in that it allows cooperatives to provide services to non-members under contractual arrangements with the government and supporting organisations.[50] Under this arrangement, cooperatives primarily serve as a distribution channel for goods or services that the government or other organisations otherwise distribute. Additionally, it established structures such as federal and regional cooperative agencies and envisioned a Cooperative League to assume promotional roles previously held by the government. Consequently, the Directive further detailed standards for the establishment and operation of cooperatives.[51] This modern legal framework aligns Ethiopian cooperatives with international cooperative principles while tailoring them to local realities and contexts. Based on its evaluation, the ICA has rated Ethiopia's legal settings as "cooperative-friendly".[52] Lastly, following the fall of the Ethiopian People's Revolutionary Democratic Front (EPRDF), the new regime has maintained the existing cooperative laws.

2.2.Growth Trends of Cooperatives

Despite seasonal declines during regime changes, cooperatives have been growing in number, membership, and capital since their formal introduction in the 1960s.[53] At the end of the imperial

[48] Cooperative Societies Proclamation No. 147/1998.
[49] Tefera, Bijman & Slingerland, *supra note* 6 at 431–443.
[50] Cooperative Proclamation No. 985/2016, Art.23.
[51] Cooperatives Organizational Directive No. 896/2022, Art,17.
[52] International Cooperative Alliance Africa, 'Legal Framework Analysis Ethiopia National Report', 2021, pp-15-18.
[53] Mojo, Degefa, and Fischer, *supra note* 6 at 50–61; Veerakumaran, *supra note* 6 at 1–40; Tefera, Bijman, and Slingerland, *supra note* 6 at 29–35.

era in 1974, there were only 149 cooperatives.[54] During the Derg regime, the number increased due to the compulsory membership policy. The fall of the Derg regime, however, resulted in a sudden decline in the number of cooperatives.[55] Following the end of the socialist era, successive reforms led to the development of comprehensive, modern cooperative laws, which facilitated the growth of primary cooperatives from fewer than 8,000 in 1991 to over 100,000 as of 2024.[56] At the end of the imperial era, although official statistics are lacking, the number of members was estimated at a few thousand. Compared to members of formal cooperatives, which numbered 4.5 million at the end of the Derg regime, the number is currently estimated at 25 million, which is one-fifth of the Ethiopian population.[57] Despite the challenges it faces, the cooperative is growing in terms of numbers, members, capital, employment creation, and socio-economic contribution.

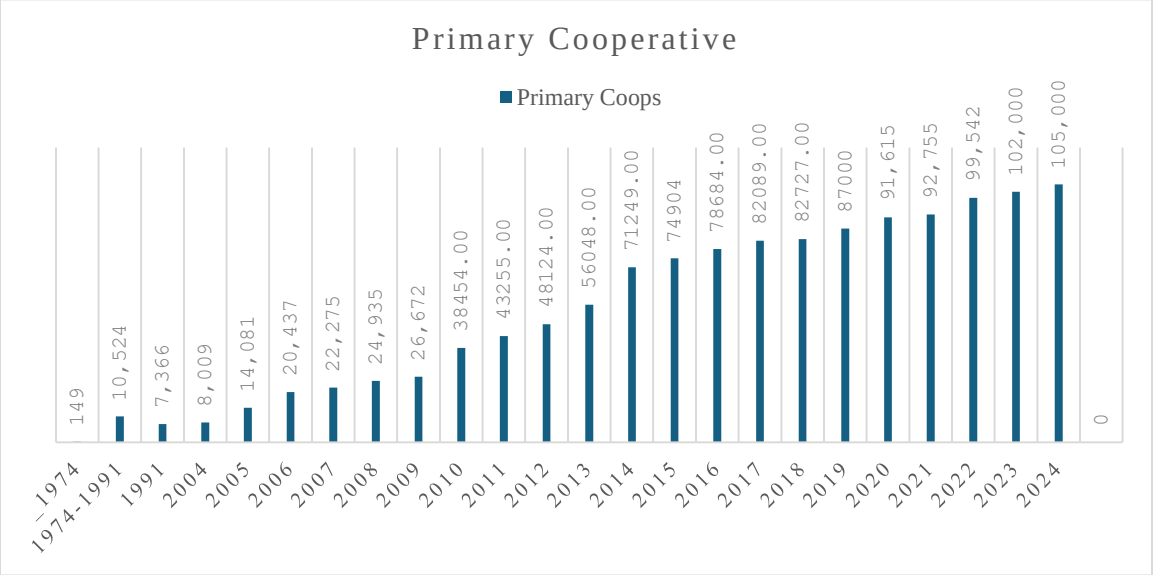


Figure 1- Number of cooperatives growth trends in Ethiopia[58]

Source: Compiled from FCA Report and Online Sources

[54] Mojo, Degefa, and Fischer, *supra note* 6 at 52; Veerakumaran, *supra note* 6 at 1-32; Tefera, Bijman, and Slingerland, *supra note* 6 at 29–35.
[55] Muthyalu Meniga, 'Growth and Challenges of Cooperative Sector in Ethiopia, international Journal of Scientific Research, Vol.4, 2015, pp.353–356.
[56] ICA Africa, Mapping: Key Figures National Report: Ethiopia, (2021), pp.1-5.
[57] Desalegn Fekadu Etefa, 'Socio-Economic Development Contributions of Cooperatives and Encountering Challenges in Ethiopia, Journal of Economics and Sustainable Development', Vol.13, No.1, 2022, pp.32.
[58] International Cooperative Alliance Africa, Mapping Key Figures National Report Ethiopia, (2021); Federal Cooperative Commission, Annual Reports from 2002-2022 (Unpublished).



Figure 2- Cooperative membership growth trends in Ethiopia[59]

Source: Compiled from FCC Reports and online sources

2.3.Principles of Cooperatives: Focusing on Concern for Community

Principles of voluntary and open membership to join and leave without discrimination, democratic member control based on equal voting rights, member economic participation through contribution to capital and participation in profit, institutional autonomy and independence during self-governance, and provision of education, training, and information for stakeholders, cooperation among cooperatives, and community concerns constitute the foundation of modern cooperatives.[60] The ICA adopts these principles as a normative identity of cooperatives.[61] The seventh principle, "concern for community," is relatively new and was adopted in 1995 after extensive discussions.[62] This principle requires cooperatives to be concerned with their communities and to work towards their sustainable development, as approved by their members.[63] Before their introduction, cooperatives were, at least in theory, considered institutions solely concerned with the common needs of their members.[64] In fact, some scholars claim that "concern for community" has long been part of cooperative practices; thus, the ICA's adoption of it reinforces existing practices rather than

[59] Ethiopian Cooperative Commission, Annual Reports from 2006-2022 (Unpublished).
[60] Cooperatives Europe, Cooperative Identity, Values and Principles, accessed on 25 September 2025; International Cooperative Alliance, *supra note* 10 at 1-12.
[61] International Cooperative Alliance, *supra note* 10 at 1-12.
[62] Osten et al., *supra note* 10 at 1813–1815.
[63] Cooperative Proclamation No. 985/2016, Art.5.
[64] Osten et al., *supra note* 10 at 1813–1815.

constitutes a new development.[65] Despite this, since 1995, cooperatives have been recognised as economic and social institutions that pursue both economic and social values.[66]

The core problem of the doctrine of common concern lies in the absence of a common understanding of what it means.[67] The question of whether concern for the community is a mimicry of corporate social responsibility and stakeholder theory is highly controversial. Some argue that there is substantial overlap between the two, while others claim they are different.[68] Due to its diverse interpretations as members of a cooperative, stakeholders (such as employees, co-operators, consumers, and suppliers), a local community, or even a global community, the scope of "community" is also far from consensus. Its status relative to other values, such as members' democratic control and economic participation, which promote members' interests, is also unclear. In cases where the interests of the broader community contradict those of individual members, what will be the hierarchy of community interests? Can management pursue community interests at the expense of member interests? There is no clear-cut answer to the question of prioritisation. There is also controversy as to whether concern for community is an intrinsic or extrinsic value. The normative status of concern for the community is also not clear. Is it a simple guiding principle or something that has a binding effect on cooperatives and their management? What is the scope of concern for the community? Is it about reducing adverse effects or creating a positive impact? Does this principle create justiciable rights and interests for the community? What does it mean when it says a cooperative should be concerned about the community? Is it different from the idea of community or social responsibility, which is common in the corporate world? Is it different from the idea behind stakeholder theory, which requires a firm to consider the interests of various stakeholders? If it is different, what makes it so? If not, why is it necessary to replicate social responsibility or stakeholder theory? How are scholars understanding the principle, and how are

[65] Airton Cançado et al., 'Principle of «concern for Community»: Beyond «social Responsibility» in Cooperatives, Boletín De La Asociación Internacional De Derecho Cooperativo', Vol.48, 2014, pp.192–198.
[66] Ian MacPherson, 'Cooperatives' Concern for the Community: From Members Towards Local Communities' Interests, Euricse Working Paper, No. 46, 2013, pp. 1–10.
[67] Osten et al., *supra note* 10 at 1813–1820.
[68] Airton Cançado et al., El Principio de "Interés Por La Comunidad": Más Allá de La "Responsabilidad Social" de Las Cooperativas, Boletín De La Asociación Internacional De Derecho Cooperativo, No.48, 2014, pp.191-200; Airton Cançado et al., 'Beyond Mimicry: A Critique of "Social Responsibility" in Cooperatives, Amazing Power of Cooperatives' (Quebec 2012 International Summit Conference, Quebec, Canada, 2012), pp.597-608; Samantha Vo, 'Concern for Community: A Case Study of Cooperatives in Costa Rica, 24 Journal of Community Practice, Vol. 2016, pp. 56; International Cooperative Alliance, *supra note* 10 at 1-5.

cooperatives implementing it? Is concern for the community an intrinsic value embedded in cooperative identity or an extrinsic value, such as social responsibility? What is the motivation behind concern for the community? Long-term maximisation of member interests through building reputation and visibility, or Philanthropic sacrifice or gift without waiting for reciprocity? What is the connection of this principle with the idea of social enterprise and the emergence of the social cooperative model? Is it equivalent to adopting a social enterprise business model? Some attempts are made to illuminate the principle of concern for community and answer some of these questions; however, they are insufficient to establish a theoretically and empirically grounded understanding.[69] Of course, these questions are not abstract; they are critical and pragmatic and require further, independent research.

In its simplistic understanding, the principle of concern for the community requires cooperatives to go beyond members' financial interests to address the socio-economic and environmental problems of the local community.[70] During the operation, it should consider both the positive and negative impacts on society and the environment.[71] The principle requires that the degree and form of concern for the community be determined by the members' decision, rather than by the government or the law.[72] This weak normative status makes the principle not substantially different from social responsibility. Concern for the community has economic, social, environmental, and cultural dimensions, each requiring cooperatives to support, invest in, or promote the community's broader, multidimensional development.[73] In practice, concern for the community means different things for cooperatives depending on their type and sector of operation. It may involve fair pricing, sustainable production, local sourcing, reducing the carbon footprint, offering loans, a socially responsible supply chain, financing local development projects, or considering stakeholders' interests. Beyond practical application, the principle has relevance in anchoring cooperatives in stakeholder theory, serves as a counterweight to market failures, and connects cooperatives with

[69] Cançado et al., *supra note* 65 at 191–197; MacPherson, *supra note* 66 at 1–15; Osten et al., *supra note* 10 at 1815–1820.
[70] Osten et al., *supra note* 10 at 1813–1815.
[71] Claudia Sanchez Bajo, 'The Principle of Concern for Community: what is community,' ICA Research Cooperative Congress, 2021, pp.2-4.
[72] Cooperative Europe, *Cooperative identity, values and principles,* < https://coopseurope.coop/cooperative-values-and-principles/> accessed on May 26, 2026.
[73] Johnston Birchall, 'Co-operative Values and Principles: A Commentary, Journal of Co-operative Studies', Vol. 90, 1997, pp.79-80.

social economy movements. Despite its practical and theoretical relevance, balancing and prioritising community and members' interests, defining the scope of concern and community, and measuring non-financial impacts remain challenging, as studies conducted in Costa Rica show that most cooperatives are negligent about the concern for the community, while some understand community narrowly as equivalent to members.[74] The principle of concern for the community among cooperatives in Ethiopia is yet unexplored.

The concept of Concern for Community has influenced the growth of social cooperatives; however, they are not identical. A social cooperative is a specific type of cooperative that institutionalises and capitalises on the principle of concern for the community.[75] For a social cooperative, this is more than a guiding principle; it constitutes its primary mission.

3. The Concept and Laws of Social Cooperatives

3.1.Social Enterprise and Social Cooperative

Social enterprise and social cooperative are interrelated, but different business concepts.[76] In recent decades, both have gained prominence in both academic and policy circles.[77] Despite sharing similar values and a mission, they differ in terms of scope.[78] Social enterprises are broadly defined as organisations that apply a market-based approach to achieve social objectives, often striking a balance between mission and financial sustainability.[79] This hybrid business model is not confined to a single legal form; it may take various forms, including traditional legal structures and emerging

[74] Vo, *supra note* 68 at 56-58.
[75] Adam Sofia and Douvitsa Ifigeneia, 'Theoretical Foundations of Social Enterprise, Cooperative and Voluntary Action Principles and Values: Complementarities, Contradictions and Their Implications, 8th EMES International Conference on Social Enterprise' 2021, pp.1–18; Hernández Cáceres, *supra note* 12 at 173.
[76] Adam Sofia and Douvitsa Ifigeneia, 'Theoretical Foundations of Social Enterprise, Cooperative and Voluntary Action Principles and Values: Complementarities, Contradictions and Their Implications, 8th EMES International Conference on Social Enterprise' 2021, pp.1–18.
[77] Hernández Cáceres, *supra note* 12 at 173–189; Fici, *supra note* 12 at 153–171.
[78] Defourny and Nyssens, *supra note* 11 at 1–10; Hernández Cáceres, *supra note* 12 at 173–180.
[79] Ofer Eldar, 'The Role of Social Enterprise and Hybrid Organizations, Columbia Business Law Review,' Vol. 92.No.1, 2017, pp.92-194; Jacques Defourny & Marthe Nyssens, 'Defining Social Enterprise' in Nyssens Marthe (ed), *Social Enterprise At The Crossroads of Market, Public Policies and Civil Society*, (Routledge, London and New York, 2006), pp.3-5.

hybrid structures, such as benefit corporations, community interest companies, or social cooperatives.[80]

On the other hand, social cooperatives are a specific organisational form based on cooperative principles and a commitment to a social mission. It is a special cooperative form designed for social enterprise. Historically, following its emergence in Italy in 1991, the social cooperative constituted the first special corporate structure created for social enterprise.[81] It is a subtype of social enterprise that blends cooperative values with emerging social entrepreneurship. Social cooperatives combine the principles and values of cooperatives with the pursuit of explicit social objectives, such as providing welfare services or integrating disadvantaged groups into the labour market. Profit is a secondary objective relative to the objective of creating positive social and environmental impacts. Social cooperatives thus represent a cooperative-based model of social enterprise.[82] In other words, a social enterprise is a business conducted for the benefit of society, while a social cooperative is a distinct form of cooperative that facilitates such business.[83]

3.2.Social Cooperative and the Principle of Concern for Community

A cooperative is built upon principles that guide its purpose, membership, governance, and relationships. Among these, the principle of concern for community holds special significance in redefining the purpose and identity of cooperatives. This principle requires cooperatives to go beyond member economic interests and work for the sustainable development of the local

[80] Eldar, *supra note* 79 at 92–95; Antonio Fici, 'Recognition and Legal Forms of Social Enterprise in Europe: A Critical Analysis from a Comparative Law Perspective, European Business Law Review', Vol. 27, 2016, pp.25–30; Dana Brakman Reiser, Steven Dean & Giedre Huber, *Social Enterprise Law: A Multijurisdictional Comparative Review* (Larcier-Intersentia, Brussels, 2023), pp.13-114.

[81] Triponel Anna and Natalia Agapitova, 'Legal Frameworks for Social Enterprise: Lesson from A Comparative Study of Italy, Malaysia, South Korea, United Kingdom and United States' (World Bank Group, 2016); Carlo Borzaga, 'Social Enterprises and Their Ecosystems in Europe. Updated Country Report: Italy' (2014), Carlo Borzaga, 'Social Enterprises and Their Ecosystems in Europe:Country Report Italy' (European Union, 2020); Simone Poledrini & Carlo Borzaga, 'Social Enterprise in Italy A Plurality of Business and Organisational Models' in Defourny Jacques & Nyssens Marthe (eds), *Social Enterprise in Western Europe Theory, Models And Practice* (Routledge, New York 2021), pp. 131; Antonio Thomas, 'The Rise of Social Cooperatives in Italy, Voluntas: International Journal of Voluntary And Nonprofit Organizations', Vol. 15, 2004, pp.243.

[82] Hernández Cáceres, *supra note* 12 at. 173-175.

[83] Carlos Vargas Vasserot, 'Social Enterprises in the European Union: Gradual Recognition of Their Importance and Models of Legal Regulation' in Henry Peter et.al. (eds), *The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Geneva, 2023), pp.36-39.

community. Although some scholars have attempted to differentiate it from "social responsibility", there is little meaningful difference.

The connection between the principle of concern for community and social cooperatives and social enterprises remains unexplored. The principle of concern for the community is related to social cooperation but not identical to it,[84] and the main difference between the two lies in their scope and normative values.[85] In terms of scope, concern for the community applies to all cooperatives irrespective of their type and activities.[86] In contrast, a social cooperative is a specific cooperative form that is dedicated to serving community interests rather than members' economic interests. In this sense, it is possible to say that a social cooperative is a special type of cooperative dedicated to institutionalising and maximising community interest.

Social cooperatives not only institutionalise concern for the community but also prioritise the community's interests. Because of social cooperatives' dedication to improving societal welfare, the way "concern for community" is understood and applied differs between social and conventional cooperatives. For a conventional cooperative, the principle allows the cooperative and its management to equate the community's interests with those of the members, rather than prioritise the latter. In fact, because the cooperative's concern for the community is subject to members' approval, one could argue that conflicts of interest are rare. The problem is that, if a conflict of interest arises, the principle of concern for the community does not require cooperatives and their governing bodies to pursue the community interest at the expense of members' economic interests. In this situation, cooperatives pursue the community interest only if members unanimously consent, which is usually difficult to secure. Because of this problem, cooperatives usually pursue the community's interest without compromising members' interests. Whenever there is conflict, unless the member decides otherwise, the member's interest prevails. In contrast, for a social cooperative, "concern for community" goes beyond considering community interests during operations.[87] It is about being primarily devoted or dedicated to serving the socio-economic

[84] Vo, *supra note* 68 at 57.
[85] Osten et al., *supra note* 10 at 1813–1818.
[86] MacPherson, *supra note* 66 at 10-18.
[87] MacPherson, *supra note* 66 at 2-11; Nina Boeger, Shaping Corporate Reform: Social Enterprise, Cooperatives, and Mission-Led and Employee-Owned Business, in the Cambridge Handbook of Social Enterprise Law (2019), pp-123-125; Thomas, *supra note* 81 at 245; Fici, *supra note* 16 at153-157.

needs of the community. In this sense, for a social cooperative, concern for the community constitutes the foundation and purpose of establishment.

Another difference lies in the level of commitment they demonstrate in maximising community welfare.[88] Concern for the community does not require a cooperative to primarily serve community interests at the expense of members' economic interests; rather, it simply requires cooperatives to consider the community's well-being in their operations. Accordingly, cooperatives may use different approaches to reduce their negative impact or create a positive social impact. As a result, the level of commitment and normative value it establishes is usually weak and discretionary. Community interest is not at the core of conventional cooperative business; instead, serving members' common needs remains central. In contrast, in social cooperatives, the community's interests take precedence over members' economic interests.

As a result, social cooperatives are not only considerate but also dedicated to maximising community interests. In case of concern for the community, the law recommends and encourages cooperatives to be considerate about the sustainable development of their communities through policies approved by members. Cooperatives work for the community based on the approval of members. In the absence of such approval, neither the law nor regulators require cooperatives to work for the public good. As a result, the principle does not create a strict and enforceable legal obligation. In contrast, because pursuing the community's interests is at the core of social cooperative business, the law obliges them to prioritise social purpose. Meaning, social cooperatives have a stronger social commitment than what the principle of concern for the community requires. Despite the difference, the doctrine of "concern for the community" facilitates the development of social enterprise within cooperatives. Likewise, social cooperatives institutionalise and solidify concern for the community.

Social cooperatives are a distinct type of cooperative that focuses on enhancing the well-being of the wider community.[89] In addition to the recognised cooperative principles, they adhere to principles tailored to their specific context. The central tenets of social cooperatives include the

[88] Hernández Cáceres, *supra note* 12 at 174.
[89] European Commission and OECD, *Social Cooperatives Law in Italy: Adjustment of an Existing Cooperative Law to Support Social Enterprise Development*, https://betterentrepreneurship.eu/en/case-study/social-cooperatives-law-italy-adjustment-existing-cooperative-law-support-social accessed on 26 September 2025; Defourny and Nyssens, *supra note* 48 at 1-5; Fici, *supra note* 16 at 12-17.

primacy of social purpose over profit.[90] The primacy of social mission over profit-making goals is what makes it a typical form for social enterprise and differentiates it from conventional cooperatives.[91]

Its dependence on income earned from commercial activities differentiates a social cooperative from a nonprofit organisation, which relies on donations and grants. The initial ICA principles were formulated on the premise that cooperatives are dedicated solely to serving members' common needs. Later, with pressure from global movements toward sustainable and inclusive development, the ICA articulated the principle of concern for community.[92]

This has a great deal to teach us about the evolution of the social business within cooperatives before the emergence of social cooperatives. Considering community interests has been part of cooperative practices, which was later formulated as a principle after extensive discussions. However, with its adoption as the seventh principle, the idea and practices of community concern became common to the cooperative's formal identity. Adoption of the principle of "concern for community" is foundational to the development of social enterprise among cooperatives. In fact, there is no empirical research demonstrating the impact of the doctrine of concern for the community on the development of social enterprise and its legal regime. At least, integrating community interests with cooperative practices made it possible to use cooperatives for purposes beyond members' communal interests. In some countries, such as Italy, the introduction of the social cooperative form preceded concern for the community.[93]

The principle of concern for the community urges cooperatives to work for the sustainable development of their community, not just members' economic needs. It requires cooperatives to be considerate of community interest in addition to co-operators' interests. However, the fundamental question here is whether the introduction of this principle alone can make every cooperative a social cooperative. Concern for the community supports the development of social enterprise within the cooperative sector. However, having a concern for the community alone cannot make a

[90] Defourny and Nyssens, *supra note* 48 at 16; Hernández Cáceres, supra note 12 at 173–175.
[91] Hans-H. Münkner, 'How Cooperative Are Social Cooperative? Cooperativismo e Economía Social' (2016), pp. 60–61.
[92] Osten et al., *supra note* 10 at 1817–1819.
[93] Thomas, *supra note* 81 at 243–246; Simone Poledrini & Carlo Borzaga, *Social Enterprise in Italy A Plurality of Business and Organisational Models,* in Social Enterprise in Western Europe: Theory, Models and Practice, (Defourny Jacques & Nyssens Marthe eds 2021), pp. 131, 131–135.

given cooperative a social cooperative or social enterprise.[94] This is because although the ICA principle requires cooperatives to be considerate of community development, it is not clear how much concern and what legal commitments are expected of cooperatives. Hence, the degree, type, and sustainability of community concerns may vary among cooperatives. In addition, the community's status on the hierarchy ladder, relative to members' interests, is undefined and remains subject to members' decisions. While some cooperatives serve community interest as a secondary value, others may treat it as a value equivalent to members' needs. This makes the principle of concern for the community primarily subjective, discretionary, unsustainable, and abstract.

The principle of "concern for community" neither obliges cooperatives to work for the community nor forces them to pursue social causes as their prime objective.[95] Instead, it simply uses a diplomatic approach that requires cooperatives to be concerned with the community and to work for community development with their members' consent. Notably, at least the expansion of social cooperatives and their legal regime is influenced by the doctrine of concern for community; however, it does not prioritise social purpose over profit. Social cooperatives prioritise community well-being over financial gain, reinvesting surpluses into their mission rather than distributing them as profits. Unlike a cooperative, in which users and investors are the same, this may not be the case for a social cooperative, as users may be either outsiders or insiders, depending on the circumstances. In the case of worker-integrative social cooperatives, which aim to create employment opportunities for disadvantaged groups and are owned by the same individuals, the users and investors are the same person. On the other hand, in the case of a social cooperative that aims to impact society by providing goods or services to non-members, the users and investors are distinct groups.

In addition to the doctrine of social primacy, democratic and participatory governance is the defining feature of a social cooperative.[96] The terms "democratic" and "participatory" refer to two interrelated aspects. Like conventional cooperatives, social cooperatives operate on a democratic basis, typically following the one-member, one-vote rule.[97] However, unlike that of a cooperative,

[94] MacPherson, *supra note* 66 at 10-15.
[95] Osten et al., *supra note* 10 at 1820.
[96] Ian Adderley, 'Co-operatives and Social Responsibility, Journal of Cooperative Studies', 2024, Vol.57. No.3, pp.64-67.
[97] Hernández Cáceres, *supra note* 12 at 174-177.

whose governance is reserved for members, the governance of social cooperatives is participatory, allowing various stakeholders, including investors, workers, beneficiaries, and community members, to have a say through mechanisms such as consultation, voting, observation, or representation on management bodies. A social cooperative is a multi-stakeholder organisation that usually focuses on worker integration and social inclusion. Because of this focus, they are referred to as social-integration, social-welfare, social-initiative, and social-solidarity cooperatives.

As data from countries indicate, social cooperatives strive to provide employment and social integration opportunities to disadvantaged groups, including people with disabilities, migrants, individuals with low levels of skills, the elderly, and the unemployed. In addition to their integrative role, they provide essential goods and services, such as education and healthcare, to the community, usually at fair prices. Like cooperatives, social cooperatives are characterised by autonomy and independence. A social cooperative is a multi-stakeholder organisation that collaborates with various stakeholders, including governments, while remaining autonomous in its decision-making. Primarily, social cooperatives focus on sustainable development and community welfare. Hence, a social cooperative is a cooperative for the community, not for its members.

3.3.Types of social cooperatives

Social cooperatives represent a subtype of social enterprise that combines cooperative values with explicit social objectives. Its development is significantly influenced by the Italian model, which pioneered the introduction and classification of social cooperatives following the enactment of Law 381/1991.[98] This law formally categorised social cooperatives into two types: Type A and Type B. Since then, this typology has shaped both academic discourse and legal frameworks in other jurisdictions. Type A social cooperatives primarily engage in the provision of social, health, and educational services. Activities they operate include nursing homes, vocational centres, rehabilitation centres (for drug addicts or former prisoners), and a care centre for older people and those with disabilities. Through service provision, this type plays a positive role in filling gaps left by the state welfare system.[99] Type B social cooperative primarily focuses on integrating

[98] Poledrini and Borzaga, *supra* note 93; P. Villotti, S. Zaniboni & F. Fraccaroli, *Social Cooperatives in Italy*, 40 ENCEPHALE (2014).
[99] Villotti, Zaniboni, and Fraccaroli, *supra* note 98 at 120; Jacques Defourny & Marthe Nyssens, *Social Cooperatives: When Social Enterprise Meets the Cooperative Tradition*; Fici, *supra* note 87 at 155.

disadvantaged groups such as people with disabilities, low-skilled, former prisoners, migrants, people with an addiction, and long-term unemployed into the labour market.[100] Addressing structural barriers to employment faced by such groups is a social purpose served by such social cooperatives.

Services and work-integration social cooperatives are not mutually exclusive. One cooperative can be a hybrid, combining both service and integrative cooperative models by simultaneously providing services and creating employment. A notable example is a social cooperative that offers rehabilitation services to former prisoners and employs them. The Italian typology has influenced the social cooperative dichotomy in several European countries and beyond. Countries such as Spain and Portugal followed a similar classification.[101] Some countries introduced social cooperatives without classifying them as integrative and service social cooperatives. In this regard, countries like South Korea and France permit cooperatives to operate in both service provision and worker integration domains without requiring dichotomisation.[102] There are also countries, such as Poland, that focus solely on work integration, particularly for unemployed and disadvantaged individuals.[103] The division of social cooperatives into two types represents an important legal innovation. The international diffusion and adaptation of this typology underscore its versatility and relevance in terms of promoting welfare and social inclusion through service provision and employment. At the same time, the adoption of a new approach that enables social cooperatives to engage in both worker integration and the delivery of social services demonstrates an alternative to regulatory design.

[100] Catherine Davister, Jacques Defourny and Olivier Gregoire, 'Worker Integration Social Enterprises in the European Union: An Overview of Existing Model', WP no. 04/04, 2004, pp.3-25.

[101] Vasserot, *supra note* 83 at 37-40; Sílvia Ferreira & Joana Almeida, 'Social Enterprise in Portugal Concepts, Contexts and Models', in Defourny Jacques & Nyssens Marthe (eds), *Social Enterprise in Western Europe: Theory, Models and Practice* (2021), pp.183-190; Millán Díaz-Foncea et al., *Social Enterprise in Spain From a Diversity of Roots to a Tentative Typology of Models in* Defourny Jacques & Nyssens Marthe (eds), *Social Enterprise in Western Europe: Theory, Models and Practice* (2021), pp.200-209.

[102] Anna and Agapitova, *supra note* 81 at 1–15; Francesca Petrella et al., 'Social Enterprise in France at the Crossroads of the Social Economy, Solidarity Economy and Social Entrepreneurship' in Defourny Jacques & Nyssens Marthe (eds), *Social Enterprise in Western Europe Theory, Models and Practice* (Routledge, New York 2021), pp. 69–75.

[103] Ingo Bode, Adalbert Evers & Andreas Schulz, 'Work Integration Social Enterprises in Europe: Can Hybridization Be Sustainable?' in Nyssens Marthe (ed), *Social Enterprise at the Crossroads of Market, Public Policies and Civil Society* (2006), pp.237-240; Davister, Defourny, and Gregoire, *supra* note 100 at 23.

3.4.Global Trends in Social Cooperative Law Development

In Europe, social cooperatives constitute the primary legal form for social enterprises. As various studies confirm, the emergence of social enterprises in Europe is closely linked to the cooperative movement. Italy was a pioneer in introducing social cooperatives following the enactment of Law 381/1991. Since then, many European countries have adopted this cooperative type. Portugal's "Social Solidarity Cooperatives" (Decree No. 7/98), Spain's "Social Initiative Cooperatives" (Law 27/1999), France's "Collective Interest Cooperative Society" (Law no. 624/2001 & Law no. 856/2014), Hungary Social Cooperative (Act X of 2006 and Act CXXV of 2012), Greek's Social Cooperative (Laws no. 2716/1999, Law no. 4019/2011 and Law 4430/2016), Belgium's social enterprise ("*Entreprise Sociale*") status for cooperative (2019), Croatia' Social Cooperative (Law No. 764/2011), Czech Republic Social Cooperative (Law no. 90/2012), and Poland's Social Cooperative (Law 651/2006 and its amendments 742/2009, 1567/2015, 2494/2017) prove higher recognition of social cooperatives in Europe.[104]

In Africa, no single country has a special law of social cooperatives. Although the legal structure labelled as "social cooperative" is lacking, the existing cooperative laws of most countries are flexible enough to accommodate cooperatives with a social mission. As a result, cooperatives that strive to address the socio-economic problems of the broader community often operate within conventional structures. Exceptionally, South Africa has recognised and defined a social cooperative in its general cooperative law. Per this law, it is defined as "a non-profit co-operative which engages in the provision of social services to its *members*, such as care for the elderly, children, and the sick".[105] Although the term "social cooperative" is used, they are dedicated to members, just like traditional ones. This makes its full recognition in South Africa questionable.

[104] Ferreira & Almeida, *supra note* 101 at 182–183; Millán Díaz-Foncea et al., 'Social Enterprise in Spain From a Diversity of Roots to a Tentative Typology of Models" in Defourny Jacques & Nyssens Marthe (eds), *Social Enterprise in Western Europe Theory, Models and Practice* (Routledge, New York 2021), pp., 200–203; Francesca Petrella et al., 'Social Enterprises in France, Portugal and Spain Between Path Dependence and Institutional Creation?' in Defourny Jacques & Nyssens Marthe (eds), *Social Enterprise in Western Europe Theory, Models and Practice* (Routledge, New York 2021), pp. 271–280 (Defourny Jacques & Nyssens Marthe eds., 2021); Ifigeneia Douvits, 'The Work Integration Social Enterprises In Greece', (Ciriec-Espana, Revista Juridica De Economia Social Y Cooperativa, 2020); Angelos Kornilakis, 'Report from Greece: The New Law on Social Enterprises in Greece, European Company Law Journal', Vol.14, Issue 3, 2017, pp.1-5; Ioannis Nasioulas, 'Social Cooperatives in Greece: Introducing New Forms of Social Economy and Entrepreneurship, International Review of Social Research, Vol.2, No.2, 2015, pp.151-171; Ingo Bode, Adalbert Evers & Andreas Schulz, 'Work Integration Social Enterprises in Europe: Can Hybridization Be Sustainable?' in Nyssens Marthe (ed), *Social Enterprise At the Crossroads of Market, Public Policies and Civil Society*, (Routledge, London and New York, 2006), pp.237-239; Poledrini and Borzaga, *supra note* 98 at 131–134.

[105] South Africa Co-Operatives Act No.14/2005.

Like Africa, Asia is also lagging in adopting the social cooperative model. Only a few countries have special legal frameworks that explicitly accommodate cooperatives with social objectives. The term "social cooperative" is known in a few countries, including South Korea.[106] In countries with explicit, specific recognition, social cooperatives are growing in both number and social impact, including job creation. The existence of over 15,000 social cooperatives in Italy (2021), 1,400 Sociétés coopératives d'intérêt collectif (SCICs) in France (2024), 1,516 Community Benefit Societies in the UK (2024), and 2,980 social cooperatives in Hungary (2019)[107] shows the growing trend of social cooperatives.

3.5.Social Cooperative Regulatory Approach

Countries follow different approaches in regulating social cooperatives,[108] ranging from a lack of a dedicated regulatory framework to regulation through special law.[109] Countries that lack a dedicated regulatory framework treat social cooperatives the same as conventional cooperatives, without considering their social purpose. In such countries, the social mission of social cooperatives lacks legal and administrative recognition. Additionally, they are not usually entitled to special or preferential treatment due to the lack of a clear legal identity. The positive social impacts created are also not subject to mandatory reporting, auditing, and disclosure requirements. They also lack legal existence and exist only in practice, without official recognition. Despite this, countries that opt for this approach may, in the meantime, introduce a special regulatory scheme for social cooperatives.

On the other hand, countries that have a special framework for social cooperatives regulate them using different approaches, including regulation as a distinct legal form (with special or specific law or within general cooperative law, as regulation as one type of cooperative), regulation as one actor within the law of social economy and/or regulation within the framework of social enterprise

[106] Eric Bidet and Hyung-Sik Eum, 'Social Enterprise in South Korea: History and Diversity, Social Enterprise Journal, Vol.7, 2011, pp. 69–71.
[107] European Commission, Hungary - EU Social Economy Gateway, https://social-economy-gateway.ec.europa.eu/my-country/hungary_en accessed on 30 September 2025.
[108] Fici, *supra note* 16 at 151–171.
[109] Remigijus Civinskas et al., 'Social Cooperative Model Choices in the Socially Unsustainable Environment: Evidence from Lithuania, Sustainability', Vol.15(15), pp. 2–7.

law.[110] Such diversity in regulatory design reflects differences in legal traditions, policy choices, and socio-economic contexts.[111]

3.5.1. Regulation of Social Cooperative as a Distinct Legal Form

As countries' experiences show, the regulation of social cooperatives as a distinct legal form, separate from conventional cooperatives, can be achieved either through a dedicated social cooperative law or by treating social cooperatives as a special type of cooperative under the general laws of cooperatives. Both approaches are similar in recognising social cooperatives as a distinct entity, separate from companies or conventional mutualistic cooperatives. Both approaches also have their own strength and shortcomings.

With the enactment of Law No. 381 of 199, Italy became the first to enact a specific law dedicated to social cooperatives.[112] Since then, it has influenced the development of laws of social cooperatives in Europe and beyond.[113] Countries that opt for the Italian model have a distinct law on social cooperatives that differs from the laws governing companies, cooperatives, and even social enterprises. In fact, when necessary, the special law of social cooperatives makes cross-references to relevant provisions of cooperative or company law. The Italian law on social cooperatives categorises social cooperatives into Types A and B.[114] The former refers to social cooperatives dedicated to providing social services, while the latter is an integrative model dedicated to integrating disadvantaged groups into the labour market.[115] Despite this theoretical and legal dichotomy, in the real world, it is common to see social cooperatives that simultaneously provide social services and create job opportunities. Some countries have created social cooperatives for the public interest without such categorisation.

Following Italy, Portugal, Greece, and Poland, France is among the countries that have enacted special laws for social cooperatives. In Portugal, Decree No. 7/98 regulates “social solidarity

[110] Defourny and Nyssens, *supra note* 9 at 1–3; Fici, *supra note* 16 at 151–165.
[111] Vasserot, *supra* note 99 at 41-43; Bernard Enjolras et al., 'Social Enterprises in Norway Models and Institutional Trajectories; in Defourny Jacques & Nyssens Marthe (eds), *Social Enterprise in Western Europe: Theory Models and Practices* (2021), pp. 166-170.
[112] Thomas, *supra note* 81 at 243–245.
[113] Fici, *supra note* 16 at 155.
[114] Fabrizio Cafaggi & Paola Iamiceli, ‘New Frontiers in the Legal Structure and Legislation of Social Enterprises in Europe: A Comparative Analysis, EUI Working Paper Law 2008/16’, 2011, pp.5-7.
[115] *Ibid,* 7–9.

cooperatives" that provide both social services and jobs for vulnerable groups.[116] In Greece, Law 4019/2011 and Law 4430/2016 introduced three types of social cooperatives: social cooperative integration enterprise, social cooperative social care, and social cooperative collective.[117] As the name implies, they are dedicated, respectively, to integrating volunteers into the labour market, providing welfare services, and providing goods or services in the community's collective interests. Poland also has the Act on Social Cooperatives (2006), which focuses on integrating disadvantaged workers. France has also developed the Collective Interest Cooperative Society (*Société Coopérative d'Intérêt Collectif*) through Law No. 2001-624 of 17 July 2001.[118] These cooperatives focus on the production and supply of goods and services of collective interest and social utility.

Countries including Spain, South Korea, and Hungary have established social cooperatives as a type of cooperative under general cooperative law. In Spain, the law of social cooperatives is decentralised and largely regional; several regions have introduced their own laws.[119] The National Cooperative Law 27/1999 introduced "Social Initiative Cooperatives", largely similar to the Italian Model.[120] Accordingly, without a profit motive, the Social Initiative Cooperatives provide social services or engage in economic activities that ensure the labour integration of the disadvantaged. In addition to Law 27/1999 and regional laws on social cooperatives, Spain has Law 44/2007 and Law 5/2011, which are relevant to social business. In Hungary, Act X-Law of Cooperative of 2006 introduced the social cooperative as a type of cooperative dedicated to social causes.[121] Social cooperatives in Hungary are primarily integrative, focusing on creating employment for disadvantaged groups, who are also expected to be co-operators. South Korea is another country that regulates social cooperatives under the general law of cooperatives. The Framework Act on Cooperatives (2012) defines a social cooperative as a cooperative that carries out business activities related to enhancing the rights, interests, and welfare of residents, or provides social

[116] Ferreira and Almeida, *supra note* 101 at 182–183; Petrella et al., *supra note* 104 at 271–275.
[117] Nasioulas, *supra note* 104 at ;153-160; Kornilakis, *supra note* 104 at 1-7.
[118] Petrella et al., *supra note* 104 at 274–277.
[119] Petrella et al., *supra note* 104 at 276.
[120] Vasserot, 'Social Enterprises in the European Union: Gradual Recognition of Their Importance and Models of Legal Regulation' in Henry Peter et.al. (eds), The *International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies* (Springer, Geneva, 2023), pp.27-36.
[121]Juliana Kiss and Melinda Mihaly, 'Social Enterprises and Their Ecosystems in Europe: Country Report: Hungary', (European Commission, 2019), pp.1-93.

services or jobs to disadvantaged people, but is not run for profit. Although the social cooperative is regulated under the general cooperative law, the applicable regulations are detailed.

In addition to creating special laws or regulating social cooperatives within the general cooperatives, some countries opt for a more flexible approach that permits cooperatives to pursue any legitimate purposes, including social goals, without restriction. In such countries, any cooperative is free to pursue a wider social mission beyond members' interests.

3.5.2. Regulation of Social Cooperatives within the Law of Social Enterprise

The third approach, followed by countries in accrediting cooperatives with a social goal, is through social enterprise law. In such countries, a social cooperative is not known as such; instead, it is labelled a social enterprise once it fulfils predefined criteria. Many countries have opted for this approach in regulating cooperatives with a social purpose. Italy's *Impresa Sociale* (Social Enterprise) of Law 118/2005 and Legislative Decree 155/2006, Slovakia's Act No. 112/2018 on Social Economy and Social Enterprises, Slovenia's Social Entrepreneurship Act (2011), Latvia's Social Enterprise Law of 2017, and Lithuania's Law on Social Enterprise in 2019 (No. XIII-2427) are among law which allow cooperatives with social aim to get the status of social enterprise.[122] Additionally, Colombia's Law 1901 of 2018 on Collective Benefit and Interest Companies and Belgium's social enterprise status of 2019 have systems that certify cooperatives with a social mission as social enterprises.

3.5.3. Regulation of Social Cooperatives with the Law of Social Economy

The third and emerging regulatory approach adopted by countries in regulating social cooperatives is through the general law of the social economy. Those who opt for this approach support the growth of social cooperatives within the social economy. Slovenia's Social Entrepreneurship Amendment Act (2018), Romania's Law No. 219 of 2015, Spain's Law No. 5 of 2011, France's Law No. 856 of 2014, and Portugal's Law No. 30 of 2013 are among the laws that create a framework for the social economy.[123] Additionally, Ecuador's Law of the Popular and Solidarity

[122] Villotti, Zaniboni, and Fraccaroli, *supra note* 98 at 125; Defourny Jacques & Nyssens Marthe, Social Enterprise in Central and Eastern Europe Theory, Models and Practice (Defourny Jacques & Nyssens Marthe eds., 2022), pp.1; Remigijus Civinskas et al., 'Social Cooperative Model Choices in the Socially Unsustainable Environment: Evidence from Lithuania, Sustainability', Vol 14, 2023, pp. 11566.

[123] Díaz-Foncea et al., *supra note* 101 at 203-209; Francesca Petrella et al., 'Social Enterprises in France, Portugal and Spain Between Path Dependence and Institutional Creation?', in Defourny Jacques & Nyssens Marthe (eds.), *Social Enterprise in Central and Eastern Europe Theory, Models and Practice* (2021), pp.204.

Economy No.444 of 2011, France's 2014 law on Social Economy, Greece's Law 4430 of 2016 on the Social and Solidarity Economy, Uruguay's Law No. 19848 of 2019 on Social and Solidarity Economy, and Mexico's Social and Solidarity Economy Law of 2012 have regulated cooperatives with social purpose under the umbrella of social economy.[124]

4. Social Cooperative and Its Law in Ethiopia

4.1. The State of Social Cooperatives in Ethiopia

According to the 2021 report of the Federal Cooperative Agency (FCA), there are more than 92755 cooperatives in Ethiopia with 21,043,370 members. The same report shows that there are 21,328 primary savings and credit cooperatives, with 5,384,559 members and 18.54 billion ETB in savings and shares. As studies show, a cooperative is one of the legal forms used by social enterprises in Ethiopia.[125] According to a 2017 study conducted by the British Council, cooperatives, which account for 10% of social enterprises in Ethiopia, are among the most commonly used legal forms, following sole proprietorships, which constitute 22%.[126] Overall, the British Council estimated that there were 55,000 social enterprises in Ethiopia.[127] In this sense, the number of social enterprises that use a cooperative form is estimated to exceed 5,000. Based on the British Council's findings, the distribution of social enterprises across legal forms is as follows.

[124] Petrella et al., *supra* note 123 at 208; Carlos José de Cores Helguera, Patricia Di Bello & Natalia Hughes, *Innovation in Uruguayan Business Law:* 'The Benefit and Collective Interest Companies and Trusts' *in* Henry Peter (eds), *the International Handbook of Social Enterprise Law: Benefit Corporation, and Other Purpose-driven Companies* (2022), pp.921-925.
[125] Desalegn Disassa, 'The Social Enterprises in Ethiopia: Critical Analysis of Legal and Institutional Frameworks' (Haramaya University 2019).
[126] British Council, *supra note* 18 at 1-54.
[127] *Ibid.*

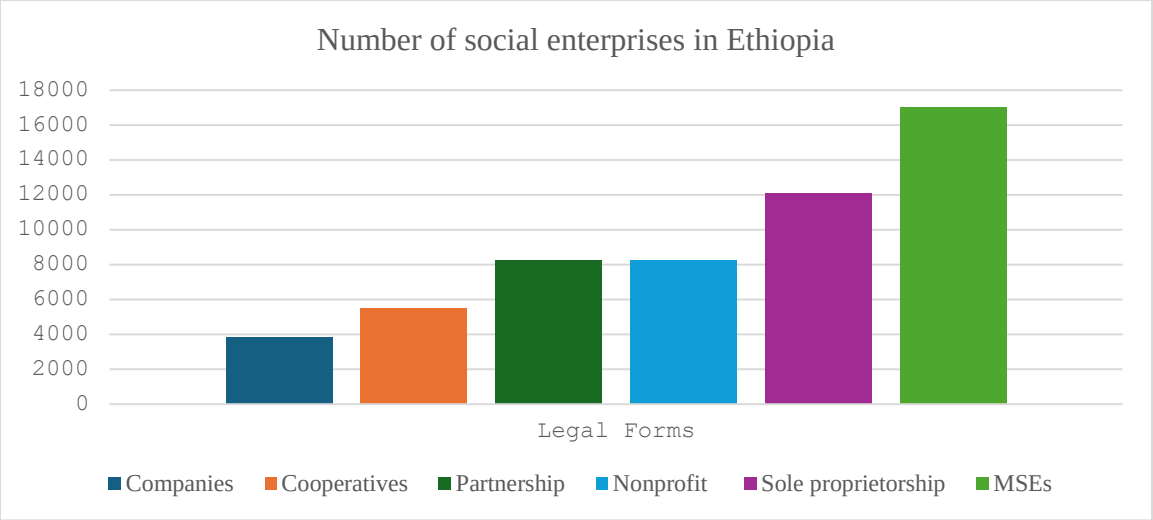


Figure 3: Number of social enterprises (as of 2017)[128]

As studies show, traditional self-help associations, which have long been part of Ethiopian history, form the foundation for the emergence and development of cooperatives in Ethiopia. Those social institutions that are the foundation for cooperatives were not blind to social causes, though they are typically mutualistic organisations. Cooperatives have been active in addressing society's socio-economic problems. Even before the formal introduction of the principle of concern for community, cooperatives were serving non-members and investing in community development. For instance, it is common to see worker and consumer cooperatives that sell essential goods to non-members at low prices, while agricultural cooperatives provide agricultural inputs to non-members. Even though the idea behind social cooperatives is part of cooperative practices in Ethiopia, the law lags in expressly recognising them as such. In fact, the laws governing cooperatives recently incorporated the principle of concern for the community and allowed cooperatives to provide goods and services to non-members. These two changes are transformational in formalising the social dimension of cooperative business and reforming the mutualistic core of cooperatives. Although entitlement to serve non-members and a duty of concern for the sustainable development of the local community are important in enabling cooperatives to consider their social responsibility, they are not adequate to institutionalise and promote social cooperatives, which are primarily committed to social causes.

[128] British Council, *supra note* 18 at 1-54.

4.2.Justifying the Social Cooperative

In Ethiopia, although the social cooperative is not formally introduced, it is commonly used by social enterprises.[129] The number of social enterprises using a cooperative form is high in Africa. For instance, based on a 2017 estimate, 12,183 of 43,933 social enterprises in Kenya are registered as cooperatives.[130] This figure is very high, with a prevalence rate of 68% compared to the total number of cooperatives in the country (17,916).[131] In Morocco, out of 20,000 social enterprises, 10,472 (52.36%) were registered as cooperatives. Of the 15,700 total cooperatives, 10,472 (66.7% of the total) were estimated to be social enterprises.[132] In Ethiopia, around 55,000 social enterprises operate, of which 10% are cooperatives. Principles such as concern for the community, cooperation, and democratic control make cooperatives a relatively suitable legal form for businesses that prioritise society. In some countries, social enterprises have their roots in cooperative movements. Initially, the cooperatives were conceptualised as member-centred businesses, and later they broadened their scope to include services for non-members and local community development projects. In the meantime, this extension led to the emergence of social cooperatives.

In Ethiopia, using existing cooperative forms to pursue social purposes requires the introduction of social cooperatives. Several factors justify the introduction of social cooperatives as a distinct type of cooperative dedicated to social enterprise businesses. These factors underscore its distinctive roles in addressing the societal challenges of the 21st century. The *first* justification is the unique potential of social cooperatives to combat social exclusion and improve social welfare. Social cooperatives are specifically designed to address social issues such as poverty, unemployment, and social exclusion. It also targets disadvantaged groups and tries to integrate them into society sustainably. One of the major negative effects of a member-centred firm is the social exclusion of those who cannot afford to pay or compete in the market. In contrast, social cooperatives are well-positioned to address social exclusion by employing disadvantaged groups and providing essential goods and services at affordable prices. In some countries, such as Italy

[129] British Council, *The State of Social Enterprise in Ghana'*; British Council, *The State of Social Enterprise in Nigeria* (2022); British Council, *The State of Social Enterprise in Kenya* (2017); British Council, *Social Enterprise Landscape in Morocco* (2017); British Council, '*State of Social Enterprise in Algeria*'; British Council, *supra note*'12.
[130] British Council, *The State of Social Enterprise in Kenya (*2017*)*, pp. 40.
[131] *Ibid.*
[132] British Council, *Social Enterprise Landscape in Morocco* (2017).

and Poland, the law requires social cooperatives to employ a certain percentage of disadvantaged individuals. Social cooperatives can also contribute to social inclusion through community empowerment by involving communities in decision-making, providing opportunities to participate in economic activities, and offering training.

The hybrid nature of the business and its role in addressing gaps left by the public and private sectors are additional factors that justify its status as a social cooperative. Social cooperatives serve people, planet, and profit. Profit is not at the core of the social cooperative mission. Instead, it reinvests most of the profit toward social ends rather than distributing it to co-operators. By blending social and economic missions, it ensures sustainability across social, environmental, and economic dimensions. Additionally, the introduction of the social cooperative is an emerging global trend in the recognition of social enterprise that is worth adoption. Even in the cooperative sector, there is a movement that requires cooperatives to go beyond members' interests to address the challenges facing the local communities in which they operate. To align with global trends, creating a social cooperative tailored for community-centred cooperative businesses is justified. The country context and state of social enterprise growth are other factors that justify its introduction in Ethiopia. A study conducted by the British Council has shown that social enterprise is a growing sector. Even in its present form, the cooperative is widely adopted by social enterprises. Cooperative principles, which usually align with the very nature of social enterprise, make social cooperatives a fitting legal form. Social enterprises operating in Ethiopia are also urging policymakers to develop a regulatory framework that ensures their viability, amplifies their voice, supports their growth, and maximises their impact. In this sense, the existing local context also proves the need for social cooperatives.

The importance of social enterprise in supporting sustainable development goals and addressing societal and environmental problems is unquestionable. Unlocking the full potential of social enterprises requires creating an enabling environment that supports the sector by fostering a clear identity that signals the business's social nature and attracts potential investors, users, beneficiaries, employees, donors, and other stakeholders. In addition, creating an incentive scheme, such as a tax benefit, funding, a grant, or special treatment in public procurement, that supports the growth of social enterprises requires a system that distinguishes this institution from traditional businesses.

In this sense, the need to create an enabling ecosystem for social enterprises justifies introducing social cooperatives as one means of regulating them.

4.3.Adequacy of Existing Laws and Quest for Reform

Social cooperatives, which combine cooperative principles with an explicit and primary social aim of welfare provision and labour integration for the disadvantaged, have attracted the interest of policymakers over the last few decades. Since its first formal appearance in Italy, many countries have adapted the model to fit their socio-economic context. Although the idea of doing business for social ends has been growing in the sector and the country has implemented successive reforms to modernise its cooperative law, the term "social cooperative" remains unfamiliar. The principles of concern for the community and the freedom to serve non-members based on contract were introduced with the legal reforms of 1998 and 2016. The presence of these principles, along with the incorporation of solidarity, social responsibility, and care for others as fundamental values, is foundational to supporting the development of social cooperative businesses. The existence of principles and values relevant to social business raises the question of whether the existing regime is adequate to accommodate and promote a social cooperative model dedicated to a broader social cause beyond mutualistic concerns.

4.3.1. Adequacy to Permit or Accommodate

The first fundamental question in evaluating adequacy is whether existing cooperative laws permit cooperatives to focus solely or primarily on serving the community, rather than their members. Examinations of cooperative principles, values, objectives, and mandates reveal that cooperatives are primarily self-help organisations formed by and for their members. They are a member-centred organisation dedicated to members' mutual benefits, addressing their common socio-economic and environmental problems. The concepts of fulfilling social responsibility, promoting others' sustainable development, and serving non-members under contract are new developments in Ethiopia's cooperative jurisprudence. These principles are instrumental in embracing the idea that cooperatives should focus on developing the local community and protecting the environment. However, fulfilling social responsibility and providing goods or services to third parties solely under contract is not sufficient to fully embody the concept of a social cooperative. As the name implies, a social cooperative is a cooperative for the broader society rather than for its members. On the hierarchy ladder, members' interests come after those of the community or the environment.

In case of conflict or competition, the social goal takes priority over members' interests. In this regard, although the law of Ethiopia does not prohibit pursuing a social mission or serving the community (at least as a secondary goal), it remains silent on the possibility of pursuing a social mission solely or of prioritising it over its members' interests. The absence of legal security for prioritising and protecting the social mission left the matter to the members' discretion and, at the same time, proved the inadequacy of existing laws.

4.3.2. Adequacy to Promote

To be adequate, the law must have a system that promotes and supports the development of social cooperatives. Promoting the sector requires a legal identity, governance, and market structure that align with its dual purposes. The primary function of the law is to provide explicit recognition and a clear identity. The question is whether the existing cooperative laws in Ethiopia provide clear and explicit recognition and a distinct identity for social cooperatives. The laws of Ethiopia have recognised different types of cooperatives based on their products (producer versus service cooperatives), levels (societies, unions, federations), and membership (consumers, workers, farmers, artisans, etc.). However, there is no explicit recognition of social cooperatives as a distinct type. Actually, what makes cooperatives distinct is their focus on addressing problems faced by the wider community.

In contrast to the traditional mutualistic cooperative, a social cooperative is a social enterprise or enterprise for society, as the name implies. It is a social-help, not self-help, cooperative. The existing cooperative laws provide modern and comprehensive foundations for various types and levels of mutualistic cooperatives. Additionally, it has established a special regulatory agency, adopted modern principles, and clearly recognised the cooperative's right to serve non-members. Despite this, the law does not create a social cooperative type as found in other countries. Ethiopian law (at least by silence) allows cooperatives to pursue a social purpose or serve the community (through production or service provision) as a legitimate goal. Still, it does not treat them as a distinct entity dedicated to social causes. Such an approach of treating them as traditional cooperatives not only limits their visibility to stakeholders but also limits their positive impact and sustainability.

The second function of law is to set a governance structure that serves various stakeholders and serves two purposes. Here, the question is whether the existing law establishes a democratic and

participatory decision-making system that promotes a social mission and balances stakeholders' interests. The cooperative laws of Ethiopia have enshrined democratic governance, in which all members have fundamental membership rights, including equal voting rights and the right to serve in management. This democratic governance is consistent with social cooperative values; however, the governance structure is defective in terms of ensuring the participation of stakeholders other than members. The existing law establishes governance in which members manage the cooperative for the benefit of members. This makes it non-participatory and less considerate of other stakeholders. The dedication of social cooperatives to the broader society or environment through welfare provisions, labour integration, and environmental protection makes the participation of stakeholders, such as beneficiaries, in the governance process essential. The beneficiaries may participate in the governance process through representation or consultation. However, the existing governance structure is insufficient to ensure stakeholder participation and protect their interests.

The dual purpose of social cooperatives necessitates a regulatory structure that enables and balances the pursuit of dual purposes and the service of multiple stakeholders. This structure ranges from defining and prioritising the mission to setting fitting governance mechanisms. However, the law is defective in this regard. Neither is the social purpose defined and prioritised, nor is the management body mandated to pursue and prioritise the social mission. The law also lacks a system for reporting, measuring, disclosing, and auditing social impact. The regulatory bodies, at both the federal and regional levels, also lack a clear mandate and adequate competence to assess social impacts. Due to these shortcomings, the law does not fit the regulatory needs of social cooperatives. To conclude, although the existing law allows cooperatives to pursue a social mission as a legitimate goal alongside members' common interests, it lacks comprehensiveness in providing clear recognition and identity, ensuring stakeholder participation, protecting the interests of various stakeholders, and fostering a pro-social environment.

Creating an enabling environment for social cooperatives to compete and grow in the market is the third function of law. The adoption of internationally recognised principles makes the existing cooperative law among the most modern in the world. The incorporation of the seventh cooperative principle and the entitlement of a cooperative to provide goods or services to a third party are among the new developments that make the existing law transformative. However, there is no statutory preferential treatment in public procurement or fiscal policy that uniquely supports social

cooperatives. Due to the lack of a specific legal identity for a cooperative dedicated to a social purpose, it is challenging for various stakeholders to distinguish among such cooperatives. This makes the law ineffective at connecting social cooperatives with stakeholders, including beneficiaries, investors, customers, and donors or grantors.

Globally, despite differences in regulatory approach, many countries have enacted laws for social cooperatives. In Ethiopia, there is no dedicated law for social cooperatives. Although the existing law accommodates blending member benefits with societal benefits, it is insufficient to address regulatory issues arising from the interplay between the mission to serve members and the broader community. Among other things, it is not sufficient to create a distinct legal identity, to enshrine multi-stakeholder governance, to protect and promote diverse interests, and to offer tailored support. To address the shortcomings of the existing regime and to cope with new developments in cooperative jurisprudence, the author advocates introducing social cooperatives as a distinct legal form for social enterprise in Ethiopia.

4.3.3. Fitting Regulatory Approach

Countries follow different approaches, including regulating social cooperatives as a distinct legal form (with a specific law or within general cooperative law), regulating under social enterprise law, labelling cooperatives with a social purpose as "social enterprise", and regulating under the law of the social economy.[133] All these approaches have costs and benefits that need to be examined, considering the country context. In Ethiopia, the concept and law of the social economy are uncommon, and hence regulating within the social economy framework is ill-suited to the country's context. Regulating social cooperatives through labelling as a social enterprise reduces transaction costs that would otherwise be incurred in converting to a dedicated type. However, it is defective in terms of creating a clear and secure legal identity. Hence, at least for the moment, regulation through the creation of a specific social cooperative type by special law or amendment of cooperative law is suitable for creating a clear legal identity and supporting its development.

[133] Fici, *supra note* 16 at 10; Boeger, *supra note* 87 at 153-155. Rado Bohinc & Jeff Schwartz, 'Social Enterprise Law: A Theoretical and Comparative Social Enterprise Law: A Theoretical and Comparative Perspective, Ohio State Business La W Journal', Vol 15, No.1, 2021, pp .1-6.

5. Concluding Remarks

Since its formal establishment in 1960, the cooperative has undergone several reforms that have led to the modernisation of its laws and subsequent growth in the types, numbers, membership, capital, and impact. Despite this, the article reveals a significant gap in existing laws in accommodating the growing practice of social enterprise within the cooperative. The law's failure to introduce a social cooperative as a cooperative dedicated to addressing social problems is a major shortcoming. Even in its absence, cooperatives remain a legal form commonly utilised by social enterprises. This widespread use is facilitated by the incorporation of the principle of "concern for the community" and the right of cooperatives to provide services to non-members. Despite this, the existing regime is fundamentally designed on the assumption that cooperatives are mutualistic and member-centred organisations. As a result, although it is not prohibitive, the law is inadequate to accommodate and promote mission-driven social cooperatives, which prioritise societal interests over members' interests. Specifically, the existing laws are short of defining social mission and prioritising it over members' interests; creating a clear legal identity; setting a governance structure that mandates prioritising societal interests and ensures stakeholder engagement; facilitating tailored support; providing scientific and standardised social impact reporting, measurement, and disclosure; and mandating regulatory bodies to inspect social impacts. The inadequacy of existing laws can hinder the development of social cooperatives. To support the development of social businesses within cooperatives, many countries have established social cooperatives as distinct legal entities. Therefore, to cope with the global trend and market needs, address shortcomings of existing laws, and support the development of social enterprises within cooperatives, this study calls for the introduction of a social cooperative legal type through either a dedicated special law or an amendment of existing cooperative law in a manner that adequately addresses regulatory concerns.

Conflict of Interest

The author declares no conflict of interest.

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Tax Avoidance and the General Anti-Avoidance Rule under Ethiopian Income Tax Law: A Tax Policy Review

Hailemariam Belay Fenta *

Abstract

The Income Tax Proclamation No. 979/2016 introduces the General Anti-Avoidance Rule (GAAR) as a fundamental mechanism to address tax avoidance practices that undermine the objectives and principles of the tax system. Generally, this article aims to examine the implications of tax avoidance for Ethiopian tax policy and to evaluate the policy design of GAAR under the Income Tax Proclamation (ITP). Specifically, it investigates the legislative structure of GAAR, focusing on its scope of application and alignment with the fundamental principles of the Ethiopian tax system. Using a doctrinal research approach, it analyses pertinent statutory provisions and scholarly literature to elucidate the meaning, purpose, and operational framework of GAAR within the income tax regime. The article contends that, as tax avoidance practices increasingly threaten the goals and principles of the Ethiopian tax system, the GAAR holds the potential to increase government revenue by enabling the tax authority to disregard arrangements whose primary purpose is to secure a tax benefit. Nevertheless, the provision currently lacks explicit guidelines and exceptions to differentiate between abusive avoidance and legitimate tax planning. This deficiency grants the tax authority extensive discretion, thereby engendering uncertainty in interpretation and enforcement and undermining core principles of taxation such as equity, certainty, simplicity, and neutrality. The article highlights the need to amend the GAAR by introducing interpretive guidelines or subordinate legislation to clarify its application. Such measures would ensure consistent enforcement aligned with tax principles, thereby limiting discretionary power and better balancing anti-avoidance objectives with the integrity of the tax system.

Keywords

Tax Avoidance; Ethiopia; Tax Policy; Income Tax; GAAR; Principle of Taxation

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* LLB, LLM, Lecturer in Law, University of Gondar, Gondar, Ethiopia, Email: mamushbelay13@gmail.com or hailemariambf@gmail.com ORCID No.: 0009-0000-2120-7711.

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1. Introduction

Taxation is the primary means by which governments finance public goods and services.[1] These goods and services benefit all citizens but are often under-produced by the private sector due to their non-excludable and non-rivalrous nature.[2] While taxation is fundamental for financing public services, citizens often perceive it as an unavoidable evil and, as such, explore legally permissible avenues to reduce their tax obligations.[3] For instance, in the income tax system, taxpayers navigate various opportunities to adjust their tax burdens,[4] utilising strategies such as deferring income losses to a later period, shifting income to a different tax unit, or receiving income from tax-favoured sources, e.g., capital gains.[5] While these strategies are inherent in the tax structure,[6] loopholes and ambiguities in tax laws can be exploited by taxpayers to minimise their tax liabilities, sometimes without violating the law.[7]

Tax avoidance and the tax system are inherently mutually exclusive. This is because the impact of tax avoidance practice undermines the overall objectives of tax policy, i.e., revenue generation.[8] and disrupts the fundamental principles of the tax system, including equity, efficiency, neutrality, and certainty.[9] Recognising these challenges, many countries have adopted GAAR as a fundamental legislative measure to address complex tax avoidance strategies.[10] For instance, Australia, Canada, Tanzania, the United Kingdom, and South Africa, to name a few, incorporate GAAR into their tax legislation to deter and address tax avoidance.[11]

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[1] S. L.Winer and W. Hettich, 'The Political Economy of Taxation: Positive and Normative Analysis When Collective Choice Matters' in C.K. Rowley and F. Schneider (eds.), The Encyclopedia of Public Choice (Springer, Dordrecht, 2004).
[2] Neelima K. Menon, 'The Economic Philosophy of Taxation' (PhD thesis, Azim Premji University, 2018), p. 34.
[3] Mario J. Rizzo, Richard A. Epstein and David Schmidtz, 'Justifying Taxation', Social Philosophy and Policy, Vol. 39, 2022, p. 1, https://doi.org/10.1017/S0265052523000080.
[4] M.B. Taylor, 'Tax Policy and Tax Avoidance: The General Anti-Avoidance Rule from a Tax Policy Perspective' (LL.M. thesis, University of British Columbia, 2006), p. 3.
[5] Federal Income Tax Proclamation, 2016, Art. 54-62, Proc. No. 979/2016, *Fed. Neg. Gaz.*, Year 22, No. 104.
[6] Belete Addis, 'Characterization of Taxable Units and Tax Bases under the Income Tax Schedules of Schedule "A" and "B" of the Federal Income Tax Proclamation of Ethiopia: A Commentary', Bahir Dar University Journal of Law, Vol. 8, 2019, p. 35–69.
[7] Joseph E. Stiglitz, 'The General Theory of Tax Avoidance, National Tax Journal', Vol. 38, No. 3, 1985, p.325.
[8] David Fernandes & Kerrie Sadiq, 'A Principled Framework for Assessing General Anti-Avoidance Regimes', British Tax Review, No. 2, 2016, P. 172.
[9] Taylor, *supra* note 4, P. 4.
[10] Lang M, Rust A, Schuch J, Staringer C, Owens J and Pistone P (eds), *GAARs: A Key Element of Tax Systems in the Post-BEPS World* (IBFD, Amsterdam 2016), P. 515-531.
[11] Judith Freedman, 'Designing a General Anti-Abuse Rule: Striking a Balance, Asia-Pac. Tax Bull., Vol.20, 2014, p.167. https://ssrn.com/abstract=2488541.

