



ETHIOPIAN HUMAN RIGHTS LAW SERIES
(VOLUME-IX)

Addis Ababa University - School of Law

**Addressing Good Governance Issues through
Human Rights Protection in Ethiopia**

EDITOR

Mizanie Abate (PhD)

2017



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Each volume of *Ethiopian Human Rights Law Series* covers different themes in priority areas identified by committee of conveners and approved by the Academic Committee of the Law School. Submissions to this volume have been presented in a national conference organized by the School on August 8, 2017 attended by invited faculty members from law schools in Ethiopia and experts from different walks of life. Moreover, each submission has been blind peer-reviewed by experts in the field for substantive merit as per the Addis Ababa University School of Law Thematic Research Conference and Proceedings Rules of 2016.

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The Link between Good Governance and Human Rights: Editor's Introduction

*Mizanie Abate (PhD)**

1. The Essence and Key Attributes of Good Governance

The concept of 'good governance' is flexibly used by a multitude of actors including international organizations, states and private institutions and its meaning principally depends on the purpose for which it is applied. While financial institutions applied it in the context of economic reforms, others focus on its social dimension.

The debate on good governance started in reaction to the inefficient and corrupt administrative structures of developing countries eligible for financial loans. Because of the weak governmental structures in these countries structural adjustment programmes of the World Bank and IMF had failed. In 1989 a report by the World Bank reflected on why structural adjustment programmes had failed to create economic growth. The Bank considered the economic crisis in Africa as a 'crisis of governance' in the sense that officials serving their own interests without being held accountable; reliance on personal networks for survival rather than on holding the state accountable; personalized politics and patronage; illegitimate leadership; and excessive control of information and of associations. Consequently, these financial institutions introduced good governance requirements as borrowing conditions.

According to the World Bank, governance refers to the 'process through which authority is exercised to manage the collective affairs and

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economic and social recourses of a country, nation, community or economy'.¹ Good governance, in turn, refers to the propriety of the manner in which this process is executed. Based on this definition, the Bank developed and applied six governance indicators "to assess the 'goodness' of a country's governance":² voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption.

Those who favor a more social approach to good governance state that good governance involves ideas and values about how a state should act towards individuals. OHCHR, for example, defines good governance as 'the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation.'³

The editor of this volume is of the opinion that the economic and social dimensions of good governance are not mutually exclusive and hence adopted a definition which takes into account aspects from both. Accordingly, the definition of good governance adopted for the purpose of this publication is 'the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law.'⁴ The concept of good governance has been clarified by the work of the former Commission on Human Rights. In its resolution 2000/64, the Commission identified the key attributes of good governance as transparency, responsibility,

¹ The World Bank, UN, IMF <http://www.imf.org/external/np/exr/facts/gov.htm> and <http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>, last visited on April 1, 2018.

² See www.govindicators.org, last visited on April 1, 2018.

³ OHCHR, Good Governance for the Protection of Human Rights, 2007.

⁴ *Ibid.*

accountability, participation and responsiveness (to the needs of the people).

2. What are Human Rights?

Human rights are legally enforceable entitlements of individuals. Governments have the primary responsibility for the realization of human rights. At global and regional levels, human rights are guaranteed in a plethora of human rights treaties which member states thereto pledge to realize them within territory and subject to their jurisdiction without discrimination of any kind. At national level, human rights find their ways in various legislation including constitutions. Good governance related human rights include, but not limited to: the right to participation, the right of every person to be heard before any individual measure which would affect him or her adversely is taken; the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the right to receive reasons for decisions; and the right to have the government make good any damage caused by its institutions or by its servants in the performance of their duties.

The principal human rights treaties have incorporated good governance related human rights principles. Article 21 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone to take part in the government of his country and the right of equal access to public service in his country. Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR) enjoins states parties to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other

competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

3. The Link between Good Governance and Human Rights

Good governance and human rights are mutually reinforcing. Human rights cannot be respected and protected in a sustainable manner without good governance.⁵ The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.⁶

On the other hand, human rights principles provide a set of values to guide the work of governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures.⁷ Last, but not least, human rights can both confer legitimacy and normative strength to the application of good governance. Grounding good governance in human rights standards gives a better opportunity for its enforcement.⁸

⁵ In relation to this, the United Nations Human Rights Council recognized ‘that transparent, responsible, accountable, open and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is one of the indispensable conditions for the full realization of human rights, including the right to development.’ See Human Rights Council, Resolution adopted by the Human Rights Council, 19/20, The role of good governance in the promotion and protection of human Rights, 2012, preamble.

⁶ OHCHR, cited above at note 3.

⁷ *Ibid.*

⁸ Jilles L.J. Hazenberg, ‘Good Governance Contested: Exploring Human Rights and Sustainability as Normative Goals’ *in* Holzhaacker R., Wittek R., and Woltjer J. (eds), *Decentralization and Governance in Indonesia*, 2016.

The link between good governance and human rights has become visible by the explicit and implicit acceptance of right to good governance. The right to good governance has been included and better elaborated in 2000 by the Nice Charter on Fundamental Rights of the European Union. This Charter became binding for all EU member states through the Treaty of Lisbon, which entered into force in 2009. Article 41 of the Nice Charter provides the following about the right to good governance:

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

5. Laws and Policies on Good Governance and Human Rights in Ethiopia

Although Ethiopia does not have a self-standing comprehensive law on good governance, the concept and its elements are reflected in its laws and principal policy documents. While the Constitution of the Federal Democratic Republic of Ethiopia does not mention good governance by name, it recognizes its key attributes in its various provisions. Article 12 lays down the guiding principle on the conduct and accountability of government. It specifically states that the conduct of affairs of government shall be transparent; any public official or an elected representative is accountable for any failure in official duties; and ‘in case of loss of confidence, the people may recall an elected representative.’ Article 37 on its part recognizes the right of individuals ‘to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power’. Article 38 is also relevant in assuring every Ethiopian to ‘take part in the conduct of public affairs’.

Proclamation 211/2000 is an indispensable law in establishing the Institution of the Ombudsman as an autonomous organ of the government with a view to ‘bringing about good governance that is of high quality, efficient and transparent, and are based on the rule of law, by way of ensuring that citizens' rights and benefits provided for by law are respected by organs of the executive.’⁹ Article 6 of the Proclamation set out the powers and duties of the Institution of Ombudsman which include the following:

- Supervise that administrative directives issued, and decisions given, by executive organs and the practices thereof do not contravene the constitutional rights of citizens and the law as well;

⁹ Institution of the Ombudsman Establishment Proclamation (Proclamation No. 211/2000), Article 5.

- Receive and investigate complaints in respect of maladministration;
- Conduct supervision, with a view to ensuring that the executive carries out its functions in accordance with the law and to preventing maladministration;
- Seek remedies in case where it believes that maladministration has occurred;
- Undertake studies and research on ways and means of curbing maladministration; and
- Make recommendations for the revision of existing laws, practices or directives and for the enactment of new laws and formulation of policies, with a view to bringing about better governance.

The Freedom of the Mass Media and Access to Information Proclamation is also pertinent from the view point of fostering ‘the values of transparency and accountability in the conduct of public affairs and to impose a legal obligation on public officials to facilitate access to individuals and the mass media to information so that matters of public interest may be disclosed and discussed publicly’.¹⁰

The overarching policy document of Ethiopia, the Second Growth and Transformation Plan (GTP II), states the country’s vision to become a lower middle-income country by 2025 where democracy, *good governance* and social justice are maintained through people's participation. In order to achieve the objectives of GTP II, the establishment of democratic and developmental good governance through enhancing implementation capacity of the public sector and mobilization of public participation is identified as one of the pillar strategy. The document further states the

¹⁰ Mass Media and Access to Information Proclamation, Proclamation No. 590/2008, Preamble.

specific measures the government will take to augment good governance: enhancing the implementation capacity of the public sector, mobilizing public participation, building a democratic culture; strengthening the role of the National Electoral Board and its branch offices, the Ethiopian Human Rights Commission, Institute of the Ombudsman, and Office of the Auditor General; strengthening the legislative and oversight capacity of federal and regional councils; increasing public participation; and enhancing the role of civil societies, charities and professional associations to strengthen the democratization and development processes.

On the human rights side, Ethiopia is a State Party to almost all core international human rights instruments except treaties which entitle individuals to lodge complaints before international human rights monitoring bodies and seek remedies for violations of human rights.¹¹ Ethiopia has, however, accepted procedures of individual complaint mechanisms under the African Charter on Human Peoples' Rights and African Charter on the Rights and Welfare of the Child.¹² Article 9(4) of the Constitution provides that '[a]ll international agreements ratified by Ethiopia are an integral part of the law of the land.' The FDRE Constitution also recognizes a range of human rights in its chapter three.

6. The Focus of This Publication

Ethiopia witnessed unprecedented massive public protests over the past three years, particularly in the two largest regions of Oromia and

¹¹ Ethiopia is not a party to Optional Protocol to the International Covenant on Civil and Political Rights or the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. For ratification status of these treaties, see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited Feb. 6, 2011).

¹² For ratification status of Ethiopia regarding ACHPR and ACRWC, *see* http://www.achpr.org/english/_info/index_ratifications_en.html (last visited Feb. 6, 2011).

Amhara. While marginalization as well as unfair and inequitable distribution of wealth are said to have triggered the unrest, the Ethiopian Government singled out lack of good governance as the principal reason for the problem. Accordingly, the government promised and have started to implement 'sincere reform' to overcome the good governance challenge that the country has been facing. In the meantime, as the protests in a number of areas turned violent and the government was unable to restore peace and order through the conventional law enforcement machinery, the federal government declared a nation-wide state of emergency twice one of which is still enforce.

Building on the crucial importance of human rights in reinforcing good governance, this particular volume of the Human Rights Law Series of the School of Law is dedicated to analysing the place of strengthening the protection of human rights to address the growing governance challenges in Ethiopia. It consists of research articles that rigorously assess how human rights recognized in Ethiopian laws and policies and their applications can augment current reform measures that the Government is undertaking to deal with the issues of lack of good governance.

The first article written by Solomon Tekle looked in to how some of the major challenges to good governance in Ethiopia can be overcome by advancing a rights-based approach to ensuring an effective social accountability. The author identified restrictive laws that limit the manner in which corruption and lack of competence can be discovered and prevented; limited awareness about and accessibility of local governance accountability mechanisms; limits on practical functioning of CSOs; inability to access information and censorship concerns and patronage and partisanship as factors that exacerbate bad governance in Ethiopia. In the light of these challenges, he stressed on the importance of strengthening social accountability through flexibility of some legal

and policy frameworks including civic society and anti-terrorism proclamations; creating a conducive environment in establishing and strengthening vibrant civil society, independent media and a strong opposition party; adoption and application of participatory approach which includes the clients of services or the people in the decision-making processes which deal with local-level resource allocation, quality of services and timely access; and building awareness, capacities and skills of citizens about their rights and corresponding responsibilities.

Milkiyas Bulcha, in the second article, examines the impact of evictions of farmers from their land for the purpose of realizing the right to housing of city dwellers on farmers' land rights in the surrounding area of Addis Ababa City. The study found out that evictions carried out in clearing farm land to let for building condominium houses for City dwellers as 'public purpose' is only one sided view and solely imposed by the government on top-down approach and has resulted in devastating impact on the farmers' life who were living on the land for centuries. The waves of eviction breach all forms of human rights of farmers including the right to livelihood, the right to food, the right to life, the right to adequate housing, the right to use once own language as well as culture. The author urged for integration of human rights balance test in any public purpose led evictions by fairly balancing competing rights and to employ bottom-up development approach to ensure participation, and benefits all. He also calls upon all concerned bodies to take interim good administrative measures to rectify human rights violations from past and current evictions and to avert future evictions.

The third article, written by Aberra Degefa, analyzed the impacts that the imposition of formal governance systems is having on indigenous people taking the Borana Oromo of Ethiopia as an example. The article explored the possible merits of mutual recognition between the formal and indigenous governance systems with a view to establish the relevance of indigenous governance system as a viable local governance

system. The main argument of the author is that Ethiopia can overcome the recurring good governance problem at the local level if the positive governance traditions and institutions embedded in the traditions of the diverse Ethiopian societies are retained and revitalized.

Towards an Effective Social Accountability to Promote Good Governance in Ethiopia

*Solomon Tekle Abegaጼ (LL.D)**

Introduction

Characterized by a highly centralized and top-down process, policy planning and making as well as the implementation of systems in developing countries significantly ignores any genuine involvement of citizens and civic groups. The approach – centralized and top-down – emphasizes excessively the supply-side indicators¹ and tends to overlook the vital link between service providers (mainly governments) and receivers (citizens).² Notably, the nature of this relationship affects the ownership and sustainability of development programs through popular participation,³ which in turn is clear manifestation of poor governance.

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¹ In the theory of governance, as opposed to demand-side indicators that focus on supporting actors in domestic and transnational contexts to demand better governance, supply side-indicators underscore governance that tries to incentivize particular institutions to improve their governance. For a comprehensive engagement on this, see F. Biermann et al, “Global goal setting for improving national governance and policy”, in N. Kanie and F. Biermann (eds.), Governing through Goals: Sustainable Development Goals as Governance Innovation, Cambridge: The MIT Press, (2017), pp. 75-98.

² Eshetu Yimenu, Social Accountability Mechanisms in Enhancing Good Governance, Prepared for the informal interactive Civil Society hearing of the General Assembly in Preparation for the Fourth United Nations Conference on the Least Developed Countries in May (UN LDC IV), April 1, 2011, (www.un.org/en/conf/ldc/pdf/eshetu%20b.pdf) last visited on June 2, 2017.

³ The World Bank Learning Group defines public participation “as a process through which stake-holders influence and share control over development initiatives, decisions and resources that affect them”. In connection with participation, article 1 of the Declaration on the Right to Development (1986) proclaims that all people “are entitled to participate in, contribute to, and enjoy economic, social, cultural and political

In light of this problem, there has been increased interest and initiatives over recent years, especially by the civil society groups, in the use of innovative mechanisms.⁴ There is now wide agreement that today's development challenges, manifested in various forms, demand effective solutions that fully integrate the aspirations, voices, needs and support of citizens.⁵ Social accountability has emerged as an alternative pathway or weapon to ensure good governance, effective development and empowerment. It builds upon accountability that relies on civic engagement, i.e., in which it is ordinary citizens and/or civil society organizations who participate directly or indirectly in exacting accountability.⁶

Social accountability and good governance⁷ are inextricably intertwined. Conceptually, the latter emerged as a development agenda by the World

development". See G. Nuba Mgwebi, Social Accountability - A Key Element of Effective Service Delivery, March 30, 2011, (<http://www.ngopulse.org/article/social-accountability-key-element-effective-service-delivery>) visited on May 23, 2017).

⁴ *Ibid.*

⁵ See J. Wouters et al (eds.), "Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability", The World Bank Legal Review, Vol. 6 (2015), pp. 3-545.

⁶ World Bank, "Social Accountability: An Introduction to the Concept and Emerging Practice", Social Development Paper, No. 76 (2004).

⁷ The concept of good governance has no clear-cut definition, although UN bodies and personalities have come up with their distinct criteria as a precondition to good governance. Among the relevant authorities who described the "good governance", former Congressman from New York and World Bank President Barber Benjamin Conable, Jr. used the term to refer a public service that is efficient, a judicial system that is reliable and an administration that is accountable to its public. It helps to protect people from economic and political catastrophes, such as famines and other crises; promote sustainable development by empowering citizens to influence policies that promote growth and prosperity and reflect their priorities. See T. Hoque Chowdhury, Social Accountability Practice for Good Governance,

(www.commoncause.org/states/colorado/news/good-governance.pdf) last visited on June 5, 2017; R. Kay Marie, Norm Articulation in International Organizations: Democracy, Governance, and Participation at the UNDP and the World Bank, (2012,

Bank some thirty years ago. The statements encompassed in defining good governance include ‘an administration that is accountable to the public’.⁸ Social accountability to the public is one of the cornerstones of good governance. Good governance is very important to this work because of the conceptual link it has with accountability. Not only is that social accountability the underlining component of good governance but also, importantly, a central principle in the human rights discipline. A consistent integration exists between human rights and social accountability – a human rights-based approach demands that institutions responsible for delivering social utilities or development

Unpublished, University of Denver), p. 139; T. Dickovick and Tegegne Gebre-Egziabher, Ethiopia: Comparative Assessment of Decentralization in Africa, (2010).

- ⁸ Other ingredients in the World Bank’s definition of good governance includes the following: Public-sector management, legal framework for development, and transparency and information. Other comparable institutions with the World Bank offer related definition of good governance. For instance, the Asian Development Bank stated Accountability, Participation, Predictability and Transparency as basic elements of good governance. On the other hand, the African Development Bank and African Development Fund list accountability, transparency, combating corruption, participation of legal and judicial reform in support of good governance in the continent. UNDP’s policy document, on its part came with “Governance for Sustainable Human Development”, listed Participation, Rule of law, Transparency, Consensus orientation, Equity, Effectiveness and efficiency, Accountability and Strategic vision as essential characteristics of good governance. Accountability is one principle captured commonly by all these institutions. For comprehensive engagement on the respective definitions conceived by these organizations, see World Bank, “Governance: the World Bank’s Experience”, The World Bank: Washington DC, (1994); Asian Development Bank (AsDB), Governance: Sound Development Management, (1995), (<http://www.asianlii.org/asia/other/ADBLPres/1997/1.pdf>) last visited on May 5, 2017; African Development Bank and African Development Fund Bank Group Policy on Good Governance, (November 1999), ([http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/21-EN-BankGroupPolicyon Go odGo vernance.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/21-EN-BankGroupPolicyon%20GoodGovernance.pdf)) visited on May 6, 2017; UNDP, Governance for Sustainable Human Development, (1997), (<http://meltingpot.fortunecity.com/lebanon/254/cheema.htm>) visited on May 5, 2017.

programs should be fully accountable for their actions.⁹ Social accountability confers power and ability on the citizens, civil society and the private sector, to scrutinize public institutions and governments and to hold them to be accountable.¹⁰ Essentially, where there is a failure on the part of government to fulfill its constitutional promises of delivering social goods or which goods are provided in international human rights instruments to be enjoyed by individuals or groups, then social accountability serves as an alternative pathway to hold the executive and other branches of government to be responsible for their action or inaction. In the main, this article describes efforts to develop and enforce social accountability relating to bad governance in Ethiopia.

In Ethiopia, the downfall of the *Derg* regime in early 1990s and the inauguration of the Ethiopian Federal Constitution in 1995 raised hopes of a new era of governance guided by the basic principles of democracy, good governance, respect for human rights and the rule of law, together with the decentralization of power to lower tiers of regional governments. There were many promising signs that the dark days of bad governance and one-party dictatorships were gone. Indeed, over the last decade, the country is praised for a booming economic growth in consonance with the Africa rising mantra.¹¹ Also, the country has strong diplomatic ties with the east and west of the world. Further, what is well recognized is the nation's positive contribution to peace and security in Africa, particularly in the eastern region. However, the country was

⁹ J. Ackerman, "Human Rights and Social Accountability", Participation and Civic Engagement Paper, No. 86 (2005), p. 7.

¹⁰ F. Yaseen, "Social Accountability in Pakistan: Challenges, Gaps, Opportunities and the Way Forward", Sustainable Development Policy Institute Working Paper, No. 133 (2013), p. 2.

¹¹ Ethiopia's phenomenal economy grew with an average of 10.9% over the last few years. Data available at, (<http://www.worldbank.org/en/country/ethiopia/overview>), visited on May 29, 2017. See also, Ministry of Finance and Economic Development, Growth and Transformation Plan (GTP) 2010/11-2014/15, Final Draft, (September 2010), p 4.

ragged in 2016 by overlapping crisis fuelled by waves of protests from the two biggest regional States in the country – Amhara and Oromiya – that undermined the nation’s progress in all aspects and led the regime in power to crack down on dissent.¹² Despite several steps forward, including great poverty reduction efforts and improvements in aspects of human development, Ethiopia lags behind on freedom status - the country’s rating has declined on the Freedom House’s Annual Report in 2016.¹³ Absence of freedom such as limits on the free flow of information may impede efforts to ensure good governance and undermines accountability for decisions and discourages greater participation in the decision-making process.¹⁴

Government and opposition parties are in no doubt concerning the cause of the recent protest in these regions –predominantly caused by poor governance problems exhibited over the years throughout the country.¹⁵ Among others, the bad governance problems are

¹² Getahun Gesso, The Poverty-bad Governance Conundrum Simmering Conflicts in Ethiopia, July 28, 2016, (<http://www.zehabesha.com/the-poverty-bad-governance-conundrum-simmering-conflicts-in-ethiopia/>)_visited on May 20, 2017. Also, for some knowledge on Oromo and Amhara protests, see “What is Behind Ethiopia’s Wave of Protests?”, British Broadcasting Corporation (BBC), August 22, 2016, (<http://www.bbc.com/news/world-africa-36940906>) visited on May 23, 2017; M. Cochi, Oromo and Amhara Protest Movement Shakes Ethiopia, Sub-Saharan Monitor: Ethiopia, 14 October 2016, (<http://eastwest.eu/en/opinion/sub-saharan-monitor/oromo-and-amhara-protest-movement-shakes-ethiopia>) visited on May 27, 2017.

¹³ See A. Puddington and T. Roylance, Anxious Dictators, Wavering Democracies: Global Freedom under Pressure, (2016), p. 21.

¹⁴ UNESCO, “Media and Good Governance”, (2005), p. 7.

¹⁵ See A. Alfa Shaban, “Ethiopia: 2016 Anti-government Protests Claimed over 660 Lives – Report”, April 19, 2016, africanews, (<http://www.africanews.com/2017/04/19/ethiopia-2016-anti-gov-t-protests-claimed-over-660-lives-report/>) visited on September 15, 2017; Khen Trevor Amooti, “Ethiopian Government Values Concerns of Protesters and is Working to Meet their Demands – Envoy”, November 28, 2016, newtimes, (<http://www.newtimes.co.rw/section/read/205757/>) visited on October 13, 2017.

characterized by bribery, extortion, favoritism or nepotism in selecting teachers for promotion, upgrading or grants; the Ethiopian Telecommunication works under exacerbating connectivity problems and Ethiopian Electricity is equally blamed for frequent power interruptions – which are found to be the cause of bottlenecks in business and other allied areas; shortcomings in quality education and underperforming civil servants in the various sectors of public service delivery that aroused public dissatisfaction; government is often unwilling to listen to public complaints; drought, hunger and violent conflicts continue unabated; the use of draconian laws to suppress dissent; questions concerning the identity of some ethnic groups and boarder markings seem to find no proper answers by those responsible for governance.¹⁶ These are just examples of the troubles simmering in the country caused by poor governance which in turn contribute to the decline in the enjoyment of a wide array of human rights of citizens promised under the Constitution of Federal Democratic Republic of Ethiopia (FDRE Constitution) and international human rights instruments to which the country has subscribed.¹⁷

Importantly, the Ethiopian government admits that the underlining cause of peoples' discontent is a huge problem of bad governance. While the democracies of Europe and the United States are struggling to cope with the Syrian and unresolved war with ISIS, Ethiopia is to overcome challenges of poor governance. Recently, Prime Minister Hailemariam Desalegn said 'problems of good governance are posing challenges in the

¹⁶ For a useful source to support the various allegations made regarding these signs of bad governance in Ethiopia, see Gesso, cited above at note 12; Fekadu Geleta, "Good Governance on the Ground in Ethiopia", November 8, 2013, *The Global Journal*, (<http://www.theglobaljournal.net/article/view/1151/>) visited on May 20, 2017.

¹⁷ Editorial, "Ethiopia: The Need to Ensure Good Governance", *The Ethiopian Herald*, 15 December 2015, (allafrica.com/stories/201512151150.html) visited May 19, 2017; "PM Hailemariam Calls for Joint Efforts to Promote Good Governance", *WALTA*, 14 August 2014, (<http://www.waltainfo.com/index.php/news/detail/3134>) visited on May 27, 2017.

fight against poverty.’¹⁸ There are certain areas of bad governance and its causes, which the government identified. The government is mulling over how to foster efforts to reverse the tide.

In the light of such realities, one can no longer avoid worrying about the dark clouds beginning to gather to jeopardize the little gains in terms of good governance and respect for the rule of law that the ‘third wave’ of democratic transition¹⁹ or the fall of the *Derg* (military committee) regime in Ethiopia brought in the 1990’s. Given the importance of social accountability using the civil society as an instrument for promoting good governance and respect for human rights, all of which are critical to peace and stability in the country, the ominous decline in respect for good governance cannot be ignored. This article aspires to investigate, as soundly as possible, how some of the major challenges facing good governance in Ethiopia can be overcome. It justifies why and how this can be achieved by advancing arguments in favour of a rights-based approach to ensuring an effective social accountability against bad governance as a model for re-engineering a better governance and service delivery in Ethiopia.

Three reasons justify the importance of this article. First, the practice of accountability and transparency for improved governance are not

¹⁸ Editorial, as above.

