



ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

**“The African Charter on Democracy, Election and Governance (ACDEG); Its
Enforcement in Member Countries: Case of Ethiopia”**

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Addis Ababa, Ethiopia

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LL.M PROGRAMMEE IN PUBLIC INTERNATIONAL LAW

**THE AFRICAN CHARTER ON DEMOCRACY, ELECTION AND GOVERNANCE; ITS
ENFORCMENT IN MEMBER COUNTRIES: - CASE OF ETHIOPIA**

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**A thesis submitted in partial fulfillment of the requirements for a Master of Laws degree in
Public International Law at the School of Law, College of Law and Governance Studies of
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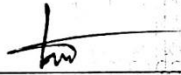
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Declaration

I, Lidya Girma, hereby declare that this paper on "The African Charter on Democracy, Election and Government: Its Enforcement on Member countries case of Ethiopia" is original and has never been presented in any institution or university. I also declare that all sources used in this study have been duly acknowledged.

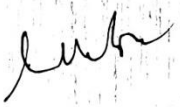
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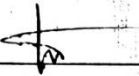
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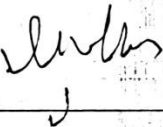
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Abstract

This research examines the implementation of the “African Charter on Democracy, Elections and Governance (ACDEG) in Ethiopia”, focusing on the progress and obstacles encountered since its ratification. Through a qualitative assessment of current practice of democracy, legal and policy frameworks, key informant interviews, electoral processes, and civil society engagement, the study analyzes Ethiopia's adherence to the principles outlined in the Charter, including, political participation, and human rights protections. The research reveals, despite Ethiopia's constitutional framework aligning with ACDEG, issues such as conflicting domestic laws, political instability, and ethnic conflicts hinder its implementation, showing a gap between Ethiopia's commitments under ACDEG and its actual practices. In light of these findings, the research indicates the need for legal reforms, enhanced enforcement mechanisms, and a more collaborative governance approach.

Acronyms

AUC: African Union Commission

ACDEG: African Charter on Democracy, Elections and Governance

AI: Amnesty International

AGA: African Governance Architecture

APRM: African Peer Review Mechanism

AU: African Union

AUEOM: African Union Election Observation Mission

CSOs: Civil Society Organizations

EHRC: Ethiopian Human Rights Commission

EWLA: Ethiopian Women Lawyers Association

EPRDF: Ethiopian People's Revolutionary Democratic Front

FHI: Freedom House Index

HRW: Human Rights Watch

HOF: House of Federation

HPR: House of People's Representatives

ICHREE: UN International Commission of Human Rights Experts on Ethiopia

IGR: Intergovernmental Relationship

KII: Key Informant Interviews

OAU: Organization for African Unity

PAP: Pan-African Parliament

PM: Prime Minister

PP: Prosperity Party

PSC: Peace and Security Council

RECs: Regional Economic Communities

TGR: Tigray Regional Government

TPLF: Tigrayan People's Liberation Front

UCG: Unconstitutional Changes of Government

Table of Contents

Acknowledgement	iii
Abstract.....	iv
Acronyms	v
CHAPTER ONE	1
INTRODUCTION.....	1
1.1. Background of the Study	1
1.2. Statement of the Problem	2
1.3. Research Questions	3
1.4. Objectives of the research.....	3
1.5. Hypothesis	4
1.6. Research Methodology and Data Gathering Methods.....	4
1.6.1. Methodology and Design.....	4
1.6.2. Data Collection Methods and Tools	4
1.7. Ethical Consideration	5
1.8. Literature Review.....	6
1.9. Scope of the research.....	9
1.10. Significance of the Study	9
1.11. Limitations of the Study.....	9
1.12. Organization of the study.....	10
CHAPTER TWO	11
2. The African Charter on Democracy, Elections and Governance (ACDEG)	11
2.1. Introduction	11
2.2. Rationale behind the Establishment of ACDEG	11
2.3. Structure and Basic Features of ACDEG.....	12
2.4. Key Principles of the ACDEG Charter	13
2.4.1. Democratic Governance	13

2.4.2.	Human Rights and Freedoms	14
2.4.3.	Democratic Elections	15
2.4.4.	Unconstitutional Change of Government (UCG).....	15
2.4.5.	Democratic Institutions and Culture	16
2.5.	Mechanisms of Monitoring and Observing Implementation of the ACDEG Charter	17
2.5.1.	State Parties and Reporting Mechanism	17
2.5.2.	Bodies of the African Union	18
2.5.2.1.	The African Union Commission (AUC)	18
2.5.2.2.	The Peace and Security Council (PSC)	19
2.5.2.3.	The Election Observation Missions with the Pan African Parliament.....	20
2.5.2.4.	The Economic, Social and Cultural Council (ECOSOCC)	21
2.5.3.	Enforcement Mechanisms by Judicial Organs of the AU	22
2.6.	Major Challenges Impeding Enforcement of the ACDEG Charter	23
CHAPTER THREE		25
3.	Backgrounds of Democracy in Ethiopia	25
3.1.	Introduction	25
3.1.1.	The Pre-2018 Democracy	25
3.1.2.	The Post-2018 Democracy	26
3.2.	The Northern Ethiopian Conflict and African Union's Efforts.....	27
3.3.	The Notion of Intergovernmental Relationship (IGR) and Enforcement Mechanisms in Ethiopian Federalism	29
CHAPTER FOUR		32
4.	ASSESSMENT AND FINDINGS	32
4.1.	Introduction	32
4.2.	Method of Data Analysis	32

4.3. The Extent of ACDEG’s Implementation in Ethiopia's Democratic Transition and Reforms....	32
4.3.1. Legal, and Institutional Reforms in Compliance with ACDEG.....	33
4.3.2. Challenges of the Democratic Transition in Implementing ACDEG.....	36
4.3.2.1. Intra-State Ethnic Conflicts and Instability	36
4.3.2.2. Human Right Violations and Conflict-Related Abuses.....	37
4.3.2.3. Irregularities in Electoral Processes	39
4.3.2.4. Freedom of Expression and Accessibility of Press and Media Service.....	41
4.3.3. Challenges of Civil Society Organizations (CSO’s).....	43
4.3.3.1. Financial Sustainability and Funding Allocation	43
4.3.3.2. Bureaucratic Reporting Requirement.....	44
4.3.3.3. Political Tensions and Conflicts with Security Risks	44
4.3.3.4. Repression against Civic Space.....	45
4.3.4. Weak Enforcement Mechanisms and Insufficient/Poor IGR	46
4.3.4.1. Scope of the New IGR Proclamation in Ethiopia	48
CHAPTER FIVE	50
5. CONCLUSION AND RECOMMENDATIONS	50
5.1. Conclusion	50
5.2. Recommendations	50
REFERENCES.....	52
APPENDICES	67

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

The African Union (AU) aims to promote democracy and development across Africa, addressing severe human rights violations and governance issues that have persisted since independence. While democracy is increasingly viewed as the legitimate form of government, many African nations continue to experience political instability, corruption, and repression.¹ The AU has established common values focused on democracy, rule of law, and good governance, yet its enforcement mechanisms are often inconsistent.² The rise of Unconstitutional Changes of Government (UCG), which poses a serious threat to stability,³ led to the adoption of the African Charter on Democracy, Elections and Governance (ACDEG) in 2007, which became effective in 2012.⁴

ACDEG is entirely dedicated to set standards for Member States in promoting the realization of democratic principles including; respect for human rights and fundamental freedoms, good governance, credible and transparent elections, separation of powers and rule of law. It also aims to ensure political stability and to strengthen democratic institutions; Civil Society Organizations (CSOs). Moreover, ACDEG recognizes the need for power decentralization and calls for strong enforcement mechanisms and cooperation between government levels to ensure compliance.⁵ Despite its comprehensive framework, the ratification and implementation of ACDEG have been

¹ Matlosa, Khablele. "Pan-Africanism, the African Peer Review Mechanism and the African Charter on Democracy, Elections and Governance: What Does the Future Hold?." (South African Institute of International Affairs, SAIIA, 2014) 2

² The African Peer Review Mechanism (APRM) In Collaboration with the African Governance Architecture (AGA) "The Africa Governance Report; Promoting African Union Shared Values" (January 2019) 27
<https://au.int/sites/default/files/documents/36843-doc-aga_report_-_english_-_online.pdf> accessed 16 March 2024

³ Kioko, Ben. "The African Charter on Democracy, Elections and Governance as a justiciable instrument." (Journal of African Law 63, 2019) 40

⁴ The African Charter on Democracy, Elections and Governance (ACDEG), (Adopted by the 8th Ordinary Session of the Assembly of Heads of State and Government held in Addis Ababa, Ethiopia, on 30 January 2007, Entered into force on February 15, 2012)

⁵ Ibid, Article 2, 3, 12 (3), 27(2), 28, 34 and 45(c)

slow,⁶ especially among authoritarian regimes hesitant to adopt its liberal principles.⁷ From the 55 AU Member States, 46 have signed and 38 have ratified ACDEG, but many remain non-compliant.⁸

Ethiopia, a founding member of the OAU/AU and a signatory to the ACDEG since 2007, faces its own democratic challenges. The country has undergone various autocratic regimes, the recent being the Ethiopian People's Revolutionary Democratic Front (EPRDF). As a result, Ethiopia struggled with significant democratic shortcomings, including undemocratic governance, human rights violations and restricted fundamental freedoms and media environment.⁹

Moreover, as a federal state having a dual structure of governance that comprises the federal and regional levels of governments, different reasons underscore the need for an institutionalized intergovernmental relationship (IGR) mechanism in Ethiopia but the notion was given relatively little attention until recently.¹⁰ Similarly, although their participation in promoting democratic governance is essential, CSOs faced challenges in their operational environment.¹¹ Accordingly, this study aims to assess Ethiopia's current compliance with ACDEG by analyzing the legal frameworks for democratic principles and their practical implementation, identifying structural and institutional obstacles, examining the challenges of effective enforcement and IGR between levels of governments as well as challenges CSOs in upholding democracy.

1.2. Statement of the Problem

Since the 2018 transition to the Prosperity Party (PP) Prime Minister Dr. Abiy Ahmed, the government has introduced legal reforms of repressive laws and institutional measures, yet inter-

⁶ "Open Session on African Charter on Democracy, Elections and Governance" Insights on the Peace and Security Council (PSC) (Amani Africa August 22, 2018) <<https://amani-africa-et.org/insights-on-peace-security-council-psc-open-session-on-african-charter-on-democracy-elections-and-governance/>> accessed 06 January 2023

⁷ Wiebusch, Micha, Chika Charles Aniekwe, Lutz Oette, and Stef Vandeginste. "The African charter on democracy, elections and governance: trends, challenges and perspectives." (Journal of African Law Special Supplementary Issue, Africa Spectrum, 54(2), 2019) 97

⁸ African Union, 'List of Countries which have signed, ratified/acceded to the African Charter on Democracy, Elections and Governance' (February 2023) <https://au.int/sites/default/files/treaties/36384-sl_AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE_0.pdf> accessed 6 March 2022

⁹ Elim Shanko, "Left Behind: The Story of the Ethiopian Pursuit of Democracy" (Master's thesis, University of Pretoria, 2022) 3.

¹⁰ Afesha, Nigussie. "Intergovernmental relations system in the Ethiopian Federation: normative considerations." (Cogent Social Sciences 10, 2024) 1

¹¹ Nicky Broeckhoven, Kelemework Tafere Reda, Dina Townsend, and Jonathan Verschuuren, "CSOs in Sustainable Development in Ethiopia: Past Practices and New Trajectories" (2020) 13 *African Journal of Legal Studies*. 46 & 69

state conflicts and armed struggles in many Regional States including, Amhara, Tigray and Oromia regions has hindered democratic consolidation.¹² Although a majority of Ethiopians support democratic governance, satisfaction with its implementation remains low.¹³

As a result, despite Ethiopia's leadership in ratifying the ACDEG, it remains a State struggling to keep up with the democratic principles and the demands of its people. Moreover, Ethiopia has not submitted required reports on ACDEG, indicating a gap in attention to this vital treaty. This research aims to fill this gap by exploring the extent of Ethiopia's commitment to ACDEG principles, identifying the progress and obstacles encountered after the democratic transition.

1.3. Research Questions

This research attempts to respond to the following questions:

1. To what extent has Ethiopia enforced and implemented the principles and commitments of ACDEG?
2. What are the practical, legal and institutional challenges faced by Ethiopia in implementing ACDEG?
3. How can the enforcement mechanisms and intergovernmental relations between the federal and the regional government of Ethiopia be seen as a challenge to implement ACDEG?

1.4. Objectives of the research

This research has the following objectives:

1. Explore the legislative and practical framework for democratic principles in Ethiopia with the objectives of ACDEG.
2. Analyze the challenges faced by Ethiopia in implementing ACDEG by observing the factors that have influenced the State's non-compliance.

¹² The Center for Preventive Action "Conflict in Ethiopia" (December 19, 2023)

<<https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia> >accessed 08 January 2024

¹³ Afrobarometer, 'Overwhelming Majority of Ethiopians Support Democracy, Seek Accountable Governance' (News release ABCON – Research and Consulting, Addis Ababa, Ethiopia, 30 October 2020)

<<https://www.afrobarometer.org/articles/overwhelming-majority-ethiopians-support-democracy-seek-accountable-governance/>> accessed 6 March 2021

3. Identify possible solutions to overcome the hurdles of democracy and suggest ways in which the federal and regional governments of Ethiopia including democratic institutions like CSOs can function better to improve compliance with ACDEG.

1.5. Hypothesis

Ethiopia can really benefit from the ideas in ACDEG, like democracy and political stability, if it's willing to accept and domesticate most of its principle. It's not enough to just write them into the laws; it's actually crucial to stick to them or live by them too. Given Ethiopia's history of conflict, following ACDEG's principles can be a big help in promoting peace and stability in the nation.

1.6. Research Methodology and Data Gathering Methods

1.6.1. Methodology and Design

The structure, reasoning, and principles of the research methodology, as well as their link to the research questions, are all validated by the research design.¹⁴ By employing a qualitative research design and adopting the empirical legal research method to investigate the operation, function, and influence of a legal rule;¹⁵ the research explored ACDEG and its practical enforcement in Member States particularly; Ethiopia. It also analyzed national and regional legal texts, policies, guidelines, and official reports to understand the framework of ACDEG and democratic governance in Ethiopia. Qualitative method was applied since it provided a more profound understanding of a phenomenon, removed preconceptions and presented the actual circumstances.¹⁶

1.6.2. Data Collection Methods and Tools

As for the data collection method; a chart of a research applied to get the result/finding, this study applied both primary and secondary data collection devices.¹⁷

¹⁴ Mason, Richard O., James L. McKenney, and Duncan G. Copeland. "An historical method for MIS research: Steps and assumptions." (MIS quarterly, 1997). 312

¹⁵ Khadka, Chandra Shekhar. "Empirical Method in Legal Research" (Nepal Law Review, 28(1-2), 2019) 445 and 446

¹⁶ Mugenda, Olive Muihaki, and Abel Gitau Mugenda. "Research methods: Quantitative & qualitative approaches" (Nairobi: Acts press, (Vol. 2, No. 2) 2003).