In some countries, notably Australia and Canada, statutory GAAR has been significantly reinforced and structured through judicial interpretation and doctrinal development.[12]

Before the 2016 tax reform, efforts to address tax avoidance in Ethiopia relied predominantly on specific anti-avoidance rules (SAARs). While SAARs explicitly targeted specific avoidance practices, such as transfer pricing, the rules' nature and scope arguably rendered them increasingly inadequate for addressing the complexity of tax-planning schemes. In this regard, the adoption of GAAR under the Income Tax Proclamation No. 979/2016 undoubtedly represents a significant milestone within Ethiopia's broader fiscal reform framework. In this regard, the introduction of GAAR under Article 80 of the 2016 Proclamation represents a transformative policy shift, fundamentally transitioning legislative tax-avoidance measures from a restrictive, narrowly focused framework to an expansive one.[13]

Equally, other tax legislation, including the Excise Tax Proclamation[14] and the Value-Added Tax Proclamation,[15] also adopt GAAR to combat tax avoidance practices as the ITP. Accordingly, all the provisions authorise the tax authority to adjust transactions or schemes carried out with the sole or dominant purpose of obtaining the tax benefit. In this context, the 2016 tax reform marked a pivotal development by extending the GAAR framework beyond income taxation and establishing a comprehensive, preventive legal architecture against avoidance practices. Through this integrated approach, Ethiopia has equipped its tax administration with a robust, flexible, and adaptive instrument to combat complex tax avoidance practices.

The design and implementation of anti-avoidance rules play a critical role in preserving the integrity and stability of the tax system.[16] Notably, well-structured anti-avoidance rules, when properly enforced, contribute to a fair, transparent, and efficient tax system by establishing

[12] Krever R, 'Policy Forum: Rethinking GAAR—Back to Basics', Canadian Tax Journal, Vol. 72, No.3, 2024, P. 617.
[13] Income Tax Proclamation No. 979/2016, *supra* note 5, Art. 80.
[14] Excise Tax Proclamation, 2020, Art. 41, Pro. No. 1186/2020, *Fed. Neg. Gaz.*, Year 26, No. 25.
[15] Value Added Tax Proclamation, 2024, Art. 70, Proc. No. 1341/2024, *Fed. Neg. Gaz.*, Year 30 No. 61. For instance, while the ITP and VATP used the term *ከግብር ለመሸሽ የሚደረጉ ዕቅዶች እና የተጨማሪ አሴት ታክስ ያለመክፈል ዕቅድ* respectively, the Excise Tax Proclamation used the term *ታክስ ላለመክፈል የሚደረግ ስምምነት*. The literal meaning of the former Amharic terms connotes a tax-avoidance plan, while the latter connotes an agreement not to pay tax. However, the author opines that, given the uniformity of the content of those provisions, save for academic discourse, such mere term deference does not hamper the tax authority in applying them.
[16] R. Garg & K. Mukerjee, Removing the Fences: Looking through GAAR (PricewaterhouseCoopers, February 2012) http://www.pwc.in/assets/pdfs/publications-2012/pwc-white-paper-on-gaar.pdf .

clear guidelines and minimising opportunities for exploitation.[17] Conversely, poorly designed rules that grant excessive discretion to tax authorities may lead to legal uncertainty, increase compliance, and ultimately undermine public trust in the tax system.[18] This calls for anti-avoidance rule design that is precise, administratively feasible, and aligned with international best practices to prevent loopholes while maintaining simplicity.[19]

In Ethiopia, although there is growing policy focus on addressing tax avoidance, scholarly and legal analyses of anti-tax-avoidance rules, particularly from a tax policy perspective, remain limited. As discussed above, existing studies have examined specific issues such as treaty shopping, avoidance in the context of a permanent establishment (PE), tax avoidance and double tax avoidance agreements, corporate income tax planning loopholes, and regulatory responses affecting multinational enterprises,[20] as well as localised administrative and enforcement challenges.[21] While these contributions provide valuable insight into tax avoidance and regulatory shortcomings, they offer little guidance on advancing a systematic and principled evaluation of tax avoidance and anti-avoidance measures (GAAR) and their broader implications for the foundational objectives of Ethiopia's tax system. Thus, by employing doctrinal legal analysis, statutory interpretation, and limited comparative examination of other GAAR regimes, this article aims to bridge this scholarly lacuna by examining these two interconnected questions.

This article addressed these outstanding issues in five sections. The first section provides the conceptual and theoretical framework of tax avoidance. The second section examines tax avoidance and its impact on Ethiopian tax policy, i.e., its foundational objectives and normative principles. The third section undertakes a critical analysis of the income tax GAAR as an anti-tax avoidance mechanism. The fourth section further discusses the design of the GAAR under Article 80 of the ITP, in line with Ethiopian tax principles, and assesses whether the prevailing

[17] David G. Duff, 'General Anti-Avoidance Rules Revisited: Reflections on Tim Edgar's "Building a Better GAAR", Canadian Tax Journal, Vol. 68, No.2, 2020, P.584.
[18] Shu-C. Chen, 'Predicting the 'Unpredictable' General Anti-Avoidance Rule (GAAR) in EU Tax Law', Inter EU Law East: Journal for the International and European Law, Economics and Market Integrations, Vol.5, No.1, 2018, P. 91.
[19] R. Garg & K. Mukerjee, *supra* note 16.
[20] Hirko Alemu, Critical Analysis of the Regulatory Framework Governing Corporate Income Tax Planning in Ethiopia (LLM Thesis, Addis Ababa University, 2020).
[21] Abate Gashaw Ayele, 'A Study on Tax Evasion and Avoidance in Ethiopia: The Case of Ethiopian Revenue and Custom Authority Bahir Dar Branch', Research Journal of Finance & Accounting, Vol.10, No. 13, 2019, p. 52–63; Tariku Lorato, Yonas Sendaba and Tasew Tadesse, 'Tax Evasion Attitude and Taxpayers' Perception of Government Legitimacy: Evidence from Southern Ethiopia, Cogent Economics & Finance', Vol. 12, No. 1, 2024.

GAAR framework sufficiently protects the fiscal integrity of the tax system or unintentionally undermines it. Finally, the article provides concluding remarks and the way forward.

2. Theoretical and Conceptual Approach

2.1.Conceptualising Tax Avoidance and its Challenge to the Tax System

Tax avoidance holds an ambiguous status within the legal and fiscal frameworks of modern tax systems.[22] Unlike tax evasion, which entails the illicit concealment or misrepresentation of taxable income in breach of legal mandates, tax avoidance encompasses arrangements that adhere to the literal wording of statutory provisions while deliberately reducing tax liability, often in defiance of legislative intent.[23] It involves the deliberate structuring of transactions or affairs to exploit gaps, inconsistencies, or unintended consequences within tax legislation.

Scholars and international organisations have conceptualised tax avoidance in diverse ways. For instance, the Organisation for Economic Co-operation and Development (OECD) delineates it as the deliberate arrangement of a taxpayer's affairs to minimise tax liability in a manner contrary to the law's underlying intent.[24] Likewise, legal scholars, including Barker and Stiglitz, assert that tax avoidance often entails the deliberate manipulation of legal forms and structures to obtain tax benefits unanticipated by the legislator.[25] This position is also buttressed by other schools that portray tax avoidance as a strategic exploitation of legislative gaps, ambiguities, and inconsistencies through contrived transactions that adhere to the letter of the law while subverting its spirit. [26] In essence, tax avoidance transcends superficial compliance with statutory text. Rather, it relies on artifices that obscure the true economic substance, ultimately securing a tax benefit without incurring the economic consequences the Legislator anticipated would be borne by taxpayers qualifying for such a reduction in their tax liability.[27]

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[22] Nigar Hashimzade & Yuliya Epifantseva (eds.), The Routledge Companion to Tax Avoidance Research (Routledge, 2018), p. 1.
[23] Dinah M. Payne & Cecily A. Raiborn, 'Aggressive Tax Avoidance: A Conundrum for Stakeholders, Governments, and Morality, Journal of Business Ethics', Vol. 147, No. 3, 2018, p. 470.
[24]OECD, *International Tax Avoidance & Evasion, Issues in International Taxation* No. 1 (OECD, Paris, 1981), p. 16–17.
[25] William B. Barker, 'The Ideology of Tax Avoidance', Loyola University Chicago Law Journal, Vol. 40, 2009, p. 232.; see also Stiglitz, *supra* note 7.
[26] Takayuki Nagato, 'A General Anti-Avoidance Rule (GAAR) and the Rule of Law in Japan', Public Policy Review, Vol. 13, 2017, p. 37.
[27] Zoe Prebble & John Prebble, 'The Morality of Tax Avoidance', Creighton Law Review Vol. 43 (2009) p. 702.

Tax avoidance, while operating within the legal boundaries, poses a serious threat to the tax system by undermining governments' ability to achieve key policy objectives such as revenue mobilisation, fairness, and economic efficiency.[28] Moreover, the practice of tax avoidance ultimately narrows the tax base, complicates revenue forecasting, and forces tax administrators to respond with more complex and fragmented legislation. These, in turn, raise compliance burden for taxpayers and tax authorities, notably in countries with limited administrative capacity. Thus, tax avoidance threatens the coherence and sustainability of tax policies designed to support public finance and equitable economic development. [29]Beyond these operational and fiscal impacts, the practice of tax avoidance distorts the relationship between taxpayers and the government, thus eroding public trust and compliance with tax policies.

2.2.Anti-Tax Avoidance Measures

In response to the impact of tax avoidance, countries have been using various anti-avoidance measures, i.e., judicial and legislative anti-avoidance measures.[30] Before the introduction of statutory (legislative) anti-avoidance measures, which are formally codified responses, countries relied on judicial anti-avoidance doctrine, in which courts often denied tax benefits to artificial or abusive arrangements by looking beyond the legal form of transactions to their real economic substance or purpose.[31] In doing so, courts often employ various judicial doctrines, including the substance-over-form doctrine and the business-purpose doctrine.

For instance, the substance-over-form principle empowers courts to determine based on real economic activity rather than on superficial legal structure.[32] In addition, the economic substance coupled with the business purpose test allows the court to evaluate whether a transaction was undertaken primarily for *bona fide* commercial reasons or to obtain tax advantages, thereby permitting denial of tax benefits if avoidance is the dominant motive. Collectively, these judicial anti-avoidance doctrines represent a vital framework that curtails artificial contrivances that imperil the integrity of tax systems.

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[28] Archi Sarawgi, 'Impact of Tax Avoidance on Economic Growth: Loopholes & Policy Solutions, Taxguru.in' https://taxguru.in/corporate-law/impact-tax-avoidance-economic-growth-legal-loopholes-policy-solutions.html

[29] Tylor, *supra* note 4

[30] Arnold B, 'A Comparison of Statutory General Anti-Avoidance Rules and Judicial General Anti-Avoidance Doctrines as a Means of Controlling Tax Avoidance: Which Is Better? (What Would John Tiley Think?)', in Avery Jones J, Harris P, Oliver D (eds.), *Comparative Perspectives on Revenue Law: Essays in Honour of John Tiley* (Cambridge University Press, 2008) p. 1-24.

[31] Reuven S. Avi-Yonah and Amir Pichhadze, 'Formulating a General Anti-Abuse Rule (GAAR) in Tax Legislation: Insights and Recommendations', in Nigar Hashimzade and Yuliya Epifantseva (eds.), *The Routledge Companion to Tax Avoidance Research*, Routledge, (2018) p. 117.

[32] Ibid.

However, given the limitations of traditional judicial doctrines and the increasing ingenuity of tax-avoidance tactics, many countries have adopted legislative anti-avoidance measures that combine SAARs and GAARs. [33] Importantly, SAAR, while providing legal certainty and being easier to implement than GAAR, is inherently reactive and may become obsolete as taxpayers adopt new avoidance techniques.[34] To address these limitations, many countries introduced GAAR as an additional avoidance measure, empowering tax authorities to disregard or re-characterise arrangements primarily designed to obtain tax benefits that are contrary to the purpose of tax legislation.[35]

From a policy perspective, while countering aggressive tax avoidance, GAARs seek to restore the balance between taxpayers' autonomy and fiscal integrity by prioritising substance over form, legislative purpose, and equitable taxation.[36] However, they also engender significant concerns about legal certainty, excessive administrative discretion, and the potential for arbitrary enforcement.[37] Notably, overreliance on GAARs, which grant broad powers to tax authorities, can deter foreign investment, escalate compliance costs, foster pervasive uncertainty, and erode taxpayers' voluntary compliance.[38] Conversely, proponents argued that when GAARs are carefully designed and transparently applied, they can enhance fairness and strengthen voluntary compliance by promoting trust in the tax system's integrity.[39]

2.3.Analytical Framework of the Article

Drawing on these theoretical and legal foundations, this article employs an analytical framework grounded in fundamental tax policy goals and principles recognised under the Ethiopian tax system. Here, tax avoidance emerges as a systematic consequence of the intersection between taxpayers' behaviour, legal structure and institutional capacities. In contrast, anti-tax avoidance measures, notably GAARs, are analysed as regulatory measures designed to restructure tax benefits in line with legislative intent and policy objectives.[40] This framework facilitates a balanced evaluation of GAARs' design under the ITP, assessing

[33] Ning Hou, 'Research on the Dilemma of Anti-Tax Avoidance Measures in Developing Countries and Their Response', BCP Business & Management Vol. 20 (2022) p. 222.
[34] Ibid.
[35] Robert B. Whait, Gerald E. Whittenburg and Ira Horowitz, 'The World According to GAAR', Australian Tax Forum Vol. 27, No. 4 (2012).
[36] Ibid.
[37]Matheus Peixoto Behrends, 'Under Which Conditions Would the ATAD's GAAR Benefit from Automatic Decision-Making in Terms of Legal Certainty and Efficiency' (LLM Thesis, University of Amsterdam) 2022, P.7.
[38] Rachel Anne Tooma, *Legislating against Tax Avoidance*, (IBFD, 2008).
[39] David G. Duff, *General Anti-Avoidance Rules Revisited*, *supra* note 17, p. 579.
[40] Tylor, *supra* note 4.

whether it strengthens tax policy coherence by enhancing fairness, economic neutrality, and revenue generation, or compromises these aims.

In general, building on the conceptual and theoretical foundations of tax avoidance established in this section, the subsequent section examines how tax avoidance practices undermine the fundamental principles and objectives that underpin effective tax policy. In particular, it scrutinises how tax avoidance obstructs tax systems from achieving their designated purposes, including revenue mobilisation, equity, economic efficiency, and administrative simplicity, thereby endangering the integrity and long-term viability of fiscal architectures.

3. Tax Avoidance as a Threat to Ethiopian Tax Policy

Although Ethiopia lacks a single codified tax policy document, a constellation of pivotal strategic instruments, including the Plan for Accelerated and Sustained Development to End Poverty (PASDEP),[41] the first Growth and Transformation Plan (GTP I)[42] and the second growth and transformation plan (GTP II),[43] the 10-Year Development Plan,[44] the National Medium-Term Revenue Strategy (NMTRS),[45] and various tax legislations collectively discharge this function. Notwithstanding their somewhat fragmented disposition, these documents embody the cardinal objectives and principles that orient the Ethiopian tax regime.

Tax policy provides a normative and analytical framework for designing, implementing, and evaluating a tax system.[46] At its core, it grapples with fundamental questions of why taxes are levied and how they should be structured and administered.[47] In this regard, the rationale for taxation concerns the state's role and the objectives it pursues, including revenue mobilisation, redistribution, and broader socio-economic and inter-jurisdictional goals.[48] Meanwhile, the

[41] Ministry of Finance and Economic Development (MoFED), *A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06–2009/10)*, 2006.
[42] *FDRE, Growth and Transformation Plan I (GTP I) (2010/11–2014/15)* (Ministry of Finance and Economic Development, 2010).
[43] FDRE, *Growth and Transformation Plan II (GTP II) (2015/16–2019/20)* (Ministry of Finance and Economic Development, 2016).
[44]FDRE, *Ten Years Development Plan: A Pathway to Prosperity 2021–2030* (Planning and Development Commission, 2020), P. 32–33.
[45] FDRE, *National Medium-Term Revenue Strategy (NMTRS): FY 2024/25 to FY 2027/28,* (Ministry of Finance) 2024.
[46] R. Boadway and K. Cuff, 'Tax Policy: Principles and Lessons' (Cambridge University Press, Cambridge, 2022) p.1.
[47] Taddese Lencho, 'The Ethiopian Income Tax System: Policy, Design and Practice' (PhD thesis, University of Alabama, 2014) p.35.
[48] Allison Christians, Introduction to Tax Policy Theory (Social Science Research Network, 2018), P. 2 https://doi.org/10.2139/ssrn.3186791. While the first and second goals are clear, the third, negotiated expansion, arguably a novel one, deals on the use of tax system to interacts with other jurisdictions with the aim to take comparative advantage in socio, economic and political arena.

mechanics of taxation (how taxation works) encompass the juridical and institutional architecture of the tax regime. Most importantly, it provides the criteria by which we evaluate the design, implementation, and administration of a tax system.[49] In academic discourse, *inter alia*, equity, efficiency, simplicity, and neutrality are fundamental principles that scholars use to analyse tax policy.[50]

Tax avoidance poses a considerable challenge to the integrity of the tax system, as it jeopardises the fundamental goals and tenets of sound tax policy. As shall be discussed, tax avoidance practices undermine not only the revenue-generating capacity and economic development but also the fairness, simplicity, and efficiency of the tax system.

In this context, the following subsection examines the challenge of tax avoidance on the Ethiopian tax policy goals and principles.

3.1.Ethiopian Tax Policy Goals and the Threat of Tax Avoidance

Tax avoidance and the implementation of countermeasures against it have constituted enduring challenges in the Ethiopian tax regime since the 2002 reform.[51] These challenges are evident across multiple national strategic documents, including the PASDEP, GTP I and GTP II, the 10-Year Development Plan, and the NMTRS. For instance, PASDEP marked an inaugural policy initiative to strengthen Ethiopia's domestic revenue mobilisation amid broader state-building and poverty alleviation imperatives.[52] To do so, the strategy prioritises refining tax administration, streamlining income tax, closing loopholes, improving the incentive system, strengthening tax administration, overhauling the income tax law and regulations, broadening the tax base, and rectifying revenue shortfalls.[53]

Besides, GTP I and II accorded heightened priority to domestic resource mobilisation to fund expansive public investment agendas.[54] Specifically, these plans clearly identified deficiencies in tax administration, aggressive avoidance strategies, and base erosion as barriers to enduring revenue mobilisation.[55] In response, they prescribed legislative and institutional

[49] Ibid., p. 10.
[50] Taddese Lencho, *supra* note 47, p. 35.
[51] Alemayehu Geda & Abebe Shimeles, Taxes and Tax Reform in Ethiopia, 1990–2003, WIDER Research Paper No. 2005/65 (UNU-WIDER, Helsinki, December 2005), p. 7.
[52] A Plan for Accelerated and Sustained Development to End Poverty (PASDEP), *supra* note 41, p. 62.
[53] Ibid, p. 4.
[54] GTP I, *supra* note 42, p. 38; GTP II, *supra* note 43, p. 108
[55] Ibid.

transformations to strengthen enforcement apparatuses, raise compliance levels, and suppress malicious tax manoeuvres, including by strengthening regulatory structures and administrative competencies.[56]

Currently, the 10-Year Development Plan identifies maintaining a healthy balance between revenue generation and expenditure as the government's two major fiscal focuses for the next 10 years.[57] In particular, to fulfil the central fiscal goal of increasing domestic revenue, the plan identified several key measures, including intensifying tax collection efforts, broadening the tax base, reforming tax policies and regulations, modernising the tax system and its administration, restructuring the tax structure, and combating illegal trade activities.[58]

For instance, during the Plan years, the government, though ambitious, aims to increase domestic revenue from 317.9 billion birr to 3.5 trillion birr, thereby raising the tax-to-GDP ratio from 9.2% to 18.2%.[59]In terms of year-by-year trajectory, the tax-to-GDP ratio is projected to grow progressively. Accordingly, starting at 9.23% in 2019/20, it is projected to reach 11.6% from 2020/21 to 2024/25. It is then expected to rise further to 16 % between 2025/26 and 2029/30. The average for the entire plan year 2020–2030 is 13.8%, with the ratio expected to reach 18.2% by 2030.

Nevertheless, despite revenue generation being a fundamental goal of fiscal policy, the tax-to-GDP ratio has declined continuously since FY2014/15, falling from 12.4% to 6.8% in FY2022/23.[60] This figure remains well below the IMF's recommended minimum tax-to-GDP ratio of 15%, and the 16% target projected in the national development plan.[61] This trajectory indicates slower revenue growth relative to GDP.

Ethiopia's low tax-to-GDP ratio reflects structural and institutional issues, including weaknesses, inefficiency, corruption, inflation, and security challenges, as Tahir *et al* highlights.[62] Furthermore, low tax compliance, particularly tax avoidance and evasion, is a major contributor to Ethiopia's tax gap. Abel identifies these practices as key drivers of weak

[56] Ibid.
[57] Ten Years Development Plan: A Pathway to Prosperity 2021–2030, *supra* note 44, p. 32–33.
[58] Ibid.
[59] Ibid.
[60] National Medium-Term Revenue Strategy, *supra* note 45, p 12.
[61] Ten Years Development Plan: A Pathway to Prosperity 2021–2030, *supra* note 44, p. 33.
[62] Tahir Desta, Mekdelawit Reta, & Bizuneh Girma, 'Determinants of Tax Revenue in Ethiopia: Autoregressive Distributed Lag Approach', Ethiopian Journal of Business and Social Sciences, Vol.6, No.2, 2024, P. 106. DOI: https://doi.org/10.59122/154F59lk

revenue collection,[63] while Taddese highlights widespread tax avoidance and generous tax incentives as major causes of the country's poor tax performance relative to other Sub-Saharan African countries.[64] These findings underscore tax avoidance as a persistent challenge to Ethiopia's revenue mobilisation.

In addition to revenue generation, enhancing economic development is another major objective of Ethiopian tax policy. On this account, various policy documents, i.e., the 10-year development plan, NMTRS, and the recent homegrown economic reform, identify domestic revenue from tax sources as a key and sustainable source of financing for poverty eradication and the country's economic development.[65]

Besides, the preamble of the Income Tax Proclamation, as a source of tax policy, makes supporting economic development through taxation its major priority.[66] To this end, incentive provisions, including tax holidays, reinvestment deductions, allowances for forward losses, and exemptions from dividend taxation for reinvested dividends, are being used to foster economic development.[67] While these incentive laws are intended to foster economic growth, investment, and saving, they inadvertently create opportunities for tax avoidance and result in ineffective tax revenue mobilisation.[68] Thus, tax avoidance, although seemingly illusory in its impact on economic growth goals, significantly undermines the tax system's objectives by reducing the revenue needed to achieve those targets.[69]

Furthermore, the prevalence of tax avoidance undermines the objectives of the tax policy aimed at modernising the country's tax system and administration.[70] Modernising the tax administration is vital for bolstering the country's capacity to fund public services, infrastructure, and overall economic progress. Modernising tax administration requires a significant investment in technology, training, and enforcement mechanisms (e.g., digital tax systems), which is unthinkable without adequate revenue. However, by undermining the

[63] Abel A. Mebratu, 'Theoretical Foundations of Voluntary Tax Compliance: Evidence from A Developing Country' Humanities and Social Sciences Communications, Vol. 11, No.1, 2024, P. 443.
[64] Taddese, *supra* note 47, p. 117.
[65] FDRE**,** *A Homegrown Economic Reform Agenda: A Pathway to Prosperity, Ethiopia Country Strategic Plan (2020–2025),* (2020).
[66] Income Tax Proclamation No. 979/2016, *supra* note 5.
[67] Taddese, *supra* note 47, p. 110-116.; Ibid., Art.22 (d), (2); Art. 59; Art. 26, & Art.35.
[68] A.T. Mengistu *et al*., 'Tax Evasion and Missing Imports: Evidence from Transaction-Level Data, ICTD Working Paper, 2019, P.7.
[69] Taddese, *supra* note 47, p. 118.
[70]Ten Years Development Plan: A Pathway to Prosperity 2021–2030, *supra* note 44, p. 31.

government's revenue-generating capacity, increasing compliance costs, and impeding crucial reforms, tax avoidance substantially threatens the government's efforts to modernise the tax system.[71]

3.2.Tax Avoidance Challenge on Major Tax Principles

Tax policy is also intricately linked to the standards or benchmarks used to evaluate or design tax reform. Various writers have proposed criteria for evaluating tax systems. Notably, Adam Smith's maxims of taxation, i.e., equity/equality/fairness, certainty, convenience, and economy, have influenced tax policy discussions and continue to be widely recognised as foundational principles.[72] To this end, Taddese observes that the Ethiopian tax system has been deliberately designed to align with the core tenets of taxation, such as equity, efficiency, certainty, and neutrality, as reflected in the nation's fiscal policy and tax legislation.[73] However, he argued that the pervasive issue of tax avoidance substantially undermines the effective actualisation of these principles.

Considering this, the following discussion flaunts how tax avoidance compromises each of these fundamental tax principles.

3.2.1. Tax Equity

Equity in taxation, categorised as horizontal and vertical equity, entails a fair distribution of the tax burden based on taxpayers' ability to pay.[74] Horizontal equity requires that taxpayers in similar economic positions be treated alike, thus preventing arbitrary or irrelevant distinctions from influencing their tax liabilities, while vertical equity requires that those with greater ability to pay shoulder a proportionately higher share of the tax burden.[75] The Ethiopian income tax laws also appear to incorporate both horizontal and vertical equity through progressive tax rates on the major sources of income, mainly employment, rental, and business income.

Beyond fairness, tax equity also serves as a tool for redistributing resources, particularly in countries such as Ethiopia, where market mechanisms alone are insufficient or socially

[71] Joel Slemrod & Shlomo Yitzhaki, *Tax Avoidance, Evasion and Administration*, in A.J. Auerbach & M. Feldstein (eds.), Handbook of Public Economics, Vol. 3 (2002), P. 1423.
[72] Piotr Eckhardt, 'Adam Smith's View on the Functions of Taxation', *Internetowy Przegląd Prawniczy TBSP UJ*, 2016, P.86.
[73] Taddese, *supra* note 47, p. 36.
[74] Robin Boadway & Katherine Cuff, *supra* note 46, p. 3.
[75] Pasquale Pistone *et al*., *Fundamentals of Taxation: An Introduction to Tax Policy, Tax Law and Tax Administration* (IBFD, 2019), p. 9-13.

undesirable.[76] In this context, the tax system assumes a dual function: firstly, by generating sufficient revenue to finance public goods and social services that benefit the wider population; and secondly, by implementing progressive taxation, whereby the tax burden escalates with the taxpayer's income or wealth, thereby ensuring that higher-income individuals contribute a more equitable share relative to their means.[77]

Tax equity has been a major consideration for tax reforms in Ethiopia.[78] Evidently, the preambles and substantive provisions of income tax laws amplify tax equity.[79] For instance, paragraph two of the preamble of the ITP reads "… make the tax system fair and bring income that is so far not subject to tax into the tax net" as one rationale for introducing the ITP.[80] Furthermore, some of the substantive provisions of the income tax law, i.e., provisions defining income tax jurisdiction, uniform income brackets, and tax rate structures, and the inclusion of previously untaxed income sources, such as windfall profit,[81] undistributed profit,[82] repatriated profit,[83] recharged technical fees and royalties,[84] and inclusion of Article 63, which imposes tax on a person who has derived income not otherwise taxable under the ITP. All of this represents stronger cases for recognising tax equity under the income tax law.[85]

Besides, the new Income Tax (Amendment) Proclamation No. 1395/2025 also unequivocally enshrines tax equity and fairness as foundational tenets of Ethiopia's ongoing fiscal reform agenda.[86] Notably, the Amendment delineates advancing tax equity, substantially broadening the tax base, alleviating the burden on low-income earners, meticulously rectifying systemic fairness deficiencies, and vigorously combating tax avoidance as major objectives of the reform.[87] This commitment is further demonstrated in the substantive part of the Amended Proclamation, as some of the provisions focus on the strategic expansion of the tax base, via

[76] Taddese, *supra* note 47, p. 36.
[77] Linda Sugin, 'Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems', Fordham Law Review, Vol.72, 2004, P.1991.https://ir.lawnet.fordham.edu/flr/vol72/iss5/27.
[78] Michael Seifu, 'Equity Potentials for Tax Reform in Ethiopia', Ethiopian Journal of Economics, Vol.8, 1999, P. 21.
[79] Taddese, *supra* note 47, p.120.
[80] Income Tax Proclamation No. 979/2016, *supra* note 5. The preamble part of every law, including tax laws, is considered the traditional section for policy statements in the Ethiopian legal system.; Ibid., p. 134.
[81] Income Tax Proclamation No. 979/2016, *supra* note 5, Art. 60.
[82] Ibid., Art. 61.
[83] Ibid., Art. 62.
[84] Ibid, Art. 50 & 51.
[85] Taddese, *supra* note 47, p. 131-143.
[86] FDRE Ministry of Finance, 'Explanatory note on Income Tax (Amendment) Proclamation No. 1395/2025', 2025, P 1.
[87] Ibid.

introducing a new tax base, i.e., the Digital Service Tax,[88] changing the standard exemption threshold from 600 to 2000, etc.[89]

Despite the recognition of tax equity, the very structure of the income tax is arguably susceptible to tax avoidance. In particular, its scheduling design, overlapping tax schedules, difficulties in income characterisation, and the absence of clear legal definitions for certain transactions create opportunities for taxpayers to engage in tax avoidance.[90] Furthermore, the prevalence of exceptions, exemptions, and exclusions that depart from the Proclamation's comprehensive concept of income further increases the system's susceptibility to tax avoidance.[91]

In this context, tax avoidance undermines the two main components of tax equity (horizontal and vertical equity).[92] Mainly, it arguably undermines horizontal tax equity by allowing taxpayers in similar economic positions to bear dissimilar tax burdens for reasons unrelated to their income or wealth. [93] This ultimately creates a *de facto* arbitrary or irrelevant distinction in the allocation of the tax burden. Equally, it undermines vertical equity by enabling wealthier taxpayers to exploit legal loopholes, deductions, and sophisticated tax-planning strategies that are generally beyond the reach of low- and middle-income earners.[94] As a result, the tax burden falls disproportionately on those with fewer resources, eroding the fairness of the tax system and weakening the integrity of Ethiopia's income tax regime.

Furthermore, even though the exact revenue loss is difficult to quantify, tax avoidance indirectly undermines tax equity by reducing government revenue, thereby limiting public investment in essential services and infrastructure.[95] This disproportionately affects lower-income groups that rely on public services and weakens the redistributive function of Ethiopia's income tax system. In general, tax avoidance weakens the fairness and effectiveness of the tax system by eroding the tax base and disrupting the government's projected revenue. In this

[88] Income Tax (Amendment) Proclamation, 2025, Proclamation No. 1395/2025, Art.12 (Art.22 as amended).
[89] Ibid., Art. 7 (Art.11 as amended).
[90] Belete Addis, *supra* note 6, p. 35; Taddese, *supra* note 47.
[91] Taddese, *supra* note 47.
[92] Taylor, *supra* note 4, p. 13.
[93] Faster Capital, 'Tax Avoidance: Navigating the Gray: Tax Avoidance in the Realm of Horizontal Equity' https://fastercapital.com/content/Tax-Avoidance--Navigating-the-Gray--Tax-Avoidance-in-the-Realm-of-Horizontal-Equity.html accessed on 4 November 2025.
[94] Taylor, *supra* note 4, p. 14.
[95] Ute Reisinger, 'Three Essays on Tax Abuse and the Fulfillment of Economic and Social Rights' (master's thesis, 2017) p.1157. https://digitalcommons.lib.uconn.edu/gs_theses/1157

context, the Income Tax Proclamation (Amended) makes the prevention of tax avoidance a central objective, aiming to enhance revenue while reinforcing tax equity and fairness.[96]

3.2.2. Simplicity and Convenience

The principle of tax simplicity and convenience emphasises that the tax system should be clear and easy to understand for both taxpayers and administrators. Notably, it entails that tax obligations, the timing, method, and amount of tax payment, should be transparent and unambiguous.[97] Thus, by ensuring clarity in tax rules and procedures, this principle seeks to promote fairness, enhance compliance, and reduce administrative burdens.

In the Ethiopian context, the fundamental characteristic of the Ethiopian tax reforms lies in their emphasis on simplicity and convenience.[98] For instance, the central objective of the 2002 tax reform, among others, was to modernise the tax system, expand the tax base, bolster administrative capacity, simplify the tax framework, reduce structural complexity, and thereby reduce opportunities for targeted tax avoidance and evasion.[99] However, despite these efforts, the reform was criticised for fragmented rules, persistent legal complexity, and a narrow tax base, which in turn limits its overall effectiveness.[100]

Building on the pitfall of the 2002 reform, the 2016 tax reform also incorporated more clearly delineated tax classifications, a rationalised tax rate structure, and modified stipulations to attenuate interpretive ambiguities and compliance burdens, thereby advancing voluntary taxpayer adherence and revenue yields, thereby ensuring tax simplicity.[101] Additionally, the enactment of the NMTRS[102] alongside the amendment of the 2016 ITP, which adopts a scheduled tax system with withholding as the final tax for employment and other income, payments for goods and services, and imports, simplification has been foregrounded as an explicit policy objective. This is intended to reinforce fiscal resilience, elevate regulatory congruence, and close avoidance channels through precise statutory articulation and enhanced

[96] Explanatory note on the Income Tax (Amendment) Proclamation No. 1395/2025, *supra* note 86, p.1.
[97] Kenneth H. Ryesky, 'Tax Simplification: So Necessary and So Elusive', The University of New Hampshire Law Review, Vol.2, No.2, 2024, p. 94.
[98] Delessa Daba, 'Tax Reforms and Tax Revenues Performance in Ethiopia,' 5 Journal of Economics & Sustainable Development, Vol. 5, No.13, 2014, p. 11.
[99] Getachew Demirew, 'Tax Reform in Ethiopia & Progress to Date, Ethiopian Economics Association', International Conference on Ethiopian Economy, 2005, p.3.
[100] Belete Addis *et al*., 'The 2016-Income Tax Reforms of Ethiopia: Drivers, Major Legislative Changes, and Constraints, Bahir Dar University Journal of Law', Vol. 13, 2022, p. 3.
[101] Ibid., p. 29
[102] FDRE, NMTRS, *supra* note 45, p.35-36.

enforcement mechanisms. All of this reflects the importance of reducing tax complexity to uphold the principle of simplicity.

Conversely, when a tax system is burdened with unclear legislative terms and an extensive array of rules, exceptions, exclusions, deductions, and credits that are hidden from intended beneficiaries, it becomes a complex structure.[103] Therefore, an unclear or unpredictable taxation system diminishes taxpayer confidence, impairs economic planning, and may unintentionally promote avoidance behaviours by creating ambiguity about tax obligations, ultimately compromising the fundamental objectives of a coherent tax framework.[104] In this regard, Taddese explicitly articulates this scenario and contends that excessive complexity in tax design undermines the fundamental principle of ability-to-pay and supplants it with a dynamic of ability-to-manipulate, thereby allowing well-resourced taxpayers to exploit systemic loopholes and, consequently, eroding fairness and consistency.[105]

It is crucial to acknowledge a significant paradox in tax administration arising from the tax system's complexity. This paradox arises from the tension between enforcing compliance and preserving simplicity. Notably, although a complex tax system offers opportunities for taxpayers to exploit loopholes and pursue sophisticated avoidance strategies, the comprehensive anti-avoidance provisions enacted to combat these practices may unintentionally generate new avenues for taxpayers to reduce their obligations.[106] Ironically, these specific pieces of legislation enacted to combat tax avoidance may inadvertently increase the complexity of the tax system, thereby reinforcing the very problems they are meant to resolve.

Therefore, considering the historical trajectory of Ethiopian income tax laws, it is plausible to assert that tax avoidance poses a clear threat to the legislative simplicity envisioned in the Ethiopian tax system and further compounds its existing legislative complexity.[107] This, in turn,

[103] Binh Tran-Nam, Annet Wanyana Oguttu, & Kyle Mandy, 'Tax Complexity and Tax Simplification: A Critical Review of Concepts and Issues' in Annet Wanyana Oguttu (ed), *Tax Simplification: An African Perspective* (Pretoria University Law Press, Pretoria, 2019), p.27.
[104] Ibid.
[105] Taddese, *supra* note 47, p. 87-88.
[106] Ibid., p. 17.
[107] Ibid., p. 126. In connection with this issue, Taddese argued that simplicity deficiencies plague the Ethiopian income tax system. Notably, multiple amendments, coupled with numerous subsidiary legislations and the incorporation of borrowed terminology from other jurisdictions without proper contextualization, have eroded the simplicity of the Ethiopian income tax system.

beyond adding layers of intricacy to the tax system, arguably has a spillover effect that undermines the principles of equity, certainty, and neutrality.

3.2.3. Efficiency or Economy

Efficiency in taxation refers to the tax system's ability to raise revenue with minimal economic cost.[108] As discussed above, the principal goal of taxation is to raise revenue to finance public goods. Achieving this requires efficient, effective tax collection relative to the costs of administering it. In this context, Adam Smith stated that "…every tax ought to be so contrived as both to take out and keep out of pockets of the citizen as little as possible, over and above what it brings into the public treasury of the state", which reflects the importance of designing taxes that achieve their revenue goals with minimal burden on taxpayers.[109]

Tax efficiency has been widely recognised as a core principle in Ethiopian tax policy. For instance, the 2002 and 2016 tax reforms, together with subsequent tax law amendments, were primarily driven by the goal of creating a more efficient tax system. [110] To this end, both the repealed 2002 Income Tax Law and the 2016 Income Tax Proclamation explicitly positioned efficiency as a central pillar of the tax framework.[111] This focus is further reinforced in Ethiopia's broader fiscal policy documents, including the 10-Year National Development Plan and NMTRS, which emphasise the importance of a modern, streamlined, and effective tax system.[112]

This policy orientation toward a modern and effective tax system necessarily makes addressing how tax avoidance affects the foundational principles that such reforms seek to advance. Here, assessing how tax avoidance undermines efficiency requires considering both its direct administrative and compliance costs and its indirect costs (deadweight loss) arising from distortions in economic behaviour.[113] In this regard, tax avoidance, on the one hand,

[108] Lena Hiort af Ornäs Leijon, Tax Policy, Economic Efficiency and the Principle of Neutrality from a Legal and Economic Perspective (Working Paper 2015:2, Uppsala University, (2015), P. 2.
[109] Piotr Eckhardt, *supra* note 72. Efficiency also connotes several things, such as simplicity of the tax, neutrality, certainty and administrative feasibility.
[110] Belete Addis *et al*, 'The 2016-Income Tax Reforms of Ethiopia', *supra* note 100, p. 11; Taddese, *supra* note 47, p. 147.
[111] Income Tax Proclamation No. 979/2016, *supra* note 5, para. 1.
[112] Ten Years Development Plan: A Pathway to Prosperity 2021-2030, *supra* note 44.
[113] Luigi Popescu, 'The Essence and the Role of Taxes - The Principles of Taxation', Annals-Economy Series, Vol.4, 2019, p. 15; Taddese, *supra* note 47, p. 77. An inefficient tax system causes 'dead-weight losses and hidden costs, leading to reduced activity, investment, and market distortions. Tax effects are distortionary but should be minimised for efficiency. High efficiency involves broad bases, few exemptions, and low tax rates. Since efficiency depends on the tax base, tax avoidance is inefficient.

significantly increases the direct costs of tax administration by compelling tax authorities to expand their enforcement efforts, as combating it consumes substantial resources, including money, time, and the time and resources of lawyers, accountants, courts, and tax administrations.[114] Equally, taxpayers incur heightened compliance costs for advisory fees, record-keeping, and litigation, especially if their transaction is labelled as an unacceptable tax avoidance practice.[115] Altogether, diverts resources from productive economic activity, thereby weakening the tax system's capacity to raise revenue cost-effectively.

Furthermore, tax avoidance also increases indirect costs in the form of deadweight losses.[116] Deadweight loss arises when taxpayers' tax considerations distort their economic decision-making, as they may substitute productive investments with less efficient financing structures to reduce their tax exposure.[117] This means that when taxpayers' transactions are primarily intended to avoid tax exposures rather than to advance genuine commercial objectives, capital, labour, and managerial efforts would be diverted towards tax-driven arrangements rather than value-creating activities.[118] Such distortions, in turn, create opportunity costs and reduce welfare, as economic outcomes would deviate from those that would prevail under a neutral and efficient tax system.[119]

Further, tax avoidance also undermines taxpayer voluntary compliance by eroding public confidence in the tax system. As Tylor observes, the perception that other taxpayers are unfairly circumventing their tax obligations can erode confidence in the fairness of the tax system, thus diminishing the willingness to comply voluntarily. [120] To make matters worse, such perceptions may foster reciprocal non-compliance by prompting some taxpayers to move beyond lawful taxpaying and engage in outright evasion. In this context, tax avoidance practices would indirectly undermine the culture of voluntary compliance upon which the Ethiopian income tax system, i.e., self-assessment, fundamentally depends.[121] Thus, arguably, tax avoidance exacerbates taxpayers' existing low-tax moral behaviour in their compliance.[122] And though

[114] Taylor, *supra* note 4, p. 17.
[115] Ibid.
[116] M. Feldstein, 'Tax Avoidance and the Deadweight Loss of the Income Tax, Review of Economics and Statistics', Vol. 81, No. 4, 1999, p. 674–680.
[117] Ibid
[118] J. Slemrod & S. Yitzhaki, *supra* note 71, p. 1423–1470.
[119] Ibid.
[120] Taylor, *supra* note 4, p. 17.
[121] Ibid.
[122] Abate Gashaw Ayele, *supra* note 21, p.10.

there is no evidence of a correlation, it may lead those who have not benefited from avoidance to engage in tax evasion.

3.2.4. Tax Neutrality

In the context of the principle of tax neutrality, the tax system should not influence taxpayers' economic decisions. Instead, individuals and businesses should make investments and other commercial decisions based solely on economic considerations, not on tax advantages.[123] In Ethiopia, the introduction of several tax laws, such as the 2002 VAT Proclamation, the 2002 Turnover Tax, and the 1994 Capital Gain Tax, underscores the commitment to ensuring tax neutrality.[124]

In the income tax context, the relevant preamble of the 1994 Capital Gain Tax states that levying tax on all gainful activities maintains neutrality and equity in the tax system, highlighting the significance of these laws in promoting tax policy attributes, namely, tax neutrality.[125] Similarly, Alemu, while discussing e-commerce taxation in Ethiopia, cited the principle of neutrality as justification for the introduction of the Electronic Transaction Proclamation No. 1205/2020.[126]

However, despite tax neutrality being recognised in the Ethiopian tax policy, the practice of tax avoidance fundamentally contravenes this principle. Notably, by incentivising taxpayers to enter into artificial or contrived arrangements, tax avoidance distorts the underlying motivation for transactions by shifting it from genuine commercial objectives to the pursuit of tax advantages.[127] This distortion, in turn, compromises the integrity of the tax system by influencing individual decisions and prompting taxpayers to structure transactions through artificial legal forms for tax-related reasons, ultimately discouraging fair competition among businesses by providing special preferences only to those who avoid tax, often through the use of tax experts.

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[123] Jennifer Chen Shu-Chien, 'Neutrality as Tax Justice: The Case of Common Consolidated Corporate Tax Base under the EU Law, 'The Review of European Law, Economics and Politics', Vol. 5, No. 1, 2018, p. 33–66. Despite the recognition of neutrality as a tax norm, Taddesse observed the principle of neutrality in its breach rather than in its observance. To this end, he cited the tax rate difference under Schedule D and Ethiopia's tax incentive regimes as the best example that presents a case against the neutrality of the income tax.; Taddese, *supra* note 47, p. 156.

[124] Taddese, *supra* note 47, p. 156.

[125] Ibid.

[126] Alemu Balcha, 'Taxation of Income from E-Commerce in Ethiopia: A Quest for Integrating Modern Rules of Taxation into Ethiopian Income Tax System', Jimma University Journal of Law, Vo. 15, 2023, p. 100.

[127] Taylor, *supra* note 4, p. 15.

In general, the preceding section underscores the substantial influence of tax avoidance on the Ethiopian tax system, particularly its detrimental effects on revenue mobilisation and economic growth, and its diminution of core principles such as equity, simplicity, efficiency, and neutrality. This underscores the significance of tackling tax avoidance. In this context, the subsequent section analyses Ethiopia's income tax legislative framework and the measures implemented to mitigate tax avoidance.

4. Navigating GAAR under the Income Tax Proclamation No. 979/2016

The phenomenon of tax avoidance is as old as taxation itself, having emerged alongside the introduction of fiscal levies.[128] In tandem with the increasing dynamism and complexity of modern business transactions, tax avoidance has evolved significantly in both prevalence and sophistication.[129] Far from being a mere innocuous financial manoeuvre, this practice adversely and profoundly impacts revenue mobilisation, economic equity, and the integrity of the tax system. These, in turn, collectively undermine the ability of the Legislature and the National Treasury to formulate and execute the country's economic policies.[130] To address this challenge, many countries have implemented anti-avoidance measures (legislative and administrative).[131]

Coming to Ethiopia, despite the absence of clear anti-avoidance rules in successive income tax laws,[132] The 2016 ITP introduced SAAR and GAAR as explicit anti-avoidance measures. These rules, though with varying scopes, aim to detect unwarranted tax avoidance by taxpayers. SAAR, which includes income splitting, transfer pricing, and thin capitalisation (as articulated in articles 78, 79, and 47 of the ITP, respectively), focuses on a limited set of transactions and addresses specific instances of tax avoidance.[133] Moreover, the amendment of certain provisions of the 2016 ITP via Proclamation No. 1395/2025 can also be understood as a specific anti-avoidance measure, including measures to combat tax avoidance.[134]

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[128]Korinna Schönhärl, Gisela Hürlimann & Dorothea Rohde, 'The Ability and Intention of Not Paying Taxes in History: Some Introductory Observations' in Korinna Schönhärl, Gisela Hürlimann and Dorothea Rohde (eds), *Histories of Tax Evasion, Avoidance and Resistance* (Taylor & Francis, Abingdon, 2022) p.4.

[129] David G. Duff, 'Tax Avoidance in the 21st Century' in Chris Evans and Rick Krever (eds), *Australian Business Tax Reform in Retrospect and Prospect* (Thomson, Sydney, 2009) p.477.

[130] Ling Zhang, 'Tax Avoidance: Causes and Solutions', (master's thesis, Auckland University of Technology, 2007) p.23.

[131] David G Duff, *Tax Avoidance in the 21st Century', supra* note 129, p. 477.

[132]Mustefa Ali, 'Revisiting Ethiopian Income Tax Law on Tax Evasion and Avoidance: Special Emphasis on Share Companies' (LL.M. thesis, Jimma University), p. 40.

[133] A detailed analysis of these specific provisions is beyond the scope of this article.

[134] Explanatory note on the Income Tax (Amendment) Proclamation No. 1395/2025, *supra* note 86, p.3. As provided in the preamble, addressing existing tax avoidance practices and re-establishing alignment between the

However, while SAARs offer precision, their limited scope may mean they cannot address all tax avoidance practices.[135] Notably, their narrow, focused scope requires that the rule apply only to the particular schemes or situations explicitly mentioned in the law.[136] As a result, taxpayers may still engage in other forms of tax avoidance that fall outside the prescribed scenarios, exploiting gaps or loopholes not covered by the specific rules.

Given this, GAAR has been adopted under Article 80 of the ITP. As provided in Article 80, GAAR serves as a comprehensive safeguard, or a catch-all, against tax avoidance practices that may fall outside the reach of SAAR.[137] Accordingly, when a person engages in a scheme, through agreements, arrangements, promises, or undertakings, whether explicit or implied, and regardless of legal enforceability, with the sole purpose of obtaining a tax benefit, the authority may reassess the tax liability of the taxpayer and any parties connected to the scheme.[138] In this context, GAAR under Article 80 serves as a last resort, empowering tax authorities to address unacceptable tax avoidance practices that would otherwise escape scrutiny under the standard terms and statutory interpretation of the ITP. [139]

From a tax policy perspective, GAAR reflects the legislator's effort to curb abusive tax avoidance practices without impinging on legitimate tax planning.[140] Thus, the goal is to strike a balance between protecting the tax base and allowing taxpayers to manage their economic transactions in a tax-efficient manner. [141] Moreover, GAAR should not be designed to obstruct ordinary commercial transactions which enable taxpayers to legitimately take advantage of opportunities available to them in conducting transactions.[142] However, if a transaction is

tax system and the foundational principles of taxation is provided as the primary justification for the revision of the 2016 ITP.

[135] Christopher Evans, 'Containing Tax Avoidance: Anti-Avoidance Strategies' in John G. Head and Richard Krever (eds), *Tax Reform in the 21st Century: A Volume in Memory of Richard Musgrav*e (Kluwer Law International, Alphen aan den Rijn, 2009) p.529.

[136] H. Michael Dolson, Kenneth Keung & Josh Kumar, 'Modern Overview of Specific Anti-Avoidance Rules, Canadian Tax Foundation', Vol. 14, 2018, p. 11

[137]The Institute for Fiscal Studies, *A General Anti-Avoidance Rule for Direct Taxes: A Response to the Inland Revenue's Consultative Document* (The Institute for Fiscal Studies, London, 1999), p. 13.

[138] Income Tax Proclamation No. 979/2016, *supra* note 5, Art. 80 (3).

[139] Ibid., Art. 80.

[140]Afton Titus, 'Designing a General Anti-Avoidance Rule for the East African Community—A Comparative Analysis', World Tax Journal, Vol. 11, 2019, p. 263.

[141] Christophe Waerzeggers & Cory Hillier, 'Introducing a General Anti-Avoidance Rule (GAAR)—Ensuring That a GAAR Achieves Its Purpose', Tax Law IMF Technical Note, Vol.1, 2016.

[142] Ibid.

arranged primarily or solely to secure a tax benefit (to avoid tax), it will attract the GAAR provision, irrespective of the form selected.[143]

4.1.Setting Ethiopian GAAR in Motion[144]

GAAR is not self-executing *per se*; instead, it operates through administrative determination and applies only where the tax authority concludes that a transaction constitutes tax avoidance. To this end, the ITP establishes a three-stage test or conditions, namely the scheme, tax benefit, and purpose of the transaction, for identifying abusive tax avoidance under Article 80. The three stages of GAAR may raise a few questions in interpreting and applying these tests. In particular, the questions of how the scheme is understood, how to identify tax benefits, and what purpose to consider when identifying the sole or dominant purpose of the scheme are important for evaluating the design of the GAAR.

4.1.1. Existence of Scheme

The initial requirement for implementing the anti-avoidance regulation under Article 80 is a taxpayer-undertaken 'scheme', broadly defined to include various agreements, arrangements, promises, and commitments, explicit or implicit, enforceable or not.[145] This broad definition gives the tax authority flexibility to identify what constitutes a 'scheme', especially when a taxpayer's arrangement involves multiple transactions or steps. It enables them to pinpoint specific elements that, individually, define a tax-driven arrangement.[146] Such an inclusive definition of 'scheme' may, arguably, have significant implications for the tax authority and the taxpayer.

On the one hand, the definition enables the tax authority to scrutinise a broad spectrum of financial arrangements, structures, or strategies that might otherwise exploit ITP loopholes, thereby enhancing its capacity to safeguard the tax base by capturing complex transactions intended to evade or mitigate tax liabilities. On the other hand, this discretionary power, although potentially effective in detecting tax avoidance, arguably may indeed introduce a

[143] Ibid.
[144]This article exclusively concentrates on the framework of GAAR, pinpointing and examining key concepts such as tax benefit, the purpose test, and series of transactions. The statutory interpretation and application of the GAAR by the tax authority and the Ethiopian court fall outside the scope of the discussion.
[145] VAT Proclamation No. 1341/2024, *supra* note 15, Art. 70. The provision similarly defines Scheme in a way to include any course of action, agreement, arrangement, understanding, promise, plan, proposal, or undertaking, whether express or implied and whether enforceable or not.; Excise Tax Proclamation No. 1186/2020, *supra* note 16, Art. 41.
[146] C. Waerzeggers & C. Hillier, *supra* note 141, p. 2.

certain level of uncertainty for taxpayers.[147] This is due to the importance of tax predictability; an overly broad definition may, arguably, leave taxpayers uncertain about whether their legitimate financial arrangements or planning strategies will be subject to challenge by tax authorities, potentially resulting in unintentional noncompliance.

4.1.2. Tax Benefit

The existence of a tax benefit is a prerequisite for invoking the provisions of GAAR.[148] The ITP defined a tax benefit or tax outcome linked to the scheme as a *reduction*, *postponement* (deferral), or any form of avoidance of a person's liability to pay tax.[149] This means that any arrangements, whether they involve re-characterisation of income, shifting of tax burdens, or other strategies, designed to secure unintended tax advantages would, arguably, be recognised as generating a tax benefit.[150] This indicates the importance of phrases such as 'reduction, postponement, or avoidance' for identifying tax benefits in connection with the scheme.

In this context, when identifying tax benefits, Article 80 (2) requires comparing the scheme's tax consequences with those that would have arisen, or might reasonably be expected to arise, if the scheme had not been entered into or executed.[151] To make this determination, the authority is allowed to employ a hypothetical scenario, such as rewriting a transaction, treating specific events as if they did or did not occur at a particular time, or involving particular third-party actions or to make corresponding 'adjustments' to the tax liability of any other person affected by the scheme.[152] The underlying policy intent of this provision arguably seeks an alternative postulate that achieves substantially the same non-tax results for the taxpayer as the actual transaction, but without the tax implications that the authority aims to counter by invoking the GAAR.[153]

Here, it must be noted that tax benefits associated with a scheme should not extend to incentives or concessions explicitly provided for in tax laws.[154] Otherwise, it would be against the very

[147] Karmen Mrakovčić, 'Effectiveness of the General Anti-Abuse Rule of the Anti-Tax Avoidance Directive' (Master's thesis, Tilburg University, 2019), p. 26.
[148] Income Tax Proclamation No. 979/2016, *supra* note 5, Art. 80 1(b) & (4) (b).
[149] Ibid.
[150] Richard Krever, 'General Report: GAARs' in Michael Lang et al. (eds), *GAARs – A Key Element of Tax Systems in the Post-BEPS World* (European and International Tax Law and Policy Series, vol.3, IBFD, Amsterdam, 2016), p.75.
[151] Income Tax Proclamation No. 979/2016, *supra* note 5, Art. 80 (2).
[152] Ibid.
[153] M. Greggi & K. Devos, 'A Comparison of Common Law and Civil Law Gaars: The Cases of Australia and Italy', International Tax Law Review, No.1, 2016, p.17–46.
[154] C. Waerzeggers & C. Hillier, *supra* note 141, p. 3.

purpose of incentive provisions, which the legislator provides to promote certain behaviours or economic activities through tax incentives or concessions.[155] However, if the taxpayer seeks to obtain a tax benefit via incentive provisions in a manner that constitutes misuse or abuse of the tax law's provisions, it should attract the application of the GAAR.

Generally, the definition of tax benefit under the ITP is broader than the term 'tax avoidance' might imply. In this context, while this discretionary power is crucial for effectively addressing complex tax avoidance strategies that might otherwise escape scrutiny, it may also undermine the certainty and predictability of the tax system for taxpayers, as almost any arrangement that reduces, defers, or postpones tax liability could be classified by the authority as generating a tax benefit. Thus, the mere classification of an arrangement as a tax benefit could trigger the application of GAAR, potentially creating uncertainty regarding which transactions may be subject to challenge.

4.1.3. Purpose of the Scheme

The purpose of the scheme serves as a key analytical tool for assessing whether it was designed primarily to achieve a tax advantage rather than to fulfil genuine commercial or economic objectives.[156] In applying this requirement, countries adopt different approaches. For example, Canada adheres to the principle of economic substance over form, which assesses whether a transaction possesses genuine economic substance beyond its legal structure.[157] According to this approach, transactions may be disregarded, despite compliance with the letter of the law, if they lack bona fide purposes and are primarily driven by tax considerations. Conversely, the purpose test, adopted by Australia and the UK, examines the taxpayer's intent by asking whether the taxpayer's predominant aim was to secure a tax advantage rather than to pursue bona fide business objectives.[158]

[155] Ibid. For example, the ITP encompasses a range of tax incentives, including deductions (such as accelerated tax depreciation for certain encouraged assets or specific tax deductions for bad debts) and exemptions. These incentives are designed to encourage taxpayers operating in particular sectors. Additionally, the Ethiopian government has implemented a broad array of tax incentives aimed at attracting foreign direct investment (FDI) into the country. The preamble of the Investment Incentive Regulation highlights the government's objective of promoting investment and enhancing development equity. This is achieved through various tax incentives, such as income tax exemptions and tax holidays, offered to investors in select areas that stimulate investment, ultimately contributing to the equitable development envisioned by the legislator.

[156] E. D. Liptak, 'Purpose Requirement of the GAAR: Rethinking the "Subjective" vs "Objective" Debate, Business Tax and Company Law Quarterly', Vol. 14, No. 3, 2023, p. 1–14.

[157] J. Cassidy, 'To GAAR or Not to GAAR—That Is the Question: Canadian and Australian Attempts to Combat Tax Avoidance', Ottawa Law Review, Vol.36, 2004, p. 288-293.

[158] Ibid., p.293-298.

Coming to ITP, like most GAARs worldwide, the GAAR under Article 80 is fundamentally triggered by a purpose test, in which a transaction is labelled if the taxpayer's sole or dominant purpose is to obtain a tax benefit.[159] This makes determination of the taxpayer's true purpose central to the application of the GAAR. The pivotal question, therefore, is what standard should be applied to ascertain the taxpayer's true purpose. In this regard, because most commercial transactions are driven by multiple motives, including both tax and non-tax considerations, identifying the taxpayer's dominant purpose under Article 80 is inherently challenging. However, the provision appears to adopt a subjective test by requiring the tax authority to determine the taxpayer's purpose in undertaking the transaction rather than relying solely on objective characteristics.[160] Accordingly, the application of Article 80 depends largely on the interpretation of the surrounding facts and circumstances, leaving considerable room for administrative judgment. [161]

Besides, the provision, in determining the taxpayer's purpose, mandates that the authority have regard to the scheme's substance, reflecting the *substance-over-form* principle.[162] This allows the authority to look beyond the legal form and assess the transaction's economic reality. While adopting the substance of the scheme helps strengthen enforcement against transactions that exploit legal formalities, Article 80, unlike jurisdictions such as Canada, Australia, and South Africa, which supplement the purpose test with detailed statutory guidelines, offers no concrete criteria for assessing economic substance or dominant purpose. Thus, while Article 80 embraces the substance-over-form principle, it provides limited interpretative guidance, thereby advancing the tax authority with broad discretion in applying the GAAR.[163]

In sum, by empowering the authority with broad discretion to re-characterise transactions through the legal deeming of an event, Article 80 enables the adjustment of taxpayers' liabilities and the reallocation of tax positions among the parties concerned.[164] This framework, therefore, underscores the central role of GAAR as a potent regulatory instrument in tackling abusive tax avoidance practices, while simultaneously highlighting the significant discretionary power vested in the tax authority.

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[159] Income Tax Proclamation No. 979/2016, *supra* note 5, Art. 80 (1) (c).
[160] Krever, '*General Report: GAARs*', *supra* note 150, p. 7
[161] Ibid, p. 1; see also Waerzeggers & Hillier, *supra* note 141, p. 3.
[162] Income Tax Proclamation No. 979/2016, *supra* note 5, Art. 80 (1) (c).
[163] E D Liptak, *supra* note 156, p. 1–14.
[164] Technical Notes, *Federal Income Tax Proclamation No. 979/2016* (FDRE Ministry of Finance and Economic Cooperation, 2016) p. 189.

4.2.Assessing Ethiopian Income Tax GAAR from a Tax Policy Perspective

GAAR under Article 80 of the ITP is a central legislative tool for addressing abusive avoidance schemes. Its adoption reflects the countries' broader commitment to protect the integrity of the tax system. Notably, in the current world, characterised by sophisticated tax-planning strategies, the introduction of GAAR serves as a residual safeguard by empowering tax authorities to recharacterize transactions that technically comply with the law but undermine its true purpose. From a tax policy perspective, however, the effectiveness of a GAAR depends not merely on its anti-avoidance ambition, but on its design, its alignment with core tax principles, and its balance with legal certainty.[165]

4.3.The Adoption of a Purpose-Centred Approach with Substantive Review

As discussed above, in terms of legislative design, the ITP adopts both a purpose test and substance-over-form principles. In doing so, the provision requires the tax authority to place the taxpayer's sole or dominant motive at the centre of the anti-avoidance enquiry. However, despite the provision further requiring the authority to have regard to the substance of the scheme, it neither defined that requirement nor accompanied it with interpretative guidelines, thereby making the GAAR assessment discretionary.[166] Thus, from a tax policy perspective, while the adoption of purpose and substance enhances the scope and flexibility of the GAAR, it broadens administrative discretion, which arguably reduces predictability in its practical application.

In comparison, in most other jurisdictions, i.e., Canada, South Africa, and Australia, to mention a few, income-tax GAARs are structured with additional qualifying guidelines governing their application.[167] While providing an exception or relief provision, Canadian GAAR, for instance, requires the authority or court to apply the GAAR only if the transaction results, directly or indirectly, in a misuse of the statute's relevant provisions.[168] Likewise, though with different terminology, South African and Tanzanian income tax GAARs empower their respective tax

[165] Judith Freedman, 'Defining Taxpayer Responsibility: In Support of a General Anti-Avoidance Principle', British Tax Review, No.4, 2005, p. 332-357.
[166] Hirko Alemu, *supra* note 20, p. 49.
[167] Lorika Anthea Tobias, 'An Analysis of the Evolution of the General Anti-Avoidance Rules and the Substance over Form Doctrine and Its Effectiveness to Combat Impermissible Tax Avoidance' (MSc thesis, University of Pretoria, 2014).
[168] Jinyan Li, 'Economic Substance: Drawing the Line Between Legitimate Tax Minimization and Abusive Tax Avoidance', Canadian Tax Journal, Vol.54, 2006, p. 35.

authority to apply the GAARs only if the transaction results in a 'misuse or abuse' of the statute.[169]

Similarly, the Australian GAAR, which adopts *the purpose* test to determine tax avoidance arrangements, as in Ethiopia, includes an exclusionary provision that exempts certain tax outcomes from classification as a *tax benefit*.[170] In addition, it requires the courts and the Commissioner of Taxation to consider eight specific factors to determine whether the taxpayer has such a dominant purpose.[171] These criteria are designed to guide the dominant purpose inquiry by grounding it in objective, observable considerations, thereby limiting purely subjective judgments. In general, the inclusion of specific guidelines and exclusion/exception clauses allows taxpayers to lawfully structure their affairs using these provisions without the risk of GAAR re-characterisation, thus promoting predictability and certainty for taxpayers and balancing the broad discretion created by GAAR.[172]

In contrast to other countries, Article 80 requires the tax authority to apply GAAR where the primary or dominant purpose of the scheme is to obtain a tax benefit, without additional interpretative guidance, such as indicators of abuse, statutory purpose analysis, commercial substance criteria, or exceptions.[173] This makes the design of the GAAR non-prescriptive, in that it provides broad language and discretion to the tax authority rather than a detailed, interpretative framework.[174] Thus, the absence of clearly defined qualifying standards arguably leaves the tax authority with broad and largely unchecked discretion in applying the GAAR,[175] which in turn would generate uncertainty regarding how purpose or motive will be assessed and what evidentiary threshold applies.

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[169] Salome Massaga, 'The General Anti-Avoidance Section: A Comparative Analysis of Section 80A of the South African Income Tax Act No. 58 of 1962 and Section 35 of the Tanzanian Income Tax Act No. 11 of 2004' (LLM thesis, University of Cape Town, 2015) p.30–36.

[170] Shu-Chien Chen, *supra* note 18, p. 91. The Australian GAAR specifically prevents GAAR from targeting the non-inclusion of income, the allowance of deductions, the incurrence of capital losses, or the granting of foreign tax credits from deliberate actions like entering agreements, making choices, declarations, elections, notices, or exercising options.

[171]These factors include how the scheme was entered or carried out, its form, timing, duration, tax outcome, changes in the taxpayer's and connected persons' financial positions, other consequences, and the relationship between parties.; Thaddeus Hwong and Jinyan Li, 'GAAR in Action: An Empirical Study of Transaction Types and Judicial Attributes in Australia, Canada, and New Zealand, Canadian Tax Journal', Vol. 68, 2020, p. 539.

[172] P. K. Schmidt & K. Buhmann, 'Taxation, General Anti-Avoidance Rules and Corporate Social Responsibility', FIRE Journal: UCPH Fiscal Relations Law Journal, No.2, 2020.

[173] G. Cooper, Tax Avoidance and the Rule of Law (IBFD Publication, 1997) p. 25.

[174] N. E. Suryani & K. Devos, 'The Proposed Design of an Indonesian General Anti-Avoidance Rule, World Applied Sciences Journal', Vol. 34, No. 12, 2016, p. 1785.

[175] Alexis Niall Brassey, Tax, GAAR and the Rule of Law (PhD dissertation, University of Cambridge, Faculty of Law, 2017) p.162.

Here, it must be noted that a taxpayer whose transaction is subject to GAAR and consequently reassessed retains the right to challenge the assessment or request its amendment under Article 28 of the Tax Administration Proclamation (TAP).[176] The taxpayer may also object in accordance with Article 54 of the TAP and, where necessary, pursue an appeal within the tax administration under Article 56, or seek judicial review before a court of law pursuant to Articles 57 and 58, respectively.[177] Nevertheless, despite the availability of these remedies, the application of GAAR continues to generate uncertainty for taxpayers regarding the predictability and stability of their tax obligations.

4.4.Implications for the Core Tax Principles

From a tax policy perspective, adopting the purpose-and-substance-over-form principle under the ITP is not inherently problematic. These principles are widely recognised as legitimate and necessary in controlling abusive, yet sophisticated tax avoidance. The real challenge, however, arises from the absence of clear interpretive guidelines and explicit exceptions within the GAAR under Article 80. Thus, the lack of structured criteria arguably has significant implications for adherence to the core principles of Ethiopian tax policy, i.e., equity, certainty, efficiency, and neutrality, when applying the GAAR.