¹⁹ The phrase “third wave” has been widely used among academics analyzing what is considered by some to be democratic transitions and democratization throughout much of the developing world. In his seminal work, Samuel P. Huntington proclaims that the rise of the “third wave” is derived from five main causative factors such as, decrease of legitimacy of authoritarian regimes due to increased popular expectation of periodic and competitive election, and/or poor economic performance or military failure. For comprehensive engagement regarding the “third wave” by Huntington, see S. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, The J. Rothbaum distinguished lecture series, University of Oklahoma Press, (1993).

common in Ethiopia.²⁰ If these mechanisms are installed effectively, they may, *inter alia*, overcome rampant corruption and address the inadequate accountability that exists within State institutions in Ethiopia. Second, considering the present ineffective system of governance, which has, at least, been declared public by the government, the political leaders have the potential to make government institutions responsive to the public needs and attain a good governance agenda. Last, in the pursuit of inclusive growth and development and empowerment of the marginalized, there is a greater call for participatory governance among citizens and civil society groups. Underscoring these three ideas and relying heavily on the literature in the English language, the writer organizes this article into four sections. Following this introduction, the first section explores the meaning and the extent to and the manner in which social accountability can serve as a pillar to ensure good governance. The second section is reserved for investigating the legal and policy framework regarding social accountability in Ethiopia. It gauges how such laws and policies can be utilized to contribute to the reversal of the current problem of bad governance. It is followed by a section – third section – determining the possible challenges of social accountability in Ethiopia. In its last section, the article concludes by arguing, in the light of the challenges identified, the urgent need to instill an effective social accountability mechanism.

1. Social Accountability as Central to Good Governance

“There is no substitute for public scrutiny in developing effective and equitable policies.... We therefore call on African governments to set

²⁰ “No Accountability as Government Agencies Mismanage Funds”, Addis Fortune, February 07, 2017, Vol. 17, No. 875, (<https://Addisfortune.Net/Columns/No-Accountability-As-Govt-Agencies-Mismanage-Funds/>) visited on November 2, 2017; “Ethiopian Social Accountability Program”, (<http://kmgethiopia.org/ethiopian-social-accountability-program/>) visited on October 20, 2017.

out a bold national agenda for strengthening transparency and accountability to their citizens.”²¹

After the end of colonization decades ago, Africans are still going through numerous challenges. The people of Africa continue with harsh feelings about the impacts of unresponsive and unaccountable governance – where corruption and governance failures are broadly acknowledged as major obstacles to achieving critical poverty reduction and human development goals.²² Lack of public accountability not only results in corruption and the waste of precious development resources, but also seriously compromises the quality and effectiveness of public policy making, planning and the provision of services to meet basic needs.²³ As Africa’s development remained slow in the face of these and many other challenges, the need to embrace social accountability and human rights obligations are major tools to realize the continent’s potential. The question is - what is social accountability? Why is social accountability praised, at least for the purpose of this article, given that other forms of accountability also exist? What practical social accountability initiatives are being pursued to demonstrate the potential to improve those challenges?

²¹ The foregoing is a quote from Kofi Annan, ex-United Nations (UN) Secretary General, speaking on accountability in Africa on 10 May 2013 in the Africa Progress Panel Meeting, Cape Town, in South Africa. See further, F. Tembo, “Rethinking Social Accountability in Africa: Lessons from the Mwananchi Programme”, Overseas Development Institute, (2013), p. vii.

²² See H. AKhan, “The Idea of Good Governance and the Politics of the Global South: An Analysis of its Effects”, New York: Routeledge, Taylor and Francis, (2016), p. 25; Malena and McNeil, cited below at note 23, p. 1; JP. Ganahl, Corruption, Good Governance, and the African State: A Critical Analysis of the Economic-Political Foundations in Sub-Saharan Africa, (2013), pp. 21-258.

²³ See C. Malena and M. McNeil, “Social accountability in Africa: An introduction”, in M. McNeil and C. Malena (eds.), Demanding Good Governance: Lessons from Social Accountability Initiatives in Africa, (2010), pp. 1-2.

Accountability (in its generic sense) is the cornerstone principle of good governance. Often, it is broadly defined as the obligation of public power holders to account for or take responsibility for their actions.²⁴ Accountability presupposes the rights of people to demand answers from authority holders and impose sanctions accordingly. In a system that upholds accountability, those who wield power must explain and justify their actions or face sanctions. This process emanates as a corollary of the implicit social contract between citizens and their representatives in a democracy.²⁵ Using social contracts and the principle of democracy, citizens have both the right and the responsibility to demand accountability and to ensure the government acts in their best interests. In this light, citizens have the right to ensure that public actors: (a) obey the law and not abuse their powers, and (b) serve the public interest in an efficient, effective and fair manner.

In the social context, accountability is an approach that relies on civic engagement – ordinary citizens and/or civil society organizations participate directly or indirectly in demanding accountability.²⁶ It is epitomized by a “wide range of citizen and civil society organization (CSO) ²⁷ actions to hold the state to account, as well as actions on the part of government, media and other actors to promote or facilitate

²⁴ C. Malena et al, “Social Accountability: An Introduction to the Concept and Emerging Practice”, *Participation and Civic Engagement Paper*, No. 76 (2004), p. 2.

²⁵ Malena and McNeil, cited above at note 23.

²⁶ NGO Federation of Nepal, *Importance of Social Accountability in Nepal*, 2 November 2010, (http://www.ngofederation.org/index.php?option=com_content&view=article&id=67:importance-of-social-accountability-in-nepal-&catid=36:president-blog&Itemid=27) visited on May 23, 2017.

²⁷ They (CSOs) include charity and advocacy organizations, cultural and religious societies, informal community groups, youth and women organizations, trade unions, business and professional associations, and the media. See Sisay Alemahu, CSO Law in Ethiopia: Considering its Constraints and Consequences, *Journal of Civil Society*, Vol. 8, No. 4 (2012), p. 369.

these efforts.”²⁸ Through empowering ordinary citizens, social accountability strategies and tools enable them to exercise their inherent rights and to hold governments accountable for the correct use of public funds and how they exercise authority. For instance, social accountability could be utilized to enable citizens to hold government accountable for how public monies are managed, transferred and used. More broadly, social accountability mechanisms include citizen participation in public policy-making, participatory budgeting, public expenditure tracking, citizen monitoring of public service delivery, citizen advisory boards, lobbying and advocacy campaigns.²⁹ Globally, citizens are increasingly active in challenging their governments – citing lack of accountability, transparency and responsiveness as important problems. This is especially the case in relation to disadvantaged social groups. In many countries, CSOs no longer rely on top-down measures to improve governance, but instead they are demanding good governance by participating in public decision-making and resource allocation, monitoring government performance and ensuring accountability in the use of public resources. In this way, such schemes play an increasingly critical role in securing and sustaining governance reforms that strengthen transparency and accountability.

Social accountability is by no means the only strategy for people to hold their governments accountable. Four other forms of internal mechanism of control exist on the basis of which a state submits itself to promote or ensure the accountability of public servants – they are judicial and quasi-judicial accountability (such as regular courts and human rights commissions and ombudsman offices, monitoring through treaty bodies);³⁰ administrative accountability (such as reporting systems, public

²⁸ See Malena and McNeil, cited above at note 23, p. xi.

²⁹ See Mgwebi, cited above at note 3.

³⁰ For a more elaborative engagement on judicial and quasi-judicial oversight and other types accountability mechanism, see S. Qui and G. Macnaughton, “Mechanisms of

oversight, norms of public sector probity and public service codes of conduct);³¹ political accountability (such as parliamentary committees, legislative investigative commissions, constitutional constraints, separation of powers and the legislature);³² and fiscal mechanisms³³ (such as procurement regulations, auditing and financial management). Despite their significance for ensuring good governance, experience shows that these mechanisms are not sufficient³⁴ - partly because it is less likely for States to hold themselves accountable effectively. For instance, although elections are the principal means by which citizens can hold the state to account in democracies, they have frequently proven to be a weak and blunt instrument to hold the accountability of governments. Equally, political and legal mechanisms of accountability are frequently compromised by executive dominance over the legislative and judicial branches of government and independent control agencies (such as anti-corruption commissions or ombudsmen) and often lack genuine powers of sanction.³⁵ Further, closely related to the concept of social accountability, voice is more effective if done by lobbying, protest and through proper complaint mechanisms. Conceptually, voice refers to the capacity of citizens to express their views, demanding their basic rights and complaining to those who are responsible and in control.³⁶ This implies that voice and social accountability are the same. But how

Accountability for the Realization of the Right to Health in China”, Health and Human Rights Journal, Vol., 19 No. 1 (2017), pp. 281–289; H. Potts, Accountability and the Right to the Highest Attainable Standard of Health, (2008), p. 17; UNOHCHR, “Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies”, (2006), para 77, UN Doc HR/PUB/06/12.

³¹ *Ibid*

³² *Ibid*.

³³ *Ibid*.

³⁴ Malena and McNeil, cited above at note 23, p. xi; Potts, cited above at note 30.

³⁵ Malena and McNeil, as above, p. 12.

³⁶ T. Brown et al, Accountability and Voice for Service Delivery at the Local Level, Sofia: UNDP, (2008).

could voice be applied? The ways in which voice or social accountability could be utilized is summarized as below: ³⁷

- a) Identifying areas of improvements and/ mobilizing entry points;*
- b) Gathering information through different techniques (to engage with evidences and demand for changes);*
- c) Holding different debates and disseminating results;*
- d) Building alliances and supports through lobbying and campaigns to have common voices;*
- e) Negotiating for changes through interface meetings and forums (service providers and receivers); and*
- f) Monitor on the sustainability of change/ s.*

However, achieving effective social accountability necessitates citizens, CSOs and other external actors to demand accountability and responsiveness against governance failures. More broadly other external actors include community-based membership organizations, community leaders and activists, independent media, advocacy organizations, social movements, professional associations, trade unions, academics and think tanks and³⁸ social accountability approaches through the involvement of these actors are broadly acknowledged to bring important benefits with regard to improved governance, enhanced development and citizen empowerment. In the long term, the major advantages of social accountability are its potential to reduce poverty, enhance service delivery, create people-centric policies and lead to the empowerment of citizens thus strengthening democratic processes.³⁹ Is there any evidence of important impacts of social accountability approaches? Over the past

³⁷ Yimenu, cited above at note 2.

³⁸ M. McNeil and C. Malena, "Social Accountability in Africa: An Analysis", in M. McNeil and C. Malena (eds.), Demanding Good Governance: Lessons from Social Accountability Initiatives in Africa, Washington, DC: The World Bank, (2010), p. 195.

³⁹ Institute of Development Studies, Making Accountability Count, (2006).

decade, a large body of anecdotal evidence showing the important impacts of social accountability approaches has emerged demonstrating how these approaches have contributed to improved governance, enhanced development, greater government legitimacy and credibility and citizen empowerment. Among others, a review by the Organization for Economic Co-operation and Development (OECD) on the experience of 25 member countries found that “open and inclusive policy making” has improved policy performance by helping government to better understand citizens’ needs, address inequality, improve public services, lower costs and reduce delays in implementation.⁴⁰

In some countries with a comparable geographical and economic condition with Ethiopia, social accountability approaches have resulted in enhancing good governance through fighting corruption, curbing important problems of abuse of powers, patronage, mismanagement and embezzlement of public resources. In India, social audits and public hearings conducted by Mazdoor Kisan Shakti Sangathan (MKSS), Participatory Research in Asia (PRIA) and other CSOs have served to uncover and address many instances of public sector corruption. In some instances, due to public shaming, public officials have even publicly confessed their wrong-doings and handed over cash – obtained through corrupt means – to the panel adjudicating the public hearing. In Andhra Pradesh, huge sums of money have been voluntarily returned by corrupt officials, thanks to (PRIA-facilitated) social audits in 13 districts. Corruption in the postal department, where postmasters are known to embezzle funds from the accounts of workers whose wages are paid through post office has also been drastically reduced. In a period of five months, approximately Rs. 60 lakh, equivalent to Birr 2,194,000, were returned to the system or to workers. While India is not free from the manifestations of poor governance even today, these developments –

⁴⁰ C. Malena, “Evidence of Impacts of Social Accountability/Demand for Good Governance (Dfagg) Initiatives: An Overview”, Background paper, (2009).

civil society controlling mechanisms – reveal the potentials that such an approach has to address misuse of public resource in the emerging economy.

Another country example is Uganda's Public Expenditure Tracking Survey applied to the Uganda primary education sector. In this frequently cited example of the successful anti-corruption impacts of social accountability approaches, "leakage of capacitation grants to local schools, partly due to corruption, was reduced from 74% in 1995 to less than 20% by 2001."⁴¹ In the same vein, the Centre for Total Transformation of Zimbabwe has helped reduce corruption within rural schools in the Mazowe district and led to improved delivery of education services. This has led the school authorities to be aware that the community members could monitor their behavior in the education service delivery and held them liable for action or inaction.⁴² The Ethiopian education sector is one area in which corruption is diagnosed according to World Bank. Per this Bank's study, corruption in education can be complex – "ranging from large distortions in resource allocation and significant procurement-related fraud to smaller amounts garnered through daily opportunities for petty corruption and non-transparent financial management."⁴³ Importantly, if similar and effective social accountability mechanisms to the likes of Uganda and Zimbabwe exist in Ethiopia, the multifarious corrupt practices that have been identified might have been dropped significantly.

⁴¹ R. Reinikka and J. Svensson, "The Power of Information: Evidence from a Newspaper Campaign to Reduce Capture", *Journal of the European Economic Association*, Vol. 3, No. 2–3 (2003), pp. 1–9.

⁴² Public Affairs Centre (PAC) et al, "Empowering the Marginalized: Case Studies of Social Accountability Initiatives in Asia", *WBI Working Paper*, (2007).

⁴³ M. Latham, "Education Sector Corruption in Ethiopia", in J. Plummer (eds.), *Diagnosing Corruption in Ethiopia: Perceptions, Realities, and the Way Forward for Key Sectors*, (2012), p. 68.

However, an effective social accountability mechanism that aims to address the desired societal results highly depends on a number of determinants. Changing accountability relationships is not easy and cannot simply be done by applying simple technical tools or formulas. Social accountability initiatives rely on a broad range of political,⁴⁴ institutional,⁴⁵ socio-cultural⁴⁶ and historical pre-conditions.⁴⁷ Even the best designed social accountability mechanisms and institutions will have little impact on “downward accountability”⁴⁸ if certain critical factors and conditions providing a favorable environment for social accountability mechanisms are not in place.⁴⁹ For instance, there should

⁴⁴ Political factors relate to availability or not of democratic space, respect for citizen rights and decentralization of power in a State. See Malena and Mcneil, cited above at note 32, pp. 187-190.

⁴⁵ The institutional factors for ensuring accountability underpins the opportunity of governments to be accountable and the ability of citizens and civil society to hold governments accountable through providing critical information, building citizen capacity, and strengthening citizen voice. See R. Alsop, and N. Heinsohn, “Measuring Empowerment in Practice: Structuring Analysis and Framing Indicators.” Policy Research Working Paper 3510, (2005).

⁴⁶ The socio-cultural factors in promoting or challenging the success of social accountability initiatives include social norms, power relations, and deference to authority, lack of citizen empowerment and participation, and gender inequities. See Malena and Mcneil, cited above at note 38, pp. 192-193.

⁴⁷ In typically repressive regimes citizens have had, historically, little voice or opportunity of being heard. Changing the history of those that have had previously less voice through empowering could take on social accountability activities and demand improvements in public services. See UNDP, “Reflections on Social Accountability: Catalyzing Democratic Governance to Accelerate Progress Towards the Millennium Development Goals”, (2013), p. 93.

⁴⁸ Downward accountability refers to the accountability of elected leaders or local governments to all citizens in a country. Empowering local governments and citizens is a precondition for downward accountability. See further, S. Yilmaz et al, “Local Government Discretion and Accountability: A Diagnostic Framework for Local Governance”, Local Governance and Accountability Series Paper, No. 113, (2008), pp. 1-20.

⁴⁹ See for instance, T. Corrigan and S. Gruz, “Monitoring Ourselves -The African Peer Review Mechanism (APRM) as a catalyst for accountability”, in M. Claasen and C. Alpin-Lardiés (eds.), Social Accountability in: Africa Practitioners’ Experiences and

be an enabling legal and policy environment for citizens and CSOs to meaningfully engage in the process of development and poverty reduction and exercise the various mechanisms discussed above.⁵⁰ Here, the question to ask is how does the legal policy framework regarding accountability look under the Ethiopian system which will be important to framing the mechanism to hold the government accountable for their inefficient service delivery or other forms of bad governance? The following section aims to analyze the laws and policies relevant for social accountability in Ethiopia.

2. Legal and Policy Framework for Social Accountability in Ethiopia

2.1 The Federal Constitution

Sadly, Ethiopia has been hit by poverty and starvation. Nature plays a role in this,⁵¹ but there are many reasons including economic management and the external environment. The country's politics has not necessarily been pro-poor, just as they have not inspired the

Lessons, Cape Town: ABC Press, (2010), pp. 182-184; The World Bank, Social Accountability E-Guide: A Step-by-Step Approach to Integrating Social Accountability into Projects, (<https://saeguide.worldbank.org/>) last visited on June 4, 2017.

⁵⁰ The World Bank has identified that the effectiveness of social accountability depends on several conditions, including the following: an enabling political environment for civic engagement; an appropriate policy and legal framework; capable and supportive state actors; the institutional capabilities of non-state actor. See Social Accountability and You, Why is Social Accountability Important?, (<http://say-zambia.org/get-facts/social-accountability/why-is-social-accountability-important/>) visited on June 14, 2017.

⁵¹ Climate change has affected Ethiopia frequently. The crisis in the environment caused by global warming has been threatening the country's food security, increasing nutritional casualties and poverty. See Oxfam, Climate change increasing poverty and vulnerability in Ethiopia, 22 April 2010, (<https://www.oxfam.org/en/pressroom/pressreleases/2010-04-22/climate-change-increasing-poverty-and-vulnerability-ethiopia>) last visited on May 30, 2017.

expected development.⁵² Public administration has not been as efficient and effective as hoped in addressing poverty in Ethiopia and poverty reduction efforts before the mid-1990s were largely disappointing.⁵³ After the political transition from a one-party system to a multi-party system in 1991 and the adoption of the Federal Constitution in 1995, Ethiopia has been transforming from a closed society, with considerable government control over many aspects of daily life, to a more open and democratic society. Political governance has tended to dominate economic governance. The decentralization process pursued by the government since the 1990s has created yet another set of challenges to the work of non-governmental organizations (NGOs) and civil society in general.

In exploring the role of an active and critical citizenry from an accountability perspective, analyzing the country's legal and policy framework regarding accountability is vital. Importantly, accountability is a constitutional value in the present Ethiopia. The FDRE Constitution and its nine state-level counterparts lay a foundation for accountability of the government. The FDRE Constitution spells this out in no uncertain terms, as follows: '[A]ny public official or an elected representative is

⁵² According to the World Bank Group, policies that promote growth at the expense of increasing income inequality are not pro-poor. This same global body found Ethiopia as country example where modest growth since the early 1990s does not appear to have been reflected in the growth of average income of the bottom quintile. See J. Page, "Strategies for Pro-poor Growth: Pro-Poor, Pro-Growth or Both?", *Journal of African Economies*, Vol. 15, Issue 4 (2006), pp. 510-542.

⁵³ This might partly be caused by Ethiopia's internal problems and regional security issues, which even caused cancellations and postponements of agricultural and industrial development projects with development partners in the 1990s. It was after the fall of the *Derg* that the current ruling party - the Ethiopian People's Revolutionary Democratic Front (EPRDF) - adopted poverty focused policies for the first time. See for instance, Ministry for Foreign Affairs of Finland, *Evaluation of the Bilateral Development Co-operation between Ethiopia and Finland*, Publications, 2002, (<http://formin.fi/public/default.aspx?contentid=50647&nodeid=17210&contentlan=2&culture=en-US>), visited on May 29, 2017.

accountable for any failure in official duties'.⁵⁴ The drafters of the Constitution make this provision in such a peremptory manner to stress that accountability is something more than ethical behaviour in all spheres of public service. The recognition of accountability of public officials in the law asserts their responsibility for failure to deliver services in accordance with the domestic, regional and global standards. It is for this reason that primary and secondary legislation and governmental action stipulate disciplinary penalties ranging from simple warnings, to grave ones, including dismissal from employment as well as criminal and civil sanctions over public officials for failure to discharge their mandates.⁵⁵ Here, it is worth mentioning that in addition to officials in the executive branch of government, public or State actors includes, mayors and local councillors, members of parliament, bureaucrats and public service providers as well as those who work within "independent" government institutions such as the judiciary, ombudsmen and anti-corruption agencies.

Ethiopian law also recognises that failure to deliver public goods and services gives constitutional authorization to the electorate to remove public actors or servants from office under the FDRE Constitution and to recall their elected representatives if their behaviors and actions are contrary to their responsibilities and mandates.⁵⁶ Equally, the Constitution paves the way towards accountability of public officials more sensibly through the requirement of transparency of their action or

⁵⁴ The FDRE Constitution, article 12 (2).

⁵⁵ See the Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 articles 407-409; Labour Proclamation, Proclamation No. 377/2003, article 27(1); Federal Civil Servants Proclamation, Proclamation No. 515/2007 (this Proclamation is under the process of revision at the time of writing this work), articles 66-77; Mizanie Abate, A Rights-Based Approach to HIV Prevention, Care, Support and Treatment: A Review of its Implementation in Ethiopia, (2012, Unpublished, University of Alabama, Tuscaloosa), p. 265.

⁵⁶ The FDRE Constitution, article 12 (1) and (2).

non-action to the wider population.⁵⁷ This in turn induces individuals or groups' to claim the right of access to information on matters affecting their interest. For this very reason, the right to information is also guaranteed within the Ethiopian constitutional framework.⁵⁸ The Constitution protects this right within the context of the broader right of freedom of expression, which normally includes the right to "seek, receive, and impart information and ideas." Necessary for civil engagement of social accountability, the right to assembly, demonstration and petition are equally incorporated under the Constitution.⁵⁹ Citizen's right of participation in development and their right to be consulted with respect to policies and projects affecting their interest are also explicitly guaranteed.⁶⁰ Using these sets of rights, citizens could criticize and make suggestions to the state and its officials on matters affecting their interest. They further enable people to bring their complaints to the State organs and the latter are required to address complaints in a responsible manner, and such charges shall not be suppressed, nor shall citizens making them be subject to retaliation.

2.2 International Human Rights Law

Ethiopia is a State party to nine of the core human rights treaties and their Optional Protocols that have been adopted and enforced with the backing of the United Nations (UN).⁶¹ Again, the country has ratified or

⁵⁷ *Id.*, article 12(1).

⁵⁸ *Id.*, article 29.

⁵⁹ *Id.*, article 30.

⁶⁰ *Id.*, article 43(2) and 92(3).

⁶¹ The nine core treaties and their Optional Protocols are as follows: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965/1969; International Covenant on Economic, Social and Cultural Rights (ICCPR) 1966/1976; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008/2013; International Covenant on Civil and Political Rights (ICESCR) 1966/1976; Optional Protocol to the International Covenant on Civil and Political Rights 1966/1976; Second Optional Protocol to the International Covenant

accessed to major human rights instruments of the African Union (AU).⁶² The human rights treaties contain provisions that impose a general obligation on member states to realize rights recognized therein. They enjoin member states to take all “appropriate” legislative, administrative and other measures for the implementation of the rights recognized in

on Civil and Political Rights, aiming at the abolition of the death Penalty 1989/1991; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979/1981; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1999/2000; Convention on the Rights of the Child (CRC) 1989/1990; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000/2002; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000/2002; Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984/1987; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002/2006; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) 1990/2003; Convention on the Rights of Persons with Disabilities (CRPD) 2006/2008; Optional Protocol to the Convention on the Rights of Persons with Disabilities 2006/2008; and International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) 2006/2010. With the exception of ICMW and ICPED, Ethiopia is a state party to all the nine core instruments. Also, except the first two Additional Protocols to the Convention on the Rights of the Child, Ethiopia has not made ratification/accession to the remaining seven Additional Protocols mentioned herein. For a comprehensive review on the status of ratification of the core international human rights instruments and their Additional Protocols, see United Nations Human Rights Office of the High Commissioner, Monitoring the Core International Human Rights Treaties,

(www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx) visited on May 20, 2017.

For a comprehensive knowledge on status of the nine core international human rights instruments and Additional Protocols ratified/accessed by Ethiopia, see (www.ohchr.org/Documents/HRBodies/HRChart.xl) visited on May 25, 2017.

⁶² The major African human rights instruments that Ethiopia has ratified/accessed to include: African Charter on Human and Peoples’ Rights (ACHPR) 1981/1986; the African Charter on the Rights and Welfare of the Child (ACRWC) 1990/1999; and Convention Governing the Specific Aspects of Refugee Problems in Africa 1969/1974. For a comprehensive knowledge on status of the African human rights instruments ratified/accessed to by Ethiopia and other member countries of the African Union (AU), see (<https://www.au.int/web/en/treaties>) visited on May 25, 2017.

the treaties.⁶³ More specific treaty provisions relevant to social accountability is couched in the language of rights, such as the right to seek, receive and impart information, expression, association, assembly and the right to carry out social audits on the use of public funds.

While the treaties leave wide margins of appreciation as regards the selection of measures for the implementation of rights, the ratification by Ethiopia of the major treaties enjoins the state to respect, protect, promote and fulfil human rights within its jurisdiction, including the State's obligation to allow citizens and the civil society to freely express their view in areas affecting good governance. These ratified treaties are categorically regarded by the Constitution as part and parcel of domestic or national laws of the country.⁶⁴ The provisions of these treaties, therefore, are reference points for the work of institutions or mechanisms such as courts, the Ethiopian Human Rights Commission (EHRC) and Ethiopian Institution of Ombudsman (EIO) and civil society organizations (CSOs), in evaluating and monitoring the conduct of the government and to hold it accountable when it fails to live up to its obligations.