¹⁷ Kothari, CR. "Research methodology: Methods and techniques." (New Age International, 2004) 9

A. Primary Data

Primary data was composed using ‘Key Informant Interview (KII)’ with experts from major national institutions to complement document analysis.¹⁸ (See Appendices I, II, and III). For this study KIIs were conducted with two Human Right Officers working at the Ethiopian Human Rights Commission (EHRC), in (Advocacy and Investigation of Violation) departments, a Senior Legal Officer in Ethiopian Women Lawyers Association (EWLA), an Official in the National Election Board of Ethiopia (NEBE), and a journalist in an anonymous independent media.

B. Secondary Data

Secondary data such as, relevant scholarly literatures, reliable news reports and conference minutes are also utilized. The study systematically and inductively reviewed, analyzed, and interpreted the collected data.

1.7. Ethical Consideration

While conducting this study relating to the actual practice of a democracy in a particular country, especially with informants like human right experts, government officials, and professional journalist, many principles of ethical considerations were followed. The major ones are voluntary participation by obtaining informed consent, ensuring confidentiality and privacy.

In order to receive consent from informants, a written letter from Addis Ababa University was provided for the all the above institutions in order to appoint a representative informant. After submitting the request letter, the researcher received an appointment date and conducted KIIs as scheduled. The research objectives were expressed verbally for all informants to understand the purpose. All relevant information was also disclosed by the researcher including the use, results and potential harms of the collected data. Moreover, all responses or facts shared during interviews were used only for this study. All information relating to the informant was also kept strictly confidential and since all informants wished to be anonymous they were named indirectly to protect their privacy.

¹⁸ The Australian Prevention Partnership Centre, “Key Informant Interviews” <[07-Key-Informant-Interviews.pdf](https://preventioncentre.org.au/07-Key-Informant-Interviews.pdf)> (2018), accessed 20 February 2022

1.8. Literature Review

As the most comprehensive instrument that represent the aspiration of the AU for a democratic region,¹⁹ several literatures regarding ACDEG were identified. *Ibrahima Kane (2008)*²⁰ and *Amina A Ahmed (2017)*²¹ explored the justification behind the adoption and the impact of ratifying ACDEG on democratization of African States. *M. Wiebusch, C. C. Aniekwe, L. Oette, and S. Vandeginste (2019)* reviewed the governance and legal implications of ACDEG and projected future implementation scenarios ten years after its adoption. They also highlighted interdisciplinary views and challenges for future research.²²

More explicitly, *Witt A. (2019)* observes how and by whom ACDEG is employed and contested regarding the right to access to state power in the result of UCG.²³ *Abdumelik N and Bellay T (2019)* investigate women's representation and leadership in African decision-making spaces and governance, as recognized by ACDEG.²⁴ *Engel U (2019)*²⁵ develops different suggestions on the failure to ratify and implement ACDEG's compliance mechanisms by AU's Member States. Beyond its legal framework, these articles are concerned in answering the crucial question of how ACDEG's impact and implementation affect the democratic governance setting in Africa.²⁶

The inquiry of the above literatures discovered that ACDEG's implementation remains partial or differs depending on the democratic quality of the executing government as well as on the particular legal issue. The ongoing commitment gap between policy and practice undermines the overall implementation of ACDEG. Thus, further study on ACDEG could be useful to explore

¹⁹ Supra Note 6

²⁰ Ibrahima Kane, "The Implementation of the African Charter on Democracy, Elections and Governance" (African Security Review, 2008) 43.

²¹ Amina Ahmed "The Role of African Union Instruments in Regulating State Compliance with Human Rights Standards: Case Study of the African Union Charter on Democracy, Elections and Governance" (Academia, 2017) 4

²² Supra Note 7 p.100

²³ Witt, Antonia. "Where regional norms matter: contestation and the domestic impact of the African Charter on Democracy, Elections and Governance." (Africa Spectrum 54, 2, 2019) 112

²⁴ Abdumelik, Nebila, and Tsion Belay. "Advancing Women's Political Rights in Africa: The Promise and Potential of ACDEG." (Africa Spectrum 54, 2, 2019) 157–159.

²⁵ Engel, Ulf. "The 2007 African Charter on democracy, elections and governance: Trying to make sense of the late ratification of the African Charter and non-implementation of its compliance mechanism." (Africa Spectrum 54, no. 2, 2019): 127-146.

²⁶ Supra Note 7, p.100-101

the diverse institutional relations to ensure a better synergy and coordination between the AU and national actors in the application and interpretation of ACDEG.²⁷

Regarding the notion of democratic elections in Africa, many authors have noted that, even after ACDEG, elections in most Africa fall short of the basic international standards. They are merely window dressing probably to placate the international community. This certainly hinders not only the legitimacy of democracy as the most preferred system of government but also the moral right of the political leaders to command obedience and indivisible loyalty from the entire citizenry.²⁸

Similarly, numerous scholars examined how the recurrence of UCG, coups d'état, undemocratic elections, and violence in Africa had overtaken democracy. They also highlighted how the AU tries to enforce its sanctions in case of violations of UCG. According to these literatures apart from UCG, currently AU's sanctions for breach of rules on democratic governance including ACDEG are limited in practice. If the violation does not qualify to be UCG, there is no record of the AU sanctioning a Member State regardless of seriousness of the breach. However, there is no way to determine ratification practices of individual Member States until significant empirical research on this topic has been carried out.²⁹

Moreover, studies were reviewed regarding the general concept and practice of democracy in Ethiopia. Accordingly, scholars like *Selassie, A. G. (1992)*³⁰, *Walle Engedayehu (1993)*³¹, *Zewde, Bahru, and Siegfried Pausewang, eds. (2002)*³², *Abbay, A. (2009)*³³, *Ayele, Z. A. (2018)*³⁴ and

²⁷ Ibid,

²⁸ Aniekwe, Chika Charles, and Samuel Atuobi. "Two decades of election observation by the African Union: a review." (Journal of African Elections 15, no. 1, 2016) and Molla, Tesfaye. "The Challenges to Free and Fair Election in the Horn of Africa: The Case of Ethiopia (1990-2010)." International Journal of Democracy and Development Studies 6, 2023)

²⁹ Antonia Witt, "Negotiating Political Order(s): The Politics of Unconstitutional Changes of Government" (Working Paper No 1, Centre for Area Studies, Leipziger Universitätsverlag, 2012); Powell, Jonathan, Trace Lasley, and Rebecca Schiel. "Combating Coups d'état in Africa, 1950–2014." (Studies in Comparative International Development 51, 2016); and Dersso, Solomon Ayele "Defending Constitutional Rule as a Peacemaking Enterprise: The Case of the AU's Ban of Unconstitutional Changes of Government," (International Peacekeeping, 24(4), 2017)

³⁰ Selassie, Alemante G. "Ethiopia: Problems and prospects for democracy." (Wm. & Mary Bill Rts. J. 1, 1992) 205

³¹ Engedayehu, Walle. "Ethiopia: Democracy and the politics of ethnicity." (Africa Today, 1993) 35

³² Zewde, Bahru, and Pausewang, Siegfried, "The challenge of democracy from below." (eds. Ethiopia, Nordic Africa Institute, 2002) 94

³³ Abbay, Alemseged. "Diversity and democracy in Ethiopia." (Journal of Eastern African Studies 3, no. 2, 2009) 187

³⁴ Zemelak Ayele, "EPRDF's 'Menu of Institutional Manipulations' and the 2015 Regional Elections" (Regional & Federal Studies 28, 2018) 286

Yusuf, S. (2022),³⁵ examined the underexplored roots of anti-democratic rules in Ethiopia and identified historical, institutional, ideological, political, and socio-cultural factors causing democratic predicaments and existence of authoritarianism in the country.³⁶

In addition, *Eyasu Hailemichael G. (2018)* reveals the structural gaps and institutional challenges, and weaknesses of opposition parties as well as CSOs have been hindering the democratization and election process during the EPRDF regime in Ethiopia. His article also relates these issues with the implementation of ACDEG in practice.³⁷ Similarly, by interrogating the practice and quality of democratic elements in Ethiopia during the PP; *Shanko, E. (2022)*, critiqued the 2021 general election as undemocratic and not participatory in its performance.³⁸

While the above studies have improved our awareness on the subject, not much has been written about AU's involvement in Ethiopia's democratic practices and ACDEG's role in ensuring political stability, democracy and good governance. Thus, despite the significance of democratic principles enshrined in ACDEG, its inadequate recognition in many African States particularly Ethiopia can be seen from the lack empirical researches, recently published and frequently updated official reports in the area.

Besides, instead of current political settings, most existing literatures are focused on Ethiopia's past or the EPRDF rule. They did not examine how ACDEG was actually implemented or linked it with democratization in Ethiopia. As such, there should be sufficient evidence based literatures that highlight the current prevalence of undemocratic practices in Ethiopia and its apparent violations of ACDEG. Thus, this paper aims to fill the literature gaps by conducting a comprehensive examination of elements of democratic governance in Ethiopia as enshrined in ACDEG while also examining the practical challenges.

³⁵ Semir Yusuf, "Ethiopia's democratic predicaments State–society dynamics and the balance of power." (Institute for Security Studies Monographs, 2022) 5

³⁶ Ibid, p.46

³⁷ Eyasu Hailemichael, "The African Charter on Democracy, Elections and Governance (2007) and Democratization in Ethiopia: Prospects and Challenges" (African and Middle East Studies, Addis Ababa, Ethiopia, 2018). 4

³⁸ Supra Note 9

1.9. Scope of the research

The study focused on the legal and practical enforcement of ACDEG in Ethiopia. It is restricted to assess ACDEG's principles with Ethiopia's democratic practices; progress and obstacles as well as legal frameworks mostly focusing on the current government. The deliberated principles of ACDEG are limited to; democratic governance, respect for human rights, free and fair elections and freedom of expression as well as CSO freedom in Ethiopia, with the enforcement mechanisms and intergovernmental relationships of the two levels of government. The study does not discuss beyond the scope of these elements in Ethiopia.

1.10. Significance of the Study

Academically, although ACDEG is an important instrument of AU, its practical enforcement in its Member States has not been sufficiently studied. Thus, the study aims to investigate the extent of implementing the principles and commitments of ACDEG mainly in Ethiopia as one of its Member States. Moreover, while much has been written on Ethiopia's recent interstate conflicts, it is not from the perspective of ACDEG in promoting stability and peace in the Country. As such, the study seeks to fill this gap through endorsing academic discussions in this area to give a general overview of the possible contributions of ACDEG in democratic governance.

The findings and recommendations of the study can be used as a reference to future inquiries on relevant problems by both researchers and legal practitioners. They can also be used by future policy-makers and directives to improve democratic system and upheld good governance in practice, as well as help track the application of ACDEG in solving problems. They can also provide Ethiopian democratic institutions with the knowledge they need to strengthen democratic governance and improve their efforts towards compliance with different regional instruments including ACDEG, using effective enforcement mechanisms.

1.11. Limitations of the Study

Like any other research, this study also faced potential challenges and shortcomings. The major challenges were; lack of access to sufficient literature, up-to-date materials and official reports on the status of ACDEG. This is mostly due to membership requirements to certain websites and unavailability of vital materials. Also, conducting interviews with officials and authorities was

difficult due to unavailability and unwillingness of informants. Thus, the researcher was forced to mostly focus on secondary sources and experts with limited knowledge. Moreover, because of the extensive interrelated topics, time and resource constraints, the focus of the research is limited to just a few principles of ACDEG and not all, limiting the universality of the findings.

1.12. Organization of the study

This paper is organized into five chapters. As an introductory remark chapter one presents the background of the study, statement of the problem, research questions, objectives, significance, limitations, scope and methodologies with ethical considerations used in the research. Chapter two describes rationale behind the establishment of ACDEG, its basic features, key principles, monitoring mechanisms as well as major challenges impeding its enforcement.

Chapter three analyzes Ethiopia's underpinnings for democracy during the pre and post-2018 period, while exploring the enforcement mechanisms and relationships between the levels of governments in Ethiopia. Chapter four analyzed the collected data and presented the findings, by examining the extent of compliance and noncompliance of ACDEG in Ethiopia, focusing on the current democratic approach. The final chapter presents conclusions and recommendations, by summarizing main points discussed in the paper and suggesting possible solutions to the main research problem.

CHAPTER TWO

2. The African Charter on Democracy, Elections and Governance (ACDEG)

2.1. Introduction

This chapter will assess the quest for democratic governance in Africa; as the justifications for the adoption of ACDEG. It discusses its basic features, key objectives and principles as a basis of the study. It also discusses ACDEG's monitoring and observing mechanisms with major factors affecting its effective enforcement.

2.2. Rationale behind the Establishment of ACDEG

After Africa gained independence in the late 1950s and up until the early 1990s, democracy was not a primary motivation for most countries.³⁹ Many African nations focused more on getting rid of colonialism and apartheid rather than on governance or economic fairness.⁴⁰ Even though the Organization of African Unity (OAU) was set up in 1963, it didn't push that hard for good governance or reform.⁴¹ This led to a lot of political instability in several countries, with military coups, political killings, and other violent attempts to change governments.⁴²

Given its history of over a hundred coups, authoritarian regimes, one-party states, and armed conflicts, Africa faced an urgent need to accelerate democratization across its nations.⁴³ Consequently, the OAU took a firm stand for the first time in 1997 by openly condemning the violent overthrow of democratically elected governments.⁴⁴ This was followed by the adoption of the Algiers Decision on Unconstitutional Changes of Government (UCG) during the 1999 Summit in Algeria.⁴⁵ However, even though it was a big step, the Algiers Decision did not lay out a clear code of conduct for African countries regarding UCG.⁴⁶ So, in 2000, African leaders

³⁹ Nyinevi, Christopher, and Richard Fosu. "The African union's prohibition of unconstitutional changes of government: An uneasy choice between fidelity to principle and pragmatism." (African Security 16, 2023) 95

⁴⁰ Nzewi, Ogochukwu. "The challenges of post-1990 regional integration in Africa: Pan-African Parliament." (Pan-African Parliament, Policy Brief 57, 2009) 29

⁴¹ Supra Note 1, p.4

⁴² Supra Note 39, p.99

⁴³ McGowan, Patrick J. "African Military Coups D'état, 1956–2001 1956–2001: Frequency, Trends and Distribution." (The Journal of Modern African Studies 41, 2003) 352

⁴⁴ The 33rd OAU Summit, held in Harare, Zimbabwe, took place from June 2nd to 4th, 1997

⁴⁵ 'Decisions on Unconstitutional Changes of Government (Algeria Decision)' (AHG/Dec. 141 & AHG/Dec. 142 (XXXV), adopted by the OAU Assembly at the 35th Ordinary Session, Algiers, Algeria, 12–14 July 1999).

⁴⁶ Supra Note 39, p.100

came together to adopt the Lomé Declaration alongside the AU's Constitutive Act, reaffirming their rejection of coups and UCG.⁴⁷

However, the Lomé Declaration was also not a legally binding agreement.⁴⁸ As a result, the AU adopted ACDEG in 2007 in order to primarily codify or formally define and prohibit UCG, as well as uphold democratic principles across the continent.⁴⁹ As a legally binding instrument, ACDEG became the AU's most significant framework for guiding democratic governance among its Member States.⁵⁰

2.3. Structure and Basic Features of ACDEG

The Preamble of ACDEG emphasizes its foundational purpose by reaffirming its connection to preceding OAU/AU commitments, particularly in tackling poor governance and rejecting UCG in Africa.⁵¹ The Charter includes 53 provisions outlining various obligations for Member States in multiple areas. From other African legal instruments ACDEG is exceptional in its six distinctive features. First and foremost, it serves as the primary treaty that consolidates various OAU/AU democratic commitments into one legally binding framework, providing Member States with a solid institutional and cultural foundation to foster sustainable democracy and peace.⁵²

Secondly, ACDEG includes its own provisions on sanctions, complementing AU's framework. Thirdly, it stands out as the first AU legal instrument to explicitly address the rights and challenges of ethnic minorities, migrants, and other marginalized and vulnerable groups—areas often overlooked in other instruments.⁵³

⁴⁷ 'Declaration on Unconstitutional Changes of Government in Africa (Lomé Declaration)' (adopted by the OAU Assembly at the 36th Ordinary Session, Lomé, Togo, 10 July 2000) and 'Constitutive Act of the African Union' (adopted by the 36th Ordinary Session of the OAU Assembly, Lomé, Togo, 11 July 2000).