The primary and most immediate implication is evident in the principle of certainty.[178] Notably, while acknowledging that the tax authority should be vested with discretionary power to determine tax consequences, the absence of explicit interpretative guidelines or exceptions may lead to the provision being applied beyond its intended scope.[179] Such overextension arguably endangers the inclusion of legitimate commercial transactions that align with both the letter and the spirit of the law, thereby compromising principled and predictable enforcement of the GAAR.[180] Such ambiguity would further introduce uncertainty, making it difficult for taxpayers to structure their affairs with confidence while relying on legally available provisions.[181] Accordingly, the absence of explicit guidance and exemptions undermines the principle of certainty, which is fundamental in ensuring a predictable and stable tax system.

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[176] Federal Tax Administration Proclamation, 2016, Art. Art. 28, Proc. No. 983/2016, Fed. *Neg. Gaz*., Year 22 No. 103.
[177] Ibid, Art. 54 & 56-58.
[178] Rebecca Prebble & John Prebble, 'General Anti-Avoidance Rules and the Rule of Law', *in The Routledge Companion to Tax Avoidance Research* (Routledge, 2017), p. 61–77.
[179] Taylor, *supra* note, 4, p. 85.
[180] Greg Travers, *The Tax Adviser's Guide to Part IVA: A Practical Guide to the Application of the General Anti-Avoidance Rule* (Tax Institute, Melbourne, 2014), p. 161.
[181] Jinyan Li, *supra* note 168, p. 42.

Again, despite the importance of GAAR in ensuring fairness by preventing taxpayers with access to sophisticated planning from obtaining disproportionate tax advantages.[182] The discretion granted to the tax authority in applying the GAAR without an anchor could, arguably, lead to uncertainty in its interpretation and application.[183] This uncertainty will result in unequal and selective enforcement of tax laws on taxpayers.[184] This is because only a portion of the pool of taxpayers who may have entered into similar transactions is subject to audit, and only some of those transactions might be identified as transactions to which the GAAR might apply, with the rule applied successfully only to a portion of this subset.[185] Thus, these procedural inconsistencies (the selective enforcement of the rule) ultimately undermine perceived fairness. Moreover, considering the cost of litigation, low- or middle-income taxpayers who lack the resources to challenge assessments may experience a disproportionate burden compared to well-resourced entities capable of litigation.[186]

Beyond concerns about certainty, a key implication of the GAAR's design relates to Efficiency. It authorises the tax authority to disregard artificial transactions that are primarily intended to secure tax advantages rather than genuine commercial outcomes, thereby ensuring economic efficiency. However, its subjective purpose test and undefined substantive requirement may raise administrative and compliance costs.[187] This, in turn, renders the enforcement of GAAR administratively intensive. Particularly in the absence of interpretive guidance, assessing taxpayers' intent and substantive facts may necessitate the tax authority's thorough investigation, comprehensive analysis of documentation, and, on occasion, litigation.[188] Equally, the inconsistent application of the rule, in turn, obliges the taxpayer to incur higher advisory and compliance costs to mitigate GAAR risk.

Similarly, GAAR under Article 80 is implemented to reinforce the principle of neutrality. Specifically, by targeting arrangements whose primary purpose is to secure a tax benefit, the GAAR ensures that business arrangements and financial decisions are motivated by genuine

[182] Sigrid Hemels, 'Fairness and Taxation in a Globalized World' (26 February 2015) SSRN https://ssrn.com/abstract=2570750. Accessed Feb.16/2026.
[183] Alexander Ketut Wahyu Adiyanta, 'Assessing the Necessity of GAAR in Indonesia: A Comparative Evaluation of Global GAAR Frameworks and the Development of an Effective Statutory Model to Mitigate Tax Avoidance', Journal of Economics, Finance and Management Studies, Vol. 08, No. 02, 2025, p. 1367.
[184] E D Liptak, *supra* note 156, p. 1–14.
[185] Krever R, '*Policy Forum: Rethinking GAAR*, *supra* note 12, p. 620.
[186] Tax Administration Proclamation, 2016, *supra* note 176, Art. 2 (32).
[187] Matheus Peixoto Behrends, *supra* note 27, p. 2.
[188] Ibid.

economic considerations rather than fiscal arbitrage. Consequently, this promotes neutrality by levelling the playing field and preventing any competitive advantage that may be obtained solely through aggressive tax planning. Nevertheless, the lack of clear interpretative guidelines and exceptions introduces uncertainty in applying the GAAR, ultimately fostering overly cautious behaviour among taxpayers and discouraging legitimate commercial transactions,[189] thereby undermining the very neutrality of the tax system the GAAR seeks to protect. [190]

Overall, from a fiscal policy standpoint, the ambiguity and uncertainty arising from GAAR's design endanger the fundamental principles of the income tax system, namely fairness, certainty, efficiency, and neutrality. Essentially, the implementation of GAAR functions as a tool that, although intended to protect the tax base, may unintentionally undermine the very integrity of the tax system it aims to defend. Therefore, unless the discretion granted to tax authorities is appropriately limited, governmental efforts to combat tax avoidance through legislative measures alone may inadvertently further complicate the tax system and sustain a cycle in which the tax system's objectives remain unfulfilled.

5. Concluding Remark

This article has critically examined tax avoidance and its implications for the Ethiopian tax system, with a particular focus on income taxation. Employing a doctrinal methodology within an analytical framework centred on core tax policy goals and principles, the article examined the effect of tax avoidance on key tax policy goals and principles, alongside an evaluation of whether the design of GAAR under Article 80 upholds or undermines the principles it seeks to protect.

Accordingly, this article highlights that even though the Ethiopian tax policy provides for generating adequate revenue, propelling economic growth, modernising tax administration as its fiscal objective, and embodying the principles of equity, efficiency, certainty, and neutrality, the long-standing threat of tax avoidance poses a serious threat to the integrity of the tax system. In response to this, the Income Tax Proclamation No. 979/2016 provides SAAR, including transfer pricing, thin capitalisation, and income splitting, to address such avoidance. It also introduced GAAR as a catch-all provision to address tax avoidance.

[189] Eshaan Singal, 'Navigating the Labyrinth: Understanding GAAR and Its Impact on Tax Avoidance' (8 June 2024) https://www.taxtmi.com/article/detailed?id=12680 , accessed on 21 February 2026.
[190] Taylor, *supra* note 4, p. 181.

In addition, this article argues that whilst SAARs are significant for enforcing specific measures against tax avoidance, their efficacy in countering sophisticated and intricate tax-avoidance strategies remains uncertain. Owing to this, the GAAR is regarded as the ultimate measure to protect the integrity of the income tax base and the overall tax system. Accordingly, this article investigates the design of the GAAR and its implications for maintaining the integrity of the tax system. The article argued that the GAAR stipulated under Article 80 of the ITP, aside from instructing the authority to consider the substance of the scheme, does not encompass explicit guidelines for evaluating whether the taxpayer's motivation for the undertaking is primarily or solely to obtain a tax benefit. This, in turn, potentially grants the tax authority substantial discretion and a degree of ambiguity in the application of the GAAR.

Of course, GAAR by its design should be flexible, and at times, vesting discretionary power in the tax authority is necessary to combat sophisticated and complex tax avoidance practices. Equally, the design of GAAR, while flexible and discretionary, should also provide taxpayers with assurance that their arrangements fall outside the GAAR's scope. In this regard, specific guidelines and exemption rules are used as primary tools by countries such as Australia, Canada, and South Africa to balance the tax authority's discretion in applying GAAR. By contrast, the article argued that the absence of exemptions or interpretive guidelines in Article 80 of the ITP arguably entrusts the tax authority with excessive discretion. This unfettered discretion, coupled with underdeveloped tax administration, would arguably breed uncertainty and lead to uneven and selective enforcement of the GAAR. This, in turn, arguably, undermines the foundational principles of the tax system, such as equity, certainty, efficiency and neutrality, which GAAR is intended to protect.

Hence, to mitigate tax avoidance while achieving the GAAR's intended objectives, this article recommends providing specific guidelines for the tax authority to determine whether the taxpayer's motive was solely or predominantly to obtain a tax benefit. These specific measures would at least ensure that transactions made solely for tax advantage from bona fide business purposes are easily and coherently determined. Furthermore, the article recommends the tax authority to interpret and implement the rules in harmonious alignment with bedrock tax principles, including equity, certainty, simplicity, and neutrality. This, in turn, would effectively curb abusive tax avoidance practices while qualifying the tax authority's discretion.

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Cross-Border Assets Recovery in Abacha, Marcos, Montesinos, Griffen and Angolan Oil Finance Cases: Analysing the Legal Landscape, Practice and Challenges

Uche Nnawulezi *
Obinna Nnanna Okereke **
Jacques Kabano ***

Abstract

Current literature on financial transparency suggests that illicit financial transfers and money laundering are integral to cross-border corruption, which has caused significant financial challenges globally. Nigeria is a victim of this, as evidenced by the notorious instances of 'Abacha's loot', which were recovered, repatriated and restituted from sundry international accounts. The recovery of looted assets is heavily reliant on international financial agreements; however, the legal frameworks for repatriation and restitution have not been updated to address evolving forms of international financial corruption. This article aimed to examine the impediments inherent in enforcing institutional frameworks and policies against cross-border financial laundering, using the Abacha loot recovered from Switzerland as a basis. To achieve this, it has conducted a comparative analysis of similar corrupt-looting experiences in Peru, the Philippines, Angola, and Kazakhstan, in the Nigerian context, to identify subjective considerations regarding the application frameworks these nations use for the return of illicitly transferred funds. Using a doctrinal method of research, it identified challenges to the enforcement of legal frameworks and policies against corrupt cross-border financial transfers, such as poor international cooperation, weak transparency in financial circles, poor public accountability, porous monitoring mechanisms, bank secrecy policy, and non-ratification of the United Nations Convention Against Corruption, among others. Accordingly, this article contributes to existing knowledge regarding the complex web of effects, the international cross-border transfer of funds for corrupt purposes, and the recovery and return of such funds. Hence, it addresses the need for concerted efforts to ameliorate the impediments to the effective implementation of institutional regulatory schemes against cross-border illicit money laundering in the Nigerian context.

Keywords

Cross-Border Corruption; Recovery of Looted Funds; Abacha; Swiss Bank; Illicit Financial Flow; Nigeria

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* LL.B, LL.M, PhD, Faculty of Law, University of Lay Adventists of Kigali Rwanda, Kigali, Email: uche.augustus@unilak.ac.rw ORCID No: 009-0004-0625-2775
** LL.B, LL.M, PhD, Faculty of Law, Federal University Wukari, Taraba State, Nigeria, Email: obinnaokereke@yahoo.com ORCID No: 0009-0008-8793-5693
*** LL.B, LL.M, PhD, Faculty of Law, University of Lay Adventists of Kigali Rwanda, Kigali, Corresponding Author, Email: j.kabano@unilak.ac.rw ORCID No: 0000-0002-0248-9204

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1. Introduction

Nigeria is one of the most popular African Countries, heavily endowed with natural resources and a productive population, yet marred by bad governance, insecurity, and financial corruption. The in-depth effects of financial corruption in the country have a complex and adverse relationship with the country's gross domestic product and sustainable development. Financial corruption is multifaceted in its conceptual underpinnings, hence the complexity of its forms, causes, and effects across subjective occurrences in various jurisdictions.[1] It includes the mismanagement of public funds, embezzlement, bribery, and nepotism, among others. Financial corruption is the act or inaction that stifles a state's economic muscle, such as the distortion of market flows and investments, and the abuse of public trust. To this end, it is the selfish use of the state's institutional networks to carry out financial crimes, which, in a broader sense, include international corrupt collaborations. In simple terms, it is an abuse of private and public institutions for the economic benefit of one or more.

The case of 'Abacha's loot' cum the 'Swiss Bank Saga' is an illustrious example of the negative effects of financial corruption on an international scale.[2] It has spread beyond the circle of national geography to encompass the transfer of funds across nations. To this end, personal ties to looted funds transferred overseas for personal effects gained ascendancy through the help of weak banking regulatory systems and over-dependency on the corrupt political system in developing countries.[3] International transfer of funds is now subject to a subtle regulatory framework to track looted funds from Nigeria abroad. The foregoing led to the development of several terms in the quest to arrest the menace.

The term 'Illicit financial flow' (IFF) as a corruption nomenclature gained prominence in the early 2000s, reflecting the emerging need to tackle corrupt capital flow existing in a global economy. IFF signifies the illegal cross-border movement of funds obtained through corruption from one

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1 A. Modupe, 'Corruption and its Impact on Sustainable Development in Nigeria' (2024) Vol.8, No.4, Wukari International Studies Journal 1.

2 World Bank, 'Sani Abacha and Swiss Mutual Legal Assistance Treaty Case' (2023) <https://star.worldbank.org> accessed on 12 June 2025.

3 Business Day NG, 'Where's the Rest? Recovering Abacha Loot' (2020) <www.businessday.ng> accessed on 12 June 2025.

country to another.[4] It involves financial corruption, which destroys good governance, the rule of law, and public trust. To this end, IFF is a source of social inequality and stifles efforts to reduce poverty. IFF creates a vicious circle of poverty that erodes and weakens institutional efforts of states to enforce laws and regulations on financial crimes. In Nigeria, for instance, there are financial enablers that militates corruption and illicit transfer of funds. Mainly, banks and financial institutions play major roles in the activation of IFF.[5] Apart from the term IFF, 'Money Laundering' is a similar concept in the rapidly globalising economy that poses significant threats to cross-border or international transactions.[6] These are notable strategies criminals use to commit unlawful acts that are becoming serious global and regional threats to national economies, including Nigeria's.

On this account, this article aims to examine the challenges affecting the legal frameworks against cross-border illicit transfers of public funds using 'Abacha's loot' of Nigeria as a case study. It compares other countries' experiences, as exemplified by Peru, the Philippines, Angola, and Kazakhstan, to identify subjective considerations regarding the application frameworks these nations use for the return of illicitly transferred funds in the Nigerian context. Using a doctrinal research method, it identified the challenges to enforcing legal frameworks and policies against corrupt cross-border financial transfers, along with the arguments and contributions.

2. Conceptual Clarifications

In this section, terminologies and concepts pertinent to asset recovery shall be briefly highlighted and defined.

A. Assets Recovery

Asset Recovery is the process of assessing the value of exploited, unutilized or excess assets through re-channelling, re-investment and divestment. It entails a country's identification, retrieval, and management of recovered assets. The foregoing involves the legal process through

[4] Carnegie Endowment for International Peace, 'African Strategies to Combat Illicit Financial Flows' (2024) <https:carneg endowment.org> accessed on 11 June 2025.

[5] Channels TV, 'Money Laundering: Prosecution of Bank Executives to Commence Soon' (2024) <https: www.channelstv.com> accessed on 12 June 2025.

[6] E.A. Isolauri and I. Ameer, 'Money Laundering as a Transactional Business Phenomenon: A Systematic Review and Future Agenda' (2023) Vol.18, No.3, Critical Perspectives on International Business 1.

which countries recover resources that were mismanaged or stolen.[7] The nature of asset recovery involves the procedure through which proceeds of corruption are recovered and returned to the country from which they were taken. The process is salient for addressing the plundering or squandering of a nation's national wealth. It calls for cooperation among countries through mechanisms for freezing or confiscating funds.

B. Cross-Border Assets Recovery

Cross-Border Asset Recovery refers to the legal process utilised to recover assets moved across international borders through corruption. It is complex because two or more countries' legal frameworks are utilised in the process. It poses jurisdictional conflicts, fraudulent concealment of assets, inconsistent asset-recovery processes, and operational differences in international freezing and seizing, among others.[8] The key point is that the illicit funds are moved abroad and recovered.

C. Illicit Financial Flows

Illicit financial flows refer to the illegal movement of funds across national borders. It involves the illegal acts of corruption, bribery, theft and drug trafficking, which can be used in crimes. Illegal Financial Flows negatively impact the economy by draining foreign exchange reserves and government revenues, and by blocking the expansion of growth and infrastructure.[9] It has major similarities to cross-border asset recovery; however, illicit financial flows concern finance alone.

D. Money Laundering

Money Laundering is the process of illegally hiding the origin of funds obtained through fraudulent activities. Such illicit origin may be through corruption, embezzlement, or drug trafficking. The above fund would be transferred into a genuine transaction while concealing the source. Money laundering is illegal, and the individuals or entities that engage in it are fraudsters.[10] Just like Illicit Financial Flows, it focuses solely on finance.

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[7] Faster Capital <https://fasteron> accessed on 26 February 2026.
[8] Link Law Solicitors <htpp://ilinklwasolicitors.com> accessed on 18 February 2026.
[9] Illicit Financial Flows <UNCtad.org> accessed on 20 February 2026.
[10] Money Laundering <https://britanica.com> accessed> on 20 February 2026.

E. Financial Action Task Force Recommendation

The Financial Action Task Force (FATF) recommendations serve as a global call for combating money laundering and terrorist financing. The recommendations, numbering 40, outline action plans and a framework of measures that states parties should follow to protect the international financial mechanism. In all, it sets a global standard in averting money laundering, terrorism financing and other financial crimes. It includes a robust standard of laws, regulations and enforcement measures to ensure national bodies take proactive measures to identify and prosecute financial crimes and terrorism.[11]

F. World Bank Recovery Handbook

World Bank Recovery Handbook is an internationally recognised resource material geared towards the recovery of stolen goods. It provides a comprehensive overview of asset recovery, procedures, legal processes, and practical studies on the theme. The book is valuable as it covers strategic studies, asset-tracking schemes, confiscation mechanisms, and international cooperation methodologies and serves as a general tool for practitioners. The book outlines approaches to recovering stolen assets across national and international jurisdictions.

3. International Legal Standards on Asset Recovery

There is a plethora of international and regional legal frameworks ratified by United Nations State Parties on asset recovery.

A. The United Nations Convention Against Corruption (UNCAC) 2005

Significant progress has been made on efforts to apply global statutes prohibiting financial corruption. The stride culminated in the adoption of international legal frameworks such as the United Nations Convention Against Corruption (UNCAC),[12] United Nations Convention Against Transnational Organised Crime (UNCATOC),[13] African Union Convention on Prevention and

[11] Cracking the Code: Understanding the FATF Recommendations < financial crime academy.org> accessed on 20 February 2026.

[12] United Nations Convention against Corruption (UNCAC) 2003, 2349 UNTS 41. The Convention along with the Countries that have ratified it is available at <https://www.uncdc.org/pdf/crime/convention-corruption/siging/convention-epdf> Accessed 14 June, 2025.

[13] United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

Combating Corruption (AUCPCC),[14] Convention of the European Union on the Fight Against Corruption (CEUFAC),[15] Council of Europe's Criminal Law Convention on Corruption (CECLCC),[16] Organisation of American States Inter American Convention against Corruption (OASICAC),[17] OECD Convention On Combating Bribery of Foreign Public Officials[18] and Financial Action Task Force Non-Cooperation List,[19] among others.

Explicitly, UNCAC is a foremost legally binding international instrument on anti-corruption practices. The framework foreshadows an affirmation that exigent global action is required in the fight against stolen funds. This is in line with its belief that corruption, especially international cross-border funds, is a global threat. In its Article 1, the Convention calls for the enhancement of measures that are effective against corrupt financial practices, international cooperation, and the promotion of accountability and the integrity of public funds. It strongly calls for the freezing or seizure of corrupt funds identified by assuming custody and control of the same via a court order. Article 3 defined the scope of the Convention to include international prevention, investment and prosecution of illicit funds, confiscation or return of the same in line with the law. The above is to be carried out with respect to the sovereignty of nations.[20] It has provisions on preventive measures against corruption,[21] creation of anti-corruption bodies,[22] public sector integrity,[23] Code of conduct for public officials,[24] public reporting schemes,[25] private sector protection,[26] measures to prevent money laundering,[27] embezzlement, misappropriation or diversion of public funds,[28] illicit wealth,

[14] It was established in Mozambique in 2003: The Convention encourages State Parties to create mechanisms in Africa to prevent, control and eradicate corruption and related crimes in the public and private sectors.
[15] It involved officials European Communities and various Protocols were adopted in 1995, 1997, 1998 and 2003.
[16] Entered into force in 2002, while the Civil Law Convention on Corruption, entered into force in 2003.
[17] Entered into force in 1997.
[18] Entered into force in 1999.
[19] This list is to put pressure on countries to fight money laundering. Compare K Freeman, ''Repatriation of Looted State Assets: Some Case Studies and UN Convention Against Corruption," Available at: <https://www.ipocafrica.org/cases/assetsrecovery/commentaryandopinion/daniel/june04.pdf> Accessed 14 June 2025.
[20] UNCAC, art 26.
[21] Ibid, art 5.
[22] Ibid, art 6.
[23] Ibid, art 17.
[24] Ibid, art 8.
[25] Ibid, art 12.
[26] Ibid, art 12.
[27] Ibid, art 14.
[28] Ibid, art 17.

freezing and seizure of funds,[29] confiscation cooperation among nations,[30] nation and private sector,[31] bank secrecy,[32] international cooperation,[33] asset recovery,[34] among others. The Convention's provision of a whole chapter on the recovery of stolen assets is a valuable tool against corrupt financial practices.

UNCAC has been described as a salient legal framework in the prevention and combating of corruption and the recovery of fraudulent assets.[35] Its provisions aim to recover stolen assets back to their rightful owners, including countries from which they had been taken illicitly. The framework provides fundamental principles that enable States to provide the widest measures of cooperation and assistance to each other in the recovery, confiscation and return of stolen assets. UNCAC enables assets to be recovered from the proceeds of various offences. It provides for the punishment of offences termed as corrupt offences such as bribery of Government officials, embezzlement, misappropriation or diversion of funds, abuse of public offices, illicit aggrandisement in all forms, money laundering, among others.[36] The framework aims at a global fight against illicit financial flows across borders.

B. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998 (also referred to as the Vienna Convention).

This legal framework is a global regime against fraudulent wealth through drug dealings across nations. Article 5 provides processes for the recovery and confiscation of proceeds obtained from fraudulent trafficking in drugs.[37] If it is across nations, the recovered funds are returned to the nations against which the fraud was committed.

C. The Transnational Organised Crime Convention, 2000 (referred to also as the Palermo Convention)

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[29] Ibid, art 31.
[30] Ibid, art 38.
[31] Ibid, art 39.
[32] Ibid, art 44.
[33] Ibid, art 43.
[34] Ibid, art 51.
[35] The number of UN Member States that have ratified the Convention as at 2025 is available at https://www.undoc.org/unodc/en/corruption/ratification-status.html accessed on 11 Feb. 2026.
[36] UNCAC 2005, Article 51.
[37] The Vienna Convention is available at https://www.unodc.org/undoc/en/commissions/CND/cONVENTIONS.html accessed on 11 Feb. 2026.

This legal framework provides the procedures for the recovery of proceeds of crime. The Convention provided circumscribed outcomes on the criminalisation of corruption activities.[38] Article 8 urged States to take measures to punish all acts of corruption, to enact legislation to promote integrity, and to prevent and detect corruption by public officers. A perusal of the Palermo Convention reveals that it aligns with the UNCAC provisions on asset recovery, denunciation of corruption, money laundering, international cooperation, and measures for the repatriation and compensation of victims of crime.

D. United Convention on the Suppression of the Financing of Terrorism, 1999

This Convention provides that the proceeds of crimes, whether licit or illicit, are not utilised to finance terrorism.[39] It is a global outcry against sponsorship of international terrorism.

3.1.Regional Institutions on Assets Recovery

There are several regional conventions on the recovery of assets, some of which will be discussed below.

A. Council of Europe (COE) Civil Law Convention on Corruption

The convention provides that victims of corruption have legal capacity to seek redress, obtain justice and seek compensation for wrongs from people, states representing interests located within European Union member states.[40] The framework is a call to combat illegal wealth acquisition in civil processes within Europe.

B. Council of Europe (COE) Criminal Law Convention on Corruption

This Convention focuses on the need for States to provide, in their frameworks, legislative enactments criminalising offences relating to the laundering, seizure, and confiscation of the proceeds of crime and the financing of terrorism.[41] It condemns and calls for punishment for illegally acquired wealth.

[38] Palermo Convention, 2000 Articles 8, 9, 12, 13 and 14.
[39] Article 8 of the Convention of the Suppression of Financing of Terrorism provides for the forfeiture of any funds that are allocated for the use in the funding of terrorism and, where possible, share such funds with requesting states and also use the funds to compensate victims of terrorist attacks.
[40] European Treaty Series – No. 174, (See Articles 1, 3, 4, 5) available at https://www.coe.int/en/web/conventions/full-list/-/convenions /treaty/174 accessed on 12 Feb. 2026
[41] European Treaty Series – No. 173.

C. African Union Convention on Prevention and Combating Corruption, 2003

The Convention provides in Article 4(1) a list of offences that includes the use of concealment of property by public officials, among others.[42] It criminalises specific money laundering offences, such as proceeds derived from any of the following: fraudulent activity, illicit enrichment, bribery, diversion of public property, and the conversion, transfer, or concealment of the property's illicit origin. It is a salient fight against financial flows which should be adopted by the African State Party. The Convention makes it compulsory for States to adopt legislative measures for the search, seizure, and freezing of the instrumentality and proceeds of corruption.[43]

3.2. Cross-Border Assets Recovery Case Studies: Nigeria, Peru, Philippines, Kazakhstan, and Angola

Looted asset recovery is one of the trending themes of discourse in cross-border financing as a result of the huge economic resources that are illegally exported to other countries through unlawful means. Illicit proceeds of the above are transferred in a subterfuge form from one jurisdiction to another in order to cover their corrupt flow. Transparency International (TI), an international non-governmental organisation, comes up every year with a perceived and rated corruption index of countries. Nigeria for years have been on the high score card of the assessment. Using data from various reputable sources like the World Bank, TI in 2024 released the corruption perception index, ranking countries on scales based on the perceived quantum of public sector corruption. It scaled the score of '100' to indicate a corruption-free nation, as 'Ó' denotes a highly corrupt country. Nigeria in 2024 scored 26 over 140th.[44]

This is a slight improvement over 2023, wherein it ranked 145th out of 180 Countries, with a score of 25 out of 100.[45] The historical performance of the country has been lagging, ranging from an average score of 21.48 since 1996, with the apex score of 28 in 2016 by the TI assessment. However, despite the slight improvement in the CPI in 2024, Nigeria is still globally perceived as a corrupt country. Though no Country in the region of Africa appears in the top 10 corruption-free

[42] African Union Convention is available at https://au.int/sites/default/files/treaties/36382-treaty-0028 - african_african_union_convention_on_preventing_and_combating_corruption+e.pdf accessed on 12 Feb. 2026.
[43] Ibid, Article 6 and Article 16.
[44] Olalekan Adigun, Business News (2025) <https://nairametrics.com/2025/02/11nyens-moves-up-in-2025-corruptionperception-index-ranks2140/> accessed on 12 June 2025.
[45] ibid

countries as presented by the index, Nigeria is behind other African Countries in the fight against corruption.[46]

Comparatively, the highest-ranked African Country by the TI CPI in 2004 was the Seychelles,[47] followed by Cape Verde,[48] Namibia,[49] Mauritius,[50] Rwanda[51], and Botswana.[52] On the other hand, Peru's CPI index assessment was 31, placing the Country 127th out of 180 nations. Angola was lower in percentage than Peru, as its CPI was 32. However, the Philippines was lower in percentage than Nigeria, Peru and Angola in CPI as it scored 33 in 2024. Furthermore, Kazakhstan, by the index, was the 88th least corrupt nation out of 180. It scored 40 points out of 100 in the2024 TI's CPI.[53] In sum, Nigeria has the highest corruption index among the countries listed above, according to TI's 2024 assessment. Embezzlement of public funds and weak institutional frameworks that allow illicit flow of funds contribute to the growth of corruption in Nigeria.[54] As cross-border financial corruption remains a grave distortion of economic growth and governance, the fight against its global rise through collaborative efforts is warranted.

This segment comparatively looks at the financial loot proceeds recovered from Sani Abacha of Nigeria, Vladimir Montesinos of Peru, Ferdinand Marie of the Philippines, Kazakhstan and Angola through cross-border collaborative efforts from Switzerland.

3.2.1. Nigeria

During the military regime in Nigeria, General Sani Abacha was the Junta President for 5 years from 1993 to 1998. His government was characterised by financial mismanagement and looting. Investigation revealed that upon his demise in June 1998, a whopping sum close to three to five billion USD of the national fund was embezzled and deposited into Swiss banks and others. He succeeded in the above through stealing from the national treasury with the assistance of the

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[46] Ibid

[47] Transparency International, 'Corruption Perceptions Index 2024' (2024) <https://www.transparency.org/en/cpi/2024>

[48] Score 62.

[49] Scored 59.

[50] Scored 56.

[51] Scored 57.

[52] Adigun (n 7) 4.

[53] United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41 (UNCAC).

[54] Jonathan G Ercan Brack, ''Hawala in the UK Nigeria Remittance Corridor: Institutional Dynamics and Illicit Value Flows,'' (2025)10 *Journal of Economic Criminology,* 1- 2.

national Central Bank, grave inflation of awarded jobs, kickbacks, falsifications from the contractors and massive fraudulent financial transactions, among others.[55] The funds were laundered abroad through illicit coverage to various countries like the United Kingdom, Switzerland, and Luxembourg.[56]

The analysis of the paper revealed that on February 7, 2005, the frozen corrupt funds from Abacha were ordered to be released to Nigeria by the Supreme Court of Switzerland.[57] The Court ruled that the majority of Abacha's loot was from corrupt governmental asset exploitation. In 2005, USD 700 million was restituted to Nigeria along with the World Bank (WB). In this regard, WB exercises a monitoring role over Nigeria's financial system as the funds were agreed to be used for specific projects.[58] In summary, with the successful recovery of over 1 billion Dollars corruptly stashed away by Abacha in Switzerland, the last set of repatriated funds was in 2020. Switzerland formerly returned $752 million, which Abacha and his wife hid in a Swiss Bank. Later on, Switzerland returned another 321 million Dollars which has been put in the Central Bank of Nigeria for Projects. In order to maintain financial accountability and stability, WB accept the responsibility of disbursing the said Abacha's looted funds to execute National Cash Transfer Schemes for the benefit of the entire citizenry as the commonwealth.

The Nigerian financial regulatory frameworks provide numerous laws, policies and institutions aimed at stalling the illicit flow of money laundered in and out of the country. Some of them are discussed hereunder:

A. Money Laundering (Prevention and Prohibition) Act 2022

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[55] I. Jimu, Managing Processes of Asset Recovery: The Case of Nigeria, Peru the Phillipines and Kazakhstan, 2023, International Centre for Asset Recovery 6-7; Gretta Frenner Zinkemagel and Kodjo Attiso, 'Returning Stolen Assets – Learning from Past Practice: Selected Case Studies'[2023] 3 – 6.

[56] S. Hirsbrunner 'Stolen Asset Recovery: Swiss Expereience', Economics of Corruption Training in Passau, 4 – 10, October 2008. Available at : <https://www.unipassau.de/fileadmin/dokumente/lehrstuechle/lambsdorff/Economics-of-corruption-2008/Poster-EOC2008-simon.pdf> Accesed 14 June, 2025.

[57] BBC, 'Nigeria's Ex-Oil Minister Diezani Alison-Madueke Charged with Bribery in the UK',[2023] 2 accessed from <https://www.bbc.com/news/world-africa-66582585> on June 10 2025.

[58] See Factsheet on Asset Recovery – a Breakthrough by the UN Convention Against Corruption (UNCAC) Published by the Deutsche Gesellschaft fur Technische Zusammenarbeit (GTZ) GMBH, Division State and Democracy in June 2007, accessed from <www.giz.de/Themen/en/dokumente/en0gtz-asset-recovery-case-of-montesions-2007.pdf> on 15 June 2025

The Money Laundering (Prevention and Prohibition) Act 2022 is a primary institutional framework requisitely created to address the plight of money laundering in Nigeria for local and international transactions.[59] The Act provides for the prevention and compliance measures to cross-border transaction guidelines, which include the reporting scheme for international transfers of suspicious financial transactions, politically exposed individuals and collaborative cross-border banking, among others. Apart from the foregoing, it provided a regulatory regime called the 'Special Control Unit Against Money Laundering' (SCUML) under the aegis of the 'Economic and Financial Crimes Commission' in relation to designated non-financial businesses and professionals. To this end, payments exceeding N 5,000,000.00 for corporate groups must be electronically made, as it is criminalised to transact the above by cash. Financial institutions are mandated to carry out due diligence and customer identification, especially for politically exposed persons. Hence, they are to report any suspicious transactions to the Nigerian Financial Intelligence Unit within 24 hours. The Act deals with cross-border transfers of assets and funds and provides a comprehensive and institutional framework for combating money laundering.

B. Central Bank of Nigeria Regulations, 2022

In Nigeria, this financial instrument is set to regulate compliance with anti-money laundering laws in order to protect financial regulatory bodies from fraudulent practices of economic crimes.[60] This is geared towards the adherence of financial institutions via due diligence measures, identification, verification of deals and customers, among others. It has cross-border provisions that regulate acts bordering on the financing of terrorism to individuals along with agencies within and beyond Nigeria, customer due diligence in cross-border transactions, attention to transactions with persons in high-risk nations, among others. In addition, the Central Bank makes engagements with relevant domestic stakeholders to foster collaboration and cooperation to combat financially corrupt cross-border transactions. To this end, regulatory reporting of corrupt system transactions is a sine qua non. In its 2025 agenda, the Act places a premium on customer due diligence to monitor suspicious transactions through efficient record-keeping and good reporting obligations.

[59] Money Laundering (Prevention and Prohibition) Act 2022 (Nigeria)

[60] The Central Bank of Nigeria (Anti-money Laundering/Combating the Financing of Terrorism (AML/CFT) Regulation 2013.

C. Securities and Exchange Commission (Capital Market Operator) Anti-Money Laundering and Combating the Financing of Terrorism) Regulations 2022

This regulatory mechanism regulates the practices or applications on activities relating to money laundering, violent acts, along with the multiplication of economic capital market operators in and outside Nigeria.[61] It is aimed towards enthroning compliance obligations on capital market operators, internal audit and control, financial monitoring, reporting of illicit and suspicious monetary transactions, among others. The regulation highlights that a cross-border transaction is carried out when the originator and the beneficial party are from two different nations. To this end, these regulatory mechanisms expect financial intermediaries to exhibit great caution in carrying out business activities for high-risk clients within cross-border business transactions. In order to achieve the above, safeguard policy steps on cross-border transactions, such as employing employees as first-line actors against money laundering, are advised to be put in place. The establishment of internal policies for the identification and tracking of suspicious financial activities through updated technology, alignment and review of policies abreast of international standards helps to build credible global stakeholders' financial initiatives.

D. The Code of Conduct Under the Constitution of the Federal Republic of Nigeria (CFRN), 1999

Within these statutory provisions, there is a provision for the Code of Conduct for Public Officers to be selfless, avoiding personal interest from overwhelming their obligations and duties of service. They are mandated to declare their assets after taking official positions. The said declaration is to be made every four years or at the expiration of the officer's term in office in the country.[62] They are mandated to declare their assets after taking an official position. The code provides for the creation of a Code of Conduct Tribunal, which prosecutes Officers in breach. The Code enhances the stalling of illicit trades on the cross-border for Public Officers as their assets are under institutional scrutiny.

E. Economic and Financial Crimes Commission (EFCC) Act 2004

[61] SEC – AMLCFT CPF – Regulations 12 May 2022.

[62] Constitution of the Federal Republic of Nigeria 1999 (Nigeria) Fifth Schedule, Part I.

This regulatory body, though, was not created specifically to combat corruption, but is very relevant in the vanguard against cross-border corruption and illicit transactions.[63] The EFCC has the mandate to investigate all manner of financial crime transactions traceable to Nigeria. Hence, financial crimes committed within the purview of financial institutions can be investigated and prosecuted by the Commission. This complies with the EFCC Act in Section 7, which outlines the powers of the Commission to investigate economic and financial crimes, including illicit fund transfer, cross-border corrupt assets procurement, among others.

F. Independent Corrupt Practices Commission (ICPC), 2000

ICPC is a regulatory framework that seeks to punish acts of financial misappropriation along with other similar economic crimes.[64] This regulatory body is empowered by law with investigatory and prosecutorial powers over an alleged offence. The Act defined corruption in Article 1 as offences arising from illegal extortion, fraudulent practices, along with other similar criminal acts. This regulatory body focused on the activities of public officials that relates to corrupt practices. It outlaws giving and receiving of bribes to influence actions in sections 12, 13, 14, fraudulent acquisition of properties, failure to report corrupt related matters and its concealment in section 26. It is important to include that cross border corrupt transfer of assets and illicit financial transfers can be tried and punished by the ICPC.

The creation of various financial institutional and legal frameworks against corrupt cross border financial launderings is to bridge the craze for illicit wealth creation from the State's purse. This is mostly committed by the people in governance. The above-mentioned frameworks are not exhaustive as the Courts and the Police have roles to play in the fight to emasculate the menace. Apart from the making of the Laws, their enforcement capacity to march the progressive growth of the international financial crimes is requisite. The measures would be ineffective and inefficient when its powers exist only on paper rendering the whole system weak against the stemming of cross border financial corruption. This is because financial culprits exploit the gaps and lacunas in the frameworks to succeed in laundering stolen assets and funds outside the country.

3.2.2 Peru

[63] Economic and Financial Crimes Commission (Establishment) Act 2004.

[64] The Independent Corrupt Practices Commission (ICPC) 2000.

From 1990 to 2000, Vladimino Montesinos headed Peru's Secret Service Scheme of South America and was an adviser to then-President Alberto Fujimori.[65] In an organised financial crime, governmental structures were influenced for the personal gains of a few individuals. The above was exposed through the leaked video of Montesinos bribing the opposition. This led to the resignation of the President and Montesinos going into exile. The scandal discredited the Government as investigations revealed that Montesinos was at the centre of numerous multi-million-dollar illicit fund grafts, corrupt activities ranging from embezzlement, extortion, arms trading, money laundering, among others. It was alleged that up to USD 3 billion was stolen.[66] The above sum was laundered through the instrumentality of weak banking structures that covered illicit processes for the procurement of equipment, weapons used by soldiers on the basis of providing for the general security of the country.

Upon his convictions, the Peruvian government retrieved a whopping sum of over 185 million USD from many countries. Hence, 33 million USD was repatriated to the Peruvian government by the Cayman Islands in August 2001, while the sum of 77.5 million USD was repatriated as well by the Swiss Government in August 2022. The fraud at Swiss Bank was a misappropriation of people's assets by Vladimino Montesinos. About USD 113 million was frozen by the Swiss Government, partly from the criminal process of money laundering and from the Peruvian Government's call for assistance on recovery in 2022. The Government of Peru, in an endeavour to properly utilise the returned illicit funds, created the 'Fondo Especial de Administración del Dinero Obtenido Illicitamente en Perjuicio del Estado (Feddoi) regarded as a special fund for the

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[65] See World Bank and UN Office on Drugs and Crime, 'Fact Sheet on Stolen Asset Recovery', 2024. Available at: <http://www.undoc.org/pdf/Star_Factsheet.pdf> Accesed 14 June, 2025; Basel Institute on Governance (BIG) International Centre on Assets Recovery (ICAR), 'Efforts to Recover Assets Looted by Vladimir Montesinos of Peru',2023. Available at: <https://www.assetsrecovery.org/kc/resources/org.apache.wicket.Application/repo?nid=Isafec73-a345-11dc-bf1b-335d0754ba85> Accesed 11 June, 2025.

[66] Decredo de Urgencia No 122-2001 (27 October 2001). Available at: <https://www.minjus.gob.pe/normatindad/decretos/ds001-2002Jus.pdf> Accesed 11 June, 2025; Note that Viadimiro Lenin Montesinos Torres was the right hand officer of President Alberto Fujimori of Peru, whose Presidency lasted from 28 July 1990 to 17 November 2000. Montesinos was officially the head of Perus Secret Service (Sevicio de inteligencia Nacional SIN) and de facto Presidential advisor and national security advisor. In total, Peru have recovered around US 185 Million. In addition to the assets returned by Switzerland, USD 33 Million from Cayman Islands in 2001, USD 20 Million from the United States in 2004 and the balance from other jurisdictions were returned.

management of illegally obtained money against the interests of the state.[67] This scenario shows the extent to which bad governance could facilitate financial corruption in the face of an inefficient legal framework.

3.2.3. Philippines

From 1965 to 1986, Ferdinand Marcos served as the President of the Philippines and due to a high level of corruption, he was deposed from power by revolution. Marcos and his family were alleged to have corruptly siphoned USD 5 billion and USD 10 billion from the country's coffers through illegal contracts.[68] Just like the Abacha of Nigeria, Marcos committed several instances of money laundering through numerous illegal financial transactions, such as the privatisation of companies, the awarding of fake contracts to his cohorts, the swindling of public funds, high-class bribery, and the personal use of foreign aid, among others. The corrupt practices were carried out through the assistance of shell companies that invested the sums in real estate in the United States and deposits in various countries using bank accounts with fake names.

At the time Marcos left office, looted USD 356 million was recovered from the Swiss Bank. To this end, the Government of Switzerland returned USD $356 Million Dollars and its interest frozen from the account of Marcos in 2004. This was after a legal tussle where the monies were remitted to the account of the Government of the Philippines.[69] The Swiss authority transferred the fund to an off-budget account known as the 'Agrarian Reform Fund'. This was meant to acquire lands and distribution in line with the Swiss Court decision.[70] Being similar to Nigeria's and Peru's looting situation, corruption among the ruling class was the mitigating factor in the cross-border transfer of the State's funds to the Swiss Bank for personal aggrandisement.

3.2.4. Kazakhstan

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[67] See House of Representatives (Phillipines), 'Full Accounting of Recovered Marcos Money Sought', The Committee of Oversight' [2005](13) (69) 1. Available at: <https://www.congress.gov.ph/committees/commnews_det.php?newsid=420> Accessed 10 June, 2025.

[68] See Press Release by the Philippines Senate President and Liberal Party Head Franklin M. Drilon titled 'Drilon Surprised Over Nograles Reaction on COA Report' 2006, 2. Available at:< https://www..senate.gov.ph/press_release/2006/0328_drilon1.asp > Accessed 10 June, 2025.

[69] See ATF 123 – 11-95, Cons. 7C.

[70] A. Bisssenova, 'Swiss to Hand Over USD 84 Million in Blocked Assets to Kazakhstan'. Available at:< <https://www..cacianalyst.org/?q=taxonomy/term/4&page=5> Accessed June 9, 2025.

Through an investigation of the US Foreign Corrupt Practices Act in 1999 involving a US citizen on illicit payments to Kazakh officials up to USD 84 million, stashed into a Swiss Bank, Mr James Griffen's corrupt financial practices were uncovered, and he was indicted in 2003. Griffen allegedly made corrupt lodgments of funds in the 1990s for US Petroleum Companies to get concessions for oil resources. The said sum was recovered by the Swiss bank. [71]The recovery and restitution of Kazakhstan's stolen assets emanated from a criminal judicial process by the Geneva Judicial authorities on alleged money laundering. It was a call for assistance by the United States Government on a suspected bribery case. The country suspected that the huge sum in the Swiss Bank was a bribe paid by some US citizens, i.e. American Oil Companies, to Kazakh officials in order to acquire oil rights in Kazakhstan.[72] In 2011, the sum of approximately USD 84 million was confiscated via legal proceedings. It was frozen through a mutual agreement between the US and the Geneva Government.

This case differs from others, as can be seen in Peru, Nigeria and the Philippines, as the money in question does not belong to the State Government but to US Citizen Oil Investors. This made the modality of restitution special and different. In 2003, negotiations on restitution started between the US and Geneva on the modality of repatriation that would be all-inclusive and wholesome. In 2007, an agreement was reached among the US, Switzerland, Kazakhstan, and the World Bank that the said frozen fund be managed through an NGO, 'Bota Kazakh Child and Youth Development Foundation', for Projects beneficial to the town of Kazakh.[73] This restitution process is tripartite, as it involves monitoring by the requested country, the requesting country, and the World Bank.

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[71] S. Howald, 'Money from Corrupt Deals for Kazakh Children', Finanzplatz information 3/2008, available at <https://www..ationfinanzplatz.c/pdf/AFP_Kazakh_0908.pdf > on 12 June 2025. Also reported in the World Bank's News Release No. 2008/07/KZ (Kazakhstan BOTA Foundation Established), Avilable at: <https://www.siteresources.worldbank.org/INTKAZAKHASTAN/News%20> Accesed 8 June, 2025.

[72] See Evaluation of the BOTA Foundation's programmes, Kazakhstan, Summary notes 1,2,3, Oxford Policy Management, February, 2013 at 1-2. These are the Conditional Cash Transfer (CCT) scheme that provides regular cash transfer to poor households, the Tuition Assistance Program (TAP) that disburses grant for Higher Education and the Social Services Programme (SSP) that Offers funds to Local NGOs to support vulnerable groups.

[73] G. F. Zinkernagel and K. Attisso, 'Returning Stolen Assets – Learning from Past Practice: Selected cass, international Centre for Assets Recovery, 6-7.

3.2.5. Angola

The recovered funds of Angola by Switzerland related to two separate cases of fraud. In 2022, Switzerland froze and confiscated assets as part of a criminal investigation. The said looted funds from Angolan Oil Finance were meant to cushion the debt owed to Russia. As the case was struck out due to no irregularities being found, the sum of USD 21 million discovered in the name of a former Angolan official was frozen as they confirmed it to be the Government's corruptly transferred funds. The second matter concerns a money laundering case in which USD 43 million was frozen in 2008.[74] It is important to note that, in the first matter in 2005, the repatriation agreement required that the laundered funds be used for socio-economic purposes and that the Swiss Agency for Development and Cooperation (SDC) should manage the funds. In the 2nd case, the said USD 43 million fund was also to be managed by SDC for humanitarian purposes.

3.2.6. Lessons Revealed

Looted funds and collaboration between countries to recover the same are vital means of stalling corruption and promoting development. Consensus is emerging that corruption distorts and stifles the economy, while repatriation of stolen funds back to the victim country enhances development. The funds recovered from Abacha, Montesinos, Marcos, Kazakhstan, and Angola were returned to the country's economy for developmental projects. The above cases exemplified that where governance and financial public institutions are weak, gaps for corruption are open. It uncovered that countries with significant financial strength should, as a matter of urgency, take all necessary legal and administrative steps in repatriating illicitly padded funds in their territories. The foregoing procedure is wholesome as it uncovers the negative impact of illicit financial transfer, corruption and economic mis-governance on state development. However, the wholesome usage of the fund repatriated through SDC or the World Bank is an issue. When not properly managed, it goes a long way in diffusing the efforts of the process.

To this end, as the United Nations Convention on Corruption adduces that the government should restitute unconditionally the money recovered and repatriated back to its coffers. The didactic

[74] Compare World Bank; World Bank Releases Report on Returned Abacha Funds' Dec. 22 2006, 1-2; The World Bank released a report that concluded that funds from the Nigerian people by former dictator Sani Abacha, and repatriated to Nigeria from Switzerland under an agreement signed in 2005, were utilized for development of projects in five sectors that will help Nigeria move towards Millennium Development Goals.

lessons learnt from the highlight of the above cases show that the institutional schemes for recovery, repatriation and restitution are subjective as they vary from country to country. The nature of the financial crime is reputable among the factors for consideration. In Nigeria, Abacha's loot emanated from misappropriation by cornering the people's funds. In the case of Kazakhstan, bribery is an indicator of cross-border corruption, as it is a process meant for corporate settlement of illicit oil transactions. Angola's case centres on fund diversion meant to settle national debt, while in Peru, Montesinos national bribery scandal exposed the corrupt money laundering criminal act. Ferdinand Marcos of the Philippines stemmed from the corrupt siphoning of the country's funds. The four countries analysed succeeded in the recovery of stolen and looted assets, vide a good institutional and legal framework in relation to international cooperation with Switzerland. This shows the latter has a friendly approach to the return of fraudulent assets of other nations' funds stashed in its banks. The four countries had constructive dialogues with Switzerland to achieve the reparation of the assets siphoned by corrupt persons. To this end, Switzerland's Foreign Policy aims at the promotion of financial integrity and transparency. By experience, it has developed a couple of cooperation frameworks relating to the recovery and return of assets stolen from various nations. This is demonstrated in the efforts and positive effects of the recovery and return of corrupt frozen funds of many countries through international cooperation. Explicitly, returned confiscated assets from the above countries were geared towards the sustainable development of the owner nation through controlled measures of legal frameworks on restitution. In all, the major lesson is the efficient collaborative enforcement of institutions and policies prohibiting cross-border transfer of illicit funds.

4.0. Challenges to the Enforcement of Institutional Frameworks against Cross-Border Transfer of Corrupt Assets

The emerging issues bordering on cross-border money laundering set out the critical importance of states' cooperation so as to avert the legal and financial constraints. A lot of impediments stand against the implementation of legal frameworks prohibiting illicit cash transfers across country borders. They are discussed hereunder:

A. Poor Public Accountability

Lack of transparency and accountability breeds corruption. The above facilitates the looting of public funds for personal use, accentuates bad governance, erodes financial openness, and erodes resource monitoring, checks and balances, among others. To this end, corrupt officials and activities of public funds are enabled through the creation of pseudo contracts, siphoning of government funds abroad, among others. The embezzled funds are exported through weak financial landscapes, which allow the perpetrators a huge cut of the proceeds. Local and international banking institutions exploit gaps in the financial frameworks to assist cross-border transfer of funds. A close perusal of how assets were stolen by Marcos, Abacha and Montesinos shows similarities and dissimilarities in the gaps existing in the various countries' financial institutions. Abacha and Marcos cleared the country's treasury of foreign currency stolen from the Central Bank.[75] It can be deduced that in Nigeria and Peru, the system of monitoring is weaker than in the Philippines, which made Montesinos need the settlement of human resources enablers. Also, in Peru, most theft of funds activities were carried out by bribery of public and private stakeholders, especially as regards contracts of purchase of Military or Police equipment. In all, corrupt proceeds were exported by laundering to other countries because of porous public accountability measures. The above goes a long way in handicapping the strength of legal frameworks against the international transfer of looted assets.

B. Weak Cross-Border International Cooperation

Effective international cooperation on cross-border financial processes is vital to the fight against money laundering. When the above is weak or has gaps to be easily exploited, stolen public funds would be hatched and exported successfully. Hence, if the political will to go after stolen assets is weak, the essence of cooperation is defeated. Ineffective cross-border information sharing among nations destroys the ability to track and combat these financial crimes. To this end, when countries are not members of networks against money laundering, cooperation would be awash.[76] This is

[75] See Global Forum on Asset Recovery 'Principles for the Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (GFAR Principles) (2017) 1-2. Available at: < https://star.worldbank.org/gfar-principles> Accessed 10 June, 2025.

[76] See Article 55, paragraph 1 UNCAC: 'Each State Party in order to provide mutual legal assistance pursuant to Article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall in, accordance with its domestic law: (…) (b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law'

because cooperation enhances information and policy exchanges on money laundering as it aids the detection and investigation of cross-border thefts. These networks allow for the exchange of evidence, the extradition of culprits, and the easy recovery and repatriation of laundered funds. It also helps in the apprehension of suspects hiding in another country. Nigeria, Peru, the Philippines, Kazakhstan and Angola are comparatively successful stories on stolen fund recovery and repatriation from Switzerland.

The Government of the Philippines has made strenuous efforts for close to a decade to recover part of Marcos' looted assets. The case studies of Abacha and Montesinos came in the form of investigative stress years for asset recovery. There is little to be achieved without adequate collaboration and goodwill of Nations. The relevance of international cooperation could be illustrated in the eighteen years of the Philippines' struggle to recover Marcos' looted assets against the initial three and five years it took Peru. There was an initial cooperation synergy with the Swiss Authorities among the cases of Nigeria, Peru, Philippines, Kazakhstan and Angola, which was instrumental to the recovery, repatriation and restitution of the looted funds. If cooperation and collaboration of nations are weak, it corrodes the potency of institutional frameworks put in place to fight cross-border financial flows.

C. Lack of Public Sector Integrity

Public officers are key players in the enabling of cross-border illicit fund transfers. Asset detection scheme is a relevant tool in enthroning accountability among Public Sector Officials. The dearth of Public Sector integrity could be enhanced by poor regulation of assets. In Nigeria, the primary legislation is the Code of Conduct Bureau. Before the coming of the Freedom of Information Act 2011, the declaration of assets and verification mechanisms of the Code of Conduct Bureau were private.[77] But now it is a public assessment process in Nigeria. The essence of the above is that officials should not use their positions to amass personal wealth. A weak asset declaration mechanism for public officials and porous enforcement of punitive regulations for their breach corrodes the financial integrity of governmental officials. The above played major roles in the cross-border transfer of illicit funds as exemplified in Nigeria, Peru, the Philippines and Angola.

[77] On Code of Conduct Bureau see the Constitution of the Federation of Nigeria, Paragraph 8, Part I of the Fifth Schedule. Compare FACTF,'Financial Integrity for Sustenable Development' [2018] 1-2 accessed from <https://www.uploads-ssl.webflow.com/5e0bd9eda846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel-Report.pdf> on 8 June 2025.

Lack of public sector integrity enhances bad governance, which engenders the ruling class to look for means of cornering public funds through the manipulation of gaps in the financial institutional frameworks.

D. Poor Regulation and Supervision of Financial Bodies

Financial bodies play major roles in the stalling of the laundering of illicit funds and assets. As financial crimes soar, regulators are to grow with the system by acquiring specialised knowledge and skills in the fight against the menace. The capacity of Agencies such as the Central Bank in Nigeria is empowered in order to curb the poor regulatory and supervisory roles of financial institutions. When the regulatory and supervisory schemes or systems are weak, it affects compliance programmes, customer due diligence, and financial cooperation among nations. Funds are laundered abroad by exploiting a weak financial system. Without advanced technological transaction monitoring, the detection of suspicious financial activities and regulatory roles would militate against IFF by nations.

Non-adequate and independent intelligence Units in Nigeria, Peru, Angola and the Philippines orchestrated the non-detection and prevention of money laundering of corrupt assets. The impediments of resource constraints, compliance breaches and lacunas existing within the financial intelligence schemes of countries are contributory factors for cross-border corruption. Also, poor funding and non-technological development of processes foster cross-border financial corruption.[78] The foregoing affects the comprehensive financial data accumulation, transfers of huge assets abroad by opening doors to the emasculation of the potency of the financial regulatory legal frameworks.

E. Weak Monitoring Systems on Asset Recovery and Repatriation

Asset recovery and repatriation of cross-border money are crucial anti-corruption Schemes. When the systems are poorly managed, it destroys international alliances, transparency, accountability and overall efficiency of anti-corruption processes. Nigeria is one of the most popular African Countries globally prone to the recovery of looted funds abroad. General Abacha's case in Nigeria has been a locus classicus in Africa. The process started in 1998 and continued up to 2018. Switzerland returned over USD $320 million of Abacha's loot to Nigeria. To this end, the long

[78] L. S. Sanusi, 'The Nigerian Banking Industry : What Went Wrong and the Way Forward'[2010] 1-2. Available at:< https:www.cbn.gov.ng/out/2010/GOV-Convocational-lectureBUK-2010.pdf> Accessed 13 June 2025.

straddle of investigation in two different jurisdictions, legal system incompatibilities between common law and civil law countries, due diligence with confiscation processes, and differences in the burden of proof in financial matters are stiff implications.[79] Bringing corrupt leader to account for illicitly laundered funds in their home countries appears difficult because of porous investigative and enforcement mechanisms. Due to their special status in their country, they may influence investigative and prosecutorial processes. Worst when they are in a corrupt country, with weak monitoring systems, the recovered funds can be further looted via mismanagement of resources and inadequate enforcement of the financial legal frameworks.

F. Limited Resources for Enforcement Regulators

This is another crucial factor engendering money laundering. Regulatory bodies in some developing countries, like the EFCC, ICPC, and the Police of Nigeria, often face the problem of resource constraints.[80] The above could be in finance and human development, which pose challenges to the effective monitoring and enforcement of anti-money laundering compliance. They need to renew inter-agency collaboration with similar bodies across the globe in the recovery of evidence, repatriation and restitution of stolen funds, among others. Inadequate awareness and training are mitigating factors to money laundering, as many Governments and institutions are ignorant of anti-money laundering compliance procedures orchestrated by poor funding. There is no financial regulatory legal framework that can be properly enforced in the face of poor funding.

G. Complex and Corporate Secrecy Policies

Investigations can be stifled by the policy of international banking secrecy. This has been an obstacle to international collaboration and cooperation to fight illicit fund transfers, as it is against all criminal investigative processes in corruption-related matters. To succeed in anti-money laundering related matters, financial institutions' policy on secrecy should not inhibit the enforcement of institutional frameworks prohibiting cross-border financial corruption. Hence, secrecy laws should not be a basis for refusal of cooperation on financial corruption cases that

[79] L. S. Sanusi, 'Banking Reform and its Impact on the Nigerian Economy' 2012, 1. Available at:< <https://www..bis.org/review/r/20320d.pdf> Accesed 9 June, 2025.

[80] C. Sechadri, 'Tracking Corruption by Improving Financial Inclusion in Nigeria,'2023, . Aailable at <https://www..rusi.org/explore-our-research/publications/commentary/tackling-corruption-improving-financial-inclusion-nigeria> Accesed 9 June, 2025.

touch different jurisdictions. The concealment should not be geared towards shielding a suspected financial criminal.[81] Good governance entails transparency and integrity in financial management. Whenever a signal of a corrupt asset or financial mismanagement comes up, the accounts allegedly utilised should be put on red alert. Harping on the policy of bank secrecy gives leeway for more fraud and boosts the shielding of culprits. This is because most of the illicit cross-border cases come through the web of complex financial transactions veiled as legitimate in order to evade the potency of the regulatory framework.

H. Non-Ratification of United Nations Convention against Corruption

Countries need to ratify and adopt international financial regulatory frameworks for the monitoring of corrupt assets across borders. The Convention is a global instrument in addressing issues bordering on cross-country corrupt proceeds, and its non-ratification by many countries is a setback to the crusade against the menace.[82] This is because the provisions of the Convention do not bind countries to ratify it yet. In concert, countries are to adopt the above Convention by domesticating it and properly enforcing it within their jurisdictions, as cross-border transactions are international in nature and involve many foreign jurisdictions.

5. Conclusion

The recovery of assets looted by the former and late Nigerian Military Junta, General Sani Abacha, was a lengthy and complicated process in Switzerland. Although the funds were recovered from several sources, this article focused solely on Switzerland. The loot prompted an international money-laundering cooperation that lasted for decades. In 2005-2006, the repatriated sum was lodged into the country's treasury budget.[83] However, the latest recovered looted sums in 2020

[81] V. Prusa, 'The Lost Potential of Nigeria's Asset Recovery: How is the Recovery of Stolen Assets Sabotaged by Politicians? 2021, 1-2. Available at <https://www.cifar.eu/the-lost-potential-of-nigeria-assets-recovery-how-is-the-recovery—of-stolen-assets-sabotaged-by-politicians> Accesed 8 June, 2025.

[82] For the signature and ratification status of the United Nations Convention Against Corruption, see <htpps:www.unodc.org/unodc/en/treaties/CAC/Signatories.html> accessed on 7 June 2025. Note that the below countries signed and ratified the convention. Nigeria signed on 9 December 2023 and ratified 14 December 2014, Philippines, 9 Dec 2003 and 8 November 2006, Peru 10 December and 29 August 2006, Angola 10 December 2003 and 29 August 2006, Switzerland 10 December 2003 and 24 September 2009.

[83] See Abacha Loot: Breakdown of Recovered Funds from 1998 – 2022: (1). $750 million – recovered from Abacha family in 1998 (2). $64 million – recovered from Switzerland in 2000 (3). $1.2 billion – recovered from Abacha family in 2002 (4). $88 million – recovered from Switzerland in 2003 (5). $160 million – recovered from Jersey in 2003 (6). $461.3 million – recovered from Switzerland in 2005 (7). $227 million recovered from Liechtensten in 2014 (8). $322 million – recovered from Switzerland in 2018 (9). $311.7 million – recovered from Jersey in

through the Swiss, Nigeria and World Bank Tripartite Memorandum of Agreement on Monitoring the Modalities of the fund disbursement were for capital projects. Looking at the institutional frameworks for recovering the loot and the impediments to the effective and efficient application of the recovered loot, this paper highlighted salient challenges standing in the way of the above enforcement of the frameworks. Having looked at other countries' similar situations, such as Peru, Philippines, Kazakhstan, and Angola, it made recommendations requisite to ameliorate the challenges to the enforcement of legal frameworks against illicit cross-border transfer of state assets.

Drawing from the above discussion and conclusion, the following are the recommendations:

- Establishment of a robust anti-money laundering legal framework is capable of addressing the evolving challenges experienced in global asset recovery.
- Lack of strict adherence to asset declaration requirements by public officials should be re-examined.
- The regulatory mechanisms on international collaboration on global asset recovery should be strengthened to enhance efficiency.
- Issues of favouritism and lack of political will of the President should be addressed, as this contributes to the challenges in the international asset recovery agenda of any country.
- Lack of domestication of the United Nations Convention against Corruption in most countries' national laws has remained an impediment to the realisation of the good intentions of the Convention.
- Any other policy in this regard should be designed to be result-oriented.

Conflict of Interest

The author declares no conflict of interest.

2020 (10). $23 million – recovered from Ukin 2022. Source Premium Time Inforgraphics, 'Break Down of the Total Recovery from Abacha Loot Between 1998 and 2022 (26 August 2022).

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Jurisdictional Competence of Courts and Contradictions in the ECOWAS Legal Order: Seeking Broader Access and Rights of Establishment

Julius Edobor *
Ifeoma Eucharia Edobor*

Abstract

A fundamental contradiction within the ECOWAS legal order is that individuals, who are key drivers of regional integration, lack the legal standing to access the ECOWAS Court of Justice to enforce their establishment rights. But as it currently stands, and by implication, a corporate body cannot rely on the provisions of the ECOWAS Supplementary Protocol, particularly article 10(d), to litigate any violation against its right of establishment. Although the ECOWAS Court's jurisdiction was expanded in 2005, individuals still lack the means to enforce their establishment rights. Against this background, however, this study challenges the position of ECOWAS in this regard by investigating whether any other means of protection are available to ECOWAS citizens (including corporations) who may venture into another ECOWAS State for establishment. This study adopts a comparative approach to examine the East African Community framework's stance on the protection of individuals' economic rights within its jurisdiction. The study concludes that Community citizens should have broader access to the ECOWAS Court to enforce establishment rights.

Keywords

ECOWAS; Establishment; Individuals; Member-State; Jurisdiction.

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* LLB, LL.M, PhD – Senior Lecturer, Department of Public Law, Faculty of Law, University of Benin, Nigeria; Email: Julius.edobor@uniben.edu

BSc (Public Administration), MSc (Public Administration), PhD Student, Department of Public Administration, Faculty of Social Sciences, University of Benin; Email: ifyedobor@gmail.com

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1. Introduction

The ECOWAS Community Court of Justice (ECCtJ) was established in 1991 by Protocol A/P. I/7/91 on the Community Court of Justice.[1] The Court was opened to individuals by a Supplementary Protocol A/SP.1/01/05 in 2005.[2] It cannot be overemphasised that individuals do not have the competence to seize the jurisdiction of the ECCtJ to challenge the violation of their rights of establishment before the ECCtJ. This right of establishment is the third phase of the Protocol on Free Movement of Persons, Residence and Establishment. It grants citizens who are nationals of an ECOWAS member State the right to settle, work, and operate businesses in another member State other than their own. In a similar vein, the right of establishment, as part of the ECOWAS legal instrument, also aims to foster economic integration by promoting investment and enabling citizens to contribute to regional prosperity.

Accordingly, the individual may rely on the domestic laws of the violating State and/or on the ECOWAS instruments for the protection of their rights as a foreign investor in a member State. By so doing, such an individual is expected to utilise such legal means as afforded by the Community instruments in ensuring the safety and protection of their investment(s) from the wrongful act of the host State in which such investments are made. This rests on the firm conviction that free movement of persons, goods, services, and capital not only constitutes the fundamental basis for enhancing and consolidating the dividends of economic integration under the ECOWAS mechanism but also is capable of influencing the harmonious development of socio-economic and cultural activities within the sub-region.[3] Thus, Article 59 of the ECOWAS Revised Treaty provides that:

> Citizens of the Community shall have the right of entry, residence, and establishment, and Member States undertake to recognise these rights of Community Citizens in their territories in accordance with

1 Protocol A/P.1/7/91.

2 Supplementary Protocol A/SP.1/01/05 Amending the Preamble and articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice.

3 J. O. Bolarinwa, "The ECOWAS Free Movement Protocol: Obstacle or Driver of Regional Integration?", available at https://journals.sagepub.com/doi/abs/10.1177/0975087815580731. Accessed 28 May, 2025. Also see J. Agyei and E. Clottey, "Operationalising ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration", (2013), available at http://www.imi.ox.ac.uk/pdfs/rese arch. Accessed 28 May, 2025.

> the provisions of the Protocols relating thereto; and Member States undertake to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights referred to in paragraph 1 of this Article.

This was reaffirmed in Article 2 of the ECOWAS Protocol on Free Movement of Persons, Residence and Establishment, which afforded Community citizens the right to enter, reside, and establish in the territory of member States.

Despite these provisions, some instances show that the implementation of the rights under the Protocol has been riddled with allegations of abuses by members of the Community.[4] Furthermore, despite the protocol's entry into force, the Community has faced several challenges, including border checks, inadequate means of judicial remedies, particularly when individual rights are violated, and these challenges continue to exist.[5] This has resulted in severe harassment and extortion of money from travellers by security personnel at the numerous checkpoints.[6] The perennial allegations by ECOWAS citizens who engage in business activities are that host States have not complied with the intent of the ECOWAS instruments, thereby subjecting their investments to various abuses. At the moment, the situation is such that, except for claims of human rights, such individuals are prevented from pursuing their claims under the judicial mechanism of ECOWAS. An example of these allegations was clearly tested in the case of *Chude Mba v. Republic of Ghana*,[7] where the applicant had sought an order from the High Court of Ghana to enforce a default judgment obtained from the ECOWAS Court of Justice, seeking $800,000 award as damages and N500,000 as costs after successfully suing the Government of Ghana for alleged violations of his fundamental human rights. The main issue for determination was whether the Court could recognise and enforce the order or judgment of the ECOWAS Court. The Ghana

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[4] E.S. Nwauche, "Enforcing ECOWAS Law in West African National Courts", *Journal of African Law*, 55, 2, (2011), 181-202. Also see R. I. Onwuka, "The ECOWAS Protocol on the Free Movement of Persons: A Threat to Nigerian Security?", *African Affairs*, 81, (1982), 193; A. A. Afolayan, "Immigration and Expulsion of ECOWAS Aliens in Nigeria", *International Immigration Review*, 22, (1988), 4; M. L. Brown, "Nigeria and the ECOWAS Protocol on Free Movement and Residence", *The Journal of Modern African Studies*, 27, (1989), 251.