2.3 Special Legislation

Beyond the overarching constitutional guarantees against unaccountable governance, various laws, policies and plans of action also purport to protect the principle of accountability of government bodies in connection with their public duties. For instance, with regards to legislation dealing with accountability in the health service delivery, Proclamation No. 276/2002 is a paramount example to mention. This

⁶³ See for instance, article 2 of the ICESCR and CEDAW; article 4 of the CRC and ICRPD. See also, Mizanie Abate, "Transnational Corporate Liability for Human Rights Abuses: A Cursory Review of the Ethiopian Legal Framework", *Mekelle University Law Journal*, Vol. 4 (June 2016), p. 41.

⁶⁴ The FDRE Constitution, article 9(4).

proclamation provides for the establishment of the principal organs that play a crucial role in HIV/AIDS governance. It sets up the National AIDS Prevention and Control Council (NHAPCC) chaired by the president of the Republic, consists of members from government institutions, CSOs, People Living with HIV/AIDS (PLWHA) associations and the private sector and is responsible for giving policy guidance and overseeing the overall national response to HIV/AIDS.⁶⁵ At least on paper, NHAPCC is a good forum to ensure accountability at the highest level. While this platform is not entirely people led social accountability mechanism, the involvement CSOs, PLWHA associations and the private sector using this accountability framework is essential for improving health care services to the victim of HIV/AIDS.

Media is another mechanism that has a potential to enhance accountability for social service delivery or to ensure that public funding is utilized properly. Crucially, media serves a role as society's watchdog, exposing corruption and ill-doings for the public good. News and social media may be the most responsive mechanisms to ensure that state and all non-state actors engaged in services act in compliance with the relevant laws and policies.⁶⁶ Although one of the most debatable legislation in terms of its restrictive effect on freedom of speech and press, Ethiopia has promulgated a legislation to govern broadcasting services which, *inter alia*, recognizes in its preamble the importance of the role of broadcasting service in exercising the basic constitutional rights such as freedom of expression and access to information.⁶⁷ The

⁶⁵ National HIV/AIDS Prevention and Control Council and the HIV/AIDS Prevention and Control Office Establishment Proclamation, Proclamation No. 276/2002, Federal Negarit Gazeta, Addis Ababa, 11th June 2002, 8th Year, No. 23, articles 4 and 5.

⁶⁶ The Partnership for Maternal, Newborn and Child Health (PMNCH), "Human Rights and Accountability", (2013), pp. 2-3.

⁶⁷ Broadcasting Service Proclamation, Proclamation No. 533/2007, Federal Negarit Gazeta, Addis Ababa, 23th June 2007, 13th Year, No. 39, Preamble, para. 2.

proclamation in article 16 (2)(a-b) states broadcasting to include services of ‘enhancing the participation of the public through the presentation of government policies and strategies as well as activities related to development, democracy and good governance; and presenting programs which inform, educate and entertain the public’.

There are different forms of media in Ethiopia which mainly include government-owned television stations, radio broadcasting and print media, which utilize different languages to educate and inform the public on governmental and other activities. Although, as highlighted above, the media has significance in ensuring accountability, the impact that it would have brought has suffered from lack of government commitment to liberally govern this sector. The government struggles to justify its draconian control over the media by stipulating misleading liberal preamble of the above-cited proclamation as a cover for restricting media.⁶⁸

In 2008 the government of Ethiopia also passed the Freedom of the Mass Media and Access to Information Bill reinforcing the right to freedom of information.⁶⁹ Enhancing public access to and demand for public information is the first step towards empowering citizens to participate proactively and effectively in governance processes. Access to information represents the most important ingredient for strengthening the social accountability framework in developing countries.⁷⁰ This freedom of information Proclamation incorporates several provisions

⁶⁸ See Solomon Hailemariam, *Constitutionally Questionable*, *Global Journalist*, December 1, 2008, (<http://www.Globaljournalist.org/stories/2008/12/01/constitutionallyquestionable/>) visited on May 12, 2017.

⁶⁹ See Freedom of the Mass Media and Access to Information Proclamation, Proclamation No. 590/2008, Federal Negarit Gazeta, Addis Ababa, 4th December 2008, 14th Year, No. 64.

⁷⁰ See for instance, M. Hamza Abbas and V. Ahmed, “Challenges to Social Accountability and Service Delivery in Pakistan”, Working Paper, No. 145 (2014), p. 19.

reaffirming freedom of expression and the role of the mass media which would allow citizens to promote and consolidate the values of transparency and accountability in the conduct of public affairs. It, for instance, proclaims “the fundamental importance, in a democracy, transparent conducts of government affairs and, in particular, the right of individuals to access information held by public bodies”.⁷¹ Not only that the legislation guarantees a platform for accountability of public conduct, but it also imposes a legal obligation on public officials to facilitate access to individuals and the mass media to information so that matters of public interest may be disclosed and discussed openly. In fulfilling its public function, public bodies are thus to respect or have due regard to the right of the mass media to seek, receive and impart news or information; express opinion or criticism on various issues or participate in the process of forming public opinion through other means. However, the law also describes the possibilities that certain restrictions on the freedom of the mass media could be imposed by laws issued in accordance with the Constitution.⁷²

Most scandals involving public officials that captured world attention are as a result of the deteriorating ethical behaviors of the public officials who have indulged themselves in all sorts of malpractices.⁷³ In light of this general problem, it is deemed desirous to place appropriate mechanisms to govern the behavior of government officials. To strengthen efficient public service delivery, Ethiopia has also detailed

⁷¹ Freedom of the Mass Media and Access to Information Proclamation, cited above at note 69, Preamble, para. 8.

⁷² *Id.*, article 4(2).

⁷³ D. Ssonko, Ethics, Accountability, Transparency, Integrity and Professionalism in the Public Service: The Case of Uganda, Paper presented in a Capacity Building Workshop with the theme “Enhancing Professionalization of Human Resource Management in the Public Service in Africa”, Cotonou, Republic of Benin – April 12 to 16, 2010, (<http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan038560.pdf>) visited on June 1, 2017.

codes of ethics for regulating the conduct of public officials in the discharge of their duties. The office of the Ethiopian Ministry of Public Service and Human Resources Development believes that ethical public service is necessary for the Renaissance of Ethiopia.⁷⁴ To minimize corrupt behavior of public officials and its effects on service delivery, the Ethiopian government has adopted twelve ethical principles in the Ethiopian civil service drawing inspiration from lists of elements of good governance.⁷⁵ Essentially, accountability is one of the twelve ethical principles aimed at protecting public resources and enhancing public sector performance.⁷⁶ While these ethical codes are not legally binding instruments by their very nature as they are merely principles, their recognition has a potential to strengthen the ethical behaviors of public servants by addressing, among others, corruption, conflict of interest and human resource management malpractices.

⁷⁴ Public text message released by the Ethiopian Ministry of Public Service and Human Resources Development through Ethio-telecom, June 27, 2017. The message partly informs an acknowledgement of corruption and other unethical behavior existing within the public service and practiced by public servants as a challenge and the need for the country to rise up from such pitfalls.

⁷⁵ The lists of elements good governance captured by various institutions, such as the World Bank are discussed in section 1 of this paper. See above at note 8.

⁷⁶ The other remaining codes of ethics and their corresponding meaning are: Integrity – exhibit the highest standards of professional competence and private conduct; Loyalty – show dedication to uphold the constitution and the laws as well as trust to discharge duties by fellow public officers; Transparency – be as open as possible about decisions and justify action; Confidentiality – refrain from disclosing private or confidential information; Honesty – be sincere and free from deceit, fraud or corruption and promises; Serving the Interest of the Public – make decisions and act solely in the interest of the general public; Exercise Legitimate Authority – exercise legitimate power and authority within the office without abuse; Impartiality – make decisions and take actions in a fair and equitable manner; Respecting the Law – obey the law and comply with enactments, proclamations or directives appropriate for duties and as instructed by the relevant authority; Responsiveness – listen and respond to the needs of stakeholders in a timely, respectful manner; and Leadership – promote and support these principles by taking the lead and setting examples. See FDRE Ministry of Health, Ethics and Anti-Corruption, (<http://www.moh.gov.et/ethics-and-anticorruption>) last visited on May 31, 2017.

2.4 Relevant Policies and Programs

Decentralization of power is critical for fostering social accountability and thereby ensuring good governance. It contributes to achieving key elements of good governance, such as increasing people's opportunities for participation in economic, social and political decisions; assisting in developing people's capacities; and enhancing government responsiveness, transparency and accountability.⁷⁷ As in many African States in the 1990s, Ethiopia has embarked on a decentralization policy tool of devolving considerable power, resource and responsibilities to lower orders of governments.⁷⁸ Inherent in the decentralization of power and service delivery is social accountability whose aim is to ensure that citizens can directly ask and hold accountable the service providing offices and personnel.

In addition, the Ethiopian Social Accountability Program (ESAP) is another key platform introduced by the government with a backing from the World Bank. This Program has been divided into phases and, at the time of writing this work, the country is transiting to the third phase - ESAP3. The objective of ESAP is actively engage communities in the governance of the delivery of basic public services. It concerns with promoting the service users or citizens direct involvement in the service provision process.⁷⁹ The goal of the project is empowering citizens and their grass roots institutions to engage in and benefit from public basic service delivery processes and governance structures that are responsive

⁷⁷ See R. Gregory, "Accountability in Modern Government", in B. G Peters and J. Pierre, Handbook of Public Administration, Sage publications, (2003), p. 96.

⁷⁸ J. Lee, "The Process of Decentralisation in Ethiopia since 1991: Issues on Improving Efficiency", Korea Review of International Studies, (2015), pp. 3-4.

⁷⁹ Bereket Gedlu, Gender Sensitiveness of Social Accountability Program: The Case of Libo Kemkem Woreda of South Gondar, (2016, Unpublished, Addis Ababa University), p. 3.

and accountable to them”.⁸⁰ The major strategies of the project is capacity building of the local community, and promoting participatory budgeting and community based performance monitoring and evaluation in primary education, and water supply and sanitation.

The Ethiopian Growth and Transformation Plan (GTP) II is a relatively more recent government policy direction that recognizes multiple forms of accountability. GTP II emphasizes that public participation through election of representatives is crucial for building a democratic system, development, good governance and ensuring equitable distribution of resultant benefits to citizens.⁸¹ Moreover, conducive environment has been laid down to enhance the participation of the different community groups, professional and civic associations.⁸²

From this non-exhaustive cursory review of the various Ethiopian laws and policies pertaining to accountability of government, it can, arguably, be inferred that various mechanisms for ensuring the accountability of public authorities are recognized in Ethiopia. One such accountability mechanism is *monitoring* and *evaluation* of public conduct. Ethiopia has a national monitoring and evaluation framework in a number of social service deliveries.⁸³ The recognition of accountability of public officials in the law serves as a basis for ensuring their responsibility for failure to deliver services in accordance with the domestic, regional and global

⁸⁰ Jerusalem Children and Community Development Organization (JeCCDO), “Ethiopian Social Accountability Program II (ESAP II)”, (<http://www.jeccdoethiopia.org/Social%20Accountability.HTML>) visited on November 30, 2017.

⁸¹ National Planning Commission of the Federal Democratic Republic of Ethiopia, “Growth and Transformation Plan II (GTP II) 2015/16-2019/20”, Vol. 1 (May 2016), p. 52.

⁸² *Id.*, p. 53.

⁸³ For instance, the Ethiopian Ministry of Health’s Child Survival Strategy lists about monitoring and evaluation mechanisms to ensure health service delivery to children. See The FDRE Ministry of Health, Maternal and Child Health Directorate, National Strategy for Newborn and Child Survival in Ethiopia (2015-2020), (January 2015).

standards. As discussed in section 2.1, it is for this reason that primary and secondary legislation and governmental action stipulate disciplinary penalties ranging from simple warnings to grave ones, including dismissal from employment as well as criminal and civil sanctions over public officials for failure to discharge their mandates.⁸⁴ In a nutshell, the various laws have created a system for citizens to report facts, the right to make criticism, submit proposals or opinions, or file a complaint to the people's governments at various levels for violations of the law or dereliction of duties. However, the implementation of these laws is not without challenges – a myriad of challenges to ensuring accountability exist in Ethiopia. The following section aims to highlight some of those challenges.

3. The Difficult March towards Social Accountability

The government of Ethiopia has institutionalized accountability structures for both internal and external accountability. The institutions designed to ensure accountability include the Office of the Federal Auditor General and its counterparts in Regional States, Public Accounts Affairs Standing Committee, Institution of Ombudsman, Federal Police Bureau of Investigation, anti-Corruption establishments both at Federal and Regional level, Accountability Bureau and various oversight committees of the Parliament. The government has also subscribed to the African Peer Review Mechanism in order to facilitate good governance and accountability.⁸⁵ There are also clear laws relating to the

⁸⁴ Cited above at note 55.

⁸⁵ The African Peer Review Mechanism (APRM) is a strategy for making governments responsive and accountable for their actions and declarations under the AU framework. It is a system of peer review to which states may submit themselves and receive feedback on their compliance with governance standards, including political governance and human rights. To participate in this voluntary process states must sign the Memorandum of Understanding of the African Peer Review Mechanism (2003). Fortunately, Ethiopia is one of the participating countries in the APRM. By becoming a

conduct of business, for the public servant and for curbing the menace of corruption in Ethiopia.⁸⁶ In addition, in 2006, with the support of international partners, Ethiopia was able to launch the Promotion of the Basic Social Service (PBS) program.⁸⁷ The program included essential components like public financial management, monitoring and improving accountability.⁸⁸ Along with this initiative, the Ethiopian Social Accountability Program (ESAP) and Financial Transparency and Accountability (FTA) were introduced aiming to empower and improve Ethiopia's poor engagement in service delivery and assure accountability. Whereas ESAP deals with promoting the service users' direct involvement in the service provision process, FTA works with the service providers to create a budgetary system of government open to public scrutiny by disclosing key information. As a result of this first phase of social accountability program inaugurated in Ethiopian government's service delivery program and operated on a smaller scale, a more elaborate and second phase of the social accountability program, covering 232 woredas, was launched as part of the second phase of the

participating country, Ethiopia agrees to promote democracy and its core values including, but not limited to, just, honest, transparent, accountable and participatory government and probity in public life. For further knowledge on the APRM, see for instance, A. Mbata and B. Mangu, "Assessing the Effectiveness of the African Peer Review Mechanism and its Impact on the Promotion of Democracy and Good Political Governance", *African Human Rights Law Journal*, Vol.7, No. 2 (2007), pp. 334-388; Ch. Heyns and M. Killander, "Compendium of Key Human Rights Documents of the African Union", Pretoria: Pretoria University Law Press, (2013), pp. 489-492.

⁸⁶ See for instance, A Proclamation to Amend the Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation, Proclamation No. 883/2015, 21st Year, No. 38, Addis Ababa, 3rd April 2015.

⁸⁷ The program, among other things, aims to tackle poverty with enhanced and decentralized public service delivery to the poor in five areas - health, education, water and sanitation, agriculture and rural roads. See Gedlu, cited above at note 79, p. 29.

⁸⁸ J. Sandford, "Serving the Ethiopian People: The Origins and Evolution of the PBS Programme", Addis Ababa: World Bank, (2012).

PBS in 2012.⁸⁹ The program had been mobilized nationwide through 49 local implementing partners which are local CSOs and community members (citizens) with assistance from the Management Agency and supervision by the Ministry of Finance and Economic Cooperation (MoFEC).

There are research outputs documenting evidences of the impacts of social accountability mechanisms that have triggered real change across Ethiopia, although these changes are often hard to capture.⁹⁰ Social accountability action that was initiated at Serbo preparatory high school in Jimma zone is considered here by way of an example. Like in many parts of the country, the Serbo high school is recorded for its poor infrastructure and poor quality education service provision. The school had no laboratory, ICT training facility, plasma television, toilet rooms, and tap water due to functionality problems. These problems were on table in an interface meeting at woreda level between the community and local administration. After this social accountability action measure to overturn the school's problems, the functionality challenges were solved; 60 computers, loaded with e-books; chairs and tables provided; 150 new chairs and table supplied; 169 new reference books provided; and 4 new class rooms added.⁹¹

Currently, the country is in the transition process towards ESAP phase 3.⁹² In general, institutionalized social accountability terminology is relatively new to citizens and civil society in Ethiopia. However, 'the essence that it captures, and demands that it puts forth before the

⁸⁹ Gedlu, cited at above note, 79, p. 30.

⁹⁰ L. Nass and Meskerem Girma (eds.), Most Significant Change Stories – Social Accountability in Ethiopia, October 2015, VNG International, pp. 1-34, (<http://www.cib-uclg.org/cib-library/content/most-significant-change-stories-social-accountability-ethiopia>) visited on May 23, 2017.

⁹¹ *Id.*, pp. 5-6.

⁹² *Ibid.*

governments is not new, as the researchers have long been demanding for transparency driven from citizen's access to information and fair use of the country's economic and social resources through participatory governance⁹³. However, the government's initiatives to promote social accountability in Ethiopia have essentially not been rooted in the community's demands. Instead, they have been mainly driven by the need and wish to please the international financial institution and donors – mainly the International Monetary Fund (IMF) and the World Bank – as these institutions follow a trend of urging developing countries to maintain good governance as a precondition to granting credit.

These legal and institutional measures taken by the government demonstrate the country's commitment to ensuring an accountability system – a step in the right direction. However, there is limited practice of social accountability in the country. Why is there a dearth of social accountability exercise in the political sphere in Ethiopia? There exist major challenges relating to social accountability structures in Ethiopia which arise from the loopholes in the systems, laws, practices and procedures. There is a pressing need to better understand the various factors influencing the success or failure of social accountability initiatives in Ethiopia. While studying all factors that affect social accountability in Ethiopia is not within the limit of this article, the ones that appear to be most important are the following.

3.1 Awareness about and Accessibility of Local Governance Accountability Mechanisms

Building awareness of citizens on the various tools of social accountability, such as awareness of the Citizens Report Card (CRC) and Participatory Budgeting and Community Score Cards (CSC) is critical to implementing this accountability system. Essentially, 'social

⁹³ Yaseen, cited above at note 10, p. 2.

accountability is based on notions of citizen rights, and the starting point of many social accountability initiatives is to raise awareness of these rights and advocate for their protection both in law and in practice.⁹⁴ Many African citizens, however, remain unaware of their rights to voice and, all too frequently, these rights are violated despite legal guarantees. The Ethiopian situation is not an exception to this general problem. The general public's understanding of participatory governance and the role of civil society in governmental decision-making are still quite new in Ethiopia.⁹⁵ Various studies show that awareness and accessibility of accountability is a problem in Ethiopia.⁹⁶ A few years ago, a research conducted by the Institute of Educational Research (IER) of Addis Ababa University (AAU) found out that accountability of service providers is affected by the lack of information on how and where to lodge complaints.⁹⁷ Further, a recent study on the social accountability of local governments land administration service delivery in Ethiopia with a particular focus on Saharti-Samre rural *Woreda*, Tigray Regional State, reiterates issues and challenges to social accountability in the *woreda*.⁹⁸ The qualitative results of the study revealed that the greatest number of household respondents (96 respondents, i.e. 61%) indicated the lack of

⁹⁴ See Malena and Mcneil, cited above at note 23, p. 19.

⁹⁵ ThinkWell, cited below at note 120.

⁹⁶ Understanding the problem of awareness as a challenge to ensuring social accountability in Ethiopia, HelpAge International in Ethiopia, for instance, has engaged in providing awareness training on Community Score Card and Citizen's Report Card to *Woreda* sectoral office staff, CSO representatives and other stakeholders to enhance their capacity of measuring people's or communities satisfaction and/or dissatisfaction on various social services including health, education, water and others. See HelpAge International in Ethiopia, Training manual on Community Score Card (CSC) and Citizen Report Card (CRC), HelpAge International, (2009), pp. 5-45.

⁹⁷ Yilmaz and Venugopal, cited below at note 123, p. 16.

⁹⁸ Abraham Alihonay and Angsom Tekle, "What the People Want from the Democratic Decentralized Governance: The Quest for Accountability in Local Governments' Service Provision in Ethiopia", Public Policy and Administration Research, Vol. 5, No. 5 (2015), p. 69.

social accountability channels, i.e., there is no social accountability means to hold the land administration office of the *Wereda* accountable. Also, 59 respondents (37.8%) responded saying that community members have low level of awareness regarding the notion of accountability and how to hold the officials accountable.

Due to gaps in awareness and fear of repression of voice by the government, among others, access to social accountability in Ethiopia remains low. With the exception of cases where citizens engaged in protests related to, for example, land administration, border claims and issues, issues relating to endangering their basic livelihood, the prevailing state is one of citizen passivity and pessimism.

3.2 Legal Barriers: CSOs and Anti-Terrorism Laws

It goes without saying that the important role of non-governmental organizations (NGOs) is their immense contributions towards the betterment of social service delivery and promoting good governance and democracy in Ethiopia. However, as argued earlier, an enabling legal and policy framework for civil engagement is crucial for an effective implementation of a social accountability mechanism. Legitimate, effective, responsive laws, policies and institutions are necessary. Ethiopian law governing CSOs dates back to 1960 when the 1960 Ethiopian Civil Code provided for the legal framework governing associations and others working on a non-profit basis. However, this law was not comprehensive enough to address the peculiar features of charitable organizations and there was a huge demand to come up with a more detailed law. Subsequently, in 2009 Ethiopia adopted legislation to regulate the activities of CSOs.⁹⁹

⁹⁹ Proclamation to Provide for the Registration and Regulation of Charities and Societies, Proclamation No. 621/2009, 15th Year, No. 25, Addis Ababa, 13th February 2009.

Three types of CSOs are envisaged under this new legislation, namely, ‘Ethiopian Charities or Societies’, ‘Ethiopian Residents Charities or Societies’ and ‘Foreign Charities’.¹⁰⁰ The Proclamation defines ‘Charitable Purpose’ – a defining feature of CSOs recognised in terms of the law – to include ‘the promotion of the rights of the disabled and children’s rights’.¹⁰¹ Nevertheless, the Proclamation prohibits Ethiopian Resident Charities or Societies and Foreign Charities from engaging in issues, including but not limited to, the advancement of human and democratic rights and the promotion of the rights of the disabled and children’s rights.¹⁰² This manifests that CSOs are limited by various legal restrictions from the federal government. Further, although the Constitution and a number of public policies support opportunities for good governance and civic participation as discussed in section 2, the space is restricted by mistrust in the government and the limited presence of CSOs working on governance issues.¹⁰³ The restriction has pushed NGOs from rights-based efforts to service delivery activities.¹⁰⁴

Another legislation limiting the free expression of ideas which is a requisite for citizens or civil society’s engagement for putting in place an effective social accountability system in the country is the Anti-Terrorism

¹⁰⁰ *Id.*, article 2 (2-4 and 15). To understand the difference between charities and societies, see articles 14(1) and 55(1).

¹⁰¹ *Id.*, article 14(2)(l).

¹⁰² *Id.*, article 14(5).

¹⁰³ Freedom House, Ethiopia,

(<https://freedomhouse.org/report/freedom-world/2013/ethiopia#.VETV4haWG88>) visited on June 1, 2017; ThinkWell, cited below at note 120.

¹⁰⁴ S. Brechenmacher, Civil Society under Assault: Repression and Responses in Russia, Egypt, and Ethiopia, May 18, 2017,

(<http://carnegieendowment.org/2017/05/18/civil-society-under-assault-repression-and-responses-in-russia-egypt-and-ethiopia-pub-69953>) visited on June 2, 2017.

Proclamation.¹⁰⁵ While the contemporary threat of an act of terror is a challenge many countries are facing and one way to address the threat is through legislative measures,¹⁰⁶ the Anti-Terrorism Proclamation goes beyond the acceptable limits in restricting freedom of expression and media freedom. The excessive broadness in the language of some provisions of the law creates a wide possibility for arbitrary application of the provisions to curb decent criticisms against the government. Consequently, this legislation is responsible for a large share of the shrinking media environment in Ethiopia. Since the inauguration of the proclamation, the media in general, and the private press in particular, is experiencing difficulties. Journalists are facing threats, intimidation and detentions. They are repeatedly being charged for crimes of terrorism. The country is accused by international observers for invoking the anti-terrorism law or used the war on terrorism to justify a deadly crackdown on protests against forced displacement in the Oromia Region in November and December 2016 and the Amhara protest in the same year, as well as ongoing repression of political opponents, journalists, bloggers and activists.¹⁰⁷ The dreadful nature of some of its provisions and the way the law is being enforced have resulted in a heightened form of self-censorship among journalists— so they are unable to discharge their proper journalistic activities.¹⁰⁸ The law is also being used to stifle critical voices against the government. Building on strong social accountability in itself is the potential solution for the revision of the

¹⁰⁵ See A Proclamation on Anti-Terrorism, 2009, Federal Negarit Gazzeta, Proc. No. 652, 15th year, No. 57.

¹⁰⁶ In view of such threat that the UN Security Council Resolutions 1624(2005) and 1373(2001), and the OAU Convention on Preventing and Combating Corruption (2003/2006), for instance, call up on states to combat terrorism by criminalizing incitement or glorification of terrorism and other allied acts.

¹⁰⁷ A. Puddington and T. Roylance, cited above at note 13, p. 11.

¹⁰⁸ Human Rights Watch, Journalism is Not a Crime: Violations of Media Freedom in Ethiopia, 2015, (<https://www.hrw.org/report/2015/01/21/journalism-not-crime/violations-media-freedoms-ethiopia>) visited on June 2, 2017.