⁴⁸ Supra Note 39, p.101

⁴⁹ Michael Gyan Nyarko, Michael Addaney, and Elsabé Boshoff, "Historical Context of Governance and Human Rights in Africa" in *Governance, Human Rights, and Political Transformation in Africa* (Springer International Publishing, 2020) 7.

⁵⁰ Supra Note 7 p.96

⁵¹ Supra Note 20, p.46

⁵² Matlosa, Khabele. "The African charter on democracy, elections and governance: declaration vs policy practice." (2008) 1

⁵³ (ACDEG), Article 8(2)

Fourth, ACDEG places considerable emphasis on elections, dedicating 16 specific provisions on the matter. Fifth, it is the first AU instrument to incorporate the UN Millennium Development Goals and NEPAD objectives, establishing a legal foundation for promoting human security and sustainable development.⁵⁴ Lastly, ACDEG sets out a comprehensive framework of standards and guidelines that, if fully implemented, would significantly reduce the risk of UCG and political conflicts driven by power struggles.⁵⁵

2.4. Key Principles of the ACDEG Charter

Ensuring the realization of democratic principles is the entire focus of the ACDEG,⁵⁶ including; respect for basic human rights and fundamental freedoms, the need to exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law, a multi-party democratic governance, credible and transparent elections, freedom of expression with active citizen political participation, transparency and fairness, gender equality, separation of powers, democratic institutions and culture, as well as the total rejection of corruption and impunity including the of UCG.⁵⁷ Therefore, the presence of these elements signifies a strong representative democracy.⁵⁸

2.4.1. Democratic Governance

According to ACDEG, governance has political, cultural and socio-economic dimensions. Accordingly, it mandates State Parties to institutionalize good political governance through: promoting peace, security and stability; fostering transparent, accountable, participatory and efficient political system and administration; strengthening the functioning and effectiveness of parliaments; independent judiciary; having relevant reforms of public institutions including the security sector; and consolidating sustainable multiparty political systems. State Parties shall also

⁵⁴ (ACDEG), Article 37

⁵⁵ Supra Note 9 p.43

⁵⁶ Jaafar, Ahmed. "The African Charter on Democracy, Elections and Governance and its application: A case study of the Republic of Somalia." (PhD diss., University of Nairobi, 2017) 8

⁵⁷ (ACDEG), Article 2 (1, 3 & 5) and Article 3 (1, 2, 3, 4, 5, 7 & 8)

⁵⁸ A Reynolds (ed), "The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy" (OUP Oxford, 2002). 30

promote a representative government, participation of the youth and people with special needs, in the governance process.⁵⁹

ACDEG also recognizes the importance role of the Regional Economic Communities (RECs) in the promotion, and consolidation of democracy and governance.⁶⁰ It also identifies separation of powers as a crucial element of a democratic organization.⁶¹ Besides its objectives includes the promotion of independence of the judiciary. In addition, State Parties shall also decentralize power to democratically elected local authorities as provided in national laws.⁶² ACDEG also recognize decentralization of governance and the role of traditional authorities, particularly in rural communities. Implementing core values of the New Partnership for Africa's Development (NEPAD), the United Nations Millennium Development Goals (MDGs) and the African Peer Review Mechanism (APRM) are also seen as important milestones to promote and deepen democratic governance in Africa.⁶³

2.4.2. Human Rights and Freedoms

Human rights are among the core principles and objectives of ACDEG.⁶⁴ It obliges State Parties “to uphold universal values, including the supremacy of constitutions, the protection of fundamental freedoms and human rights—recognizing their universality, indivisibility, and interdependence—eliminating all forms of discrimination as well as respecting diversity.”⁶⁵ Furthermore, freedom of expression is considered essential to strengthening other democratic elements, such as elections, and serves as an indicator of democracy.⁶⁶ Accordingly, ACDEG calls on State Parties to promote freedom of expression and the press, in order to enhance political, economic, and social governance, and to support the development of a professional and independent media sector.⁶⁷

⁵⁹ (ACDEG), Article 3 (3, 5, 7, 8, 9 & 10), 12 (1), 31 (1) and 32

⁶⁰ Ibid, Article 2 (12)

⁶¹ Ibid Article 3(5) & 34 and 7 & 26

⁶² Ibid, Article 2 (5), 3 (5), 32 (3) and 34

⁶³ Ibid, Article 35, 36 and 37

⁶⁴ Ibid, Article 5 and 10(2)

⁶⁵ Ibid, Article 2 (1), 3 (1), 4 (1), 6 and 7

⁶⁶ Supra Note 9, p.46

⁶⁷ (ACDEG), Article 2 (10), 6, 19(2) and 27(8)

2.4.3. Democratic Elections

ACDEG affirms that popular participation through universal suffrage is a fundamental and inalienable right of the people. In addition to being emphasized in its objectives and principles, elections are given particular importance through a dedicated chapter under ACDEG.⁶⁸ State Parties also reaffirm their obligation to hold regular, transparent, free, and fair elections in line with the African Union’s Declaration on the Principles Governing Democratic Elections in Africa. To uphold this, States are required to establish impartial and independent national electoral bodies to oversee the electoral process. They must also develop and strengthen national mechanisms to resolve electoral disputes promptly and guarantee fair access to state-controlled media for all candidates and political parties during elections.⁶⁹

Moreover, before elections take place, State Parties are required to engage in negotiations with recognized political parties, government bodies, and other political actors to establish a binding code of conduct. This agreement must include a commitment from all parties to either accept the election results or contest them only legally before, during, and after elections. Furthermore, State Parties are expected to “take every possible measure to promote the full and active participation of women in electoral processes and to ensure gender parity in representation across all levels.”⁷⁰

2.4.4. Unconstitutional Change of Government (UCG)

One of the main factors behind the adoption of ACDEG was the condemnation of UCG in Africa.⁷¹ Building upon the Lomé Declaration’s action plan, ACDEG broadens the definition of UCG.⁷² The extra factor introduced by ACDEG is—the notion of constitutional manipulations to win an election or altering term limits or rigging elections—as forms of UCG.⁷³ As a result, African states collectively reject UCG through the combined force of several instruments: the Constitutive Act, the Lomé Declaration, the Peace and Security Council (AUPSC), the Malabo

⁶⁸ Ibid, Article 2 (3), 2 (13), 3 (4), 3 (11) and 4 (2)

⁶⁹ Ibid, Preamble and Article 17(1, 2 & 3)

⁷⁰ Ibid, Article 17(4) and 29 (3)

⁷¹ Supra Note 1, p 11

⁷² (ACDEG), Article 23(1-5) reads “UCG means...refusal by an incumbent government to relinquish power to the winning party, or amendment or revision of the constitution or any other law in a manner that infringes the principles of democratic change of government.”

⁷³ Supra Note 39, p.101

Protocol, and ACDEG.⁷⁴ These frameworks also establish a range of sanctions targeting both states and individuals involved in violating this democratic norm.⁷⁵

2.4.5. Democratic Institutions and Culture

ACDEG calls on African countries to cultivate, promote, and embed a culture of majority rule and peace. This goal can be realized by fostering open, accountable, responsible and transparent governance.⁷⁶ Accordingly, to nurture a democratic political culture, states are expected to develop legislative and political frameworks that support democratic practices, create legal environments that support the growth of Civil Society Organizations (CSOs), incorporate civic education on peace and democracy into educational systems, and uphold ongoing social and political dialogue that builds trust and transparency among political actors.⁷⁷ Additionally, Member States are encouraged to collaborate at both continental and regional levels by sharing experiences to strengthen and advance democratic governance.⁷⁸

Moreover, ACDEG highlights the significance of strong democratic institutions to strengthen democratic culture on the continent.⁷⁹ Accordingly, it requires the involvement of governmental authorities including; the parliament, judiciary, electoral bodies, political parties, armed and security forces, independent and accessible media, with a vibrant civil society that can fulfill its responsibility of monitoring the actions of governmental authorities.⁸⁰ Apart from these particular institutions, ACDEG also uses the term ‘public institution’ referring to any organization working to advance democracy and constitutional order and whose independence and autonomy are protected by the State Party's constitution. These institutions will also answer to appropriate national authorities.⁸¹

⁷⁴ Supra Note 1, p 18

⁷⁵ Supra Note 39, p.96.

⁷⁶ Supra Note 56, p.9

⁷⁷ Supra Note 20, p.50 and (ACDEG), “Article 11, 12 and 13”

⁷⁸ (ACDEG), Article 15 and 16

⁷⁹ Supra Note 7 p.97

⁸⁰ (ACDEG), Article 14, 27 and 32

⁸¹ Supra Note 20, p.50 (ACDEG), Article 15(1, 2 & 3)

2.5. Mechanisms of Monitoring and Observing Implementation of the ACDEG Charter

ACDEG does not establish a distinct institutional body specifically for monitoring its implementation and enforcement. However, when combined with existing AU treaties and the broader institutional structure of the AU, it opens up a range of enforcement mechanisms that are typically unavailable in non-binding or soft law frameworks.⁸² These mechanisms include state reporting procedures and the involvement of AU policy organs and governance institutions, which together provide multiple platforms for continental engagement in assessing democratic governance in Africa.⁸³

To coordinate the many institutions and actors involved in governance, the African Governance Architecture (AGA) Platform was established in 2011. Its primary purpose is to foster dialogue among stakeholders and to support the harmonization and implementation of various instruments and initiatives, with a particular emphasis on ACDEG.⁸⁴ The AGA Platform includes AU organs, institutions, and RECs that have a formal mandate to promote democratic governance and human rights across Africa. As such, ACDEG envisions a multi-level governance structure for its implementation, relying on both State Parties and AU organs. It also outlines specific measures and enforcement mechanisms, including interventions by judicial bodies, to ensure compliance.⁸⁵

2.5.1. State Parties and Reporting Mechanism

At the level of individual State Party, ACDEG requires all signatories to fully commit to implementing its objectives, upholding its principles, and honoring the commitments it outlines. Specifically, each signatory is expected to take necessary steps—whether legislative, executive, or administrative—to align their national laws and regulations with the provisions of ACDEG. Furthermore, they are to integrate its principles into national policies and development strategies.⁸⁶ This means that all provisions of ACDEG must be domesticated and enforced through suitable legal and institutional reforms.⁸⁷

⁸² Supra Note 7, p.98

⁸³ Supra note 2, p.51

⁸⁴ Ibid, p.21

⁸⁵ African Committee of Experts on the Rights and Welfare of the Child, “AGA-APSA” (The African Union) <<https://www.acerwc.africa/en/networks/aga-apsa>> accessed 13 March 2024.

⁸⁶ (ACDEG), Article 44 (1(A-D) and 47(1)

⁸⁷ Supra Note 25, p.131

Even though, ACDEG does not specifically mention the state institutions responsible for its implementation, a reading of Article 44, paragraph 1, suggests that several key bodies could be involved. These include institutions responsible for drafting and enacting national legislation, such as the executive branch and parliament, as well as national bodies tasked with promoting and protecting human rights and overseeing electoral processes. State-run media also have a crucial role in raising public awareness on the provisions and principles of ACDEG.⁸⁸

In addition, once ACDEG is ratified, each signatory is required to submit a report every two years detailing the legislative and other relevant measures taken to domesticate and implement its principles and commitments.⁸⁹ The content and procedure of these reports are guided by the rules set out by ACDEG and other associated reporting guidelines.⁹⁰ To fulfill this obligation, one of the previously mentioned state institutions must take obligation to prepare and submit the report on the measures adopted to implement its provisions.⁹¹

2.5.2. Bodies of the African Union

2.5.2.1. The African Union Commission (AUC)

ACDEG calls on the AUC to act as the central authority coordinating structure for its implementation.⁹² Accordingly, by intervening in continental and sub-regional levels, the AUC is empowered to promote and protect democratic principles as well as evaluate and monitor compliance of State Parties under ACDEG with other basic organs of the AU.⁹³

At the continental level, as part of its mandate in developing benchmarks to monitor the implementation of ACDEG, the AUC supports Member States in identifying the relevant criteria they must apply to meet their commitments under ACDEG.⁹⁴ To facilitate this process, the AUC designs reporting guidelines and models used to evaluate the bi-annual reports submitted by Member States. It also verifies the accuracy of these reports within the framework of APRM, “an

⁸⁸ Supra Note 20, p.52

⁸⁹ (ACDEG), Article 49(1)

⁹⁰ Wondemagegn Tadesse Goshu, “Direct Enforcement as African Constitutional Law: Exploring Its Potential for the Effectiveness of the African Human Rights Regime” (Doctoral Thesis, University of Graz, 2015). 10

⁹¹ Supra Note 20, p.53

⁹² (ACDEG), Article 44

⁹³ Ibid, Article 45

⁹⁴ Supra Note 20, p.53

advanced system for assessing the performance of AU Member States in fulfilling commitments made under various AU instruments, including ACDEG.”⁹⁵ The AUC then submits the consolidated progress reports to the AU Assembly of Heads of State and Government, which is responsible for taking suitable action on the issues raised.⁹⁶

At the national level, the AUC is tasked with encouraging Member States to create an environment conducive to democratic governance across the continent. This includes promoting the harmonization of national policies and monitoring the implementation of decisions made by AU policy organs concerning UCG. Additionally, the AUC has the authority to ensure that the Democracy and Electoral Assistance Unit and Fund deliver the necessary resources and support to Member States to strengthen their electoral processes.⁹⁷

Beyond the AU, prioritizing democratic governance and human rights have grown in importance within RECs which were originally created to promote economic integration.⁹⁸ Consequently, at the regional level, the AUC is responsible for creating a cooperative framework with various RECs to support the implementation of ACDEG’s principles. This includes encouraging their Member States to ratify and enforce ACDEG, appointing a focal point within each REC to coordinate, monitor, and evaluate adherence to ACDEG’s commitments, and promoting broad stakeholder engagement, especially by encouraging CSOs to actively participate in the process.⁹⁹

2.5.2.2. The Peace and Security Council (PSC)

Established in 2004, the Peace and Security Council (PSC) was created to serve as an early warning mechanism and collective security, enabling effective and swift responses to the crises and conflicts throughout Africa. As such, it functions as the AU’s key decision-making body for conflict management, prevention, and settlement.¹⁰⁰ In this role, the PSC is responsible for monitoring Member States’ efforts in promoting democratic governance, upholding the rule of

⁹⁵ Supra Note 6

⁹⁶ (ACDEG), Article 49(3 & 4)

⁹⁷ Ibid, Article 44 (2/B, C & D)

⁹⁸ Supra Note 49, p.8

⁹⁹ (ACDEG), Article 44 (2/A&B)

¹⁰⁰ African Union, “The Peace and Security Council of the African Union (AUPSC)” (Effective Governance, Peace Dividends, 23 November 2015) <<https://www.peaceau.org/en/page/42-psc>> accessed 8 July 2023

law, safeguarding fundamental freedoms and human rights, and adherence to international humanitarian law.¹⁰¹