[5] J. Agyei and E. Clottey, "Operationalising ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration", available at: http://www.imi.ox.ac.uk/pdfs/CLOTTEY%20and%20AGYEI.pdf. Accessed 30 May, 2025

[6] *Ibid*.

[7] An application was brought to enforce the judgment of the Community Court of Justice of the ECOWAS against the Republic of Ghana; High Court unreported suit No. HRCM/ 376/15,2/2/2016

High Court held that the statutory regime for enforcing foreign judgments in Ghana operates based on reciprocity and that the ECOWAS Court is not stated as one of the courts to which the legislation applies.

The individuals' lack of competence before the ECOWAS Court in holding member States accountable for their treaty obligations is really worrisome, given the fundamental role of the right of individuals in this regard in the effective actualisation or fulfilment of the integration objectives as envisaged by the ECOWAS laws. However, having eliminated the possibility of individuals taking advantage of ECOWAS legal instruments, the next ambit of this study shall discuss in detail the possible means of redress of violations of their ECOWAS instruments' rights by a member State that are available to individuals. These may include: assertion of the ECOWAS Treaty Rights of the Individual before the ECOWAS Court; the Scope of the Jurisdiction of the ECOWAS Court under the Supplementary Act on Investment and/or through the means of diplomatic protection.

2. Assertion of the ECOWAS Treaty Rights of the Individual before the ECOWAS Court

At the moment, as experiences and practice have shown, of all the institutional frameworks of ECOWAS, only the ECCtJ has direct contact with the pains and grievances of ECOWAS citizens, notwithstanding those certain roles, such as that of enforcement of judgment, that have been assigned to other institutions of ECOWAS.

2.1 ECOWAS Community Court of Justice

Suffice to mention that some institutions of ECOWAS (like the Authority of Heads of State and Government (AHSG), ECOWAS Council of Ministers (the Council), the ECOWAS Secretariat) all play peripheral roles in the protection of the rights of the individual; however, none provides direct judicial access like the court.

Under the ECOWAS, as already mentioned above, the protocol of the Court recognises only a limited jurisdiction in favour of individuals in that the right of individuals to seize the jurisdiction of the Court is limited to human rights cases. Incidentally, though human rights are recognised in Article 4(g) of the Revised Treaty, the catalogue of rights relied upon is external to ECOWAS, and it has no bill of rights of its own. The Court thus basically relies on the African Charter and the International Covenant on Human Rights cases, which are the only sphere of the court's

jurisdiction in which individuals can directly participate. It is thus obvious from the provisions of Article 9(3) of the Court's Protocol that only States can litigate ECOWAS treaties, even those treaty provisions that were crafted to benefit individuals.[8]

About the appropriate plaintiff in rights action before the ECOWAS Community Court of Justice (ECCtJ), the Court has repeatedly held that only natural persons can institute actions for human rights violations, to the exclusion of artificial beings such as companies; though Non-Governmental Organisations (NGOs) may sue, but they can only make human rights claims on behalf of natural persons.[9] It is, however, unlikely that this line of reasoning would be adopted by the Court to exclude an artificial entity seeking to implement treaty rights or protect its investments from expropriation. For instance, there have been a few cases in which the treaty rights of a company have been couched as human rights to bring the same within the restrictive jurisdiction of the Court respecting the litigation of treaty rights. A good example of this is the case of *Ocean King (Nigeria) Ltd v. Republic of Senegal*.[10] In this case, the plaintiff (Ocean King) is a corporate entity registered under the laws of the Federal Republic of Nigeria, while the defendant (Republic of Senegal) is a member State of ECOWAS. The major issue before the Court was the determination of the plaintiff's *locus standi* before the Court against an act or inaction of a community official (Senegal) which violates the right of individuals or corporate bodies as encapsulated in article 9 of the Protocol relating to the Community Court of Justice, 1991, as amended by article 3 of the Supplementary Protocol of 2005. It was also contended that the provisions of Article 10(c) of the Protocol, as amended, granted the right of access to individuals and corporate bodies to approach the Community Court for the determination of an act or inaction of a community official which violates the rights of individuals or corporate bodies.

The ECCtJ, in its judgment, held that the acts of officials of the defendant are not subject to Article 10(c) of the Protocol as amended. The Court further held that Article 10(d) of the amended Protocol is not open to corporate bodies as victims of rights abuse and that it is only open to natural persons. The ECCtJ took a similar view in *Ebrimah Menneh v. Republic of the Gambia.*[11] and

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8 *Ibid*, article 59.

9 See *Social-Economic rights and Accountability Project (SERAP) v. Federal Republic of Nigeria*, Suit No: ECW/CCJ/APP/08/09; Judgment No: ECW/CCJ/APP/07/10.

10 Suit No. ECW/CCJ/APP/05/08; Judgment No: ECW/CCJ/JUD/07/11.

11 Suit No. ECW/CCJ/APP/04/07.

Hadijatou Mani v. Republic of Niger.[12] It affirmed that it is only individuals who can approach the Court in matters of rights abuses, to the exclusion of corporate bodies. In consequence, it is imperative to argue that the word "individuals" as used in the Supplementary Protocol can be given a flexible interpretation to include artificial legal persons. As it currently stands, and by implication, a corporate body cannot therefore rely on the provisions of Article 10(d) of the Supplementary Protocol.

Nwoke has, however, criticised this interpretation of the Court on the ground that it is a "narrow interpretation of the provisions of the said article".[13] Thus, the argument in this study is also in tandem with Nwoke's submission in that most of the corporate entities registered in member States' territories fall into the scope of individuals, albeit artificial beings. After all, in corporate law, a company takes the nationality of its place of registration.

In addition, one may not agree that, within ECOWAS, corporations can never utilise ECOWAS legal instruments to assert their rights when they are violated. Thus, by virtue of the provisions of Article 9(6) of the ECOWAS Protocol (as amended), the Court has jurisdiction "over any matter provided for in an agreement where the parties provide that the Court shall settle disputes arising from the agreement." The plain meaning of this provision was further clarified in *Petrostar (Nigeria) Ltd v. Blackberry (Nigeria) Ltd*,[14] where the ECOWAS Court was willing to determine a contractual dispute between two private parties based on a forum-selection clause in their agreement, as envisaged by the ECOWAS legal order. It is apt to state that the ECCtJ, through its Protocol, provides a forum for the settlement of investors' (corporate entities) contractual disputes against any violation. It is therefore our argument that, relying on the ECOWAS law's provisions, these individuals who are also Community citizens should be afforded avenues for the protection of their establishments, and this can only be possible if corporate entities are given the necessary access before the ECOWAS Court to litigate against the violation of their establishments.

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[12] Suit No. ECW/CCJ/APP/08/07.

[13] F. C. Nwoke, "Alternative Platform for the Protection of Human Rights in the West African Sub-region: ECOWAS Court in Perspective", Being a Paper Delivered at the 17th Justice Idigbe Memorial Lecture, University of Benin, Nigeria, on 18th June, 2919.

[14] ECW/CCJ/JUD/05/11.

3. The Scope of the Jurisdiction of the ECOWAS Court under the Supplementary Act on Investment

The jurisdiction granted to the ECCtJ under article 9 of the Court's Protocol, however, should not be read in isolation; rather, it should be read in conjunction with article 10 of the Protocol, which specifically sets out who can bring claims before the ECOWAS Court. Thus, it provides that access to the Court is only granted to individuals and corporate bodies in proceedings for the determination of an act or inaction of a Community official who violates the rights of the individuals or corporate bodies, and to individuals on application for relief for the violation of their human rights.[15] In other cases, ECOWAS member States and organs of the Community can bring claims, and officials of the Community have access to the ECOWAS Court in employment disputes.[16] However, individuals and corporations otherwise lack such power, except that member States' national courts can request preliminary rulings from the ECOWAS Court on the interpretation of the ECOWAS legal instruments.[17]

It is obvious from the provisions of Article 9 of the Protocol Relating to the Community Court of Justice[18] that the ECCtJ has the exclusive competence of interpreting the provisions of the Revised Treaty and other Protocols or Regulations of the Community. On this score, the ECCtJ, in the determination of disputes before it, defines the clear meaning of Community law of ECOWAS to the exclusion of any other court or tribunal. In other words, the drafters of the ECOWAS Treaty, in their own wisdom, envisaged that issues of Community law may arise in suits pending before a national court of a member State, and where that occurs, the national court may *suo moto* or on an application of any of the parties refer the provisions of the Community law to be interpreted to the ECCtJ.[19] Therefore, it appears that the essence of the said provision is to ensure uniformity in the interpretation and application of Community law.

[15] *Ibid*, article 10(d).
[16] *Ibid*, article 10(e).
[17] *Ibid*, article 10(f).
[18] A/P.1/7/91 as amended by the Supplementary Protocol A/SP.1/01/05.
[19] *Ibid*, Article 10(h).

3.1 The ECOWAS Referral Procedure

The referral procedure is contained in Article 10(f) of the 1991 Protocol relating to the Court of Justice as amended by the Supplementary Protocol, 2005[20] (relating to access to the Court), which, by implication, arguably defines the relationship between the Court of Justice and the national courts of member States. Accordingly, article 10(f) provides thus:

> …where in any action before a court of a Member State, an issue arises as to the interpretation of a provision of the Treaty, or other protocols or regulations, the national court may, on its own or at the request of any of the parties to the action, refer the issue to the Court for interpretation.

In effect, this provision can presumably mean that Community laws can have direct application before national courts of member States and that the rules of the Community Court are directly applicable to national courts in utilising the power of preliminary reference. It has thus been argued that the power of reference in article 10(f) of the Court's Protocol is an interlocutory request from a national court of a member State of ECOWAS to the Community Court, which has been created under ECOWAS law to give an authoritative interpretation of ECOWAS legal instruments.[21] The preliminary reference procedure (Referral Procedure) was introduced into the legal text of ECOWAS in 2005, when the 1991 Protocol[22] that established the ECOWAS Court was amended.[23]

Thus, while the expansion of the jurisdiction of the ECOWAS Court to cover complaints of human rights violations has contributed in no small measure to increasing the docket of the Court since 2005, the preliminary ruling procedure has remained unutilised.[24] For instance, as of August 2025, no single referral has been received by the Court from any member State's national court. The implication of this is that the ECOWAS Court has been forced to shift its focus from the economic

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[20] Supplementary Protocol A/SP.1/01/05.

[21] Enabulele and Bazuaye, *Basic Topics in Public International Law*, 436, *(*arguing that 'Article 10(f) does not entitle a national court to refer an interpretation of national law to the Court…, a national court may make a reference where the application of a particularly national law is likely to be incompatible with laws of the Community').

[22] Protocol A/P.1/7/91 on the Community Court of Justice (Adopted on 6 July, 1991).

[23] Article 10(f) of the 2005 Supplementary Protocol A/SP.1/01/05 Amending the preamble and Articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and paragraph 4 of the English Version of the said Protocol (2005 Supplementary Protocol).

[24] *Ibid*.

integration agenda as envisaged by ECOWAS to the field of human rights, and has thus earned a reputation as a formidable human rights Court in the West African Sub-region.[25]

In consequence, the ECOWAS, as a Sub-regional organisation, should be appreciated for not only giving effect to the establishment of the ECCtJ, but also moving from State-centric postures by giving Community citizens direct access to the human rights mandate. In the same vein, notwithstanding this obvious fact, it is unfortunate that the ECCtJ's competence over human rights cases is too restrictive, particularly as it fails to recognise and protect individuals' rights of establishment. This was exemplified in the case of *Afolabi v. Federal Republic of Nigeria*.[26] Obviously, it appears on its surface that the Supplementary Protocol has cured the actual problem that bedevilled this case of 2005; however, the fact remains that the plaintiff in the case was denied access to the court and consequently the justice he deserved. This typifies the extent to which the rights of citizens of the Community to entry, residence, and establishment in the territories of member States, as made possible by ECOWAS laws, are still threatened, including issues pertinent to the jurisdiction of the Court to hear cases bordering on the violation of rights created in ECOWAS Treaties as against those created in human rights forms.[27] However, the inability of the individuals to have direct access to the ECCtJ to litigate their economic rights when violated by member States remains a major bane within the Sub-region.

3.2 The ECOWAS Referral Procedure Juxtaposed with the European Union

By way of a Comparative approach, the preliminary reference procedure in the European Union (EU) has been a tremendous success, earning it the label of the "keystone" of the EU legal system.[28] It is indisputable that it is through the preliminary referral procedure and the willingness of national courts to bring cases before the Court of Justice of the European Union (CJEU) that the legal and political content of the European Community has gradually, but fundamentally, been

[25] *Ibid*.
[26] ECW/CCJ/JUD/01/04 of April 27, 2004.
[27] This gap and its consequences are addressed in details in chapter four.
[28] J. Krommendijk, "The Preliminary Reference Dance Between the Court of Justice of the European Union (CJEU) and the Dutch Court in the Field of Migration," *European Journal of Legal Studies* (2018), 101, 103.

transformed.[29] In this guise, Krommendijk posits that the success of the procedure and the consequent impact that the CJEU has made is "as a result of the cooperation of national courts."[30]

It suffices that, on one hand, the import of this has given the ECOWAS Court an exclusive role to give a preliminary ruling as to the interpretation or validity of the Treaty provisions or Community Acts, while the national courts, on the other hand, shall apply the ruling to the facts of the case(s) presented. In other words, the ECOWAS Court's role is to interpret, while the national court's role is to apply what has been interpreted.

The problems identified above, specifically the lack of application of ECOWAS laws in the municipal realm of member States and by municipal courts, highlight the inability of ECOWAS citizens to employ municipal mechanisms for the protection of their ECOWAS rights, including the right to freely move without hindrances, right to reside in any member State of their choice as Community citizens, and fundamentally, the right to establish businesses. This obviously renders Community citizens, who are supposedly the prime movers of integration, incapable of enforcing their rights against violations and abuses, particularly by host member States where their businesses are situated. In consequence, it would appear that individuals must look up to general international law and ECOWAS laws for protection in the event of a violation of their ECOWAS treaty rights. Against this backdrop, this study now turns to the relevant international mechanisms in the following parts.

4. International Law Mechanisms against Violation of Treaty Rights

In ECOWAS, apart from the important obligations undertaken by member States to respect the provisions of the Treaty by implementing the same in their municipal realm and also respecting the judgments or decisions of any of the organs of ECOWAS, they have a responsibility towards their nationals to protect them from the failure of any other member State in which they reside and do business to uphold the Treaty towards them. As shall be discussed in this study, this obligation towards nationals is expressly recognised in the Protocol of the Court. One of the ways a State

[29] M. Wind, D.F. Martisen and G.P. Rotger, "The uneven Legal Push for Europe: Questioning Variation When National Courts go to Europe", *European Union Politics* (2009), 10, 64.

[30] Krommendijk, "The Preliminary Reference Dance Between the CJEU and Dutch Courts", 103.

fulfils this obligation to its nationals, and indeed the one that is of interest to us here, is diplomatic protection, to which we now turn.

4.1 Diplomatic Protection

Historically, despite the fact that individuals hold a unique position within the framework of the municipal legal system, under the traditional international law theory, the roles of individuals were not contemplated.[31] Thus, international law was originally a system of rules governing the relationship between sovereign States only.[32] The individuals were not regarded as subjects[33] of international law, and as such, could not institute international claims or actions.[34] There was no particular need to consider the legal consequences of injury to aliens at that time.[35] Aliens (individuals) had no means of addressing injuries they sustained in host States and had little or no alternative to turning to their States of nationality for protection.[36]

However, the contention that individuals were not regarded as subjects of international law was later subjected to scrutiny and was opposed on the ground that the individuals under the international law theory should rather be seen as "beneficiaries" of international law policies rather than as objects.[37] It is further argued that the individuals should be referred to as "participants or non-State actors" in international law.[38]

Under diplomatic protection, it is believed that the defaulting State is expected to incur responsibilities because it fails to treat the foreign national in accordance with the minimum

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[31] A. Cassese, *International Law*, 2nd Edition, (Oxford: Oxford University Press, 2005), 78.

[32] *Ibid*.

[33] The term "legal subject" means any being that can have rights, duties and status in law. A legal subject is any entity recognized by law as possessing such status. See for details, D.S.P. Conje and J. Heaton, *The South African Law of Persons*, 2nd ed. (United Kingdom: LExisNExis Butterworths, 2003), 1.

[34] *Ibid*.

[35] See H. Lauterpacht, "Allegiance, Diplomatic Protection and Criminal Jurisdiction over Aliens", *Camb. L.J*. (1945-47), 330 at 334. Each would acknowledge the domestic structures and religious vocations of its fellow states and refrain from challenging their existence". However, the most recent trend in the transformation of world order is often depicted as a shift from Westphalia to Post-Westphalia.

[36] E. Borchard, "Protection of Citizens Abroad and Change of Original Nationality," *Yale Law Journal* 43, No. 4 (1934), 359-393.

[37] D.P. O'Connell, *International Law*, 2nd ed. (United Kingdom: Stevens, 1970), 106, at 107.

[38] N. Gal-Or, "Desirability of enhanced Legal position of Non-State Actors," available at https://ghum.kuleuven.be/ggs/events/2009/03_2009/seminar_nsa_26_28March2009.pdf. Accessed 16 December, 2019.

standard of justice required for the treatment of aliens.[39] The corollary of this is that a State exercising diplomatic protection is actually exercising its own right, "the right to ensure in the person of its nationals respect for international law."[40] This right is necessarily limited to intervention on behalf of its own nationals because, in the absence of a special agreement, it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection, and it is a part of the function of diplomatic protection that the right to take up a claim and to ensure respect for the rules of international law must be envisaged.[41]

Under customary international law, for an action of diplomatic protection to succeed, the foreign State is required to prove that: (1) the injured person is its national;[42] (2) all local remedies have been exhausted in the respondent State (this is not required in ECOWAS);[43] (3) The conduct of the host State violates the rules of international law relating to the treatment of aliens[44] And (4) the claim by a State on behalf of its national may be dismissed or declared inadmissible if there is no effective and genuine link between the national concerned and the State that seeks to protect him.[45]

Consequently, Article 4 of the Draft Articles further states that:

> For diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalisation, succession of States, or in any other manner, not inconsistent with international law.

Article 7 deals with a situation where a State of nationality of a dual national seeks to exercise diplomatic protection against the other State of nationality. Under the article, such exercise of diplomatic protection is possible only where the claiming State was predominant both at the time of the injury and at the time of the official presentation of the claim."[46] This appears to emphasise

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[39] The minimum international standard of justice was the standard of treatment recognized by the international community to be acceptable for the treatment of foreigners.
[40] *Panevezys-Saldutiskis Railway Case, Estonia v. Lithuania)*, Series A/B, No. 76, (1939), 65.
[41] *Ibid*.
[42] ILC's Draft Articles on Diplomatic Protection, 2006, article 3.
[43] *Ibid*, article 14.
[44] *Ibid*, article 1.
[45] See *Nottebohm Case (Liechtenstein v. Guatemala)*, I. C. J. Jidgment of April 6, 1955.
[46] See Article 7 of the ILC Draft Articles on Diplomatic Protection – Multiple nationality and claim against a State of nationality.

a point where the requirement of the bond of nationality meets or conflicts with the genuine link principle as exemplified in the case of *Liechtenstein v. Guatemala*[47] *(the Nottebohm case)*.

In ECOWAS, the provisions of Article 9(3) of the Protocol of the Court (as amended) give strong impetus to the exploration of the diplomatic protection angle, given that only States can litigate the ECOWAS instruments for and on behalf of their citizens, either before the ECOWAS Court or the International Court of Justice. The usefulness of diplomatic protection under the current legal setup of ECOWAS lies in the fact that it is increasingly becoming commonplace that investors in States other than their own are at the receiving end of attacks by the governments and private individuals and/or groups. It is the reluctance of member States to honour this Treaty limitation that has created a situation where such victims are left without a remedy and exacerbates the risk of venturing under the ECOWAS Treaty regime.

This is particularly so as the concept of diplomatic protection does not impose a duty on their home States to seek the diplomatic protection of their injured nationals. Instead, the State has the discretion to use this tool. As was also reiterated by the International Law Commission in articles 2 and 19 of its Draft Articles on Diplomatic Protection,[48] Only the State has the choice whether to seek redress for the wrong against the offending State, and the State has the international right to protect its citizens, whether by espousing a claim for monetary compensation or by making diplomatic submissions to ensure its citizens' physical safety or repatriation.

4.2 Summary of Some Selected Judicial Decisions on Diplomatic Protection of Individuals' Right of Establishment

The position of diplomatic protection on the rights of aliens in the host State territory has been judicially tested in cases such as the *Nottebohm Case*.[49] The *Barcelona Traction, Light and Power Company, Limited*,[50] and the *Ahmadou Sadio Diallo*[51], which concerned the issues of investments or other economic activities.

[47] I. C. J. Jidgment of April 6, 1955.
[48] Draft Article 2 is founded on the notion that diplomatic protection involves an invocation—at the State level—by a State of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a national of the former State.
[49] I.C.J. 1955, I.C.J., 4 (1955).
[50] I.C.J. Reports (1964).
[51] I.C.J. Reports (2007).

a. The Ahmadou Sadio Diallo's Case

In the case of the *Republic of Guinea v. The Democratic Republic of Congo (DRC)*,[52] the Republic of Guinea brought a claim against the Democratic Republic of Congo (DRC) in an exercise of diplomatic protection on behalf of Mr Diallo, a Guinean national, who moved to the DRC between 1960 and 1971. Ten years later, in 1974, Mr Diallo established an import-export company, Africom Zaire. In 1979, Mr Diallo also took part in the founding of Africontainers-Zaire, a private limited liability company specialising in the containerised transport of goods. Mr Diallo was a shareholder in both Companies.

On 31 October 1995, the DRC Prime Minister issued an expulsion decree against Mr Diallo on the allegation that his presence and personal conduct have breached the DRC public order, especially in the economic, financial, and monetary areas, and continues to do so. With a view to the implementation of the said decree, Mr Diallo was arrested and detained on two occasions for 72 days before he was expelled to Guinea.

Consequently, Guinea instituted proceedings against the DRC before the International Court of Justice (ICJ) and sought to exercise diplomatic protection on behalf of Mr Diallo in the following respects: his rights as an individual; his direct rights as a shareholder in the Companies; and the rights of the Companies by "substitution" (as a shareholder in a foreign "victim" company). Thereafter, Guinea submitted that the Court, relying on its previous decision in the *Barcelona Traction* case, held that the right of diplomatic protection of a company belongs to its national State, which allows for the protection of shareholders by their own national State through "substitution".

The ICJ upheld the DRC's objection to admissibility and held that Guinea was without standing to offer Mr Diallo diplomatic protection regarding the alleged unlawful acts of the DRC against the rights of the Companies by "substitution". Notwithstanding, the Court held further that Guinea's claim was admissible as regards the protection of Mr Diallo's rights as an individual, and his direct rights as *a* shareholder in the Companies.[53] The Court declared Diallo's claims based on violation of his rights, including loss of property, admissible in part and eventually rejected

[52] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, I.C.J Reports 2007.
[53] *Ibid*, (Judgment on the merit of 30 November, 2010)

Guinea's claim on the merits mainly because the claims were not sufficiently substantiated on the ground that only States of the nationality of the corporation could exercise diplomatic protection over the rights of the corporation.

b. The Barcelona Traction's Case

On the protection of corporations, *Barcelona Traction* came to the fore.[54] In its judgment, the ICJ rejected the request of the Belgian government and declared Belgium as having no legal standing to exercise diplomatic protection of shareholders in a Canadian company in respect of measures taken against that company in Spain, and as such, has no recognised rights to exercise diplomatic protection for its nationals. Moreover, the Court stated that Belgium couldn't sue Spain by itself as the Barcelona Company was ruled by Canadian law and there was no legal interest in the matter for Belgium to bring a claim. The Court accordingly rejected Belgium's claim.

Regrettably, flowing from the facts of the above cases, it is argued that the issue as to whether the individuals have any right to diplomatic protection from their States of nationality depends almost entirely on national State discretion. Thus, under the domestic law of most States, individuals or enterprises had no more than a legitimate expectation that the State of nationality would take up a claim on their behalf.

c. The Nottebohm Case

In addition, *the Nottebohm* case deals with the principle of effective nationality. The ICJ in this case asserts diplomatic protection in respect of Nottebohm on the ground that the bond of attachment with Liechtenstein and naturalisation were not based on any genuine connection (GENUINE LINK) with the country. The Court proceeded that it is a well-known principle that nationality is within the jurisdiction of the State which confers it; a State cannot claim that the rules it has laid down are entitled to be recognised by another State, unless it has acted in conformity with the general aim of making the nationality granted in accordance with an effective link between the State and the individual. For these reasons, the Court held that Liechtenstein's claim was inadmissible for failure to prove any genuine link with Nottebohm and the judgment was given in favour of Guatemala.

[54] I.C.J. Reports, (1964).

4.3 The Implication of the Nationality of Claims on the Rights of Individuals

The power to admit an individual by a State, thereby granting it the nationality, rests upon that State, and obviously creates a link between the individual and the State concerned. Although there must exist some requirements upon which nationality could be granted, such conditions or requirements rest on the granting State. Also, its admissibility must align with the rule of customary international law, which has constantly been that the applicant's State must establish a legal interest in instituting the claim, and that the said legal interest is fundamentally provided by the allegedly injured individual(s) being a national of the applicant's State. This is encapsulated in the well-established legal doctrine usually applied by international courts and tribunals that the bond of nationality is the basis of diplomatic protection.[55]

By implication, it therefore means that if a State in principle has the exclusive competence to regulate questions of nationality by its own legislation without interference by other States, it is difficult to see on what ground its interpretation and application of this same legislation could be open to challenge by other States. However, such a challenge is possible in theory if that legislation or the application thereof is inconsistent with any international law standard. For instance, for that to succeed, it would have also been proved beyond any doubt whether the authorities granting it have applied their local laws in a manner consistent with the provisions of that same local law.[56] In the *Nottebohm* case, for instance, although the Respondent (Guatemala) contested the invalidity of the legal act of naturalisation by Nottebohm under the Liechtenstein national law, it is, however, our argument that the burden of proving whether the said naturalisation was genuine or not should have been shifted to Guatemala in proving non-compliance with the Liechtenstein national law. This argument is also supported by the express provision of Article 1 of the *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 1930, in the following words:

> It is for each State to determine under its law who are its nationals.
> Other States shall recognise this law in so far as it is consistent with

[55] See *Nottebohm Case (Liechtenstein v. Guatemala)*, I. C. J. Judgment of April 6, 1955; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, I.C.J Reports 2007; the *Barcelona Traction, Light and Power Company, Limited*, I.C.J. Reports, (1964).

[56] See the dissenting Opinions of Judge Klaestad and Judge Read.

> international conventions, international custom, and the principles of law, generally recognised about nationality.[57]

In applying the above rule, it would result that Liechtenstein had the exclusive right to determine under its own law that Mr Nottebohm was its national and that Guatemala must also recognise the Liechtenstein law in this regard, in so far as it is consistent with international conventions and the principle of law generally recognised, about nationality.[58] Better still, the above argument further implies that diplomatic protection is rarely suitable for affording adequate protection of rights and interests involving international economic activities, and it is, therefore, our view that there is a need to assess alternative models.

In the same vein, under ECOWAS, article 9(3) of the Protocol of the ECOWAS Court (as amended) gives member States the right to litigate the provisions of the Treaty only on behalf of their nationals. Thus, article 9(3) of the 1991 Protocol (as amended) states that:

> Member States may, on behalf of their nationals, institute proceedings against another Member State or an institution of the Community, relating to the interpretation and application of the provisions of the Treaty, after attempts to settle the dispute amicably have failed.

Thus, an important element of the Supplementary Protocol is that it took into cognisance the recognition that the ECOWAS integration was not possible without a strong protection of human rights. The integration policies envisaged by the Community emphasise the need for Community citizens to have access to redress their rights when violated by member States. As one of the core objectives of the ECOWAS, Article 4(g) of the Revised Treaty emphasises the "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights". This commitment to the enforcement of human rights was fulfilled in the Supplementary Protocol of the ECCtJ, by reason of which individuals can now enforce their rights before the ECCtJ by direct action.[59] However, despite the above

[57] The Convention on Certain Questions Relating to the Conflict of Nationalist Law was a League of Nations' Convention adopted during the League of Nations Codification Conference, 1930 in The Hague.
[58] See generally, the Dissenting Opinion of Judge Read in the Nottebohm Case.
[59] See Enabulele, "Supranationality of ECOWAS and the Community Legal Order", 11.

provision, it appears that the challenges in enforcing ECOWAS Court decisions remain a bane to the actualisation of the ECOWAS mandate. Thus, the ECCtJ was established to perform adjudicatory purposes assigned to it, irrespective of the member States and the institutions of the Community.[60] More to this, decisions of the Court are in the real sense not directly enforceable in member States national courts. This was clearly tested in the case of *Chude Mba v. Republic of Ghana*,[61] where the Ghanaian High Court held that the statutory regime for enforcing foreign judgments in Ghana operates based on reciprocity and that the ECOWAS Court is not stated as one of the courts to which the legislation applies. Thus, the decision of the case highlights how the work of the ECOWAS Court could be undermined when the critical enforcement mechanism is not available in member States. The effect of the ECOWAS Court's decisions has only become one of moral persuasion with no practical value to the party that sought and obtained such relief from the Court.

5. Individuals' Rights of Establishment in ECOWAS Juxtaposed with the East African Community (EAC)

Within this ambit, this study briefly examined the available mechanisms within the East African Community (EAC), a selected case study, for the protection of individuals' rights within its domain, with a view to establishing a comparative perspective.

5.1 The East African Community

The Treaty Establishing the East African Community (EAC Treaty) made a deliberate effort to hinge the achievement of its integration objectives on a set of principles that include adherence to the principles of good governance, democracy, rule of law, and respect for human rights.[62] By virtue of the provisions of articles 6(d) and 7(2) of the EAC Treaty, the EAC Partner States agreed a set of fundamental and operational principles, such as the principles of good governance, democracy and the rule of law, gender equality, as well as the recognition, promotion and

[60] Article 15(3) of ECOWAS Treaty, 1975.

[61] An application was brought to enforce the judgment of the Community Court of Justice of the ECOWAS against the Republic of Ghana; High Court unreported suit No. HRCM/ 376/15,2/2/2016

[62] V. Lando, "The Domestic Impact of the Decisions of the East African Court of Justice," *African Human Right Law Journal*, 18, No. 2 (2018). EAC integration is to be achieved through four phases: a customs union, the protocol for which entered into force on 1 January 2005; a common market, which is still under implementation, although the protocol establishing it came into force on 1 July 2010; a monetary union, the protocol establishing which was signed on 30 November 2013; and a political federation.

protection of human and peoples' rights in recognition of the principles enshrined under the African Charter on Human and Peoples' Rights (ACHPR).[63]

Thus, for proper interpretation and application of the EAC Treaty, the East African Court of Justice (EACJ) was established under Article 9(e) of the EAC Treaty as the Community's judicial arm, whose main function is to ensure adherence to law in the interpretation and application of the Treaty.[64] The EACJ jurisdiction covers both contentious and non-contentious matters relating to the interpretation and application of the EAC Treaty.[65] Thus, the Court may be seised of a matter through references by natural and juristic persons residing within the Community, EAC Partner States, and the EAC Secretary-General.[66] The EAC Council may also seek advisory opinions from the Court under Article 14 of the Treaty.

Although, the EACJ does not have express jurisdiction to hear and determine human rights cases as provided under article 27 of the EAC Treaty, which is not the major focus of this study, but this study is mainly concerned with the judicial protection guaranteed and offered by the EAC legal order to Community citizens that can provide them avenue, either individually or collectively, to enforce their rights or seek redress through litigation in the Community court.[67] Again, we are also concerned with the jurisdiction of the EACJ to interpret Community legal orders at the suit of

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[63] See Article 6(d) of the Eat African Community (EAC) Treaty. The provisions relating to human rights in the EAC legal framework are found in Articles 3(3)(b), 5(1) and 5(3) (f); Articles 120, 123, and 124, as well as Articles 146 and 147 of the EAC Treaty.

[64] The EACJ is different in composition and jurisdiction from the defunct East African Court of Appeal which was a Court of Appeal from decisions of the national courts on both civil and criminal matters, except constitutional matters and the offence of treason in Tanzania. See H.R. Nsekela, "Overview of the East African Court of Justice", being a Paper Presented at the Sensitisation workshop on the Role of the EACJ in the EAC Integration, in Kampala, Uganda, 1-2 November, 2011. Available at http://www.eacj.org/docs/overvew-of-the-EACJ.pdf. Accessed 5 December, 2014.

[65] The EACJ is also empowered to determine disputes between the EAC and its employees with regard to their terms and conditions for employment and arbitrate disputes pursuant to an arbitration clause contained in a contact agreement which confers such jurisdiction on the Court. For detailed provisions on the mandate and functions of the Court are highlighted in Articles 23-47 of the EAC Treaty. Also available at http://www.eacj.org/establishment.php. Accessed 5 December, 2019.

[66] Articles 28-32 of the EAC Treaty.

[67] It should be noted that the status of an "EAC citizen" is not yet formally recognized, despite the availability of EAC passports for nationals of EAC Partner states. Therefore, the use of the phrase "EAC citizen" in this study shall be understood as meaning "a national of a Partner State recognised under the laws governing citizenship in the Partner State", this being the interpretation provided under Article 1 of the Protocol on EAC Common Market.

individuals, particularly as it relates to the rights of free movement, residence, and establishment of Community citizens within the Partner States.[68]

It is axiomatic that the free movement of persons, residence, and establishment is also one of the core tenets of the EAC common market, making it seem like a purely economic project. The free movement of persons within the region is thus one of the key cooperation elements of the Community. Indeed, by virtue of the provisions of Article 104 of the EAC Treaty, the EAC Partner States undertook to achieve the free movement of persons, labour and services, and the right of establishment and residence of their citizens in the EAC region.[69]

Having noted that the EAC is a supranational organisation which has also recognised the free movement, residence, and establishment of Community citizens as one of its core tenets, it is, however, expedient to argue that, for the EACJ to be seen as an integrating institution, it has to facilitate such an integration process through the recognition of the rights of individuals.[70] This position was brought to bear in *Nyang v. Attorney-General of Kenya*,[71] where the court had to consider preliminary objections from defendants alleging a lack of *locus standi* by individuals to institute an action before the EACJ. In that case, the court held that individuals have access to the

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[68] See Articles 6, 7, 10, 13 and 14 of the Protocol on the Establishment of the East African Community Common Market.

[69] Treaty Establishing The East African Community, Article 104(1) and (2), (noting that, "For purposes of paragraph 1 of this Article, the Partner States agree to conclude a Protocol on the Free Movement of Persons, Labour, Services and Right of Establishment and Residence at a time to be determined by the Council"); Its preamble also affirming that, '…with a view to realising a fast and balanced regional development are resolved to creating an enabling environment in all the Partner States in order to attract investments and allow the private sector and civil society to play a leading role in the socio-economic development activities through the development of sound macro-economic and sectorial policies and their efficient management while taking cognisance of the developments in the world economy… and as may be decided by the Partner States, the development of technological capacity for improved productivity.'

[70] Ruhangisa, "Judicial Protection under EAC Law", 244; LR Helfer "Sub-regional courts in Africa: Litigating the hybrid right to free movement" (2015, iCourts working paper series no 32), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2653124. Accessed 17 June, 2020; A. Possi, "The East African Court of Justice: Towards Effective Protection of Human Rights in the East African Community," *Max Planck Yearbook of United Nations Law*, 17, (2013), 1 at 19.

[71] *Peter Anyang' Nyong'o and Others v. Attorney-General of Kenya and Others*, REF No 1 of 2006 & Appeal No. 1 of 2009, (the Court declaring that, 'the Rules of election applied by Kenya National Assembly infringed article 50 of the Treaty establishing EAC to the extent of their inconsistency with it. It was declared further that the National Assembly of Kenya did not undertake an election within the meaning of Article 50 of the Treaty, and that the election rules in issue infringe the same Article. The Court ordered that the claimants have costs of the reference'); *Christopher Mtikila v. Attorney-General of Tanzania and Others*, Ref No. 2 of 2007.

court by virtue of the provisions of Article 30 of the EAC Treaty,[72] which is a basic right to the regional justice mechanism enabling the people to 'participate in protecting the integrity of the Treaty.'[73] It was concluded that an infringement on the rights of citizens of the EAC by the Partner States or their institutions is therefore actionable in the EACJ.[74]

Under the ECOWAS legal order, Article 88 of the ECOWAS Revised Treaty clearly defines the legal standing of the Community with respect to member States, to the effect that the Community shall have international legal personality. By implication, Member States are enjoined to respect and honour the treaty provisions to actualise Community objectives. Also relevant are the provisions under articles 5 and 59 of the Treaty, which conceptualise the right of entry, residence, and establishment. By virtue of this, Member States are obliged to recognise the rights of Community citizens in their territories with due regard to the provisions of the protocol relating thereto.[75]

In the same vein, Article 9(6) of the Treaty provides that decisions of the Authority of Heads of State and Government "shall automatically enter into force sixty (60) days after the date of their publication in the Official Journal of the Community." In effect, the above provision envisaged the direct applicability of Community laws in member States.[76]

In view of the above discourse, it is imperative to state that the EACJ, however, from its interpretative tenet, has so far been courageous in its rights-oriented approach to interpretation, especially when compared to the ECOWAS Court, though such jurisdiction has not been explicitly conferred by its legal order. In effect, this might just be the key to realising a progressive transformation in the rationalisation of the right of establishment within the EAC.

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[72] Treaty Establishing the East African Community, Article 30 provides that, "Subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty."

[73] *East African Law Society and 4 Others v. Attorney-General of Kenya and 3 Others*, Ref No. 3 of 2007, (the Court noting that, '… the lack of people's participation in the amendment process constituted infringement of principles and provisions in articles 5 (3) (g) and 7 (1) (a). The Court further held that the purpose for which Article 26 was amended constituted infringement of article 38 (2) of the Treaty.

[74] Ruhangisa, "Judicial Protection under EAC Law," 244.

[75] Article 59(1) of the Revised Treaty.

[76] Nwauche, "Enforcing ECOWAS Law in West African National Courts", 181.

On this note, it is therefore hoped that the ECOWAS Court will someday be courageous enough, just as its EACJ counterpart, to boldly give clear interpretative meanings to the ECOWAS laws.

6. Concluding Remarks

It is, moreover, sad that ECOWAS citizens who venture into another ECOWAS State, pursuant to the provisions of the rights on free movement, residence, and establishment, are in no better position than individuals were in those days when only States could bring international claims. This is because the ECOWAS Court, to which the individuals would have resorted, lacks jurisdiction in this respect. Therefore, just as in those days, ECOWAS citizens whose rights to movement, residence, and establishment have been violated by another member State will have no other alternative but to look to their State of nationality for protection.

In effect, international investors are left virtually defenceless in protecting their foreign investments, with the knowledge that international law will not permit a shareholder's national State to exercise diplomatic protection in a situation of a triangular relationship between the States of incorporation, the place of investment, and the shareholder's State, as demonstrated in the *Barcelona Traction Case*. The investor will become discouraged from placing capital abroad through the medium of a multi-national corporation not domiciled in his State. It is the stand of this study to reason therefore that ECOWAS, with an international legal regime, should seek to ensure that States are held accountable when the rights of individuals are violated, particularly their rights of establishment within the sub-region.

Conclusively, although it has been established that individuals do not have the competence to litigate economic rights before the ECOWAS Court. However, an understanding of the status of ECOWAS instruments within the municipal sphere of member States became necessary in determining whether individuals will be able to assert ECOWAS laws within the municipal realm of the States. From the above discussions, it is the study’s submission that, since the ECOWAS Treaty was couched in a manner that benefits individuals, it is definitive of the intention of the drafters to make it applicable in the municipal laws of member States, especially through the referral procedure.

Conflict of Interest

The author declares no conflict of interest.

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Urban Land Lease Regime and Informal Settlements in Ethiopia: Reconciling Law with Human Rights

Alemayehu Gonfa Jabessa*

Abstract

This article critically analyses Ethiopia's urban land lease law, constitutional provisions, municipal regulations, and policy frameworks governing urban land rights and informal settlements, identifying key gaps and proposing reforms consistent with international housing rights laws and standards. Drawing on a doctrinal analysis of national urban land laws, it argues that Ethiopia lacks both procedural safeguards and substantive protections for informal settlers facing eviction. Although the urban land lease law allows for the regularisation of informal settlements, legal gaps and institutional capacity constraints have limited implementation, and informal residents continue to experience forced evictions without due process. National laws exclude informal tenure from security-of-tenure guarantees, leaving informal residents unprotected despite Ethiopia's housing rights commitments under international human rights instruments. Informal settlements in Ethiopia are the direct consequence of state failures in land administration, housing provision, and urban planning. The government's practice of forced evictions without due process breaches its housing rights obligations, fails to meet rights-based standards, undermines tenure security, and excludes informal settlements from urban planning. The article recommends comprehensive legal reform, including a judicial review standard, to strengthen judicial oversight, participatory planning, and equitable access to land and housing. Thus, the article highlights the need to align Ethiopia's laws and practices with international human rights and urban development standards, focusing on strengthening urban governance, ensuring inclusive planning, protecting housing rights, and fostering just and sustainable urban development.

Keywords

Urban land rights; Informal settlements; Human rights law; Housing rights; Ethiopia

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*LLB. LL.M, MA, PhD Candidate, Assist. Professor, Bule Hora Univesrity, School of Law, Bule Hora, Ethiopia, Email-tadego2010@gmail.com ORCID No. 0009-0008-2075-6805

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1. Introduction

Urbanisation is a permanent global trend, reshaping social, economic, and spatial landscapes worldwide, with more than half the population now urban and projections reaching 70% by 2050.[1] As cities expand, one of the most persistent consequences is the rapid growth of informal settlements. Currently, a projected one billion people, approximately one-quarter of the world's urban population, live in slums and informal settlements, particularly across the Global South.[2] Governance failures have left many urban communities without secure tenure and other essential services, reflecting deep structural inequalities in access to land and housing, and undermining the realisation of the human right to adequate housing.[3] The proliferation of informal settlements is not confined to a single region; it is characteristic of broader urban governance challenges, in which inadequate planning, weak regulatory frameworks, and limited institutional capacity fail to ensure secure tenure, basic services, and equitable access to housing.[4] This is a widespread phenomenon affecting cities in Latin America, Asia, and especially Sub-Saharan Africa.[5] When the land administration authority fails to provide for the housing needs of the community as a whole, squatter settlements may arise.[6]

The emergence of informal settlements is strictly linked to systemic failures in land administration and urban governance.[7] When governments are unable to supply sufficient serviced land or affordable housing to meet the needs of rapidly growing urban populations, residents often resort to occupying public land, engaging in informal land markets, or resorting to unauthorised

[1] United Nations, World Urbanization Prospects: The 2018 Revision, Department of Economic and Social Affairs, Population Division, 2019; World Bank, Urban Development Overview, Washington, DC: World Bank, 2020; OECD, Cities in the World: A New Perspective on Urbanization, Paris: OECD Publishing, 2021; UN-Habitat, World Cities Report 2022: Envisaging the Future of Cities, Nairobi: UN-Habitat, 2022.

[2] The Shift: The Right to Housing for Residents of Informal Settlements, International Development Research Centre, P. 2

[3] UN-Habitat, World Cities Report: Envisaging the Future of Cities, Nairobi: UN-Habitat, 2022.

[4] Supra note, no. 1.

[5] Michael Oloyede, 'Determinants of Informal Settlement Expansion in Sub-Saharan African Cities: The Case of Lokoja, Nigeria', 2019.

[6] Zelalem Tekalign and Kirubakaran A., 'The Social Determinants and Impact of Squatter Settlement on the Delivery of Infrastructure Among Urban Squatters: The Cases of Some Select Woredas of Ilu Aba Bora Zone, Oromia Regional State, Ethiopia', Anthropo-Indialogs Vol. 1 no. 1, 2021.

[7] Ibid

construction.[8] High population growth, rural-to-urban migration, and the limited capacity of states to enforce planning standards or regulate land allocation further accelerate the expansion of unplanned settlements[9]. Although the specific drivers vary across countries, the underlying pattern is consistent. Informal settlements arise where formal systems fail to provide equitable access to land and housing.[10]

Ethiopia exemplifies these global dynamics. Over the past two decades, the country has experienced rapid urbanisation, particularly in Addis Ababa, *Sheger*, and other cities, with unprecedented expansion.[11] Yet the supply of affordable housing has not kept pace with demand. Formal rental markets remain limited, construction costs are high, and state-led housing programs have reached only a segment of low-income residents.[12] As a result, many urban dwellers turn to informal land transactions or occupy open public land on the urban periphery as a practical, though legally insecure, solution to their housing needs.[13] Despite government initiatives aimed at curbing informal settlements, they continue to grow due to inconsistent urban planning, weak land administration, and limited institutional capacity.

The legal and policy response to informal settlements in Ethiopia has been characterised by tension and inconsistency. State authorities frequently rely on expropriation laws and urban land lease regulations to justify demolitions and evictions, often without compensation, adequate notice, consultation, or resettlement. These practices raise serious concerns under international human rights law. The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Ethiopia is a party, stipulates that evictions must not render individuals homeless or expose

[8] Jemal Abagissa, 'Informal Settlements in Addis Ababa: Extent, Challenges and Measures Taken', Journal of Public Administration, Finance and Law Issue 15, 2019.

[9] Ibid.

[10] Degu B., Melesse A. and Jafri S, 'Causes and Remedy of Squatting in Burayu Town, Ethiopia', Developing Country Studies, Vol.4, No.11, 2014.

[11] Jemal Abagisa, (2019), supra note, no. 8.

[12] Matsumoto, T., and Crook, J., *Sustainable and Inclusive Housing in Ethiopia: A Policy Assessment, Coalition for Urban Transitions*, (2021).

[13] Akirso, N. A., 'Exploring Causes and Consequences of Squatter Settlement in Jimma Town, Oromia Regional State, Ethiopia', International Journal of Sociology and Anthropology, 13(2), 2021, PP. 58–63.

them to further rights violations.[14] Except in narrowly defined circumstances, forced evictions are incompatible with international human rights standards. Yet in Ethiopia, the absence of legal recognition for informal tenure and the lack of procedural safeguards leave informal settlers highly vulnerable to arbitrary eviction.

The prevailing scholarship on Ethiopia's urban land governance tends to examine either the legal framework governing land administration or the human rights implications of forced evictions. Limited attention has been given to the intersection of these domains, specifically to how national land laws align with or conflict with Ethiopia's obligations under international and regional human rights instruments. This gap is significant, as the tension between legality and human rights lies at the heart of contemporary urban governance challenges in the country.

This article seeks to address this gap by critically examining Ethiopia's constitutional, legislative, and policy frameworks governing urban land rights and informal settlements. The article aims to analyse how Ethiopian laws govern urban land and informal settlements, and to identify gaps, inconsistencies, and tensions between national laws and international human rights protections. It also proposes legal and policy reforms that reconcile Ethiopia's urban land governance with human rights principles, ensuring equitable treatment and security of tenure for informal settlers.

2. Research Methodology

This article employs a doctrinal legal research methodology, which is appropriate for analysing the content, structure, and coherence of Ethiopia's legal framework on urban land and informal settlements. By examining primary national legal instruments, including the 1995 Constitution, the Urban Land Lease Proclamation No. 721/2011, and the Expropriation Proclamation No. 1161/2019, alongside international and regional human rights frameworks such as the ICESCR, the African Charter on Human and Peoples' Rights, UN-Habitat guidelines, General Comments, and relevant jurisprudence, the research situates domestic law within its broader normative obligations. This approach ensures a systematic evaluation of how Ethiopia's laws align with international standards on housing rights and tenure security.

[14] International Covenant on Economic, Social and Cultural Rights (hereafter called ICESCR), Article 11(1); UN Committee Economic Social and Cultural Rights (hereafter called CESCR), General Comment No. 7: The Right to Adequate Housing: Forced Evictions), para. 16.

Comparative and gap analyses are used to identify inconsistencies and tensions between national legislation and human rights protections, highlighting areas where Ethiopia's framework falls short of its commitments. Normative legal analysis complements this by moving beyond description to develop policy-oriented recommendations, grounded in international best practices. This combination of doctrinal, comparative, and normative methods is justified as it not only exposes structural weaknesses in Ethiopia's urban land governance but also provides a principled foundation for proposing reforms that advance equity, tenure security, and compliance with human rights obligations.

3. Conceptual Framework: Urban Land Rights and Human Rights

Urban land rights are essential for equitable urban development, as secure tenure reduces vulnerability and enables investment in housing and livelihoods. In Ethiopia and other rapidly urbanising contexts, contested land rights and exclusionary practices have perpetuated poverty and driven the growth of informal settlements.[15] These settlements, often lacking infrastructure and legal recognition, reflect governance failures but also embody community resilience.[16] Scholars emphasise that informal settlements are not only symptoms of weak governance but also spaces of social innovation, underscoring the need for reforms that integrate land rights into inclusive urban planning.[17]

The human rights dimension provides the normative foundation for evaluating land rights and informal settlements. International law affirms the right to adequate housing, protection against forced eviction, and access to basic services as essential to human dignity.[18] Weak governance compromises these rights, leaving residents in precarious conditions.[19] Law and governance therefore act as mediating mechanisms, translating rights into enforceable policies through transparency, participation, and accountability.[20] Embedding human rights principles into governance structures can transform informal settlements into inclusive urban spaces, bridging the

[15] UN-Habitat, Land Governance: A Review and Analysis of Key International Frameworks, 2017.

[16] World Bank, Securing Land Tenure for Urban Development in Africa, 2020.

[17] Payne, G., *Urban Land Tenure Policy Options: Titles or Rights?* (Habitat International, 2001).

[18] United Nations, Universal Declaration of Human Rights (hereafter called UDHR), 1948, Article 25.

[19] Amnesty International, Forced Evictions and Human Rights Violations in Africa's Cities, 2019.

[20] FAO, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, 2012.

gap between normative ideals and practical realities.[21] In Ethiopia, land reform policies have failed to consider the human rights aspects of land use fully.[22] The population has grown manyfold in Ethiopia, and land scarcity is evident throughout the country, yet policy adjustments to land tenure that consider informal settlements remain insignificant.[23]

4. Urban Land Legal Framework in Ethiopia

From the twentieth century to today, in Ethiopia, three land tenure regimes have existed under three distinct political regimes. These were the feudal system of pre-1975, the state-ownership system of 1975-91, and the semi-liberal, market-oriented system from 1991.[24] Before 1975, the country's land tenure system was characterised by a feudalistic nature and landlord-tenant relationships.[25] Although there were many other types of tenure systems practised in different parts of the country.

4.1 During the Imperial Regime

In the feudal regime of Ethiopia, land was controlled by the king and the ruling elites under the land administration system of *rist* in the north and *gult* in the south.[26] In the south, southeast, and west of the country, the traditional lands and territories of several ethnic groups were incorporated under monarchical control and, in due time, redistributed to the nobility and supporters in the *gult* system,[27] either in the form of private, church, or government land.[28] The peasants were allowed to use, rent, and inherit the land for family members, but selling it to non-family members was prohibited; in exchange, peasants were obligated to pay various land-related taxes.[29] Government-owned land was distributed to various people on the condition that they serve the state at different

[21] UN-Habitat, The Right to Adequate Housing, Fact Sheet No. 21, 2014.

[22] Daniel Behailu, *Transfer of Land Rights in Ethiopia towards a Sustainable Policy Framework*, (Eleven International Publishing, 2015), p. 207.

[23] Getachew Diriba, 'A Contribution to the Homegrown Economic Policy Reform to Accelerate Food System Transformation in Ethiopia', Policy Working Paper 03, 2022, p. 11.

[24] M.M. Ahmed, S.K. Ehui, Berhanu Gebremedhin, S. Benin and Amare Teklu, 'Evolution and Technical Efficiency of Land Tenure Systems in Ethiopia, Socio-economic and Policy Research', Working Paper 39, 2002, p. 5.

[25] Zemen Haddis, 'Access to Land and Tenure Security in Ethiopia's Ethnic-Based Administration System', African Journal on Land Policy and Geospatial Sciences, Vol. 5 Issue 3, 2022, P. 522.

[26] Daniel Weldegebriel, *Land Rights in Ethiopia: Ownership, Equity, and Liberty in Land Use Rights*, (FIG Working Week, 2012, p. 2.

[27] Ibid.

[28] M.M. Ahmed, S.K. et. al., supra note, no. 26, p. 24.

[29] Ibid.

levels. The government heavily relied on the land under its control to run the state. Land was also provided to the Church, which was considered a major ally to the imperial power.[30]

Informal settlements in Imperial Ethiopia emerged largely from traditional land tenure systems, *gult*, *rist*, church land, and state land, which restricted access to formal urban land and pushed low-income households into informal arrangements or land occupation.[31] Weak municipal capacity, inconsistent enforcement, and tolerance of informal housing in exchange for *gabbar* further enabled unplanned expansion.[32] Modernisation efforts such as the 1960 Building Proclamation and the 1963 Addis Ababa Master Plan had limited impact due to institutional weaknesses and the absence of affordable housing.[33] Evictions for public projects were often abrupt and uncompensated, displacing residents to new peripheral settlements.[34] Overall, fragmented land systems and ineffective governance entrenched urban informality during the Imperial era.

There were laws and institutions governing urban and rural land under Emperor Haile Selassie, but they were piecemeal and never amounted to a comprehensive land reform. Urban governance and land control were governed by municipal law, such as Proclamation No. 74/1945 to provide for the Control of Municipalities and Townships/1945 and the 1960 Civil Code, which provided general property and expropriation rules. Addis Ababa and other towns operated a permit/old-possession system, administered by municipalities, with expropriation for public purpose recognised in law since the 1908 Addis Ababa Land Charter and refined thereafter. Urban land was privately owned during the imperial regime.

4.2 During the *Derg* Regime

The nationwide reforms of 1975, specifically the Public Ownership of Rural Land Proclamation No. 31/1975 and the Government Ownership of Urban Lands and Extra Houses Proclamation No.

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[30] Zewde, B., *A History of Modern Ethiopia, 1855–1991*, (Boydell and Brewer, August 201), p.7.

[31] Markakis, J. *Ethiopia: The Last Two Frontiers*, (Boydell and Brewer Ltd, Volume 10 of Eastern African studies 2011); Crummey, D. *Land and Society in the Christian Kingdom of Ethiopia*: *from the Thirteenth to the Twentieth Century*, (Urbana : University of Illinois Press, 2000).

[32] Daniel Lirebo, 'An Assessment of the Development and Implementation of Regulations on Informal Settlements: The Case of Addis Ababa City, Ethiopia', (Master Thesis, Addis Ababa University, 2006), p. 53.

[33] The State of African Cities: A framework for Addressing Urban Challenges in Africa, 2008, p. 206.

[34] Richard Pankhurst: *History of Ethiopian Towns from the Mid-Nineteenth Century to 1935*, (Cambridge University Press: 24, 2009).

47/1975, fundamentally altered Ethiopia's agrarian and urban property systems[35] after the fall of the imperial regime. These proclamations abolished the landlord-tenant relationship for rural land and the private land ownership system, confiscated additional houses and urban land from individuals, nationalised additional houses, and restricted transfer rights, leaving citizens with only lifetime use rights under a permit system.[36] While the measures were intended to dismantle feudal landlordism and promote socialist equity, they effectively eliminated private property rights, created a compensation implementation gap, and entrenched state dominance over land.[37] The uncompensated nationalisation of urban land and housing generated enduring tenure insecurity and encouraged illegal land transactions, fostering informal settlements.[38] The state's monopoly over rental and transfer rights, coupled with weak enforcement, undermined trust in governance and widened the gap between law and practice.[39]

Urban land was subject to a state property regime under the Derg government; it could not be transferred by sale, antichresis, mortgage, succession, or any other means, except by inheritance to a spouse or children.[40] Although individuals were denied ownership of land, urban residents were granted lifetime use rights under a permit system, which required them to pay urban land rent[41] and housing tax.[42] Those without land were guaranteed up to 500 square meters for housing,[43] and while they became owners of the houses they constructed, their rights were limited to transferring them by sale, succession, or exchange.[44] Renting out houses or receiving rent was strictly prohibited,[45] as the government was the sole authority permitted to rent properties and collect rent. Over time, informal settlements and illegal land transactions proliferated, prompting the government to recognise self-help housing cooperatives (*kuteba bet*) as a means to mitigate the

[35] Daniel Weldegebriel Ambaye, *Land Rights and Expropriation in Ethiopia*, (Royal Institute of Technology (KTH), 2013), p. 4

[36] Pausewang, S., *The Ethiopian Revolution: Proclamations and Politics of the Derg*, 1983.

[37] Proclamation No. 31/1975, Public Ownership of Rural Land.

[38] Proclamation No. 47/1975, Government Ownership of Urban Lands and Extra Houses.

[39] UN-Habitat, Urban Land Tenure in Ethiopia: Policy and Practice, 2010.

[40] Proclamation No. 47/1975, Article 4(1) and Article 6.

[41] Ibid, Article 9.

[42] Ibid, Article 11(4).

[43] Ibid, Article 5(10).

[44] Ibid, Article 12(1).

[45] Ibid, Article 20(1).

housing shortage.[46] Although the proclamation formally allowed compensation for private houses that had been nationalised,[47] this provision was never implemented in practice. As a result, both individuals and organisations saw their houses nationalised without any compensation, meaning that, in reality, no payments were ever made for the expropriation of additional houses.

These historical policies continue to shape Ethiopia's urban landscape, where informal settlements proliferate, and contemporary land governance struggles to reconcile socialist legacies with global standards of fairness and human rights. International law affirms the right to property and adequate housing, yet the *Derg's* uncompensated confiscation of extra houses contravened these norms.[48] The absence of compensation and restrictions on property use raised significant human rights concerns, particularly regarding fairness and legality.[49] Comparative perspectives highlight that Ethiopia's socialist land policies diverged sharply from international property regimes, which emphasise compensation and protection of tenure security. As a result, the legacy of the *Derg* proclamations remains central to understanding current urban tenure insecurity, informal settlements, and the ongoing challenges of aligning national land governance with international human rights standards.

4.3 Transitional Period

Transitional Government of Ethiopia was established after the collapse of the *Derg* in 1991[50] and confronted the formidable task of redefining land institutions in a post-socialist setting. Although many anticipated a decisive move toward privatisation and land title registration as a means to boost agricultural productivity,[51] the government chose instead to maintain state ownership of land under its 1992 economic policy, a position it upheld until the adoption of a new constitution.[52] The Ethiopian People's Revolutionary Democratic Front (EPRDF), which assumed power, deliberately

[46] Feyera Abdissa and Terefe Degefa, 'Urbanization and Changing Livelihoods: The Case of Farmers' Displacement in the Expansion of Addis Ababa': In, Teller, C. and Hailemariam, A. (eds.), 'Demographic Transition and Development in Africa: The Unique Case of Ethiopia,' (London: Springer, 2011), P. 217.

[47] Proclamation No. 47/1975, Article 18(1).

[48] UDHR, 1948, Article 17.

[49] Amnesty International, Forced Evictions and Housing Rights in Africa's Cities, 2019.

[50] Daniel Weldegebriel, (2013), supra note, no. 35.

[51] Wibke Crewett, Ayalneh Bogale, and Benedikt Korf, 'Land Tenure in Ethiopia Continuity and Change, Shifting Rulers, and the Quest for State Control', CAPRi Working Paper No. 91, 2008, P. 15.

[52] Federal Democratic Republic of Ethiopia, (1993), Urban Lands Lease Holding Proclamation No. 80/1993; Pausewang, S., The Ethiopian Transition and Land Policy, 1994.

preserved the socialist principles of its predecessor, thereby ensuring that public ownership of land remained a deeply contested issue.[53]

The government introduced a significant reform in urban areas: the leasehold system, established in 1993 through Proclamation No. 80/1993.[54] This marked a clear departure from the earlier permit system, as the leasehold framework enabled urban land to be transferred under open tender, with lease rights freely transferable through sale, mortgage, or contribution to share companies (Article 10(1)).[55] While the system was intended to alleviate housing shortages and generate revenue to fund the construction of dwellings, it suffered from a critical weakness: the absence of a firm constitutional foundation. The 1995 Constitution[56] did not explicitly address urban land, leaving the proclamation on uncertain legal ground. Subsequent revisions, including Proclamation No. 272/2002 and later enactments, entrenched the leasehold system but also produced far-reaching socio-economic consequences. Informal settlers and low-income households faced heightened risks of eviction, deepened tenure insecurity, and mounting affordability challenges.[57]

The persistent gap between constitutional legitimacy and practical implementation raised pressing questions about human rights compliance, particularly regarding the fairness of leasehold transfers and the protection of vulnerable urban residents.[58] Thus, Ethiopia's transitional period illustrates a profound shift in land governance: from socialist nationalisation to state-controlled leaseholds. This transformation embedded enduring tensions between constitutional legitimacy, tenure security, and human rights obligations, tensions that continue to shape urban and rural land debates in the country.

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[53] Rahmato, D., *Land Policy in Ethiopia at the Crossroads*, (Forum for Social Studies, 2009); Markakis John, *Ethiopia: The Last Two Frontiers*, (James Currey, 2011); Daniel Behailu, (2015), supra note, no. 18, p.22.

[54] Proclamation No. 80/1993.

[55] Ibid, Article 10(1).

[56] Federal Democratic Republic of Ethiopia, (1995), Proclamation No. 1/1995, Federal Negarit Gazeta, Addis Ababa (hereafter the Constitution).

[57] Federal Democratic Republic of Ethiopia, Urban Land Lease Holding Proclamation *No. 272/2002*.

[58] Rahmato, Dessalegn, *The Peasant and the State: Studies in Agrarian Change in Ethiopia 1950s–2000s*, (Addis Ababa University Press, 2009), p. 104.

4.4 The Current Urban Laws

4.4.1 The FDRE Constitution

The Federal Democratic Republic of Ethiopia Constitution (1995) (hereafter, the Constitution) entrenched state ownership of land[59] as a constitutional principle, thereby perpetuating the socialist legacy of both the *Derg* and the Transitional Government. Land ownership in Ethiopia is not merely a matter of policy but also a constitutional issue due to its profound socio-economic significance. The Constitution empowers the federal government to enact laws governing the utilisation and conservation of land and natural resources, and delegates to regional states the authority to administer land in accordance with federal legislation.[60] The Constitution also guarantees private property rights over the products of labour, creativity, and capital,[61] yet it explicitly vests ownership of all rural and urban land in the State and the people of Ethiopia.[62] This regime of public ownership prohibits the sale or exchange of land, relying instead on use rights, while simultaneously granting the State sweeping authority over allocation and administration.

Although peasants and pastoralists are constitutionally guaranteed access to land without payment and protection against eviction,[63] they do not hold ownership of the land itself. Rather, they retain full rights to immovable property and improvements they create, including the ability to alienate, bequeath, and receive compensation upon expiration of use rights.[64] Expropriation for public purposes is permitted only with advance and commensurate compensation;[65] yet persistent implementation gaps have raised serious concerns regarding procedural fairness and compliance with human rights standards.[66]

The Constitution does not explicitly regulate urban land acquisition or transfer, thereby creating ambiguity regarding urban tenure security. The Constitution grants investors access to land on a

[59] The Constitution Article 40(3).
[60] Ibid, Article 52(6).
[61] Ibid, Article 40(1) (2).
[62] Ibid, Article 40(3).
[63] Ibid, Article 40(4) (5).
[64] Ibid, Article 40(4) (7).
[65] Ibid, Article 40(8).
[66] Rahmato Dessalegn, 2009, supra note, no. 59.

payment basis,[67] has been interpreted by some as extending to urban residents, though its original intent was limited to profit-oriented investment.[68] Some regional constitutions later replaced the term "investor" with "proprietor" to address this gap. This interpretive gap has contributed to significant socio-economic challenges for informal settlements and low-income households,[69] where eviction risks and tenure insecurity remain pressing realities.

From a human rights perspective, Ethiopia's constitutional land provisions warrant critical evaluation against international norms that safeguard property rights and prohibit arbitrary deprivation. Article 40 of the Ethiopian Constitution vests land ownership in the state and the people, granting citizens only use rights. This framework diverges from international standards such as UDHR Article 17, which affirms the right to own property and to be protected against arbitrary deprivation. Similarly, the African Charter on Human and Peoples' Rights emphasises secure tenure and fair compensation in cases of expropriation. Yet, empirical evidence from Ethiopia's urban centres demonstrates a persistent gap between constitutional authority and practice. Informal land transactions, driven by bureaucratic inefficiencies and corruption, have become widespread in cities, undermining tenure security and creating parallel markets. Moreover, enforcement challenges and frequent state-led expropriations with inadequate compensation highlight the tension between Ethiopia's constitutional framework and its international obligations. These realities suggest that Ethiopia's land regime, while formally recognising property rights, often fails to meet the standards of international human rights law.

4.4.2 Urban Land Lease Proclamation

The Urban Land Lease Proclamation established leasehold as the exclusive tenure system for urban land in Ethiopia, replacing the earlier permit system and creating a comprehensive framework in which land is transferred through tenders or allotments under municipal authority.[70] Leasehold is tenure for a specified period, subject to payment of rent, conferred by the owner, whether state or

[67] The Constitution, Article 40(6).

[68] Crewett, Wibke, and Benedikt Korf, 'Ethiopia: Reforming Land Tenure', Review of African Political Economy 35, no. 116, 2008, pp. 203–220.

[69] Markakis, John, *Ethiopia: The Last Two Frontiers*, (James Currey, 2011).

[70] Proclamation No. 80/1993.

private.[71] The leasehold right system defines the rights of urban land leaseholders and the obligation to use the land for the agreed purpose within the specified period.