CSOs and the anti-terrorism laws. A research shows evidence of a change of laws through the application of this mechanism in some countries. In Mali, Burkina Faso and Niger, social accountability initiatives have led to revisions of laws including the pastoral code, the land-use code and the trans-border convention.¹⁰⁹

3.3 Practical Limits on Functioning of CSOs

In a system of accountability, it is essential that the civil society or civil associations should themselves be held accountable for their actions. It is about personal and/or institutional accountability. If they assume public functions and act as partners in governance, their own accountability and credibility must be reflected. Due to the deep suspicion and mistrust of Ethiopian CSOs and in a bid to ensure their credibility, the Ethiopian government issued the restrictive CSOs law already discussed. Apart from this law as a barrier to ensuring an enabling environment for a proper social accountability, the other major challenges that CSOs in Ethiopia face in seeking to promote and support social accountability include, first, building capacities and skills. Second, raising resources is another challenge - owing to the CSOs law, the amount of money civil societies can raise from foreign funds is limited. Thinkwell's study in 2014 also indicates that CSOs in Ethiopia are lacking the appropriate number of staff with adequate understanding of participatory governance and often do not account for the timeline and human resources required by most of the methods.¹¹⁰ Currently, most civil societies are facing strong challenges in getting adequate human and financial sources even to operate their day-to-day activities because the money raised from local sources is very limited. This is exacerbated by the lack of a donation

¹⁰⁹ Malena, cited above at note 33.

¹¹⁰ ThinkWell, cited below at note 120.

culture to help charity organizations voluntarily from the society at large.¹¹¹

In addition to much donor funded literature focusing on the role of CSOs in Ethiopia,¹¹² they have found the lack of a comprehensive framework for CSOs, limited perspective by the government of civil societies, the lack of an open media, inhibit downward accountability. Clark *et al* report that concerns to stifle the free expressions of opinions of disfavored CSOs are not mere speculation. Recently, three members of HUNDEE, a well-known community development NGO, were arrested by local authorities under provisions of the criminal code concerning unrest and incitement to hatred and were held in jail for nine weeks.¹¹³ The authors found that HUNDEE was simply attempting to mobilize local residents to participate in self-help development projects. Another well publicized case involves imprisonment of Daniel Bekele and Netsanet Demessie – two anti-poverty campaigners after the 2005 elections. They were subsequently released. The latest arrest dates 1 October 2016, when university professor and blogger Seyoum Teshome finished up in handcuffs. A number of so-called civil society organizations are affiliated to the government or the political party as in

¹¹¹ Tadele Dersh, *The Social and Human Rights Impact of EBA*, March 7, 2017, (<http://www.Gspevaluation.com/wp-content/uploads/2016/12/Social-and-Human-Rights-Impact-of-EBA.pdf>) visited on May 27, 2017.

¹¹² See B. Pratt and L. Earle, *Study on Effective Empowerment of Citizens in Ethiopia*, *International NGO Training and Research Center (INTRAC)*, (July 2004); J. Clark et al, *Review of the Environment for Civic Engagement and the Role of Civil Society Organizations in Ethiopia's Poverty Reduction and Democratization Efforts*, Submitted to the Ministry of Capacity Building, Government of Ethiopia, Addis Ababa, (November 2004); J. Plummer and Mohammed Mussa, *Scoping Study for the Elaboration of Component 4 of the Protection of Basic Services (PBS) Project*, for the Accountability Group of the PBS Project and DFID-Ethiopia (December 2006); CIDA, *Ethiopia Institutional Governance Review. Grassroots Empowerment Review of Progress and Prospects*, (October 2005).

¹¹³ Yilmaz and Venugopal, cited below at note 123, p. 13.

the case of an NGO named REST.¹¹⁴ These organizations may be highly effective in community development activities, but because of their very nature, they cannot function as effective social accountability mechanism.

Currently, the number of NGOs in Ethiopia has decreased when compared with their number a decade ago. CSOs are reluctant to “engage in politics” – a manifestation of political pragmatism in an oppressive political environment. As a consequence, their stronger impact on civic activism is lacking. In spite of these trends, there are some organizations such as the Ethiopian Women’s Lawyers Association (EWLA) and the Human Rights Council (HRCO) that are truly independent of the government, provide much needed services and have, on occasion, questioned the government’s actions. It is yet to be seen whether more such organizations will emerge and whether they will play a strong role in holding the government to account.

3.4 Inability to Access Information and Censorship Concerns

This article set out earlier the importance of the constitutional rights such as freedom of expression and access to information, which are necessary for ensuring good governance, transparency and development. The various laws guaranteeing these rights under the Ethiopian legal system were also discussed. There is an indication that Ethiopia has increasingly codified its commitment to free speech over the years by rewriting its Constitution and passing laws that proclaim to protect a citizens’ right to free speech. Further, the government seems to maintain that it is protecting press freedom through the press law and points out that it has not banned any publication. Nevertheless, the practice is different – government acts are contrary to the Constitution and press law provisions and it is criticized in the treatment of writers, journalists

¹¹⁴ *Ibid.*

and bloggers, including a lack of press freedom, arbitrary detention, an inability to access government information, suppression of peaceful association and assembly and restrictive laws and policies regarding the internet and digital platforms.¹¹⁵ Equally, censorship remains in Ethiopia in part due to problems of enforceability within Ethiopian law and in part because of the country's unique history and culture of free speech suppression. Its major challenges are difficulty in conducting face-to-face interviews, especially with those who are to be held accountable and the inability to access information. Some community members are also uncooperative due to a fear of intimidation from superiors, other community members as well as officials of the district assemblies.

A more specific study depicting censorship and problems with media accountability is one relating to the country's television newsrooms, Ethiopian Broadcasting Corporate (EBC), formerly known as Ethiopian Television (ETV). Respondents replied that 'not only is the newsroom not accountable to the public or to its audience but also the station as a whole fails to advance the free flow of news and information.'¹¹⁶ As the respondents see it, the situation results in information marginalization in a globalizing world.¹¹⁷ The findings of the research further show that while ETV's/EBC's newsroom collects information, comments and complaints from the public through emails, postal messages and the telephone – these are the ways the public gives its voice, there is no organized mechanism to analyze and use this information to improve day-to-day activities.¹¹⁸ The editors reply that it would be very

¹¹⁵ See for example, Alene Agegnehu and Worku Dibu, "Freedom of the press under FDRE: The Challenges of Constitutionalism", International Journal of Emerging Trends in Science and Technology, Vol. 3, No. 2 (2016), pp. 4811-4821.

¹¹⁶ Tadele Bekele, The Essence of Accountability: And an Examination of the Practices of Ethiopian Television Newsroom, (2008, Unpublished, Addis Ababa University), p. 33.

¹¹⁷ *Ibid.*

¹¹⁸ *Id.*, p. 34.

difficult to say the audience has a voice in the newsroom even if there were a mechanism for collecting information from the public or audience.¹¹⁹

Unsurprisingly, CSOs in Ethiopia encounter more barriers, such as critical problems to accessing and disseminating information.¹²⁰ The key informants of Thinkwell's study respond that participatory methods being used by CSOs in Ethiopia are bottlenecked by access to information both from the government and CSOs - this in turn encounters difficulty in disseminating information. Further, capacity is a two-way barrier. Both supply and demand-side capacities for implementing participatory governance methods are limited, as citizen, CSO and state exposure and institutionalization of the methods are limited. The access to information, especially budget information and policy implementation documents, is relatively restricted to CSOs and the general public.

3.5 Patronage and Partisanship

The FDRE Constitution and special laws allow a multi-party system.¹²¹ Nevertheless, at present the ruling party controls the executive and legislative branches of the federal and regional governments.¹²² At the

¹¹⁹ *Ibid.*

¹²⁰ D. Shanklin and J. Tan, Civil Society Engagement to Strengthen National Health Systems to End 16 Preventable Child and Maternal Death, (USAID) (2016), p. 17; ThinkWell, Participatory Governance in Africa: Case Study, Ethiopia, 2014, (file:///C:/Users/DELL/Desktop/PG-Case-Study-Report-11.20.14.pdf) visited on May 30, 2017.

¹²¹ For instance, see the FDRE Constitution, articles 51(15), 56, 60(2), and 73(2); Political Parties Registration Proclamation, Proclamation No. 573/2008, 14th Year, No. 62, Addis Ababa, 24th September, 2008.

¹²² See Human Rights Watch, Report: Ethiopia, (<https://www.hrw.org/reports/1997/ethiopia/Ethio97d-02.htm>) visited on May 29, 2017; Dejen Mezgebe, "Decentralized Governance under Centralized Party Rule in

local level as well, while the letter of the law is generally obeyed, the spirit of the law is mostly compromised. The separation of executive and legislature is blurred and all local government employees are beholden to the party administration. Women have reserved seats in *Woreda* and *Kebele* councils but they lack voice when it comes to local planning and decision-making.¹²³ While the *Kebele* assemblies and mass association should act as mechanisms of social accountability, in the current political system, they seem to function mostly as arms of central control at the local level.¹²⁴ Several existing institutions such as *Kebeles*, community assemblies and mass associations could potentially fulfill the role of ensuring social accountability. Equally, *Kebeles* are the first point of contact for citizens with the governance structure and can thus be viewed as mechanisms to ensure social accountability. However, so far they have not lived up to this expectation.¹²⁵ There seems to be a high degree of uniformity in agenda items discussed in *Kebele* administration meetings. For instance, security and good governance were cited as an agenda item in different *Kebeles* across regions. In some *Kebeles* in Afar and Amhara the *Woreda* administration sends the *Kebele* the agenda for their meetings.¹²⁶ Thus, it is unclear whether the *Kebele* administration reflects the demands of the citizens.

While *Kebele* Councils should serve as a possible voice of the citizens, they are controlled by cadres of the governing party, who make sure the *Kebele* chairman and leaders closely follow the EPRDF line and are thus

Ethiopia: The Tigray Experience”, *Journal of Regional and Federal Studies*, Vol. 25 No. 5 (2015), pp. 473 –490.

¹²³ S. Yilmaz and V. Venugopal, *Local Government Discretion and Accountability in Ethiopia*, *Public Administration and Development*, (2008), p. 7.

¹²⁴ *Ibid.*

¹²⁵ *Id.*, p. 12.

¹²⁶ *Ibid.*

not representative voices of the community.¹²⁷ The position of a *Kebele* manager could be interpreted as a mechanism to ensure upward accountability. The managers are more qualified than the chairmen and are full-time employees of the *Woreda* administration. They attend *Kebele* Council and administration meetings. Since the managers are appointed and answerable to the *Woredas*, it is unclear how their presence impacts the accountability of the *Kebele* councils and administrations to the citizens.¹²⁸ In addition to the *Kebele* Council and administration, there are periodic public assemblies held in the *Kebeles*, but these do not seem to represent independent voices as in a number of cases, these assemblies are chaired by the *Kebele* or *Woreda* administration or the agenda is provided by the *Kebele* administration. Cases where the *Kebele* community tries to hold the *Kebele* or *Woreda* administration accountable for service delivery are rare. One such rare case was in Oromiya, where the community tried unsuccessfully to influence the *Woreda* decision on diverting a river away from their farms.¹²⁹

Akin to that of the position of *Kebeles*, membership-based mass organizations such as women and youth associations are perceived as an extension or under patronage of the government structure at the local level. However, some analysts have identified signs that some of these organizations are adopting a more independent stance towards government. The European Commission Non-State Actors Study (2004) notes, for example, that the women and youth associations in Tigray and Amhara Regions are engaging regional governments on issues of policy

¹²⁷ S. Pausewang et al (eds.), "Ethiopia Since the Derg: Decade of Democratic Pretension and Performance", London, UK, (2002).

¹²⁸ Yilmaz and Venugopal, cited above at note 123, p. 12.

¹²⁹ *Ibid.*

and are working more collaboratively with sector bureaus and less under their direction.¹³⁰

3.6 Impunity of the Wrongdoers and Others

A common challenge faced by social accountability initiatives is the failure to prosecute wrongdoers once evidence of corruption has been revealed. This might be attributed to disillusionment as regards the effectiveness of the national integrity system, fear of retribution by perpetrators and the absence of adequate mechanisms for protection of whistleblowers. Here, the public nature of social accountability initiatives is extremely important; these initiatives can both create informal sanctions in the form of public shaming and increase the chances of applying formal sanctions through public pressure and sustained public monitoring.¹³¹ The openness of the state is a major inhibiting factor for the implementation of certain methods in Ethiopia, as they require both transparency and some level of responsiveness or state participation in order to properly work.¹³² The existing poor culture of robust political engagement, inadequate informal and formal grievance redress mechanisms, lack of financial and human resources, existence of one dominant ruling political party, low implementation capacity and lack of adequate autonomy are further pitfalls to installing social accountability.¹³³

¹³⁰ T. Silkin et al, Review of Donor Engagement with Civil Society in Ethiopia, (July 2005).

¹³¹ Malena and McNeil, cited above at note 23, p. 20.

¹³² ThinkWell, cited below at note 120; Kena Deme, “Decentralization of Power and Local Good Governance in Ethiopian Federal System: A Look at Two Decades Experiment”, Urban and Regional Planning, Vol. 1 No. 3, (2016), pp. 45-58.

¹³³ Deme, cited at note 132, pp. 50-54.

4. Towards an Effective Social Accountability

The question of ‘how to improve governance?’ remains the most pressing from a legal perspective. This article essentially amplifies the potentials of applying social accountability to installing good governance which could, among others, be used for improving public service delivery. It highlights how an accountability mechanism has led to some improvements in the performance of local administration and delivery of public service by drawing on the occasional reference to the experience of other countries. While praising the potential benefits this mechanism delivers, the research has uncovered that implementing social accountability in government and citizen relationships is not easy and cannot simply be done by applying simple technical tools or formulas – as accountability initiatives rely on a broad range of political, institutional, cultural and historical pre-conditions. It notes that even the best designed social accountability mechanisms and institutions will have little impact if certain critical factors and conditions that provide a favorable environment for social accountability mechanisms are not in place. Despite the important potential benefits, social accountability faces significant risks in the absence of an enabling environment such as, lack of democratic space, disabling legal and policy frameworks, an adverse political climate, lack of government capacity or willingness to respond, weak civil society, dangers of elite capture and the exclusion of marginalized groups.

Looking at the Ethiopian legal and policy landscape concerning social accountability, a cursory review of the FDRE Constitution reveals that accountability is a constitutional value in the present Ethiopia. Not only does the Constitution stipulate the accountability of elected officials to the people for their action or inaction in the discharge of their public duties, but also the human rights necessary for effective social accountability, such as freedom of information and expression, and the

right to assembly and demonstration have been proclaimed. Following the inauguration of these rights under our constitutional framework, freedom of expression and free press had gained a relatively free space for the first time in the history of the country. This has opened an enabling space for the voices of ordinary citizens and the civil society to be heard, and the performance and conduct of duty-bearers monitored. However, such promising environment entered its gloomy age especially after the 2005 election and the coming into force of restrictive laws, mainly the CSOs and anti-terrorism proclamations. Legal challenges are thus factors that limit the manner in which corruption and lack of competence can be discovered and prevented; policies and plans can be more oriented towards citizens' needs; citizens understand to which services they are entitled; resources can be more efficiently used and service delivery can be strengthened and improved. Apart from the legal restrictions, limited awareness and accessibility to local governance accountability mechanisms; limits on practical functioning of CSOs; inability to access information and censorship concerns and patronage and partisanship remain as challenges. Further, skills to implement social accountability interventions are limited as the study by ThinkWell shows, by way of example. Overall, these challenges make existing evidence on impacts of social accountability approaches thin.¹³⁴ The manifestations of bad governance cannot be overcome in the presence of these deficits.

¹³⁴ This does not necessarily imply that there is no evidence at all to show improvement of the social service delivery as a result of social accountability movements in Ethiopia. For instance, the writer's personal experience at the time of writing this research shows that several cobble-stone roads are under construction in the city of Gondar following protests in the Amhara region in 2016. In general, following the recent wave of Amhara and Oromo protests, attempts to improve service delivery are in process, including the decision by the government to establish a Youth Revolving Fund – the House of People's Representatives (HPRs) endorsed (in February 2017) unanimously a draft bill (the Ethiopian Youth Revolving Fund Establishment Proclamation No. 995/2017) submitted to it in January by the Office of the Prime Minister for the establishment of a Youth Revolving Fund. The bill exclusively serves as a permanent source for financing youth-centered projects. The

In the light of the challenges identified, there is an urgent need to strengthen social accountability. To do so, flexibility of some legal and policy frameworks including civic society and anti-terrorism proclamations is important. Moreover, the government should create a conducive environment for establishing and strengthening vibrant civil society, independent media and a strong opposition party. The demand-side of accountability cannot achieve sustainability unless and until there is a responsive supply-side to support it. That's why CSOs need to work collectively and with the State machinery in order to strengthen and shape political will towards community development and to make both the communities and officials responsive towards their responsibilities. Such measures would help reinvest the Ethiopian people's faith in their government and grant the country increased political legitimacy in the international community. While such action would represent a departure from centuries of censorship in the country, it is crucial to Ethiopia's continued political and economic success. If Ethiopia refuses to strengthen its protection of freedom of information and expression, it risks increased instability and, in turn, it risks its prosperity.

A further key recommendation that needs to be put in place is the participatory approach which includes the clients of services or the people in the decision-making processes which deal with local-level resource allocation, quality of services and timely access. Government policies and programs must ensure that weak and marginalized groups are explicitly targeted and empowered. In this way, social accountability can improve service delivery, especially for the poor. To achieve this, building awareness capacities and skills for social

HPRs endorsed it merely by reading the draft bill without the need to refer it to a standing committee for further revisions. For some knowledge on the Oromo and Amhara protests, see for instance, Cochi, cited above at note 12. For some insights on service improvement as a result of social service intervention in some *Kebeles* of Ethiopia, see Nass and Girma, cited above at note 71.

accountability is of paramount importance. Citizens who know their rights and their corresponding responsibilities are more likely and better placed to engage with public actors and to demand accountability and good governance. Democracy requires active and empowered citizenship and rights awareness is an important first step. In order for this to materialize in Ethiopia, it will take the political will of state actors to sustain an initiative of social accountability. Are they prepared to do so?

Managing the Competing Rights of Addis Ababa City Surrounding Farmers and the Right to Housing of the City Dwellers: Reinforcing Good Governance Using Human Rights Balancing Tests in Ethiopia

*Milkiyas Bulcha**

1. Introduction

Though ‘evictions’¹ or displacing people from their land or houses, in the name of development is an anxious global phenomenon², practices

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¹ The term “eviction” has both negative and positive effects. It has been claimed harmful because in most cases it contravenes human rights laws. Yet, evictions which are justified on well founded grounds and are carried out in accordance with dictates of international human rights laws are not prohibited. How to maintain the fair balance between its unpleasant impacts and validly fostering its dynamism always matters. The notion of evictions and its practices has remained the most contentious issues in Ethiopia, too. The loops of language used to explain the magnitude and the phenomena of evictions in Ethiopia are similar to many other large eviction projects around the world. Officials would not like to hear the term “eviction”. Evictions are explained in other terms such as relocation, displacement and/or resettlement often exceedingly technical, and invariably connected with notions of ‘public interest’. In contrast, the FDRE Constitution and subsequent legislation use the term ‘eviction’. For instance, article 40(4) of the constitution utilizes the term in saying that “Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession.” The subsequent sub-article of the same provisions of the Constitution uses ‘displacement’ and ‘expropriation’ to convey the same message as eviction. What is common to all terms used by the law is that people should leave their habitat - home or land - in case the place is needed or is required for public purposes. The Committee on Economic, Social and Cultural Rights also utilized the expression ‘eviction’ or ‘forced eviction’ interchangeably to convey that the term has a sense of arbitrariness and illegality of interference in to right to house or use land instead of unfair and illegal eviction.

from developing countries reveal that eviction has been increasing in unprecedented manner, aggravated by the official inattention to human development.³ Upholding human rights values whilst endeavoring to bring development is one of the challenges facing the entire world, but it is chronic to developing countries. In Ethiopia, predominantly, in the peripheries of Addis Ababa City, where massive eviction took place, the government has continued the policy of eviction of thousands of farmers debatably for ‘public purposes’ of building government subsidized condominium house projects. Almost all the evictees from the Sammit, Labu, Bole Bulbula, Tulu Dimtu and other areas were farmers who used to cultivate the land in the outskirts of Addis Ababa City. Clearing farm lands for the purpose of public housing projects may appropriately be considered a public purpose endeavor, only if the evictions were carried out in accordance with international and national human rights standards and subject to the satisfaction of the public purpose requirement.

Though evictions is common and observable nationwide owing to emerging mega projects, ever growing urbanization, industrialization, and resettlement policies, it has been by far more rampant and unremitting in Addis Ababa City and its surrounding. Evictions are often depicted as induced by developmental projects; namely, expansion of road networks, schools, healthcare institutions, hotels, condominiums, real estates,

² Urquhart, "Globalized eviction" (29 March 2006) Guerrilla News Network, available at: <http://szamko.gnn.tv/print/2162/Globalized_Eviction>; see also United Nations Human Settlements Programme (UN-HABITAT), Forced Evictions - Toward Solutions? (2005 Advisory Group on Forced Evictions), p. 2.

³ UN-HABITAT Guide to Monitoring Target 11: Improving the Lives of 100 Million Slum Dwellers (2003, UN HABITAT) pp. 4-8; See also the UN Human Development Report 2006 (2006, United Nations Development Programme) as cited in Paul De. Ocheje, "in the Public Interest": Forced Evictions, Land Rights and Human Development in Africa, in Journal of African Law, Vol. 51, No. 2 (2007), pp. 173-214.

banks, shopping centers, and many other businesses.⁴ Considering the poor housing and environmental condition of the Addis Ababa City, the City Development Plan provides for the upgrading and redevelopment of inner-city slums based on a local development plan.⁵ This has resulted in both inter-city and intra-city evictions of many people. According to the Center on Housing Rights and Evictions (COHRE), in 2002, the Addis Ababa City Administration began evicting 10,000 people from Bole Bulbula area alone in order to develop the city's International Airport.⁶ Compared to other public purpose led development evictions, condominium house construction projects have required large tracts of land as a result of which thousands of farmers were evicted from their farmland.

Farmers, informal settlers and residents of the surrounding areas of Addis Ababa City have been complaining about the unpleasant impacts of the condominium house constructions contending that the condominium housing project carried out on their farm land unkindly affected their livelihood, food, life, housing, settlement pattern, social tie, cultural sites, religious practice, security of tenure and other social services. The massive public housing project induced evictions in particular and rapid expansion of the capital city in general into the farmers land surrounding Addis Ababa City has remained one of the blistering agenda and catchword of the ongoing mass protests across

⁴ Gebre Yintesu, Urban Development and Displacement in Addis Ababa: The Impact of Resettlement Projects on Low-Income Households, in Eastern Africa Social Science Research Review, Volume 24, Number 2, June 2008, pp. 53-77 (Article).

⁵ Office for the Revision of the Addis Ababa Master Plan –ORAAMP, (2000) Policy Environment Assessment for Urban Planning in Addis Ababa. Addis Ababa, Ethiopia.

⁶ Ethiopia: Bole Sub-City Eviction Order Violation of Law of Land – APAP, Daily Monitor (29 May 2007), <<http://allafrica.com/stories/200705310424.html>> (accessed 13 January, 2014); See also August 2005, 1/3 Evictions Monitor (Newsletter of the Geneva-based Centre on Housing Rights and Evictions (COHRE)). Available [www.internal-displacement.org/.../\\$file/Evictions_Monitor_aug05.pdf](http://www.internal-displacement.org/.../$file/Evictions_Monitor_aug05.pdf), accessed 13 May, 2014.

Oromia Region. The governments at federal and regional levels admit the disproportional impacts of faultily designed public purposes development projects carried out on farm lands but specifically singled out the lack of good governance as the only causes of the problem, rather than legal and policy crisis.

The purpose of this article is, therefore, to examine whether the eviction regime laws and practices in Ethiopia, are consistent with international human rights standards. In doing so, it closely looks at how competing rights of Addis Ababa City surrounding farmers to farm land and livelihood and the right to housing of the city dwellers was managed to ensure good governance by using human rights balancing tests in Ethiopia. To that end, the study follows doctrinal and socio legal research approach. Empirical data were collected using interviews, observation, and focus group discussions. Unstructured and semi-structured interviews were utilized in order to get the holistic understanding of the evictees and to get specific information from key informants. To determine the participants who should be covered in the study, purposive and random sampling techniques were utilized. While purposive sampling was utilized to identify key informant interviews who are officials and judges, random sampling technique was used to select evictees who are interviewed for this study. Sample size was determined by data saturation and the researcher discontinued interviewing the evictees when all evictees respond exactly in the same way.

The article is organized into five sections. Following this introduction, the second section briefly presents the theoretical foundations of human rights and public purpose induced evictions and its nexus with good governance. The third section explores the competing rights in perspective and balancing test tools available under international human rights law and employed to make just balance between contended rights and right holders. Section four is devoted to closely examining the Addis Ababa city surrounding farmers' rights and City dwellers' right to

housing with a view to ascertaining how the competing rights has been managed using human rights balancing test to reinforce good governance in the administration of matters relating to public purpose. Finally, the article presents the impacts of failure to properly balance the competing rights of Addis Ababa city surrounding evictees and the city dwellers as conclusion and recommendations for the way forward.

2. Human Rights Implication of Public Purpose Led Evictions and Good Governance

2.1 Human Rights and Public Purpose Led Eviction: Sketching the Nexus

Conceptualizing the interplay between public purpose led development activities which cause eviction and human rights laws that prohibit evictions is exceedingly essential to make fair balancing among rights in question and between rights holders' in case limitation of rights is warranted. This is important as the mere existence of public purpose itself is not enough to justify prioritization between rights and thereby making a distinction between right holders. This section briefly highlights the interaction between human rights and public purpose driven projects which cause eviction and its nexus with good governance.