Ten years after its adoption, the PSC became the supervisory body for the violations of AU's instruments; ACDEG.¹⁰² In line with the PSC Protocol and the Constitutive Act, ACDEG vests the PSC and the AU Assembly with the mandate to investigate occurrences of UCG and determine the appropriate measures to be imposed. These sanctions can be punitive diplomatic, economic, and political measures, including the suspension of membership rights within the AU.¹⁰³

Accordingly, in situations that could jeopardize the development of democratic, political, and institutional processes, the PSC is asked to oversee and exercise its duties in order to maintain the constitutional order. Then together with the AUC, the PSC will begin 'preventive diplomacy' actions, and if essential it will try reconciliation or conduct in-depth enquiries on the matter. If these diplomatic initiatives have failed, the PSC shall suspend the party concerned immediately from the exercise of its right to participate in the activities of the AU.¹⁰⁴ Moreover, in addition to AU sanctions and possibility of prosecution before Member State's courts, ACDEG allows the functional Court of the AU to try UCG perpetrators.¹⁰⁵

2.5.2.3. The Election Observation Missions with the Pan African Parliament

As it is intended to enhance electoral processes and strengthen electoral institutions in Africa to conduct transparent elections, ACDEG outlines the principles and guidelines for the AU Election Observer Missions (AUEOM), including their composition, independence, and reporting. Accordingly, AUEOM is to be carried out by qualified and experienced election monitoring experts selected from both continental and national institutions. This includes, but is not limited to, representatives from the Pan-African Parliament (PAP), national electoral commissions,

¹⁰¹ Supra Note 6

¹⁰² Dersso, Solomon A. "The adequacy of the African Peace and Security Architecture to deal with serious democratic deficits: Lessons from the North African uprisings." (African Security Review 21, 2012) 8

¹⁰³ (ACDEG), Article 23, 24, 25 (6 & 7) and 46; Article 23 and 30 of the Constitutive; And Article 7(g) of the PSC Protocol

¹⁰⁴ Ibid, Article 25(8&9) and Article 6(b) and 9(1/g) of the Constitutive Act

¹⁰⁵ Ibid, Article 25(5) with Supra Note 39 p.101

legislative bodies, and other prominent individuals with attention given to regional representation and gender balance.¹⁰⁶

The participation of the AUEOM in Member States holding elections is completed through the Department of Political Affairs (DPA) of the AUC. The PAP was established to guarantee Africans' full involvement in the continent's economic growth and integration.¹⁰⁷ In accordance with the decision adopted during the Sixteen Ordinary Session of the Executive Council in 2010, the Chairperson of the AUC through the office of the DPA requested the PAP and other AU concerned organs to participate in the joint AUEOM. In implementing this decision, the PAP and DPA agreed that PAP would provide 40% of observers and that staff from both organs would cooperate in the organization of the missions.¹⁰⁸

2.5.2.4. The Economic, Social and Cultural Council (ECOSOCC)

Adopted in July 2004, the Economic, Social & Cultural Council (ECOSOCC), is as an advisory body made up of various CSOs from different sectors, including labor, business, and professional associations, service providers, and policy experts, both from within AU Member States and the African diaspora.¹⁰⁹ Its goal is to shape a solid alliance between governments and all African CSO sectors. It gives CSOs the chance to actively participate in collaboration with African governments in order to influence AU's guiding principles, regulations, and decision-making procedures.¹¹⁰

The role of CSOs is vital in promoting democratic governance by advocating for accountability, preventing constitutional manipulation, fostering inclusive decision-making, and ensuring electoral integrity.¹¹¹ Accordingly, ACDEG acknowledges CSO's participation for democratic

¹⁰⁶ Ibid, Preamble(par 10), Article 19, 20 and 21

¹⁰⁷ The African Union "About the Pan-African Parliament" <<https://pap.au.int/en/about>> accessed August 04 2023

¹⁰⁸ "Election Observation Missions" (Adopted In accordance with Decision No EX.Cl/Dec.534 (XVI) during the Sixteen Ordinary Session of the Executive Council of the African Union on February 01, 2010) <<https://pap.au.int/en/election-observation-missions>> accessed August 04 2023

¹⁰⁹ The African Union "The Economic, Social & Cultural Council (ECOSOCC)" (Established under the provisions of Articles 5 and 22 of the African Union's Constitutive Act [Assembly/AU/Dec.42 (III)]) <<https://au.int/en/about/ecosocc>> accessed August 04 2023

¹¹⁰ The African Union "The Genesis of Economic, Social & Cultural Council ECOSOC" <<https://ecosocc.au.int/en/about/overview>> accessed August 04 2023

¹¹¹ 'The Charter Project Africa (2021-2024) on Democracy, Elections and Governance' (ECDPM, Feb 01, 2022) <<https://ecdpm.org/work/charter-project-africa>> accessed August 04 2023

governance as essential; hence, it recognized the ECOSOCC is as one of the key organs to evaluate its implementation.¹¹²

2.5.3. Enforcement Mechanisms by Judicial Organs of the AU

ACDEG requires for the perpetrators of its principles like UCG to be tried before the competent court of the Union. Thus, it includes the African Commission on Human and Peoples' Rights (African Commission) and the merged African Court of Justice and Human Rights (ACJHPR) on the list of AU organs that are supposed to take part in the evaluation of its implementation.¹¹³ Since then, the AU has taken some action to put this provision into effect.¹¹⁴

In 2004 the African Court on Human and Peoples' Rights (African Court) was officially established and mandated to provide binding decisions on human rights violations within the AU enforcement system.¹¹⁵ However, direct access to the Court is limited to only intergovernmental organizations, the African Commission and State Parties, unless a state has made a special declaration allowing individuals and NGOs to bring cases. As a result, the ability of individuals or non-governmental organizations to invoke ACDEG's democratic principles before the Court remains uncertain.¹¹⁶

While the ACtHPR remains operational, a separate protocol was initially adopted to establish the African Court of Justice as the AU's principal judicial body. However, this court never materialized, as the AU decided in 2008 to merge it with the ACtHPR.¹¹⁷ This led to the adoption of the Malabo Protocol in 2014, which created the African Court of Justice and Human Rights (ACJHPR).¹¹⁸

¹¹² (ACDEG), Article 12 (3), 27(2), 28 and 45(c)

¹¹³ (ACDEG), Article 25(5) and 45(c)

¹¹⁴ Niyungeko, Gérard. "The African Charter on Democracy, Elections and Governance as a human rights instrument." (Journal of African Law 63, 2019) 72

¹¹⁵ Hansungule, Michelo. "Towards a More Effective African System of Human Rights" (Entebbe Proposals, 2020) 5

¹¹⁶ Supra Note 3 p.40

¹¹⁷ "Protocol on the Statute of the African Court of Justice and Human Rights" (Adopted by AU on July 11, 2003, and entered into force on February 11, 2008) Article 1 Replacement of the 1998 and 2003 Protocols and Article 2 Establishment of a single Court.

¹¹⁸ "The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights" (Adopted by AU in Malabo on June 27, 2014)

The new court includes a criminal chamber with the mandate to prosecute serious international crimes such as genocide, crimes against humanity, and UCG. The AU adopted this protocol partly in response to growing concerns about the perceived bias of the International Criminal Court (ICC) toward African states.¹¹⁹ As a result, the Malabo Protocol creates an Office of the Prosecutor, granting it the authority to bring charges for various international crimes, including UCG. However, as of 2023, the Protocol had not yet secured the required number of ratifications to come into force.¹²⁰

2.6. Major Challenges Impeding Enforcement of the ACDEG Charter

While ACDEG represents an important step towards promoting democracy in Africa, it faces enforcement issues. Overall the implementation of ACDEG is undermined by a notable commitment gap between policy and practice, which is highlighted by several seminars and conferences organized by the AU.¹²¹ Nearly all issues facing its effective enforcement are associated with its institutional mechanisms and implementation by the AU Member States. Regarding institutional mechanisms, the, first issue is while ACDEG has designated central coordinating agencies, their powers are limited to coordinating, monitoring, and assessing the implementation of its provisions by AU Member States.¹²²

Secondly, at the national level, many State Parties to ACDEG lack both the political will and the institutional mechanisms needed to manage public affairs in line with its principles, values, and obligations. Thirdly, although establishing state reporting guidelines inside the AGA framework is a significant move toward institutionalizing ACDEG, the failure of State Parties to submit their reports compromises its effectiveness.¹²³

According to the AUC Chairperson in 2017¹²⁴ and during the second open session of PSC in 2018,¹²⁵ only the Republic of Togo submitted its initial State Report on the implementation of ACDEG. Moreover, according to the Africa Governance Report, 31 Member States should have

¹¹⁹ Supra Note 39, p.104

¹²⁰ Ibid, "Malabo Protocol Article 28(A-M)"

¹²¹ Supra Note 6

¹²² Supra Note 1, p.23

¹²³ Supra Note 6

¹²⁴ "Togo, First AU Member State to Submit State Report on African Charter on Democracy, Elections and Governance"(Addis Ababa, Ethiopia Mar 27, 2017) <<https://au.int/fr/node/32298>> accessed May 03 2023

¹²⁵ Supra Note 6

reported by 2019.¹²⁶ Similarly, Togo and Rwanda were the only two nations recognized by the AU in 2024 for their exceptional commitments to report on matters pertaining to democracy and governance.¹²⁷

Lastly, it is the lack of an efficient enforcement mechanism to deal with ACDEG's violations, since only UCG is currently subjected to sanctions. As a result, regardless of the seriousness of the breach if it does not qualify to be UCG, the above organs cannot use their authority to sanction Member States.¹²⁸

¹²⁶ Supra Note 2, p.52

¹²⁷ African Union Information and Communication Directorate "Togo and Rwanda honored for commitment in reporting on democracy and governance" (Press Release in Addis Ababa, Ethiopia, August 09, 2024) <https://www.peaceau.org/uploads/aga-apsa-press-release-revised-aug-2024.pdf> accessed 06 March 2022

¹²⁸ Supra Note 6 "Article 7(g) of the Constitutive Act"

CHAPTER THREE

3. Backgrounds of Democracy in Ethiopia

3.1. Introduction

This chapter examines the practice of democracy in Ethiopia following the ratification of ACDEG, using it as a framework for evaluation. It also highlights the recent instability challenges in Ethiopia and the AU's efforts. Additionally, the chapter discusses the institutional arrangements for enforcement and relationships between the federal and regional governments. Numerous publications shed light on Ethiopia's democratic challenges, by describing political, cultural, legal and historical backgrounds. This chapter will thus focus on Ethiopia's democracy during the pre- and post-2018 periods.

3.1.1. The Pre-2018 Democracy

As mentioned in many literatures, the EPRDF with its revolutionary governing ideology violated fundamental democratic principles enshrined in the 1995 Constitution, including protecting human rights, upholding the separation of powers, and ensuring a free media environment. Most evidently, in order to keep power, the party used violent and undemocratic methods to sabotage electoral procedures, undermining the prospects of democracy. These tactics have led to the EPRDF's unlawful consolidation of political power and the lack of a clear separation between the state and the party in power.¹²⁹

Throughout the EPRDF's rule, credible reports have also documented extra-judicial killings, gross human rights abuses, arbitrary arrests, rapes, forced disappearances, torture, malicious destruction of individual properties and other cases of repressive measures against opponents in several regions.¹³⁰

¹²⁹ Supra Note 30, p.205

¹³⁰ Human Rights Watch, 'Ethiopia: Human Rights Developments' (World Report, 1999) <<https://www.hrw.org/legacy/worldreport99/africa/ethiopia.html>>; 'Ethiopia: Protest Crackdown Killed Hundreds – Free Wrongfully Held Detainees, Independent Inquiry Needed' (15 June 2016) <<https://www.hrw.org/news/2016/06/16/ethiopia-protest-crackdown-killed-hundreds>> and 'Ethiopia: Year of Brutality, Restrictions – Restore Rights, Address Grievances' (12 January 2017) <<https://www.hrw.org/news/2017/01/12/ethiopia-year-brutality-restrictions>> accessed August 13 2022.

In 2015 widespread protests in Oromia and Amhara regional states were sparked by frustration over the regime's failure to implement reforms in response to demands arising from a sense of marginalization, extreme concentration of power, and a leadership crisis within the EPRDF.¹³¹ The three-year-long protests created a new leadership of PP in 2028 after the appointment of Dr. Abiy Ahmed Ali, as the Prime Minister (PM).¹³² The protest movement mainly primarily called for an inclusive political and economic structure, access to fundamental rights and freedoms, respect for human dignity, and an improvement in the human rights system.¹³³

3.1.2. The Post-2018 Democracy

The new PM launched introduced the idea of Medemer, or cooperation and synergy, in place of revolutionary democracy, as the new governing theory underpinning his political ethics.¹³⁴ Medemer is described as a promise of peace, seeking harmony in shared humanity and working toward peace through acts of love and reconciliation. Its foundations are the development of an active democracy, economic power, regional integration, and global openness.¹³⁵

With his Medemer ideology, the PM gave Ethiopia hope at a time when it felt like it was on the verge of ethnic conflict.¹³⁶ The severity of the transition from a completely closed political system to one that was widely broadened stunned all Ethiopians.¹³⁷ Though the impact has been mixed, the political measures and democratic reforms taken by the government were outstanding and even seemed influenced by ACDEG.¹³⁸

The initial measures taken by the reformists included; ending the state of emergency rule that was declared twice during the protests, releasing thousands of political prisoners as part of the

¹³¹ Fombad, Charles Manga, Assefa Fiseha, and Nico Steytler, eds. "Contemporary governance challenges in the Horn of Africa." (Routledge, 2023) 96

¹³² Andinet Adinew Tesfaye and Endalkachew Abera Mekuriya, "Conditions of Human Rights in Ethiopia in the Aftermath of Political Reform" (Northwestern University Journal of International Human Rights, 19 2020) 24

¹³³ Ibid, p.28

¹³⁴ Supra Note 9, p.24 and 25

¹³⁵ Fitsum Arega, 'A Changing Ethiopia: Understanding Medemer' (Institute of Peace, Introductory Speech by Ethiopian Ambassador to the United States, 13 February 2020) <<https://www.usip.org/events/changing-ethiopia-understanding-medemer>> accessed 12 November 2023.