Leaseholders are granted extensive rights to use and develop land, employ it as collateral, and transfer lease rights through sale, mortgage, inheritance, or capital contribution, subject to the obligation of utilising the land for its prescribed purpose.[72] By prohibiting the transfer of bare land or incomplete constructions, the proclamation sought to curb speculation and reinforce the principle that land remains the property of the State.[73] This framework introduced a fundamental dichotomy between rural landholding rights, which are indefinite, and urban leasehold rights, which are fixed in duration and subject to renewal.[74]

The lease proclamation represents a significant intervention in the governance of urban land, establishing leasehold tenure as the dominant framework in Ethiopia's urban centres.[75] By requiring all urban land to be identified, registered, and transferred into the lease system,[76] the state reconfigures the relationship between government, municipalities, and citizens. This reflects a broader global trend in urban land policy, where governments balance public ownership with private use rights to ensure oversight and economic utility.[77]

The proclamation provides two mechanisms for lease transfer, tenders (auctions) and allotments (non-auction transfers), both of which are designed to align with planning guidelines and legal frameworks.[78] The assumption that any qualified individual may obtain land through lease shows conditional access, a principle common in state-led land systems.[79] In practice, land for housing, commerce, and business is predominantly allocated through competitive tender, underscoring the

[71] John W. Bruce, *Review of Tenure Terminology*, *Tenure Brief*, (No. 1, 1998), p. 3.
[72] Proclamation No. 80/1993, Article. 10.
[73] Ibid.
[74] Crewett, Wibke, and Benedikt Korf, 2008, supra note, no. 70, pp. 203–220.
[75] Federal Democratic Republic of Ethiopia, Urban Land Lease Holding Proclamation No. 721/2011 (hereafter called Proclamation No. 721/2011), Article 7(2).
[76] Ibid, Article 6.
[77] UN-Habitat, Urban Land Policies and Tenure Security in Developing Countries, 2012, pp. 34–36.
[78] Proclamation No. 721/2011, Article 6.
[79] Alemu, G., 'Urban Land Lease Policy in Ethiopia: Reform, Implementation, and Challenges' Ethiopian Journal of Development Research, 2015, p. 112.

state's reliance on market-based competition to distribute scarce urban land resources.[80] Ethiopia's leasehold rights are designed to be flexible and economically functional, permitting inheritance, donation, mortgage, and capital contribution. This positions Ethiopia's urban land regime closer to global financial practices, though enforcement challenges and the constitutional prohibition on private ownership continue to create tension with international human rights norms.[81] Yet speculative practices, where land is sold at prices far above the initial lease value, reveal tensions between regulatory intent and market realities, urban land markets and other rapidly urbanising contexts.[82]

Despite this transactional flexibility, the proclamation imposes restrictions that require lease rights to be exercised in accordance with the land's prescribed purpose. Lease durations are tailored to regulate land use for construction and development, reflecting policy concerns with planned urban growth.[83] Transfers to third parties outside inheritance merge old and new lease rights, while regularisation of informal settlements requires payment of lease fees. This integration of informal and formal systems illustrates Ethiopia's effort to reconcile unregulated practices with formal frameworks, a hallmark of contemporary urban land policy.[84]

A critical dimension of the lease proclamation lies in its treatment of informal settlements. Although the law formally allowed for the regularisation of informal settlements within four years of enactment,[85] implementation has been rare, leaving large segments of urban residents without tenure security.[86] Proclamation No. 1161/2011 further entrenched exclusion by denying informal settlers compensation or rehabilitation during eviction, thereby intensifying socio-economic vulnerability.[87] Rising lease prices have compounded these challenges, rendering access to urban

[80] Global Tenders, 'Latest Ethiopia Urban Planning and Landscape Tenders', 2024, pp. 9–11.

[81] Rahmato, D., *Land Rights and Tenure Security in Ethiopia: Policy and Practice*, (Addis Ababa University Press, 2014), pp. 88–90.

[82] Payne G., *Land, Rights and Innovation: Improving Tenure Security for the Urban Poor*, (ITDG Publishing, 2002), pp. 57–63.

[83] Proclamation No. 721/2011.

[84] Durand Lasserve A. and Selod, H., 'The Formalisation of Urban Land Tenure in Developing Countries. World Bank Policy Research Paper, 2009, pp. 14–16.

[85] Ibid, Article 5(4) and (5).

[86] Proclamation No. 80/1993.

[87] Proclamation No. 1161/2011.

land unaffordable for low-income households,[88] exacerbating inequality, and fuelling the persistence of informal land transactions.[89] The Urban Land Lease Holding Proclamation restricts residents' access to urban land as lease prices rise.[90] From a human rights perspective, the leasehold system raises serious concerns about its compatibility with international norms on housing and tenure security, particularly when evictions occur without adequate safeguards or compensation.[91]

The Ethiopian Constitution remains silent, even implicitly, on the urban land lease holding system. Instead, the country has adopted a dichotomous approach to regulating land tenure, distinguishing between rural and urban land. Consequently, separate legal and institutional frameworks govern the rural landholding and urban leasehold tenure systems. The rights derived from these systems are distinct: in rural areas, the relationship between individuals and land is established through holding rights of unlimited duration, whereas in urban areas, individuals exercise leasehold rights for fixed periods determined by the type of lease.[92] Since land is constitutionally recognised as the property of the state, tenure security remains precarious, as landholders may lose their rights under certain conditions. Prominent threats include displacement due to private investment and eviction for public purposes.[93] Farmers residing on the peripheries of urban centres are particularly vulnerable, often facing dispossession due to urban expansion or the construction of new settlements.[94]

Under Ethiopian urban land lease law, informal land tenure is excluded from the ambit of legal protection. In other words, informal settlers are denied tenure security within the existing legal framework.[95] This exclusion reflects a broader tension in urban land governance between formal regulation and informal practices. While rural tenure systems emphasise continuity and security,

[88] Jemal Abagissa, (2021), supra note, no. 30 p. 19928; Tewodros Mekonnen, 'Policies and Practices of Urban Land Governance in the Special Zone of Oromia Region Surrounding Addis Ababa, Ethiopia', (PhD Dissertation, Addis Ababa University, 2020), p. 284.

[89] Markakis, John, 2011, supra note, no. 71.

[90] Tura, H. A., *Land Rights and Land Grabbing in Oromia, Ethiopia,* (Land Use Policy, 70, 2018), pp. 247–255.

[91] ICESCR, 1966, Article 11.

[92] Proclamation No. 721/2011.

[93] UN-Habitat, *Urban Land Policies and Tenure Security in Developing Countries,* 2012, pp. 88–90.

[94] Alemu, G. (2015), supra note, no. 83, pp. 102–104.

[95] Payne, G. (2002), supra note, no. 84, pp. 59–61.

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the urban leasehold system prioritises planned development and state oversight, often at the expense of marginalised groups.

Empirical evidence from urban centres underscores the persistence of enforcement gaps, rising displacement driven by urban expansion, and the systematic exclusion of informal tenure from legal protection.[96] These dynamics continue to undermine both constitutional guarantees and Ethiopia's obligations under international human rights instruments, highlighting the enduring tension between state-controlled urban land governance and the principles of tenure security, equality, and human dignity.

5. Absence of Compensation for Informal Settlements

The Constitution guarantees that "all persons displaced or whose livelihoods are adversely affected as a result of government programs are entitled to commensurate amounts or alternative means of compensation, including relocation with adequate government assistance."[97] Yet the scope of this provision remains ambiguous when applied to informal settlers, who acquire land outside formal authorisation. The Urban Land Lease Holding Proclamation and subsequent Compensation and Rehabilitation Legislation, Proclamation No. 1161/2011, restrict compensation to those holding land legally under lease or prior lawful possession.[98] This statutory interpretation effectively excludes informal settlers from protection, leaving them vulnerable to eviction without compensation or rehabilitation.[99]

According to Ethiopia's Urban Land Lease Holding Proclamation, once the competent authority determines that eviction is necessary for a public purpose, compensation is provided in cash only to those landholders who formally acquired their plots from the government.[100] By contrast, individuals who legally obtained land before the introduction of the leasehold system, or those who received land as compensation in kind after earlier evictions, are afforded protection against displacement.[101] This framework makes clear that persons who informally acquired land are

[96] Richard Pankhurst, Alula, 2009, supra note, no. 34.
[97] The Constitution, Article 44(2).
[98] Proclamation No. 80/1993; Compensation and Rehabilitation Proclamation No. 1161/2011.
[99] Crewett, Wibke, and Benedikt Korf, 2008, supra note, no. 70, pp. 203–220.
[100] Proclamation No.721/2011, Article 2(8), 12(4) and Article 26.
[101] Alemu, G. (2015), supra note, 83, pp. 41–43.

excluded from legal protection and cannot escape eviction. The exclusion of informal settlers reflects a broader challenge in urban land governance, where the drive for planned development and state authority often comes at the expense of tenure security for marginalised populations.

The exclusion of informal settlements from Ethiopia's land governance framework raises profound constitutional and human rights concerns. While Article 40 of the Constitution guarantees peasants and pastoralists protection from arbitrary eviction and compensation for expropriation, urban informal settlers are denied comparable safeguards.[102] The Compensation and Rehabilitation Proclamation promises displaced persons support for sustainable income, housing, and infrastructure, yet its implementation systematically omits informal settlers.[103] This omission directly contradicts international human rights standards, particularly ICESCR, which prohibits punitive demolitions and requires adequate housing protections.[104] Ethiopia's Urban Land Lease Holding and Compensation and Rehabilitation Legislation explicitly permits eviction of informal settlers without defining "illegal occupiers," a term that appears to apply to settlers unable to prove acquisition with official authorisation. Consequently, informal settlements lack legal protection against arbitrary eviction, and authorities are not obliged to consult affected communities when planning evictions. This framework leaves informal settlers vulnerable to both private evictions and mass displacements for public purposes, reflecting a legislative approach that prioritises formal tenure while disregarding the rights of marginalised urban populations.

The reality in Ethiopian cities demonstrates that informal residents are frequently evicted without consultation, compensation, or rehabilitation, reflecting a systemic enforcement gap.[105] Jurisprudentially, Ethiopian courts have rarely addressed the rights of informal settlers, thereby reinforcing their exclusion from legal protection.[106] The absence of compensation for informal settlements thus illustrates a profound inconsistency between constitutional guarantees, statutory frameworks, and international human rights obligations. This inconsistency perpetuates tenure

[102] The Constitution, Article 40.

[103] Federal Democratic Republic of Ethiopia, *Compensation and Rehabilitation Proclamation No. 1161/2011*.

[104] ICESCR, 1966, Article 11.

[105] Richard Pankhurst, Alula, 2009, supra note, no. 34.

[106] Rahmato, Dessalegn, 2009, supra note, no. 59.

insecurity, socio-economic marginalisation, and a widening gap between Ethiopia's constitutional commitments and its lived urban realities.

6. Land Rights as Human Rights in Ethiopian Laws

Legal instruments in Ethiopia present land as a form of immovable property, defining it as the surface of the earth together with any fixtures such as buildings, fences, trees, plants, and other improvements.[107] In contrast, the human rights approach views land as an essential element for the realisation of fundamental rights.[108] Land is not merely a commodity but a vital resource for sustaining livelihoods and ensuring dignity.[109] The livelihood of rural households directly and urban households indirectly depends largely on access to land resources in Ethiopia.

The Constitution explicitly recognises the right to property, including its various components.[110] Within the Ethiopian legal framework, land is treated as a constitutional matter rather than a mere policy option. This is incorporated under Chapter 3, which addresses fundamental rights, and more specifically under democratic rights. The Constitution guarantees the right to access land, to utilise it, and to collect its fruits, allowing individuals to enjoy a usufructuary right over land they do not own. It further states that Ethiopian peasants and pastoralists have the right to obtain land without payment and are protected against eviction from their possession.[111] In doing so, the Constitution underscores the importance of land access to the well-being and dignity of rural populations, elevating it to a constitutionally guaranteed right. Moreover, it emphasises the security of landholding rights by protecting peasants and pastoralists against eviction. However, in practice, arbitrary dispossession and forced evictions remain widespread, adversely affecting the lives and dignity of the people, thereby contradicting the constitutional guarantees.[112]

> *In Ethiopia, no property rights and much chaos. Constant human reshuffling within Addis Ababa shows how hard life is. The government owns all land and has broad authority to seize it. The constitution states that individuals can lease land and own the property built on it, although that aspect doesn't seem to be honoured either. While land leasing systems*

[107] Civil Code of Ethiopia, Property Law Provisions, Articles 1204–1207.
[108] UDHR, 1948, Article 25.
[109] UN-Habitat, *Urban Land Policies and Tenure Security in Developing Countries*, 2012, pp. 45–47.
[110] The Constitution, Article 40.
[111] The Constitution, Article 40(4)(5).
[112] Alemu, G. (2015), supra note, no. 83, pp. 88–90.

> *have worked elsewhere, it doesn't seem to in Ethiopia. Some migrants have no legal claim to the land; they are ultimately disposable to the government. … People's homes get razed and their possessions scattered on little notice. That land … benefits politically connected developers. Other displaced slum dwellers get relocated to new large public housing complexes on the city's outskirts. While the housing quality is higher than that found in Addis' villages, wait lists are long, and the units are located far from the city's best jobs. It should be apparent by now the chaos that surfaces from lack of private land ownership, at least in Ethiopia.*[113]

However, the distinction between constitutional guarantees and practice reveals significant gaps. While the Constitution protects rural households from arbitrary dispossession, urban residents, especially informal settlers, lack comparable safeguards.[114] The practices demonstrate that forced evictions and arbitrary dispossession remain common, undermining the constitutional promise of tenure security.[115] This divergence highlights the tension between Ethiopia's constitutional land model, which emphasises collective ownership and usufruct rights, and international human rights standards such as ICESCR, which prohibits arbitrary eviction and affirms the right to adequate housing.[116]

A balanced assessment suggests that although Ethiopia's constitutional framework recognises land as a human rights issue, weak enforcement, the exclusion of urban informal tenure, and persistent arbitrary evictions compromise its effectiveness. Thus, land rights in Ethiopia remain both a constitutional entitlement and a contested human rights concern, requiring stronger alignment between law and practice.

7. Informal Settlements and Eviction under Ethiopian Law

Ethiopian constitutional law remains silent on informal settlements, yet the Urban Land Lease Holding Proclamation No. 721/2011 explicitly empowers urban administrations to demolish houses informally constructed by serving written notice, without providing alternative accommodation or compensation.[117] This provision effectively authorises forced eviction against

[113] Scott Beyer, *Ethiopia: No Property Rights*, Much Chaos, (2023), Available online at: https://catalyst.independent.org/2023/08/14/ethiopia-property-chaos/.

[114] Crewett, Wibke, and Benedikt Korf, 2008, supra note, no. 70, pp. 203–220.

[115] Pankhurst, Alula, 2009, supra note, no. 34.

[116] ICESCR, 1966, Article 11.

[117] Proclamation No. 721/2011), Article 26(4).

unauthorised settlers, considering informal and illegal settlements as the same.[118] At the same time, the proclamation allows for the regularisation of houses built before January 24, 2013, provided they do not conflict with the urban plan or parcelling standards.[119] This duality creates a legal paradox: while some informal houses may be regularised, others remain subject to demolition without compensation, reflecting inconsistent statutory treatment.

From a constitutional perspective, this framework raises significant concerns. Article 44(2) of the Constitution guarantees displaced persons compensation and relocation assistance, but its application to informal settlers remains unclear.[120] The exclusion of informal settlements from compensation and rehabilitation contradicts Ethiopia's obligations under international human rights law, particularly the ICESCR, which prohibits arbitrary eviction and punitive demolition.[121]

The practices reveal that residents of informal settlements are often evicted without consultation, compensation, or rehabilitation, actions that undermine both constitutional guarantees and international human rights standards.[122] Compounding this problem is the failure to distinguish between two very different realities: informal settlements, which are frequently tolerated and eventually regularised, and informal occupations, which constitute deliberate violations of planning law. Considering these categories as the same has led to widespread eviction practices that disproportionately burden low-income households.[123] A more nuanced legal framework, one that differentiates types of occupation, ensures procedural fairness, and provides pathways for compensation or regularisation, would bring Ethiopian urban land law into closer alignment with constitutional principles and international obligations.

8. International and Regional Human Rights Obligations

Ethiopia is bound by the ICESCR and the African Charter on Human and Peoples' Rights, both of which protect the right to adequate housing and prohibit forced evictions without due process. General Comment No. 7 (ICESCR) emphasises consultation, adequate notice, and alternative

[118] Crewett, Wibke, and Benedikt Korf, 2008, supra note, no. 70, pp. 203–220.70
[119] Proclamation No. 721/2011, Article 6(4).
[120] The Constitution, Article 44(2).
[121] ICESCR, 1966, Articlr 11.
[122] Richard Pankhurst, Alula, 2009, supra note, no. 34.
[123] Markakis, John, 2011, supra note, no. 71.

housing in eviction cases. Despite these commitments, informal settlers in Ethiopia are often evicted without sufficient consultation, compensation, or participation in urban planning, highlighting a persistent gap between national law and international human rights standards.

8.1 Land as a Human Right

International human rights instruments emphasise that all individuals are born free and equal in dignity and rights, and land plays a pivotal role in the realisation of these rights[124]. Land is not simply a resource or commodity; it is a foundation for livelihood, housing, food security, and economic participation.[125] In Ethiopia, both rural and urban households depend, directly or indirectly, on land, making the protection of land central to the enjoyment of rights to adequate housing, food, health, and work.[126] The absence of secure land rights undermines these entitlements, while forced evictions and arbitrary dispossession carry broad human rights consequences.

The ICESCR recognises "the right of everyone to an adequate standard of living… including adequate food, clothing and housing, and to the continuous improvement of living conditions."[127] Land is indispensable for realising these rights, particularly the right to adequate housing, which derives from the broader right to an adequate standard of living. Similarly, the UDHR enshrines the property right, prohibiting arbitrary deprivation.[128] General Comment No. 7 of the Committee on Economic, Social and Cultural Rights explicitly affirms that forced evictions are incompatible with ICESCR obligations.[129] Although the African Charter on Human and Peoples' Rights does not explicitly recognise land rights, they are implied by the property right, which permits infringement only in the public interest and in accordance with appropriate laws.[130]

A nuanced analysis requires distinguishing land as a resource essential for realising rights from land as a legally recognised human right. Ethiopia's constitutional model treats land as a collective

[124] UDHR, Para 1 of the Preamble and Article 1.

[125] Montgomery Wray Witten, *The Protection of Land Rights in Ethiopia*, *Africa Focus*, (20(1–2), 2007), p. 159.

[126] Elisabeth Wickeri and Anil Kalhan, *Land Rights Issues in International Human Rights Law, Institute for Human Rights and Business*, p. 2; Rahmato, Dessalegn, 2009, supra note, no. 59.

[127] ICESCR, 1966, Article 11.

[128] UDHR, 1948, Article 17.

[129] CESCR, General Comment No. 7: The Right to Adequate Housing, Article 11.1.

[130] African Union, African Charter on Human and Peoples' Rights, 1981, Article 14.

resource under state ownership, granting usufruct rights rather than private ownership.[131] While this framework aims to balance equity and state regulation, its implementation often diverges from constitutional guarantees, particularly in urban contexts where informal settlements lack protection.[132] Recognising legitimate state regulatory powers is important, but aligning them with international human rights standards and ensuring procedural fairness, compensation, and protection against arbitrary eviction remain critical challenges.

9. Right to Housing

The right to adequate housing is a legally binding human right under international law, applicable to all persons, including residents of informal settlements. The Committee on Economic, Social and Cultural Rights (CESCR) has clarified that adequacy requires legal security of tenure, protection against forced eviction, and access to essential services.[133] Forced demolitions are prima facie incompatible with the ICESCR, and the former UN Commission on Human Rights has classified forced evictions as a gross violation of human rights, particularly the right to housing.[134] Importantly, tenure security is not confined to formal ownership but extends to informal settlers, meaning that the right to be free from arbitrary eviction is integral to the right to housing.[135] The right to life itself is undermined if housing, food, water, and health facilities are not secured.

Within Ethiopia, the FDRE Constitution recognises housing as a social objective under Article 90(1), requiring the government to promote access to housing for all citizens.[136] Ethiopia has acceded to the ICCPR, ICESCR, and other core human rights instruments, thereby assuming obligations to respect, protect, and fulfil the right to adequate housing.[137] However, constitutional silence on informal settlements and forced evictions has created ambiguity. This does not mean that, under Ethiopian law, forced evictions of informal settlements are permissible, because international laws recognised by the Constitution are an integral part of the country's law.[138] A

[131] The Constitution, Article 40.
[132] Crewett, Wibke, and Benedikt Korf, 2009, supra note, no. 70, pp. 203–220.
[133] CESCR, General Comment No. 4: The Right to Adequate Housing, Article 11.1, 1991.
[134] UN Commission on Human Rights, Resolution 1993/77: Forced Evictions, 1993.
[135] CESCR, General Comment No. 7: The Right to Adequate Housing Article 11.1, 1997.
[136] The Constitution, Article 90(1).
[137] United Nations Treaty Collection, Ethiopia's accession to ICCPR and ICESCR.
[138] Crewett, Wibke, and Benedikt Korf, 2008, supra note, no. 70, pp.203–220.

doctrinally precise reading suggests that Ethiopia's constitutional framework recognises housing as a right, but enforcement gaps and the absence of explicit protections for informal settlements weaken its practical effect.[139]

A clear doctrinal distinction must be drawn between the absolute prohibition of arbitrary eviction, which is impermissible under both constitutional and international human rights law, and regulated evictions undertaken for legitimate public purposes. The latter, while legally permissible, requires strict adherence to procedural safeguards, such as prior consultation, adequate notice, transparent decision-making, and the provision of compensation or alternative housing. Without such differentiation, Ethiopia's housing law risks combining unlawful eviction with lawful state action, thereby weakening constitutional protections and failing to meet international human rights standards. Establishing this distinction would not only enhance legal clarity but also ensure that urban development initiatives proceed in a manner consistent with principles of fairness, dignity, and accountability.

10. Informal Settlements and Eviction under International Laws

International human rights law establishes clear obligations regarding housing and protection against forced evictions, obligations that Ethiopia has accepted by acceding to core treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).[140] ICESCR affirms the right to an adequate standard of living, including adequate housing, and obliges states to respect, protect, and fulfil this right.[141] Forced evictions, defined as arbitrary or unlawful removals from one's home or land, are generally incompatible with these obligations.[142] The Committee on Economic, Social and Cultural Rights, in General Comment No. 4, emphasised that all persons must enjoy a degree of tenure security that guarantees legal protection against eviction, harassment, and other threats.[143]

At the same time, international law recognises that evictions may be permissible in exceptional circumstances, provided they comply with strict procedural safeguards. General Comment No. 7

[139] Rahmato, Dessalegn, 2009, supra note, no. 59
[140] Supra note, no. 140.
[141] ICESCR, 1966, Article 11.
[142] Supra note, no. 139.
[143] CESCR, Supra note, no. 136.

clarifies that evictions must be lawful, proportionate, and carried out in accordance with human rights standards.[144] This includes genuine consultation with affected persons, adequate notice, provision of information, and exploration of alternatives to eviction.[145] Crucially, evictions must not render individuals homeless; states must provide adequate alternative housing, resettlement, or access to productive land.[146] The ICCPR reinforces these protections through Article 17, which prohibits arbitrary or unlawful interference with privacy, family, and home.[147]

Regional jurisprudence adds further nuance. The African Charter on Human and Peoples' Rights implies land rights by protecting property, allowing interference only in the public interest and in accordance with the law.[148] The African Commission has interpreted this to mean that mass evictions without compensation or consultation violate both property rights and broader socio-economic rights. In practice, governance realities in Ethiopia reveal a gap between these binding obligations and enforcement: informal settlers are often evicted without consultation or compensation, contrary to international standards.[149] A doctrinally precise reading therefore requires distinguishing between binding treaty obligations (ICESCR, ICCPR, and African Charter) and interpretive standards (CESCR General Comments, UN resolutions), while acknowledging Ethiopia's constitutional incorporation of treaties.[150] This framework makes it clear that Ethiopia's current eviction practices, particularly those targeting informal settlements, remain inconsistent with its international human rights commitments. Therefore, the government should adopt legislation to protect people against evictions. This is an essential basis for building an effective protection system. This legislation should include measures that provide the greatest possible security of tenure to owners of houses and landholders, and should conform to the ICESCR. If an eviction is considered justified, the state should ensure the eviction is carried out in strict compliance with the relevant provisions of international human rights law.

[144] CESCR, supra note, no. 138.
[145] Ibid.
[146] Ibid.
[147] United Nations, International Covenant on Civil and Political Rights (ICCPR), 1966, Article 17.
[148] African Union, African Charter on Human and Peoples' Rights, 1981, Article 14.
[149] Pankhurst, Alula, 2009, supra note, 73.
[150] The Constitution, Article 9(4).

The Constitution treats the international human rights treaties ratified by Ethiopia as an integral part of the country's law. Ethiopia has acceded to the ICCPR, the ICESCR, and other core human rights instruments. Since the country has been a party to most international human rights treaties that set minimum human rights standards, the Ethiopian government has an obligation to recognise, respect, ensure, and fulfil the right not to be evicted as enshrined in the ICCPR, ICESCR, and other international and regional human rights laws. Hence, the protection against eviction could fairly be read as a right to housing, which, in turn, is an integral requirement of the right to life.

11. Disjuncture between Urban Land Law and Human Rights in Ethiopia

Urban land governance framework in Ethiopia reflects a state-centred model that prioritises public ownership, orderly urban planning, and strict legal compliance. Proclamations such as the Urban Land Lease Holding Proclamation No. 721/2011 and the Expropriation Proclamation No. 1161/2019 grant authorities broad powers to evict residents of informal settlements in the name of public purpose, urban development, or the demolition of informal settlements (what the authorities called illegal houses).[151] While these laws require compensation for lawful landholders, informal settlers, despite long residence or community investment, are excluded from protection. In practice, evictions are frequently carried out with minimal notice, limited consultation, and inadequate resettlement measures, all of which are inconsistent with international standards such as ICESCR, General Comment No. 7, and African regional jurisprudence, which mandate meaningful consultation, adequate notice, and safeguards against homelessness.[152]

Constitutionally, Ethiopia recognises property and housing rights under Articles 40 and 90, but the silence on informal settlements creates a gap between law and practice.[153] International human rights law, by contrast, recognises the security of tenure of de facto settlers and obliges states to prevent arbitrary eviction.[154] The practices reveal that informal residents are often evicted without compensation, consultation, or rehabilitation, deepening socio-economic marginalisation.[155]

[151] Proclamation No. 721/2011; Proclamation No. 1161/2019.
[152] CESCR, supra note, no. 138.
[153] The Constitution, Article 40 and 44.
[154] CESCR, 1966, Article 11.
[155] Pankhurst, Alula, 2009, supra note, no 73.

Urban planning and land governance in Ethiopia are largely top-down. Residents of informal settlements rarely have opportunities to participate meaningfully in decision-making processes regarding urban affairs that will affect their interests. International human rights frameworks emphasise the right to participation, particularly for marginalised groups affected by state actions. The absence of participatory mechanisms in urban planning further exacerbates this disjuncture: informal settlers rarely have opportunities to influence decisions that directly affect their livelihoods, despite Ethiopia's ratification of treaties that emphasise rights to participation.[156]

A balanced analysis must acknowledge legitimate state interests in regulating land use, preventing speculation, and ensuring orderly urban growth. Yet, the current legal approach prioritises legality over rights, embedding structural tensions between national law and international obligations. Reform pathways include: clarifying statutory distinctions between informal and illegal settlements; inserting procedural safeguards such as consultation, notice, and compensation; integrating participatory mechanisms into urban planning; and aligning expropriation practices with constitutional guarantees and international human rights standards.[157] Reconciling Ethiopia's state-centred land regime with human rights obligations is essential for protecting human dignity, reducing tenure insecurity, and fostering inclusive urban development.

12. Conclusion and Recommendation

In Ethiopia, the urban land governance system exhibits a deep imbalance between legality and the protection of human rights. The Constitution offers strong protections for peasants and pastoralists against eviction, but urban residents in informal settlements are excluded. Laws like the Urban Land Lease Proclamation allow authorities to remove informal settlers citing public purpose or urban development, yet lack safeguards such as consultation, notice, or compensation. This creates a legal vacuum where long-term informal settlers are treated as unlawful occupants without tenure security. Evictions often occur abruptly, disregarding socio-economic impacts, leaving families homeless and marginalised.

This disjuncture between law and practice undermines Ethiopia's commitments under international treaties, including the ICESCR, the ICCPR, and the African Charter, which it has

[156] ICESCR, 1966; Rahmato Dessalegn, 2009 supra note, no. 59.

[157] Markakis, 2011, supra note, no. 71.

ratified. These treaties ban arbitrary dispossession and forced eviction and require respect for the right to housing and security of tenure. Informal settlements, though illegal under domestic law, result from systemic failures, poor land management, and urbanisation. Treating them as solely illegal ignores their social and economic role. Ethiopia's current approach prioritises government control and urban order over human dignity and social justice, highlighting the need for reform.

The Ethiopian government has an international obligation to respect citizens' rights. Demolishing informal houses without following human rights standards and due process, under the guise of law enforcement, violates these commitments. Destroying homes without due process and rights safeguards is not legitimate law enforcement. The human rights approach to informal settlements requires that residents have security of tenure, meaning the government must adopt policies that allow people to live in their homes with security, peace, and dignity. Recognised as a universal right under international law, this applies to all, regardless of land title. Ensuring security means no eviction from informal settlements, as evictions show flawed processes and a lack of engagement with communities, undermining human rights. Protection against forced eviction should extend to residents of informal settlements, even if they lack legal authorisation. Evictions should only happen in exceptional cases with clear, strictly enforced grounds. Alternatives must be explored through community consultation, with due process and proper housing guaranteed. If eviction is unavoidable, affected individuals should receive compensation. Ethiopian law currently excludes informal settlements from such protections, highlighting the urgent need for legal reform to include informal settlers within human rights and housing security rights.

In Ethiopia, rapid urbanisation has made fair land rights an urgent issue. Addressing informal settlements requires legal reform, recognising informal land tenure, establishing mechanisms for residents to secure land rights, and creating policies to integrate settlements into the formal urban landscape. Urban land rights are crucial for equitable access and addressing housing and eviction challenges. The government should develop a comprehensive urban land rights policy and planning framework that considers informal settlements, enact laws to protect residents' land rights, and safeguard against forced eviction. City administrations should provide legal land-use certificates or long-term leases instead of demolitions, thereby promoting human rights and inclusive urban development. The government must create an inclusive land policy to prevent land grabbing, ensure fair access, and address urban land rights, especially in informal settlements. It

should prioritise securing tenure, participatory planning, and access to services, adopting a human rights-based strategy that covers land governance and the needs of informal settlement residents.

Addressing tensions between Ethiopia's land laws and human rights requires a comprehensive, rights-based approach to urban governance. A human rights framework should embed international standards into law, ensuring urban development promotes legality and social justice. Legislation must include safeguards against arbitrary eviction and require that expropriation and demolition processes follow international standards. This involves community consultation, adequate notice, participation, and access to remedies. These safeguards would align Ethiopia's urban laws with international human rights commitments and better protect vulnerable urban groups. Formal recognition of informal settlers' use rights or incremental tenure can offer legal protection against arbitrary eviction. Ethiopia could implement mechanisms that secure residents' tenure while balancing urban planning. This reduces vulnerability, boosts social stability, and supports inclusive development. Compensation should go beyond property replacement to include socio-economic impacts like livelihood disruption, loss of social networks, and diminished community resources. Policies need resettlement options that sustain employment, education, and urban access, preventing evictions from worsening poverty or marginalisation.

Inclusive planning is vital to balancing urban growth with human rights. Cities should enable informal settlers to participate in planning, relocation, and resettlement negotiations, thereby boosting transparency and trust. Strengthening judicial and administrative oversight by empowering courts and ombudsman offices to review evictions, disputes, and legal compliance is essential. Incorporating these safeguards aligns Ethiopia's urban policies with human rights and prevents vulnerable communities from being neglected. Urban development in Ethiopia should focus on affordable housing, fair land distribution, and inclusive infrastructure, ensuring that legality and dignity support each other. The government must align national laws with international human rights norms and shift urban land governance from enforcement to social justice. This approach would protect informal settlers' rights and promote sustainable, inclusive urban growth. Ethiopia's housing policy should differentiate between vulnerable settlers who occupy land out of necessity and opportunistic occupiers who exploit legal gaps for speculation. Vulnerable households need protection through compensation, rehabilitation, or regularisation, while opportunistic occupiers require enforcement and sanctions. To ensure the feasibility of

compensating evicted informal settlers, the government should establish a dedicated compensation fund, supported by diversified funding sources. This approach balances social protection and legal accountability, aligning urban growth with constitutional and human rights standards.

Conflict of Interest

The author declares no conflict of interest.

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Developmental Paradigms and Politics of Eviction: A Case Study of Informal Settlements in Sheger City, Ethiopia

Alemayehu Gonfa Jabessaa*

Abstract

The transformation of Sheger City into a "smart" urban hub has produced complex social, legal, and ethical challenges, particularly for residents of informal settlements. Drawing on data and legal analyses, the article examines the theoretical underpinnings and socio-political consequences of the eviction of informal settlements in Sheger City, Ethiopia. Using qualitative and quantitative methods, the article analyses how far developmental frameworks, modernisation theory, post-development theory, neoliberal development theory, and the rights-based development approach shape the rationale for, and the critique of, eviction practices. Findings reveal that forced evictions, often carried out without due process, compensation, or resettlement, have displaced thousands of residents, deepening poverty and vulnerability. Modernisation discourse has been mobilised to justify large-scale demolitions, privileging technocratic, top-down planning while marginalising low-income communities. Neoliberal frameworks further facilitate "accumulation by dispossession," clearing informal settlements to attract private investment and global capital, thereby exacerbating inequality. Post-development perspectives highlight the absence of participatory governance and the silencing of local agency, as informal settlers are excluded from decision-making and denied tenure security. This article advances a human rights-based approach to urban governance, emphasising security of tenure as a universal entitlement under international law. Legal reform and policy innovation are essential to bridge the gap between Ethiopia's constitutional obligations and the lived realities of informal settlers. Preventing and managing informal settlements requires transparent land administration, participatory planning, and community empowerment. By foregrounding human dignity, inclusion, and legal protections, the article argues for alternative frameworks that challenge technocratic rationalities and promote socially just urban transformation.

Keywords

Informal Settlements; Eviction; Developmental Theory; Sheger City; Ethiopia

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* LLB. LL.M, MA, PhD Candidate, Assist. Professor, Bule Hora Univesrity, School of Law, Bule Hora, Ethiopia, Email-tadego2010@gmail.com ORCID No. 0009-0008-2075-6805

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1. Introduction

Informal settlement is characterised by informal housing development and an irregular arrangement of housing, with insufficient infrastructure, utilities, and sanitation.[1] An informal settlement is a residential area of people that has developed without legal claims to the land and/or permission from the relevant authorities to build.[2] It is the occupation of land without legal title, occurring outside regulatory housing planning and development.[3] It is characterised by overcrowding, insecure residential status, and poor housing quality.[4] Informal settlements arise when the current land administration and planning system fails to address society's housing needs, and people resort to their own means to settle on someone else's land. Such settlements are characterised by rapid, unstructured and unplanned development.[5] Informal settlements can be attributed to poor land management and eviction practices.[6] Demolishing informal houses[7] can have serious social, economic, and political ramifications and can lead to adverse outcomes.[8]

Informal settlements in Ethiopia refer to houses built on unauthorised land without official building permits.[9] These areas are predominantly inhabited by low- and middle-income individuals who construct houses, often referred to as *chereka bet* "moon houses", in violation of urban planning regulations. In fact, existing urban policies have failed to adequately address the housing needs of low-income people.[10] As a result, many people are compelled to live in informal dwellings that lack

[1]Dessalegn G/Silassie, 'The Factors Contributing for Expansion of Informal Settlements: The Case Study of Yeka Sub-City, Addis Ababa Ethiopia', (Thesis Submitted, Addis Ababa University, 2017), P. 9.

[2]Srivinas Hari, *Defining Squatter Settlements, Division of Human Settlements -development, Bangkok Nations Human Settlements Program,* (2015).

[3] Ampofo J. A., Iddrisu A., Arfasa G. F., Mantey I., and Aniah E., 'Causes of Informal Settlement in Africa: A systematic review', ADRRI Journal of Contemporary African Development, Ghana: Vol. 1, No. (1), 2024, P. 7.

[4]UN-Habitat, *Policy Framework for Informal Settlements, United Nations Human Settlements Programme*, (2020); OHCHR, *Guidelines for the Implementation of the Right to Adequate Housing*, United Nations Office of the High Commissioner for Human Rights, (2019).

[5]Ashenafi Getachew, 'The Factors Contributing for the Expansion of Informal Settlements in Hossana Town, Southern Ethiopia', (Master Thesis, Addis Ababa University, 2015), p. 18.

[6] Roe, B., 'Urban Challenges in Addis Ababa', (PhD and Master Theses, 2009), In: Proceedings of the 16th International Conference of Ethiopian Studies, p. 14.

[7] 'Informal houses' are dwellings built on unauthorised land, often without legal recognition, not legally registered and regulated houses.

[8] Bello, M. O., *Squatter Settlement, Accessibility of Land and the Urban Poor*; *Mustapha Oyewole BELLO, Nigeria; Squatter Settlement, Accessibility of Land and the Urban Poor,* (2009).

[9] Ashenafi Getachew, (2015*),* supra note, no. 6.

[10] Jemal Abagissa, 'Empirical Review of Informal (Squatter) Settlements in Addis Ababa City, Ethiopia', International Journal of Current Research, Vol. 13, Issue 12, 2021, p. 19928.

access to basic infrastructure and utility services. The expansion of informal settlements in *Sheger* City has become a pressing urban challenge, driven largely by Ethiopia's rapid urbanisation rate of 5.4%, which exceeds the Sub-Saharan African average of 4.1%.[11] Within *Sheger* Sub-City, towns such as Sebeta, Gelan, Laga Tafo Laga Dadi, Sululta, and Burayu have seen unregulated housing proliferate, reflecting weak land governance and an inadequate supply of formal housing.[12] The consequences are severe: lack of access to basic infrastructure, residents face tenure insecurity, and frequent forced demolitions. In 2023, the Ethiopian Human Rights Commission reported that the demolition of informal houses in *Sheger* City worsened homelessness and social instability, underscoring the human rights implications of the city's informal housing crisis. [13]These dynamics illustrate how informal settlements in *Sheger* City not only strain urban planning but also deepen poverty and inequality, making them a critical issue for sustainable development. In *Sheger* City, eviction practices have intensified, raising concerns about governance transparency, legal safeguards, and human rights protection. The government's efforts to clear these areas have led to widespread displacement, homelessness, and public outcry.

The ambition of the government in *Sheger* City is to transform peri-urban landscapes into modern (smart city), economically vibrant areas.[14] However, this ambitious vision has come at a significant social cost, namely, the widespread eviction of informal settlements that have long contained low-income residents. These evictions raise critical questions about the role of development theories in shaping urban policy and the ethical implications of displacing vulnerable people.

The right to adequate housing, enshrined under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), is incorporated into Ethiopian law through Articles 9(4) and 13(2) of the FDRE Constitution.[15] General Comment No. 4 of the Committee on Economic, Social and Cultural Rights (CESCR) identifies tenure security as a central element of housing adequacy, thereby prohibiting arbitrary evictions against both formal property owners and

[11] Policy Studies Institute (PSI), Informal Settlement Expansion in Ethiopian Cities: Challenges and Policy Options. July 2025.
[12] Frontiers, Practices and Determinants of Urban Land Governance in *Sheger* City, October 22, 2022.
[13] Addis Insight, the demolition and forced resettlement of houses in *Sheger* City in Oromia Region has exacerbated homelessness, March 31, 2023.
[14] Degu Bekele Nigatu, 'Practices and Determinants of Urban Land Governance in *Sheger* City, Ethiopia', 2024.
[15] International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 1966, Article 11(1); FDRE Constitution, 1995, Arts. 9(4), 13(2).

informal settlers.[16] The FDRE Constitution further protects property rights, consistent with Article 14 of the African Charter on Human and Peoples' Rights, which prohibits arbitrary deprivation of property.[17] In addition, Article 90(1) of the FDRE Constitution outlines national policy objectives, including access to housing as part of broader social development goals.[18] While the Constitution permits expropriation of private property for public interest upon payment of compensation,[19] it does not explicitly address informal settlements or forced evictions, leaving a significant gap in the protection of housing rights.

Relevant to this theme, various studies have examined the legal and socio-economic dimensions of evictions from informal settlements in Ethiopia. Across multiple studies, scholars highlight that informal settlements in Ethiopia are primarily driven by rapid urbanisation, rural-to-urban migration, and the shortage of affordable housing, compounded by weak land administration, poor enforcement of planning regulations, and limited institutional capacity. Jemal Abagissa[20] and Debela E.B.[21] emphasised the scale of informal settlements in Addis Ababa, noting insecure tenure, poor infrastructure, and inadequate services, as well as inefficient government upgrading and resettlement programs. Endalew T.A.[22] and Nega A. A.[23] identified similar dynamics in Jimma and Gondar, in which socioeconomic pressures such as unemployment and poverty deepen vulnerability, leading to consequences such as environmental degradation and secondary displacement. Achamyeleh,[24] and Degu, Melesse, and Jafri[25] showed that institutional fragmentation and poor coordination in Bahir Dar and Burayu further enable informality, with

[16] Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, U.N. Doc. E/1992/23 (1991).
[17] African Charter on Human and Peoples' Rights, 1981, Article 14; FDRE Constitution, Article 40.
[18] FDRE Constitution, Article 90(1).
[19] FDRE Constitution, Article 40(8).
[20] Jemal Abagissa, 'Informal Settlements in Addis Ababa: Extent, Challenges and Measures Taken', Journal of Public Administration, Finance and Law, 2019.
[21] Debela E.B., 'An Overview of Squatter Settlements in Addis Ababa, Ethiopia', Journal of Governance and Development, 17(2), 2021.
[22] Endalew T.A., 'Determinant Factors for the Expansion of Informal Settlement in Gondar City, Northwest Ethiopia', Journal of Urban Management 11, 2022.
[23] Nega A. A., *Exploring Causes and Consequences of Squatter Settlement in Jimma Town, Oromia Regional State, Ethiopia*, International Journal of Sociology and Anthropology (2021).
[24] Achamyeleh G.A., 'Informal Settlements in the Peri-Urban Areas of Bahir Dar, Ethiopia: An Institutional Analysis', Habitat International, 2014.
[25] Degu B., Melesse A., and S.S.A., 'Jafri, Causes and Remedy of Squatting in Burayu Town, Ethiopia', Developing Country Studies, Vol.4, No.11, 2014.

remedies requiring stronger governance, affordable housing, and inclusive planning. Other studies highlight the political economy and actor dynamics sustaining informal housing. Philmon[26] showed that regularisation in Addis Ababa improved tenure security but excluded the poorest due to rising costs, benefiting middle-income groups more. Taye, Alemayehu, and Woldeamanuel[27] revealed that informal settlements occupy large shares of urban land, expanding unevenly across sub-cities, complicating infrastructure provision and requiring spatial mapping for policy. Tefera and Abebe[28] found that brokers dominate land transactions in Burayu, creating unequal power dynamics under weak regulation. Debele and Negussie[29] examined *Sheger* City and showed how brokers, officials, and community actors exploit institutional gaps, making informal housing both a survival strategy and a political tool. Collectively, these studies conclude that without affordability measures, stronger governance, transparency, and integrated urban policies, informal settlements will continue to expand, entrench inequality, and undermine sustainable urban development.

Despite constitutional and international commitments to the right to adequate housing and protection against arbitrary eviction, empirical studies across Addis Ababa, Gondar, Jimma, Bahir Dar, Burayu, and Sheger City reveal that informal settlements will continue to expand due to rapid urbanisation, rural migration, weak land governance, and shortage of affordable housing. These settlements are marked by insecure tenure, poor infrastructure, and social inequality, with brokers and local actors exploiting institutional gaps to sustain informal land markets. Government interventions such as upgrading and resettlement have proven fragmented and insufficient, often excluding the poorest and risking secondary displacement. The combined evidence underscores a critical gap between legal guarantees and lived realities: without affordability measures, stronger governance, transparency, and inclusive urban planning, constitutional and international housing rights remain aspirational rather than enforceable, leaving vulnerable groups at risk of exclusion and undermining sustainable urban development.

[26] Philmon Gebeyehu, 'Regularization of Informal Settlements: The Case of Shed Sefer in Addis Ababa', (Thesis, 2019).
[27] Taye, Alemayehu, and Woldeamanuel, 'Informal Settlements in Addis Ababa: Spatial Extent and Policy Implications', 2025.
[28] Tefera B.B. and Abebe B.G., 'Informal Land Transactions and Brokers in Burayu City, 2023.
[29] Debele E.T. and Negussie T., 'Political Economy of Informal Housing Scenario in Sebeta, Furi, and Gelan Guda subcity of Sheger City, Oromia, Ethiopia', Research in Globalization 7, 100161, 2023.

The studies have treated evictions mainly as technical or policy failures. They have not sufficiently explored how urban eviction in Ethiopia is embedded in broader narratives of modernisation, political control, and development ideology, nor have they applied post-development or rights-based theoretical frameworks to understand these processes. This article addresses that gap by focusing on *Sheger* City, a rapidly urbanising area that condenses new forms of city governance and state-led transformation. By combining legal analysis with empirical fieldwork and by applying critical theoretical lenses, this research provides a more holistic, contextualised, and policy-relevant analysis of informal settlement evictions. The main objective of this article is to explore the intersection of development theories and eviction practices in *Sheger* City. Furthermore, it examines whether theoretical frameworks justify eviction or expose its injustices.

2. Methodological and Theoretical Approach

2.1 Methodological Approach

This article uses a mixed-methods approach, integrating qualitative and quantitative methods to examine development paradigms and the expansion of informal settlements. It combines doctrinal and legal analysis with empirical data for a comprehensive understanding.

2.1.1 Qualitative Research

There is no requirement to ensure that the sample is sufficiently large to provide estimates because qualitative research does not aim to estimate the incidence of phenomena in a wider population.[30] Furthermore, qualitative studies yield data that are rich in detail, and to adequately analyse all the detail, it is crucial to keep sample sizes small.[31] For this article, a qualitative research design is employed, and detailed datasets are documented through key informant interviews, focus group discussions, and archival research. Taking *Sheger* City as a case study, four sub-cities, namely Laga Tafo, Laga Dadi, Koyee Face, Burayu, and Sebeta, were covered in the qualitative fieldwork. In addition, the Land Bureau, *Sheger* City Mayor's Office, land offices of these sub-cities, and the Regional Land Bureau were included. A non-probability purposive sampling approach was used because values, beliefs, attitudes, and perceptions vary widely, and some informants offer more insights due to social, economic, educational, and cultural factors. Key informants included officials

[30] Ritchie, J., Lewis, J., *Qualitative Research Practice: A Guide for Social Science Students and Researchers*. (SAGE Publications Ltd, London, 2003): Cited in Creswell, J., W., *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, (Fourth ed. SAGE Publications, Inc, 2014).
[31] Ibid

at the regional, city, and sub-city levels, as well as residents, such as informal settlers and farmers. Of the 40 planned interviews, 14 were with officials (heads, deputy heads, land office members, Oromia Land Bureau reps) and 38 with informal settlers, farmers, and displaced persons, for a total of 52 interviews. In addition, four focus group discussions (one per sub-city) were also conducted, each involving 10–13 participants, for a total of 43 participants.

In addition, this article employed doctrinal legal research methods that analysed land and human rights laws, drawing on comparative insights from past national experiences. Sources included federal and regional constitutions, urban land legislation, expropriation proclamations, ratified international human rights instruments, reports from human rights institutions, scholarly studies, and media publications. The National Public Legal Portal and the Legal Library of 5A Law Firm LLP provide access to a wide collection of federal and regional laws.

2.1.2 Quantitative Research

A survey was conducted using a structured questionnaire to collect quantitative data. Availability (convenience) sampling was used to select informal settlers whose houses had not been demolished, as they were readily accessible. Snowball sampling was used to reach displaced people whose houses had been demolished. Cochran's formula was used to determine the sample size. Of 384 questionnaires distributed, 327 were returned, yielding an 85.16% response rate. In addition, three instruments were used, namely self-administered questionnaires, key informant interviews, and focus group discussions. Questionnaires targeted informal settlers and institutional employees with knowledge of the issue, while interviews involved administrative staff from the sampled institutions. Document analysis supported triangulation. A concurrent triangulation design was used, with qualitative and quantitative data collected simultaneously. Quantitative data were edited, coded, and analysed using descriptive statistics in SPSS version 26. Quantitative results were presented using percentages, tables, and figures.

2.2.Theoretical Approach

This article has considered and analysed relevant development theories to demonstrate their relevance to the *Sheger* City context and to examine how each framework explains the rationales, mechanisms, and outcomes of informal settlement evictions. The analytical discussion covers modernisation and liberalisation theories, which focus on economic growth. Whereas the post-

development critiques these paradigms, favouring human development and rights-based approaches that put people, not just economies, at the centre of development.[32]

2.2.1. Modernisation Theory

Modernisation theory posits that all societies progress through a linear trajectory of development, from traditional to modern, driven by industrialisation, technological advancement, and urbanisation.[33] Within this framework, informal settlements are perceived as obstacles to urban modernity and incompatible with the demands of a modern city. Consequently, they are often targeted for eviction to make way for planned, orderly, and economically vibrant urban growth.[34] The theory characterised informal settlements as illegal, irrational spaces that reflect underdevelopment and a lack of modernity.[35] Eviction, in this context, is framed as a rational and progressive policy aimed at clearing land for investment or urban renewal.[36] Rather than advocating for upgrading or tenure security, modernisation theory promotes clearance and resettlement as the preferred solutions.[37] Urban planning guided by modernisation principles tends to prioritise formal housing, infrastructure development, and private investment areas. In this paradigm, low-income residents are not viewed as stakeholders in development but rather as impediments to be managed or displaced.[38]

Modernisation theory is now widely criticised as the modernist cleansing of urban space underpins class divisions and excludes the poor.[39] The modernisation framework privileges elite visions of order and infrastructure while ignoring the adaptive, community-driven structures of informality.[40] It promotes imposing unsuitable models of development, displacement and exclusion of the urban

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[32] Varun Gauri and Siri Gloppen, *Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy*, (World Bank Policy Research Working Paper No. 5938, 2012).

[33] Rostow W. W., *The Stages of Economic Growth: A Non-Communist Manifesto*: (Cambridge University Press; Free Press, New York, 1960).

[34] Bubaker F. Shareia, 'Theories of Development', International Journal of Language and Linguistics Vol. 2, No. 1, 2015, p. 79.

[35] Daniel K. A., *How Different Theories of Development Address the Relationship between the Urban Informal Economy and Poverty in the Labor Marke*t, (Discover Global Society, 2024).

[36] Ibid.

[37] Ibid

[38] Lerner, D., *The Passing of Traditional Society: Modernizing the Middle East*, (The Free Press, Glencoe, 1958).

[39] Mike Davis, *Apocalyptic Anti-Urbanism: Mike Davis and His Planet of Slums: Planet of Slums*, (New York: Verso, 2006).

[40] Mohammad Agung et. al., 'Theoretical Study of Poverty in Urban Slum Settlements', International Journal of Scientific and Technology Research, Volume 9, Issue 03, 2020, p. 4827.

poor, disregarding grassroots solutions and local contexts, and creating unsustainable urban inequality and homelessness.[41] Ethiopia's urban policy, inspired by modernisation theory, emphasises industrialisation, infrastructure expansion, and planned urban growth. The establishment of industrial parks in cities reflects the modernisation view that industrialisation drives economic transformation.[42] While modernisation theory assumes that urbanisation will naturally lead to improved living standards and formal housing, rapid rural-to-urban migration in *Sheger* City has outpaced the government's capacity to provide affordable housing and services.[43] As a result, informal settlements have proliferated, reflecting both the demand for urban opportunities and the shortcomings of modernisation's linear model.[44] These settlements illustrate how modernisation-driven policies, focused on industries and infrastructure, often neglect the immediate housing needs of low-income people.[45] Ethiopia's urban policy, chiefly the Sheger City smart city (modern city) project, reflects modern standards. The *Sheger* city's smart city project is a typical example of modernisation theory in practice, pursuing linear development, urban renewal, and technological advancement. Yet, its challenges highlight the tension between modern ideals and local realities**.**

2.2.2. Liberalisation Theory

Liberalisation theory, rooted in neoliberal economic principles, emphasises market freedom, privatisation, and minimal state intervention.[46] This theory views development as a function of open markets, deregulated land use, and private capital investment.[47] In urban planning, this translates into prioritising land commodification, reducing the provision of public housing, and favouring investor interests.[48] This trend may result in greater inequality, reduced access to essential services for marginalised communities, and the prioritisation of profit over residents' well-being.[49] In the

[41] Daniel K. A., (2024), supra note, no. 57.
[42] Ministry of Urban Development and Housing, Ethiopia's Urban Policy Framework, 2017.
[43] Ibid.
[44] UN-Habitat, Informal Settlements in Ethiopia: Challenges and Opportunities, 2020.
[45] Pankhurst, A., 'Urban Development and Social Change in Ethiopia', Journal of Modern African Studies, no. 3, 2016.
[46] Rachel Beatty, *Neoliberal Urbanism: Socio-Spatial Fragmentation and Exclusion,* New Visions for Public Affairs, (Volume 6, May 2014), p.44.
[47] Ibid
[48]Armita Khalatbari, *A Critique of Neoliberal Urbanization and Its Downsides on Housing Policies*, (Preprints.org, April 2024), p. 5.
[49] Harvey D., *A Brief History of Neoliberalism, Gentrification and Social Mixing: Towards an Inclusive Urban Renaissance*? Urban Studies, 45(12), (Oxford University Press, 2008); pp. 2449-2470.

neoliberal development model, housing needs, livelihoods, and other aspects of social life receive little attention.[50] Most new cities emerge from a neoliberal drive to create the next world city to be competitive and attract investment.[51] Liberals view informal settlements as inefficient or as obstacles to economic growth.[52] Under this model, the city is a site of investment, and land becomes a commodity rather than a social good.[53] Informal settlements are displaced to make space for more efficient land use and become spaces for capital accumulation rather than inclusive habitation.[54] In the Ethiopian context, this theory has influenced urban development policies since the government began adopting market-oriented reforms.

The main shortcomings of this theory are redevelopment[55] and the displacement of existing residents, resulting in social and economic exclusion and the loss of affordable housing options.[56] Moreover, the presence of public land ownership and the extensive powers granted to the government through the expropriation proclamation led to eviction, even when someone is a legal occupant of the land. The core issue lies in the circumstances that arise after eviction. In neoliberal urban policies, attracting investment and promoting economic growth[57] that can lead to increased property values and rising rents.[58] As a result, low-income residents become unable to afford to remain in their homes, ultimately facing displacement.[59] Neoliberal urban development projects exacerbate existing inequities and create new forms of inequity.[60] Thus, informal settlers are doubly marginalised, excluded from formal markets and evicted.

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[50] Gideon Baffoe, *Neoliberal Urban Development and the Polarization of Urban Governance*, (2023), p. 2.
[51] Harvey D., *Neo-Liberalism as Creative Destruction*, Geografiska Annaler: Series B, Human Geography, (2006), p. 147.
[52] Gilles Pinson and Christelle Morel Journel, *The Neoliberal City, Theory, Evidence, Debates, Territory, Politics, Governance*, (2016), p. 139.
[53] Ibid
[54] Harvey D., (2005), supra note, no. 51.
[55] Mele, C., *Casinos, Prisons, Incinerators, and Other Fragments of Neoliberal Urban Development*, (Social Science History, 2011), p. 419.
[56] Armita Khalatbari, (2024), supra note, no. 50, p. 6.
[57] Florida R., *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life*, Basic Books, (2003).
[58] Van Noorloos F. and Kloosterboer M., *Africa's New Cities: The Contested Future of Urbanizatio*n, (Urban Studies, 2018), p. 1226.
[59] Lees L., *A Reappraisal of Gentrification: Towards Geography of Gentrification, Progress in Human Geography*, (2000), p. 390.
[60] Brenner N. and Theodore N., *Cities and the Geographies of Actually Existing Neoliberalism*, (Antipode, 2002), pp. 341–347.

2.2.3. Post-Development Theory

Post-development theory emerged as a critical response to conventional development discourse, chiefly the Western-centric, growth-driven and technocratic paradigms.[61] This theory challenges the universality of development models by ignoring the idea that modernisation is the only development path.[62] It emphasises plurality, local agency, knowledge diversity, and autonomous grassroots innovation.[63] Post-development theory critiques the hegemonic discourse that labels non-formal urban life as backward or illegitimate, including informal settlements that do not fit within the formal urban planning frameworks.[64] From this theoretical perspective, informal settlements should not be viewed solely as illegal encroachments or slums to be cleared for urban beautification; rather, they represent adaptive, locally grounded responses to systemic exclusion from formal land and housing markets.[65] The eviction of informal settlements in the name of modernisation constitutes an exercise of top-down developmental power that disregards the lived realities, survival strategies, and cultural logic of the urban poor.[66]

2.2.4. Rights-Based and Human Development Approach

The rights-based approach to development emphasises that all development efforts must respect, protect, and fulfil internationally recognised human rights.[67] It is rooted in international human rights laws. It frames housing not merely as a commodity but as a fundamental human right essential for dignity, security, and well-being.[68] This approach shifts the focus from economic growth metrics to people's capabilities and freedoms.[69] It prioritises enhancing individual well-being, social inclusion, and empowerment over material accumulation.[70] These approaches also advocate for

[61] Escobar A., *Encountering Development: The Making and Unmaking of the Third World*, Princeton, (NJ: Princeton University Press, 1995).
[62] Ferguson J., *The Anti-Politics Machine: Development, Depoliticization, and Bureaucratic Power in Lesotho*, (University of Minnesota Press, Minneapolis, 1994).
[63] Ibid.
[64] Ananya Roy, 'Urban Informality: Toward an Epistemology of Planning', Journal of the American Planning Association, 2007, p.41.
[65] Ibid.
[66] Ibid, p. 71.
[67] Morten B. and H. S., 'Strengths and Weaknesses in a Human Rights-Based Approach to International Development, An Analysis of a Rights-Based Approach to Development Assistance Based on Practical Experiences', The International Journal of Human Rights, Vol. 22, No. 5, 2018, pp. 664–680.
[68] Ibid
[69] Anand S. and A. Sen., *Human Development and Economic Sustainability*, (World Development Volume 28, Issue 12, 2000).
[70] Nussbaum M., *Women and Human Development: A Study in Human Capabilities*, (Cambridge University Press, 2000).

development policies that centre on equity, participation, accountability, and non-discrimination,[71] essential principles when addressing informal settlements and evictions.[72] It argues that settlements can be seen as a legitimate claim to urban space; all urban inhabitants, regardless of tenure status, have a right to shape the city, access services, and remain in place. This concept directly challenges eviction-based development strategies and aligns with theories advocating redistributive justice, participatory democracy, and inclusive urbanism.[73] Forced evictions tend to prioritise government development programs over residents' rights, exacerbating vulnerabilities.

The link between development theories and informal settlements in *Sheger* City lies in how each theory frames urban development, land use, and human rights. Modernisation and liberalisation theories often justify rapid urban expansion and market-led urban development that fuel informal settlements. Post-development and rights-based approaches highlight the need for local agency, justice, and human rights. The clash of these theories explains why *Sheger* City faces both expansion of informal housing and aggressive eviction campaigns.

3. **Informal Settlement Practices in Ethiopia**

Informal settlements in Ethiopia result from a complex interplay of structural, socio-economic, and institutional factors. These drivers are deeply interconnected and reflect broader challenges in governance, urban planning, and economic development.[74] Poverty remains a central driver of informal settlement growth. The absence of affordable housing options forces low-income groups to seek shelter in unregulated areas, often without legal tenure or basic services.[75] Ethiopia has experienced accelerated urbanisation, particularly in cities like Addis Ababa and *Sheger* City. This growth is fuelled by rural-to-urban migration, driven by the search for employment, education, and safety.[76] However, urban infrastructure and housing supply have not kept pace with this demographic shift, resulting in overcrowding and proliferation of informal settlements. Conflicts and political instability have led to internal displacement, with affected populations migrating

[71] UNDP, Human Development Report: The Rise of the South: Human Progress in a Diverse World, New York, 2013.
[72]Loren King, Henri Lefebvre, *The Right City*, Sharon Meagher and Joe Biehl, eds. Philosophy of the City Handbook (Routledge 2019).
[73] Johan G., 'Violence, Peace, and Peace Research', Journal of Peace Research, Vol. 6, No. 3, 1969, pp. 167-191.
[74]Ashenafi G., (2015), supra note, no. 6.
[75] Ibid.
[76]Dessalegn G/Silassie, (2017), supra not,e no. 1, P. 9.

toward urban centres in search of security and livelihoods.[77] These displaced groups often settle informally due to the limited formal resettlement programs and affordable housing alternatives. The scarcity of formal employment opportunities in urban areas also exacerbates vulnerability. Without a stable income, many urban dwellers cannot afford formal housing and hence are pushed into informal settlements where living costs are lower, but conditions are precarious.

Corruption, lack of transparency, and weak enforcement of planning regulations contribute to the unchecked expansion of informal settlements.[78] The absence of participatory planning mechanisms excludes marginalised communities from decision-making processes.[79] The informal land market operates with minimal oversight, facilitating the sale and occupation of land without legal documentation.[80] This undermines formal planning efforts and perpetuates tenure insecurity. Ethiopia's land tenure system, which vests land ownership in the state, complicates access to residential land. Bureaucratic hurdles, unclear land rights, and inefficient land administration systems limit formal land allocation.[81] This drives informal land transactions and unauthorised construction.

In Ethiopia, most of the informal settlements are characterised by people who have low or middle income and built *chereka bet* (moon house - house built during nighttime), informally in violation of urban planning rules. Urban policy, aimed at meeting the housing needs of low-income people, cannot solve residents' housing problems.[82] As a result, people are obliged to live in informal houses that lack access to infrastructure and utility services.

According to the 2022 Supervision Report of the Oromia Regional State President's Office, informal settlement is a more complex problem than a good governance issue,[83] becoming a political and systemic problem in the region. As stated in the report, illegal settlement is practised

[77] Alemayehu G. J., *Land Law and Clearance of Informal Settlements in Sheger City, Ethiopia,* International Journal of Leadership and Public Sector Reform (IJLPSR), 2024.
[78] Jemal A., (2021), supra note, no. 11, p. 19928.
[79]Daniel B, *Informal Urban Land Holdings in Ethiopia: A Policy Debacle*; in Murado Abdo (Ed), *Ethiopia's Urban Land Questions: Focus on Access to Justice and Dispute Resolution*, (Ethiopian Civil and Commercial Law Series Vol.9, 2020), P.184.
[80] Ibid.
[81] Alemayehu G. J., (2024), supra note, no. 79.
[82]Jemal A., (2021), supra note, no. 11. p.19929.
[83] Oromia Regional State Office of the President Supervision Report, 2021.

both at the centre and the periphery of the towns. Moreover, it is reported that in towns identified by the supervision, 45,000 houses in Burayu Town, 7,077 houses in Adama Town, and 5,110 houses in Sululta Town were built illegally. Above all, it was also reported that the problem is severe in the urban and peri-urban areas. According to this supervision report, it is the place where corruption is highly exercised.

4. Eviction: A Legal Framework

4.1.Eviction in International Human Rights Law

The Committee on Economic, Social and Cultural Rights (CESCR), in General Comment No. 7, has emphasised that States must ensure due process before carrying out evictions, including genuine consultation with affected individuals and groups.[84] Under international human rights instruments, arbitrary deprivation of property is understood as the failure of a State to provide fair notice and an opportunity to be heard.[85]

The right to property ownership and protection against arbitrary deprivation is recognised in Article 17 of the Universal Declaration of Human Rights (UDHR);[86] Consequently, forced eviction constitutes a violation of property rights. In line with these obligations, municipal authorities are required to provide adequate notice and engage in meaningful consultation with those facing eviction before demolitions or displacement.[87]

The obligation to respect, protect, and fulfil the right to adequate housing is firmly established in international human rights law, particularly under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11(1) of the ICESCR recognises "the right of everyone to an adequate standard of living, including adequate housing," and obliges States Parties to take appropriate steps to ensure its realisation.[88] Ethiopia, as a signatory to the Covenant, is legally bound to uphold these provisions.

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[84] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The right to adequate housing, 1991, Article. 11(1): Forced evictions, 13, U.N. Doc. E/1998/22 (1997).
[85] ICESCR, Article 11(1), adopted by the UN General Assembly, 1966, Article 17.
[86] Universal Declaration of Human Rights (UDHR), 1948, General Assembly Resolution, 217A (III), U.N. Doc. A/810, Art. 17.
[87] UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, U.N. Doc. A/HRC/4/18 (2007), pp. 37–39.
[88] ICESCR, Article 11(1), UN General Assembly, 1966, Article 11(1).

The CESCR, in its authoritative General Comment No. 4 (1991), elaborates that adequate housing is not merely a roof over one's head but encompasses elements such as legal security of tenure, availability of services, affordability, habitability, accessibility, location, and cultural adequacy.[89] Furthermore, General Comment No. 7 (1997) addresses forced evictions, stating that such actions are prima facie incompatible with the requirements of the Covenant unless carried out in exceptional circumstances, with due process and the provision of alternative housing.[90] These interpretations underscore that informal settlers, even if residing without formal tenure, are entitled to protection under international law.[91] Evictions carried out in accordance with the law differ fundamentally from arbitrary forced evictions in that lawful evictions must be grounded in clear legal authority, conducted only in exceptional circumstances, and accompanied by due process safeguards such as prior notice, genuine consultation, and provision of alternative housing, whereas arbitrary forced evictions are removals undertaken without legal basis, notice, or procedural guarantees, and are therefore considered prima facie violations of international human rights law under the ICESCR and CESCR General Comment No. 7.[92]

4.2.Informal Settlement Eviction under Ethiopian Laws

The legal basis for land use and urban development in Ethiopia is primarily governed by the Urban Land Lease Holding Proclamation No. 721/2011, which stipulates that all urban land is owned by the state and leased to individuals or entities for specified periods. Informal settlers, who often occupy land without formal lease agreements, are considered to violate this law, making them vulnerable to eviction without full legal protection. In *Sheger* City, eviction practices have been justified under the guise of urban renewal and infrastructure expansion.