Human rights are inalienable and universal rights that all persons are entitled to merely because of being a human person. These rights are set out in international human right conventions, customary international law and domestic laws.⁷ Human rights are indivisible, interdependent and interrelated as one cannot get full enjoyments of one type of rights

⁷ To date, the binding international human rights conventions are ICCPR with its two optional protocols, ICESCR, CRC, CEDAW, CAT, ICEARD, CMW and the most recent are ICPAED and ICRPD.

in isolation from other rights.⁸ From the nature of interdependence and interrelatedness, treating all human rights in the same footing with the same weight would aid to address the violation of one right which is implicit in the denial of other rights.⁹ Hence, it is impossible to make ranking among human rights.

While all human rights impose obligation on state which involves “duty to respect, to protect and to fulfill,”¹⁰ the African Commission on Human and Peoples’ Rights has expounded the nature of state obligation in to four levels; namely, the duty to respect, protect, promote, and fulfill these rights”.¹¹ The complete range of human rights encompasses economic, social and cultural rights and civil and political rights, as well as the right to development.¹² Specifically, the right to adequate housing

⁸ *Ibid.* As the international community affirmed the holistic notion of human rights indivisibility and interdependence, one cannot fully enjoy the right to life disregarding or in violation of right to food, right to health, right to water, right to house and any other rights which are fundamental to life. If one takes away one right, then it results in the taking away of the other(s) i.e. denial of food is denial of livelihood, deprivation of shelter is refusing liberty and freedom, and ultimately the right to life and all that goes with life.

⁹ See the Vienna Declaration and Plan of Action on World Conference Human Rights, adopted on June 25, 1993, part1, para .5.

¹⁰ While other scholars recommend the states to undertake four layers of obligations under bill of rights, G.J.H. Van Hoof described the four layers of duty of States as “an obligation to respect, an obligation to protect, an obligation to ensure, and an obligation to promote”; See also Asbjørn Eide, “Economic, Social and Cultural Rights as Human Rights”, in Asbjørn Eide, Catarina Krause and Allan Rosas, (eds.), Economic Social and Cultural Rights: A Textbook, (Martinus Nijhoff Pub., 1995), pp. 35 – 40; and G.J.H. van Hoof, “The Legal Nature of Economic, Social and Cultural Rights: A Rebuttal of Some ‘Traditional Views’”, in P. Alston and K. Tomaševski, (eds.), The Right to Food, Dordrecht/Utrecht: Martinus Nijhoff/SIM, (1984), pp. 106-107.

¹¹ The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria, Communication No.155/96, African Commission Human and Peoples' Rights, 2001(hereinafter SERAC Case).

¹² See the common article 2 of ICCPR and ICESCR that impose obligation on the states with different realization mechanism; see also ICCPR and ICESCR that list human rights including but not limited to: right to life, freedom from torture, the right to

with all its components,¹³ right to food, right to life and land use rights of farmers are the rights which require protection during evictions for public purposes.¹⁴

Freedom from eviction obliges States not to interfere arbitrarily with the right to housing and other human rights and oblige States to take due care in carrying out evictions for public purposes. In order to make freedom from eviction meaningful, home or land rights have been conceptualized from a human rights perspective because it is impossible to attribute human dignity to a landless or homeless person. It is also difficult to see how those who were dispossessed of land can live a dignified life. Seeing that, John Locke treats proprietary interest in land as coming from the same normative source as the right to life.¹⁵

Except few of them, all human rights might have been subjected to limitation imposed by the state. Public purpose led eviction typically bring into play as justification for limitation of land related human rights. In Black's Law dictionary, Public interest is defined as "the general welfare of the public that warrants recognition and protection", while, public purpose has been defined as "an action by or at the discretion of government for the benefits of the community as the whole".¹⁶ The phrase 'public purposes' also known as "public use" has continued to be

freedom of movement and residence, privacy, equality before the law, fair trial, the right to education, right to health, employment, and the right to adequate standard of life including food, water and housing. These are some of the human rights which belong equally to every person.

¹³ The seven components of adequate housing were deliberated by the CESCR under the General Comment No.4 on article 11(1) of ICESCR: adequate right to housing.

¹⁴ Article 11(1) of ICESCR; See also the 1996 UN Conference on Human Settlements (Habitat Agenda) para.60. The components of right to adequate housing and prohibition of forced eviction have been addressed by the CESCR under General Comments no 4 and 7, respectively.

¹⁵ Michael Akomaye Yanou, Access to Land as a Human Right: The payment of Just and Equitable Compensation for Dispossessed Land in South Africa, (2005), p. 33.

¹⁶ Black's Law Dictionary, 7th edition, p, 1246.

ever contested notion. Its broad definition is intertwined with public safety, health, interest, or convenience.¹⁷ From this viewpoint, ‘public use’, for instance, includes the taking of land to build a school, municipal building or a public park. The usage of the phrase ‘public purpose’ is diverse under different countries’ jurisprudence, but with almost all similar connotations. In USA, it is known as “public use”; whereas in Europe it is usually known as “public interest” and under Ethiopian law both “public purposes” and “public interest” are employed under different legislation to refer exactly the same thing.¹⁸

Beyond its literal definition, the notion of ‘public’ has been lingering as a tough subject for years due to various reasons. The benchmark uses to determine the numbers of people being sufficient to consider them as “public” is the first challenging matter. What constitutes public purpose and who determines it is another challenge in dealing with allegedly public purpose driven development projects. If developmental project which does not fulfill public purpose standard is implemented in arbitrary manner, it would not only constitute maladministration, but also amounts to violation of human rights. This necessitates a robust balancing test to carry out public purposes projects in human rights friendly manner.

¹⁷ West's Encyclopedia of American Law, in Lehman, J. & et al (eds.), Eminent Domain, Vol.4, 2nd ed. San Francisco, London and Munich: Thomson Gale, p.125; see also <http://www.florida-eminent-domain.com/public-purpose.html>, accessed on 21 September, 2014.

¹⁸ See the US Constitution Fifth Amendment; Article 1 of Protocol No. 1 of European Human Right Treaty; and the article 40(8) of FDRE Constitution, respectively as cited in Daniel, *supra* note 15, pp 188-189; Article 2(7) of Urban Lands Lease Holding Proclamation No. 721/2011 and see also article 2(5) of Expropriation of Landholding for Public Purposes and Payment of Compensation Proclamation No.455/ 2005.

2.2 Human Rights and Good Governance: Complementary or Mutually Exclusive?

While governance plays primary role to ensure development, it is also essential for the promotion and protection of human rights. Nevertheless, governance in general and good governance in particular has attracted many definitions and it remains a contested concept.¹⁹ UNDP roughly defines the term “governance” as “the exercise of economic, political and administrative authority to manage a country’s affairs at all levels”.²⁰ Governance comprises of the mechanisms, processes, and institutions, through which citizens and groups reason out their interests, exercise their legal rights, meet their obligations and mediate their differences.²¹

Good governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights. Since good governance basically requires being free from maltreatment and corruption, and due regard for the rule of law, there is strong link between good governance and human rights. The true test of “good” governance is examined by the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.²² Accordingly, human rights provide set of rules to guide the work of government. Human rights also provide a set of performance standard of which less performance led the government accountable for

¹⁹ Weiss, T, ‘Governance, Good Governance and Global governance: Conceptual and Actual Challenges’, *Third World Quarterly*, Vol. 21 (5).

²⁰ UNDP, *Governance for Sustainable Human Development*, a UNDP Policy Document, January 1997, Chapter 1.

²¹ *Ibid.*

²² ‘What is Good Governance’, UNHCHR (www.unhchr.ch/development/governance-01.html) Copyright 1996-2002, Office of the United Nations High Commissioner for Human Rights - Geneva, Switzerland.

failure. In doing so, human rights inform the content of good governance.

Governance is much more than the business of running the State machinery to keep one's borders safe and the law and order situation under control.²³ Good governance creates conducive and enabling environment for the implementation of human rights.²⁴ Legal frame work, institution, political management and administration process responsible to the rights of the people are some of the settings favorable to human rights. The democratic institutions required to ensure good governance creates avenues for public participation.

While both are often discussed inelegantly, in practice, they are intertwined in many factors. Governance is indispensable in attaining sustainable human development.²⁵ Thus, good governance is a means to the realization of human rights, rather than an end in itself. In service delivery perspective, good governance reforms kick off mechanisms of responsibility, precision and culturally sensitive policy tools.²⁶ Good governance has strong link with human rights in complementing it and creates favorable conditions for the fullest enjoyment of manifold of rights.²⁷

Hence, good governance and human rights are mutually reinforcing and complimentary.²⁸ This means that good governance cannot be claimed in

²³ David Beetham, "Democracy and Human Rights: Contrast and Convergence", paper presented at the Seminar on the Interdependence between Democracy and Human Rights, OHCHR, Geneva, November 2002: <http://www.unhchr.ch/democracy/D-Beetham.pdf>.

²⁴ *Ibid.*

²⁵ Management Development and Governance Division Bureau for Policy and Programme Support, United Nations Development Programme, New York, January (1997).

²⁶ *Ibid.*

²⁷ *Supra* Note,23.

²⁸ *Ibid.*

isolation from human rights norms. As a result, admitting lack of good governance only from the state for human rights violation is not the way out. While the State has no legal obligation to be good government in clear and precise norm, they are duty bound to realize human rights by any means including legislative, adjudication, and administrative measures. Put differently, if the state strives to achieve good governance but is unable to do due to various factors, it can best use human rights obligation which is exceedingly crucial in reinforcing good governance. For this reason, for the implementations of human rights unfriendly designed public purpose driven development projects, singling out lack of good governance alone as the only cause of all human rights violation is flawed.

3. Setting the Competing Rights in Perspective and Balancing Test

Currently, reconciling the tension between public purpose driven development projects and human rights has remained an arduous and challenging task to the global community. Clapham contends that human rights principle in itself does not actually resolve the tensions between competing interests; rather, it provides the languages for arguing about which interest should prevail and how best to achieve the ends we have chosen.²⁹ The normative human rights law encapsulates that all human rights are to be protected and promoted to the greatest extent possible before other interests are even taken into consideration,³⁰ but it does not visibly provide the system of prioritization among the rights themselves. To show the obscurity encountered in balancing the competing rights,

²⁹ A.Clapham, Human Rights: A Very short Introduction, Oxford University Press, (2007), p.1.

³⁰ Aileen McHarg, "Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights", in Modern Law Review, vol. 62. P.674.

one scholar explained that “we face between societies where people accept modest sacrifice for a common good or a more continuous society where groups selfishly protect their own benefits.”³¹ Classical scholars contend that human rights may be outweighed by other important considerations of collective good based on “interest model”.³² From those scholars advocating the foundation of public purposes, Held conveniently identified three general categories of theories which justify public purposes; namely, preponderance or aggregative theories, unitary theories and common interest theories.³³ In these classical theoretical approaches, balancing individual rights against general welfare requires the harmonizing tests. In preponderance theory, public interest has no independent content; rather, could be based simply on aggregating individual interest. Under unitary theories, public interest is treated as overriding interests that not only exceed but also settle actually at odds with individual interests.³⁴ Coming to Common interest theory, there is distinction between individual interest and interests which all members of the public have in common.³⁵ This theory is different from both theories mentioned above by admitting the possibility that individuals/groups may make mistakes in identifying their interests and differentiates self-interested from ideal-regarding or altruistic behavior.

Dissimilar to the classical theories above, human rights have inbuilt mechanism of balancing competing human rights in case contending claim appear between right holders. Evicting individuals from the land they rely on for livelihood is undoubtedly interference with their human

³¹*Ibid.*

³² *Ibid.*

³³ “The Public Interest and Individual Interests”, as cited in Aileen Mc Harg (ed.), Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights, in *Modern Law review*, (New York: Basic Books, (1970), vol.62, p. 674.

³⁴ *Ibid.*

³⁵ *Id.*, p.676.

rights. However, whether the evictions amount to violations of rights protected depends on how it was conducted based on the 'balancing test criteria' of human rights limitations; namely, legality, the existence of legitimate aim and proportionality.³⁶ In attempts to reconcile the public purpose and human rights, one can approach it using the flexibility embodied in the human rights instruments themselves.³⁷ While the complexity and magnitude of the challenges facing the State in their efforts to combat poverty through public purpose driven development activities may cause eviction, international human rights law is flexible to address the concern effectively.

From this flexibility of human rights, individual rights which are protected by international human rights laws can validly be restricted in case where it is necessary for the broader public interest by ways of exception. By doing so it is possible to draw a distinction between justified interferences grounded on public purposes and violation of human rights which are unjustified, illegal and disproportionate. Generally, States may restrict human rights, essentially, in reservation to treaties, limitation to rights, and derogations from obligation under different circumstances. In case state measures are justified by sound public purposes, evictions would fall under the limitation clause of human rights instruments. Resonance limitation is effectively done using balancing tests of legality, legitimate aim and proportionality to weigh those competing interests.³⁸

³⁶ Article 4 of ICESCR.

³⁷ Common article 4 of ICCPR and ICESCR. Article 4 of the ICESCR states that limitations imposed on the enjoyment of rights should be 'determined by law' and should be done solely for the purpose of 'promoting the general welfare in a democratic society.'; See also article 12(3) of ICCPR.

³⁸ *Ibid.* see also the Policy on competing human rights, Ontario Human Rights Commission, available on Internet: www.ohrc.on.ca, accessed on September 26, 2014.

3.1 Legality

All human rights treaties provide that any act of States to restrict the full enjoyment of rights and freedoms must be set out within, or authorized by, a prescription of law.³⁹ To fulfill the legality requirement for legitimately restricting rights, the law, among other things, must be consistent with human rights conventions, must not be arbitrary and unreasonable, accessible, precise, provide safeguards and effective remedies.⁴⁰ The Human Rights Committee (HRC) has suggested that laws allowing evictions should use precise criteria and may not confer unfettered discretion on affected people.⁴¹ The validity of the substantive content of such laws should also be tested by the broader human rights law requirements.

3.2 Legitimate Aim

The permissible legitimate purposes for the interference vary depending on the rights subjected to the possible limitations as well as on the human rights treaty in question. National security, public safety, public order, health, morals, and the human rights and freedoms of others are considered as legitimate aim to be able to limit rights.⁴² The important objective of general public wellbeing is often used as a pretext to

³⁹ See, for example, HRC, General Comment No. 29; Siracusa Principles (E/CN.4/1985/4, annex, paras. 15 and 17); “Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights – Human rights: a uniting framework” (E/CN.4/2002/18, annex, paras. 3 (a) and 4 (a)).

⁴⁰ See the European Court of Human Rights in *Sunday Times v. United Kingdom*, N° 6538/74, Judgment of 26 April 1979, Para. 49.

⁴¹ HRC, General Comment No. 27(1999), para13.

⁴² For example the CESCR under its General Comment No .7 explained that in cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.

broaden State powers in other areas.⁴³ Governments' eviction order of squatters and other tenants must be justified on the grounds of public interests which directly or indirectly benefits all. Developmental projects and construction of housing are to list some that validly amount to pressing public interest. However, evicting people from their home or land in the name of public purposes, but failure or delay in implementing the public purposes project does not constitute "pressing social needs".⁴⁴ The arbitrary decisions of the government to coin a certain project as serving public purposes is not sufficient. Compelling and overriding public interest should exist to serve as public purposes which justify evictions.⁴⁵ However, the legitimate aim itself shall be evaluated constantly by ensuring the proportionality test by mitigating the impacts of eviction on affected persons.⁴⁶

3.3 Necessity and Proportionality

To impose acceptable limitations on human rights, legality and legitimate public purposes are not enough. Assessing the proportionality of the act to achieve the desired goals and particular human rights to be restricted is needed. According to the HRC, proportionality plays pivotal role in limiting the limitation on human rights by dictating that limitation to the rights must be "least intrusive" to achieve the desired goal while upholding the rights under limitation.⁴⁷ The Committee on Economic, Social and Cultural Rights (CESCR) explained that "in cases where

⁴³ *Ibid.*

⁴⁴ R. Gordon, T. Ward, T. Eicke, The Strasbourg Case Law, Sweet & Maxwell, London,(2001), p.1125-1138.

⁴⁵ UN Commission on Human Rights, UN Guiding Principles on Internal Displacement (1998), Para6 (2)(c).

⁴⁶ In Residents of Joe Solvo Community of the Western Cape vs. Tubelisha Homes and other case, the Constitutional Court of south Africa ruled that public purpose is imposed as requirements of ensuring proportionality.

⁴⁷ HRC, General Comment No 27, supra not 77, para 14.

eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality”.⁴⁸ Due to the strict requirements of proportionality test by human rights laws, no limitation on right is justified in total denial of the rights in question. If balance has not been properly struck between the rights to be limited and another rights required to be given priority, even with the existence of legitimate public purposes, the interference with the right would amount to violation of the right in question.

In the jurisprudence of the European Court of Human Rights (ECtHR), what is often referred to as “necessary is an additional safeguard which requires States to demonstrate that the limitations should be the only way to achieve the existing ‘pressing social need’”.⁴⁹ In *Handyside case*, the Court ruled that any limitation on the free enjoyment of rights and freedoms must be necessary in the pursuit of a pressing objective, and its impact on rights and freedoms should be strictly proportional to the nature of that objective.⁵⁰ As a general matter, given the consequences of poverty on human rights, there is no doubt that the response to poverty through various developmental projects may have resulted in eviction and, the implementation of such projects is an important objective which can, in principle, permit the limitation of certain rights. To be justifiable, however, the imposition of such a limitation must satisfy various requirements. Rights can be restricted to the extent that the limit placed on them is proportionate to the aim pursued.⁵¹ In the absence of safeguards to the rights by proportionality test from abuse in pretext of

⁴⁸ CESCR, General Comment No 7, para 14.

⁴⁹ R. Gordon, T. Ward, T. Eicke, *The Strasbourg Case Law*, Sweet & Maxwell, London,(2001), p.1125-1138.

⁵⁰ *Ibid*.

⁵¹Supra note 47, p.99.

legitimate aim, there is risk of undermining or even destroying the rights.⁵²

Proportionality requires strict necessity test by obliging the State that wants to limit certain rights for public purposes to cautiously choose from various ways the objective could be achieved before resorting to limit the rights.⁵³ Concerning evictions carried out for public purpose, the CESCR enjoins states that, prior to carrying out any evictions, all feasible alternatives shall be explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.⁵⁴

Proportionality in strict sense is a consequential test founded on the appropriate relationship between the benefits gain by limiting rights from the public purpose and the damages to the rights. Based on that link, it is to balance between the marginal least intrusion to the right necessitated by public purpose and the exercise the rights under limitation. Based on the proportionality requirement, a State cannot validly limit human rights by public purpose project if the conduct brings entire denial of rights

Though there is no scientific or precise ways to balance between competing human rights and evictions for public purpose driven development project, there are principles that states must consider when they deal with competing rights situations.⁵⁵ Owing to their universality and relation with human dignity, in situations where rights, interests, and values may seem to compete with human rights, the latter will usually hold higher status. In this case, a simple cost-benefit analysis that eviction can be justified if it ultimately benefits many people than those

⁵² *Id.*, p.101.

⁵³ CESCR, General Comment No 7, para 13; see also the Supreme Court of Canada, *Rodriguez v. Attorney general of Canada* (1993)3S.G.R. para. 519.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

affected due to eviction will not work. On top of this, human rights are interrelated and interdependent; hence, there is no hierarchy among them.

States commonly carry out eviction using the justification of public purposes determined by them as provided by classical theoretical approaches. Due to the progress of the international community on the dynamic concept of development, rather than solving on state discretionary power, people are considered to be at the center of development. Thus, rights- friendly development paradigm has led the international community to adopt human rights based approach to development (HRBAD). Under HRBAD, the mere existence of public purposes is not sufficient to evict people from their home or land. It requires genuine public participation, upholding human rights and taking measures to avoid disproportional impacts on vulnerable groups of the society. Furthermore, human rights laws impose limitation on any public purpose development project driven evictions by demanding the State to justify it based on legality, legitimate aim and proportionality test mechanism to fairly prioritize between competing human rights.

4. Farmers' Rights VS. City Dwellers' Rights to Housing: Managing the Competing Rights Using Human Rights as Balancing Test

Ethiopia is a state party to numerous international human rights treaties that prevent unjustified eviction. In furtherance of that, fundamental rights and freedoms have been incorporated under chapter three of the FDRE Constitution. Moreover, the country has a legal framework which regulates evictions for public purposes. Under this section, farmers' rights to be protected from eviction and competing City dwellers' rights are analyzed using human rights as balancing test. To that end, the laws and practices are critically analyzed pertaining to the justification of

eviction, the process, the depressing impacts of the evictions on the livelihood, right to food, life, housing, language and religion.

4.1 Justifications for Eviction: Limitation on Human Rights or a Price Paid for Public Purposes Development?

The FDRE Constitution under article 40(8) allows the government to expropriate land use rights for public purpose projects upon advance payment of compensation commensurate to the value of the property. Proclamation No.455/2005 provides that the justification to evict people from their home or land for public purposes include among other things, the government's needs to use land for public services, land redevelopment for the construction of dwelling houses for increasing urban dwellers, infrastructure, investment as well as preparation and provision of land for development works in rural areas. Further, the Land Lease Holding Proclamation stipulates that the rapid economic growth registered in the country has necessitated continuously and increasingly the demand for urban adjacent land.⁵⁶ At this juncture, what exactly constitutes public purposes that sufficiently justify eviction is worth discussing.

To begin with, the Constitution does not define what constitutes "public purpose". It is the subsequent proclamations which have defined the concept of public purpose and public interests interchangeably. Proclamation No.272/2002 before being replaced by proclamation No.721/2011 used the term "Public Interest" and define it as what an appropriate body determines as a public interest in order to continuously ensure the direct or indirect usability of land by peoples, and to

⁵⁶ Urban Land Lease Holding Proclamation No 721/2011, Federal Negarit Gazeta, 18th Year No. 4 Addis Ababa 28th November,(2011), herein after Proclamation No.721/2011.

progressively enhance urban development.⁵⁷ Similarly, the recent legislation, Proclamation No.711/2011, defines public interest to mean the use of land for public purposes defined as such by the decision of the appropriate body in conformity with urban plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.⁵⁸

From the definition given by the above proclamations, one can pinpoint several elements of the definitions which have considerable nexus with human rights. First, public interest has been defined in circular narrative. The Proclamations fall short of defining what precisely constitute public purposes developments that may be a ground for possible limitation on human rights. Second, the determination of what constitutes public purpose is rather left to the discretion of the ‘appropriate body’. And the appropriate body is defined as “a body of a region or a city administration vested with the power to administer”.⁵⁹ Apparently, the only organs that have final say in determining public purpose projects including the condominium house constructions are only the administrative bodies. For this reason, it entirely excludes people from being decision makers on what constitute public purpose. The law authorizes the administration with vested power to initiate and administer development projects having public purposes that could cause eviction. Third, the public purpose driven development project may benefit the people at large merely indirectly as direct return is not a mandatory criterion. It means that eviction for public purposes development in Ethiopia need not necessarily give direct benefits to

⁵⁷Article 2(7) of Proclamation no 272/2002, Re-enactment of Urban Land Lease Holding Proclamation No. 272/2002, Federal Negarit Gazeta, 8th Year No 19, 14th May 2002(hereinafter Proclamation No.272/2002).

⁵⁸ Article 2(7) of Proclamation no. 721/2011; see also article 2(5) of Proclamation No. 455/2005.

⁵⁹ *Ibid*, Article 2(8).

public at large and the evictees. To put simply, straight public benefit from the said public purpose is not necessarily required in Ethiopia to evict people from their home or land. Fourth, the law only demands the compatibility of public purposes led developments projects with cities' master plan or development plan of the city, without setting observance of human rights standards as criterion.

The noteworthy issue here is that the Constitution stipulates that land is a common property of the people and the state.⁶⁰ Under article 43(2), the Constitution also set forth that nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community. Furthermore, the state is duty bound at all times to promote the participation of the people in the formulation of national development policies and programmes.⁶¹ The legislation governing expropriation in Ethiopia follows the old discretionary power of the government embodied in the classical justifications of the public purposes. If farmers using the land are not allowed to jointly determine the content of public purpose, this visibly contradicts with the constitution, human rights based approach to development and with system of limitation of rights under human rights law.⁶² In practice, officials from government side argue that the evictions

⁶⁰ Article 40(3) of the Constitution.

⁶¹ Article 89(6) of the Constitution.

⁶² UN High Commissioner on Human Rights, Basic Principles and Guidelines on Development-based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18), para. 5-6; See also United Nations Comprehensive Guidelines on Development-Based Displacement, preamble, para.5 which says that "Reaffirming that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from."; CESCR, General Comment No.7, para. 13. The committee explained that the time frame within which the state should consult with concerned people about eviction for public purposes. It states that "States parties shall ensure, prior to carrying out any

carried out so far on Addis Ababa City surrounding farm lands were voluntary and was aimed to benefit the public.⁶³ The government alleges that social services, housing, city beautification to the ‘world class city’, and cleaning and leasing land to investors ensure welfare of larger society than benefits the evictee would have got if they were not evicted.