¹³⁶ Supra Note 9, p.25

¹³⁷ Supra Note 35, p.10

¹³⁸ Nebiyu Daniel Mesheshab "Ethiopia's next steps along a troubled road to democracy" (Ethiopia Insight, July 9, 2024) <<https://www.ethiopia-insight.com/2024/07/09/ethiopias-next-steps-along-a-troubled-road-to-democracy/#:~:text=The%202018%20reforms%20led%20Ethiopia's, longstanding%20undemocratic%20culture%20in%20Ethiopia.>> accessed August 13 2024.

government's large-scale pardons, inviting formerly exiled political parties (some of whom had been designated as terrorist) to return home and pursue peaceful political struggles,¹³⁹ putting independent personalities in positions of influence, lifting restrictions on social media, reorganizing the cabinet and bringing more women into it and increase the practical field of freedom of expression.¹⁴⁰

In an attempt to create open and independent institutions in the justice system and to broaden the scope of civil and political rights, numerous institutional and legal reforms were also taken.¹⁴¹ Moreover, in order to attain a diversified, middle-income economy by 2030, the government has introduced an economic roadmap called “Home-grown Economic Reform Agenda”.¹⁴² This agenda mainly targets productivity and creating enough jobs through structural, sectoral, and macro-economic reforms.¹⁴³

Consequently, as a result of his popularity, reforms and effort to bring peace between Ethiopia and Eritrea the PM was awarded the 2019 Nobel Peace Prize branded as a ‘reformer’ who ended one-party rule and led the transition to democracy.¹⁴⁴ However, although the reform government has taken important political and economic actions the intended result of the process has not yet materialized. Ongoing conflicts and ethnic tensions in various regions of Ethiopia have weakened stability, unity, and the country’s capacity to uphold democratic principles and human rights.¹⁴⁵

3.2. The Northern Ethiopian Conflict and African Union’s Efforts

When the new PM took office in 2018 and implemented a number of policies that the TPLF perceived as aiming to undermine their authority and influence in the country, the TPLF’s

¹³⁹ Federal Democratic Republic of Ethiopia “The Seventh to Tenth Periodic Country Reports on the Implementation of the African Charter on Human and Peoples’ Rights and the Maputo Protocol” (January 2024) 35 <<https://achpr.au.int/en/state-reports/ethiopia-7th-10th-periodic-reports-2015-2023>> accessed 12 October 2024,

¹⁴⁰ Supra Note 131, p.96

¹⁴¹ Supra Note 132, p.28

¹⁴² Federal Democratic Republic of Ethiopia, ‘A Home-grown Economic Reform Agenda: A Pathway to Prosperity’ (Office of the Prime Minister, March 2020) <<https://faolex.fao.org/docs/pdf/eth211967.pdf>> accessed 12 October 2023.

¹⁴³ Supra Note 139, p.127

¹⁴⁴ Supra Note 131, p.97

¹⁴⁵ Supra Note 132, p.26

favorable relationship with the current government came to a close end.¹⁴⁶ Their relations further deteriorated during March 2020 over tensions of postponement in the general elections caused by the COVID epidemic. The TPLF held its national election since it believed that this was a trick by the government to retain power.¹⁴⁷

The federal government did not acknowledge the outcome of the TPLF election and the TPLF views the government as illegal; extending its official term. In reaction to this shared perception of illegitimacy representatives of the TPLF stopped taking part in parliamentary activities. These incidents, along with many more, caused tensions between the two sides, which eventually led to the start of an armed confrontation in November 2020.¹⁴⁸

After more than two years of fighting largely because of AU the ‘Agreement for Lasting Peace’ through the Permanent Cessation of Hostilities (COHA) was signed between the conflicting parties on November 02, 2022, in Pretoria, South Africa.¹⁴⁹ The terms of the agreement and monitoring for human rights violations were brokered by the AU.¹⁵⁰

The AU’s role in Ethiopian ethnic instability offers important information about their capacity to reduce conflict.¹⁵¹ During the conflict diplomacy by leaders has not produced any noticeable results for the millions of people in the nation beyond those waiting for the weapons to stop

¹⁴⁶ Nahom Benyam, “Conflict in Ethiopia: Evaluating Prevention Strategies” (Doctoral Dissertation, Department of Afroamerican and African Studies, University of Michigan, April 13, 2023) 12

¹⁴⁷ Ibid, p.13 “The Election was scheduled for August 2020”

¹⁴⁸ Ibid, p.12

¹⁴⁹ “AU Commission Chairperson Commends All Ethiopians for Embracing Peace and Reconciliation on the First Anniversary of the Signing of the Cessation of Hostilities Agreement on Tigray” (African Union, Press releases, November 02, 2023) <<https://au.int/en/pressreleases/20231102/au-commission-chairperson-commends-all-ethiopians-embracing-peace>> accessed 16 July, 2023.

¹⁵⁰ “Representatives of the Intergovernmental Authority on Development (IGAD), the United Nations (UN) and the Government of the United States of America (USA) are participating as observers to the AU-led peace process” See “AU launches peace talks to end the conflict in the Tigray Region of Ethiopia” (African Union, Press releases, Oct 25, 2022) <<https://au.int/en/pressreleases/20221025/au-launches-peace-talks-end-conflict-tigray-region-ethiopia>> accessed 16 July, 2023.

¹⁵¹ Aidi, Hisham. "The Tigray War and the African Union." (Policy Brief, PB-28/21, 2021) 3

firing.¹⁵² However, AU has been organizing global efforts to halt hostilities from deteriorating into a spreading civil war which would further destabilize the entire region.¹⁵³

3.3. The Notion of Intergovernmental Relationship (IGR) and Enforcement Mechanisms in Ethiopian Federalism

The concept of federalism involves multiple levels of government, each with distinct powers and jurisdictions over the same territory.¹⁵⁴ A key feature of federations is the constitutionally mandated separation of powers between federal and state governments. It is almost impossible to entirely separate legislative or administrative functions among these governments without functional overlap.¹⁵⁵ Even when the powers and jurisdictions of each level are clearly defined and their sovereignty respected, overlap of powers between them will not remain fixed permanently. Consequently, it is expected that the two governments will engage in various interactions and collaborations. One common form of cooperation in federations is known as intergovernmental relations (IGR).¹⁵⁶

IGR is a crucial norm and solution designed to help divided governments in federations. It focuses on the interactions and cooperation between the various governmental orders in federal systems. It facilitates and regulates communications between the two governmental levels' institutions, each of which has a distinct powers and is in charge of its own jurisdiction.¹⁵⁷

Another way that the federal and state governments interact is through the enforcement of federal laws in the states.¹⁵⁸ The notion of federal laws in federations is a rule established by a nation's

¹⁵² "African Union launches probe into alleged rights abuses in Tigray" (Al Jazeera, June 2021)
<<https://www.aljazeera.com/news/2021/6/17/african-union-launches-probe-alleged-rights-abuses-tigray>>
accessed 12 June 2023

¹⁵³ Hamza Mohamed "Can the African Union solve Ethiopia's year-long conflict?" (Aljazeera, Nov 2021)
<<https://www.aljazeera.com/news/2021/11/16/can-the-african-union-solve-ethiopia-yearlong-conflict-tigray>>
accessed 12 October 2024

¹⁵⁴ Afesha, Nigussie. "The federal-state intergovernmental relationship in Ethiopia: Institutional framework and its implication on state autonomy." (Mizan Law Review 9, 2015) 342

¹⁵⁵ Bekele, Ayana Simachew. "The Enforcement of Federal Laws in States in Ethiopian Ethnic Federalism: The Deadlock between the Federal Government and the Tigray Regional State on the New Law of Boundaries and Identity Issues." (European Scientific Journal, 2019) 19

¹⁵⁶ Ibid,

¹⁵⁷ Yonatan Fessha, "Intergovernmental Cooperation, Divided Societies and Capital Cities" () 53 *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, 53 (2020) 18

¹⁵⁸ Supra Note 10, p.1

federal government and applied throughout its territory.¹⁵⁹ Federations frequently use a variety of mechanisms to enforce federal laws and policies in their member entities.¹⁶⁰ Dual (competitive) federalism is the first mechanism which establishes its own institutions in every state to carry out the duty of enforcing federal laws, rather than assigning responsibility for the state machinery needed to do so.¹⁶¹

The second mechanism is executive (cooperative) federalism which gives state institutions the authority to enforce federal laws. Therefore, it believes that, while the federal government is in charge of enacting federal laws and policies, states are primarily tasked with implementation. Yet, such a system necessitates greater cooperation and coordination between the governmental levels.¹⁶²

Therefore, it is appropriate to institutionalize federal-state IGR forums to facilitate an even implementation of policy frameworks; otherwise, it would be strange if the federal government required states to implement laws it solely created without establishing institutions.¹⁶³ Besides policy formulation and implementation or facilitating the execution of federal laws in states, creating IGR legal frameworks and related forums is crucial to foster a culture of regular communication, negotiation, and effective management of functional interdependence, and power overlap.¹⁶⁴

Ethiopia is a federal state with a dual structure of decentralized governance comprising the federal government with two Federal Houses¹⁶⁵ and the regional government with nine largely ethnic-based constituent units.¹⁶⁶ Thus, different reasons underscore the need for IGR in Ethiopian federalism which was given relatively little attention till 2021. Despite the variety of activities, significant concurrent constitutional responsibilities, and power overlap that may lead

¹⁵⁹ Fiseha, Assefa. "Federalism and the Accommodation of Diversity in Ethiopia." (A Comparative Study, Nijmegen: Wolf Legal Publishers, 2007) 333

¹⁶⁰ Supra Note 155, p.19

¹⁶¹ Ibid, p.20

¹⁶² Ibid,

¹⁶³ Deme, Kenna. "The Impact of Federal-States Intergovernmental Relations on Regional States Autonomy in Ethiopia." (Doctoral dissertation, Addis Ababa University, 2014) 140

¹⁶⁴ Ibid,

¹⁶⁵ (FDRE Constitution) Article 53

¹⁶⁶ Ayele Yared. "The Need and Impact of Reforming the Ethiopian Electoral System" (Doctoral dissertation, Addis Ababa University, 2017) 21

to intergovernmental disputes which necessitate ongoing cooperation and an institutionalized IGR mechanism between or among the tiers of government, the Constitution appears to lack adequate provisions addressing IGR.¹⁶⁷

As indicated in Article 50(2) of the Constitution, regional states are not explicitly assigned the responsibility of implementing and enforcing federally enacted laws and policies.¹⁶⁸ Nonetheless, many federal laws and programs have been executed and managed by regional states, often without a solid constitutional basis and guided by established practices.¹⁶⁹ As a result, during the EPRDF era, due to the absence of active and impartial institutions, most IGR issues, including implementation of federal laws in states, were addressed by the ruling party and other temporary mechanisms, such as regional representation in federal institutions or sector-specific interactions facilitated by memorandums of understanding to address common issues.¹⁷⁰

¹⁶⁷ Birhanu, Habtamu, and Zelalem Kebu. "Inter-federal-regional conflict resolution mechanisms in Ethiopian federacy: A comparative appraisal on the legal and institutional frameworks." (Beijing L. Rev. 10, 2019) 1376

¹⁶⁸ Supra Note 163, p.140

¹⁶⁹ Supra Note 154, p.354 and 344

¹⁷⁰ Supra Note 155, p.29

CHAPTER FOUR

4. ASSESSMENT AND FINDINGS

4.1. Introduction

This chapter examines the factors influencing Ethiopia's compliance and non-compliance with ACDEG. Although Ethiopia has been a signatory since 2007, it has not submitted the required biennial report on its efforts to fulfill its obligations. Therefore, this chapter will assess the implementation of ACDEG's principles by focusing on the recent democratic transition, along with the legal and institutional improvements and obstacles that have hindered Ethiopia's compliance.

4.2. Method of Data Analysis

A qualitative research method with was used to gather data from various sources such as policy documents, official reports, and interviews with CSOs, government officials, and citizens to understand their perspectives on democracy and governance. The researcher used 'thematic analyses' to organize and analyze the data obtained through key informant interviews (KII) and reports, relating to the implementation and challenges of ACDEG in Ethiopia.¹⁷¹

Through careful reading of the gathered data, the researcher analytically identified key ideas, themes and issues related to ACDEG's principles in Ethiopia to develop a thematic framework. The themes were interpreted and analyzed to reveal the strengths and weaknesses in Ethiopia's democratic framework. Finally, based on the organized data, to validate the factors that impede the implementation of ACDEG, the researcher presented the findings in a coherent narrative.

4.3. The Extent of ACDEG's Implementation in Ethiopia's Democratic Transition and Reforms

According to, the 7th to 10th Periodic Country Report on the implementation of the African Charter on Human and Peoples' Rights (ACHPR), "several legal, institutional and administrative measures were taken by the Government of Ethiopia to meet the obligations under the African human rights system."¹⁷² "Ethiopia has engaged in a wide range of activities to transform the

¹⁷¹ Clarke, Victoria, and Virginia Braun. "Thematic analysis" (The journal of positive psychology 12, 2017) 297

¹⁷² Supra Note 139, p.126

political, economic and social situation in line with its commitment to the promotion and respect for human rights.”¹⁷³

4.3.1. Legal, and Institutional Reforms in Compliance with ACDEG

The Office of the Attorney General established the Legal and Justice Affairs Advisory Council to review various regulations within the justice system in order to formulate suggestions for extensive reforms, including amending and arranging laws and institutions respectively.¹⁷⁴ As a result, laws that threatened institutional and human freedom and independence in the media, elections, judiciary, and CSOs have been overturned and modified to conform to a more liberal democratic framework and laws intended to shield citizens from the abuse of their rights have been implemented.¹⁷⁵

The amended Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020 is more “liberal” and in line with democratic and human rights principles.¹⁷⁶ Similarly, a favorable shift toward reintegration, rehabilitation, and human rights protection is indicated by Federal Prison Proclamation No. 1174/2019. Also, by creating a system of judicial review for administrative officials who violate citizens' rights or adversely impact their enjoyment of those rights, Federal Administrative Procedure Proclamation No. 1183/2020 seeks to give citizens access to justice.¹⁷⁷

Additionally, there has been significant progress in reforming the EHRC.¹⁷⁸ In compliance with the revised Proclamation No. 1224/2020, the new Chief Commissioner of the EHRC has also been selected by the House of Peoples’ Representatives (HoPR). The Commission is now free to employ any professional at the Chief Commissioner’s discretion, and its salary is no longer

¹⁷³ Ibid,

¹⁷⁴ Supra Note 132, p.29

¹⁷⁵ Supra Note 35, p.10

¹⁷⁶ Supra Note 132, p.29

¹⁷⁷ Sisay A. Yeshanew and Abadir M. Ibrahim, “Righting Human Rights through Legal Reform: The Ethiopian Experience from Past to Present” in *Righting Human Rights through Legal Reform: Ethiopia's Contemporary Experience* (2020) 6 and Abduletif Kedir and Minilik Assefa, “Justiciability of Administrative Actions in Ethiopia: Appraisal of the Federal Administrative Procedure Proclamation in Light of the Right to Access to Justice” (December 2020) 3.