According to the Ethiopian Constitution (Article 40), citizens are guaranteed the right to property and protection from arbitrary displacement. International human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), also affirm the right to adequate housing and protection from forced evictions. However, the Ethiopian Constitution does not explicitly address the eviction of informal settlements. The constitution does not grant

[89] CESCR), General Comment No. 4: The right to adequate housing (Article 11(1), 1991.
[90] CESCR, General Comment No. 7: The right to adequate housing Article 11(1): Forced evictions, 1997.
[91]UN Basic Principles and Guidelines, (2007), p. 56.
[92] CESCR, General Comment No. 7, Article 11.1: Forced Evictions, pp. 13–15.

urban dwellers the right to acquire land. It clearly outlines the rights of peasants and pastoralist communities to access rural land free of charge and provides them protection against eviction. Since the constitution does not recognise the land rights of urban dwellers, it is unexpected that it would offer them protection against eviction either. Urban Land Lease Holding Proclamation No. 721/2011 grants urban authorities the power to demolish houses built on informally occupied urban land by serving a written order to residents, without providing alternative accommodation (Article 26(4)). This means residents may be evicted without compensation or resettlement.[93] The proclamation appears inconsistent with international human rights law, as such law clearly permits forced eviction for unauthorised occupation of land.[94] The law does not distinguish between informal and illegal settlements; as a result, it presumes the two concepts are the same.

Despite this, the proclamation itself allows regulation of land possessed without formal permission, provided it does not conflict with urban planning or parcelling standards, through the lease system. [95] Furthermore, the Oromia Urban Land Lease Administration Directive provides that houses constructed before January 24, 2013, can be regulated and legalised.[96] This means they may be informal but not necessarily illegal, given urban planning. Therefore, in Ethiopia, the law does not protect informal settlers whose land is subject to demolition as a result of eviction. Informal settlers will not be compensated in case the land or houses they used to reside in are subjected to demolition for a public purpose or the houses are constructed without permission.

According to Article 11 of the draft Urban Land Lease System (2024), where urban land is acquired outside the lease system, the relevant authority is responsible for taking preventive measures to prevent illegal possession of urban land. Any city that has not completed the regularisation of urban land acquired before November 18, 2004, without the permission of the relevant authority must complete it within three consecutive years from the date this Proclamation comes into effect. Any

[93] Federal Democratic Republic of Ethiopia, (2011), Urban Land Lease Holding Proclamation No. 721/2011, Federal Negarit Gazeta, Addis Ababa, (hereafter called Proclamation No. 721/2011), Article 26(4); Re-enactment of Urban Lands Lease Holding Proclamation No. 272/2002.
[94] Ibid, Article 26(4).
[95] Ibid, Article 6(4)
[96] Oromia Regional State, Urban Land Lease Administration Directive No. 9/2013 Article 63; Directive No. 5/2016, Articles 25 and 11.

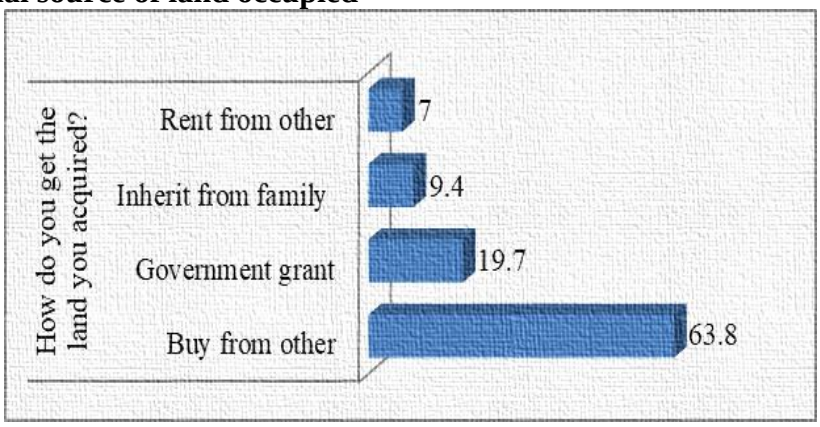
buildings constructed on land occupied without permission after November 18, 2004, shall be demolished, and the relevant authority will take them over and transfer them to the Land Bank.

5. Informal Settlements in *Sheger* City: Context and Complexity

5.1.Expansion of Informal Settlements

The emergence of informal settlements resulted from the failure to address rapid urbanisation.

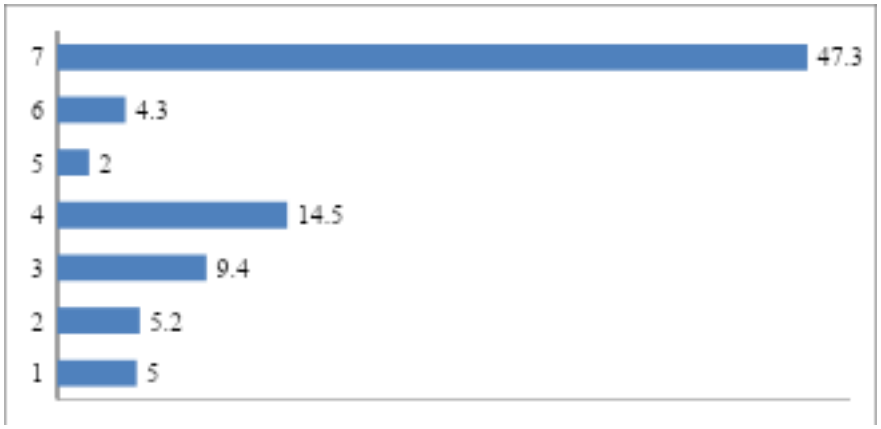
Figure 1: Original source of land occupied



Source: *Survey Data, 2024*

The residents initially acquired the land on which they built their shelters through various means. In this study, participants were asked to reflect on their perceptions regarding the original methods of land acquisition. As illustrated in Figure 1, the majority of respondents reported that the land was obtained through purchase rather than through rental agreements, inheritance, or government grants, and more than 63.8% acquired land from other sources. Additional modes of acquisition included renting from others, inheriting land from family members, and receiving government allocations. Within the framework of current land legislation, acquisitions through inheritance and government grants are not necessarily illegal; however, they may be classified as informal due to inconsistencies with the city administration's urban planning regulations.

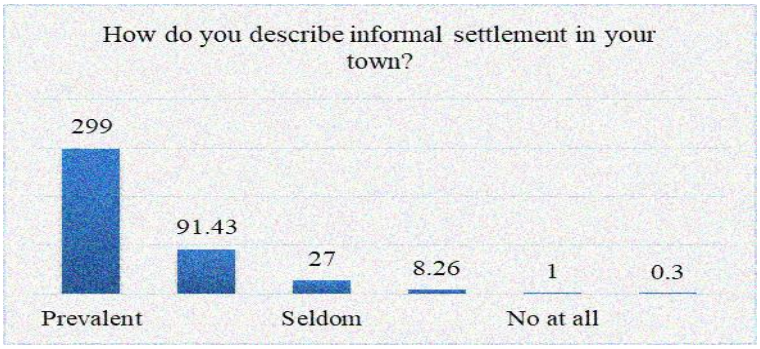
Figure 2: From whom the land was acquired



Source: *Survey Data, 2024*

The participants also discussed the origin of the land occupied by informal residents. As shown in Figure 2, the majority (47.3%) bought a plot of land from farmers. A small number bought from landholder agents (14.5%). Most of the time, speculators do not want to sell the land themselves; they prefer to sell through a third party (an agent). The qualitative data revealed that the majority of the land for sale is farmers' landholdings. Farmers sell their land to others at better prices, which is better than the compensation the government pays them upon expropriation. This left them in severe poverty, as they had already sold their land and spent the proceeds. As the qualitative data from interviews and focus group discussions reveal, almost all local farmers who reside on the peripheries of the study towns have neither land nor money.

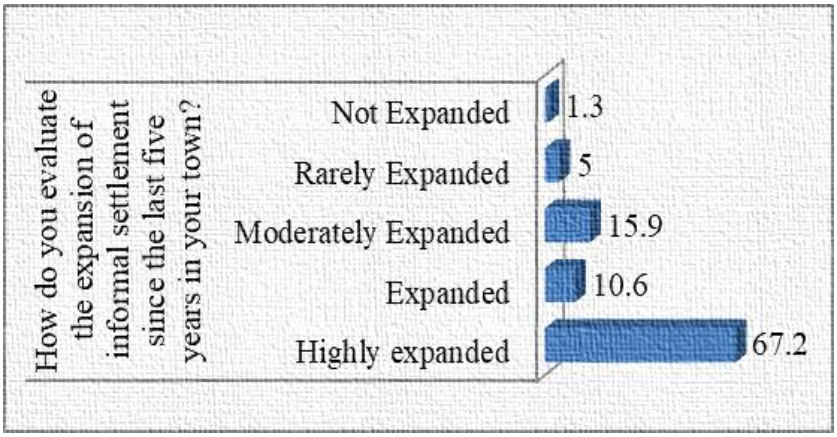
Figure 3: Existence of informal settlements in the study area



Source: *Survey Data, 2024*

Respondents to the questionnaire were asked whether informal settlements exist in the towns where they live. As shown in Figure 3, informal settlements and illegal constructions are very prevalent in the city where they live (91.43%).

Figure 4: Extents of expansion of informal settlements

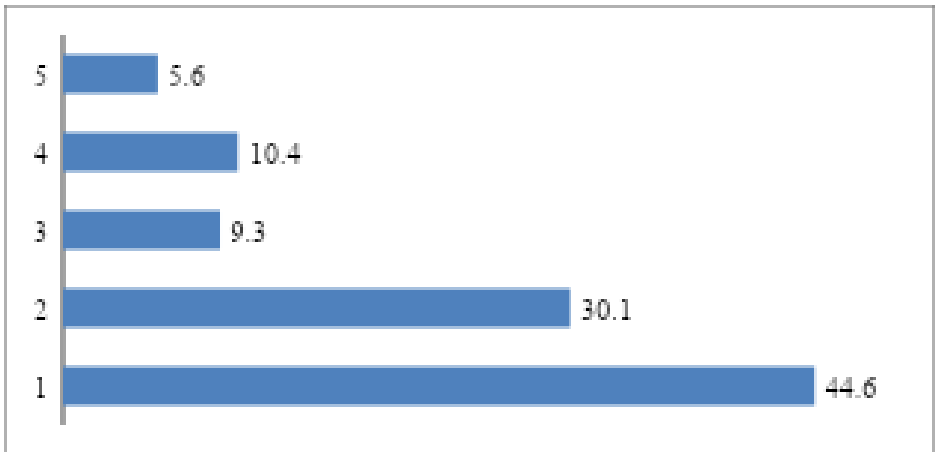


Source: *Survey Data, 2024*

Respondents were also asked to share their observations regarding the expansion of informal settlements, particularly since 2018. As indicated in Figure 4, 93.7% of respondents reported that informal settlements have expanded in the towns where they reside. Interviews conducted with local officials also confirmed that the expansion is occurring at a significant scale.

5.2.Actors Driving the Expansion of Informal Settlements

Figure 5: Players in the expansion of informal settlements



Source: *Survey Data, 2024*

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https://journals.hu.edu.et/hu-journals/index.php/hujl
https://www.ajol.info/index.php/hujl

Different actors are involved in the expansion of informal settlements, including government officials. As indicated in Figure 5, brokers and speculators are the main actors in the expansion of informal settlements (44.6%). The actors who participate in the expansion of informal settlements and land grabbing include government officials (30%). Other actors involved in the expansion of informal settlements are landholders (10.7%) and employees (9%). The interviews conducted with residents divulged that government officials, police officers and even members of local militia receive money (bribes) and cooperate in the expansion of informal settlements, violating de jure housing procedures (formal, legally established processes and regulations that govern housing) as lands are exchanged for money. In this regard, collaboration between speculators and officials has significantly exacerbated the expansion of informal settlements.

5.3.Causes of Informal Settlements Growth

Table 1: Reason for the emergence of informal settlements

No	Items	Agree		Neutral		Disagree	
		F	P	F	P	F	P
1.	Lack of housing for residents	257	78.6	13	4.0	57	17.4
2.	Local officials encourage informal settlements	290	88.7	10	3.1	27	8.3
3.	Local community welcomes informal settlements	159	68.6	17	5.2	151	26.2
4.	Land inaccessibility for housing	251	76.8	7	2.1	69	21.1
5.	Ineffective formal housing	287	87.8	9	2.8	31	9.5

Source: *Survey Data, 2024*

As shown in Table 1, respondents reported their perceptions of the causes of informal settlements in *Sheger* City. The results reveal multifaceted and deeply rooted causes. A significant majority (78.6%) attributed the growth of informal settlements to a lack of adequate housing for citizens. Furthermore, 88.7% of respondents believed that local officials intentionally encourage informal settlements, while 68.6% indicated that local communities, including farmers, actively welcome such developments. Inaccessibility of land for residential purposes was cited by 76.8% of respondents, and 87.8% cited the ineffectiveness of formal housing programmes as a key factor driving residents towards informal alternatives.

These results underscore the complexity of the issue, revealing that informal settlements are not merely the result of housing shortages but are shaped by governance failures, local complicity, and systemic barriers to land access. The proliferation of informal settlements, driven by diverse and interrelated causes, poses a significant challenge for urban management and policy intervention in Sheger City. Qualitative data from FGDs and interviews with officials further revealed the economic behaviours fuelling informal expansion. Many individuals reportedly sell their legally acquired land at higher market prices and purchase land informally from local farmers at lower prices to build new housing. Government employees are also implicated in this practice, often selling their formal plots and reinvesting in informal land occupation. This cycle has contributed to a sharp rise in both land and informal housing prices, creating a lucrative yet illegal market that incentivises further unauthorised development. The growing profitability of informal land transactions and housing construction reflects a breakdown in formal land governance and housing provision. Without coordinated efforts to curb speculative behaviour and enforce legal frameworks, informal settlements will continue to expand, undermining urban planning and exacerbating social inequality.

Table 2: Economic reasons

No	Items	Agree	Neutral	Disagree
1.	Unemployment	67.4	7.7	24.9
2.	Compensation and replacement upon expropriation	74.3	5.6	19.7
3.	Unaffordable land lease price	71.7	7.7	20.2
4.	Weak urban house affordability	69.5	10.4	19.1
5.	Low income of settlers	65.2	3.9	30
6.	Housing shortage	78.7	1	16.9
7.	Land speculation	89.6	2.3	7.9

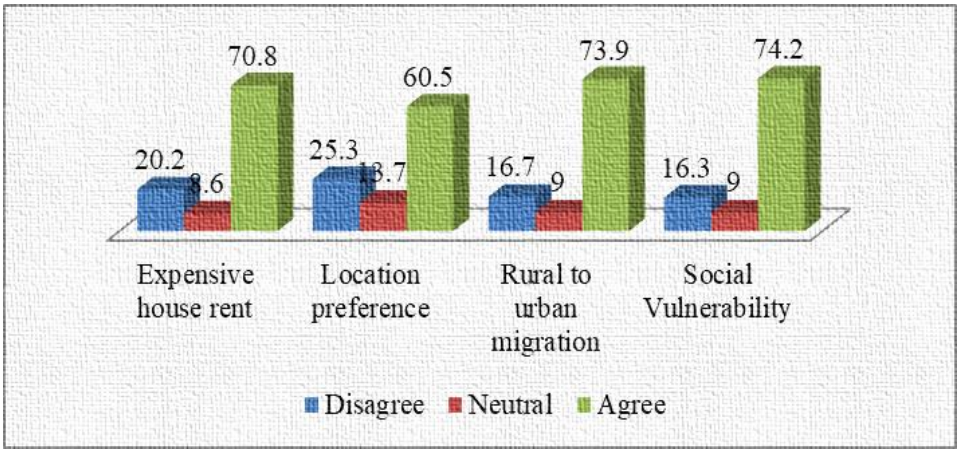
Source: *Survey Data, 2024*

As presented in Table 2, the expansion of informal settlements in the study area is driven by a combination of economic pressures and institutional shortcomings. Unemployment is identified by 67.4% of respondents as a key factor, highlighting the struggles of many urban residents to obtain

a stable income needed for formal housing. Low affordability of urban housing, cited by 69.5% of respondents, further pushes individuals toward informal alternatives. The rising cost of land leases, reported by 71.7%, effectively excludes low-income populations from acquiring residential plots through formal channels, making informal land acquisition a more viable option. Income levels also play a significant role, with 65.2% of respondents indicating that low earnings contribute to the growth of informal settlements. The housing shortage, particularly of affordable units, was cited by 78.1% of participants as a major driver. Land speculation emerged as the most prominent factor, with 89.6% of respondents identifying it as a contributor to the expansion of informal settlements. Speculative practices inflate land prices and distort access, favouring profit-driven transactions over equitable housing distribution.

Qualitative data from interviews and FGDs conducted with residents reinforce these findings. Participants observed that weak and ineffective land and housing management systems have exacerbated the problem. Shortage of low-cost housing for low-income groups is consistently highlighted as a core issue. Moreover, the desire to own housing, amid rising costs, rigid procedures, and limited formal options, drives many residents to pursue informal housing solutions.

Figure 6: Social and Spatial Drivers of Informal Settlement Expansion



Source: *Survey Data, 2024*

The expansion of informal settlements in Ethiopia is closely linked to a range of social and spatial factors. One of the most significant causes is the shortage of residential housing that meets the needs of urban residents, coupled with the escalating cost of house rent. According to the data, 70.8% of

respondents identified expensive rental prices, rising unexpectedly across *Sheger* City, as a key driver pushing individuals toward informal housing options. Additionally, 60.5% of respondents indicated that people prefer to settle on informally acquired land due to its strategic advantages, such as proximity to city centres, improved security, and access to larger plots.

Rural-to-urban migration also plays a critical role in the proliferation of informal settlements. Driven by limited job opportunities, insecurity, and weak governance in rural areas, migrants seek better prospects in urban centres. This trend was confirmed by 73.9% of respondents, who agreed that migration is a major factor in the growth of informal settlements. The influx of migrant's places additional pressure on urban housing markets, which are already strained by inadequate supply and affordability challenges. Social vulnerability is another contributing factor, cited by 74.2% of respondents. Low-income groups, displaced populations, and marginalised communities often lack access to formal housing and are forced to settle informally.

6. Eviction Practices: Legal and Human Rights Dimensions

6.1. Forced Evictions and Human Rights Violations

Table 4: Demolition and human rights protection

No	Items	Disagree	Neutral	Agree
1.	Force used during house demolition	20.8	6.4	72.4
2.	The demolition body took the property (corrugated iron, door, windows) of the people whose houses were demolished	17.1	5.4	77.6
3.	Persons who resisted the demolition were arrested	17.2	7.2	75.4
4.	The security forces tired people out when the houses were demolished	13.5	7.9	78.6
5.	Following the demolition of their residences, affected individuals filed a petition with the court, which subsequently issued an order to cease the demolition.	81.1	8.9	11.0
6.	People were appealing to the administrative body to stop the demolition and to keep their property intact	65.3	12.3	22.4
7.	The city administration provided shelter and housing for the people whose houses were demolished	81.3	7.2	11.5
8.	The government body accepted the petition of the people whose houses were being demolished and stopped the demolition	7.1	10.2	82.7

No	Items	Disagree	Neutral	Agree
9.	Compensation paid to the people whose houses were demolished	5.0	14.2	80.8
10.	The demolition of houses was carried out at an appropriate time	47.7	11.6	40.7
11.	When houses are demolished, the government security forces surround the area and threaten people	28.4	9.7	61.9

Source: *Survey Data, 202*4

According to international human rights law, particularly as articulated in General Comment No. 7 (1997) of the UN Committee on ESCR, forced evictions are permissible only under exceptional circumstances and must be carried out in strict accordance with legal procedures. These include prior consultation with affected communities, adequate notice, legal remedies, and provision of alternative housing. The use of force is strongly discouraged and considered a violation of the right to adequate housing under Article 11(1) of ICESCR. However, evidence from *Sheger* City indicates widespread violations of these principles. According to survey data, 72.4% of respondents confirmed that the city administration used force during house demolitions. Furthermore, 77.6% reported that when houses were demolished, residents' property was confiscated or appropriated by the demolition teams. FGDs made with residents revealed that task forces not only demolished houses but also loaded valuable materials, such as logs, doors, and windows, into vehicles and removed them from the site. Participants alleged that these materials were later sold, with the proceeds used to pay labourers involved in the demolition. Yet, 75.4% of respondents reported that government security forces engaged in beatings, arrests, and imprisonment of those who protested the demolitions. Additionally, 78.6% indicated that residents were subjected to physical and psychological exhaustion during these operations. Testimonies from FGDs made with residents further confirmed that security forces deployed by the city administration inflicted severe harm on individuals, especially those who resisted the demolition of their houses.

The judiciary, as a constitutionally empowered institution, plays a critical role in upholding human rights and ensuring that government actions, including forced evictions, comply with national and international legal standards. While Ethiopian law and international human rights instruments affirm the right of access to justice, including the ability to challenge eviction orders in court, the data reveal significant procedural and institutional barriers. According to survey responses, 81.1%

of affected individuals reported being unable to file complaints or obtain court orders to halt the demolition of their houses. Furthermore, 65.3% indicated that they could not appeal to administrative bodies to protect their property, although 22.4% disagreed, suggesting that a minority were able to seek administrative relief. Despite these isolated cases, the broader trend shows that government bodies largely failed to respond to petitions from residents facing eviction. A striking 81.3% of respondents confirmed that their appeals were ignored and demolitions proceeded without legal recourse.

International human rights standards also stipulate that evictions must not result in homelessness. Governments are obliged to provide alternative accommodation or land for displaced persons. However, in *Sheger* City, 81.3% of respondents reported that no shelter or land was provided after their houses were demolished, resulting in widespread displacement.

Compensation for the demolition of informal residents' houses is another critical component of lawful eviction procedures. Yet, 80.8% of respondents confirmed that no compensation was paid for demolished houses, further exacerbating the vulnerability of displaced residents. Regarding the timing of demolitions, opinions were divided: 47.7% disagreed that demolitions occurred at appropriate times, while 40.7% agreed, citing daytime and winter periods as examples. This suggests inconsistency in the execution of eviction operations. Alarmingly, 61.9% of respondents reported that during demolitions, government security forces, including Federal Police, Regional Police, Special Police Forces, and Local Militia, surrounded the area and threatened residents.

Accurately determining the number of houses demolished in Sheger City remains a challenge. According to officials from the Land Bureau and Sub-City Land Offices, the absence of a comprehensive eviction monitoring system makes it difficult to track the scale of demolitions. Moreover, the process is ongoing, and demolitions have not ceased, suggesting that the actual number of affected homes may be significantly higher than currently estimated.

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6.2.Demolition Procedures

Table 5: Community involvement in decision-making

No	Items	Yes	No
1.	Have you observed that the community affected by eviction were involved in any decision-making regarding the demolition of houses?	7.10	92.20
2.	Were you adequately informed about your rights during the demolition process?	4.90	95.10
3.	Did you get a resettlement package from the city administration?	3.97	96.03

Source: *Survey Data, 2024*

According to the data presented in Table 5, an overwhelming majority of respondents (92.2%) reported that affected individuals were not involved in the decision-making processes related to the demolition of their houses. During FGDs, residents stated, "No one invited us to participate in any meeting about the demolition of our houses; the authorities decided clandestinely and eventually demolished our houses." This sentiment reflects a widespread perception of exclusion and lack of transparency. In contrast, government officials interviewed denied these claims, asserting that residents were unwilling to attend officially convened meetings. They attributed the information gap to the residents themselves.

The data reveal a deeply troubling pattern of rights violations in the context of forced evictions in *Sheger* City. An overwhelming 95.1% of respondents reported that evicted individuals were not informed of the demolition of their homes, indicating a lack of communication from the city administration. According to Table 4, 96.03% of respondents reported that individuals did not receive any resettlement assistance or service packages. Only 3.97% reported receiving support, suggesting that relief efforts were minimal and were applied inconsistently. This failure to provide alternative housing or compensation directly contravenes obligations under ICESCR, which requires states to ensure that evictions do not result in homelessness or further marginalisation.

6.3.Procedural Deficiencies

Table 6: Notice and preparation time

No	Items	Responses	Count	Per
1.	Have you been given prior notice about the eviction?	Yes	87	26.6
		No	189	73.4
2.	If you were given prior notice of the eviction, how much time were you given to prepare?	Less than two days	37	11.3
		Three days	20	6.1
		Four days	4	1.2
		Five days	10	3.1
		Six days	8	2.5
		Seven or more days	75	22.9

Source: *Survey Data, 2024*

The data presented in Table 5 highlight serious procedural deficiencies in the execution of forced evictions in *Sheger* City. A significant majority of respondents (73.4%) reported that displaced persons received no prior notice before the demolition of their houses, while only 26.6% indicated that some form of notice was provided. Among those who received notice, the timeframe was notably inadequate: only 22.9% were informed seven or more days in advance, whereas 11.3% were notified less than two days before the demolition. Such short notice periods severely limit affected individuals' ability to prepare, seek legal remedies, or secure alternative housing.

During FGDs, residents reported being excluded from any form of consultation. Participants stated that “no prior notice was given” and that demolitions were carried out without warning, a prima facie violation of the FDRE Constitution and of international human rights law under the ICESCR and CESCR General Comment No. 7. Similarly alarming are the findings on resettlement and rehabilitation. Many participants reported receiving only verbal communication, with no written documentation or clear information about the reasons for eviction, relocation options, or available support services. This lack of transparency and procedural clarity undermines the right to information and meaningful participation, both of which are protected under international human rights law. Interviews with government officials acknowledged that the city administration reclaimed land under tight deadlines, often dictated by city cabinet orders. Regional Land Bureau officials were accused of carrying out demolitions without prior notice, adequate preparation time,

or consultation with residents. These practices, coupled with the use of force, are widely viewed as violations of human rights norms.

The Ethiopian Human Rights Commission (EHRC) reported that between October 2022 and the time of reporting, approximately 111,811 houses were demolished in *Sheger* City and the Adama City Administration.[97] The EHRC concluded that these mass demolitions and forced evictions were illegal and contravened both international human rights standards and domestic laws, including federal and Oromia Region regulations. The EHRC emphasised that evictions were carried out without due process, prior notice, or consultation with affected residents. In contrast, the mayor of *Sheger* City, in an interview with VOA, defended the demolitions as a lawful enforcement measure targeting unauthorised constructions. He claimed that discussions were held with residents before the demolitions. However, this assertion stands in stark contrast to the widespread reports of procedural violations and lack of engagement. Further concern was raised by the Ethiopian Ombudsman Institution, which announced it had received about 100,000 complaints related to the demolition of residential houses under the pretext of illegal construction.[98] The institution expressed alarm over the absence of temporary accommodation for displaced individuals, highlighting a critical gap in post-eviction support and rehabilitation.

7. City Administration Acts in the Course of Demolition

Since *Sheger* City was established as a new administrative entity, house demolitions and forced evictions have become routine, carried out by a coordinated task force. These operations suggest a systematic approach to clearing informal settlements without legal safeguards or human rights standards. FGDs with affected residents, including long-term settlers, revealed disturbing accounts of evictions, with government security forces, including the national defence force, Oromia police, Oromia special force, local militia, and labourers, forcibly removing residents. Evictions involved heavy militarisation: trucks, armed police and militia surrounding the area, day labourers dismantling houses, and bulldozers demolishing buildings.

[97] Ethiopian Human Rights Commission (EHRC) press release, the demolition and forced resettlement of houses in *Sheger* City in Oromia Region has exacerbated homelessness, Ethiopia, (March 31, 2023).
Available at: https://ehrc.org/reports/sheger-evictions (accessed 15 September 2024).
[98] Ethiopian Ombudsman Institute Report, Ethiopia, March, 2023.

Residents emphasised that the demolition areas were sealed off, with security forces preventing anyone from approaching. Those who attempted to protest the destruction of their houses were met with violence, beaten, arrested, and in some cases, jailed. These accounts point to a pattern of excessive force and suppression of dissent, raising serious concerns about violations of the right to housing, freedom of expression, and protection from arbitrary detention. Such militarised eviction practices not only contravene Ethiopia's constitutional guarantees but also breach international human rights obligations.

The EHRC has documented serious human rights violations associated with the demolition and forced eviction practices in *Sheger* City.[99] According to the Commission's report, the eviction process in several areas has resulted in violence, abuse, physical and psychological harm, and imprisonment. These outcomes reflect a failure to uphold basic human rights protections and due process guarantees, particularly for vulnerable populations. Consistent with EHRC's report, the evictions were often carried out in adverse conditions, early mornings, rainy periods, or under cover of darkness, leaving families exposed to the elements without alternative accommodation.[100] Such practices violate international human rights standards.

While city administration officials claimed that certain groups organised to disrupt illegal house demolition operations and allegedly attempted to harm security forces, EHRC received independent reports of tragic incidents, including the loss of human life. One such case involved a fatal domestic attack on a woman in Filidoro, located in the Gafarsa Guje Sub-city of *Sheger* City Administration.[101] This incident underscores the chaotic and dangerous nature of eviction operations conducted without adequate planning or safeguards.

Senior officials from the Oromia Regional Government have defended the widespread demolitions in Sheger City, citing prior administrative weaknesses and the strategic importance of the affected areas. According to Addisu Arega, a high-ranking official speaking to the Associated Press, the houses were constructed during a period of unrest when the government lacked the capacity to enforce land use regulations. He stated that the areas were designated for public infrastructure,

[99] EHRC, (2023), supra note, no. 100.
[100] Ibid.
[101] Ibid

green spaces, manufacturing hubs, and investment projects, and emphasised that reclaiming the land was essential for restoring law and order: "Everyone should know that this is something that is not up for discussion."[102] However, this official narrative stands in stark contrast to the lived experiences of residents and findings from independent investigations. FGDs and interviews with sub-city officials and residents revealed that land grabbing, illegal construction, and informal land trade have significantly increased since 2018, coinciding with the rise of the current administration.

The EHRC has raised serious concerns about the legality and human impact of these evictions.[103] The Commission reported that demolitions were carried out without prior consultation, adequate notice, or sufficient time for residents to respond, often occurring while individuals were away at work. Moreover, the EHRC documented instances of detention, physical assault, and intimidation by government security forces during the eviction process. In its official statement, the EHRC emphasised: "It is necessary to follow the legal process for the action of demolishing illegal construction and facilitate alternative solutions considering the social crisis that the action may cause." Other civil society actors and human rights advocates have echoed these concerns, urging the government to uphold the rule of law, respect citizens' rights, and adhere to due process in all eviction-related actions.

8. Conclusion and Recommendations

This article examines the eviction of informal settlements in *Sheger* City, a process that poses a major human rights challenge. Its "smart city" initiatives follow a top-down approach that excludes residents of informal settlements from decision-making, undermining legitimacy and fuelling public resentment. Evictions often occur without court orders or proper procedures, while the Urban Land Lease Proclamation leaves settlers in a legal grey area, disconnecting constitutional guarantees from lived realities. Modernisation views evictions as necessary for renewal, yet they cause social displacement. *Sheger's* smart-city strategy has favoured evictions over inclusive housing, revealing a tension between modernisation goals and residents' rights. Large-scale demolitions, justified as essential for development, embody a top-down model that marginalises low-income communities, disregards the socio-economic value of informality, and deepens

[102]Elias Meseret, *Anger in Ethiopia as Officials Demolish Hundreds of Houses*, 2019: https://www.yahoo.com/news/ethiopia-demolish-thousands-houses-prompting-anger.
[103] EHRC, supra note, no. 100.

inequality. The approach contradicts inclusive urban principles, marginalising informal residents in the name of smart city development.

The approach of *Sheger* City manifests a neoliberal development goal, in which informal settlements are often cleared for luxury housing and investor projects, illustrating that the trend of steady advancement in Ethiopia's urban land liberalisation is marked by evictions that prioritise capital accumulation over inclusive housing, thereby marginalising the urban poor and undermining housing rights. Accordingly, *Sheger* City's "smart city" agenda exemplifies neoliberal "accumulation by dispossession," involving forced evictions without compensation or due process to attract investment, violating rights. This technocratic approach favours private interests, ignores the value of the informal sector, and deepens inequality.

This article showcases *Sheger* City's urban development approach, emphasising the post-development perspective that supports locally grounded, human rights-based development, legitimises informal settlements, and values community agency. This perspective offers an ethical framework for addressing evictions that focuses on dignity, participation, and legal protections, challenging technocratic models in favour of people-centred urban transformation. In contrast, Ethiopian urban development often justifies exclusion and demolitions under the guise of building a "smart city," reflecting Escobar's concept of a "development apparatus."[104] and legitimises displacement in the name of modernisation. Eviction practices in *Sheger* City ignore community-led upgrading and participatory governance, undermining sustainable development. The disconnect between grassroots strategies and top-down goals delegitimises local realities, with many houses demolished as "illegal." These demolitions often occur without notice, compensation, or resettlement, breaching protections and undermining participation, accountability, and empowerment.

This highlights the gap between legal frameworks and practice, sidelining rights-based development in favour of exclusionary urban governance, and calls for reforms to recognise informal tenure and integrate settlements into urban planning. Bridging urban land laws and human rights requires a holistic approach, with community participation crucial, giving informal residents a voice in planning and regularisation. Policies such as housing subsidies, low-cost rentals, and

[104] Supra Note no. 62

cooperative housing provide options for low-income groups. Engaging settlers as co-creators promotes sustainable strategies. Preventing future informal settlements requires proactive governance, affordable housing, legal clarity, inclusive planning, and strong institutions to achieve equitable development. At the national and local levels, including the *Sheger* City Administration, a transparent, digital land management system with GIS and satellite monitoring should be established to verify land rights, track land use, and prevent the formation of informal settlements. Accordingly, this article emphasises managing informal settlements via upgrades, formalisation, community empowerment, targeted resettlement, and institutional strengthening, aligned with human rights-based approaches for inclusive urban growth.

Conflict of Interest

The author declares no conflict of interest.

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Reviewing Policy Tool Options to Tackle Land Fragmentation: Insights for Land Consolidation in Ethiopia

Abebaw Abebe Belay*
Achamyeleh Gashu Adam**
Daniel Behailu Gebreamanuel***

Abstract

There are arguments for and against land fragmentation. Nevertheless, it is a serious problem in Ethiopia. It is reaching a critical point that calls for government policy action. However, studies that can guide evidence-based land fragmentation tackling policy tools are limited in Ethiopia. Most of the research in this regard concentrated on fragmentation as a problem and farmland consolidation as a solution. Hence, the main objective of this article is to review the different policy approaches and instruments initiated to tackle land fragmentation in Ethiopia and assess the legal and institutional situation of their application. To realise this objective, it employs a doctrinal legal analysis and desk-based review, along with analysing stakeholder input. This article highlights that land consolidation remains a fundamental and relevant tool for addressing land fragmentation. It offers policy options including tenure restructuring, such as parcel exchanges, market-led transactions, and expropriation, and land-use consolidation or agricultural clustering (cluster farming, cooperatives, and the like). Comprehensive policies with a focus on adopting fit-for-Ethiopia policy tools and a dedicated body, such as a land consolidation commission, are essential for managing fragmentation.

Keywords

Land Administration; Land Fragmentation; Policy Tools; Land Consolidation; Fit-For-Ethiopia

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* LL.B, MSc, MA, MBA, Department of Land Administration and Surveying, Institute of Land Administration, Bahir Dar University; P.o.box 5001, Bahir Dar, Ethiopia, Corresponding Author, Email: abebawabebek@gmail.com ORCID No.:0000-0001-5046-6309

**BA, MSc, PhD, Department of Land Administration and Surveying, Institute of Land Administration, Bahir Dar University; P.o.box 5001, Bahir Dar, Ethiopia, Email: agachamyeleh@gmail.com; ORCID No.: 0000-0002-6128-2182

*** LL.B, LL.M, PhD, GIZ-Ethiopia, Email: d.behailu27@gmail.com ORCID No.: 0000-0002-5575-3400

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1. Introduction

Land is a fundamental resource for human survival, economic growth, and environmental sustainability, serving as the basis for agriculture, rural livelihoods, and broader development. These days, effective land administration is critical to bring sustainable development. However, challenges such as land fragmentation constrain mechanisation, reduce productivity, and limit investment, thereby preventing the intended sustainable development, highlighting the urgent need for policies that strengthen land governance, improve efficiency, and promote sustainable land use.

Land fragmentation is defined as the situation in which a single farm or ownership consists of numerous spatially separated and non-contiguous land plots scattered over a wide area.[1] It profoundly affects various aspects, including rural development, land management, land use, land administration, and natural resource protection. Land fragmentation presents a significant administrative, productivity, and investment challenge, constraining the utilisation of modern agricultural machinery and thus impacting productivity.[2] This issue exacerbates poverty and conflict perspectives, rendering it a matter of great concern.[3]

Literature categorises land fragmentation into four distinct types: (1) fragmentation of land ownership, (2) fragmentation of land use, (3) fragmentation within a farm, and (4) separation of ownership and use.[4] Additionally, there are four fundamentally different types of land fragmentation stemming from various reasons which are, unavoidable fragmentation due to natural conditions; fragmentation arising from physical conditions resulting from human activities unrelated to agriculture (e.g., construction of roads, railways, canals, etc.), agricultural rational fragmentation (aimed at minimising the potential risks of climatic and natural disasters, enhancing soil and crop diversity, accommodating different growing conditions, and varied harvesting schedules depending on altitudes), and agriculturally irrational fragmentation, not falling within the first two categories.

Hence, in this article, it is not feasible to address all instances of land fragmentation. Ownership

[1] Bentley, Jeffery W., 'Economic and ecological approaches to land Fragmentation: In defense of a much-maligned phenomenon, Annual review of anthropology', Vol.16, 1987, P.31-67; Balogun, Olubunmi Lawrence, and Babatunde Ebenezer Akinyemi, 'Land fragmentation effects on technical efficiency of cassava farmers in South-West geopolitical zone, Nigeria, Cogent Social Sciences', Vol.3, No.1, 2017.
[2] Bezabih, Mintewab, and Degye Goshu, 'Land issues in Ethiopia: trends, constraints and policy options, Ethiopian Economic Association (EEA)', 2022.
[3] TMG, W., 'Opportunities for Voluntary Land Consolidation in Ethiopia: Farmers' Perspectives', 2019.
[4] Van Dijk, Terry, 'Dealing with Central European land fragmentation, Eburon', Delft 872, 2003.

and land use fragmentation are also noteworthy, with the former denoting situations where agricultural land ownership is divided among numerous owners of small and often irregularly shaped parcels, while the latter pertains to the actual utilisation of the land.

Land fragmentation arises from several factors that are categorised into four. Socio-cultural variations (inheritance laws, population growth, marriage, etc.), variations in economic efficiencies (land market, land transactions); (3) physical variations (soil qualities, topography, location), and operational variations (land redistribution).[5] Additionally, population growth contributes to parcel fragmentation, negatively impacting production efficiency.[6] This fragmentation is caused by inheritance, exchange, alienation,[7] donation, land redistribution,[8] and intentional fragmentation intended to get heterogeneous land quality or characteristics.[9]

Land fragmentation is one of the critical problems to efficient crop production and agricultural modernisation.[10] On the other hand, there are counterarguments that are pro land fragmentation, claiming that it can also bring important benefits, such as intensification, crop diversification, and environmental risk management. According to this empirical evidence, landowners use land fragmentation intentionally to adapt to risks such as climate change and market fluctuations.[11] Besides, others also argue that land fragmentation is best for crop diversification and traditional manure application,[12] as this allows owners to avert risks across different soils and areas. As a result of this, proponents of land fragmentation claim that it contributes to food security through crop rotation, nutritional diversity, and sustainable production.[13]

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[8] Thein, Myat, 'The economics of farm size and land policy in the transition to a market economy, Sojourn: Journal of Social Issues in Southeast Asia', 1997, P.124-134.
[9] *Supra note., 2*.
[10] Sundqvist, Patrik, and Lisa Andersson, 'A study of the impacts of land fragmentation on agricultural productivity in Northern Vietnam', 2007.
[11] de Vries, Walter T., and Uchendu Eugene Chigbu, 'Responsible land management-Concept and application in a territorial rural context, fub. Flächenmanagement und Bodenordnung', 2017; Ntihinyurwa, Pierre Damien, and Walter Timo de Vries, 'Farmland fragmentation and defragmentation nexus: Scoping the causes, impacts, and the conditions determining its management decisions, Ecological Indicators', Vol.119, 2020,106828.
[12] Cholo, Tesfaye C., Luuk Fleskens, Diana Sietz, and Jack Peerlings, 'Is land fragmentation facilitating or obstructing adoption of climate adaptation measures in Ethiopia, Sustainability', Vol.10, No.7, 2018, 2120.
[13] Blarel, Benoit, Peter Hazell, Frank Place, and John Quiggin, 'The economics of farm fragmentation: evidence from Ghana and Rwanda, The World Bank Economic Review', Vol.6, No.2, 1992, P.233-254; Gedefaw, Abebaw Andarge, Clement Atzberger, Walter Seher, and Reinfried Mansberger, 'Farmers willingness to participate in

Despite some benefits, as per the existing literature, the disadvantages of land fragmentation are a critical issue. It is a critical challenge to agricultural productivity and mechanisation. Small and irregularly shaped parcels constrain economies of scale. Besides, managing scattered parcels and poor infrastructure, such as road access, increases labour costs, time required for cultivation, and the overall costs of production. Managing such fragmented parcels is inefficient. It has a high implication on post-harvest losses and higher transportation costs. Fragmentation also causes land loss because of several boundaries and access routes, increasing the possibility of land-related disputes due to a single parcel sharing boundaries with many adjacent parcels. Land fragmentation also discourages infrastructure development such as roads, irrigation, and drainage.[14] In addition, financial institutions are not interested in accepting fragmented parcels as collateral due to the associated higher management costs, which is a constraint to access financial products and engage in investment.[15] Besides, there is literature that talks about the impacts of land fragmentation on decreasing students' school enrollment and increasing school dropouts due to the need for more labour in a family for the management of fragmented parcels.

Ethiopia is not an exception to this, especially evident in areas where sedentary agriculture is practised.[16] Despite this, it is severe in most parts of the country. For instance, existing empirical evidence found that land fragmentation significantly affects the plains of southern Ethiopia, such as Woliata and Kebata zones, and certain areas of western Shewa. Moreover, land fragmentation is becoming a concern in the Gamo Highlands of southwest Ethiopia.[17] In Ethiopia, land fragmentation is prevalent, characterised by numerous small parcels with irregular shapes,[18] scattered over considerable distances between parcels. The absence of road

voluntary land consolidation in Gozamin District, Ethiopia, Land', Vol.8, No.10, 2019, P.148; Galli, Francesca, Stefano Grando, Anda Adamsone-Fiskovica, Hilde Bjørkhaug, Marta Czekaj, Dominic George Duckett, Henrik Almaas et al., 'How do small farms contribute to food and nutrition security? Linking European small farms, strategies and outcomes in territorial food systems, Global Food Security', Vol.26, 2020, 100427.

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[15] *Supra note., 8.*

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[17] *Supra note., 13.*

[18] Demetriou, Demetris, John Stillwell, and Linda See, 'A new methodology for measuring land fragmentation,

access for each land parcel makes cultivation laborious, time-consuming, and very difficult to apply modern agricultural practices. The main shortcomings associated with land fragmentation include the small size and irregular shape of the land parcels, parcel dispersion, and, in particular, the large potential distance between parcels and the owner's farmstead.[19]

It stands as a key constraint to Ethiopia's socio-economic development, notably impeding rural development and the pivotal task of enhancing agricultural productivity. According to the Ethiopian Statistical Service, approximately 7.4 million landholders (34%) have an average landholding of 0.1-0.5 hectares, with each holding an average of 4 parcels. In contrast, 2.8 million landholders (13%) own less than 0.1 hectares of land. Data from the National Rural Land Administration Information System (NRLAIS) reveal average parcel sizes of 0.44, 0.66, and 0.64 hectares in Amhara, SNNPR, and Oromia regional states, respectively.[20] Other studies indicate even more severe levels of fragmentation than reported in this article, underscoring the seriousness of the issue. Despite its negative impact, little has been done to address this issue of fragmentation.[21] If not, Ethiopia will likely continue to lose an estimated annual loss ranging from 31,403 tons to 281,073 tons at the national level, and the estimated grain loss due to parcel distance from homestead ranged from 15,702 tons to 202,023 tons.[22]

Despite numerous studies regarding land fragmentation and land consolidation as a management tool for the same, there is still a lack of a comprehensive study on different policy instruments that could be used to tackle land fragmentation in Ethiopia. Therefore, the primary objective of this article is to review the various policy approaches and instruments for addressing land fragmentation in Ethiopia and to evaluate the legal and institutional context of their implementation.

2. Research Methods and Materials

This article examines policy options to address land fragmentation in Ethiopia. The objective of the article is neither to quantify nor to generalise findings from a sample, but to develop an

Computers, Environment and Urban Systems', Vol.39, 2013, P.71-80; King, Russell, and Steve Burton, 'Land fragmentation: notes on a fundamental rural spatial problem, Progress in human geography', Vol.6, No.4, 1982, P.475-494.

[19] *Supra note., 18*.

[20] Amsalu Tadesse, 'Final Report on Meta-Analysis of Socio-Economic Impacts of Land Fragmentation in Ethiopia [Baseline Study], GIZ, Land Governance (LaGo) Project', 2023.

[21] *Supra note., 3*.

[22] *Supra note., 20*.

in-depth understanding of the types of policy tools available to address land fragmentation and their applications and implications. Given the nature of the research problem, a qualitative research approach combining desk reviews with Focus Group Discussion (FGD) inputs directed by a legal doctrinal research approach was applied. This approach allows the article to capture both the legal frameworks and the practical issues related to the policy tools surrounding land fragmentation issues.

This article used both primary and secondary sources of qualitative data. Primary sources include policy and legal tools related to land fragmentation, including policies and laws that govern land consolidation and other policy tools. In addition, primary data were collected using FGDs, which were employed both at the federal and regional levels, to support the findings. These FGDs were undertaken particularly in the Amhara and Central Ethiopia regions, where land consolidation pilot activities are ongoing. Participants of the FGD include experts and officials working in the Ministry of Agriculture and the land bureaus of the two regional states whose work is in one way or another related to the subject area. A total of 20 experts and officials participated in the FGD.

This article also employed secondary data gathered through desk-based reviews, encompassing prior studies and reports gathered from federal and regional land administration institutions. Additionally, other frequently cited articles in these selected materials were identified through a backward literature search to ensure the inclusion of influential and foundational studies that may not appear in initial searches.

Thematic analysis was used for both primary and secondary data sources. For the policy and legal sources, legal analysis, synthesis, and methods of legal reasoning techniques were employed. Similarly, for data gathered through FGDs, coding was used to capture participants' perspectives, experiences, and insights related to the subject matter. The analysis of this article was informed by efficiency-based theories, as discussed below in the next section.

3. Reviewing Policy Tool Options to Tackle Land Fragmentation

This section explores various policy tools designed to reduce land fragmentation's negative effects. Both theoretical models and empirical research reveal multiple policy options, each providing different strategies to tackle the causes and impacts of land fragmentation. Theories related to land fragmentation and consolidation can be broadly divided into two major strands:

equity-inclined and efficiency-based.

Equity-inclined theories include Risk Diversification/Behavioural Theory and Distributive Justice Theory. The former theory advocates that landholders rationally use land fragmentation as a risk-coping strategy,[23] which is supported by empirical evidence where farmers, sometimes, opt to have fragmented parcels for an unofficial risk-coping strategy. On the other hand, the latter advocates that land fragmentation is the result of redistributive land reforms aimed at fairness rather than efficiency (e.g., Ethiopia's "Land to the Tiller" reform).[24]

Efficiency-based theories focus on productivity, cost minimisation, and economies of scale, generally treating fragmentation as a constraint on agricultural modernisation and economic performance. Property Rights Theory mostly focuses on the effect of weak or insecure tenure arrangements on the fragmentation of the land, which limits the use of land as collateral, which in turn restricts access to credit and investment in land improvements.[25] Clear and secure land rights reduce land fragmentation through facilitating efficient land markets such as buying, selling, exchanging, or leasing the land, thereby leading to consolidation of holdings.[26] Despite the theory providing valuable insights into the role of private property rights in promoting efficiency, it neglects issues related to equity, customary tenure, and communal rights, which makes the theory a less suitable fit for the current legal system of Ethiopia, where land buying and selling are prohibited by law.

The Economies of Scale Theory, similar to the previous theory, states that fragmented plots hinder mechanisation, raise labour costs, and decrease overall efficiency, thereby limiting agricultural modernisation.[27] On the other hand, larger, consolidated plots allow mechanisation, reduce input and labour costs, and enhance productivity. Fragmentation prevents achieving these economies,[28] and the theory advocates for land consolidation, despite its failure to discuss the ups and downs during the implementation of the policy tool. The Ethiopian rural land laws, though not detailed enough, adopt this theory as a justification for

[23] *Supra note., 1.*
[24] Bruce, John W., 'Review of tenure terminology, Land Tenure Center, University of Wisconsin-Madison', 1998.
[25] Feder, Gershon, and David Feeny, 'Land tenure and property rights: Theory and implications for development policy, The world bank economic review', Vol.5, No.1, 1991, P.135-153.
[26] Demsetz, Harold, 'Toward a theory of property rights, In Classic papers in natural resource economics, Palgrave Macmillan UK, London',1974, P. 163-177.
[27] *Supra note., 1.*
[28] Binswanger, Hans P., Klaus Deininger, and Gershon Feder, 'Power, distortions, revolt and reform in agricultural land relations, Handbook of development economics', Vol.3, 1995, P.2659-2772.

the provisions regarding land consolidation and clustering. Article 18 of the federal rural land administration and use proclamation number 1324/2024 explains that land consolidation is meant to make small and fragmented parcels suitable for development, and incentives are added for this purpose. A highly linked theory with the Economies of Scale Theory is Transaction Cost Economics, which explains that fragmented plots increase supervision, transportation, and monitoring costs, resulting in resource misallocation and higher production expenses.[29] Consolidation reduces these costs and increases efficiency.[30] The empirical evidence of this article strongly supports this theory. Landholders in Ethiopia face substantial transaction costs due to fragmentation that leads to an increased demand for policy interventions, such as land consolidation.

Land Consolidation Theory, which was developed primarily in Europe, promotes land reallocation, exchange, or pooling to reduce fragmentation and improve land use. It focuses on the spatial, economic, and social rationalisation of plots.[31]

The fit-for-purpose theory offers a vital integrative view by rejecting the idea of a one-size-fits-all or "black-and-white" method to land fragmentation and consolidation. It stresses that policy measures must be tailored to the unique social, economic, institutional, and environmental conditions of each community. Consequently, no single policy can be ideal everywhere. Instead, a selection of policy tools can be created, allowing policymakers to adopt those most suitable for each specific situation. This strategy helps achieve a balance between fairness and efficiency, making land governance more legitimate and effective by being sensitive to local needs.

In transitioning to a market economy, the farm structure and economies of farm size hold significant importance.[32] The size of farms and the amount of machinery owned are closely related, as they can generate extra income through hiring out machinery, in addition to their own use. International practice and academic discourse delve into various land policy instruments to tackle the development challenges posed by land fragmentation. While many instruments involve the reorganisation of landholding (e.g., voluntary land exchanges, various

[29]Coase, Ronald H., 'The Coase theorem and the empty core: a comment, The Journal of Law and Economics', Vol.24, No. 1, 1981, P.183-187.
[30] Williamson, Oliver E., 'The economics of organisation: The transaction cost approach, American journal of sociology', Vol.87, No.3, 1981, P.548-577.
[31] Van Dijk, Terry, 'Complications for traditional land consolidation in Central Europe, Geoforum, Vol.38, No.3, 2007, P.505-511.
[32] *Supra note., 8.*

forms of land consolidation, market-based land transactions, land banking, expropriation & compensation), others focus on consolidating land use (land use consolidation, yield clustering, cooperative formation). While these land policy instruments share common objectives and partly overlapping approaches, each one has comparative advantages and disadvantages, contingent upon the geographic and socio-economic context and their compatibility with agricultural development strategies.

Given the diverse landscapes and food production systems in Ethiopia, it is imperative to recognise that different land policy instruments must be applied and combined within a comprehensive strategy to address land fragmentation. Presently, there is limited yet widespread knowledge of the variety of individual instruments at the decision-makers' level in Ethiopia, and only a limited understanding of their advantages and disadvantages. To enhance understanding of the land policy instruments available to tackle land fragmentation and to assess the legal landscape of their application in Ethiopia, an analysis of such tools must be conducted. In summary, the following are the major policy tools that can be utilised to manage land fragmentation problems.

3.1. Land Consolidation

Land consolidation involves tenure restructuring through exchanging small land parcels or shares for one or more larger parcels with land value approximately equivalent to the original holding. It aims to create parcels that are more economically and rationally sized, shaped, and located. This approach helps improve the tenure structure to support rural development by tackling land fragmentation.[33] It contributes to uniting fragmented lands, reducing the number of parcels, increasing fragment sizes, and reshaping fragment shapes.[34] Land consolidation is closely tied to land tenure and property rights issues, utilising land tenure information (existing landowner, type of ownership, and 3Rs: Rights, restrictions, and responsibilities) to identify existing situations, potential changes, and updates.[35]

The FGD conducted revealed various benefits of land consolidation and ways to address its

[33] STUDIES, LAND TENURE, 'The design of land consolidation pilot projects in Central and Eastern Europe, FAO Land Tenure Studies', Vol.6, 2003, P.1-55.
[34] Tumer, Emine, Atilla Keskin, and Avni Birinci, 'Analysis of factors affecting land fragmentation in Erzurum Province, Turkey, African Journal of Business Management', Vol.4, 2010.
[35] Rubanje, Innocent, 'Linking land use, tenure and consolidation in Rwanda, Master's thesis, University of Twente', 2016.

shortcomings in different scenarios, which legislation should consider. These benefits are closely linked to land tenure and property rights. Land consolidation reduces travel time, energy, and production costs. It reduces the number of oxen required for ploughing parcels and lowers energy consumption for transporting ploughing materials between parcels. It minimises boundary disputes by reducing the number of neighbouring landholders and boundaries post-consolidation. Additionally, it facilitates close management of crop residues for animal feeding and the preparation of organic fertiliser. It also decreases post-harvest crop losses by allowing harvesting at the same site. It helps avoid the tragedy of the anti-commons by establishing public and communal spaces such as roads and green areas. Overall, land consolidation is an innovative approach to land tenure that offers many benefits in Ethiopia's context of land fragmentation.

There is no universally defined approach to land consolidation; different countries employ various models and objectives.[36] Different approaches to land consolidation, including voluntary (100% landholders' acceptance), simple majority (50%+1 landholders or area), absolute majority (at least 75% of landholders or area), and mandatory-based approaches, may be considered, with selection dependent on specific geographic and socio-economic contexts and national policies.

Legal frameworks and institutional arrangements must align with a multi-purpose approach to land consolidation that extends beyond agricultural development to encompass community development, environmental initiatives, and infrastructure projects.[37] It is important to clarify that land consolidation does not involve the expropriation of land and properties. Individuals should not be dispossessed of their land during land consolidation projects. However, in countries with freehold tenure, land consolidation may offer landowners opportunities to sell their land voluntarily. The primary focus of land consolidation in Ethiopia should be on enhancing land structure and infrastructure to improve agricultural productivity and integrate with broader economic and rural development objectives.

The Food and Agriculture Organisation (FAO) has assessed good practices on land consolidation legislation and published a Legal Guide on Land Consolidation.[38] According to

[36] *Supra note., 34*.
[37] Hartvigsen, Morten, Tomas Versinskas, Margret Vidar, K. Mitic Arsova, F. Van Holst, and Maxim Gorgan, 'FAO recommendations on land consolidation legislation, In Annual World Bank Conference on Land Poverty Washington DC', March 2019, P.25-29.
[38] *Ibid*.

this guide, enacting context-oriented land consolidation legislation is essential for implementing land consolidation programs. Legislation should encompass competent dispute settlement and grievance redress mechanisms, among other essential elements, for Fit for Purpose land consolidation. Many countries have implemented land consolidation laws to improve land management and utilisation systematically, leading to more effective outcomes.

Land consolidation facilitates the creation of competitive agricultural production systems by enabling farmers to operate fewer, larger, and better-shaped parcels. This, in turn, allows the adoption of improved farming techniques and modern technologies. By reducing parcel fragmentation, it enhances opportunities for mechanisation, better utilisation of farm equipment and other fixed assets, and more effective organisation and supervision of labour, leading to higher land and labour productivity. Consolidation also reduces travel time, energy use, and post-harvest losses, improves transport efficiency between farms and residential areas, and minimises boundary-related disputes. These structural changes often result in substantial adjustments to land tenure arrangements and contribute to improved natural resource management and environmental conservation. Moreover, land consolidation enhances the efficiency and cost-effectiveness of both public and private infrastructure investments, such as transportation and communication networks, utilities, and irrigation systems, while lowering average input costs and increasing the profitability of farm enterprises. Collectively, these outcomes promote commercially viable family farming, support broader rural development, increase opportunities for agriculture-related investment, strengthen the monitoring of farm activities, and make farming and agribusiness more attractive to young people.

Land consolidation may not always constitute a fitting or standalone solution to land fragmentation, particularly when broader social, economic, and institutional conditions are not adequately addressed. Although it is often justified on the grounds of economic efficiency, land consolidation does not necessarily guarantee social efficiency, as its implementation is frequently constrained by limited public budgets, challenges in land and property valuation, difficulties in securing landowner approval and consensus, and the risk of future subdivision and renewed fragmentation of holdings. In addition, land consolidation projects typically require substantial initial investments and are both costly and time-consuming to implement; evidence from countries such as Serbia indicates that implementation costs have, in some cases, exceeded prevailing land prices. Nevertheless, such interventions should be understood as major social investments, as they tend to generate relatively high long-term returns and increase

land values in relation to the land market once completed. At the same time, land consolidation may entail environmental and livelihood risks by reducing the diversity of soils and growing conditions, potentially undermining diversification strategies and family-level food security. Furthermore, increased reliance on mechanisation following consolidation can reduce demand for agricultural labour, disproportionately affecting smallholders and land-dependent households and potentially accelerating rural–urban migration in the absence of sufficient off-farm employment opportunities.

Despite not being fully established, legal frameworks and provisions are present in rural land administration and use laws, enabling the consolidation of land. Nevertheless, it requires a full-fledged law that governs the necessary aspects of land consolidation (See section 4 below about the Ethiopian legal environment regarding land consolidation).

3.2. Voluntary Parcel Exchange

This approach is considered a soft alternative to land consolidation.[39] Conceptually, it falls under the umbrella of land consolidation. However, voluntary parcel exchange alone cannot achieve large-scale land consolidation results, as it is limited to the parties involved in the exchange. This voluntary exchange of parcels can be employed to address issues of distance fragmentation and parcel fragmentation. Policies can incorporate various incentive mechanisms to encourage voluntary land exchange, thereby reducing land fragmentation. Voluntary parcel exchange can be particularly beneficial in restructuring holdings when a significant number of owners participate.[40]

Voluntary parcel exchange offers several advantages in addressing land fragmentation. It is particularly effective in resolving both distance and parcel fragmentation problems and can be highly beneficial in restructuring holdings when a large number of landowners participate. However, this approach also has limitations. Since it is restricted to the parties involved in exchanging their parcels, it may not lead to large-scale consolidation outcomes. Moreover, the process can become challenging as it requires negotiations among many individual landowners in isolation, unlike comprehensive land consolidation programs that adopt a broader and more

[39] Teijeiro, Diego, Eduardo Corbelle Rico, Juan Porta, Jorge Parapar, and Ramón Doallo, 'Optimising parcel exchange among landowners: A soft alternative to land consolidation, Computers, Environment and Urban Systems', Vol.79, 2020, 101422.
[40] *Ibid*.

coordinated approach.

3.3. Farmland Subdivision Restrictions and Creation of Family Farms

This principle restricts or prohibits the subdivision of agricultural land in certain transactions. For example, some countries limit the right to purchase or sell parts of agricultural real estate.[41] Moreover, since the subdivision and fragmentation of land partly stem from inheritance based on succession laws,[42] it is important to restrict or prevent subdivisions of agricultural businesses and land to curb further fragmentation. Farmland subdivisions fragment farms and jeopardise their future viability. Countries employ this mechanism as one solution to combat farmland fragmentation. For instance, federal and regional rural land laws include provisions that establish minimum parcel sizes, prohibiting parcel division below this threshold for any reason (inheritance, donation, rent, etc.). This may involve streamlining legacy transfer to one inheritor and setting a minimum land plot size that cannot be divided.[43] Conversely, restrictions on land subdivision, whether through inheritance or sale, may result in joint ownership by heirs and subsequently cooperative farming.

Switzerland employs Farmland Subdivision Restrictions as a policy tool to address fragmentation. The law incorporates exceptions into inheritance laws and land-market regulations, prohibiting parcel fragmentation to maintain competitive family farms. It aims to safeguard the structure of Swiss agriculture by prohibiting parcel fragmentation and splitting whole estates. Agricultural parcels cannot be divided into segments smaller than 25 Ares (a quarter hectare).[44] In inheritance, the legal estate is assigned to one heir, who must compensate the other heirs, which requires substantial investment, or they can opt to keep the family farm.

In Ethiopia, certain regional states have adopted a similar approach. For instance, the Amhara National Regional State has integrated subdivision restrictions into its land law. However, these restrictions do not always prevent farmers from dividing their land, whether through formal means (court decisions favouring subdivisions) or informally (without registering further

[41] Jacoby, Erich H., 'Land consolidation in Europe', No. 3E. Veenman, 1959.
[42] Ram, Rati., 'Financial development and economic growth: Additional evidence', 1999, P.164-174.
[43] Kurylo, Volodymyr, Petro Pantaliienko, Vyacheslav Bogdanets, and Sergij Ovcharuk, 'Land fragmentation in Ukraine: agricultural land-use management and jurisprudence issues, Problems and perspectives in management', Vol.15, No.2, 2017, P.102-109.
[44] Schmidt, Alena, Gabriele Mack, Anke Möhring, Stefan Mann, and Nadja El Benni, 'Stricter cross-compliance standards in Switzerland: Economic and environmental impacts at farm-and sector-level, Agricultural Systems', Vol.176, 2019, 102664.

subdivisions). Consequently, this model faces enforcement challenges and lacks significant impact. To address this issue, a robust institutional framework is necessary to ensure strict adherence to the law.

Restrictions on farmland subdivision present both advantages and disadvantages. On the positive side, such measures can encourage cluster development and promote the formation of larger family-owned farms, which are generally more efficient and better suited for mechanisation. However, these restrictions may also raise challenges. They can be perceived as limiting individual liberty, making them vulnerable to legal and political contestation. In some cases, they may undermine women's land rights, particularly during divorce proceedings where subdivision rules apply. Effective monitoring of these restrictions is another difficulty, as it may encourage landholders to operate informally. Furthermore, joint ownership imposed by subdivision limits has the potential to increase family disputes and conflicts.

3.4. Land Swapping Through Forced Land Sale

This is one aspect of the land fragmentation management policy tool involving land contract transfer, used to combine small, fragmented land parcels into larger ones to achieve land use consolidation.[45] Larger farms can be formed through sale, leasing, or other transactions.[46] Some countries, like Germany, incentivise this kind of consolidation through land sale and swapping. In the Slovak Republic, there is an official land price during land consolidation. The state utilises this price to purchase the land that owners offer for sale through the Slovak Land Fund or the trustee.[47]

Land sales and swapping offer notable advantages in addressing fragmentation. They provide opportunities for landholders to sell smaller, scattered plots and acquire land closer to their larger holdings or homesteads, thereby facilitating land consolidation. This approach also allows uneconomical and excessively small parcels to be transferred to more efficient users, enhancing overall productivity. Nevertheless, such mechanisms are not without drawbacks. They tend to benefit individuals with greater bargaining power and financial resources,

[45] You, Li, 'Analysis of land fragmentation in PR China: Case study in Taizhou City of Zhejiang Province, Master's thesis, University of Twente', 2010.
[46] Platonova, Dace, and Anda Jankava, 'Research on the preconditions of land consolidation in rural districts, Economic science for rural development', Vol.26, 2011, P.174-181.
[47] Peráček, Tomáš, Mária Srebalová, and Andrej Srebala, 'The valuation of land in land consolidation and relevant administrative procedures in the conditions of the Slovak Republic, Administrative Sciences', Vol.12, No.4, 2022, P.174.

potentially widening inequalities. Additionally, they may lead to an influx of landless individuals residing in rural areas, creating new social and economic challenges.

In Ethiopia, land is not subject to sale or other means of exchange. This policy tool doesn't work in our current situation, where land sales are legally prohibited. Implementing this tool requires policy and legal amendments. Besides, the maximum-holding rule runs counter to this principle. As a result, a comprehensive analysis of the advantages and disadvantages of adopting this policy tool in Ethiopia is essential, supported by empirical data. This paper simply aims to present the available policy tools for further consideration.

3.5. Expropriation

Expropriation measures are necessary to make land available for enlarging farms.[48] This mechanism involves the government applying forced purchase or expropriation on small plots and consolidating them with neighbouring parcels to create larger, more suitable agricultural land. The forced sale of agricultural land can be considered a broader public purpose aimed at consolidating land. Laws can be developed to empower the government to expropriate fragmented parcels to achieve the public goal of creating more convenient fields for mechanisation and commercialisation. Forced rent to large farm owners can also be used as a short-term solution. The concept of expropriation differs from land banking as it allows for forceful implementation without the need for landowners' consent. In contrast, land banking is a voluntary approach that refrains from imposing on landowners, who may require additional support through promotion and awareness initiatives.

Expropriation can be a useful tool for the government to ensure land is put to its most productive use. By acquiring very small or uneconomical plots, the government can consolidate land and allocate it for purposes that maximise efficiency and benefit.

However, expropriation is a complex process that requires strong legal, administrative, and commercial capacities. If not handled carefully, it can create opportunities for corruption and lead to perceptions of unfairness, making transparency and oversight essential throughout the process. It is also the main reason for tenure insecurity if proper compensation is not paid. In our case, since the land value is not computed in the compensation, it definitely creates tenure insecurity. Besides, the public purpose in the Ethiopian legal framework does not cover the

[48] *Supra note., 44.*

expropriation of land for land consolidation purposes. Still, there is a possibility to amend the law to broaden it so that it can include land consolidation as a public-purpose matter.

3.6. Agricultural Zoning as a Farmland Protection Tool

This policy tool implies that areas possessing good agricultural soils and a viable farming industry are prime candidates for agricultural zoning. This practice is common in countries like Georgia[49] and the United States.[50] Agricultural zoning involves designating land exclusively or almost exclusively for agricultural purposes, based on its land use. Farmland subdivision restrictions supplement this zoning up to a size appropriate for farming. Agricultural zoning permits the use of the land solely for agricultural purposes, allowing only a limited amount of non-farm-related development, such as compatible or accessory buildings. Residential farm dwellings are not permitted as they contribute to one form of land fragmentation.[51]

Agricultural zoning represents a cost-effective and widely recognised strategy for land regulation, fundamentally designed to preserve large tracts of land for farming. As a planning-based approach, it is not only inexpensive to implement but also generally well-accepted by the public, particularly among farmers who are already familiar with the concept. This method enhances landholder productivity and fosters economically sustainable agriculture, thereby enabling landowners to settle in areas characterised by improved social and economic infrastructures. Furthermore, the inherent flexibility of agricultural zoning allows it to be easily adapted to evolving circumstances, ensuring its continued relevance as a tool for long-term agricultural protection.