Contrary to the Ethiopian government position on public purposes developments, the CESCR, under its General Comment No.7, contends that the idea that states shall develop at any cost by any means is unacceptable.⁶⁴ The Committee, in its concluding observation on Ethiopia, urged the country to take appropriate measure to improve the involuntarily relocation prevailing and which entail forced eviction in the country.⁶⁵ In Ethiopia, all laws reserved the power to determine what constitute public purposes solely to ‘appropriate’ government body.⁶⁶ Whereas, in rights friendly development, in deciding what amounts public purpose, public participation at initial step is not only central to addressing poverty, vulnerability and inequity, but also plays pivotal role to accelerate the attainment of development goals of the country.⁶⁷

Data collected regarding the evictions carried out at Sammit area reveals that widespread evictions were done on farm lands both for the expansion of city and to accommodate the overcrowded masses of the

evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders”.

⁶³ For example in reporting to the UN Human Rights Council UPR, the Ethiopian government argued that “any displacement in rural or urban area is carried out for the benefits of the evictee themselves in connection with public purposes and as such no violations of human rights occurred so far in connection with eviction for public purposes.”

⁶⁴ CESCR, General Comment No. 7, para. 19.

⁶⁵ CESCR, Concluding Observation on the Ethiopian 4th periodic Report, pp.1-5.

⁶⁶ Vienna Declaration and Plan of Action, para. 10.

⁶⁷ *Supra* note.63, para 2-3.

older city dwellers by providing condominium houses built on the farm land.⁶⁸ The government justifies the eviction by saying that “the land is needed to build condominium houses which solve acute housing problems in the city to benefit the large number of the society than those scattered few farmers who cultivate lands not in mechanized way”.⁶⁹ According to the city government of Addis Ababa, houses development enterprise needed the land for the integrated housing project. For them, since Addis Ababa is expanding from time to time, expansion in infrastructure facilities and more condominiums as a matter of the town’s master plan is required for public purposes. Against the government officials’ justification, farmer evictees from the Sammit condominium site explicate the tragedy of the eviction as unjustifiable project. Informants from the site explained as follows:

*All of the lands we were living on, farming and do everything have been taken away from us. We had totally lost our means of livelihood; we did not have other occupation or business other than farming land. Alternative farm land was not given. We lost our neighbors due to the fact that the place is now occupied with new settlers who came from town that we do not know speaking their language. Our occupation has been changed from land cultivators to home guard of the new comers on the same land we were born on.*⁷⁰

From the above, what the government claims as public purposes-condominium house projects, which caused eviction of farmers from

⁶⁸ Interview with Mr. Adem Nuri; Key informant interview, Compensation and Rehabilitation Department Head at Addis Ababa City Government, on December 21, 2014.

⁶⁹ Interview with Mr., Mulunch Horodofa, President, Addis Ababa City Government Urban Land Clearing and Compensation Cases Appellate Tribunal, on November 17, 2014; see also interview with Alemayh Fissiha, Gulale sub-city *Woreda* 2 Construction and Housing Development Office Head, on 17 November 2015.

⁷⁰ FGD with panels of former farmers currently serving as security guard of the gates of the condominium houses of the Sammit site.

their land, are challenged on the ground that the program totally ignores or compromises another public purpose- the significant number of farmers' right to food, social tie, cultural sites, means of sustainable livelihood, using their own language in administering themselves at lower level government structure. Apart from lack of consultation with the affected communities, there were problems of compensation. Compensation has been paid only for those who could be able to show their legal possession. However, the compensation paid was not commensurate to the loss of sustainable livelihood of the evictees.

In the words of one informant, "the evictions not only destroy our houses and crops on our land; but also mainly devastated our life, our livelihood, our neighbor, our community, our family".⁷¹ The eviction destroys such social bondages in the name of the condominium house project expansion plan from which the "farmers sprinkled as a salt". As a result people lost their farm and grassing land, religious site and other customary facilities.

There has been dissenting ideas not only on the necessity and nature of the public purposes projects that led to eviction but also questioning the existence of legitimate aim alleging that the concept of "public purposes" in Ethiopia, particularly, in Addis Ababa city has been used by the government as red herring. For example, the former top senior official of the current government argues that all rounded evictions ongoing in Addis Ababa City and expansion to the surrounding village have hidden political agendas behind than meeting imperatives public interest needs.⁷² Ermiyas argues that the newly emerging land redevelopment plan

⁷¹ *Ibid.*

⁷² Ermiyas Leggase, Yemeles "Tirufatoch": Balebet Alba Ketema, (Netsenat Publishing Agency, 2014), pp. 41-57, available at www.npabooks.com accessed on 5 August 2014.

appears as an agenda of the ruling government as the vacant lands in the city had been unwisely and illegally exploited.⁷³

Another problem is that there is no system of eviction impact assessment before eviction. There is also no mechanism to challenge the legality of planned evictions from taking place once decided by the government. Hence, the public purpose based argument by the government to justify the evictions contradicts what is required under international and domestic human rights laws. The 'public purposes' used in Ethiopia in general or Addis Ababa City surrounding eviction in particular as justifications of evictions have been proven to be not participatory, insufficient, remote from either directly or indirectly benefitting the public and highly contested by people at large more often than not by victims of eviction.

Even justified evictions may only be carried out as a last resort, after all other feasible alternatives to eviction have been explored and appropriate procedural protections are in place. This has made procedural guarantees and justifications of eviction tightly interlinked. Procedural principles that need to be met to comply with international standards include consultation and participation of affected people and communities, adequate notification, effective administrative and legal recourse, prohibition of actions resulting in homelessness, prohibition of actions resulting in deterioration of housing and living conditions, and provision of adequate substitute land and/or adequate compensation before evictions are carried out. As provided by the CESCRR jurisprudence and basic principles and guidelines on development based evictions and displacement, States are required to take into account plentiful factors before putting into operation any eviction measure.

⁷³ *Ibid.*

Eviction procedure begins with notice of the eviction. The new Urban Land Lease Holding Proclamation provides that where land, including farmer's landholding, is decided to be cleared by the appropriate body having the power to evict, the possessor of the land shall be served with a written clearing order stating the time the land has to be vacated, and the amount of compensation to be paid.⁷⁴ In the same way, article 3 of Proclamation No.455/2005 stipulates the procedure of notification of expropriation order stating that the appropriate body shall notify the landholder in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid. However, this legislation fails to include the requirements of consultation with affected people in order to carry out evictions for public interest in a way compatible with the Constitution. It follows that the legislation regulating eviction in Ethiopia which allow eviction for public purpose, but denies the people from being consulted are incompatible with the FDRE Constitution and human rights based approach to development.

According to article 28 (1) of Proclamation No. 721/2011, a person served with eviction notice or any other person alleging infringement of his/her right or benefit as a result of the order may submit his grievance to the appropriate body, together with evidences substantiating his cause, within 15 working days after receipt of the order. The legislation allows appeal against the decisions of the appropriate body that can be lodged to the Appellate Tribunal within 30 days from receipt of the decision from administration.⁷⁵ Though the land lease holding legislation says that the Tribunal shall be free of any influence except the law, the same law put the tribunal accountable to the City administration that decides on

⁷⁴ Article 27(1) of the proclamation No.721/2011.

⁷⁵ By virtue of Article 30 of Proclamation No.721/2011, appellate tribunal known as Urban Land Clearing and Compensation Cases Appellate Tribunals are established by regions and city administrations.

the eviction.⁷⁶ The decision of the Tribunal on issues of law and facts including claims for substitute land is final and not appealable.⁷⁷

Appeal to regular court is allowed only as regards the issues of amount of compensation.⁷⁸ There is no review of judgment for the victim on administrative tribunal's decision, by an independent court to get remedy on the issues of laws and facts. Thus, neither interim measures nor procedural guarantee are available in Ethiopia to protect people from unrecoverable human costs of unjustifiable eviction. This denial of appeal to the regular court except on issues of compensation is completely against the right to fair trial as provided under article 14 of the ICCPR which provides that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Aside from right to appeal to regular courts, the CESCPR under its general Comment No. 7 has noted that the provision of legal aid is one of the procedural guarantees that the State should fulfill in case eviction is unavoidable. Here, even if the eviction is justified for the existence of legitimate aim- public purposes, the State's failure to provide legal aid and to the worst deprivation of the right to fair trial by independent, competent and impartial tribunal is what makes the eviction process incompatible with human rights standards.

Interviews conducted with evicted informants indicate that they learnt about the fact that they should leave the sites from the officials of the sub-city, *Woreda* and *Kebeles* incidentally.⁷⁹ The informants described that the manner in which information reached them had problem. They said that the news about their eviction suddenly came to their attention. As a result the meeting of the evictee with the officials had no role than

⁷⁶ Article 30(4) of Proclamation No. 721/2011.

⁷⁷ Article 28 of the Proclamation No.721/11.

⁷⁸ Article 29(3) of Proclamation No. 721/2011.

⁷⁹ FGD with Sammit with farmers evicted from Sammit area, November 23, 2014.

convincing the public to leave the place and if not the government uses bull dozers to clear the land for what they deem serve public purposes. Even that “Pseudo Consultation” does not include all people who were evicted from the site. This is mainly because, the government only considers the farmers who could show land use rights certificate and those who have ownership rights of house or use right to land. Informal settlers who rented the farm land from the private individuals who have land use rights were out of the scope of the officials to consult with them. Thus, they were alienated from the discussion about evictions that affect and concern them. In all eviction sites, the majority of the evictees are informal settler farmers who cannot prove the fact that they acquired the land legally. In practice, the government organizes meetings with evictees, but its sole purpose is to notify the communities the unavoidable eviction, rather than consulting them.

On the issue of adequacy of the notice, the official asserts that they convene a number of meetings with concerned people. Information was also dispatched through magazines, news papers and brochures that have easily been available around the eviction area. Nevertheless, the evictees assert that they were unable to speak with the officials as those who give suggestion and ask questions were prepared by the government to speak and play an exemplary role in showing of the total acceptance of the planned eviction.⁸⁰ From the Labu eviction sites, one informant explained that:

Though I was raising my hand to have my say during the meetings that we had with officials, they gave me no chance. Only few individuals whose views conform to the position of the administrative

⁸⁰ Interview with Tesfaye Kiltu, Former Farmers and Committee Chair of the former Kebele 28 under Yeka sub-city from Sammit Eviction sites, 20 December 2014; Interview with student Yonas Kumara, from Labu Eviction area, on 28 November, 2013; see also Interview with Awal Reda, from Tulu Dimtu eviction sites, on 23 September 2014.

authorities got chances to speak while the majority eager to unveil their contentions. If in rare case chances had been given to the genuine participant who challenges the eviction, the official would tag them as anti-development.⁸¹

From this, one can construe that public meetings conducted with the affected people were always arranged with the aim of convincing the evictee, not to hear their voices and avoid the planned eviction if they opposed. On the other hand, the authorities manipulate the meetings by providing orientation to selected individuals and dispatching them to join the discussion forums to speak in favor of the authorities who pronounced the eviction orders. Thus, there is no genuine consultation with people as all meetings were held under strong influence of the authorities.

Though the legal regime governing eviction in Ethiopia stipulates mandatory written notice, in all eviction sites of farm land, no written notice was given to the farmers. This oral notice of eviction contradicts with the requirement under the General Comment 7 of CESCR and domestic laws. Residents are given up to ninety days notice to remove their effects and demolitions are then carried out. These procedures are not being consistently followed to all farmer evictees. Thus, in a very clear transgression of article 4(1) of Proclamation No 455/2005 which provides for the handing of a written notice to a person whose land is about to be expropriated, the administrators evicted many farmers with mere oral orders.

In relation to evictions carried on farmers' lands, a more ad hoc approach of notice was followed.⁸² For instance, farmers complain that

⁸¹ *Ibid.*

⁸² Interview with Ture Bedhadha, Former farmer from Sammit eviction sites, 24 September 2014; Interview with Rettaa Tadela, Former farmer from Sammit eviction

the compensation was not paid to them in advance before demolitions of houses and destruction of their farm land. The ancient buried dead bodies uncovered during the excavating works for the condominium houses were neither reburied nor compensated for the same as no one was there to claim. One informant expressed it as the worst brutality of the 'public purpose' led project by the government in stating: "the eviction enforcing authority disregards the law and operates in a manner that disregarded human dignity by digging our ancestor's burial-ground and putting the remains in unknown place".⁸³ Once the appropriate authority decides that the land is needed to build condominium house, even burial ground are not left untouched. According to Regulation No.135/2007 even burial grounds can be expropriated on public purpose ground up on payment of compensation to cover the cost of rebury of the remnants.⁸⁴ The Ethiopian eviction related laws set forth standards below the international human rights laws. They deny the consent of the people affected due to the public purpose project before the government passes decision that cause eviction; nor do they allow substitute allowance for livelihood lost or compensation for non-economic values of the farmers' attached to the land. To the worst, the laws do not provide the human rights and social impact assessment as precondition to conducting eviction by the authority. Furthermore, the law denies fair trial rights by denying victims the right to have their case reviewed by regular courts.

sites, 24 September 2014; Interview with Girma Leggasie, Former farmer from Sammit eviction sites, 24 September 2014.

⁸³Interview with Alemu Ergu, Former farmer from Sammit eviction sites, 24 September 2014; Interview with Getu Rorrissa, Former farmer from Sammit eviction sites, 24 September 2014.

⁸⁴ *Ibid.*

4.2 The Adverse Impacts of Eviction on Human Rights of Farmers

The absence of human rights mainstreaming in eviction for public purposes make the eviction unjustified and thereby constitute gross violations of a ranges of human rights. The CESCR under its General Comment No. 7 made clear that evictions cannot be justified when it renders individuals homeless, put people to deplorable condition and/or cause violation of other human rights. The most important human rights applicable to evictions, which this article aims to examine , are: the right to livelihood, the right to food, the right to life, the right to adequate housing, and the right to use once own language. These rights are derived from the ICCPR and ICESCR both of which are ratified by Ethiopia.

4.2.1 *The Impacts of Eviction on Livelihood*

Basically, livelihood is defined as a set of activities, involving securing water, food, fodder, medicine, shelter, clothing and the capacity to acquire the above necessities working either individually or as a group by using endowments (both human and material) for meeting the requirements of the self and his/her household on a sustainable basis with dignity.⁸⁵ From this, livelihood is not a right *per se*, rather activities usually carried out repeatedly to make use of an adequate standard of living as provided in article 11(1) of ICESCR. Nevertheless, one cannot entirely address the right to adequate standard of living independently of livelihood.

The right to an adequate standard of living imposes duty on states to refrain from interfering with the right and in case where limiting the right is needed for pressing public purpose, states are still duty bound to protect and fulfill the rights from being violated unjustly. In eviction for

⁸⁵*Oxford Dictionary of English*. Oxford University Press, 2010. Oxford Reference Online. Oxford University Press. Malmö hogskola. Accessed on 23 November 2014.

public purpose, states parties to ICESCR are obliged to make sure that all the individuals have the right to adequate compensation for any property including the right to use land which inexorably be affected during eviction. Alternative accommodation, known as compensation, under the Ethiopian legal system is payable in cash for building, crops, ripe and unripe perennial crops, for relocation of property, for protected grasses, for mining license, and for burial-ground.⁸⁶ And Compensation is defined, under article 2(1) of Proclamation No. 455/2005, as “payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding”.

In practice, there is no in kind allocated compensation on all farm land evictions surrounding Addis Ababa City.⁸⁷ The basis and amount of compensation is determined on property situated on the land and for permanent improvements the evictee made to such land. Beyond protection that has been given under the Proclamation No. 455/2005, Regulation No.135/2007 appears to cover compensation aimed at assisting the evictee to restore their livelihoods in post-eviction situation. It entitles the evictee to be provided with a plot of land capable of serving similar purposes; either for residential or for growing crops. Based on this, it may be argued that the Ethiopian eviction legal regime give protection for livelihood of evictee’s future life. However, the law is framed in lenient and permissive norm that the government would simply indulge in giving compensation for the crops ten times the price of the average yield of the crops obtained from the land. This is because the law was not framed in mandatory legal terms that compel the

⁸⁶Article 11-13 of Regulation No.135/2007, Payment of Compensation for Property Situated on Landholdings Expropriated for Public Purposes Council of Ministers Regulation No. 135/2007 (hereinafter Regulation No.135/2007).

⁸⁷ Interview with Mr. Adam Nuri, Key informant interview, Compensation and Rehabilitation Department Head at Addis Ababa City Government, on December 21, 2014.

government to offer substitute land serving the evictee similar purpose as before the materialization of the eviction.

In practice, no rehabilitation schemes are devised by the government to sustain livelihood of the evicted farmers. Though the Ethiopian legal system provides compensation for house to be demolished or replacement land for residential house, and replacement farm in rural area, the law does not provide for compensation for terminated incomes as a result of eviction for public purposes. In addition to lack of good governance which the government openly admits, the researcher learns that the government's justifications for the absence of protection schemes to the livelihood of the evictees for the sake of public purposes are at least three.⁸⁸ First, the fact that the country has remained undeveloped for a long time and owing to lack of resources, it become too burdensome to the government to include the future livelihood in to its compensation package. Second, the government depends on the political economy or economic system led by developmental state ideology that tries to maximize economic growth which requires all citizens to pay the price for development by sacrificing some benefits. According to the government, since the country has entered into the tracks of all rounded development, the absence of protection for livelihood of the evictee is the cost to be paid by citizens to foster development that can benefit the generation to come. Thirdly, although there is an endeavor to establish departments with role and functions of rehabilitating the evictees, there is no any institution which is legally mandated to carry out rehabilitation tasks whenever eviction takes place.

However, in all human rights conventions which Ethiopia has ratified, the Ethiopian government as States party has duty to realize the

⁸⁸ Interview with Mr. Adam Nuri, Key informant interview, Compensation and Rehabilitation Department Head at Addis Ababa City Government, on December 21, 2014.

implementation of rights protected under the respective conventions. Invoking provisions of the domestic law including the national Constitution to justify a failure to perform or give effect to obligations under the human rights treaty is prohibited.⁸⁹ Once they ratify human rights treaties, States cannot justify their disobedience by raising the system of government or their political economic policies. The eviction made the farmers homeless and landless, left them starved by changing their occupation from land cultivators to laborer of the new comers. This outweighs the potential gains from the planned public purpose driven development projects. Since the government compensates them with the intention that the farmer evictees will familiarize themselves with urban way of life after certain years, there is no any programme designed to ensure the sustainable life of the evictees.

According to the CESCR, States are required to immediately fulfill minimum core obligations of the rights that are essential for life. It is not defensible on the part of the government, on the one hand, to recognize the right to life as inalienable and inviolable right in its laws; but, to justify the deprivation of the right to livelihood based on scarcity of resources and the need to fast track development, on the other. Since the FDRE Constitution recognizes undeniable and inviolable right to life, and the right to life can be realized, among others, by realizing the right to food, it could be argued that the right to livelihood is inviolable. From this assertion, one can safely conclude that both the eviction laws and practices do not address the concerns of the farmer's whose livelihood depends on land they occupied. Regarding their right to livelihood, one informant and former resident of Sammit vicinity describes it like this:

I was born and raised on this land. Despite the fact that the place is adjacent to the capital city of the country I have never gone to school to

⁸⁹ HRC, General Comment No.31, Para. 4; See also article 27 of the Vienna Convention on the Law of Treaties.

read and write. What I know is only plowing land throughout my life. But now I do not have a single parcel of land. The government promised us to give compensation which is adequate for us and left over for our children. Nevertheless, the cash we took were finished within three months. The government bought us our land with 3.5 birr/per square meter and resold the land by building condo to the city dwellers by millions of birr.⁹⁰

Obviously, the Ethiopian government's endeavor to bring about economic and infrastructure development has to be considered as part and parcel of ensuring the full enjoyments of human rights. As discussed above, expropriating land evicting the people living thereon on grounds of public purpose is a practice common the world over and is also recognized in our legal system. What makes an eviction to contravene an array of human rights is evicting people without designing appropriate policy and legal framework which would help the evictee to establish their livelihood. Based on this test, the Ethiopian law and practice has failed to cover livelihood under its compensation scheme for eviction for public purposes and this clearly violates manifold human rights. It disregards one of essential conditions imposed by both sustainable development and human rights: prohibiting trade off decision in any rights respecting development for the sake of fulfilling other rights. Above all, the government has not designed a policy of urbanization and development guaranteeing alternative livelihoods for those farmers who have been evicted from their land.

4.2.2 Right to Food

The right to food is one of the fundamental human rights comprehensively recognized under article 25 of UDHR and article 11 (1) of ICESCR of which Ethiopia is party. The human right to adequate

⁹⁰ Supra note 81.

food is of critical significance for the satisfaction of all rights that demands more immediate and urgent steps to ensure the essential right to freedom from hunger and malnutrition.⁹¹ For example, when people are not able to feed themselves and face the risk of death by starvation, malnutrition or resulting illnesses, even their right to life would be at stake. The CESCR asserted that since the right to food has inseparable link to intrinsic dignity of the human person, it requires adopting appropriate economic, environmental and social policies oriented towards to the eradication of poverty.⁹²

The CESCR identified lack of access to available food as the roots of the problem of hunger and malnutrition rather than lack of food.⁹³ In the Committee's view, availability of food is one of the normative content of the right to adequate and sustainable food which is intrinsically relevant to understand the adverse impact of eviction on the right to food. Availability has been referred as the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.⁹⁴

Accordingly, the primary obligation of States corresponding to the right to food is not to provide food for every person; it is to respect the space available to everyone who is able to produce their own food by own means or to obtain it through exchange.⁹⁵ Dispossession of the farm land put off the individuals from taking care of their own food needs by exercising their land use rights. From this, eviction is one of the root

⁹¹ Article 11(2) of ICESCR; see also the CESCR, General Comment No.12, para.1.

⁹² *Ibid.* CESCR, General Comment No.12.

⁹³ *Id.*, para.5.

⁹⁴ *Ibid.*, para.12

⁹⁵ Allan Rosas, "The Right to Development in Economic Social and Cultural Rights", in A. Edie, et al, (ed.), Kluwer Law International, Netherlands, 2nd ed., (2001), p.135.

causes for the violations of right to food.⁹⁶ Sometimes, the State's contribution to evict the farmer to promote what the dominant group considers to be overarching national goals, i.e. constructions of condominium houses on farm land which destroy the established livelihood of farmers, have been best described as "development racism".⁹⁷

The FDRE Constitution States that "Ethiopian peasants have the right to obtain land and the protection against eviction from their possession."⁹⁸ Land Holdings for Public Purposes and Payment of Compensation legislation recognizes that where an urban administration decides to expropriate a landholding, it shall notify the landholder, in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid.⁹⁹ The proclamation further recognizes that a rural landholder whose landholding has been permanently expropriated shall, in addition to the compensation payable under article 7, be paid displacement compensation which shall be equivalent to ten times the average annual income obtained during the five years preceding the expropriation of the land.¹⁰⁰ Regardless of whether the land used to farm land or not, the new urban land legislation defined urban land to means land located within an administrative boundary of an urban center recognized by the urban plan.¹⁰¹

In practice, both the government officials and the affected farmers in the study site have confirmed that the evictees from the Sammit, Tulu

⁹⁶ *Ibid.*

⁹⁷ *Id.*, p.143.

⁹⁸ Article 40(4) of the FDRE Constitution.

⁹⁹ Article 4(1) of the Proclamation No 455/2005, A Proclamation to Provide for the Expropriation of Land Holdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005.

¹⁰⁰ *Ibid.*, Article 8(1) of Proclamation No. 455/2005.

¹⁰¹ Article 2(2) & (8) of Proclamation No.721/2011.

Dimtu and Labu sites farm land were not given a substitute plot of farm land.¹⁰² For one thing the law is easygoing saying that in case it is impossible to provide replacement land with respect to land used for growing crops, compensation equally to 10 times the price of the average yields of crops obtained from the land shall be paid. The government justifies that since the land is urban land, irrespective of how the farmers use it; the government will only compensate them in cash.¹⁰³ Scholars challenge the justification for fixing this amount an unidentified and baseless.¹⁰⁴ The fixed ten years annual income, based on the average annual income of the previous five years, has no economic or legal basis, and as a result, remains a source of discontent, complaint and frustration for most of the farmers who lost their holdings. This, in cash only compensation given to farmers, who only know cultivating land, does not take in to account the sustainable right to food of these farmers. The concept of rehabilitation for the durable livelihood of persons affected has recently led to the establishment of Compensation and Rehabilitation Department under Addis Ababa City Government Land Development and Management Bureau.¹⁰⁵ However, for one thing, the right to get rehabilitated in case of eviction for public purpose has no legal protection under the previous eviction governing legislation. On other

¹⁰² Interview with Mr. Israel Tesfaye, Land Development and Management Bureau Head, conducted on November 17, 2014; and Interview with Tesaye Qilxu as cited above, Former farmers and committee of the *Kebele* farmers association from Sammit eviction sites, on 20 December, 2014.

¹⁰³ Article 16(2) of Regulation No.135/2007

¹⁰⁴ Daniel Weldegebriel, Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation, <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=E20DAA6CE99431E36F557655004E7990?doi=10.1.1.527.127&rep=rep1&type=pdf>, (accessed January 15, 2018).

¹⁰⁵ Supra note 89. From the interview conducted with Mr. Adem, the researcher learned that the office delegated to carry out rehabilitation has no mandate to do that by the Addis Ababa City Charter. See also article 19 of the Addis Ababa City Cabinet amended Directive 19/2006 (ye kasa meriya dembi19) on Compensation and Replacement land.

thing, the institution meant to be established has no legal mandate to intrepidly carry out the rehabilitation function under the Addis Ababa City Administration.

The communities of the Sammit, Labu and Tule Dimtu sites were farmers and their families whose entire livelihood depended on the use of their land. The areas were some of the rural *Woredas* under the Addis Ababa City Administration.¹⁰⁶ Based on the City's master plan the decision to transform this rural area into an urban has demanded the eviction of farmers from their land to give way to build condominium houses.¹⁰⁷ For some officials the urban expansion to the nearby farmers land is an inevitable natural incident that happens everywhere.¹⁰⁸ In such case since farmers will no longer remain farmers, the government should give them compensation that will enable them to be accustomed to urban way of life.