¹⁷⁸ Ethiopian Human Rights Commission “Appointment of Chief Commissioner for the Ethiopian Human Rights Commission” (January 30, 2025) <<https://ehrc.org/?p=31197>> accessed March 10 2024

based on civil service limits.¹⁷⁹ It also conducts investigations and publishes regular and ad hoc reports in a more favorable political environment.¹⁸⁰ Human Rights Watch (HRW) has commended the government in its 2019 report; citing progressive changes following the appointment of the new PM.¹⁸¹ Amendments and enactment of new legislations were also made in areas including budget allocation and court administration, in order to protect judges' personal autonomy and improve the judicial integrity of courts.¹⁸²

According to the ACHPR report "the PM also proclaimed a key part of the on-going political reforms is the widening of the political space to allow complete freedom to all political parties irrespective of their ideologies." Accordingly, in an effort to guarantee a democratic electoral system, several opposition parties, including those in exile, have been invited to actively engage in an ongoing national dialogue. In light of this, the HoPR has modified the Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019 and the National Electoral Board of Ethiopia Establishment Proclamation No. 1133/2019 through discussions between the ruling and several contending parties.¹⁸³

Moreover, the NEBE has been recreated into a more autonomous institution with basic staffs, recognized for their expertise. The revised Proclamation provided the NEBE with additional guidelines for membership appointments and moral conduct, increased its accountability, with judicial review of administrative decisions. The NEBE is also given full power to issue directives for holding elections.¹⁸⁴ The demands of women and people with disabilities have also been recognized by the new electoral laws.¹⁸⁵

¹⁷⁹ "The Ethiopian Human Rights Commission Establishment (Amendment) Proclamation No. 1224/2020" Articles 10-12

¹⁸⁰ Supra Note 35, p.11

¹⁸¹ Human Rights Watch (HRW) 'Ethiopia; Events of 2018' (World Report, 2019) <<https://www.hrw.org/world-report/2019/country-chapters/ethiopia>> and '2019 Country Reports on Human Rights Practices: Ethiopia' (United States Department of State Bureau of Democracy, Human Rights and Labor, 2019) <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/ethiopia/>> accessed March 14 2022

¹⁸² "the Federal Administration Judicial Proclamation No. 1233/2021 and the Federal Courts Proclamation No. 1234/2021"

¹⁸³ Supra Note 139, p.35

¹⁸⁴ Ibid,

¹⁸⁵ Ibid, p.37

The government has also amended previous proclamations on mass media and information access, among other legislative actions pertaining to freedom of expression. Consequently, Proclamation No. 1176/2020 repealed Anti-terrorism Proclamation No. 652/2009, and Media Proclamation No. 1238/2021 replaced mass media provisions on Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 and Broadcasting Service Proclamation No. 533/2007.¹⁸⁶

The new Media Proclamation, made press licensing more direct, clarified and limited the circumstances for criminalizing speech, legalized defamation, and proposed a more independent regulatory body.¹⁸⁷ While the Press Proclamation No. 34/1992 and the Criminal Code provisions pertaining to media regulation are being considered for revision, the government has also amended the previous Definition of Powers and Duties of the Executive Organs of FDRE Proclamation No. 691/2010, the Advertisement Proclamation No. 759/2012, and the directives related to Community Radio Broadcasting Services.¹⁸⁸

According to the ACHPR report, “despite all the progressive measures taken by the government, hate speech and dangerous disinformation have increasingly been issues of serious concern especially subsequent to the reform measures. Such acts have already resulted in a number of ethnic and communal clashes, mass-displacement and in the worst scenario even killings of innocent citizens.”¹⁸⁹ Thus, the government adopted the Hate Speech and Disinformation Proclamation No. 1185/2020.

Similarly, the government revised the 2009 strict civil society law which had significantly limited the role of non-governmental actors. The new CSO Proclamation No. 1113/2019 sought to address long-standing limitations in the sector, by removing restrictions and fostering an atmosphere that encourages foreign NGOs and CSOs to participate and play a more active role in advocacy issues, advancing human rights, inclusive governance and freedom of association and

¹⁸⁶ Ibid, p.26 and 27

¹⁸⁷ Mesenbet Assefa Tadege and Solomon Shiferaw, “Reflections on Ethiopia's Media Law Reform” (Ethiopian Human Rights Law Series, XII, Addis Ababa University, 21 December 2020). 9

¹⁸⁸ Supra Note 139, p.27

¹⁸⁹ Ibid,

expression.¹⁹⁰ A member of the new Proclamation's writing committee, *Mr. Debeb Hailegebriel*, thinks it will result in a better working relationship between the government and CSOs.¹⁹¹

4.3.2. Challenges of the Democratic Transition in Implementing ACDEG

According to the ACHPR report, “Ethiopia’s journey to radical reforms since 2018 has been challenged by a series of circumstances that impede full-scale implementation of the reforms, making the effectiveness and sustainability of these measures debated.”¹⁹² Despite high hopes for the reforms, instability and conflicts has negatively impacted the country’s democratic transition and made it challenging for the government to enforce ACDEG’s key principles on peaceful transfer of power, integrity of electoral processes, and the government’s efforts to promote and protect human and democratic rights across all regions.¹⁹³

4.3.2.1. Intra-State Ethnic Conflicts and Instability

Since the start of the reform, disagreements over land access and issues related to identity and borders have caused conflicts between different ethnic groups and led to a lot of people being displaced.¹⁹⁴ Particularly, the conflict between the federal government and TPLF forces for almost two years was one of the worst ethnic conflicts in Ethiopia.¹⁹⁵ It has elevated human rights abuses and loss of democratic government in the country and has resulted in extended conflict all over the northern part of the country, mostly in Afar, Amhara, and Tigray regions.¹⁹⁶

¹⁹⁰ Supra Note 35, p.11

¹⁹¹ Supra Note 11, p.46 & 69

¹⁹² Ibid, p.126

¹⁹³ The National Democratic Institute (NDI) “Overview of Ethiopia’s Democratic Transformation” (August 9, 2021) <<https://www.ndi.org/sub-saharan-africa/ethiopia-0>> accessed July 10 2023

¹⁹⁴ Supra Note 132, p.31 “The most serious conflicts in 2018 were those between the Gedeo and Guji communities, and in the border regions of Benshangul-Gumuz, Oromia, Somalia, and the Amhara region.”

¹⁹⁵ The UN Refugees Agency ‘Ethiopia’s Tigray refugee crisis explained’ (UNHCR, July 06, 2022) <<https://www.unrefugees.org/news/ethiopia-s-tigray-refugee-crisis-explained/>> accessed 11 June 2023 and Geoffrey York ‘Tigray war has seen up to half a million dead from violence and starvation, say researchers’ (Globe and Mail, March 2022) <<https://www.theglobeandmail.com/world/article-tigray-war-has-seen-up-to-half-a-million-dead-from-violence>> accessed 06 March 2022

¹⁹⁶ “2022 Country Reports on Human Rights Practices: Ethiopia” (United States Department of State Bureau of Democracy, Human Rights and Labor, 2022) <https://www.state.gov/wp-content/uploads/2024/02/528267_ETHIOPIA-2023-HUMAN-RIGHTS-REPORT.pdf> accessed on March 20 2023

It has also raised concerns regarding IGR between the levels and branches of government, freedom of expression as well as the ability of civil society and the media to function freely.¹⁹⁷

According to the 2023 Country Report, the federal government was no longer able to maintain peace and order across the nation and has lost control over the use of force. The public's confidence and trust in public institutions and authorities has been impacted by this development. Informal forces like the Fano militia, Oromo Liberation Army (Qeerro), and government forces conflicted in the Oromia and Amhara areas, respectively.¹⁹⁸ According to KIA, *"because the federal government has let the increase of informal regional Special Forces, which are posing a threat, it has lost control over certain areas in Oromia, Benishangul Gumuz, Amhara, and Tigray."*¹⁹⁹ Moreover, Ethiopia had over four million internally displaced people due to vertical and horizontal conflicts that the government was unable to manage.²⁰⁰

As KIB puts it *"After thirty years of trying out self-determination and ethnic federalism in Ethiopia to fix political problems, most of the issues from the mid-20th century are still around, and new ones have popped up too."*²⁰¹ Therefore, while, ACDEG urges States to enhance peace, security, and stability by developing participatory political systems with inclusive institutions,²⁰² the fragmentation and instability, along with the government's reactions to these conflicts, has been criticized as violations of ACDEG.

4.3.2.2. Human Right Violations and Conflict-Related Abuses

Although the implementation of the reforms could have the potential to improve human rights, the widespread ethnic conflicts and mob justice have really made things worse. During the reform several people lost their lives in a mob attack in Burayu and others in ethnic conflicts in

¹⁹⁷ 'Ethiopia's Press Freedom Dreams under Abiy Ahmed Turning into a Nightmare' (African Freedom of Expression Exchange, 16 November 2020) <https://www.africafex.org/digital-rights/ethiopias-press-freedom-dreams-under-abiy-ahmed-turning-into-nightmare> accessed 10 July 2023

¹⁹⁸ "2023 Country Reports on Human Rights Practices: Ethiopia" (United States Department of State Bureau, Democracy, Human Rights and Labor, 2023) <<https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/ethiopia/>> accessed June 11 2024

¹⁹⁹ Interview with Key Informant A, February 29, 2025

²⁰⁰ Supra Note 132, p.37

²⁰¹ Interview with Key Informant B, February 01, 2025

²⁰² (ACDEG), Article 34 and 38(1)

many universities.²⁰³ However, according to KIA, “*from 2021 to 2022 there were many credible reports of human rights violations that increased because of inter-communal tensions.*”²⁰⁴ Consequently, the situation after the reforms is characterized by human rights violations by third parties or informal non-state forces, including conflict-related abuses.

Multiple instances of serious human rights violations and war crimes have been documented by the Ethiopian Human Rights Commission (EHRC), Human Rights Watch (HRW), Amnesty International (AI), the UN International Commission of Human Rights Experts on Ethiopia (ICHREE), and various CSOs focused on human rights. These violations include torture, cruel and inhumane treatment, unlawful or politically motivated killings, arbitrary arrests, enforced disappearances, forced displacement of civilians, property destruction, gang rapes, and other types of sexual violence.²⁰⁵

According to KIB “*these violations have happened in all areas, but Tigray, Amhara, Oromia, Afar and Benishangul have been the worst-impacted.*”²⁰⁶ The EHRC informed Parliament that the government’s inability to keep its people safe from ethnic violence is resulting human rights violations. At the time, the commissioner told Reuters that “*there is a lack of accountability for the intentional involvements and that in some cases, security officials deliberately avoided stepping in.*”²⁰⁷ Daniel Bekele; former chief commissioner, acknowledged that “*non-state actors are mostly to blame for the worsening of Ethiopia's human rights condition.*”²⁰⁸

²⁰³ Mahlet Fasil, ‘News: More Than Twenty Three Killed in a Spate of Mob Attack in Burayu. Thousands Displaced’ (Addis Standard, 17 September 2018) <<https://addisstandard.com/news-more-than-twenty-three-killed-in-a-spate-of-mob-attack-in-burayu-thousands-displaced/>> accessed 20 March 2023

²⁰⁴ Interview with Key Informant A, February 29, 2025

²⁰⁵ The Ethiopian Human Rights Commission (EHRC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) ‘Report on the Findings of Community Consultations on Transitional Justice (TJ) with Victims and Affected Populations in the Federal Democratic Republic of Ethiopia’ (December 28, 2023) <<https://reliefweb.int/attachments/904d5792-39f1-4db1-ad17-f28d7a410c61/OHCHR-EHRC-Report-TJ-28-12-23.pdf>> accessed October 03 2024

²⁰⁶ Interview with Key Informant A, February 29, 2025

²⁰⁷ ‘Ethiopia Government Failing to Protect People from Ethnic Violence: Rights Commission’ (Reuters Africa, 5 October 2018) <<https://m.ghheadlines.com/agency/reuters-africa/20181005/91408314/ethiopia-govt-failing-to-protect-people-from-ethnic-violence-rights-commission>> accessed 20 March 2022

²⁰⁸ ‘News: Human Rights Commission Chief Says Non-State Actors Worsening Human Rights Crisis in Ethiopia’ (Addis Standard, 23 January 2020) <https://addisstandard.com/news-human-rights-commission-chief-says-non-state-actors-worsening-human-rights-crisis-in-ethiopia/> accessed 20 March 2022

Therefore, as required by ACDEG, the government should have taken more suitable measures to protect human rights. But we're seeing a lot of reports showing that this hasn't happened. In many cases, the government hasn't fulfilled its primary duty of maintaining peace and order or stopping harm from abusive groups, which has led to human rights violations.

4.3.2.3. Irregularities in Electoral Processes

Although the reform government made significant strides toward improving Ethiopia's electoral process, it also contributed to certain restrictions on freedom and equity. The COVID-19 epidemic had caused the 2021 general election to be postponed twice. Despite ethnic violence and logistical difficulties, the election was held in unfavorable security and political settings that impacted its schedule and quality. Actually, the voting for 14% of the seats, which covers 79 constituencies, including Tigray Region, has been rescheduled.²⁰⁹

The election's democratic nature was highly questioned by many.²¹⁰ While the AUEOM and other local election observers considered the 2021 elections a positive step in the country's democratic trajectory, they also noted that the process was not free or fair for all citizens.²¹¹ According to the AUEOM's 2021 report, due to the security situation, particularly in the Tigray region it was difficult to hold elections in such areas. Also, the elections were affected by ethnic and border-related conflicts in some regions including West Wollega, Benishangul-Gumuz, and Somali-Afar which the authorities identified as "hotspots".²¹² The AUEOM also notes that some NEBE offices were attacked Oromia and Amhara, before the elections, which affecting smooth electoral processes in those areas.²¹³

²⁰⁹ Supra Note 198, p.30 Emphasis added.

²¹⁰ "Some political leaders (Mr. Abera Hailemariam of CECOE), Kawuser Idris of (EZEMA) and Getnet Worku of (Enat party) clearly specified irregularities..." See Bante Dessisa Kabeta. "Critical Analysis of Electoral Management in Ethiopia: The Case of National Electoral Board of Ethiopia (NEBE) in the 2021 Elections, Achievements and Challenges." (2022) 29

²¹¹ Tom Wheeldon 'Ethiopian elections: In the eyes of the international community, this vote 'is already tainted' (France 24 website, 2021) <<https://www.france24.com/en/africa/20210621-ethiopian-elections-in-the-eyes-of-the-international-community-this-vote-is-already-tainted>> accessed March 21 2023

²¹² Mission, A. U. E. O. 'Report of the African Union Election Observation Mission to the 21 June 2021, Parliamentary Elections in the Federal Republic of Ethiopia' (June 21, 2021) 3 <<https://au.int/en/pressreleases/20210623/preliminary-statement-african-union-election-observation-mission-21-june-2021>> accessed March 21 2024

²¹³ Ibid, p.3 and 6

Somehow the government allowed the participation of opposition parties in debates, hold rallies, and campaign actively. However, there were accusations of serious abuses. Before the election, numerous political parties accused the government of abusing its power against their candidates, including harassment, arbitrary incarceration, beatings, and attempted murders. Consequently, significant opposition parties including the Ethiopian Citizens for Social Justice, the OFC, and the OLF refused the election. However, observers believed that the result largely represent the wishes of the majority.²¹⁴

Overall, various sources indicates that irregularities were not only noticed by the opposition political parties.²¹⁵ The National Democratic Institute report claims that political party boycotts and a large number of HoPR elections with only one candidate in Ethiopia's most populous state were caused by the arrest of several well-known political figures and other issues. It was also difficult for opposition party candidates and supporters to participate in the election process because they were harassed and intimidated.²¹⁶

The NEBE reported that out of the 47 parties that took part in the elections, 30 of them covering 160 constituencies filed complaints about the process.²¹⁷ KIF mentioned "*the NEBE collaborated with the government to address some of these issues and managed to resolve a few, like getting some detained candidates released. But, with so many reported issues regarding officials, the NEBE struggled to keep up with everything.*"²¹⁸

Therefore, though the PP might have sparked some positive changes, and this election was a bit different from the past, ethnic tensions, low voter turnout in some areas, and the imprisonment of journalists kept it from meeting key ACDEG standards. Because of these problems, Ethiopia was

²¹⁴ Supra Note 198, p.30

²¹⁵ Lyons, Terrence, and Aly Verjee. "Asymmetric electoral authoritarianism? The case of the 2021 elections in Ethiopia." (Review of African Political Economy 49, 2022) 342

²¹⁶ International Republican Institute & National Democratic Institute, 'Ethiopia June 21, 2021, National Elections Report' (5 August 2021)

<<https://www.ndi.org/sites/default/files/LEOME%20Report%20of%20the%20June%2021%20Elections.pdf>>

accessed 21 March 2024

²¹⁷ Supra Note 196, p.29

²¹⁸ Interview with Key Informant E, January 02, 2025

labeled a ‘not free’ nation by the Freedom House Index (FHI), with scores of 23 in 2021, 27 in 2022, and 26 in 2023.²¹⁹

4.3.2.4. Freedom of Expression and Accessibility of Press and Media Service

Although freedom of expression is a key principle of ACDEG and is constitutionally maintained, the government’s adherence to this right has declined, particularly due to the conflict in the northern region. International organizations have highlighted significant limitations on freedom of expression, noting a decrease in media and press freedoms, including unwarranted arrests of journalists, censorship, and considerable interference with the rights to peaceful assembly and association.²²⁰

Throughout the year, various reports, including those from the Ethiopian Human Rights Defenders Center, indicated that “leading human rights organizations in the country have faced a rise in intimidation, harassment, and threats from authorities.” Likewise, numerous human rights defenders, such as journalists, academics, and leaders of civil society organizations, have experienced arbitrary detentions and severe criminal charges, including accusations of terrorism, for practicing their freedom of expression and carrying out their journalistic responsibilities.²²¹

In its 2023 report, the U.S. Department of Human Rights highlighted that the government had charged some journalists on national security grounds.”²²² As reported by the Committee to Protect Journalists (CPJ) specific journalists even faced death penalty on charges of anti-state or treason. Moreover, the Ethiopian Press Freedom Defenders stated that roughly 200 journalists have been arrested by the Ethiopian government since 2019.²²³ Subsequently, by arresting 18

²¹⁹ Freedom House Index ‘Freedom in the world from 2021-2023 Ethiopia’
<<https://freedomhouse.org/country/ethiopia/freedom-net/2023>> accessed July 04 2024

²²⁰ Supra Note 198, p.2

²²¹ Supra Note 196, p.20 “The arrests included journalists Meaza Mohammed, Yayesew Shimelis, Gobeze Sisay and Abebe Bayu.”