Implementing agricultural zoning poses several logistical and administrative challenges. Primarily, it increases the travel time required for farmers to commute between their centers and farmlands, thereby reducing operational efficiency. It is often difficult to monitor on a day-to-day basis and may face legal scrutiny regarding the perceived unfairness of restricting residential and commercial development. Furthermore, these measures are often susceptible to modification under intense development pressure, suggesting they do not offer a permanent solution for land preservation. Ultimately, because this method only addresses specific types

[49] Franzen, Emily, and UGA River Basin Center, 'Agricultural Zoning as a Farmland Protection Tool in Georgia, Atlanta, University of Georgia, 2006.
[50] Cordes, Mark W., 'Agricultural zoning: Impacts and future directions, N. Ill. UL Rev.', Vol.22, 2001, P.419.
[51] *Supra note., 52.*

of fragmentation, it must be integrated with complementary strategies to remain effective.

3.7. Land Use Consolidation

This process does not entail consolidating a single holding; instead, it focuses on consolidating the land use of various parcels owned/held by different individuals. In this endeavour, the aim is to streamline and optimise the utilisation of multiple land parcels, each owned by separate individuals. Rather than merging these parcels into a single entity, the focus is on harmonising their land use practices. By consolidating the land use of these diverse parcels, we can enhance efficiency, maximise productivity, and ensure a more cohesive approach to their management. This consolidation process allows for better coordination and utilisation of resources, leading to improved outcomes for all stakeholders involved. Furthermore, this approach promotes collaboration and cooperation among landowners, fostering a sense of unity and shared purpose. It enables the pooling of expertise, resources, and efforts, resulting in a more effective and sustainable land use strategy. The following are the types of land use consolidation.

3.7.1. Cluster Farming

This is also referred to as Crop Consolidation, which is the consolidation of the use of agricultural lands in terms of unifying the cultivated crop. This is one of the tools for managing land fragmentation challenges. Cluster farming has been particularly useful in employing mechanisation technologies and preventing post-harvest losses. Cluster Farming creates real profit by merging several smallholder farms, helping farmers to increase harvest, agricultural productivity, and value chain products, and boost food security. Nevertheless, the drawback with this policy tool is that it does not solve the problem of land waste because of many boundaries and ditches, which are still inefficient in terms of the use of natural resources.

In Ethiopia, cluster farming involves about 30–200 smallholder farmers with adjacent farm plots who voluntarily pool a portion of their land to benefit from targeted government support and cluster economic agglomeration.[52]Cluster farming offers several advantages, particularly in improving efficiency and profitability for smallholder farmers. By consolidating the use of individual plots, it facilitates the use of mechanisation technologies and helps reduce post-harvest losses. Merging multiple small farms creates real profit potential, increases overall

[52] Dureti, Guyo Godana, Martin Paul Jr Tabe-Ojong, and Enoch Owusu-Sekyere, 'The new normal? Cluster farming and smallholder commercialisation in Ethiopia, Agricultural Economics', Vol.54, No.6, 2023, P.900-920.

harvests, boosts agricultural productivity, and enhances the production of value chain products.

Additionally, farmers engaged in cluster farming are better positioned to access timely market information. However, cluster farming also has notable limitations. It does not fully resolve land inefficiencies caused by numerous boundaries and on-field ditches, which can lead to the suboptimal use of natural resources. Growing similar crops across clusters may conflict with food security objectives. The approach only alleviates distance and travel-time issues if mechanisation is consistently available and applied throughout the farming cycle. Managing scattered parcels across multiple clusters can be complex for farmers, and the process entails high transaction costs due to extensive coordination requirements. Successful implementation often depends on ongoing public support and facilitation.

Despite the absence of a clearly defined legal framework, this policy tool is not explicitly prohibited under Ethiopian law. However, it is crucial to establish a comprehensive, well-defined regulatory and legal framework to address this matter effectively. Understanding this, a draft proclamation, titled a proclamation for the establishment of an agricultural business company, is under development by the Ministry of Agriculture through technical support from the Agricultural Transformation Institute (ATI).

3.7.2. Cooperative Farming

Cooperative Farming is a land fragmentation management tool wherein landholders form a cooperative, bringing their parcels together, with or without amalgamating them, to cultivate jointly and share input costs and products based on predetermined criteria such as parcel size and fertility. Participating households voluntarily contribute finances and land for production according to a shared plan, process, and form of farming with similar input and output markets. Cooperative farming requires farmers to invest capital, which facilitates commercialisation.[53] It entails changing intercropping techniques to prioritise mono-cropping. The government can assist the cooperative in selling, processing, distributing, and marketing agricultural products, thereby incentivising farmers to engage in cooperative farming.[54] Cooperative farming may also involve in contract farming.

[53] Huggins, C., 'Consolidating land, consolidating control: State-facilitated 'agricultural investment' through the 'Green Revolution' in Rwanda, Land Deal Politics Initiative (LDPI) Working Paper', Vol.16, 2013.
[54] Kathiresan, Arumugam, 'Farm land use consolidation in Rwanda, Kigali: Republic of Rwanda, Ministry of Agriculture and Animal Resources', 2012.

Unlike other land use consolidation methods like cluster farming, this approach establishes a distinct legal entity for the cooperative. This unique characteristic empowers the cooperative to function cohesively as a single entity. This collaborative approach enhances efficiency and mutual benefit among members. By pooling resources and expertise, the cooperative can optimise agricultural practices and maximise yields. Additionally, shared costs help alleviate financial burdens on individual farmers. Agreed-upon criteria ensure fairness and transparency in both input and output distribution. This cooperative model fosters community and teamwork while promoting sustainable and profitable farming practices.

Cooperative farming provides several benefits by enabling farmers to collectively access government incentives for selling, processing, distributing, and marketing agricultural products. It supports the adoption of agricultural inputs and improves the livelihoods of cooperative members. Additionally, cooperative farming allows access to larger markets and encourages healthy competition, which can drive improvements in overall agricultural practices and outcomes. However, cooperative farming also presents challenges. Effective management is critical to prevent disputes and potential dissolution of the cooperative. Participating farmers must make an initial capital investment, and there is a risk that poorer farmers may be excluded from decision-making or market benefits. Corruption among cooperative leaders can compromise the cooperative's effectiveness, and some farmers may be reluctant to release land due to sentimental attachment, making management and coordination more difficult.

In Ethiopia, farmer cooperatives have a long and debated history characterised by a coercive top-down approach that compelled farm households to join cooperatives and place individual land holdings under cooperative control.[55] Even though the Ethiopian Cooperatives law can apply to this context, still it requires context-specific provisions applicable to cooperative farming.

3.7.3. Contract Farming

It is a well-defined practice in which agricultural producers enter into agreements with buyers or companies for a given period to cultivate and supply specific crops or livestock. This provides a framework for both parties to outline their respective roles, responsibilities, and

[55] *Supra note., 56.*

expectations. Farmers commit to producing a predetermined quantity and quality of agricultural products within a specified timeframe. In return, buyers or companies offer various forms of support, such as technical assistance, inputs, and ensuring a guaranteed market for the produce. This collaboration fosters a sense of security and stability for farmers, as they can rely on a predetermined price and market for their goods. By formalising agreements and establishing clear expectations, this practice promotes sustainable agricultural practices, enhances productivity, and fosters economic growth for all parties involved.

Contract farming offers several advantages as a tool for land commercialisation and large-scale agricultural investment. Unlike expropriation or land leasing, it allows investors to work with landholders without causing dispossession or displacement. It often introduces modern farming technologies, improved inputs, and facilitates the transfer of knowledge and expertise from companies to farmers, helping them adopt new production methods. Farmers also benefit from managerial, technical, and extension services, and they can secure higher incomes by negotiating fair prices while reducing exposure to fluctuating market conditions. However, contract farming has some limitations. It often encourages mono-cropping, which can reduce crop diversification. There are also risks associated with market failures or production challenges. Additionally, companies may prioritise maximising production over environmental protection, potentially relying on hazardous chemicals if regulatory frameworks are weak.

This potentially attractive tool for land commercialisation is being implemented in Ethiopia through Agricultural Commercialisation Clusters (ACC) contract farming. Ethiopia has adopted contract farming proclamation number 1289/2022. As a result, the policy tool has legal backing. This is a potential tool that can be used as a land fragmentation management tool. It facilitates contract farming- based large-scale land investment through consolidating smallholder farms under a crop/ commodity of specialisation.[56] For instance, in Rwanda, foreign agricultural investment involves contract-farming arrangements with cooperatives, which are facilitated by the state, which, when necessary, uses coercive mechanisms as well as highly interventionist strategies (such as regional crop specialisation policies and mandatory land use consolidation) to create an 'enabling environment' for agricultural investment.[57] This can be an alternative to expropriation and allows direct control of production by corporations,

[56] *Supra note., 2.*
[57] *Supra note., 57.*

without creating dispossession/displacement of landholders.[58]

4. Assessing Ethiopia's Land Fragmentation Management Policy Tools and Institutional Frameworks

4.1. Land Fragmentation Management Policy Tools at the Federal Level

According to the FAO legal guide, land consolidation law promulgation and implementation can either be centralised or decentralised based on the country's specific situation. Ethiopia seems to follow a hybrid approach where the power of legislation is given to the federal government, whereas implementation is to the regional states.[59] As land consolidation and other land fragmentation management policy tools are one type of land management, utilisation, and conservation systems, the power to enact laws related to these aspects is entrusted to the federal government, and the administration and implementation of these rules to the regional states. The federal government can either promulgate all types of land fragmentation management tools, including land consolidation laws (proclamation, regulation, and directive), or delegate all or some legislative power to the regions. This approach gives room to balance issue of uniformity required at the federal level in one hand and to address regional specific situations, as the level of fragmentation and the solutions required for each regional state would not be the same.

Ethiopia's land policy has historically been shaped more by distributive justice than by considerations of consolidation or efficiency, and this orientation has been a major driver of farmland fragmentation. The 1975 Land to the Tiller reform, which prioritised distributive and redistributive allocation of farmland, intensified fragmentation through repeated division and redistribution of peasant holdings. The 1975 legacy left the 1995 FDRE constitutional frameworks of state ownership of land, rooted in equitable access and redistribution, even at the expense of productive efficiency. Subsequent land administration and use proclamations in 1997 and 2005 also leaned heavily toward equity, with limited emphasis on efficiency.

Although the current agricultural and rural development policy is supported by the recent rural land proclamation [60], seeks to strike a balance between equity and efficiency, but it still falls

[58] *Supra note., 58.*
[59] Federal Democratic Republic of Ethiopia Constitution, 1995, Art. 51(5), 52 (2(d)), and 50(9), Proc. No 1/1995. Fed. Neg. Gaz.
[60] The FDRE Rural Land Administration and Use Proclamation, 2024, Proc. No. 1324/2024, Fed. Neg. Gaz., 30th

short of providing a comprehensive policy framework. The result has been the continual resising of farmland, producing widespread fragmentation. These fragmented holdings are often described as "starvation plots," reflecting their subsistence-oriented nature. At the core of the issue lies Ethiopia's inheritance and donation traditions, which perpetuate the subdivision of land across generations. Addressing this challenge requires a deliberate policy shift and the development of a comprehensive legal framework that reconciles distributive justice with long-term efficiency and sustainability that brings a solution for the tension between Ethiopia's equity-driven legal regime and the efficiency-driven logic of land consolidation and other policy tools.

Empirical evidences show that Policy-led efforts at land consolidation have only in their infancy in Ethiopia.[61] The Ethiopian agricultural policy[62], meant to compensate for the drawbacks of the previous policy, clearly recognised that farmland in Ethiopia is generally small in size, fragmented, and scattered, which is a barrier to mechanisation, efficiency, and productivity. As a policy direction, it recommends consolidating and merging small holdings to create medium and large farms to enhance the use of agricultural technology and inputs, thereby increasing production and productivity. Additionally, voluntary-based land consolidation through joint holding, leasing, or exchange is a policy tool proposed in the policy. However, the policy is still anchored with the equity model.

Furthermore, Proclamation No. 1324/2024 has a few provisions regarding land fragmentation and management policy tools, among others, consolidation of holdings, clustering, lease, voluntary exchange, determining minimum parcel size during land transactions, and the like. The law adopts two approaches to land consolidation: consent-based consolidation, which serves as the guiding principle, and mandatory consolidation, applied only in exceptional cases within irrigation areas where the government or its development partners have invested in infrastructure development. Other than these general provisions, the federal framework law does not have detailed provisions that guide farmland fragmentation management policy tools. Besides, there are still residual equity and redistributive provisions in the proclamation (such as distribution, re-distribution, inheritance by all descendants, donation, and determination of maximum holding size).

Year, No.58.
[61] *Supra note.*, 3.
[62] The Ethiopian Agricultural and Rural Development policy, 2024.

4.2. Land Fragmentation Management Policy Tools at the Regional Level

Like the federal legal frameworks, the regional land laws have very few provisions on land fragmentation and its management policy tools, including land consolidation. For instance, the Oromia regional state rural land law[63] addresses the issue of farm plot consolidation. It stipulates that the merging of farm plots shall be undertaken voluntarily, based on the consensus and willingness of landholders, thereby adopting a voluntary land consolidation approach. Article 23 of the proclamation further specifies the minimum plot size, 0.5 hectares for annual crops and 0.25 hectares for irrigated land and perennial crops. These minimum thresholds also apply to inheritance and rental of private holdings, intending to prevent further land fragmentation.

The Amhara regional state rural land law[64] also enshrined provisions about land consolidation and other land fragmentation management measures. This law It stipulates about rights to exchange holdings[65] in which rural landholders may agree on their holdings individually to make small plots adjoined/consolidated and suitable for development.[66] The regulation adopted to implement the proclamation [67] further provides that any landholder can exchange his or her land with the view to making his land contiguous and consolidating his or her farm. This is one form of land fragmentation management measure.[68] This type of voluntary holding/parcel exchange can be used to manage distance fragmentation and parcel fragmentation issues. In relation to this, updating of land information for land exchange transactions that have the effect of land consolidation is made free of payment. This is meant to encourage land consolidation.

The Amhara rural land law[69] partially adopted defragmentation measures. Minimum Plot Size is defined in the proclamation as the smallest plot of land to be given for holding.[70] Based on this definition, the regulation enshrined 0.25, 0.06, and 0.02 hectares as a minimum plot/parcel

[63] Oromia Rural Land Administration and Use Proclamation, 2023, Proc. No. 248/2023, Megeleta Oromia, 31st Year, No. 7/2023.
[64] Amhara National Regional State Revised Rural Land Administration and Use Determination Proclamation, 2017, Proc. No. 252/2017, Zikre Hig, 22nd Year, No. 14.
[65] *Ibid., Art. 20(1).*
[66] *Ibid., Art 20(2).*
[67] The Revised Amhara National Regional State Rural Land Administration and Use System Implementation, Council of Regional Government Regulation, 2018, Art. 8 (1-4), Reg. No. 159/2018, Zikre Hig, 23rd Year, No 4.
[68] Ntihinyurwa, Pierre Damien, Walter Timo de Vries, Uchendu Eugene Chigbu, and Patrick Acklam Dukwiyimpuhwe, 'The positive impacts of farm land fragmentation in Rwanda, Land Use Policy', Vol.81, 2019, P.565-581.
[69] Amhara Rural Land Administration and Use Determination Proclamation No. 252/2017.
[70] *Ibid., Art. 2(14).*

size for parcels cultivatable by rain, cultivatable through irrigation, and for the construction of a dwelling house, respectively.[71] It is, in any case, prohibited to give a plot of land, which is below this size.[72] Farmland subdivision restrictions are also applicable during inheritance. Heirs cannot divide the inheritance farmland if their share will be below the minimum plot size determined above; instead, they can use it commonly.[73]

As land redistribution is one cause of land fragmentation,[74] land re-distribution prohibitions could be taken as one form of land fragmentation management measures. Understanding this, the Amhara regional state rural land law[75] prohibited land re-distribution except for irrigated lands. This is a very important measure to mitigate further land fragmentation, in addition to the purpose it has in strengthening tenure security. The regional land law goes further in achieving subdivision restrictions on parcels, which would be below the determined minimum plot size. Parcels divided against the subdivision restrictions are ineligible to be registered and certified[76] except those parcels known to have existed before the enactment of the revised proclamation.[77] This is one further step in implementing subdivision restrictions.

Central Ethiopia has recently adopted its rural land law.[78] One of the unique natures of this law is that it has adopted the Voluntary Group Land Exchange (VGLE) in addition to bilateral simple land exchanges as a land fragmentation management policy tool.[79] Besides, voluntary land consolidation is one of the rights of landholders to make small fields suitable for development and the use of technology.[80] There are various incentive packages for those who participated in voluntary land consolidation programs.[81] Like that of the federal legislation, landholders benefiting from irrigation networks built by the government or non-governmental organisations are obliged to consolidate their holdings and cultivate through clustering.[82]

Despite these progresses, there are still provisions in the law that are anchored with a

[71] The Amhara Rural Land Administration and Use Regulation No. 159/2018, Art. 5(1).
[72] *Ibid., Art. 5(2).*
[73] Amhara Rural Land Administration and Use Determination Proclamation No. 252/2017, Art. 17(9).
[74] Haydaroğlu, Ceyhun, 'The relationship between property rights and economic growth: an analysis of OECD and EU countries, Danube', Vol.6, No.4, 2015, P.217-239
[75] The Amhara Rural Land Administration and Use Regulation No. 159/2018, Art. 6(1).
[76] Amhara Rural Land Administration and Use Determination Proclamation No. 252/2017, Art 35(7).
[77] The Amhara Rural Land Administration and Use Regulation No. 159/2018, Art. 26(5).
[78] Central Ethiopia Regional Government Rural Land Administration and Use Proclamation, 2024, No 32/2024, MAEKELAWI NEGARIT GAZETA, 2nd Year, No. __
[79] *Ibid., Art 21.*
[80] *Ibid., Art 22(1).*
[81] *Ibid., Art 22(2).*
[82] *Ibid., Art 22(3).*

distributive mentality. The distribution and re-distribution, and inheritance and donation provisions are among them. During the drafting process of the proclamation, regulation, and land consolidation directive, there were strong arguments that supported the distribution/partition of parcels even after the implementation of land consolidation pilots. For instance, the draft land consolidation directive enshrined that 2 hectares will be the minimum parcel size once land consolidation pilots are implemented. However, it was not supported by regional stakeholders, and officials tended towards distribution/partition.

One notable regional innovation is the recent initiative of the Amhara and Central Ethiopia Regional States, which have taken significant steps toward piloting land consolidation through the issuance of directives. The Amhara Region has already adopted its directive,[83] while the Central Ethiopia Region has finalised its draft[84] and submitted it for approval. These directives are comprehensive, addressing key aspects of land consolidation, including the objectives of consolidation, preconditions for initiating projects, criteria for selecting project areas from regional to local levels, implementation procedures, registration and surveying requirements, land and property valuation, as well as infrastructure development. The Central Ethiopia directive also incorporates a provision for Voluntary Group Land Exchange. However, it is important to recognise that land consolidation alone cannot solve the deeply rooted challenges of fragmentation, as the average landholding size remains below one hectare, meaning that even after consolidation, parcel sizes will continue to be small.

Therefore, land consolidation in Ethiopia must be complemented by additional policy tools, such as limiting the right to bequeath, and moving to a gradual shift toward a market-based system of full property rights. Many countries that have successfully reduced land fragmentation have done so through comprehensive property rights reforms, market-based instruments, and legal modernisation; examples can be drawn from Eastern Europe, East Asia, Türkiye, and Rwanda. Land markets, taxation mechanisms, and transferable rights have been mobilised to incentivise land consolidation. In contrast, Ethiopia's prohibition on land sales and weakly developed land rental systems severely restrain the adoption of such instruments.

[83] Amhara National Regional State Farmland Consolidation Directive, 2024, No. 18/2024.
[84] Central Ethiopia Regional Government Farmland Consolidation and Voluntary Group Land Exchange Draft Directive.



Figure 1: FAO land consolidation legal guide principles[85]

These six principles could be used as a criterion to assess the Ethiopian land consolidation legal environment. Significant gaps are evident in the limited provisions related to land consolidation. The existing legal frameworks, except for the directives in Amhara and Central Ethiopia, do not fulfill the six FAO land consolidation legal guide principles. The land consolidation provisions are silent about respecting and protecting legitimate tenure rights. The fate of communal landholders during land consolidation is unclear. Respecting and protecting legitimate tenure rights implies the need for some sort of registration and titling program in areas where land consolidation is implemented. This does not mean that unregistered rights and interests should be ignored.

The land consolidation law should consider all tenure types (including formal and informal, primary and secondary users, and the like). The Rural Land Administration and Use Laws do not reflect these issues. Principles such as "at least as well off," sustainability and environmental protection, the participatory approach, gender equality, and transparency are not adopted in those provisions. Land consolidation must pay attention to environmental protection and sustainable development. The provisions do not cover major thematic areas of land

[85] *Supra note., 38.*

consolidation such as valuation and rural infrastructure.

Additionally, the current legislation is unclear on whether land consolidation should be voluntary or mandatory though it leans toward land exchange as the main approach. However, consolidation may also involve intermediate stages that combine elements of both voluntary and mandatory actions. Furthermore, the provisions are unclear regarding the mandatory procedures required prior to the implementation of land consolidation. Key steps such as public consultation, stakeholder participation, and prior land registration are not explicitly articulated.

Beyond the above gaps, the law does not specify the scope, unit, or purpose of land consolidation. Provisions are needed to clarify whether consolidation applies at Woreda, Kebele, or Sub-kebele levels, noting that units need not follow administrative boundaries. While international practice shows consolidation may extend across villages or regions, Ethiopia requires a fit-for-purpose approach adapted to its context. The law should also clarify whether communal, state, and residential holdings fall within farmland consolidation programs. Given the high cost of creating new residential areas and the reluctance of landholders to leave long-established homes, excluding residential areas is crucial. Relational ontology underscores this need, highlighting the importance of respecting traditional practices, spiritual values, and local knowledge in implementation.[86]

In Ethiopia, pilot programs are being launched without comprehensive farmland consolidation laws in place. These programs aim to develop a legal framework based on the results of the pilots. However, it would be much more effective to establish a law beforehand and use the pilot programs to test and amend this legislation. This "learning by doing" approach can create a robust legal framework. Other countries have successfully adopted similar methods, implementing major amendments to their legislation after initiating their first land consolidation projects.

There is confusion about the difference between land use clustering (land use consolidation), used for coordinated crop planting, on one hand, and land consolidation (restructuring holdings) on the other. This confusion has serious policy implications. Ethiopia's reliance on cluster farming as a proxy for consolidation risks misrepresenting temporary land use coordination as structural reform. Greater conceptual clarity is therefore required to avoid

[86] Datta, Ranjan, 'A relational theoretical framework and meanings of land, nature, and sustainability for research with Indigenous communities, Local Environment', Vol.20, No.1, 2015, P.102-113.

policy substitution errors. As a result, the former brings together the land use of different parcels without necessarily consolidating holding rights. The purpose is to cultivate similar crops by different adjoining landholders without combining holding rights. The boundaries of the parcels still exist, and there will be no mixing of the products produced. On the other hand, land consolidation is bringing together different neighbouring/adjoining parcels into a single holding through different mechanisms, such as exchange, for instance.

When evaluating the legal status of land fragmentation management instruments in Ethiopia, notable gaps emerge beyond land consolidation. At present, only land consolidation and cluster farming are explicitly recognised under federal law.[87] Other measures, such as expropriation, cooperative farming, and agricultural zoning, remain legally ambiguous. For example, the Ethiopian legal framework does not define expropriation for the purpose of land consolidation as a public purpose. These approaches operate in a gray area, being neither explicitly permitted nor prohibited. It is, however, clear that land swapping through land sale is prohibited. Addressing the lack of legal recognition for additional land fragmentation management tools is crucial, as these instruments are essential for promoting efficient land use and sustainable development. Expanding the legal framework to incorporate such tools would enable more comprehensive and effective land management practices.

4.3. Institutional Arrangements for Land Fragmentation Management Policy Tools

It is a commonly accepted view that institutional structure is one of the most important indicators of property rights and that there is an interaction between it and economic growth. [88] Institutional arrangements are key to implementing policies and legal frameworks. Land fragmentation management policy tools are not exceptions to this principle. According to the legal guide provided by the FAO, there is no pre-existing institutional framework for land consolidation and other policies aimed at managing land fragmentation. The implementation of such tools depends on the specific objectives a country wishes to achieve and its unique local circumstances.

The Federal Rural Land Administration and Use Lead Executive Office, under the Ministry of Agriculture, is responsible for coordinating rural land-related activities, among which is

[87] FDRE Rural Land Administration and Use Proclamation No. 1324/2024.
[88] *Supra note., 74.*

implementing farmland fragmentation management policy tools. There is currently no dedicated institution or department established within this ministry to address the matter at hand. Under the lead executive, there is no team and even an expert who is responsible for the implementation of farmland fragmentation management policy tools. A thorough evaluation was undertaken to assess the job descriptions of all experts operating under the lead executive. The findings revealed a notable absence of any designated individual responsible for farmland consolidation and other land fragmentation management techniques. This indicates that there is neither an institution nor an expert at the federal level who coordinates land fragmentation and its management approaches and supports regional states on the matter.

Implementation power is given to regional states (institutions from region down to Kebele level). Still, regional states do not have a specific unit/section or expert dedicated to the implementation of farmland fragmentation management policy tools. The lower-level land administrators, Kebele Land Administration experts, and Kebele Land Administration and use committees, do not have express power on it. This shows that farmland fragmentation management mechanisms are at their infant stage both from their legal and institutional arrangement perspective in Ethiopia. A significant gap exists on awareness, education and training on land consolidation, from the grass- roots level to officials.

5. Conclusions and Policy Implications

This article highlights that land fragmentation in Ethiopia has reached a critical level, characterised by very small, irregularly shaped, and spatially dispersed parcels, often lacking road access and basic infrastructure. Empirical evidence confirms that the average rural landholding is less than 1.5 hectares and is divided into multiple parcels, significantly constraining mechanisation, increasing transaction costs, discouraging investment, and undermining agricultural productivity and rural development.

In addition, this article expounds land consolidation as the most fundamental and relevant policy tool available to manage land fragmentation. International experience and Ethiopian practice demonstrate that fragmentation can be addressed through a combination of instruments, including voluntary land exchange, minimum parcel size restrictions, subdivision controls, clustering, cooperative farming, contract farming, agricultural zoning, and expropriation. Some of these tools can be used as preparatory or complementary measures to land consolidation, while others can operate independently depending on context.

The analysis of Ethiopia's legal framework reveals that, although recent federal and regional laws recognise land consolidation and clustering, the regulatory provisions remain fragmented, underdeveloped, and largely equity-oriented. Only land consolidation and cluster farming are explicitly recognised at the federal level, while other policy tools operate in legal grey areas. Moreover, significant gaps exist when assessed against the principles of the FAO land consolidation legal guide, particularly regarding tenure protection, participation, valuation, gender equality, environmental sustainability, and grievance redress mechanisms.

Institutionally, the article finds a major implementation deficit. There is no dedicated national institution, unit, or expert responsible for coordinating land fragmentation management or land consolidation. Responsibilities are dispersed across federal and regional bodies without clear mandates, technical capacity, or coordination mechanisms, leaving land fragmentation management in its infancy.

Accordingly, this article concludes that Ethiopia's land fragmentation challenge cannot be resolved through land consolidation alone. Fragmentation is a multidimensional problem shaped by legal, institutional, socio-cultural, and economic factors, requiring a fit-for-purpose policy approach rather than a one-size-fits-all solution. Policies must be tailored to diverse agro-ecological, tenure, and livelihood contexts, balancing equity objectives with efficiency and long-term sustainability.

A comprehensive national framework for land fragmentation management is therefore imperative. This includes the enactment of a dedicated federal Farmland Consolidation Proclamation aligned with FAO guiding principles, alongside legal recognition of complementary policy tools such as voluntary parcel exchange, subdivision restrictions, inheritance reform, and land-use consolidation mechanisms.

Finally, the article emphasises the need for strong institutional reform. Establishing a dedicated national body, such as a Land Consolidation or Land Fragmentation Management Commission, supported by regional structures, is essential to ensure coordination, technical support, capacity building, and policy coherence. Only through a legally grounded, institutionally supported, and context-sensitive approach can Ethiopia effectively manage land fragmentation and advance toward sustainable rural transformation.

Conflict of Interest

The author declares no conflict of interest.

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Customary Rural Land Dispute Resolution in Ethiopia: A Feminist Analysis of Gender Dynamics in Shimglina

Tafesech Wolde Lakew*

Tadesse Amsalu Birhanu**

Brightman Gebremichael Ganta***

Abstract

Shimglina plays a significant role in resolving rural land disputes and expanding access to justice, particularly where formal legal institutions remain inaccessible. However, this mechanism presents a paradox for rural women. While it offers accessible forums for dispute resolution, it often reproduces gender inequalities and undermines women's rights. Although existing scholarship has examined Shimglina in relation to access to justice, social cohesion, and its interaction with formal legal systems, relatively little attention has been paid to its gendered dimensions. This article addresses this gap by employing feminist theory and a gender-transformative approach to examine how gender norms, relations, and institutional structures shape women's agency, relational positioning, and structures within Shimglina as women resolve land disputes. The empirical findings demonstrate that women experience limited opportunities for meaningful participation, constrained avenues for self-representation, and systematic exclusion from decision-making roles within Shimglina. The article argues that enhancing women's agency within Shimglina requires gender-informed reforms, including stronger normative and institutional linkages between Shimglina and the justice system. The article contributes to the literature by exposing embedded gendered power structures within Shimglina and providing empirical and theoretical foundations for transformative and inclusive land governance reform in Ethiopia.

Keywords

Access to Justice; Feminist Legal Theory; Gender-Transformative Approach; *Shimglina*.

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* LLB, LLM, PhD candidate in land policy and governance, Department of land administration and surveying, Institute of Land Administration, Bahir Dar University, Corresponding Author, P.O. Box, 5001, email, tafeymare@gmail.com ORCID No 0009-0003-0308-5193

**BSc; MSc, Ph; Professor of Land Policy and Natural Resources Management Institute of Land Administration, Bahir Dar University Email: tadamsbir@gmail.com ORCID No. 0009-0001-7666-0836

***LLB, LLM, LLD, Faculty of Law, University of Geneva, Switzerland. Email: Brightman.Ganta@unige.ch

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1. Introduction.

In Ethiopia, customary dispute resolution mechanisms are diverse and play an important role in providing access to justice for rural communities. For instance, the *Gada* system among the Oromo,[1] *Mada'a* among the Afar,[2] and *Seeraa* among the Kembata and Hadiya[3] are customary dispute-resolution mechanisms in Ethiopia. In particular, customary dispute resolution is widely used and preferred in the lowland part of Ethiopia to resolve disputes over water, grazing and even criminal matters.[4]

The Amhara Region is characterised by a rich and diverse landscape of customary dispute resolution mechanisms, each rooted in the social and cultural practices of specific localities. Notable examples include Ze-Weld**,** practised in Raya Kobo of North Wollo;[5] Aba Garr, which operates across both North and South Wollo, and Zufan Wal Waj**,** found in Tach Aremacheho of North Gondar. Additional mechanisms such as Sebatu Kezeera in Debarek (North Gondar), Rekebot in Aregoba and the Oromia Special Zone, and Awesade in Kelala of South Wollo further illustrate the regional variation and institutional richness of customary justice systems in Amhara.[6]

Although multiple dispute resolution mechanisms operate in the Amhara region, *Shimglina* is chosen as it is the most widely practised and socially legitimate customary institution in the study area. Its prominence makes it a critical site for analysing power relations, social norms, and gender dynamics in dispute resolution. The *Shimglina* institution uses respected community elders, known as *Shimagilles*, to help people who conflict with each other.[7] These community elders restore peace

[1] Abebe Bedada, 'The Role of Traditional Institutions in Managing Natural Resources; The Case of Oromo "Gada" System in Ethiopia: A Review' Vol. 2 No. 3 Journal of Agricultural Research, Pesticides and Bio Fertilisers' 2021 p. 1, https://aditum.org/images/currentissue/1628677738Galley_Proof.pdf., accessed on 14, February, 2026

[2] Kelemework Tafere Reda, 'Conflict and Alternative Dispute Resolution among the Afar Pastoralists of Ethiopia' vol. 3 No.3 African Journal of History and Culture, 2011, p. 38.

[3] Daniel Handino Onsamo and Jadi Musalaiah, 'The Path to Reconciliation: Understanding the Hiraago Cultural Peacemaking Social Philosophy of the Hadiya, Ethiopia' vol.5 No. 3 South Asian Journal of Social Sciences & Humanities 2024 p. 258

[4] Kinfe Abraha Gebre-Egziabher, 'Dispute resolution mechanisms among the Afar People of Ethiopia and their contribution to the Development Process' VOl.10 No.4 TD: The Journal for Trans disciplinary Research in Southern Africa 2014, p. 152

[5] Sisay Mengistie Addisu, 'Customary Conflict Resolution Mechanisms in Ethiopia: A Case Study of the Raya community' Vol. 2 No.1 Ethiopian Journal of Federal Studies 2014, p.173.

[6] Amhara Media Coperation , ' በአማራ ክልል ጠቅላ ፍርድ ቤት እውቅና እና ፍቃድ የተሰጣቸው 15 የባህላዊ ግጭት መፍቻ ሥርአቶች' ‹ https://web.facebook.com/watch/?v=872171942183135 › accessed 16 July 2026.

[7] Asmare Shetahun, 'Customary rural land dispute resolution in Ethiopia: The case of *Shimglina* in Bahir Dar Zuria *Woreda* of Amhara regional state. Ethiopian Journal of Governance and Development, Vol., No 4, No. 2, 2025, p.1 < https://journals.hu.edu.et/hu-journals/index.php/ejgd/article/view/1321 > accessed 16 July 2026

and harmony rather than determining a legal winner or loser. Also, *Shimglina* is widely trusted by the community because it derives its legitimacy from long-established customs.[8]

According to Alemenh, *Shimglina* provides an accessible, affordable, and culturally accepted forum for resolving land disputes, particularly where formal justice mechanisms are geographically distant, costly, or time-consuming.[9] While customary dispute resolution plays a crucial role in maintaining social order and managing land conflicts, it often falls short in adequately addressing gender issues, particularly the protection of women.[10] Ethiopia has sought to protect women's rights by adopting key international human rights instruments, including the Universal Declaration of Human Rights,[11] the Convention on the Elimination of All Forms of Discrimination against Women,[12] and the African Charter on Human and Peoples' Rights.[13] It has also endorsed the Beijing Declaration and Platform for Action, as well as national policies to address gender inequality.[14] Despite the protection afforded to women under these various legal instruments, gender inequality persists.

Although Ethiopia has shown modest progress in gender equality, ranking 75th in the 2025 Global Gender Gap Index, an improvement of four places from 2024, this progress was largely driven by increased women's representation in ministerial positions, which rose from 57.1 per cent in 2024 to 83.3 per cent in 2025.[15] However, these improvements in political representation do not necessarily eliminate the deeply rooted cultural norms that continue to influence gender relations and women's access to opportunities at the community level. For instance, Tsegamariam argues that deep-rooted cultural traditions enhance men's control over economic resources and reinforce

[8] Ibid
[9] Ibid
[10] Tihut Asfaw and Terre Satterfield, 'Gender relations in local-level dispute settlement in Ethiopia's Zeghie Peninsula, Human Ecology Review', Vol. 17, No. 2, Special Issue, 2010, p. 160
[11] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res. 217 A(III) (UDHR), https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf., Accessed on June, 19,2025
[12] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted on Dec.,1979, by UNGA), https://www.ohchr.org/sites/default/files/cedaw.pdf., accessed on 19, June, 2025
[13] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986, OAU) from <https://au.int/en/treaties/african-charter-human-and-peoples-rights > accessed at 2/12/2025 6:57
[14] UN, WOMEN, The Beijing Declaration and Platform for Action, https://archive.unescwa.org/sites/www.unescwa.org/files/u1281/bdpfa_e.pdf., accessed on 8 August, 2025
[15] World Economic Forum, Global gender gap assessment report, 11, June, 2025 https://www.weforum.org/publications/global-gender-gap-report-2025/ accessed on 12 August, 2025

unequal gender power relations in Ethiopia.[16] Ethiopia has made many advancements in reducing gender disparities in sectors such as women's ministerial leadership and reproductive health. However, gender issues are deep-rooted in the social norms, cultural practices and stereotypes that continuously perpetuate inequalities.[17] One of the areas where gender inequalities are manifested is in customary dispute resolution mechanisms, which are based on customary norms. Some aspects of these norms contravene the gender equality principles.[18] Therefore, addressing areas in which persistent gender inequalities continue to exist is an important step toward achieving gender equality. Prior studies have examined customary laws from different perspectives. For instance, one study examined customary law from an access-to-justice perspective, while another examined customary dispute resolution through the lens of social capital and social solidarity theory.[19] Yet still, few address the gap by employing a feminist theoretical approach to assess customary dispute resolutions.[20]

This article fills this gap by integrating a feminist perspective and using a gender-transformative approach as an analytical framework to assess the customary dispute resolution mechanism of *Shimglina*. Specifically, it examines the norms, institutional frameworks, and practices of *Shimglina*, analyses its gender dynamics, identifies deficiencies in agency and power relations, and consequently formulates essential recommendations to achieve gender equality within Ethiopia's customary land dispute resolution system. For this purpose, using Jabi Tehnan *Woreda* as a case study, this article employs a qualitative case study approach to investigate and document empirical evidence of the customary practice of *Shimglina* and to explore participants' lived experiences and perceptions through focus group discussions, key informant interviews, and observation. It thematically analysed the data and interrogated the empirical evidence through a critical feminist framework that incorporated a gender-transformative perspective. Accordingly, this article argues that the customary institutions, norms, and practices of *Shimgilina* are part of

[16] Tsegamariam, Dula, 'Impact of gender inequality in socio-economic development: The case of women in Ethiopia. Developing Country Studies', Vol.9, No. 1, Nov. 2019, p. 46
< https://share.google/DEL8Ced6w5Nsw140K., accessed on 11 February, 2026
[17] Ibid
[18] Tihut, and Terre, Supra note 10, p. 2
[19] Asmare, Supra note 7, p.2
[20]Eyayu Kasseye Bayu, 'Gender and conflict management: The role of women in indigenous conflict resolutions for peace building in Ethiopia: A systematic review and meta-analysis, International Affairs and Global Strategy', Vol.80, Feb., 2020. p. 1
<https://iiste.org/Journals/index.php/IAGS/article/view/51415 > Accessed on February 14, 2026

patriarchal power structures that limit women's agency, particularly in their social relations and structural roles.

Structurally, the findings of this article are systematically organised and presented in five sections following this introduction. The second section discusses the article's methodological approach in detail, reflecting on the methods of data collection and analysis. The third section discusses its theoretical approach, highlighting feminist and gender-transformative perspectives and *Shimgilina* as a customary form of dispute resolution. The fourth section analyses the empirical results of the case study on the *Shimglina* proceedings, alongside a critical analysis of the *Shimglina* proceedings from transformative gender dimensions. Finally, section five draws concluding remarks.

2. Methodological Approach

This article is the result of qualitative research conducted as a case study. A qualitative research approach examines the behaviours, perceptions, opinions, and lived experiences of individuals.[21] In the case study, involving a smaller number of participants, in-depth engagement with each participant is conducted. This methodological design allows research subjects to articulate their perspectives in their own words, which, in turn, enables the researcher to document rich and contextualised insights into the complex social and normative phenomena of *Shimglina*. Besides, it offered the researchers the opportunity to explore societal perceptions and lived experiences within the case study area. Furthermore, this methodological choice has enabled the researchers to employ a feminist theoretical framework by linking it to a gender-transformative approach, while using empirical evidence as an important analytical lens.

Accordingly, this article documents qualitative empirical evidence, interrogates and analyses the customary practice of *Shimglina* through a case study. For this purpose, Jabi Tehnan Woreda, located in the West Goam zone of the Amhara National Regional State, Ethiopia, is selected as a case study. [22] Jabi Thenan Woreda has a total population of 179,342, of whom 89,523 are men and 89,819 women.[23] Similarly, the predominant ethnic group is the Amhara people, and about 98 %

[21] Pathak, Vibha, Bijayini Jena, and Sanjay Kalra. "Qualitative research", *Perspectives in Clinical Research*, Vol.4, No. 3, 2013, p. 192.

[22]Taye Tibebu, 'Evaluation of the Impact of World Vision Ethiopia, Water, Sanitation and Hygiene Project on the Community: The Case of Amhara Region, West Gojam Zone, Jabi Tehnane *Woreda*.' (Master's thesis. St. Mary's University, Sep. 2016)

[23] The 2007 population and housing census of Ethiopia, Addis Ababa: Central Statistical Authority. <https://ess.gov.et/download/population-and-housing-census-2007-affar_statistical> accessed on September 6, 2025

of them speak the Amharic language. The majority of the population (93.8%) lives in rural areas and is predominantly dependent on subsistence agriculture.[24] Based on this case, the article interrogates and analyses the customary norms and practices of *Shimglina*, highlighting its theoretical implications at the national level.

To this effect, qualitative data were collected through focus group discussions, key informant interviews, and direct observation of dispute resolution practices from August to October 2024, in Jabi Thena Woreda, Amhara region. Focus group discussions were used to collect rich qualitative data by bringing together selected participants to engage in in-depth discussions on a specific topic under the guidance of a moderator. This method enabled the researcher to explore participants' perceptions, opinions, experiences, and interactions regarding the issues under investigation.[25] The focus group discussion was specifically designed to examine perceptions of women's roles in *Shimglina* and to assess the extent of women's participation and representation in land-related dispute resolution processes. As such, data were gathered using focus group discussions in the two selected *Kebeles*, namely Mankusa and Hondanshi. Each *Kebele* hosted a group comprising eight participants, including elders, male and female farm household heads, community police officers, and youth representatives. At the *Woreda* level, sessions included representatives from the women's affairs office, the *Woreda* land administration office, the *Woreda* judges, the public prosecutor, and police officers. Semi-structured interview guides were used to ensure both consistency and flexibility in the discussions.

In addition, this article used key informant interviews to gather data, treating them as a source of high-level perspectives and comparative insights on the issues or questions under study.[26] Accordingly, key informant interviews were conducted by selecting participants purposefully based on their roles, experience, and knowledge of local customs, social norms, and land dispute resolution processes. These included elders, religious leaders, land administration officers, and representatives from women's affairs offices. Moreover, interviews were conducted with women and men from the community. In-depth interviews aim to attain a profound understanding of

[24] Ibid

[25] Alam, Md Saiful, Adelina Asmawi, and Sayeda Fatema, 'Focus Group Discussions (FGDs) for qualitative and mixed-method approaches: Principles, applications, and key considerations', Integrated Journal for Research in Arts and Humanities, Vol. 5, No. 4, July, 2025, pp. 51- 56.

[26] Pahwa, Manisha, Alice Cavanagh, and Meredith Vanstone, 'Key informants in applied qualitative health research, Qualitative Health Research' Vol. 33, No. 14, Dec. 2023, pp. 1251-1261.

individual perspectives.[27] Data were collected until the addition of new data or information no longer contributed significantly. Furthermore, the article employs observation as a data-gathering tool. According to Gorman and Clayton, observation studies are defined as those that "involve the systematic recording of observable phenomena or behaviour in a natural setting." [28] Hence, an observation was conducted in Jabi Tehnan Woreda, focusing on Hondashi and Mankusa Kebeles.

Using a thematic method of analysis, this article documented and analysed these qualitative materials. The thematic method of analysis, a well-established and flexible approach to analysing qualitative data, enabled researchers to identify, analyse, and report patterns and themes within the data.[29] Accordingly, the qualitative data collected in this article were analysed thematically to uncover recurring ideas, perceptions, and experiences related to customary dispute resolution and gender dynamics. In addition, direct observations were conducted of local customary dispute-resolution practices, specifically *Shimglina*, in the two selected *Kebeles.* These observations were documented and narrated to provide contextual insight into the practical operation of *Shimglina*. Secondary sources, including academic books, journal articles, policy reports, and official documents, were also reviewed to support the analysis and provide a broader theoretical and legal context for this article.

3. Theoretical Considerations

3.1. Feminist Gender-Transformative Approach

This article relies on a feminist theoretical framework, linking it to a gender-transformative approach while interrogating and analysing the customary practices of *Shimglina.* Feminist theory is grounded in the recognition that gender-based oppression and inequality are structurally embedded within social, economic, and legal institutions.[30] Rather than viewing inequality as the

[27] Mantula, Fennie, Amos C. Mpofu, Favourite Y. Mpofu, and George N. Shava. "Qualitative research approach in higher education: Application, challenges and opportunities, East African Journal of Education and Social Sciences' Vol. 5, No. 1 (2024) pp. 1-10.

[28] Gorman, Gary Eugene, Peter Robert Clayton, Sydney J. Shep, and Adela Clayton, *Qualitative research for the information professional* (2nd ed., Facet Publishing, London, 2005)

[29] Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology, Qualitative research in psychology', vol. 3, No. 2, July 2008, pp. 77-101. <https://www.tandfonline.com/doi/abs/10.1191/1478088706qp063oa#:~:text=In%20this%20paper%2C%20we%20argue%20that%20it,theoretically%20flexible%20approach%20to%20analysing%20qualitative%20data. > (accessed on 11 February 2026.

[30] Ulug'bek qizi Rasulova, Durdona, Olima Obidjon qizi Turobova, and Said-Fozilxon Akmalxonovich Akmalxonov, 'Fundamental Principles and Development of Feminist Theory, In International Conference on Modern Development of Pedagogy and Linguistics', vol.1, No. 11, Dec. 2024, pp. 56-61.

result of individual bias, feminist perspectives emphasise how patriarchal power relations shape norms, authority, and access to justice.[31] From this standpoint, customary dispute resolution mechanisms are understood as sites where gendered hierarchies are reproduced and legitimised.

Sultana conceptualises patriarchy as a system of male domination operating across both public and private spheres.[32] These insights are particularly relevant for analysing customary dispute resolution institutions, where women's participation is often hindered by household chores and prohibitions on women's participation in public space in the name of culture. Although customary institutions are commonly portrayed as accessible, feminist theory cautions that their procedures and norms can systematically disadvantage women by limiting their participation and framing their claims within relational terms rather than as enforceable rights.[33]

Hence, gender inequality cannot be addressed solely through procedural reform or inclusion within existing structures. Instead, it requires a critical examination of the underlying power relations and cultural norms that sustain male dominance. Applied to customary dispute resolution, this perspective raises questions about whether dispute resolution mechanisms can deliver substantive gender justice without structural transformation. Furthermore, Liberal feminist critiques highlight how customary dispute resolution mechanisms often prioritise collective harmony and social cohesion over individual entitlements. [34] This tension is particularly significant in contexts where reconciliation is valued over women's ability to pursue land-related claims.

At the same time, counter-perspectives that frame customary dispute resolution as an expression of cultural identity and community self-governance are acknowledged. From a cultural relativist standpoint, customary institutions are valued for their social legitimacy and accessibility.[35]

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[31] Jane Flax, 'Postmodernism and gender relations in feminist theory, Signs: Journal of women in culture and society', Vol.12, No. 4, 1987, pp.621-643.; Deniz Kandiyoti, 'Bargaining with Patriarchy, Gender and Society', Vol. 2, No. 3, Special Issue. Sep. 1988, pp. 274-290.

[31] Shah, Noreen, Rebecca Rafi, Afshan S. Mahmood, and Humaira Yousaf. 'Patriarchy in Hijabistan, A critical examination of Gender inequality in Pakistan, Journal for Current Sign' Vol. 3, No. 2, 2025, pp. 162-173. <https://currentsignreview.com/index.php/JCS/article/view/161/120 > accessed on 12, February, 2026

[32] Sultana, Abeda, 'Patriarchy and women's subordination: a theoretical analysis, Bangladesh Journals Online', vol. 4, Dec.,2012, p. 1-18

[33] Albornoz-Arias, Neida, Camila Rojas-Sanguino, and Akever-Karina Santafe-Rojas, 'Empowerment of Rural Women Through Autonomy and Decision-Making, Social Sciences' Vol.14, No. 8, 2025, p. 469.

[34] Bimer Eyayu Enyew, and Alemeneh Getaneh Mihrete, 'Liberal feminism: Assessing its compatibility and applicability in the Ethiopian context', International Journal of Sociology and Anthropology, Vol.10, No. 6, Aug. 2018, pp.59-69

[35] Park, Seungbae. 'Defence of cultural relativism, Cultura' Vol., 8, No. 1, 2011 pp. 159-170.

Cultural relativists contend that externally imposed legal norms, particularly those grounded in international human rights frameworks but rooted in Western historical contexts, do not adequately reflect the experiences and realities of the Global South.[36] However, feminist analysis cautions that cultural legitimacy cannot obscure the exclusionary practices embedded within these mechanisms.[37] As evidenced in many previous studies, women's exclusion from meaningful participation in customary institutions mirrors broader patterns of gendered power relations in these institutions.

A gender-transformative feminist approach focuses on interrogating and transforming the power relations, norms, and institutional arrangements that sustain gender inequality.[38] This framework provides a critical lens for examining customary dispute resolution mechanisms by indicating dimensions of change. It seeks to expand women's choices, decision-making authority, and control over resources, offering three interrelated perspectives to analyse embedded systemic barriers: agency, social relations, and social structures.[39]

These interrelated theoretical lenses provide this article with a framework for assessing women's position within S*himglina,* as provided in Figure 1. The first dimension, agency, emphasises women's capacity to challenge social norms, individually or collectively, and to effect change through action and achievement.[40] The second dimension, social structure, refers to socially produced norms that, once normalised, shape and constrain women's choices and opportunities.[41] The third dimension is about social relations. "Social relationships are where women negotiate their needs and rights with other social actors, including men."[42] Hence, these three key dimensions offer a broad framework for understanding where change is needed to advance gender equality.[43]

[36] Ibid
[37] Okin, Susan Moller, 'Feminism, women's human rights, and cultural differences', Hypatia, Vol.13, No. 2, 1998, pp. 32-52.
[38] Rachel Marcus, Fiona Samuels, Shoubo Jalal, and Helen Belachew, Background Paper on Gender Transformative Programming: UNICEF Gender Policy and Action Plan 2022–2025 (UNICEF 2020) unicef.org accessed 13 August 2024
[39] Gender Transformative Approach, https://www.giz.de/de/downloads/giz2020_en_Gender-Transformative_Change.pdf., accessed at 15 July,2025
[40] Ibid
[41] Ibid
[42] ibid
[43] Ibid

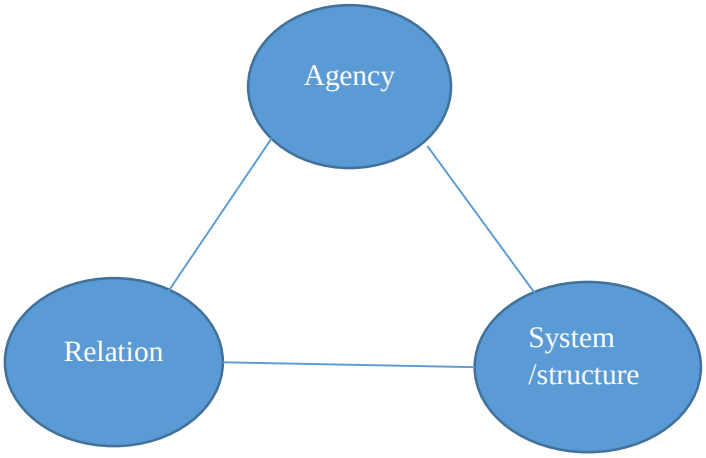


Figure1. Key dimension of Gender transformative change[44]

3.2. *Shimglena* as a Customary Dispute Resolution Mechanism

The *Shimglina* mechanism is widely recognised as a customary form of dispute resolution in the Amhara region. *Shimglina* involves a process of reconciliation conducted by the council of elders. The council of elders is often composed of religious leaders and elders who mediate and settle disputes ranging from civil to criminal matters.[45] The council of elders in *Shimglina* is dominated by male members of society serving as mediators, known locally as *Shimaglewoch.* Elders are selected not only for their age but also for their wisdom, integrity, and respected character within the community. According to an interview with a local elder, the composition of the council of elders depends on the parties' preferences. It typically comprises an odd number of members, ranging from three to five, to facilitate voting.[46] A chairperson is chosen among them to lead the proceedings.

4. Results and Discussion

In this section, the article presents empirical data collected through interviews, focus group discussions, key informant interviews, and observations in Jabi Tehnan *Woreda* of the Amhara

[44] Adopted from the consortium of international agricultural research centres, gender impact platform, Guidelines for measuring gender transformative change in the context of food security, nutrition and sustainable agriculture. (2023). FAO, WFP, and the Consortium of International Agricultural Research Centres (CGIAR) Gender Impact Platform, Guidelines for measuring gender-transformative change in the context of food security, nutrition, and sustainable agriculture. Accessed at < https://openknowledge.fao.org/items/08dccbe0-4bf0-4bc5-bd96-94410b2eafc2> accessed on Sep. 12, 2025

[45] Ibid

[46] Interview with Getahune Fente, elder priest, Mankusa *Kebele*, West Gojjam, Sept. 29, 2024.Interview with elder Melake Sewenet, West Gojjam, Aug. 12, 2025

region. It analyses the norms, institutional frameworks, and practices of *Shimglina* proceedings. In addition, this section critically interrogates its gender dynamics, identifying deficiencies in agency and power relations using a gender-transformative framework across agency, structural, and relational dimensions.

4.1. Gender Dynamics in Attending *Shimglina* Proceedings

Prevailing gender norms and power relations within the community shape attendance in customary dispute resolution proceedings.[47] Although the *Shimglina* institution serves as an accessible mechanism for resolving disputes and restoring social harmony, women's and men's opportunities to attend and participate in proceedings are not always equal.[48] This is because of social expectations, cultural practices, household responsibilities, and unequal power relations.[49] Research indicates that locally established institutions, such as S*himglina*, resolve a substantial proportion of land disputes before they reach the formal judicial system.[50] *Shimglina* is an accessible dispute resolution mechanism, particularly for rural communities to resolve land disputes.[51] In this sense, it expands access to justice and serves as a primary forum for hearing and resolving disputes.

Shimglina proceedings permit women to attend the process, unlike some customary systems that explicitly prohibit their presence.[52] While this underscores the practical importance of *Shimglina* in providing access to justice, it also raises concerns regarding the quality and inclusiveness of the justice delivered. Women are frequently excluded from institutional structures due to social

[47] Tesfaw, Mekuanint. 'Ethiopian Women; Agents and Subjects in the Shimglna (a Customary Conflict Resolution Institution): Amharas' Experience in Meket District, North Wollo Zone Sociology and Anthropology', Vol. 3, No. 2, 2015, pp. 95-103.
[48] Ibid
[49] Ibid
[50] Managing land disputes in Ethiopia, Ministry of Agriculture report < https://igad.int/download/managing-land-disputes-in-ethiopia> accessed on 17, June, 2025
[51] Alula Pankhurst & Getachew Assefa, *Grass-roots Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (1st ed., Centre Français des études éthiopiennes; Gebre Yinteso, Fekade Azeze & Assefa Fisseha, 2012),
[52] Eyayu Kasseye, supra note, 21 p. 3

norms.[53] Even though access to justice is provided, it also requires meaningful participation, fairness, and effective remedies.[54]

An interview with a land administration officer affirmed that although women's participation was limited in earlier periods, their presence has gradually increased.[55] This change can be described as a significant milestone, particularly given that there were periods when women were not allowed to participate at all. This statement reflects a gradual shift toward the inclusion of women in dispute resolution processes, signalling a departure from periods of outright exclusion. While the increase in women's participation is framed as a significant milestone, it simultaneously reveals the depth of historical gender-based barriers that normalised women's absence from such forums. MacKinnon emphasises that women's "inclusion" in legal and political processes does not automatically lead to real influence or justice unless the underlying structures that produce inequality are transformed.[56] This highlights that simply including women in legal or political processes does not guarantee they will achieve justice if the institutions and power structures that create gender inequality remain unchanged.

In addition, women's access to *Shimglina* is constrained by discrimination embedded in social norms. Such embedded norms affect gender relations, which manifest as discrimination, marginalisation and subordination of women and girls.[57] An interview with a woman villager indicated:

> Shimglina proceedings are formally open to both men and women. However, women's participation is usually limited to cases involving family members, relatives, or neighbours. In other instances, women often learn about the outcomes indirectly through

[53] Williams, Susan H. 'Women and Judging: A Feminist Approach to Judging and the Issue of Customary Law. Thomas Jefferson Law Review, Vol.36, 2013, p. 25.
[54] Rhode, Deborah L., 'Access to justice: Connecting principles to practice, Geo. J. Legal Ethics, Vol. 17, Jan. 2003, p. 369.; Adem Kassie Abebe, 'Human rights under the Ethiopian constitution: a descriptive overview, Mizan Law Review' Vol.5, No. 1, 2011, PP. 41-71.
[55] Interview with land administration officer Bezabeh Welelaw, Jabi Tehnan *Woreda*, on 29 September 2025, West Gojjam zone.
[56] MacKinnon, Catharine, 'Feminism in legal education', Legal Education. Review Vol. 1, Jan, 1989, p. 85.
[57] Van Eerdewijk, A. H. J. M., Franz Wong, Chloe Vaast, Julie Newton, Marcelo Tyszler, and Amy Pennington. 'White paper: A conceptual model on women and girls' empowerment.' 2017. <https://www.researchgate.net/publication/315516870_White_Paper_a_Conceptual_Model_on_Women_and_Girls'_Empowerment.> Accessed on 12, Feb.,2026

> others. Their absence from proceedings is largely linked to the domestic responsibilities they are expected to manage.[58]

This explanation reveals that women's involvement is conditional and limited to cases perceived as socially important, such as family and neighbourhood disputes. Household responsibilities operate as a structural barrier.[59] This reflects how gender roles diminish women's access to justice and voice in dispute resolution.

Even though women's attendance at Shimglina as observers is limited, their mere presence disrupts the traditionally male-dominated arena and allows them to gain procedural knowledge, provide social support for each other, and assert agency at individual and collective levels.

Thus, at the agency level, women possess both individual and collective awareness regarding their right and ability to attend and observe *Shimglina* proceedings. This awareness reflects that their attendance is not merely a passive presence but a conscious decision to engage with a customary institution that has historically excluded them. Williams argues that feminists advocate women's equal access in matters that concern them.[60] Thus, women's involvement in *Shimglina* represents both a practical and ideological challenge to gender inequality in customary institutions.

At the relational level, women's attendance in *Shimglina* is reinforced through social support from men and women, including family members and neighbours. Relational dimensions indicate that women are not acting in isolation; rather, their participation is enabled and legitimized through collective presence and shared responsibility. An interview with the land administration officer indicated that "women attend *Shimglina* when a family member is either initiating a claim or being sued, primarily to demonstrate solidarity and observe the proceedings."[61] This interview reflects that the relational dimension is also positively reinforced by both men and women through kinship affiliation. However, the relational dimension is affected by gender roles, which constrain

[58] Interview with women *Shimglina* participant, Enatenesh Fente on 29, January, 2024; Interview with *Shimglina* participant Banchamelak Enawegaw Jabi Tehnan *Woreda*, West Gojjam Zone on 27 October, 2024

[59] Milazzo, Annamaria, and Markus Goldstein. 'Governance and women's economic and political participation: Power inequalities, formal constraints and norms, The World Bank Research Observer' Vol. 34, No, 1, Feb.2019, pp. 34-64.

[60] Williams, Susan, Supra note 54, p.14

[61] Interview with Bezabeh Welelaw, supra note 56, p. 14

women's presence in these proceedings. At the structural level, allowing women to attend *Shimglina* proceedings represents a positive development, as the *Shimglina* framework formally permits women's presence and observation during the process. In general, *Shimglina* has limited capacity to facilitate women's attendance at its proceedings.

4.2. Representation During *Shimglina* Proceedings

Representation is crucial for women because it directly shapes whose voices are heard, whose interests are recognised, and whose rights are protected within decision-making processes. The following cases demonstrate women's participation in *Shimglina.*

4.2.1. Observation One

This observation documents a *Shimglina*-based rural land inheritance dispute that took place on November 17, 2024, in Jabi Tehnan *Woreda*, West Gojjam Zone, Hondashi *Kebele*.[62] The case is examined analytically through the interconnected dimensions of agency, structure, and social relations, with particular attention to how customary dispute-resolution processes shape women's participation and substantive equality. While *Shimglina* is formally open to community participation, the conduct and outcome of this case reveal how culturally embedded norms influence both decision-making and the distribution of power among disputants.

The dispute involved four siblings contesting the division of inherited rural land. The claim arose after the sisters alleged that their brothers had allocated themselves a disproportionately larger share of the land. Although *Shimglina* proceedings are generally public, attendance in this case was limited to family members due to security concerns in the area.

During the proceedings, the sisters were represented by their uncle, who argued that the land division was unjust and required rectification. The reliance on male proxy representation, rather than self-representation by the sisters themselves, reflects constrained agency shaped by prevailing gender norms. Although the *Shimglina* structure permits women's participation, women's direct engagement remains mediated through male relatives, indicating that formal access does not necessarily translate into an effective voice.

[62] Observation conducted by the researcher on the proceedings of *Shimglina*, Hondashi *Kebele*, Jabi Tehnan *Woreda*, West Gojjam Zone, on 17 November, 2024,

In response, the brothers justified their larger share by emphasising their labour contributions, including intensive cultivation and the purchase of fertiliser to maintain soil fertility. These claims were framed as economically rational and future-oriented, aligning with dominant masculine ideals of productivity and investment. When the sisters' representative countered by highlighting the sisters' care work, particularly nursing their late father and performing household responsibilities, these contributions were acknowledged but implicitly treated as less valuable. This hierarchy of labour illustrates how customary dispute resolution processes privilege male-defined economic inputs over socially reproductive labour traditionally performed by women.

After hearing witnesses and holding separate discussions with the parties, the elders proposed that the land be used jointly and that the harvest be divided equally. While this decision appeared to promote fairness and reconciliation, it reflected a culturally specific notion of equity aimed at restoring social harmony rather than addressing underlying inequalities. By avoiding a reassessment of contribution and entitlement, the elders prioritised relational stability over substantive gender equality, thereby reproducing existing power imbalances within the family.

The brothers objected to equal sharing of the harvest, reiterating that their labour and financial investment justified a larger portion. Following prolonged debate, the sisters eventually accepted the brothers' position. The elders did not intervene to renegotiate the distribution but instead proceeded directly to the reconciliation ceremony, concluding with a communal prayer. This moment reveals how reconciliation norms within *Shimglina* can function to close disputes prematurely, limiting women's capacity to sustain claims once resistance from male parties intensifies. Consent, in this context, appears less as a product of equal bargaining and more as an outcome of social pressure and constrained choice.

4.2.2. Observation Two

The *Shimglina* proceeding between Eme Eseyenu Worku and Molla Berku took place in the compound of a village church, a public and symbolically authoritative space.[63] Although community members were present, the attendees were overwhelmingly male. This gendered

[63] Observation by the researcher where the council of elders resolved a land dispute in Mankusa *Woreda*, West Gojjam Zone on September 29, 2024.

composition reflects how customary institutions, while formally public, remain socially masculinised, shaping whose voices carry authority and whose presence is normalised.

The dispute arose from a sharecropping agreement in which Eme Eseyenu, an elderly woman, rented out her land and was entitled to half of the harvest. However, she alleged the defendant had not given her the harvest. Her decision to bring the case to *Shimglina demonstrates that* customary institutions are readily accessible, particularly in rural contexts where formal courts may be out of reach. However, feminist analysis highlights that women often turn to customary mechanisms not because they are empowering, but because alternatives are structurally limited.[64]

Eme Eseyenu represented herself during the proceedings. While this could be interpreted as a sign of procedural equality, she struggled to articulate her claim clearly, becoming emotional and crying, which undermined its strength. The elders attempted to listen to her grievance, but urged her to make her points.

In contrast, the defendant, Ato Molla, presented a coherent defence, emphasising his agricultural risk and his labour investment. Feminist analysis underscores how men's familiarity with public negotiation and dispute forums often enables them to frame arguments in ways that resonate more strongly with male elders, reinforcing gendered power asymmetries even in ostensibly neutral proceedings.[65]

The elders, entirely male, were selected by both parties, with a religious leader acting as chairperson. The absence of women among the decision-makers is significant. Feminist legal theory stresses that representation is not merely symbolic; it shapes substantive outcomes.[66] After hearing witnesses and deliberating, the elders found the defendant at fault and ordered him to provide two quintals of wheat, allowing instalment payments if necessary. This decision appears favourable to the woman's claim and reflects a degree of responsiveness to her grievance. However, the feminist critique becomes sharper in the elders' subsequent ruling. Despite the

[64] Williams, Susan, Supra note 54, p.14
[65] Mazei, Jens, Joachim Hüffmeier, Philipp Alexander Freund, Alice F. Stuhlmacher, Lena Bilke, and Guido Hertel. 'A meta-analysis on gender differences in negotiation outcomes and their moderators, Psychological Bulletin' Vol. 141, No. 1, 2015, p. 85.
[66] Dang, Minh Hoang, 'Applying feminist legal principles to achieve gender equality in Vietnam's labour legislation ', Cogent Social Sciences, Vol.10, No. 1, April, 2024, pp. 235-566.
<https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2350566> accessed on 16 February 2026

plaintiff's explicit request to terminate the contract, the elders decided that the sharecropping arrangement should continue, citing the defendant's labour and financial investment.

While reconciliation is celebrated as a strength of customary systems, in this case it effectively constrained the woman's freedom to exit a contractual relationship that had already failed her. In addition, focus group discussions indicate that women's limited agency stems from a lack of confidence and limited experience in public negotiation, shaped by long-standing social exclusion from decision-making spaces.[67] As the focus group discussions indicate, women's limited agency is not inherent but socially produced through long-standing exclusion from decision-making spaces. This exclusion undermines women's confidence and familiarity with public negotiation, constraining their ability to assert claims and reinforcing dependence on male or customary authority during dispute resolution processes.