According to key informant interview from the city Administration, an initiation has been taken by Addis Ababa city Government to implement the rehabilitation scheme and the Compensation and Rehabilitation Department under Land Development and Management Office has been assigned to carry out this task.¹⁰⁹ It was planned to train the farmer evictees to enable them to keep business of urban farming and animal husbandry or to engage them in construction industry as daily laborers.

¹⁰⁶ Interview with official from the Ministry of Urban Land and Construction, Addunga Saboqa (Land Provision, Marketing and Tenure administration, senior expert, interview conducted on 22, November 2014; see also supra note 23, interview with Adem, key informant interviews from Addis Ababa City Government.

¹⁰⁷ See for example article 2(7) of Proclamation No. 721/2011, and article 2(5) of Proclamation No. 455/2007. Under both legislation the appropriate body will determine public interest or public purposes taking into account the urban plan in order to ensure the wellbeing of the people to get benefit directly or indirectly from the use of the land and to consolidate sustainable socio- economic development.

¹⁰⁸ See interview conducted with Mr Israel Tesfaye above.

¹⁰⁹ Supra note 89, interview conducted with Mr. Adem above.

In practice there is a gap between the rhetoric and the reality in that no evictee has been trained so far to feed himself. What is going on is that the Department assigned to carry out the tasks of rehabilitation of the evictees has signed memorandum of understanding with financial institutions and with TVETs to continually train the evictees. Nevertheless, the official admitted that there is no any post-eviction evidence that shows that the intended training has been given.

The loss of access to the farm land as a consequence of clearing land for the construction of the condominium house has resulted in less space to cultivate crops and graze cattle by the evictees. Farmers are increasingly forced to change their means of livelihood from cultivating land to other employment activity in search of their daily food. Some of them have become security guards with very low-level pay and as cheap daily laborers. As a result their food securities have been seriously diminished. Former farmer residents of Sammit, Labu and Tulu Dimtu farm land eviction sites explained that:

If you are educated or trained, though the place is changed to town, there are more options to change work as means of your life; in the rural areas, land is everything! Throughout all our ages, our lives were solely dependent on cultivating land. So if land is taken away, our entire livelihood, food, social and family life is disrupted. That is what happened to us.¹¹⁰

Similarly, one *Kebele* level committee member from Sammit eviction site explained what he has observed as: “By demolishing hundreds of houses by bulldozer, crops and livelihoods were destroyed and thousands of farmers were rendered homeless. To the worst, subsequent failure to

¹¹⁰ Supra Note.81.

provide an effective remedy has only compounded victims' misery pushing them deeper into poverty."¹¹¹

Noticeably, the right to food of the significant number of farmers evicted from the land should equally be treated in the same footing as the right to adequate housing of city dwellers. From the farmers' point of view, if their land is needed for public purpose, the administration's refusal to give them a replacement plot of land is unacceptable. They argue that if right to housing of city dwellers constitutes public purpose, there is no reason why the right to food of significant number of farmers should not be treated likewise. Hence, the government and the evictee farmers' argument are based on competing human rights of right to adequate housing and right to adequate food, respectively.

From the normative human rights perspective, the government by virtue of articles 2 and 11(1) of the ICESCR has an obligation to realize both rights. In the case of eviction sites mentioned above, from the views obtained from the government official, the government apparently rushed to weigh the balance between right to food and right to housing and gave priority to right to adequate housing to satisfy the ever increasing demand for housing by urban dwellers. From both the human rights laws and UN human rights based development guidelines perspective, the State party which is obliged to realize right to adequate housing of the city dwellers should at the same time give attention to the right to food of the farmers who would be evicted to give way to the condominium house construction on the land. Trading off the right to food of the farmers for the sake of the right to housing of the city dwellers also contravenes the sustainable development goals which Ethiopia signed with the intention of giving priority to halt extreme hunger prior to shelter.

¹¹¹ See Interview conducted with Tesaye Qilxu as cited above.

As discussed in section two of this paper, when two human rights seem to conflict each other or when limitations of one person's rights are necessary to allow others to exercise their rights, international human rights law provides the harmonizing tests. Evicting farmers from their cultivable land which affects their right to food are undoubtedly interferences to the right to food. In principle, such eviction is prohibited. The CESCR concluded that forced evictions are *prima facie* incompatible with the requirements of the ICESCR.¹¹² Human rights stipulations do not dictate that individuals cannot be evicted from their home or land use under any circumstances.¹¹³ Where sufficient justifications exist for their eviction, the law enforcer shall ensure the protection of the immediate human needs and other rights of persons to be affected by the eviction. Evictions carried out in accordance with the law and in conformity with the provisions of the international human rights Covenants are not prohibited and would not be considered as forced eviction.¹¹⁴ The balancing test standards typically used to analyze government interferences on a right for the sake of fulfilling other rights considered as public purposes are: legality, legitimate purposes and proportionality.

The Ethiopian eviction related-laws hardly fulfill the principles of legality test in balancing competing interests. For one thing, the laws are not accessible to evictees. On top of this there is no legal aid provision by the government to evictees. The laws do not also give greater care to the prevention of eviction as it allows the blank check to the government to decide as to what constitutes public purposes based on subjective criteria. In most cases the law gives less protection in prevention of arbitrary eviction for public purposes than the standards set forth under

¹¹² CESCR, General Comment No 7(1999), para.1.

¹¹³ *Id.*, para.5.

¹¹⁴ *Id.*, para.4.

the international human rights laws which has negative impact on right to food.

The government's actions of giving priority to the right to adequate housing over the right to food, despite the fact that the country has been the world's largest recipient of food aid, casts a doubt on the existence of legitimate interest.¹¹⁵ Based on mounting evidence, it seems that food is a pressing public interest when compared to the right to adequate housing.¹¹⁶ Thus, the action of the government gives the impression that it ended up failing to balance the right to food and right to housing. In proportionality test, the principle is that limitation to the right to food must be "least intrusive" to achieve the desired goal (the right to adequate housing) while upholding the rights under limitation.¹¹⁷ But here the government made tradeoff between the right to food and the right to housing. What makes the government's action out of touch the condition of the persons affected by the eviction is the absence of a means to address the future livelihood needs of the evictees. Thus, the State violates the right to food of the farmers by disproportionately interfering with the farmers' existing access to food, without providing them with some alternative means to access their food.

Here, human rights law does not ban eviction of people from cultivable land demanded to build house on it; rather, it prohibits the eviction of

¹¹⁵ Food and Agriculture Organization of the United Nations website, <http://www.fao.org/hunger/en>, (accessed September 23, 2014); Organization for Economic Co-Operation and Development website, <http://stats.oecd.org>, (accessed September 23, 2014); see also Oakland Institute, "Understanding Land Deals in Africa: Ethiopia," 2011, pp. 9–10.

¹¹⁶ Supra Note. 81, interviews with farmers evicted from Sammit, Labu and Tulu Dimtu Condominium housing sites had told to the researcher that priority should be given to right to food over the right to housing. One of the evictee argued to the extent that "if you eat, you may stay the full night hiking on the tree and thereby one can escape from being eaten by animals; whereas, one cannot escape from hunger unless food is provided."

¹¹⁷ HRC, General Comment no 27, para 14.

farmers from their farm land without substitute farm land or without enabling them to get sustainable means of livelihood.

4.2.3 The Impacts of Eviction on the Rights Embedded in Land Use Right: Right to Life, Housing, Language and Religious Rights

The right to life is fundamental and supreme of all rights.¹¹⁸ Article 6(1) of the ICCPR recognizes the right to life as the right to everyone for being a human. According to the HRC, the right is prerequisite to other rights for all human rights are fully enjoyed by existing persons. Put differently, if there is no protection to the right to life, there is no point in talking about other rights; the protections would be futile. Conversely, the deprivation of basic necessity for life negatively affects the enjoyment of the right to life. In *SERAC vs. Nigeria case*, the ACHPR held that the State cannot make prioritization between two or more human rights which are considered as fundamental for life.¹¹⁹ The ACHPR systematically inferred the right to food from the rights to life. This means when deprivation of food occurs due to the eviction of people from their cultivable land, it affects the right to life of the individuals concerned. Similarly, in *Olga Tellis case*, the Indian Supreme Court has found out that the eviction from land cannot be separately treated from the right to livelihood if the evictees solely rely on the land they occupied for their livelihood.¹²⁰ From the forgoing discussion it can be concluded that while the realization of right to food is highly depend on the farmers land use rights; right to life, in turn, is intrinsically attached to the realization of right to food. To be more specific, the protection to the right to life requires the State to take positive measures including

¹¹⁸ HRC, General Comment No 6, para. 1.

¹¹⁹ See *SERAC case* that as part of its rationale, the African Commission on Human and Peoples Right explained that eviction took place due to destruction of land and farms which also caused the violation of right to life.

¹²⁰ *Olga Tellis v Bombay Municipal Corporation and Others*, (AIR (1986), sec.180).

adopting the measures to illuminate malnutrition.¹²¹ The former farmers from the Sammit eviction site explained that:

We know only farming. Farming is our livelihood, but the government took away our land. For us land is everything ranging from material to build homes, cultivating crop for food and as a place to culturally worship our God. We really depend on land for survival. Since we are deprived of our land, we have nothing to eat. The eviction pushed us to a serious hunger. The new comers, the educated, who have occupied our land and supported by the government are living luxurious life on our land at our cost.¹²²

It is proven that such urbanizations can shift the livelihood of the rural people from agriculture to other activities. Farmers complain about insufficiency of compensation and lack of other economic options to make life livable. If there are no alternative provisions of farm land, or alternative means of livelihood than farming, or the evictees do not have the knowhow to manage the money they receive as compensation, their right to livelihood and food would be at jeopardy that ultimately put their right to life under question.

In all eviction sites for the construction of condominium house at Sammit, Tulu Dimtu and Labu, farmers who used to reside on the land established their communal life inhabiting in continuous settlement pattern before the eviction.¹²³ The farmers speak the same language; share the same social organization as well as religious and spiritual values that are strongly attached to their land. After the eviction, the demography of the area has been totally changed to city dwellers who speak other languages and do not share the same socio-economic and

¹²¹ *Ibid*, para.5.

¹²² See FGD with farmers from Sammit, Labu and Tulu Dimtu eviction sites, 12 November, 2014.

¹²³ *Ibid*.

culture of the former community. It should be noted that the non-economic values of the farmers implicit to fundamental human rights are not compensated by the government.

Farmers who have been evicted from their land without alternative farm land would be forced to live in remotest rural areas which in itself constitute violation of their right to freedom of choice of residences. Furthermore, eviction of farmers with a consequence of changing their livelihood from farming to the other urban way of life is a violation of the economic, social and cultural rights under article 41 of the FDRE Constitution which guarantees “every Ethiopian...the right to engage freely in economic activity and to pursue a livelihood of his choice and his or her means of livelihood, occupation and profession”.

4.3 The Disproportionate Impacts of Eviction on Informal Settlers

Though the government has an obligation to ensure and treat all equally, it needs to take in to account the circumstances of vulnerable groups. The non-discrimination provisions of articles 2.2 and 3 of the ICESCR impose an additional obligation upon Governments to ensure that, where evictions do occur, and appropriate measures are taken to ensure that no form of discrimination is committed. For this study, I chose the vulnerable groups in eviction, as aptly identified by the CESCR as informal settlers who were using the land and gaining the land through cultural ways and continued to use it without having documents.

According to the Urban Land Lease Holding Proclamation, once the appropriate body decides that eviction should take place on public purpose grounds, it offers compensation in cash only to the possessor of land who acquired it from government authority. The English version of the article 12(2) of Proclamation No.721/2011 provides that any person displaced due to urban renewal program shall be entitled to a substitute plot of land. However, the “Amharic” version of the same provision put

a precondition that it is only the old possessor of a plot of land who legally acquired the land before the entry of the urban center into the leasehold system or a land provided as compensation in kind to persons evicted from old possession. From this, it is clear that it is only a possessor of land who is able to prove his possession in formal way or produce documentary evidences who will be protected from arbitrary eviction.

In Ethiopia, the law does not provide any protection to informally settling farmers whose land has been subjected to clearance as a result of eviction for condo building. Informal settlers will not be compensated in case the land or houses they used to reside are subjected to clearance for the public purpose. From this one can safely conclude that protection from eviction is not a right of every person in Ethiopia against article 11(1) of ICESCR. It has been misunderstood by government as if the right not to be evicted is the right given only for those who could markedly prove the legal ownership of certain house or legal possession of the land.

The authority has power to clear illegally occupied urban land by serving a written notice of seven working days to the occupant in person without any alternative accommodation. Concerning this, CESCR noted that house demolition as a punitive measure is inconsistent with the norms of the content of the right to adequate housing.¹²⁴ Evaluating the current Ethiopian land lease holding legislation relating to the right to protection from eviction, it appears inconsistent with international human rights laws as the laws clearly permit forced eviction against the unlawful or informal occupier. The law has not defined what amounts to unlawful occupier. But perhaps it is to mean that those informal settlers who cannot prove that they formally acquired the land from authority. This is because in reality numerous farmers acquire farm land from their close

¹²⁴ CESCR, General Comment No. 7, para. 13.

or extended families in informal ways. Despite such practices there is no law that protects informal settlers from arbitrary evictions in Ethiopia. As a result, the government does not consult informal settlers in planning eviction for public purposes. The law has totally ignored them from being considered during eviction for public purposes. Following the law, the Addis Ababa City Government Urban Land Clearing and Compensation Case Appellate Tribunal has not taken in to account the general protection that citizens should get from being homeless.

In Murad vs. Bole Sub-City Land Development, the Addis Ababa City Government Urban Land Clearing and Compensation Case Appellate Tribunal has held that informal settlers have neither the right to be consulted nor alternative accommodation in case of eviction for public purposes.¹²⁵ In its several decisions, the tribunal interpreted the law as to who should be beneficiary of alternative accommodation in case of unavoidable evictions for public purposes under the Ethiopian laws. The tribunal only entertains claims on amount of compensation if and only if the compliant brings documents that show that they were possessor of the land. Informal settlers who cultivate the land in which they acquired from their families and extended kin relatives in informal way without the knowledge of authority have no right to get alternative accommodation both under the law and practice.

Similarly, the jurisprudence of Addis Ababa City Government Urban Land Clearing and Compensation Cases Appellate Tribunal shows that it is only the owner of the house or legal possessor of the land who will be compensated if eviction is ordered.¹²⁶ However, international human

¹²⁵ Murad Zayid v. Bole sub-city Land Development and City Beatification Office. Ababa City Government Urban Land Clearing and Compensation Cases Appellate Tribunal, File No. 261/ 2005, Judgment 9 June 2006.

¹²⁶ Gasit Getahun v. Nifas Silk/Lafo Sub-city, Addis Ababa City Government Urban Land Clearing and Compensation cases Appellate Tribunal, File No. 661/ 2006, Judgment 9 June 2006; see also Yeshe Gebayeh v. Addis Ababa City Kirkos Sub-city Land Development and City Beautification Office, Addis Ababa City Government

rights law which the country should be abided by states that the right not to be evicted does not presuppose ownership of land or possession of land rights. ICESCR recognizes the right of everyone who may be affected as a result of eviction order. Based on article 11(1) of ICESCR, the CESCR expounded that unavoidable eviction for pressing public purpose itself shall not be carried out in making people homeless and the State should be aware of the fact that all citizens of all States have a right to expect their governments to be concerned about their shelter and land needs.¹²⁷

In practice, in the Sammit, Tulu Dimtu and Labu sites, informal settler evictees did not receive any prior information about the fact that their land is needed by the government for public purpose uses. Such hidden eviction unfairly puts the evictees under traumatic suffering on their livelihood, security of tenure, unnecessary expenses of finding expensive rent houses; joblessness and complete dismantling of their other social ties. Due to the gaps of the law and faulty practice of eviction from farm land for condominium house, a significant number people in the eviction area have borne the costs of eviction.

Urban Land Clearing and Compensation Cases Appellate Tribunal, file no. 647/2005, judgment 2 March 2005; Gemechu Sembato vs. Bole Sub-city Land Development and City Beautification Office, Addis Ababa City Government Urban Land Clearing and Compensation cases Appellate Tribunal, file no. 643/2004, judgment 26 October 2005; Darbe Teklawold *et al* (four people) vs. Yeka Sub-city Land Development and City Beautification Office, Addis Ababa City Government Urban Land Clearing and Compensation Cases Appellate Tribunal, File no. 654/2006, judgment 23 December 2006; and Birhanu Aseffa vs. Akaki Kaliti Land Development and City beautification office, Addis Ababa City Government Urban Land Clearing and Compensation Cases Appellate Tribunal, File no. 659/ 2006, judgment 15 April 2006.

¹²⁷ See CESCR, General Comment No. 7 para 13; see also the CESCR concluding observation on Panama (1991) para.3, CESCR Concluding observation on Canada (1992), para.106; and the UN Global Strategy for Shelter to the Year 2005, GA Resolution 43/181, p.13.

5. Conclusion and the Way Forward

The eviction legal regime of Ethiopia and practices from the eviction sites of Addis Ababa City surrounding farms in particular are not fully adherent to both international human rights standards and human rights guaranteed by the FDRE Constitution. Jurisprudences from the UN human rights treaty bodies, UN Human Rights Council, European Court of Human Rights, African Commission on Human and Peoples' Rights, South African Constitutional Court and the Indian Supreme Court confirmed that full enjoyments of the right not to be evicted would only be possible through understanding the interdependence and integration of all human rights. In Addis Ababa City surrounding farm land, the evictions which are said to be carried out for 'public purpose' were not sufficiently justified based on the pressing social needs, remote to benefit the community farmers directly or indirectly, and top-down imposition by the authority excluding the farmers from the center of development.

While the condominium house projects meets the requirement of public purpose with some doubts, the concerned authority is implementing the evictions in a manner that disproportionally limit several human rights and followed flawed procedures that are unfriendly to human rights and human rights-based approaches to development. This study has found out that evictions carried out in clearing farm land to let for building condo houses for City dwellers is one sided view of public purposes and solely imposed by authorities on top-down approach which have brought devastating impact on the farmers life who lived on the land for centuries. While customarily settled tenants have been subjected to arbitrarily evictions; evictees who proved land use rights were entitled to inadequate alternative pecuniary compensation. Due to complex political dynamics and emerging forms of neo-imperialism from within, settlement patterns, social tie, cultural and spiritual attachment of the farmers with their land have never been considered, which rendered them to be marginalized, sprinkled, subjugated and vanished from

controlling their own resources. The waves of eviction breach all forms of human rights including the farmers' right to food, life, housing, livelihood, freedom to choosing sustainable residence and use one's own language. Worst of all, the government has recently evaluated the cause and the effect of the problem related to eviction for public purpose and concluded that the problem was only lack of good governance. To the converse, this article found out that both the process and outcome of eviction was apparently contrary to human rights laws. This research urges policy maker and law makers and the implementing agents to integrate human rights balance test in any public purpose oriented development projects by fairly balancing competing rights and employing bottom-up development approach to ensure participation, and benefits of all stakeholders. It also calls upon all concerned bodies to take interim good administrative measures to rectify the past and current rights violations and to avert the undue effects of planned evictions.

Rivalry between Indigenous *Gada* and State Governance Systems in Borana: Reflections on the Impacts of the Rivalry and the Right of the People to Local Self-Governance

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1. Introduction

In their search for modernity, post- independence African states have been afflicted with an epidemic of constitution-making and unmaking. Since independence, African leaders have been engaged in uncritical adoption and transplantation of one or the other forms of western governance models. They thought that the diverse indigenous African governance systems will soon disappear. Little progress has been made in terms of building sustainable institutions and stable governance. The diverse indigenous African governance systems haven't disappeared as thought earlier. For the lack of progress and the recurring governance crisis with which African political landscape has been characterized for several decades, the blame has been attributed to the diversity of African traditional governance systems. No sufficient evidence has been produced to show that African governance problem is attributable to the existence of diverse indigenous governance systems.¹

Concerning the issue of modernity and the place of tradition, there are two main competing approaches in Africa. The first one strives to bring about modernity through adopting European governance models. The second approach gives favor to African cultural heritage and advocates

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¹ S. Adelman, "Constitutionalism, Pluralism and Democracy in Africa," Journal of Legal Pluralism, 42 (1998).

for revitalization of African governance norms and institutions.² Those who pursue the second approach maintain that, “the key to effectively addressing contemporary problem lies in reclaiming and revitalizing indigenous traditions that have been degraded and suppressed in the wake of colonialism.”³ By way of compromise or middle ground, one can come up with a third option where the strengths of the two systems can be exploited.

Although the European style of governance has offered very little in terms of bringing about the modernity Africans have been longing for, even after more than half a century of cyclic trials with Eurocentric governance models, nearly all African states appear to be reluctant to explore the possible potential of each of their traditional governance systems. Very few African states have dared to look inward and tried to re-examine and reclaim their own pre-colonial indigenous values and forms of governance. Each pre-colonial African society “had unique set of rules, laws and traditions suitable for particular contexts and historical realities.”⁴ If explored well, the potential embedded in the rich unexplored African indigenous rules and institutions may possibly have remedies for some of the long-standing governance problems of Africa. In very few African countries, indigenous governance institutions have practically been proved to be viable in certain areas of governance. Among the Asante of Ghana, the indigenous governance institutions ensured decentralization of power and enabled the people to participate in governance.⁵

² K. Gyekye, *Tradition and Modernity*. New York, Oxford University Press, (1997).

³ J. A. Cifafa, “Tradition and Modernity in Post-Colonial African Philosophy,” *Humanitas*, 2 (1&2) (2008), p.121.

⁴ S. J. Ndlovu-Gatsheni, “Who Ruled by the Spear? Rethinking the form of Governance in the Ndebele State,” *African Studies Quarterly* 10 (2 & 3), (2008), p. 73.

⁵ B. Davidson, *The Black Man’s Burden: Africa and the Curse of the Nation-State*. London: James Currey, (1992)

The governance crisis in Africa is a crisis of institutions which has largely been caused by post-colonial African ideology of nationalism known as nation-statism. African nation-statism had shallow roots in Africa's own history. "The fifty or so states of the colonial partition, each formed and governed as though their peoples possessed no history of their own, became fifty or so nation-states formed and governed on European models, chiefly the models of Britain and France."⁶

Davidson and Muslow maintained that nation-statism played instrumental role in alienating Africans from their own history and cultural roots. The imposed nation-statism robbed African societies of their freedom for self-development and self-regulation. The Eurocentric approach was dismissive of African indigenous governance institutions, history and culture. African elites in many places have resorted to the destruction of indigenous institutions by imposing alien systems. In Ghana, the attempt to destroy indigenous institutions has gone to the extent of destroying indigenous markets. There were also extreme African nationalists who advocated for the eradication of all vestiges of Western model in total disregard of its merits.⁷ In Davidson's view, in order to restore Africa, Africans should return to their own history and reclaim it by liberating African history from the alienating Eurocentric approach.⁸ Of course, this doesn't mean that anything worthy of taking should not be taken from Europe.

Ethiopia has never been colonized by European colonial powers. The Empire State was built by Emperor Menelik who brought under his rule different people who had their own indigenous governance systems and institutions. After subjugating the diverse groups of people under his Empire, Menelik imposed a new governance system which was alien to

⁶ B.Davidson & B. Muslow, "The Crisis of the Nation-State in Africa," Review of African Political Economy, vol.49 (1990), p.10.

⁷ George, B. N. Ayittey, Africa Betrayed, (1992), p. 10.

⁸ Davidson, cited above at note 5.

most of the diverse conquered people. The newly introduced Imperial governance model was controlled from the center and was accountable to the Emperor. Rather than accommodating and integrating the diverse indigenous governance system of the different peoples of the conquered people, the Imperial rule pursued an assimilationist approach and embarked on eradicating diversity of governance. As a result of the assimilationist policy, the diverse indigenous governance systems and cultures have become marginalized. Ultimately, the formal Ethiopian governance system hasn't been built on the diverse "local identities but rather competed against them."⁹

The Borana Oromo of Ethiopia are one of the diverse people who had their own indigenous governance system known as *Gada* that is based on indigenous democratic values and norms. Gada governance system with its own indigenous laws and enforcement institutions has been operating fully among the Borana before Menelik's conquest. But following the conquest, the successive Ethiopian rulers introduced their exclusivist, hierarchical and centralized governance system which was inherently different and alien to Borana democratic and indigenous governance system. But the attempts made by the successive Ethiopian rulers to totally abolish Gada governance system and replace it with an alien formal governance system have not succeeded. Although Gada governance system has been weakened as a result of the assimilationist policy of the successive Ethiopian rulers, it is still operating quite well alongside the formal governance system. This has given rise to the co-existence of two governance systems with unregulated and uneasy relationship.¹⁰

⁹ O. Aadland, 'Sera: Traditionalism or Living Democratic Values? A Case Study of the Sidama in Southern Ethiopia', in Bahiru Zewde & Siegfried Pausewang (eds.), *Ethiopia, The Challenge of Democracy from Below* (2006), p.29.

¹⁰ Asmarom Legesse, *Oromo Democracy: An Indigenous African Political System*. Asmara, The Red Sea Press, Inc. (2000).