²²² Ibid, p.22 “Journalists Bikila Amenu and Dessu Dulla”

²²³ Reliefweb. ‘Ethiopia: Massive crackdown on civil society organizations’ (News and Press Release Paris-Geneva, July 19, 2024) <<https://reliefweb.int/report/ethiopia/ethiopia-massive-crackdown-civil-society-organisations>> accessed October 07 2023

journalists within 10 days, in 2022 Ethiopia was labeled as “the worst jailer of journalists in Sub-Saharan Africa”.²²⁴

According to KID and KIB “*the 2020 Terrorism Proclamation is liberal in certain ways, but it still sees the death penalty as a valid punishment for terrorist acts.*”²²⁵ The Hate Speech Proclamation, which also calls for harsh penalties for purported hate speech and disinformation, is criticized for using ambiguous language that gives the government the authority to misuse the law and restrict free speech and public debate.²²⁶

Moreover, KIC said “*media platforms have gotten more accessible over the years, but there are still some old issues hanging around because the government still controls a lot of the media.*”²²⁷ Freedom House reported that, though there were active independent media, many media outlets apparently prioritized political, ethnic, and regional factors over pluralistic, independent, and balanced journalism. Reports of violations against rival ethnic groups were allegedly suppressed, minimized, or discredited by news agencies.²²⁸

Consequently, as KID concluded, “*even though the PP took some steps to correct previous laws, they do not fully address all issues plus they actually added more restrictions on freedom of expression.*”²²⁹ As a result, in 2022-2024, four international democracy rankings of political rights and civil liberties,²³⁰ categorized Ethiopia as a ‘hybrid’ combining features of democracy

²²⁴ ‘Eighteen Journalists Arrested in Ethiopia, Two Facing Possible Death Sentence’ (Reporters Without Borders, 3 June 2022) <<https://rsf.org/en/eighteen-journalists-arrested-ethiopia-two-facing-possible-death-sentence>> and ‘Ethiopia among Worst Jailers of Journalists – Rights Group’ (Rédaction Africanews with AFP, 2 August 2022) <<https://www.africanews.com/2022/08/02/ethiopia-among-worst-jailers-of-journalists-rights-group/>> accessed 7 October 2023

²²⁵ Interview with Key Informant B and D “Article 3 and 17 of the Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020”

²²⁶ Human Rights Watch ‘Ethiopia: Bill Threatens Free Expression’ (Revise Draft Law on Hate Speech, Disinformation, December 19, 2019) <<https://www.hrw.org/news/2019/12/19/ethiopia-bill-threatens-free-expression>> accessed October 07 2023

²²⁷ Interview with Key Informant C February 01, 2025

²²⁸ Supra Note 196, p.15 and 23 “In Kelleme Wollega, Oromia Region, phone and internet connections were cut off on July 4. A large portion of the Amhara Region’s internet services were also stopped by the government. Telephone, cell phone, and internet connections were unavailable in a large portion of the Tigray Region from 2020 until the COHA was signed.”

²²⁹ Interview with Key Informant D March 07, 2025

²³⁰ The International Center for Not-for-Profit Law “Civic Freedom in Ethiopia” International Ranking Scale of (best – worst possible) (October 30, 2024) <<https://www.icnl.org/resources/civic-freedom-monitor/ethiopia>> accessed October 03 2024

and authoritarianism.²³¹ Regarding media, Reporters without Borders (RSF) rated Ethiopia out of 180 countries, 127th in 2021, 114th in 2022, 130th in 2023, 141th in 2024, and 145th in 2025 on their Press Freedom Index.²³²

4.3.3. Challenges of Civil Society Organizations (CSO's)

While the new CSO Proclamation has removed many operational constraints on the civil society sector, it still retains some level of State monitoring through registration, regulatory, and reporting requirements.²³³ According to the United States Human Rights Department's 2023 report, there is still significant interference with the freedom of expression, including legislation that place undue restrictions on funding, organization, or operations of CSOs and NGOs.²³⁴ Also, despite some progresses since 2018 government-CSO relationship is still occasionally tense due to political tensions, repression of civic space, and conflicts with security threats.²³⁵

4.3.3.1. Financial Sustainability and Funding Allocation

According to KID, *“the new Proclamation still hasn't fully dealt with the limits on foreign funding.”*²³⁶ Several developing CSOs struggle to secure sufficient and sustainable funding necessary to carry out their activities effectively.²³⁷ Majority of donors overlook fresh CSOs with less project expertise and favor established organizations. Also, established CSOs are susceptible to change agendas because they frequently rely on foreign funding. This restricts their ability to effectively handle important peace-building issues. Since competition for limited resources makes it harder for CSOs to work together, this funding situation also contributes to fragmentation.²³⁸

²³¹ Democracy in Africa (DIA) 'Democracy Ratings 2021' <<https://democracyin africa.org/democracy-monitor/ethiopia/>> accessed April 04 2024

²³² Henry Wilkins 'Journalists in Ethiopia say press freedom is at 'crossroads'', (Press Freedom, VOA, May 04, 2022) <<https://www.voanews.com/a/journalists-in-ethiopia-say-press-freedom-is-at-crossroads-/6555567.html>> accessed October 03 2024 and Reporters without Borders for Ethiopia (MAP, World Press Freedom Index, 2025) <<https://rsf.org/en/country/ethiopia>> accessed March 03 2025

²³³ Supra Note 11, p.69

²³⁴ Supra Note 198, p.2

²³⁵ Zelalem Eshetu Degifie "Civil Society Organizations and Peace-building in Ethiopia" (Briefing Paper Peace Research Facility and Rift Valley Institute, March 2025) 3

²³⁶ "The Organizations of Civil Societies Proclamation No.1113/2019" Article 86 (1-5)

²³⁷ Interview with Key Informant D March 07, 2025

²³⁸ Supra Note 235, p.3 "This is demonstrated by the recent reductions in USAID funding, which caused numerous CSOs who work on peace-building to cease operations."

4.3.3.2. Bureaucratic Reporting Requirement

According to KID, “CSOs have been finding it difficult to fulfill the Proclamation’s requirements of submitting an annual report about their main activities within three months after the end of the fiscal year.”²³⁹ These issues are directly related to their underfunding, since they lack the resources necessary to meet the strict administrative requirements, making it harder for them to finance and supervise their operations.²⁴⁰

4.3.3.3. Political Tensions and Conflicts with Security Risks

Conflicts and violence in various regions of Ethiopia have fostered an atmosphere of instability and uncertainty, making it hard for CSOs to operate freely. During the Tigray war, the government placed restrictions on humanitarian organizations saying they were allegedly helping TPLF rebels.²⁴¹ Human rights CSOs in the region reported that staff members were arrested for allegedly collaborating with armed groups, creating a climate of suspicion that complicates their protective efforts. Additionally, many local organizations in Tigray have been unable to restart their activities following the war.²⁴²

Moreover, security threats in conflict zones make it difficult to effectively monitor human rights abuses, making CSOs reluctant to operate in those regions.²⁴³ Besides, humanitarian workers often face targeted attacks and kidnappings for ransom. There were also reports of break-ins into offices of local human rights groups and private media that appeared critical of the government, including the burglary of the EHRCO office. This insecurity hinders CSOs’ protective roles.²⁴⁴ In

²³⁹ Interview with Key Informant D March 07, 2025 ‘(CSO Proclamation) Article 4(a),6(2 & 3),66(3),70(1),73(1), 77(4), 78(4) and 83(1/b))’

²⁴⁰ Supra Note 223

²⁴¹ Mulugeta Gebrehiwot and Alex de Waal, ‘Humanitarian Priorities for Tigray, Ethiopia, after the Cessation of Hostilities’ (PeaceRep, 2 May 2023) <<https://peacerep.org/publication/humanitarian-priorities-for-tigray-ethiopia-after-the-cessation-of-hostilities/>> accessed 24 March 2024

²⁴² Ashenafi Endale, ‘Almost Half of CSOs in Tigray Remain Inactive’ (The Reporter, 28 January 28, 2023) <<https://www.thereporterethiopia.com/30276/>> accessed March 24 2024

²⁴³ Interview with Key Informant D March 07, 2025

²⁴⁴ “UN OCHA documented 93 occurrences in 2023 that involved attacks and kidnappings of relief workers. Unknown groups killed five humanitarian workers, attacked ten, and abducted eleven between January and June of 2024.” see OCHA, ‘Ethiopia: Humanitarian Snapshot–February 2024’ (12 March 2024) <<https://www.unocha.org/publications/report/ethiopia/ethiopia-humanitarian-snapshot-february-2024>> and ‘Statement on the Killing of a Humanitarian Worker in the Amhara Region’ (14 August 2024) <<https://www.unocha.org/publications/report/ethiopia/statement-killing-humanitarian-worker-amhara-region>> accessed 24 February 2025

2023, the Center for Advancement of Rights and Democracy (CARD) and the Committee to Protect Journalists (CPJ) reported similar targeted robberies affecting CSOs and media offices, calling on the relevant authorities to investigate and ensure accountability. As of the end of 2023, the government had not revealed any measures it was implementing to protect the media and CSOs.²⁴⁵

4.3.3.4. Repression against Civic Space

In the face of growing violence in the Tigray region, security authorities stopped 35 local CSOs calling for peace from holding a press conference on August 6, 2022.²⁴⁶ In July, 2024 the Agency has reportedly closed at least 1,504 CSOs for not submitting their annual reports. This drastic measure is basically silencing CSOs and seems to be a disciplinary response for their lawful activity. This forced dissolution severely impacts numerous CSOs, creating an environment of fear, stigmatization, isolation and self-censorship among civil society actors. Additionally, it draws attention to the growing restrictions on civic space and human rights advocates, which is a serious infringement on the freedoms of association and expression having negative effects on CSOs.²⁴⁷

KID also notes that *“things can also get tense when CSOs criticize or speak out against government policies.”* The government was alarmed by CARD's critical report on the National Dialogue because it was seen as disruptive and helped the regulatory approach change from supportive to controlling position.²⁴⁸ As a result, in November 2024, CARD and five comparatively verbal CSOs were suspended.²⁴⁹ KID said *“this demonstrates that when the government sees CSOs as a threat by opposing its position it can act harshly.”*²⁵⁰

²⁴⁵ Supra Note 198, p.18

²⁴⁶ Commission Cautions against Silencing Rights Organizations under Dubious Claims' (Addis Standard, 27 December 2024) <<https://addisstandard.com/commission-cautions-against-silencing-rights-organizations-under-dubious-claims/>> and Wazema Radio, 'Ethiopian Minister Warns Representatives of Local Civil Society Organizations for their Recently Issued "Urgent Call for Peace" Statement' (10 September 2023) <<https://umdmmedia.com/2022/09/ethiopian-minister-warns-representatives-of-local-civil-society-organizations-for-their-recently-issued-urgent-call-for-peace-statement/>> accessed 9 January 2025.

²⁴⁷ Supra Note 223

²⁴⁸ Sisay Sahl, 'CARD questions legitimacy and inclusivity of National Dialogue Commission', (The Reporter, August 24, 2024) <<https://www.thereporterethiopia.com/41603/>> accessed March 24 2025

²⁴⁹ "Lawyers for Human Rights (LHR), Ethiopian Human Rights Defenders Center (EHRDC), Ethiopian Human Rights Council, and Association for Human Rights in Ethiopia (AHRE) were suspended." Ethiopian Human Rights

So, while the recent significant changes in CSOs represent a positive development, the effects of ongoing bureaucratic oversight by the Agency and the ambiguous political landscape are yet to be fully assessed. Thus, despite the improvement in the status of CSOs in Ethiopia, challenges in their operational environment persist. These issues underscore the necessity for ongoing efforts to enhance the working conditions for CSOs.

4.3.4. Weak Enforcement Mechanisms and Insufficient/Poor IGR

ACDEG stresses the need for power decentralization. However, tensions between the federal government's consolidation efforts and regional demands for autonomy in Ethiopia have hindered the devolution of power and inclusive governance. ACDEG also calls for strong enforcement mechanisms and cooperation between government levels to ensure compliance. Yet, Ethiopia's enforcement mechanisms and IGR are weak, lacking the capacity and political will to monitor compliance effectively, allowing both governments to often disregard ACDEG's requirements and diminishing its effectiveness.

Due to the intensification and increase of federal projects in several states or new emerging situations, the government has been facing functional interdependence and overlap of powers has been growing between the federal government and the states in many respects over the years. These problems highlight the necessity to create IGR institution.²⁵¹ Yet, prior to the introduction of IGR Proclamation in 2021, the fact that most IGR concerns were dealt with through the party channel has undermined the need to institutionalize IGRs.²⁵²

This lack of a well-designed IGR system enabled political gaps between regional states, which occasionally resulted in inconsistent policies with unfavorable outcomes, such as the different stances that regional states had on the possession and trade of weapons.²⁵³ Moreover, a security vacuum or a lack of competent authority was created in the lower judicial and law enforcement organs as a result of the power struggle and division among the ruling parties following the

Commission, 'Lifting of the Suspension of Four Civil Society Organizations' (3 March 2025) <https://ehrc.org/lifting-of-the-suspension-of-four-civil-society-organizations/> accessed 1 April 2025

²⁵⁰ Interview with Key Informant D March 07, 2025

²⁵¹ Supra Note 155, p.18

²⁵² Supra Note 10, p.1

²⁵³ Cochrane, Logan, and Sebsib Hadis. "Farmers Buying guns: The impact of uncertainty and insecurity in Rural Ethiopia." (African Studies Quarterly 20, 2021) 106

reform which exacerbated the nation's humanitarian crises, crimes, and serious human rights violations.²⁵⁴ As a result of the security vacuum, law and order also severely collapsed in the country, which were the most effective way to defend democracy and human rights.²⁵⁵ The government was consequently unable to fulfill its obligation to defend citizens' human rights.