Thus, in terms of agency, although women are formally entitled to represent themselves, this right is rarely exercised in practice, revealing a clear gap between cultural permission and effective participation. In this sense, agency is not merely absent but actively suppressed through informal social controls. In this regard, an interview with Mulusew Anemawe, who previously participated as a plaintiff in a *Shimglina* proceeding to resolve a rural land dispute with her husband, revealed the gendered dynamics of the process. Reflecting on her experience, she explained:

> I participated as a plaintiff in a S*himglina* process with my ex-husband in a divorce case, where most of our disagreements concerned rural land. I represented myself during the proceedings. However, the council of elders treated me as a troublemaker because I openly expressed that I would not accept their proposed solution. They pressured me into agreeing to a land division that I believed was unfair. As a result, I decided to take my case to the *Woreda* court to obtain both my divorce and my land.[68]

The participant's self-representation challenged customary expectations of female compliance, leading elders to label her as a troublemaker. Such framing functioned as a disciplinary mechanism, pressuring her to accept an inequitable land division. Her decision to pursue the case

[67] Focus group discussion, at Hondashi *Kebele*, Jabi Tehnan *Woreda*, on September. 29, 2024. Also, Focus group discussion, Mankusa *Kebele*, Jabi Tehnan *Woreda*, West Gojjam Zone, on Aug. 12, 2024.

[68] Interview with Mulusew Anemawe, a villager at Mankusa *Kebele*, West Gojjam Zone, on September 29, 2024.

in the *Woreda* court reflects both resistance to patriarchal customary authority and the strategic use of formal legal institutions to reclaim autonomy over divorce and land rights.

Furthermore, cultural discourses embedded within the society are expressed through widely used proverbs such as *"set wede bet, wend wede chilot"* (women to the house, men to the public) and *"set ye'eletun, wend ye'ametun"* (women think for today, men think for a year) that normalise women's exclusion from public deliberation and frame them as irrational or short-sighted.[69] These narratives function as structural barriers by shaping expectations about who is qualified to speak, decide, and lead.[70]

The relational dimension further illustrates how women's participation is mediated through dependency rather than autonomy. Women in *Shimglina* proceedings are often represented through male proxies, reflecting unequal social relations and limited interdependence among women themselves. Interviews with women villagers reveal that those who pursue their cases directly are frequently labelled as "troublemakers," a stigma that discourages collective support and weakens relational networks. [71] As a result, women lack the social reinforcement necessary to challenge authority or sustain claims within the customary forum.

Taken together, agency, structure, and relations operate in a mutually reinforcing manner. Restrictive cultural norms diminish women's confidence and agency; institutional structures dominated by men sustain these norms; and unequal social relations discourage collective action and mutual support. Formal openness within *Shimglina*, therefore, does not translate into substantive equality, as women's representation remains largely limited.

From a feminist and gender-transformative perspective, these findings demonstrate that meaningful representation requires transformation across all three dimensions. Enhancing women's agency must be accompanied by structural reforms that redistribute decision-making authority and by relational changes that strengthen social support and collective empowerment.[72]

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[69] Tesfaw, supra note 48, p. 13

[70] Hussein, Jeylan Wolyie, 'A discursive representation of women in sample proverbs from Ethiopia, Sudan, and Kenya, Research in African Literatures' Vol.3, No.3, 2009, p. 96- 108.

[71] Interview with Banchiamlak and Enatenesh, Supra note 59, p.15

[72]Verma, Ritu, 'Business as unusual: The potential for gender transformative change in development and mountain contexts, Mountain Research and Development' Vol.34: No. 3, Aug. 2014. pp. 188-196.

Without such interconnected interventions, *Shimglina* will continue to resolve disputes in ways that preserve social harmony while reproducing gender inequality.

4.3.Gender Dynamics in the Council of Elders in the *Shimglina* Process

Gender dynamics, as a fundamental aspect of social structures, play a profound role in shaping individuals' lives and societal norms.[73] According to focus group discussion, women's participation in customary dispute resolution systems, particularly in *Shimglina*, has largely centred on women as justice seekers rather than as adjudicators or decision-makers. Feminist perspectives explain and suggest directions for change in social settings.[74] One area of change is women's position as decision-makers within cultural institutions.[75] An interview with members of the council of elders emphasised that,

> Women play an important role in dispute resolution; they significantly help encourage reconciliation within families, especially in rural land disputes. However, traditions have long prevented women from serving as elders in dispute resolution. This is how we inherited the custom from our ancestors.[76]

This statement reflects an appeal to tradition as a source of legitimacy for existing customary practices. While ancestral inheritance is often invoked to preserve social cohesion and continuity, such reasoning tends to naturalise and freeze customs, rendering them static and shielding them from critical scrutiny or reform. By framing practices as inherited rather than chosen, the statement obscures the power relations embedded within the custom, particularly those that disadvantage women. Moreover, reliance on ancestral authority can function as a discursive tool to resist change, especially when customary practices conflict with constitutional principles of equality and human rights. In this sense, tradition is treated as an unquestionable norm rather than a dynamic social institution capable of adaptation. This undermines the possibility of reforming customary dispute resolution mechanisms to align with constitutional and human rights principles.

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[73] Luiz, Fernandez, 'Unveiling gender dynamics: An in-depth analysis of gender realities, Influence: International journal of science review', Vol.5: No. 3, 2023, pp. 61-70. <https://doi.org/10.54783/influencejournal.v5i3.182 > accessed on 12, February, 2026

[74] Ibid

[75] Ibid

[76] Key informant interview with Getahun Fente, elder at Mankusa Kebele, Jabi Tehnan *Woreda*, West Gojjam, on September 29, 2024.

Data from the key informant further revealed that inclusion of women in customary dispute resolution mechanisms provides an important entry point to justice; however, women's participation within these institutions remains limited in the study area. The informant emphasised that women should actively participate in resolving issues that primarily affect them, particularly land disputes, where women are often disproportionately impacted. The informant further stressed that customary institutions must deliberately create space for women's meaningful inclusion within their systems.[77]

This statement highlights the gap between formal access to justice and substantive participation. While women's inclusion is acknowledged as beneficial, their limited role reflects entrenched gender hierarchies within customary institutions. The call for deliberate institutional space underscores that meaningful inclusion does not occur naturally but requires intentional structural reforms to ensure women's voices influence outcomes, especially in land-related disputes that directly shape their livelihoods and security.

Supporting this, *Marege*, a former member of a government-established social court at the *Kebele* level, shared her experience:

> When I was selected to serve on the social court as a decision maker, my participation was often undermined. My input was overlooked, and at times, I was not even informed of scheduled proceedings. This lack of respect discouraged me from continuing.[78]

The interviewee's experience illustrates that, although she was officially selected as a decision-maker in the social court, her inclusion was largely symbolic rather than substantive. Her account reflects broader patterns of gendered exclusion from decision-making institutions. Similar dynamics are evident in *Shimglina*, where women are rarely represented as elders or decision-makers. In both institutions, women's limited participation restricts their influence over dispute resolution processes and reinforces existing gender inequalities.

[77] Key informant interview with Zina Getachew, Amhara Regional Women Affairs Bureau vice head, on 16 February 2026

[78] Key informant interview with Marege Shetaye, former Social Court Judge, on 15 August 2024.

Moreover, the absence of women's representation in *Shimglina* as elders highlights the broader problem of gendered exclusion. Gender exclusion in *the Shimglina* institution deprives women of gaining access to decision-making roles.

In addition, interviews conducted with women villagers revealed

> The exclusion of women in Shimglina as elders has long been normalised as a cultural practice. Even when opportunities for women's participation are made available in social court, many are reluctant to accept them due to fear of ridicule and social stigma. Nevertheless, the women expressed optimism that meaningful change may occur for the next generation.[79]

These interviews indicate that women's exclusion from S*himglina* as elders is deeply institutionalised and culturally normalised, reflecting entrenched patriarchal structures. Even when formal opportunities for participation exist, social pressures such as fear of ridicule or stigma discourage women from exercising agency. It also demonstrates that mere legal or procedural openings are insufficient; social norms and informal sanctions continue to limit women's effective engagement in dispute resolution in the study area.

Feminist critique how cultural practices and power hierarchies systematically marginalise women in patriarchal society, sustaining male dominance in decision-making spaces.[80] The optimism expressed by women for future generations suggests an awareness of inequality and a desire for transformative change, highlighting the potential for gradual dismantling of patriarchal barriers if structural and cultural reforms are pursued together.

The above data reveal deeply embedded cultural norms, reinforced by *Shimglina's* long-standing exclusion of women from elder roles, sustaining a self-reinforcing cycle of unequal gender power relations in Jabi Thenan *Woreda*. In addition, when cultural practices systematically marginalise women, they come into tension with fundamental human rights principles of non-discrimination and inclusive participation, revealing a structural conflict between customary authority and gender

[79] Interview with women villagers Wede Tebekew and Netehu Garede at *Mankusa Kebele*, on September 29, 2024
[80] Saima Usmani, Elsadig Hussein Fadlalla Ali, Musadhique Kottaparamban, and Samreen Hadi, 'Role of feminist theories in addressing issues of gender diversity', Kurdish Journal, Vol.11, No. 3, 2023, pp. 439- 452.

equality norms. From a feminist perspective, such marginalisation is not merely cultural but a mechanism that maintains patriarchal power, limiting women's agency and access to justice.[81]

Therefore, at the agency level, women often lack the skills, awareness, and knowledge required to serve as S*himglina* elders. This is not a reflection of inherent incapacity but stems from the historical exclusion of women. As the position of elder has been occupied exclusively by men for generations, it makes it uncharted territory for women. As a result, women have no opportunities to acquire the customary knowledge, procedural expertise, and confidence required to participate effectively as elders. This limited exposure reinforces the perception that women are less capable of holding decision-making roles, which in turn undermines their agency and ability to assert themselves in public spheres.

At the structural level, the design and operation of *Shimglina* institutions systematically exclude women from participation as elders. The rules, practices, and cultural norms embedded in the institution assume male authority as standard, creating barriers to women's inclusion. This institutional arrangement not only prevents women from occupying positions of power but also perpetuates male dominance as a normalised feature of social governance. Structural exclusion thereby restricts women's opportunities to influence decisions that directly affect their lives, reinforcing existing inequalities.

At the relational level, while some communities are open to expanding women's roles within S*himglina,* others resist such changes, reflecting deeply ingrained cultural norms. These relational dynamics influence both women's willingness to participate and their acceptance within the community. The interplay of support and resistance shapes the environment in which women operate, affecting not only their agency but also their ability to challenge or negotiate existing power hierarchies.

In general, all three dimensions have gaps in agency, structure and relation aspects in gender dynamics in S*himglina* as elders.

The male-only composition of *Shimglina* elders illustrates how local governance practices sustain male-dominated decision-making, revealing a disconnect between formal gender equality mandates within the Ethiopian policy framework and their implementation at the community level

[81] Walby, Sylvia, 'Theorising patriarchy ', Sociology, Vol. 23, No. 2, May,1989 pp. 213-234.

in the study area. Also, this tension highlights structural limitations in translating national policies into inclusive local governance and underscores the persistent challenges women face in accessing leadership positions. Although recent efforts to reform customary dispute resolution and clarify the mandate of courts are ongoing in Ethiopia in different regions, more work is needed to eradicate women's marginalisation due to customary norms.[82] Research indicates that the recognition and integration of customary mechanisms within the national legal framework offer multiple advantages in protecting individuals and vulnerable groups from gender inequality and marginalisation.[83] This article advocates that such reform and policy direction should include feminist informed changes. One possible policy direction could be to mandate the inclusion of women as mediators or elders in newly recognised and established regional customary courts and in the regional land administration proclamation. In this regard, a formal court could play a major role by providing oversight and reviewing the alignment of customary courts' decisions with constitutional and human rights principles. [84] This will ensure customary laws are reformed and developed to conform to constitutional and human rights norms.

5. Conclusion

Women's participation in *Shimglina* is constrained by entrenched gender norms and male-dominated structures. Despite Ethiopian policies promoting gender equality, the male-only composition of *Shimglina* elders exposes a gap between law and practice, underscoring persistent structural barriers to women's community leadership and decision-making. Feminist theory critiques customary law for preserving patriarchy, as male-dominated dispute resolution mechanisms marginalise women's legal standing in *Shimglina.* A gender-transformative approach addresses this through agency, structural, and relational dimensions of change.

Therefore, the article's findings show that in the context of Jabi Tehnan Woreda, the Shimglina dispute resolution structure is open to women attending and observing the proceedings. However,

[82] Managing land disputes in Ethiopia, Supra note 51, p.13

[83]Awet Halefom, 'Integrating Traditional and State Institutions for Conflict Prevention: Institutional, Legal and Policy Frameworks in Ethiopia, Mizan Law Review', Vol. 16, No. 2, Dec. 2022, pp. 339-368.; Zelalem T. Sirna and Moti Mosisa G, 'Legal Pluralism and Its Implication on Human Rights in Ethiopia: A Look for Policy Framework, Ethiopian Human Rights Law Journal', Vol. 7, 2015. p. 71

[84] Kiye, Mikano Emmanuel. 'Conflict between customary law and human rights in Cameroon: the role of the courts in fostering an equitably gendered society, African Study Monographs,' Vol. 36, no. 2, 2015, pp. 75-100.

women's agency is limited due to cultural norms and assigned gender roles in society. This also limits the relational dimension as women's gender roles limit their participation.

On the other hand, the *Shimglina* structure allows women disputants to present their cases themselves. However, there are limitations on women's ability to exercise agency in representing themselves, stemming from a lack of skill in presenting a coherent claim or defence and limited exposure to the *Shimglina* process. Relation-wise, women in Shimglina are often represented through proxy, with family and friends showing support in encouraging their defence.

Furthermore, the structure of *Shimglina* excludes women as elders. Hence, women can't exercise their agency and social relations. This creates limitations on agency, structure, and relations in *Shimglina* proceedings.

Therefore, the *Shimglina* structures must be reformed to ensure the meaningful inclusion of women as elders in *Shimglina* institutions. In such reform, formal courts play a major role in providing oversight to customary dispute resolution mechanisms in general and *Shimglina* in particular.

Rather than being overlooked, customary institutions should be reformed to align with constitutional principles and international human rights standards. When reformed, they can advance justice, gender equality, and women's empowerment for the rural community. Such reforms have important implications for land governance by addressing gendered power relations, strengthening legal frameworks, and promoting women's equitable access to land.

Conflict of Interest

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Rethinking Ethiopia's Bilateral Investment Treaties: A Comparative Analysis with Emerging Global Models

Daniel Behailu Gebreamanuel *

Abstract

This reflection provides a critical, comparative analysis intended to inform the development of a coherent Ethiopian model Bilateral Investment Treaty (BIT), grounded in best practices and aligned with the nation's development priorities. It examines Ethiopia's bilateral investment treaties (BITs) through a comparative perspective, drawing upon analyses of treaties Ethiopia has signed with Libya, Algeria, Sudan, Finland, Sweden, China, and Egypt to attract Foreign Direct Investment (FDI). These are contrasted with model BITs from South Africa, India, Ghana, Brazil, Kenya, Morocco, and China. The discussion underscores that, despite Ethiopia's extensive engagement with BITs, the country's treaty practices remain fragmented, lacking coherence and a national model BIT to ensure consistency in substance, structure, and policy orientation. These limitations have led to agreements that, often variably and disproportionately, privilege investor protections while inadequately safeguarding regulatory space and public-interest objectives. Consequently, this reflection offers insights to improve Ethiopia's ongoing bilateral treaty revisions and reforms, ensuring alignment with contemporary international investment standards.

Keywords

BITs; FDI; Investor Protection; Model BITs; National Interest; Ethiopia

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* LL.B, LL.M, PhD, GIZ-Ethiopia, Email: d.behailu27@gmail.com ORCID No.: 0000-0002-5575-3400

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1. Introduction

BITs are pivotal instruments in the architecture of international economic relations, particularly for developing countries aiming to attract FDI. These treaties are formal agreements between two countries that provide guarantees and protections to investors, such as national treatment, most-favoured-nation treatment, protection against expropriation, and access to investor-state dispute settlement (ISDS) mechanisms.[1] For many developing nations, BITs signal a commitment to a stable investment climate, offering legal certainty and assurance to foreign investors wary of domestic legal unpredictability. This framework is based on the assumption that reduced risks and increased legal protections will enhance investor confidence and ultimately boost FDI inflows.[2]

Ethiopia's approach to BITs reflects this broader trend among developing countries. Seeking to foster economic growth and industrialisation, Ethiopia has signed over 40 BITs, although only a portion have entered into force.[3] These treaties serve to signal Ethiopia's openness to investment and its desire to integrate into the global economy. In particular, BITs are seen as a way to attract capital necessary for infrastructure development, technology transfer, managerial skill transfer, and job creation, among others. The Ethiopian government has often viewed BITs as tools to bridge financing gaps and offset some of the risks perceived by foreign investors, especially given Ethiopia's transitional political and legal systems.[4]

However, Ethiopia's experience also reflects the challenges and limitations associated with traditional BIT frameworks. Many of the country's existing BITs heavily favour investor rights while offering minimal protection for the regulatory autonomy of the state. Provisions such as broad definitions of expropriation and vague clauses on fair and equitable treatment can expose Ethiopia to legal challenges when it enacts public-interest regulations, leading to what scholars term "regulatory chill".[5] The ISDS mechanism, often embedded in BITs, allows foreign investors

[1] R Dolzer and C Schreuer, *Principles of International Investment Law* (Oxford University Press, 2012).
[2] UNCTAD, *World Investment Report 2021: Investing in Sustainable Recovery* (United Nations Conference on Trade and Development, 2021).
[3]UNCTAD Investment Policy Hub, 'Ethiopia: International Investment Agreements' [https://investmentpolicy.unctad.org/] (https://investmentpolicy.unctad.org/) accessed 2025.
[4] LNS Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge University Press, 2012).
5 Van Harten, G. (2007). *Investment Treaty Arbitration and Public Law*. Oxford University Press. In fact, this chilling effect has been observed in Philip Morris v. Uruguay (ICSID Case No. ARB/10/7), where Uruguay faced a $25 million claim for its tobacco control measures. Although the tribunal upheld Uruguay's regulatory right, the case exemplifies the financial and legal pressures that can dissuade similar public-interest interventions.

to bypass domestic courts and seek arbitration abroad, a process that is frequently costly,[6] opaque, and perceived as biased in favour of investors[7]

These imbalances are increasingly prompting countries around the world to revise their investment treaty practices. Modern model BITs adopted by countries such as India (2016), South Africa (2010s), and the Netherlands (2019) include reforms aimed at rebalancing investor rights with state responsibilities and public-interest considerations. These newer treaties emphasise sustainable development, corporate accountability, and the state's right to regulate in the interests of health, the environment, and human rights.[8] For example, these model BITs reflect a deliberate shift away from the broad, investor-dominant treaties of the past toward more calibrated and policy-sensitive instruments. What makes them "modern" is not merely their recency, but their effort to introduce precision, balance, and accountability into investment governance. They narrow and clarify key standards, such as the definition of investment and the scope of fair and equitable treatment, thereby reducing interpretive ambiguity and limiting expansive claims. At the same time, they rebalance dispute settlement by restricting ISDS through requirements such as exhaustion of local remedies and a preference for domestic and state-to-state mechanisms, thereby curbing excessive litigation risks.[9]

Crucially, these models explicitly safeguard the state's right to regulate in the public interest, embedding provisions on environmental protection, labour standards, and sustainable development, and in some cases introducing investor obligations. In this way, modern BITs do not abandon investor protection but reposition it within a more balanced framework that aligns legal certainty with regulatory autonomy. This evolution provides an important benchmark for assessing and reforming Ethiopia's BIT regime, which remains largely anchored in older, asymmetrical treaty practices. Ethiopia can benefit from such models by developing its own updated model BIT

6 In *Vattenfall v. Germany* (II) (ICSID Case No. ARB/12/12), Germany faced a multi-billion-euro arbitration over its nuclear phase-out, reflecting the substantial financial stakes and unpredictability of ISDS outcomes, even for high-income states with robust legal systems.
7 Supra note 1.
8 Ibid.; African Union. *Pan-African Investment Code*. (African Union Commission: Addis Ababa: 2016)
9 In *CSOB* v. *Slovakia* (ICSID Case No. ARB/97/4), the investor used creative corporate structuring to gain access to ISDS, demonstrating how broad investment definitions facilitate treaty shopping and expose host states to strategic claims.; *Loewen* v. *United States* (ICSID Case No. ARB(AF)/98/3) exposed how ISDS can bypass national legal systems, as the tribunal accepted jurisdiction even though the investor had not exhausted U.S. remedies, raising questions about access to justice and domestic institutional trust.

that aligns with its development priorities, human rights protections,[10] including industrial and labour protection policy, environmental sustainability, and inclusive growth. Besides, the existing scholarship has not adequately addressed this inconsistency nor systematically examined how Ethiopia's treaty regime diverges from emerging global approaches that seek to recalibrate the balance between investor rights and state responsibilities. Hence, a comparative assessment becomes necessary to draw normative and practical lessons from jurisdictions that have developed modern, policy-aligned model BITs.

Accordingly, this reflection contributes to this discourse by offering a critical, comparative analysis to inform the development of a coherent Ethiopian model BIT grounded in best practices and aligned with national development priorities. It interrogates the domestic legal inconsistencies, characterises Ethiopia's BITs and situates them within the broader evolution of international investment law. Despite Ethiopia's extensive engagement with BITs, this reflection highlights that the country's treaty practice remains fragmented, lacking coherence and a guiding national model BIT to ensure consistency in substance, structure, and policy orientation. This absence has resulted in agreements that, variably and often disproportionately, privilege investor protections while insufficiently safeguarding regulatory space and public-interest objectives.

Structurally, in the subsequent sections, firstly, this reflection highlights the conceptual and functional foundations of BITs. Then, it analyses the inconsistencies and structural shortcomings within Ethiopia's existing treaties, followed by a comparative evaluation of selected contemporary models. Finally, it draws conclusive insights into the question of what ought to be, proposing targeted legal reforms to enhance coherence, policy space, and developmental alignment

2. Investor's Protection and Associated Risks in BITs

BITs are international agreements that establish legally binding commitments between two states to protect and promote investments made by investors from one country in the territory of the other. These treaties are grounded in key investment principles, including protection against expropriation without compensation, fair and equitable treatment, full protection and security, and guarantees of national and most-favoured-nation (MFN) treatment. BITs also commonly include

[10] In *Urbaser* v. *Argentina* (ICSID Case No. ARB/07/26), the tribunal acknowledged that investors might bear human rights responsibilities, signaling a shift toward integrating sustainable development into investment governance, albeit still at a nascent stage.

provisions for the free transfer of funds and access to international arbitration through ISDS. These principles are intended to reduce non-commercial risks and provide a predictable legal framework, which is essential for long-term investment planning.

Investors rely on BITs because they offer enforceable legal assurances that extend beyond domestic law, especially in countries where judicial systems may lack independence or policy environments are perceived as volatile. By codifying internationally recognised standards of investor protection, BITs help mitigate risks such as discriminatory treatment, arbitrary regulatory changes, or politically motivated expropriation. The availability of ISDS mechanisms further strengthens investor confidence by allowing disputes to be resolved through neutral international arbitration rather than relying solely on domestic courts. In this way, BITs serve as crucial instruments for investors seeking security, transparency, and legal recourse in foreign markets.

However, signing BITs without calculating their cost and considering a well-rounded national interest can be very risky. Globally, the literature on the trend in BITs and their experiences highlights that national-interest-unconscious BITs pose risks, including enabling investor dominance, undermining national sovereignty, weakening bargaining power, causing severe consequences such as costly arbitration exposure, eroding the state's regulatory policy space, and legal fragmentation. Hereunder, Table 1 digests and introduces these risks, along with their consequences and sources.

No	**Risk**	**Consequence**	**Source**
1	Investor dominance	Overly investor-friendly terms	UNCTAD[11]
2	ISDS exposure	Costly and unpredictable arbitration	Poulsen[12]
3	Loss of policy space	Inflexibility in national regulation[13]	Cotula[14]
4	Legal incoherence	Treaty shopping and fragmentation	UNCTAD[15]
5	Weak bargaining	Unfavourable terms for host states	Van Harten[16]

[11] Supra note 2.
[12] Supra note 4.
[13] L Cotula, *The Great African Land Grab? Agricultural Investments and the Global Food System* (2013).
[14] Ibid
[15] Supra note 2.
[16] Supra note 5.

Table 1. Risks and Consequences of National-Interests Unconscious BITs

These consolidated key risks and their consequences, embedded in the national-interest unconscious BITs under Table 1, also resonate with Ethiopia's practical context, where reliance on traditional BIT frameworks prevails. As Ethiopia's traditional BITs experience indicates, the broadly framed, investor-oriented provisions tend to generate these risks and consequences, mainly disproportionate investor protection, the state's exposure to costly and uncertain arbitration, and generic investor–state dispute settlement. The Table further shows that rigid treaty commitments constrain regulatory autonomy, leading to a loss of policy space, and that overlapping treaty obligations contribute to legal incoherence and facilitate treaty shopping. It also reflects the structural limitations in negotiating capacity that often result in unfavourable treaty terms. Generally, while the Table highlights the systemic nature of these risks and consequences, it also underscores the need for a more coherent and strategically guided approach in Ethiopia's BIT practice.

3. Comparative Evaluation of Ethiopia's BITs

A review of Ethiopia's BITs reveals a consistent pattern of broadly defined investment protections that prioritise investor interests over state regulatory authority. Treaties signed with countries such as Libya, Algeria, Sudan, Finland, Sweden, China, and Egypt provide expansive rights to investors, frequently without corresponding obligations or mechanisms that protect the public interest.[17] These agreements often lack provisions that address sustainable development, labour rights, and environmental protection.

For instance, Workers in Ethiopia's industrial parks, particularly in the textile and garment sectors, have raised persistent complaints about low wages, poor working conditions, and limited labour rights protections. Many employees earn wages far below a living income, often struggling to meet basic needs such as food, housing, and transportation.[18] Working environments are frequently described as harsh, with long hours, minimal breaks, and inadequate occupational safety measures.[19] Reports also indicate a lack of effective mechanisms for collective bargaining and

[17] Supra note 2.
[18] ILO, *Wages and Working Conditions in Ethiopia's Garment Industry* (2021). Indeed, some manufacturing companies, in particular garment factories in various industrial parks across the country, have attempted to ameliorate the situation by providing one meal per day to prevent workers from fainting or collapsing on the job.
[19] AFLS, *African Labour Research Network Report on Industrial Parks in Ethiopia* (2020).

grievance resolution, leaving workers vulnerable to exploitation and job insecurity.[20] These issues are compounded by weak enforcement of labour laws and limited oversight by regulatory bodies, raising concerns about the sustainability and ethical foundations of Ethiopia's industrial development model.[21] In fact, the way BITs are negotiated and the space given for labour rights also contribute to the situation on the ground.

By contrast, model BITs adopted by South Africa, India, Ghana, Brazil, Kenya, Morocco, and China, among others, demonstrate a shift toward balancing investment protection with the developmental needs of host countries. South Africa's model, for instance, replaces ISDS with state-to-state arbitration and enhances domestic remedies.[22] India's model limits the definition of investment and mandates the exhaustion of local legal avenues before resorting to international arbitration.[23] Brazil's Cooperation and Facilitation Investment Agreements emphasise dispute prevention, ombudsperson roles, and joint committees, eschewing traditional ISDS frameworks.[24] Morocco's model BIT explicitly integrates human rights, gender equality, and sustainable development into its core text.[25] These models collectively emphasise regulatory flexibility, public accountability, and socio-economic priorities alongside investment facilitation.

China's newer model BITs reflect its strategic need to safeguard regulatory autonomy while continuing to project itself as a stable investment destination.[26] Ghana's model BIT promotes policy coherence with development objectives and strengthens state control over investment-related regulations.[27] Kenya's model similarly prioritises national judicial systems and introduces environmental and social responsibilities for investors.[28] These provisions offer valuable lessons for Ethiopia's treaty reform process.

4. Structural Shortcomings in Ethiopia's BITs

[20] Ethio-Trade Union Confederation, *Annual Labour Rights Report*.
[21] UNCTAD, *World Investment Report – Special Focus on Ethiopia* (2022).
[22] Republic of South Africa, South Africa Model BIT (2011).
[23] Government of India, Ministry of Finance, India Model BIT (2016).
[24] Brazil Cooperation and Facilitation Investment Agreements (2015).
[25] Kingdom of Morocco, Morocco Model BIT (2019).
[26] China Model BIT, 2009
[27] Ghana Model BIT, 2008
[28] Kenya Investment Promotion and Protection Agreement (2020).

Ethiopia's BITs exhibit significant structural deficiencies. First, they provide inadequate assurance of the state's regulatory autonomy. The absence of clear and explicit language affirming the government's right to regulate for public interest undermines Ethiopia's capacity to enforce health, safety, environmental, and labour standards. Second, many of Ethiopia's BITs adopt vague and overly broad definitions of key concepts such as "investment" and "expropriation," resulting in legal uncertainty and an increased likelihood of investor claims against regulatory actions.[29]

Third, the dispute settlement mechanisms employed in these treaties frequently rely on ISDS without requiring the investor to first pursue remedies in domestic courts. This not only sidelines the national judiciary but also raises concerns about sovereignty and access to justice. Fourth, there is a notable absence of modern treaty provisions linking investment to sustainable development. Ethiopian BITs generally fail to address labour rights, environmental responsibilities, or corporate accountability, all of which are now considered essential elements of equitable investment governance, as noted in the South Africa Model BIT[30] and the Morocco Model BIT.[31]

Domestically, Ethiopia's investment regime, outlined in Proclamation No. 1180/2020 and Regulation No. 474/2020, governs both domestic and foreign investment, offering post-establishment national treatment, protection against expropriation except for public purposes with fair compensation, and guarantees such as profit repatriation, non-discrimination, and access to dispute resolution, including international arbitration under specific conditions. The government plays an active role in promoting investment by offering a range of incentives, including tax holidays, customs duty exemptions, and access to industrial parks, to attract capital and technology. Certain sectors remain subject to investment screening and prior approval, as listed in Regulation 474/2020. Despite ongoing political instability and legal unpredictability, the government continues to position itself as a facilitator of private-sector growth, seeking to foster a conducive investment environment through institutional reforms and policy liberalisation.

5. Concluding Remarks: Way forward for Ethiopia's Investment Climate

Ethiopia stands at a critical juncture in its investment treaty policy. The comparative analysis of its existing BITs with contemporary model agreements reveals significant gaps that could undermine

[29] Supra note 4.
[30] Supra note 22.
[31] Supra note 25.

national development priorities and regulatory sovereignty. Reforming these treaties by adopting modern standards/ Model BIT will enable Ethiopia to attract sustainable investment while safeguarding its right to pursue equitable and inclusive economic growth. Such a transformation demands not only legal drafting expertise but also strong political will and a clear vision for national development. This reflection highlights the critical need to revise Ethiopia's BIT framework, focusing on aligning it with current international standards while serving national development goals, including the following:

First, the definition of investment should be narrowed and clearly defined to include only direct investments with a genuine economic contribution. This will mitigate speculative claims and ensure greater legal precision, as set out in India's 2016 Model BIT.[32] A comprehensive definition of investment, for instance, extends safeguards to an extensive array of assets, potentially including speculative capital, thereby augmenting the exposure of the host State. Conversely, a more restrictive, criteria-based approach restricts protection to investments that are long-term, risk-bearing, and linked to development objectives. For developing nations, adopting a structured and narrower definition effectively preserves regulatory sovereignty while ensuring the protection of authentic investment inflows.

Second, it is critical to affirm the state's right to regulate in pursuit of public interest objectives. New BITs should incorporate general exceptions or preambles that explicitly recognise the primacy of health, environmental protection, labour rights, and social welfare, as set out in the 2011th Model BIT of South Africa.[33]

Third, Ethiopia might want to rethink including ISDS in future treaties. When resolving disputes, it's often better to prioritise state-to-state arbitration or mechanisms that encourage investors to try all domestic remedy options first before moving to international arbitration.

Fourth, all future BITs should be harmonised with Ethiopia's national development policies, investment proclamation/law, and international obligations, such as the Sustainable Development Goals (SDGs) and the UN Guiding Principles on Business and Human Rights.[34] Treaties should

[32] Supra note 23.
[33] Supra note 22.
[34] UN Guiding Principles on Business and Human Rights (endorsed 2011 UN Human Rights Council) (UNGPs). The UNGPs provide a global framework for preventing and addressing human rights abuses linked to business activity. Built on three pillars, including the state duty to protect, the corporate responsibility to respect, and access to remedy,

embed commitments to environmental sustainability, equitable development, gender inclusion, and responsible business conduct, as observed in the 2019th Model BIT of Morocco.[35]

Fifth, Ethiopia should establish robust institutional oversight mechanisms, such as joint committees and ombudsmen, to monitor treaty implementation, facilitate dialogue between stakeholders, and address potential disputes early. These mechanisms enhance transparency and encourage preventative diplomacy.[36]

Finally, Ethiopia must strive for regional and continental alignment. BITs should be compatible with the African Continental Free Trade Area (AfCFTA) Investment Protocol and the African Union Model BIT, enabling Ethiopia to benefit from collective bargaining power and regional coherence.

Accordingly, Ethiopia should consider reviewing and renegotiating its existing BITs in line with international best practices. Adopting a comprehensive BIT model that incorporates development objectives, safeguards regulatory space, and ensures transparency and public participation in treaty-making would represent a significant policy advancement.[37] Moreover, Ethiopia should strengthen its domestic institutions to manage investment disputes effectively and explore regional frameworks like the Pan-African Investment Code, which offers an alternative investment governance model rooted in African priorities.[38] This reform path would allow Ethiopia to retain the benefits of foreign investment while minimising the policy constraints imposed by outdated BITs.

Conflict of Interest

The author declares no conflict of interest.

the UNGPs clarify that while states must safeguard human rights through laws and enforcement, businesses are expected to avoid infringing on rights and address harms they cause or contribute to. Though non-binding, the UNGPs have become the international standard for responsible business conduct and are widely referenced in national action plans, corporate policies, and regulatory frameworks.

[35] Supra note 25.

[36] Supra note 4.

[37] Supra note 5.

[38] African Union. *Pan-African Investment Code (*2016).

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A Case Comment Vis-à-vis the Convention on the Rights of Persons with Disabilities (CRPD):

House of Federation's Decision on Dawit Otocho and Wossen Alemu Versus Amhara National Regional Government Judicial Training and Legal Research Institute and Amhara National Regional Government Judges Administration Council

Yesewzer Anteneh Miteku*

Introduction

Discrimination in employment remains one of the most persistent barriers faced by persons with disabilities in accessing professional roles on an equal basis with others.[1] Despite formal legal guarantees, exclusion often occurs through institutional practices and failure to provide reasonable accommodation.[2] The right to work is not merely an economic entitlement but a fundamental human right closely linked to dignity and equality.[3]

Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD) obliges States Parties to prohibit disability-based discrimination in all forms of employment and to ensure reasonable accommodation in the workplace.

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* LLB, LL.M, Lecturer, School of Law, Jinka University, Jinka, Ethiopia, Email: yesewzermiteku@gmail.com ORCID No.: 0009-0007-4676-4515

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[1] Ruilin Sun, 'Discrimination Against Persons with Disabilities in Life and Work' (2024) 27 J Educ Humanit Soc Sci https://doi.org/10.54097/at3q8e69 accessed 11 April 2026

[2] ibid

[3] ibid

The government of Ethiopia has taken several legislative and policy steps that indicate a commitment to advancing the rights of persons with disabilities.[4] In terms of international instruments, these steps include: Signing and ratifying (in 2010) the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the first international, legally binding treaty aimed at protecting the human rights of persons with disabilities.[5] In terms of national laws and policies, the following have the most direct bearing on the rights of persons with disabilities: Article 41(5) of the 1995 Constitution sets out the state's responsibility for the provision of necessary rehabilitation and support services to 'the physically and mentally disabled'.[6] However, under Article 9(4) and Article 13(2) of the Constitution, all international agreements ratified by the Ethiopian government automatically become part of the law of the land.[7] The state is therefore obliged to ensure the rights of persons with disabilities as prescribed in the CRPD.[8]

Although Ethiopia formally commits to disability rights, actual enforcement in judicial appointments and management is debated. A key example is the case of Mr Dawit Otocho and Mr Wossen Alemu against the Amhara Regional Government Judicial Training and Legal Research Institute and the Judges Administration Council. This case highlights important issues regarding how the House of Federation interprets and enforces constitutional guarantees and obligations of equality under the CRPD.

A notable case on which this commentary is based is Fe/M/D/No. 019/08, in which Mr Wesen Alemu and Mr David Otcho challenged the Amhara National Regional Government Judicial Training Institute and the Judges' Administration Council.[9] They proposed that the exclusion of blind trainees from judicial roles violated Articles 41/2 and 25 of the Ethiopian Constitution, which guarantee economic rights and equality.[10] On April 16, 2015, the applicants claimed their right to

[4] Swedish International Development Cooperation Agency (SIDA), *Disability Rights in Ethiopia* (September 2014), http://cdn.sida.se/app/uploads/2021/05/07125813/rights-of-persons-with-disabilities-ethiopia.pdf accessed on 4 October 2025.

[5] ibid
[6] ibid
[7] ibid
[8] ibid
[9] Alemu and Mr David Otcho v Amhara National Regional Government Judicial Training and Legal Research Institute and Amhara National Regional Government Judges' Administration Conference (2009) House of Federation, Fe/M/D/No 019/08 (decision of 2 October 2009).
[10] ibid

work was violated by a lottery system that excluded blind individuals from judicial positions.[11] Although they had completed the same academic and professional training as their peers, they were assigned to prosecutorial positions. The Institute justified this decision not on job constraints but on a long-standing judicial practice with no precedent for appointing blind law trainees to judicial positions.

The petitioners argued this exclusion breached Article 41/2 of the Constitution.[12] The Constitutional Inquiry Council ruled that excluding blind individuals lacked a legal foundation and was based on legal necessity, violating constitutional and international standards.[13] The decision mandated the inclusion of blind individuals in judicial roles with reasonable accommodations, aligning with Proclamation No. 568/2000 against employment discrimination.[14]

Summary of the Facts and Holding of the House of Federation

The case concerns a constitutional interpretation issue brought by Ato Wossen Alemu and Ato Dawit Otocho against the Amhara National Regional State Judicial Training and Legal Research Institute and the Amhara Regional Judges Administration Council. The respondents maintained that judicial functions require the visual observation of evidence and witness demeanour, that there was no prior experience of appointing blind individuals to judicial positions, and that such appointments could undermine the effective administration of justice. These considerations, rather than any assessment of the applicants' individual competence, formed the basis of their exclusion from judicial placement. The applicant states that they sought placement in the judicial service through the standard assignment system known as "ዕጣ" (lot), in which newly trained legal professionals are allocated either as judges or as public prosecutors.

From the facts of the case, both applicants had undergone the same academic curriculum and professional training as their peers at the institute, and there was no assertion that they lacked the required legal knowledge or competence. Their elimination was based on the unwritten administrative practice which supposed that individuals who could not visually inspect witnesses and documents could not serve as judges. The applicants, after being denied judicial placement,

[11] ibid
[12] ibid
[13] ibid
[14] ibid

brought their grievance to several regional bodies, including the training institute board, the regional Supreme Court, the judge's administrative council, the legal affairs standing committee of the regional council, and the regional public grievances office. The applicants' institutions ' applications to these bodies are declined or referred to another organ, leaving the applicants with no effective remedy. Thus, they petitioned the House of Federation, asserting that the established practice violated their constitutional right to choose and train for their profession under Article 41(2) of the FDRE Constitution as well as their right to equality and non-discrimination under Article 25. They also argued that the administrative practice was inconsistent with Ethiopia's international obligations under the Convention on the Rights of Persons with Disabilities and with Ethiopia's domestic disability rights legislation, Proclamation No. 568/2008, which safeguards equal employment rights for persons with disabilities.

The respondents maintained that the nature of judicial work required the visual observation of evidence, the demeanour of witnesses and the review of documents. And they emphasised that the inability to observe these elements visually would hinder the proper administration of justice and render the applicants unsuitable for judicial posts. They asserted that this practice had existed for years and served a practical purpose rather than being motivated by discriminatory intent.

Upon examining the record, the Council of Constitutional Inquiry held that the exclusion of the applicants from judicial placement was based on a long-standing administrative practice that was "not supported by any binding legal provision." The Council observed that the respondents relied on a generalised assumption that the inability to visually observe evidence and witness demeanour rendered blind trainees incapable of performing judicial functions, without conducting any individualised or objective assessment of competence. It emphasised that such a blanket approach, founded on institutional habit rather than legal necessity, was incompatible with the constitutional guarantees of equality and the right to choose and train for one's profession. On this basis, the Council concluded that the applicants' constitutional rights had been restricted without adequate and lawful justification.

The Council asserted that Article 41(2) of the FDRE Constitution guarantees every Ethiopian the right to choose and train for their profession. In this case, the respondents had not shown the impossibility of performing judicial duties on the basis of objective evidence or through an individualised assessment of the applicants. The Council also stressed that Article 25 of the

Constitution guarantees equality before the law, and that differential treatment based solely on disability constitutes discrimination. The Council reasoned that the respondents' practice amounts to discrimination because it denies them equal access to opportunities available to others with similar qualifications.

The Council also referred to Ethiopia's obligations under the CRPD, which the country has ratified and which forms part of domestic law. The Convention permits differential treatment only where the essential functions of a particular occupation cannot be performed even with reasonable accommodation. Such inherent limitations are narrowly construed and apply only where the core duties of the position objectively and unavoidably require capacities that cannot be substituted, assisted, or accommodated. The Council concluded that the respondents' practice directly violated these principles by categorically excluding visually impaired trainees. The Council similarly found that the practice against the applicants is incompatible with Proclamation No. 568/2008, which requires that persons with disabilities who meet the minimum professional qualifications be given equal opportunity to be recruited and placed in positions, unless a specific impairment renders the core judicial functions impossible in practice.

After considering the Council's findings, the House of Federation unanimously adopted its recommendations and issued a final constitutional ruling. The House held that the respondents' practice of excluding visually impaired trainees from judicial placement based on eyesight assessments violated Article 41(2) of the FDRE Constitution. The House affirmed that the respondents did not establish the existence of any binding law that authorised them to impose such an exclusionary rule. The House also emphasised that such practices violated Article 25 of the Constitution; this is because it constituted unequal treatment that singled out a particular group of trainees and denied them opportunities solely based on disability.

Accordingly, the House of Federation adopted the findings of the Council of Constitutional Inquiry and declared the respondents' decision and long-standing administrative practice unconstitutional and without legal effect. The House ordered that the applicants be recognised as having the right to train for and to serve in judicial positions on an equal basis with other trainees. It further directed the respondents to discontinue the impugned practice and to ensure that future assignment processes are conducted in conformity with the FDRE Constitution, Ethiopia's obligations under the Convention on the Rights of Persons with Disabilities, and the relevant disability rights

legislation. In doing so, the House emphasised that constitutional rights, including equality before the law and the right to choose and train for one's profession, cannot be curtailed by administrative practice or institutional tradition without a lawful and objectively justified basis.

Legal Framework

CRPD

Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD) establishes binding obligations concerning equality and employment of persons with disabilities.[15] States parties to the Convention are duty-bound to prohibit discrimination on the basis of disability in all matters concerning employment and to protect the rights of PWDs on an equal basis with others.[16]

The CRPD, being binding on member States, imposes three sets of obligations on them.[17] The first is the obligation to respect: This obligation entails refraining from engaging in any act, custom, or practice that is inconsistent with the principles of equality and non-discrimination.[18] The second obligation is the duty to protect. States must take all appropriate measures to eliminate discrimination and violations of equality by any non- state actors like private individuals and enterprises.[19] And thirdly, States have the obligation to fulfil, which means that States should adopt and implement measures that give effect to the right to equality and non-discrimination.[20]

The right to access justice is applied in the context of disability under the Convention on the Rights of Persons with Disabilities. Access to justice is specifically addressed in Article 13 of the Convention, which directs States parties to ensure that people with disabilities have effective access to justice on an equal basis with others, including by providing certain accommodations, to facilitate their effective role as direct and indirect participants (art. 13(1)). It also specifies the rightful actions that must be taken to fulfil the legal rights of persons with disabilities. For instance,

[15] Yohannes Teressa, 'Ensuring the Right to Equal Employment Opportunities of Persons with Disabilities: Critical Examination of the Ethiopian Legal Framework' (Masters thesis, Addis Ababa University 2012).
[16] ibid
[17] ibid
[18] ibid
[19] ibid
[20] ibid

according to Article 13(2), states must encourage the proper training of those working in the field of administration of justice, such as police officers and prison staff (art. 13(2)).

Domestic Legal Framework (Ethiopia)

Ethiopia ratified the Convention through Ratification Proclamation No. 676/2010. As clearly enshrined under Article 9(4) of the FDRE Constitution, all international agreements, once ratified, become an integral part of the law of the land. Therefore, since Ethiopia ratified the CRPD, it has become an integral part of the law of the land. Article 25 guarantees equality before the law and prohibits discrimination, and this provision protects disabled persons against any infringement of that protection. The second is that "disability" appeared under Article 41(5) of the Constitution as one of the grounds on which the State is obliged to allocate resources for rehabilitation and assistance to materialise their right to equal enjoyment of the economic, social and cultural rights. The cumulative reading of the two provisions squarely puts disability among the prohibited grounds of discrimination.

Proclamation Number 568/2008, depicted in its preamble, has as its main objective the prevention of unequal treatment (discrimination) in employment based on the status of a person's disability. It is based on the assumption that discrimination is wrongful and a major problem for disabled persons' enjoyment of equal employment opportunity. Article 7 of Proclamation 568/2008 clearly stipulates that a PWD, without the burden of proof, may institute a suit before the competent court if he is discriminated against by the defendant [employer] in any condition of employment. Hence, the defendant bears the burden of proving that there was no discrimination. The shifting of the burden of proof from the PWD employee or job applicant (claimant) to the employer (defendant) is one of the basic features of proclamation 568/2008.

The proclamation also enshrines the Right to Employment of Persons with Disabilities, which is pertinent to the defence of PWDs' rights and their right of access to justice. By incorporating the core principles of the CRPD, this proclamation directly addresses the employment rights of people with disabilities. The Proclamation affirms human rights and social models of that condition. To make it easier for PWDs to exercise their right of access to justice, two significant procedural provisions have been incorporated into the declaration on the employment rights of PWDs. These clauses address the burden of proof in discrimination cases and the ability of disability associations

to file legal claims when their members' rights are violated. Article 7 of the proclamation stipulates that any person with a disability who alleges that discrimination on the ground of his disability occurred with respect to recruitment, promotion, placement, transfer, or other conditions of employment may institute a suit before the competent court without the burden of proof. Additionally, the proclamation's Article 10 affirms disability associations' authority to file lawsuits on behalf of their members.

Analysis of the House of Federation's Decision

The constitutional dispute before the House of the Federation (HoF) was framed as a question of whether the exclusion of visually impaired law graduates from participation in the lottery system for judicial appointment was based on an uncodified administrative practice that violated the FDRE Constitution. The House answered this based on grounding its reasoning primarily in Articles 25 and 41(2) of the Constitution and drawing interpretive support from the Convention on the Rights of Persons with Disabilities (CRPD) and domestic disability employment legislation. While the outcome is normatively compelling, a deeper analysis reveals both the strengths and important limitations of the HoF's constitutional reasoning.

The HoF's most significant contribution lies in its rejection of disability-based exclusion, which is justified by generalised assumptions about professional incapacity. The respondents' argument is based on the fact that judicial functions inherently require visual observation and that visually impaired individuals are therefore unsuitable. Crucially, the House emphasised the absence of any binding legal provision prohibiting visually impaired persons from serving as judges. By characterising the exclusion as an "unacceptable traditional practice," the HoF affirmed a foundational constitutional principle that administrative convenience cannot override constitutionally guaranteed rights.

This reasoning reflects a sound application of Article 25 of the FDRE Constitution. Equality before the law requires that differential treatment be based on objective and legally relevant criteria. In this case, the respondents failed to demonstrate that visual ability constitutes an essential and non-substitutable requirement of judicial office. The HoF's insistence on legality and objective justification marks an important shift from assumption-driven governance toward rights-based constitutionalism.

The HoF also correctly linked equality with Article 41(2), which guarantees the right to choose and pursue a profession. By excluding the petitioners from the lottery system solely on the basis of disability, the respondents effectively denied them access to a professional pathway available to others with identical qualifications. The House's reasoning here is factually and doctrinally coherent, reinforcing the interdependence between equality and occupational freedom.

However, the analytical scope of the HoF's reasoning remains limited in a critical respect: it treats the case primarily as one of employment discrimination, without fully engaging with its implications for access to justice under Article 13 of the CRPD. This omission is significant. Article 13 does not merely guarantee the right of persons with disabilities to access courts as litigants; it also affirms their right to participate in the administration of justice, including as judges, prosecutors, and other justice sector actors.

Viewed through this lens, the exclusion of the petitioners is not only a violation of equality in employment but also a restriction on the inclusivity and legitimacy of the justice system. The absence of persons with disabilities within judicial institutions perpetuates systemic barriers and undermines the representativeness of the judiciary. The HoF's failure to articulate this dimension narrows the case's constitutional significance and overlooks its broader institutional implications.

This limitation is reflected in the HoF's lack of engagement with international standards, especially the International Principles and Guidelines on Access to Justice for Persons with Disabilities. These set out a comprehensive view of inclusion. Principle 7 affirms that persons with disabilities have the right to participate equally in justice processes, which includes serving as judges and justice sector actors. This links to Principle 1, which recognises full legal capacity and prohibits the denial of access to justice based on disability, and to Principle 2, which mandates universally accessible justice systems. Together, these principles go beyond non-discrimination, urging proactive reform of legal institutions to ensure meaningful participation. The HoF's failure to adopt these standards confines its approach to formal equality and ignores the broader need to create an inclusive justice system.

Similarly, the decision does not engage with CRPD Committee General Comment No. 8 (2022) on the right of persons with disabilities to work and employment. This General Comment clarifies that state obligations extend beyond formal equality and require the removal of structural barriers,

the provision of reasonable accommodation and the transformation of workplace norms. Employment in this framework is not merely an individual entitlement but a site of social inclusion and dignity. By not incorporating this interpretive guidance, the HoF's reasoning remains confined within a traditional anti-discrimination paradigm.

The HoF's approach to reasonable accommodation shows a clear limitation in its analysis. Although the House correctly observed that the respondents did not prove that visually impaired individuals could not perform judicial duties with reasonable accommodation, it did not treat accommodation as a core constitutional obligation linked to equality. Instead of requiring institutions to adapt and become inclusive, the ruling risks promoting a more limited, formal approach to equality that merely removes overt exclusions without addressing deeper structural barriers.

Moreover, the HoF's reasoning remains largely case-specific and remedial. While it successfully invalidates the exclusionary practice and vindicates the petitioners' rights, it does not articulate broader standards for assessing similar claims in the future. In particular, it does not provide guidance on how to evaluate claims that certain professional roles inherently do not require specific physical capacities, nor does it establish a structured test for determining when such requirements are legitimately essential. This limits the precedential value of the decision and leaves unresolved the structural issues that give rise to such disputes.

In sum, the HoF's decision is constitutionally sound and normatively progressive in outcome. It effectively dismantles an exclusionary administrative practice and affirms the rights of persons with disabilities under Articles 25 and 41(2), interpreted in light of Ethiopia's international obligations. However, its analytical framework remains comparatively narrow. By not fully engaging with Article 13 of the CRPD, the International Principles on Access to Justice, and General Comment No. 8, the decision fails to capture the transformative vision of disability rights law.

A more expansive approach would have framed the case not only as one of equal employment opportunity but also as a question of inclusive justice and institutional transformation. Such an approach would strengthen Ethiopian constitutional jurisprudence by aligning it more closely with

contemporary international human rights standards, which view persons with disabilities not as passive beneficiaries of protection, but as active participants in public and institutional life.

Conclusion

The House of the Federation's decision to nullify the exclusion of visually impaired trainees from the judicial appointment process marks a significant advance in Ethiopian constitutional jurisprudence on disability-based discrimination. By declaring the respondents' uncodified administrative practice unconstitutional, the House affirmed that exclusion from public employment cannot be justified by generalised assumptions or institutional convenience. The ruling thus reinforces the constitutional guarantees of equality under Article 25 and of the freedom to choose one's profession under Article 41(2) of the FDRE Constitution.

The HoF based its reasoning on Ethiopia's international obligations and domestic laws, affirming ratified treaties as binding in constitutional cases. It adopted a cautious, mainly remedial stance, recognising that exclusion is unjustified if performance is possible with reasonable accommodation, though it did not define this concept. The judgment focused narrowly on invalidating the specific practice, limiting its broader legal impact.

More importantly, the long-term impact of the decision remains uncertain. Despite its normative significance, there is limited publicly available evidence on whether the ruling has translated into consistent institutional practice, particularly regarding the actual appointment of visually impaired judges. This raises a broader concern regarding the gap between constitutional interpretation and administrative implementation.

A brief look at legal frameworks reveals this limitation. Proclamation No. 1233/2021 on Federal Judicial Administration does not explicitly recognise disability as a ground for exclusion or include disability-inclusive criteria for judges. Although Article 8(11) allows directives on judicial selection, none have been developed. This regulatory gap indicates that the transformative potential of its decision remains unimplemented in the law. Similarly, although the HoF relied on Article 27 of the CRPD to affirm the petitioners' right to compete for judicial positions on an equal basis, it did not develop the implications of this right beyond the immediate facts of the case. The ruling restores access to the judicial selection process but leaves unresolved how equality in public employment should be operationalised where traditional professional assumptions intersect with

disability rights. As a result, the decision corrects a clear constitutional violation without fully engaging the transformative potential of international disability rights norms in the Ethiopian legal system.

Therefore, the HoF's decision represents a decisive step towards dismantling discriminatory practices in judicial recruitment. Its constitutional reasoning is sound and firmly grounded in both domestic and international law. However, its analytical restraint and the absence of clear legislative and regulatory follow-through highlight the need for further legal and institutional development.

Conflict of Interest

The author declares no conflict of interest.

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East West Street: On the Origins of "Genocide" and "Crimes Against Humanity" by Philippe Sands, Weidenfeld and Nicolson: London, 2016, ISBN-10: 1474601901

Fikire Tinsae Birhane*

Introduction

I recently watched a new Hollywood movie titled "Nuremberg" and, eventually, a book that I read a while back and the book's presentation by the author that I attended at the Graduate Institute for International and Development Studies (IHEID) came to my mind. It then got me reflecting on two massive concepts of (international) criminal law, viz. Genocide and Crimes Against Humanity. It is in this spirit that I decided to share a review of the book, as it narrates the origins of these two enduringly relevant concepts.

Philippe Sands' East West Street: On the Origins of "Genocide" and "Crimes Against Humanity" occupies an unusual, and unusually effective, space between legal history, biography, archival reconstruction, and family memoir. Sands' central achievement is to show how two foundational categories of modern international criminal law, crimes against humanity and genocide, were not simply coined by jurists in isolation, but were forged in a dense web of place,…

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Fikire Tinsae Birhane (LLD (University of Pretoria)), (MAS-LLM (Geneva Academy)), (LLM (Addis Ababa University)), (LLB, Mekelle)); Postdoctoral Research Fellow, Children's Rights Project, DOI, FoL, UWC; Assistant Professor of Law, School of Law, Hawassa University; Email: fbirhane@uwc.ac.za/fikireb@hu.edu.et; ORCID No.: 0000-0001-9568-8036

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displacement, loss, and institutional improvisation, in which the city of Lviv (Lemberg/Lwów/Lvov) becomes both geography and jurisprudence. The work follows four interconnected lives, viz. Sands' grandfather (Leon Buchholz), the jurists Hersch Lauterpacht and Raphael Lemkin, and the Nazi Governor-General Hans Frank, whose prosecution at Nuremberg supplied a theatre in which emerging legal concepts were tested against mass atrocity and against the constraints of positive law.[1]

East West Street offers more than an origin story. It exposes the constitutive tension at the heart of atrocity law between the protection of the individual, associated with Lauterpacht, and the protection of the group, associated with Lemkin. That tension continues to structure both doctrine and politics. By foregrounding technical drafting choices, including the notorious "semicolon versus comma" episode, Sands demonstrates that international criminal law is shaped by interpretive contingency as much as by moral necessity. The book's relevance is not confined to Europe's mid-twentieth-century trauma. Its analytic frame helps illuminate contemporary struggles over hierarchy and naming in atrocity prosecution, including in domestic systems such as Ethiopia's, which adopted an expanded genocide provision that protects political groups and thereby complicates the conventional post-1948 narrative.

2. Sands' method: narrative as jurisprudence

Sands writes as a practitioner-scholar who is alert to how legal concepts travel, harden, and acquire symbolic capital. Yet the book is not structured like a doctrinal treatise. It operates by assembling overlapping archives, including family testimony, university records, diplomatic drafts, courtroom transcripts, and the afterlives of perpetrators and survivors. This method matters because it resists a comforting teleology in which law naturally progresses after catastrophe. Instead, it depicts law as a fragile language that must be made, word by word, and then defended against the pressures of politics, proof, and institutional design.

For a legal audience, particularly one situated in Ethiopia and the Horn of Africa, Sands' method carries an additional value. It models how legal scholarship can remain rigorous while refusing to separate legal categories from social consequences. Concepts do not merely describe violence; they organise memory, allocate recognition, and distribute legitimacy in the aftermath. In that sense, East West Street is also a book about the politics of naming and about the risks of fetishising names.

[1] Philippe Sands, *East West Street: On the Origins of "Genocide" and "Crimes Against Humanity"* (Weidenfeld and Nicolson, London, 2016) ISBN-10: 1474601901.

3. Lviv to Nuremberg: The Personal Geography of Legal Invention

The book's anchor is Lviv, a city of blurred borders that changed sovereignty repeatedly in the twentieth century. Both Lauterpacht and Lemkin studied there under the same intellectual milieu, yet emerged with sharply different legal imaginations. Sands uses this shared origin to resist simplistic hero narratives. Their divergence is not treated as merely temperamental but as jurisprudential, leading to the inquiry into what, exactly, the legal object that atrocity law must protect is.

At Nuremberg, the divergence becomes institutional. Crimes against humanity entered the Charter of the International Military Tribunal as a basis for prosecuting systematic violence against civilians. Genocide, although invoked in rhetoric and in parts of the prosecutorial strategy, did not secure the same textual foothold in the final judgment. The book's reconstruction of this episode is one of its strongest contributions, because it shows how legal recognition is frequently produced by a combination of conceptual persuasion, bureaucratic access, and drafting opportunity, rather than by moral clarity alone.[2]

Sands' treatment of Hans Frank is especially effective. Frank, a lawyer-bureaucrat who governed occupied Poland, embodies the bureaucratisation of atrocity. Sands draws on Frank's diaries and documentary thoroughness as a form of evidentiary self-incrimination and as an emblem of how modern violence is administered through records rather than through chaotic passion. That evidentiary texture allows Sands to keep the law in view without aestheticising suffering. The legal reader sees why Nuremberg mattered, not because it purified law, but because it built an institutional grammar for speaking atrocity in legal form.

4. Individual Versus Group: The Conceptual Fault-line

Sands frames Lauterpacht and Lemkin as representing two moral-legal grammars. Lauterpacht, associated with the primacy of the individual, sought to pierce state sovereignty by treating systematic violence against persons as an international concern. Lemkin, by contrast, insisted that atrocity often aims at the destruction of a social entity, and that law must therefore name the destruction of groups as such.

Lauterpacht's scepticism about group-protective language rests on a fear that naming groups can entrench the very tribalism that fuels violence. Lemkin's counter-argument is that an individual-only frame fails to capture the distinctive evil of annihilating a people. The book's value lies in the fact that it does not settle the argument. Sands ultimately leaves

[2] Charter of the International Military Tribunal (London Agreement) (8 August 1945) art 6(c).

the reader in an unresolved, but intellectually honest, space, recognising the force of both positions.

A critical reading can nonetheless heighten the tension. The competition between the two concepts is not only about moral priority. It is also about evidentiary design and institutional incentives. Genocide requires proof of a special intent to destroy a protected group in whole or in part, which tends to produce trials that are highly dependent on inferential reasoning, leadership statements, and patterns of conduct. Crimes against humanity, in contemporary formulations, focus on the context of a widespread or systematic attack against a civilian population, which often better fits the evidentiary realities of bureaucratic violence. The result is a paradox; genocide is rhetorically supreme, but frequently harder to prove, while crimes against humanity may be doctrinally more capacious yet symbolically undervalued.

This is not merely an academic puzzle. It shapes charging strategies, victim expectations, and political bargaining in transitional contexts. It also shapes public hierarchies of suffering, as genocide is often treated, informally and politically, as the "crime of crimes".[3]

5. The "Lonely Semicolon": Legal Technique as Moral Consequence

One of the most striking contributions of East West Street lies in its insistence that punctuation and jurisdictional drafting choices can govern the reach of justice. Sands recounts a dispute over the insertion of a semicolon in Article 6(c) of the Nuremberg Charter. A seemingly technical amendment helped constrain the tribunal's jurisdiction by tying crimes against humanity more tightly to the war nexus, thereby limiting attention to earlier Nazi persecutions, including those between 1933 and 1939.[4]

This episode is not merely anecdotal. It offers a methodological warning that international criminal law is repeatedly shaped by compromises that appear technical at the time but later become doctrinal constraints. Sands thereby invites a broader jurisprudential humility. If law is built through drafting contingencies, later invocations of settled categories ought to be read with an awareness of their constructedness and of the political trade-offs embedded within their textual lineage.

The semicolon episode also reinforces the book's deeper moral argument that atrocity law is never merely a mirror of violence; rather, it is a selective frame that inevitably includes and excludes. In this regard, Sands does not offer a utopian faith in law, but a disciplined

[3] William A Schabas, Genocide in International Law: The Crime of Crimes (2nd edn, Cambridge University Press 2009).
[4] Charter of the International Military Tribunal (London Agreement) (8 August 1945) art 6(c).

insistence that one must look closely at how law's frames were made if one is to use them responsibly now.

6. Contemporary Relevance, including Ethiopia's Legal Experience

Sands situates his historical reconstruction within a continuing world of atrocity politics. His reflections resonate because the core dilemmas remain: whether and when to use the label "genocide", whether crimes against humanity have become the workhorse category that nonetheless lacks the same political force, and how international institutions mediate between legal proof and moral expectation.

The Ethiopian perspective illustrates how domestic systems can both receive and revise international categories. Ethiopia ratified the Genocide Convention early and incorporated genocide into domestic law with a significant expansion, i.e. the 1957 Penal Code criminalised genocide against political groups as well as the Convention's protected groups. This divergence from the Convention's definition is jurisprudentially important. It shows that the post-1948 settlement was never universally received domestically, and that some states treated the Convention's compromise, particularly the exclusion of political groups, as normatively insufficient. Ethiopia's later prosecutions of Derg officials, including Mengistu Haile Mariam, demonstrate how the symbolic prestige of the genocide label can shape prosecutorial strategy in transitional justice, even where crimes against humanity might have been a doctrinally simpler vehicle.

This Ethiopian example also offers an interpretive lens on the hierarchy problem. If genocide functions as a privileged label in international discourse, domestic systems may internalise that hierarchy. Yet where domestic law broadens genocide, the label may lose some of its distinctive function and become a general condemnation category for political violence. That development may increase expressive condemnation, but it may also generate doctrinal confusion if genocide becomes a catch-all category for mass atrocity.

For Ethiopian legal scholarship, especially in leading journals, the book invites two productive lines of inquiry. First, how should domestic atrocity provisions be aligned, or not aligned, with treaty definitions when domestic histories of political violence exceed the Convention's compromise? Second, how do naming choices affect reconciliation, memory, and the legitimacy of prosecutions in contexts where violence was multi-directional and accountability selective?

7. Critical evaluation: strengths and limits

The book's principal strength is the fusion of narrative power with legal seriousness. Sands does not dilute doctrine; he rather renders it legible by showing what concepts did in the

world, and what they failed to do. His depiction of Lauterpacht and Lemkin avoids hero worship by keeping their conceptual limits visible, including Lauterpacht's anxiety about group identity and Lemkin's single-minded lobbying that sometimes appears institutionally naïve. The result is a work that humanises legal invention without romanticising it.

The book also contributes to legal historiography by modelling a form of scholarship that takes travaux-like fragments seriously, not merely as interpretive aids, but as evidence of power, contingency, and contestation. This is particularly salient for readers engaged in treaty interpretation and in the sociology of international law-making.

And yet, as a critical reader, I observe two limitations that merit attention. First, the narrative form sometimes leaves doctrinal structure implicit. The modern elements of crimes against humanity, including the contextual "widespread or systematic attack" and the policy element in some formulations, are not systematically set out. This is not a defect in a literary-legal work, but it means the book is best read alongside doctrinal accounts of contemporary international criminal law.

Second, the framing tends to privilege European origin as the primary genealogy of atrocity law. This is historically defensible given Nuremberg's centrality, but a TWAIL-inflected critique would press for greater attention to non-European experiences that were contemporaneous with, and in some respects constitutive of, international legal development, including colonial violence and its lack of recognition within early post-war legal imagination. The narrative does not deny these histories, but the weight remains anchored in Europe. That choice risks reproducing the tendency to treat European catastrophe as the privileged engine of universal norms, even when those norms were later applied globally.

8. Conclusion

East West Street is an intellectually serious and ethically restrained work that advances international criminal law scholarship by returning legal concepts to their lived and institutional origins. It shows that crimes against humanity and genocide are not merely doctrinal categories; they are competing moral grammars, each with political afterlives that shape how victims are recognised and how perpetrators are prosecuted. Sands' insistence on the fragility of legal drafting, exemplified by the "semicolon versus comma" episode, is a methodological reminder that the reach of justice is often determined in apparently minor textual choices.

For Ethiopian legal scholarship, the book's relevance is amplified by Ethiopia's distinctive domestic genocide provision and by the Derg prosecutions, which illustrate how the

hierarchy of atrocity labels can migrate into domestic justice. Ultimately, Sands leaves the reader with an unresolved but necessary question, one that is as much about law's architecture as about law's ethics: should atrocity law primarily protect persons as individuals, or peoples as groups, and what is lost whenever law chooses one frame over the other?

Conflict of Interest

The author declares no conflict of interest.

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