The co-existence of two governance systems with uneasy relationship has been having undesirable effects on the Borana. The Borana pastoral way of life would require a governance set up responsive to mobility and collective resource governance. Besides, Borana is a clan-based society where significant part of a person's social status, rights and obligations are determined by clan-membership. With its fixed territorial administrative set-up, the formal governance system disregards mobility which is an essential feature of pastoral way of life. This article looks at the impacts the uneasy relationship between the two governance systems is having on the Borana who are the end users of the systems. It aims at exploring the possible merits of mutual recognition between the two governance systems with a view to establish the relevance of indigenous governance system as a viable local governance system. The main argument in this paper is that Ethiopia can overcome the recurring governance problems at the local level if the positive governance traditions and institutions embedded in the diverse Ethiopian societies are retained and revitalized. The fact that African societies are endowed with diverse indigenous values, normative systems, institutions and governance systems cannot be contested. In view of this, the pluralistic character of Africa needs to be acknowledged and taken into account in our approach to the study of issues of governance in Africa.

2. Governance and Institutions: Conceptual and Theoretical Framework

Conceptually, governance is defined as a wide variety of ways to solve common problems including organizational, social, local, national and international problems.¹¹ For the UNDP, governance “comprises the mechanisms, processes and institutions, through which citizens and groups articulate their interest, exercise their legal rights, meet their

¹¹J. Newman, *Modernizing Governance: New Labour, Policy and Society*, Sage, (2001).

obligations and mediate their differences.”¹² Although both the notions of governance and government may refer to systems of rules and processes, governance is a more encompassing phenomenon than government. Unlike the concept of government that relates more with the institutional aspect, governance goes beyond that and embraces the operational processes as well.¹³ In its broader sense, governance comprises the traditions, rules, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern.¹⁴ In short, governance is all “about how people in groups, organizations, and communities organize themselves to make and implement decisions so that they can achieve their collective goals.”¹⁵

Functionally, governance is a result of interaction among various actors who aim at resolving their common problems with the help of formal or informal rules and institutions. Governance is not something that is done only through formal institutions and officials of governments, but it is also something that is done through informal practices.¹⁶ It is possible to conceive of governance without well-developed formal government structure. A regulatory arrangement can possibly exist in a certain sphere of activity and function effectively in the absence of formal authority.¹⁷ All people have some form of governance but depending on their

¹² UNDP (1997) Retrieved on October 13, 2017 from <http://www.undp.org/governance/local.htm>.

¹³ G. Lutz & W Linder, Traditional structure in local governance for local development (2004), p.16.

¹⁴ J. Rosenau, J & Ernst_Otto Czempiel (Eds.), “Governance without Government: Order and Change”, in World Politics. Cambridge: Cambridge University Press, (1992).

¹⁵ Indigenous Governance Matters, No 1 January 2008, p.1.

¹⁶ R. Lamb, Formal and Informal Governance in Afghanistan - Reflections on a Survey of the Afghan People, Part 1 of 4, Occasional Paper No11, April 2012, The Asia Foundation, www.asiafoundation.org.

¹⁷ J. Rosenau, J & Ernst_Otto Czempiel (Eds.), “Governance without Government: Order and Change”, in World Politics. Cambridge: Cambridge University Press, (1992).

particular settings, they may differ in the ways they structure their governance rules, institutions and processes. This means, due to local variations, local governance systems cannot be uniform for all people in all places. In the context of indigenous societies, governance is defined as “the way in which a people lives ‘best together’ or the way a people has structured their society in relationship to the natural world.”¹⁸

Governance at local level denotes an institution through which local people deal with matters of local concern to the people of a particular locality.¹⁹ The local governments are self-governing units at local level where effective participation of community members in their affairs can be realized. As they are closer to the people, and have local knowledge, local representative bodies can respond to the local needs and variations. Besides, based on the principle of subsidiarity, a certain governance task is performed better by the government closest to the people except where it cannot be done at that level.²⁰

Whatever the level may be, governance cannot be realized without some form of institutions. Institutions “embody rules and encapsulate values, norms and views of the world.”²¹ Institutions are humanly devised constraints that shape human interaction which include formal and informal institutions, social norms and all other constraints imposed by a society’s system of beliefs and values. ²² The notion of institution “extends beyond organizational form, rules and relationships into more

¹⁸ K Ladner, Governing within an ecological context: Creating an alternative understanding of Blackfoot governance, 70 *Studies in Political Economy* (2003) p. 125.

¹⁹ T. Sikander, ‘A theoretical framework of local government’, *International Journal of Humanities and Social Sciences* 5(6) (2015), p.171.

²⁰ Principles of Subsidiarity, European Charter of Local Self-governance, 1985.

²¹ Jordan, A. and T. O’riordian, ‘Social institutions and Climate Change: Applying Cultural Theory to Practice’ CSERGE Working Paper, Norwich: University of East Anglia, 1997, p.12.

²² D. North, *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press. (1990).

fundamental social and political factors that determine how people think, behave and devise rules through which they expect everyone else to play.”²³ Indigenous governance institutions are informal institutions which “include local cultural forms of organization, like locally elected, hereditary or appointed leaders and elders, customary rules and regulations relating to access to resources and indigenous practices and knowledge.”²⁴

Democratic governance is essentially characterized by citizen’s involvement in all matters that affect them. Democratic governance can be realized only where there are inclusive institutions and rule of law which defines the rights and responsibilities of all citizens facing common social problems.²⁵ Where there are rule of law and inclusive institutions, there will be voluntary compliance of members to the law that is made either by themselves or by their representatives.

Institutions are not only constraining and enabling structures, but they also make different forms of social action and organization possible.²⁶ But as they are humanly devised, rules and institutions may not always favor democratic governance. Where State power is exclusively in the hands of a few or a single ruler, the rules and institutions tend to obstruct human freedom and democratic governance. Such rules and institutions at any level cannot deliver democratic governance.²⁷

²³ J. O’Riordian, J & A. Jordan, “Social Institutions and Climate Change”, in: T. O’Riordian and J. Jager (Eds.), Politics of Climate Change: A European Perspective. London; Rutledge (1996), p.65.

²⁴ *Id.* p.6

²⁵ Rosenau & Czempiel, Cited above at note 11.

²⁶ E. Watson, “Interinstitutional Alliances and Conflicts in Natural resources Management; Preliminary Research Findings from Borana, Oromia Region”, Marena Research Project, Working paper No. 4 (2001), p.4.

²⁷ D. Acemoglu & J. A. Robinson, Why Nations Fail: The Origin of Power, Prosperity, and Poverty, New York: Crown Publishers, (2012).

3. Borana: Governance System

Borana land extends to Northern Kenya and the Borana Oromo live both in Southern Ethiopia and Northern Kenya. The livelihood of significant number of the population is based on pastoralism.²⁸ In Borana social system, the entire society is divided into two exogamous moieties known as *Sabo* and *Gona*. A member of one moiety is allowed to marry only into the opposite moiety. The Borana have a governance system known as *Gada* which is a system of an age grade classes that succeed each other every eight years in assuming economic, political and social responsibilities.²⁹ *Gada* as a system refers to the “totality of the system of governance that was practiced among the Oromo.”³⁰

One age-set is said to rule before handing over to the next younger age-set. A complete *Gada* cycle consists of five age-grades. The roles and rules attached to the age-grade system is the most important element that regulates the *Gada* system. The authority held by the elders (*hayyuu*) is derived from their position in the *Gada* system. A pan-Borana assembly known as *Gumii Gaayyo* takes place every eight years mid-point within one *Gada* period. All Borana men are entitled to attend, speak and be heard at the assembly. *Gada* leaders are elected on the basis of wisdom, bravery, health and physical fitness. *Gumii Gaayyo* is the supreme law-making and adjudicating body. If *Gada* officials fail to carry out their duties, *Gumii Gaayyo* can replace them by another group from among the same *Gada* class, which proves its democratic nature of governance.³¹

²⁸ T. Leus & C. Salvadori, *Aadaa Boorana: A Dictionary of Borana Culture*, Addis Ababa: Shama Books, (2006).

²⁹ M. Bassi, *Decisions in the Shade, Political and Judicial Processes among the Oromo-Borana*, Asmara: The Red Sea Press, Inc. (2005).

³⁰ Lemmu Baissa, ‘*Gada* Values: The Building Blocks of Democratic Polity’, *Journal of Oromo Studies*, Vol. 1 No 2 1994, P.49.

³¹ Asmarom, cited above at note 10.

Clan structures, clan assemblies and councils are the most important governance institutions among the Borana. Clans share collective rights and obligations towards their members. Democratically elected clan assemblies /*kora gosa*/ and councils which operate at different levels comprise local government. Assemblies at every level are vested with enormous authority in law making, adjudication and enforcement. Every Borana of specific age-grade is expected to perform a certain function according to specified rules and regulations.³²

The Borana have strong vertical institutional structure with good linkages from the *Abba Gada* at the top down to the grassroots or village (*olla*) levels. Upward, Borana governance structure is “represented as a set of concentric rings with the *Abba warra* at the micro level, and the *Abba Gada* at all Borana level. At each level of governance, there is a designated decision-maker or set of decision makers.”³³ At the top of the political leadership of the *Gada* class is the *Abba Gada* who is elected from one of the two Borana moieties and with his team of advisors.

The Borana have indigenous laws known as *aada seera* (customary laws). Borana *aada seera* sets out codes of conduct for social relations and natural resource management. For the implementation of their *aada-seera*, the Borana have indigenous residential executive structures and institutions starting from executive body known as *Adula Council* at the apex that goes down to the village level. Such structural arrangement has made the institutions accessible to the people. There are executive officers recruited from each clan known as *jaallab* who represent the clans at *Gada* and clan assemblies and see to it that laws are observed by all members. The Borana have their own ways of resolving disputes.³⁴ According to Asmarom, *Gada* system has made the Borana “one of the

³² *Ibid.*

³³ Watson, cited above at note 26. P. 12.

³⁴ Bassi, cited above at note 29.

most orderly legalistic societies in black Africa.”³⁵ The indigenous *Gada* governance institutions “provide structures in which people are used to discussing matters and which have a degree of continuity.”³⁶

In the economic sphere, the Borana have an indigenous system for the governance of scarce natural resources which has been effectively working for centuries. Borana pastoralist way of production and the indigenous governance system have evolved as a mechanism of coping up with the harsh climatic conditions. Among the Borana, *Gada* indigenous governance system has the “responsibility to protect the grazing resource borders based on historical use of the land as defined by ritual sites and key clusters of wells.”³⁷ They have developed an exceptionally efficient and entrenched system of managing natural resources including conflict solving mechanisms. “Herd mobility and common property regimes were used to exploit key resources at a larger scale. Thereby the pastoralists sustained the utilization of scattered rangeland vegetation throughout the year.”³⁸

Borana indigenous governance system and institutions were built in such a way as to adapt to numerous challenges and unstable atmosphere.³⁹ With the help of their indigenous governance system, the pastoral Borana have managed to cope with harsh climatic conditions of the area. They have “generated a distinct ecological, technological and organizational indigenous knowledge (IK), which enabled them to

³⁵ Asmarom, cited above at note 10, p. 29.

³⁶ Watson, cited above at note 26, p. 18.

³⁷ Boku Tache, Pastoralism under Stress: resources, Institutions and poverty among the Borana in Southern Ethiopia, (2008, Unpublished PhD Thesis, Norwegian University of Life Sciences, As, Norway), p.10.

³⁸ S. Homann, Indigenous knowledge of Borana Pastoralists in Natural Resource management: A case Study from Southern Ethiopia, Doctoral Dissertation, Justus Lieberg University, Giessen, 2004, p.2.

³⁹ Asmarom Legesse, GADA, Three Approaches to the Study of African Society, London: The Free Press, (1973).

preserve the Borana rangelands at highest grazing potential in east Africa.”⁴⁰

Through flexible natural resource use strategies and stratified herd management they matched the livestock to the available grazing and water resources during times of abundance as well as in scarcity. Institutional arrangements and networking within and between pastoral groups were elaborated to enforce decisions among multiple resource users.⁴¹

Oromo *Gada* indigenous governance system as practiced among the Borana is a holistic and an all-embracing governance system which incorporates indigenous world view, indigenous method of transfer of knowledge, natural resource management system and dispute resolution. The system is built in such a way as to enable all members of Borana society to carry out their duties at different stages of their lives and careers. The indigenous governance system has enabled them to maintain and utilize the common and scarce natural resources.⁴² With their complex laws and long legislative tradition, and effective methods of checking the abuse of power, the Borana have succeeded in maintaining orderly government and succession to political office for many centuries.⁴³

4. Relationship between *Gada* and Formal Governance Systems and Their Effects

Historically, the weakening of Borana indigenous Governance system and the disempowerment of the people began with the conquest of Borana land by Ethiopian State and the subsequent imposition of alien

⁴⁰ Homann, Cited at note 38, p.2.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Asmarom, cited above at note 10.

State institutions and governance system over the people.⁴⁴ From the time of conquest, rather than bringing an end to the imposition made by the conquerors, the subsequent Ethiopian rulers continued to undermine Borana Gada indigenous governance system. During the Derg period, state formation and nation- building continued in a dominant top-down approach with no room for indigenous governance system.

In the history of Borana *Gada* governance system and its relationship with Ethiopian formal governance system, it was the 1975 Rural Land Proclamation which brought radical change in the power relation between the two governance systems. Based on that, *Kebele* Peasant Associations (KPAs) were established as the lowest administrative arm of the formal governance structure, thus undermining the institutional foundation of traditional *Gada* governance system. Although the traditional *Gada* structures and the newly established government structures continued to coexist after the formal establishment of KPAs, owing to the strong State's coercive support and resources at their disposal, the KPAs have gained dominance over the indigenous *Gada* governance authority thus marginalizing it "in social, economic and political terms."⁴⁵

Since then, new resource management regime has been introduced through KPAs in place of the indigenous resource governance system. Among the pastoral Borana society, water wells and pasture are the two most important areas of jurisdiction which have traditionally been under the authority of *Gada* leadership.⁴⁶ The governance of Borana pastoral rangeland resources can be achieved only through "flexible arrangements

⁴⁴ Boku Tache, Cited above at note 37, p. 2.

⁴⁵ J. Helland, 'Participation and Governance in the Development of Borana Southern Ethiopia', in M.A Mohamed Salih, T. Dietz and Abel Ghaffar Mohamed Ahmed (eds.), *African Pastoralism, Conflict, Institutions and Government*, Pluto Press, (2001), p.61.

⁴⁶ Helland, cited above at note 45, p.64.

rather than formalised prescriptions.”⁴⁷ But in total disregard of this, the KPAs established rigid and formalized territorial administrative structure. According to the newly introduced formal state structure, the traditional *madda* (area with one permanent water source) boundaries were redrawn through splitting one *madda* into several parts merging these with parts of different *maddas*. The newly rigid and formal territorial-based KPAs administrative structure super imposed on the indigenous Borana Gada System took full control over the administration of water wells and pasture.⁴⁸

Consequently, as the newly established *Kebele* administrative set up restricted mobility, communities who have lost valuable grazing areas failed to accept and honour the new boundaries. This gave rise to new waves of disputes between users of arbitrarily partitioned resources. Increased violation of grazing and water management rules, aggravated by declining formal support for traditional institutions, and a conflict of authority between traditional decision-makers and the relatively young chairmen of the KPAs. Owing to this, KPAs are still being viewed by Borana elders as institutions meant to undermine the authority of their indigenous Borana governance structures and for weakening their indigenous institutions. Besides, young KPA committee members have little knowledge of the indigenous *Gada* governance system and values.⁴⁹

Although the 1995 Ethiopian Constitution has given recognition to the right to self-determination, the recognition has not been extended to indigenous governance systems that have been operating at local levels.

⁴⁷ Homann, cited above at note 38, p.9.

⁴⁸ T. Boku & B. Irwin, “Traditional Institutions, Multiple Stakeholders and Modern Perspectives in Common Property: Accompanying Changes within Borana Pastoral System”, *Securing the Commons* No.4, (2003).

⁴⁹ A.B. Kamara, B. Swallow & M. Kirk, “Policies, Interventions and Institutional Change in Pastoral resource Management in Borana, Southern Ethiopia”, *Development Policy Review*, 22(4), (2004).

As it has followed the same top-down and uniform local governance model, Oromia National Regional State Constitution has given no space for Borana indigenous governance system at local level. This disregard of the actually functioning *Gada* indigenous governance system has created rivalry between the two Government systems and their authorities.⁵⁰ The principal source for the problematic relationship between the two governance systems is the existence of incompatible normative rules relating to ownership of land and natural resources management. The Borana have effective regulatory system for the use of common range resources like wells and pasture which is known as *seera marra Bisaani* /law of pasture and water/.⁵¹

According to Borana *aada seera*, land and natural resources are owned collectively by all Borana. Since this system is based on local knowledge and long established customary practice, it is understood and respected by the people.⁵² The indigenous governance system has a comprehensive management through which the utilization of pasture and water is regulated. The indigenous resource management system is a proven means of coping with harsh climatic conditions. With the help of their indigenous governance system, the Borana have been able to mobilize resources, organize large groups of people over prolonged periods of time, and “make orderly and legitimate decisions on access to and utilization of the wells.”⁵³

Without doubt, Borana *Gada* indigenous governance system has its own limitations which cannot be overlooked. One main challenge of the

⁵⁰ Helland, cited above at note 45.

⁵¹ Bassi, Cited above at note 29.

⁵² *Ibid.*

⁵³ J. Helland, “The Political Viability of Borana Pastoralism: A Discussion of some features of the Political System of the Borana Pastoralists of Southern Ethiopia”, in Baxter, P.T.W., Hultin, J. A. (eds.), *Being and Becoming Oromo: Historical and Anthropological Inquiries*, Uppsala: Nordiska affricainstitutet, (1996), p.37.

system is lack of distinct resources to finance those elders entrusted with the management of the affairs of the community. Because of lack of coercive power to enforce decisions, the authorities have occasionally been confronted with persons defying their decisions. Since it does not involve women, *Gada* governance system is discriminatory towards women. One can as well consider lack of codified rules and procedures of governance as a limitation.

Under the 1995 FDRE Constitution, all lands in Ethiopia including pastoral lands are owned by the state. The Constitution of Oromia National Regional State has not as yet been able to introduce an effective and better alternative natural resource management system appropriate to Borana pastoral society.⁵⁴ Rather, the formal governance system among the Borana has continued to push aside *Gada* institutions. In so doing, it has undermined their decision-making structure and local authority. The indigenous governance system is being relegated to rituals without any power. Moreover, there is an ongoing measure of co-optation of *Abba Gada* and the formal governance system leadership with a view to make it a mere appendage of the formal state administration. According to Helland, the State's "denial of influence and voice to the legitimate political system of the Borana has no doubt exacerbated the strong trend towards increasing dependency and clienttleship which has been created by agencies operating on behalf of the Borana communities."⁵⁵

In effect, along the already established uniformist approach to local governance, Oromia National Regional State has pursued the same pattern and disregarded the relevance of Borana indigenous social, economic and political governance tradition. But in practice, the

⁵⁴ Watson, cited above at note 26.

⁵⁵ J. Helland, "Institutional Erosion in Dry Lands: The Case of Borana Pastoralists", *EASSREA*, 14(2) (1998), p.69.

indigenous governance is still functioning fairly well among the Borana. The indigenous governance institutions are still having significant influence on the daily lives of the people with wider public support. As a result of Borana indigenous governance system not being displaced, there is an ongoing rivalry and tension between the indigenous Borana governance system and the imposed formal state governance causing confusion among the users of the systems.

5. Conclusion

The common practice among African State-builders has been their failure to build constitutional systems based on their diverse indigenous norms and values. Similarly, in Ethiopia, the successive rulers have disregarded the various indigenous governance systems and attempted to build a State with uniform governance system throughout its territory. Owing to their monist approach to governance, they gave no space for the functioning indigenous governance systems even at the local levels. In other words, they have made the existing diverse normative and governance systems totally irrelevant.

After the adoption of the 1995 FDRE Constitution, the right to self-determination has become the core governing principle. The Federal Constitution has granted Regional States the power to establish State administration at any level they deem necessary which best advances self-government.⁵⁶ But the Oromia National Regional Government hasn't given space to Borana *Gada* indigenous governance system in such a way that it advances their self-government. The Region didn't even bother to explore the potential of the indigenous governance system which may possibly be helpful in alleviating some of the persisting governance ills in the area.

⁵⁶ Articles 50(4) and 52(2) (a) of the 1995 Federal Democratic Republic of Ethiopia Constitution.

As indicated in this article, the governance landscape among the Borana has revealed that both the formal governance system and indigenous *Gada* governance system co-exist but with uneasy relationship. Even though the formal governance system claims exclusive monopoly of governance, it hasn't succeeded in supplanting Borana indigenous *Gada* governance system. As things stand now, there is co-existence of two governance systems with their laws, institutions and procedures. This fact of the functioning of the indigenous *Gada* governance system along the formal system coupled with lack of mutual recognition and absence of regulation of the relationship is creating confusion among the users of the systems.

The net effect of this state of affairs is depriving the people freedom to opt for governance of their own choice. In other words, the Borana are involuntarily subjected to the authorities of the rival systems. Both systems require the people to comply with their rules but the people have no power to defy the authorities of the systems. In being reluctant to give space to Borana *Gada* indigenous governance system at local level and by imposing a uniform governance system, Oromia Regional State is denying the Borana the right to local self-governance. Their right to enjoy some degree of self-governance over the communally owned land and resources has to be recognized. The current uncompromising 'one size fits all' approach to local governance system would only engender feelings of bitterness and disempowerment among the Borana who prefer the continuation of their indigenous *Gada* governance system.

As shown by the experiences of many countries, it is possible to have pluralism with defined and well-regulated relationship. In the case of the Borana where pluralism is a fact, *de jure* pluralism will not only provide better means of facilitating access to governance services but it also upholds the rights of the people to self-governance with regard to local matters. If we dismiss a well-functioning Borana indigenous justice system and continue imposing uniform governance system, in addition

to risking the loss of diversity which needs to be cherished, there is a risk of losing the trust and support of the people who want to maintain their system. The fact that the indigenous justice system is more responsive, accessible and still preferred cannot easily be dismissed. In such setting, the best option is to engage the existing Borana indigenous governance system constructively and capture the needs and interests of the society. In a situation where there are competing governance systems, 'one-size fits-all' doesn't make the governance responsive to the needs of the people.

The formal governance system has thus far been pursuing dismissive approach by formally excluding Borana *Gada* indigenous governance system from having governance over those local matters that have traditionally been under the jurisdiction of Borana indigenous governance system. But the formal governance system hasn't been able to provide better governance service particularly in the areas of management of natural resources. The Ethiopian formal governance system hasn't been responsive to the needs of the pastoral Borana by way of providing user-friendly services. Structurally, the formal State structure is still inaccessible to the people. These limitations of the formal governance system at the local level have to be acknowledged.

In recognizing the role of Borana indigenous governance system and in giving a space to the indigenous governance system at local level, the Regional State will reduce the burden on the state formal administrative structures. If the people maintain their indigenous governance system with respect to handling certain local matters, significant number of minor administrative problems can effectively be resolved which would be complementary with what the formal governance system does. Such recognition of the role of indigenous governance system will also be one means of respecting the rights of the people by way of enhancing access to the available indigenous democratic governance.

On the whole, the objective of any democratic government is to enabling local communities to solve their own problems. At the Federal level, Ethiopian policy makers should work towards crafting pluralistic governance structures. In the context of Borana, there is a need to move away from the current exclusivist State-centric governance policy that dismisses the role of Borana *Gada* indigenous governance system. This would mean leaving those matters which can appropriately be done by Borana *Gada* governance system to the indigenous justice system. The formal system can provide the necessary financial assistance and other support to the local governance system so that problems may be resolved in a manner that upholds all interests.

In a pluralist governance setting like Borana, the guiding principle for the leaders of both systems should be responsiveness to the needs of the users of the system. Both should work towards making the systems in a way that promotes the best interests of the people. This can be realized through establishing a defined and regulated partnership between Borana indigenous governance system and the formal governance system. With mutually supportive linkage, the systems will provide Borana people the opportunity to make use of the democratic practices embedded in *Gada* governance system. Ways of making the best use of the strengths of both systems and avoiding the weaknesses of both should be sought.

The role of different levels of *Gada* councils for the resolution of conflict and the maintenance of peace should be acknowledged. The leadership from both systems is expected to work towards weeding out the bad and nurturing the positive in both governance systems. This partnership would require abandoning the current rivalry by way of becoming mutually supportive and accommodative of plurality of governance. The formal governance system in Oromia National Regional State should abandon undermining the authority of *Gada* governance system in local matters. The total dismissal of Borana indigenous justice system would not only be denial of the right to self-governance but it would amount to

throwing the baby with the bath water. With such creative partnership between both systems, the Borana will have the opportunity of making the best use of the best of both systems.

The first part of the paper discusses the importance of the research and the objectives of the study. It highlights the need for a comprehensive understanding of the current state of the field and the potential for future advancements. The second part of the paper presents the methodology used in the study, including the data collection methods and the analytical techniques employed. The third part of the paper discusses the results of the study and the implications of the findings. The final part of the paper concludes the study and provides recommendations for future research.

The research was conducted in a systematic and rigorous manner, following the principles of good research practice. The data was collected from a representative sample of the population and was analyzed using a range of statistical techniques. The results of the study are presented in a clear and concise manner, and the implications of the findings are discussed in detail.

The findings of the study have important implications for the field and for the wider community. They provide a valuable insight into the current state of the field and highlight the need for further research. The study also provides a range of recommendations for future research and for the wider community.

In conclusion, the study has provided a comprehensive understanding of the current state of the field and has highlighted the potential for future advancements. The findings of the study are presented in a clear and concise manner, and the implications of the findings are discussed in detail.