Consequently, very weak law enforcement agencies were established, mostly in the regional states, as a result of intra-state conflicts that led to the breakdown of law and order and the formation of a security vacuum or lack of adequate authority. Because of this, regional states were losing their ability to maintain law and order in their separate administrative regions, which made it difficult for them to carry out their duties and prevent abuses and breaches of human rights brought on by conflicts.²⁵⁶

The quarrel between the Federal Government and the Tigray Regional Government's (TRG) is the most notable IGR rupture/gap. In 2019 order to resolve tensions between regions about issues of self-administration and boundaries, the parliament issued the Administrative Boundary and Identity Issues Commission Establishment Proclamation No.1101/2018. Nevertheless, out of the 350 members that attended the parliament session 33 votes from TRG Member Parties opposed the bill's acceptance on the basis of “unconstitutionality” and voted to prevent the Commission's establishment. However, the Proclamation was approved by a majority vote when the party lost the backing of its allies.²⁵⁷

Subsequently, the regional parliament of Tigray rejected the adoption of proclamation, vowing not to implement it over its region, creating a stalemate.²⁵⁸ Similar to the experiences of executive federal system in Ethiopia while, regional states have the right to petition the House of Federation (HOF) for constitutional interpretation if a federal law is found to contradict the Constitution, until the law is ruled unconstitutional, they are required to implement it and cannot

²⁵⁴ Supra Note 181,

²⁵⁵ Supra Note 132, p.34

²⁵⁶ Ibid,

²⁵⁷ Supra Note 155, p.30

²⁵⁸ Ibid, p.33

nullify it by themselves.²⁵⁹ Thus, the act of nullifying Proclamation by TRG goes against accepted norms of federalism.

Therefore, this incident highlights the existence of weak enforcement mechanisms and IGR since the reform. Despite the federal government's several democratic reforms, including the above Proclamation, their implementation has been inconsistent across regional states. While some areas have welcomed the reforms, others have opposed and obstructed them.

As a result, the complex and often contentious IGRs between the levels of governments have posed significant challenges to the effective implementation of ACDEG's principles. Although the 2021 endeavor to create the new IGRs Proclamation No. 1231/2021 appears to be a positive move towards system consolidation, the question of handling the power overlaps and functional interface between the federal and state governments will remain a wondering issue.²⁶⁰

4.3.4.1. Scope of the New IGR Proclamation in Ethiopia

In January 2021, Ethiopia enacted its first IGR Proclamation No. 1231/2021, providing a legal framework for IGR regulation in the nation.²⁶¹ Despite the fact that it has not yet been the focus of scholarly studies, the Proclamation demonstrates that Ethiopia understands the necessity of establishing strong IGR in order to maintain rapid social and economic development, guarantee a sustainable democracy, lasting peace, and create a single political and economic community. However, the importance of formal IGR depends on the political demands for collaboration, mutual support, and their legal enforceability.²⁶² Therefore, while the new proclamation is an essential step, its actual implementation is even more crucial.

Given the broader dimensions that the IGR covers, the new Proclamation defined IGR as “any form of mutual interaction exercised vertically or horizontally between the Federal and Regional

²⁵⁹ (FDRE Constitution) Article 83(1) and 84(3)

²⁶⁰ Sisay Regassa Senbeta and Yakob Bekele Hundie ‘Ethiopia’ in Tremblay, Jean-François “The Forum of Federations Handbook of Fiscal Federalism.” (Springer Nature, Palgrave Macmillan, 2023) 130

²⁶¹ Ayele, Zemelak, and Yonatan Fessha. "Intergovernmental relations and ethnic federalism in Ethiopia." (Palgrave Macmillan, 2022) 121

²⁶² Poirier, Johanne. "Intergovernmental relations: the lifeblood of federalism." (In Teaching Federalism, Multidimensional approaches, Edward Elgar Publishing, 2023) 79

states or between and among the Regional States themselves.”²⁶³ Thus the new law is not designed to govern their relations with local governments (LG). The exclusion of the LG from the scope of the IGR framework claims that the IGR is understood in situations where powers are allocated concurrently to different government levels, besides the Constitution did not confer constitutional status to LG.²⁶⁴

Nonetheless, there are compelling reasons to include make room for the federal and LG to communicate or work together in special situations.²⁶⁵ For example, in the aforementioned situation where the Tigray Executives and TPLF continued administrative duties in defiance of many federal government decisions, as retaliation for defiance and allegedly violating the constitution and constitutional order, the federal government took a number of actions, such as cutting off federal funds and slowing relations with the State Council and Executive offices alone, primarily to undermine Tigray leadership in the situation.²⁶⁶ Later, the federal government and HoF made the decision to give LG financial support directly rather than through the TRG’s executive and administrative structure. However, because there were no established or formal rules regarding federal-local relations, the HoF’s ruling remained impossible to enforce.²⁶⁷

Additionally, the new IGR law creates six significant consultative vertical and horizontal IGR Forums where states and the federal government can discuss and potentially address common political issues and economic interests.²⁶⁸ Nevertheless, there is no proof or a media report that demonstrates the operation of the comprehensive regional state relations forum. While it is still in its infancy, not all of the established forums are completely operational, and among those that are, the principles and requirements of IGR are disregarded. The informal nature of IGRs may impact the regularity and stability of these relations.²⁶⁹

²⁶³ “The System of Inter-Governmental Relations in the Federal Democratic Republic of Ethiopia’s Determination Proclamation No. 1231/ 2021” Article2(3)

²⁶⁴ Supra Note 260, p.135

²⁶⁵ Assefa, Getachew. (eds.), Kefale, Asnake. "The legal framework of local government in Ethiopia Some issue, in Federalism and local government in Ethiopia" (Addis Ababa university Press, Routledge, 2015) 186

²⁶⁶ Supra Note 10, p.7

²⁶⁷ Ibid,

²⁶⁸ (IGR Proclamation), Article 6(1-6) and 20

²⁶⁹ Afesha, Nigussie. "Functional domainns of IGR Forums, House of Federation and Ministry of Peace in Ethiopia: The need for clarity." (Mizan Law Review 16, 2022) 315

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

This study aimed to assess Ethiopia's enforcement of ACDEG and identify challenges in its implementation. Based on the research questions, the finding reveals that, while Ethiopia's constitutional framework aligns with most ACDEG principles, conflicting domestic legislations with poor governance practices continue to hinder its implementation. The government has made some democratic reforms on the legal and institutional spheres, but political instability and ethnic conflicts have led to severe human rights violations committed by primarily third parties and non-state entities and the government has failed in its obligation to uphold and respect rule of law, to maintain peace and order and to protect its citizens from harm.

Moreover, the 2021 electoral process raised concerns about the government's commitment to ACDEG standards, particularly regarding civil liberties and electoral integrity. Additionally, IGR between federal and regional governments have posed significant challenges to the consistent and effective implementation of ACDEG's principles. Therefore, Ethiopia's alignment with ACDEG remains uneven and requires urgent attention. Ensuring democratic governance is not just a matter of not having UCG or holding elections or even making reforms on restrictive laws, it also requires for the government to actually uphold sustainable democracy consistently.

5.2. Recommendations

A. General Measures for the Government of Ethiopia;

The government shall;

- Domesticate ACDEG's principles and start submitting implementation reports biennially.
- Review existing legislations critical to the realization of democratic principles in line with the ACDEG and the Constitution.
- Strengthen enforcement mechanisms and IGR between federal and regional government of Ethiopia, by incorporating Constitutional provisions and operationalizing the formal IGR Forums to facilitate better coordination and policy resolution.

- Foster ongoing national dialogue, reconciliation and promote unity to address historical or modern ethnic conflicts.
- Allow citizens a forum to have their interests taken into consideration when making decisions about future policies.
- Develop a comprehensive strategy to build effective democratic institutions and a strong justice system that ensures peace, stability, rule of law, and socio-economic development.
- Enhance the independence of NEBE and EHRC to promote human rights and accountability.
- Recognize the important role of CSOs in peace building and create a facilitating environment for their operations, strengthening legal frameworks governing CSOs and ensuring their autonomy.
- The Authority for CSOs should also push for ongoing dialogue between the government and CSOs by coordinating with ECSOC.

B. Recommendations for the AU;

The AU shall;

- Encourage universal ratification and implementation of ACDEG by all Member States and raise awareness and popularization of ACDEG in states parties.
- Establish alliance with CSOs, the media, and academic policy research institutions to promote ACDEG.
- Promote the submission of State Reports and urge its submission by all Parties including Ethiopia, or alternatively establish a mechanism for undertaking such a review.
- Strengthen or restructure the institutional enforcement mechanisms, so that the sanctions for breach of ACDEG by Member States would not be limited in its application to only UCG but also to violations of the democratic principles.
- Advocate for the Malabo Protocol to enter into force and create the African Court of Justice to address violations of ACDEG principles.

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Federal Administration Judicial Proclamation No. 1233/2021

Federal Courts Proclamation No. 1234/2021

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APPENDICES

Appendix 1

Lists and Characteristics of KII

Key Informant	Name of Institution	Work Position	Years of experience	Date of Interview
A	EHRC	Human Right Officer (Monitoring and Investigation of Violation)	5 years	February 29, 2025
B	EHRC	Human Right Officer (Education Research and Advocacy)	4 Years	February 29, 2025
C	Anonymous Media	Journalist	5 Years	February 01, 2025
D	EWLA	Senior Legal Officer	5 Years	March 07, 2025
E	NEBE	Official	5 Years	January 02, 2025

Appendix II

Key Informant Interview (KII)

Consent

My name is Lidya Girma Assefa and I am currently studying my Master's Degree in Public International Law, at Addis Ababa University, School of Law. I am doing my thesis on "The African Charter on Democracy, Election and Governance (ACDEG); Its Enforcement in Member Countries; Case of Ethiopia". Therefore, I wanted to hear your expert opinions on its implementation and its practical interpretation in Ethiopia.

Hence, I kindly ask for your support and willingness to participate in the interview for just half an hour. Your participation is voluntary. If you choose to participate, you may refuse to answer certain questions, or you may stop participating at any time. There is no foreseen risk to your participation in this interview. Your responses will be kept completely confidential. This is not an assessment of your efforts, and there is no right or wrong answers. I just want to know the actual practices and the challenges of enforcement in order to understand how it can be improved and provide recommendations. Your answers will be very useful for this study and hopefully policymakers in improving what is lacking.

General Questions (For All Institutions)

Section A: Awareness and Understanding of ACDEG in Ethiopia

1. How familiar are you with the ACDEG and its key objectives and principles?
2. In your opinion, how well do you think ACDEG is understood among the general public in Ethiopia, and how well is it being enforced in practice?
3. Are there any legal or institutional barriers and gaps that hinder the effective implementation of the ACDEG Charter in Ethiopia?
4. How have the recent political reforms and changes in Ethiopia, such as the transition of power in 2018, impacted the country's compliance with the Charter?

5. How would you assess the level of Ethiopia's adherence to the principles and objectives outlined in ACDEG Charter over the years, particularly in terms of human rights and freedoms?

Section B: Practical application and challenges of interpretation

❖ Specific Questions For Ethiopian Human Right Commission (EHRC)

1. To what extent has Ethiopia's human rights record and adherence to the rule of law been in line with the ACDEG?
2. From EHRC's Perspective, what are the key human rights issues and concerns that have arisen in the context of ACDEG's implementation and how have the EHRC addressed these concerns?
3. Have there been any specific instances or case studies where ACDEG has been invoked or applied in the context of Human Right in Ethiopia?
4. How effective and independent is EHRC in carrying out their mandates regarding Human Right and are there any challenges or limitations in the EHRC?
5. How can the EHRC be strengthened to better support and improve compliance with the ACDEG Charter?

❖ Specific Questions For Ethiopian Women Lawyers Association (EWLA)

1. Can you describe any specific activities or campaigns your organization has undertaken to promote ACDEG principles?
2. How have CSOs been able to engage with the government on issues related to the implementation of the charter?
3. What are the main challenges you face in advocating for the enforcement of ACDEG in Ethiopia?
4. How do political dynamics and governmental policies affect your organization's work in promoting democratic governance, and did the new CSO Proclamation address all the past issues of the sector?
5. How can CSOs be strengthened to better support and improve compliance with the ACDEG Charter?

6. What strategies do you think are effective for raising public awareness about ACDEG through media channels?
7. How do you view the collaboration between CSOs and media institutions in fostering democratic discourse?

❖ Specific Questions For National Electoral Board of Ethiopia (NEBE)

1. How did you see the 2021 general election in light of the ACDEG Charter?
2. How effective and independent is the NEBE in carrying out their mandates regarding Election?
3. Are there any challenges or limitations in the NEBE after the new Electoral Proclamation?
4. How can the NEBE be strengthened to better support and improve compliance with the ACDEG Charter?

❖ Specific Questions For Media Institutions and Journalists

1. What role do you think media can play in enhancing public awareness and understanding of ACDEG?
2. How would you describe the current state of media freedom in Ethiopia, particularly in relation to covering democratic issues?
3. Have you faced any challenges or restrictions when reporting on topics related to democracy and governance?
4. How do you perceive the relationship between media institutions and government authorities regarding issues of accountability and transparency?
5. How can media institutions collaborate with CSOs to promote democratic governance?

Section C: Recommendations

1. How do you assess the overall effectiveness and impact of the ACDEG in promoting democracy, good governance, and human rights across the African continent, particularly in the case of Ethiopia?

2. What legal or practical reforms would you recommend to the Ethiopian government to enhance the enforcement and implementation of ACDEG in Ethiopia?
3. Why do think there isn't there any report submitted by Ethiopia regarding its progress in implementing the ACDEG Charter? What recommendations would you provide regarding this fact?

Appendix III

Support Letters from Addis Ababa University, School of Law

Addis Ababa University
College of Law & Governance Studies
Office of the Coordinator for Graduate Extension Programs

አዲስ አበባ ዩኒቨርሲቲ
የህግና አስተዳደር ትምህርቶች ኮሌጅ
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Date: 01/01/2025

To: National Electoral Board of Ethiopia

Dear Sir/Madam:

Lidya Girma Assefa is a 3rd year graduate student in the Law School of Addis Ababa University. This student is writing LL.M Thesis on the title "The African Charter on Democracy, Election and Governance: It's Enforcement in Member countries case of Ethiopia".

We would appreciate it if the above-mentioned student is given access to your collections and/or resources in accordance with the arrangements the student may make with your good office.

Thanking you for any assistance you may provide to the above-named student!

Best Regards,

Solomon Abay (PhD)
Associate Dean for Graduate Programs, CLGS

Tel. +251-0111 8127530 / 0111 23 97 36 Ex.108, Fax. +251-11-124 36 97, P.O. Box 1176

Addis Ababa University
College of Law & Governance Studies
Office of the Coordinator for Graduate Extension Programs

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Date: 02/04/2024

To: Ethiopian Women Lawyers Association

Dear Sir/Madam:

Lidya Girma Assefa is a 3rd year graduate student in the Law School of Addis Ababa University. This student is writing LL.M Thesis on the title "The African Charter on Democracy, Election and Governance: It's Enforcement in Member countries case of Ethiopia".

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Date: 24/02/2025

To: Ethiopian Women Rights Council (commission)

Dear Sir/Madam:

Lidya Girma Assefa is a 3rd year graduate student in the Law School of Addis Ababa University. This student is writing LL.M Thesis on the title "The African Charter on Democracy, Election and Governance: It's Enforcement in Member countries case of Ethiopia".

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