ADDIS ABABA UNIVERSITY

College of Law and Governance Studies

School of Law

Squeeze-out of minority shareholders under the Ethiopian commercial code: A critical analysis of its compliance with the Ethiopian constitution and UNGP

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A Thesis Submitted to School of Graduate Studies of Addis Ababa University in Partial Fulfillment of the Requirements for Degree of LLM in Business Law.

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May 03, 2025

Addis Ababa

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APPROVAL SHEET

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"Squeeze-out of minority shareholders under the Ethiopian commercial code: A critical analysis of its compliance with the Ethiopian constitution and UNGP"

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Declaration

I hereby declare that this thesis is my original work, has not been submitted to any other university, and the materials used in it have duly been acknowledged.

This LLM thesis meets every standard required by the Addis Ababa University School of Law LLM Thesis Guidelines.

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Date: MAY 03, 2025

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I hereby confirm that this thesis has been submitted for examination with my supervision and endorsement as advisor.

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Date: MAY 08, 2025

Acknowledgment

I thank the Almighty **God** for everything he gave me and for blessing me with a family that has never doubted me in difficult times given me courage, and hope, and supported me with everything in every step I take. My mom and my brother, all my family and friends thank you for your unwavering love, support, encouragement, and understanding. I would also like to take this opportunity to extend my sincere gratitude to my advisor Solomon Abay (PHD). Your professional advice, patience, and humble opinions have guided me and played a key role from the beginning up to finalizing this thesis. And 5A LAW FIRM LLP family for giving me the most valuable things of all things their **Time** to learn and to have this experience.

Acronyms

FDRE	Federal Democratic Republic of Ethiopia
JSC	Joint Stock Company
UNGP	United Nations General Principles
NCC	New Commercial Code
UN	United Nations
CG	Corporate Governance
GCC	German Constitutional Court

Abstract

This paper critically examines the concept of squeezing out of minority shareholders under the Ethiopian Commercial Code, focusing on its compliance with the Ethiopian Constitution and the United Nations Guiding Principles (UNGP) on Business and Human Rights. The study explores the legal framework governing minority shareholder rights in Ethiopia, highlighting the recent amendments in the Commercial Code that empower majority shareholders to enforce a squeeze-out. Through a detailed analysis, the paper assesses whether these provisions align with constitutional guarantees of property rights, the right to fair treatment, and non-discrimination. The findings reveal some gaps in the protection of minority shareholders, raising concerns about potential human rights violations. The findings underscore the need for a balanced approach that safeguards minority interests while facilitating corporate efficiency and growth.

CHAPTER ONE

INTRODUCTION

1.1.Background of the study

The practice of corporate governance in organizations has developed rapidly in recent times, and its importance has been highlighted around the world.[1] The concept also refers to the combination of legislation and practice that reflects the way a corporation or joint stock company should be organized and managed, and how it relates to its shareholders, who are the owners of the business.[2] Consequently, when adopting and implementing CG in companies, this decision can have a positive impact on decisions related to current investors, on the one hand, and potential investors on the other, and the shareholders.[3] The regulation of acquiring a significant interest in a company is closely related to the notion of corporate control.[4] This is understood as a possibility for a shareholder to influence the formation of the will of a legal entity. Shares, besides their proprietary value, possess additional value residing in the rights conferred on a shareholder.[5] A concentration of a certain percentage of shares that exceeds thresholds of 50%, 75%, or 95% at the hands of the majority shareholder (or a group of shareholders acting in concert) means a takeover and defines the capacity of the majority shareholder to influence business activities of a joint-stock company. However, without the right of squeeze-out, a takeover bid becomes much less attractive for a person who intends to acquire control of the company.[6] Control of a company may be acquired without purchasing all allocated voting stock as most decisions are made by a simple majority of votes, while a quorum at a general shareholders meeting requires a controlling interest (50% +1 share). This implies the necessity to establish a certain mechanism that would guarantee the observance of shareholders' rights by the redistribution of corporate control. This is how squeeze-outs occur,

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[1] Manuel Alfonso Garzón Castrillón, THE CONCEPT OF CORPORATE GOVERNANCE Revista Científica "Visión de Futuro", 2021, vol. 25, núm. 2, Julio-Diciembre, ISSN: 1669-7634 1668...

[2] USAID-Funded Economic Governance II Project, Corporate Governance Presented To: Banking Supervision Department of the Central Bank of Iraq: May 2006

[3] Ibid

[4] Oleksandra kOlOhOida, iryna lukach, Valeriia PoiedynOk, and anastasiia PrOkOPiuk , The Squeeze-outof Minority Shareholders: The Case of Ukraine Hungarian Journal of Legal Studies 60, No 3, p.260

[5] ibid

[6] Ibid

aimed at the protection of the rights of all shareholders in the target company and payment of fair compensation for taking control rights, besides the cost of the shares.[7]

Like all shares issued by a corporation, minority shares represent value contributed to and existing in the corporation, no matter whether the company is solvent or in liquidation. Without the cooperation of the majority, however, the value of this investment and any subsequent return remain captive in the corporation. It is the majority who retain the power to decide when and if the corporation will declare dividends, redeem shares, employ the minority, partially or completely liquidate, or provide the minority with some intracorporate return on the value of their shares. So, because of this decision-making and the need for absolute control here comes the oppression by a mechanism of squeeze-out.[8] Use of strategic positions, management powers, or legal devices by some owners in a business enterprise to eliminate other owners.[9]

Minority shareholders typically do not control the affairs of the company and are unable to prevent controlling shareholders from taking unfair or oppressive actions against them. With no liquid or easily accessible market for shares in closely held companies, minority shareholders cannot easily escape oppressive behavior by selling their shares.[10] This act of the majority shareholders in the world of corporate governance is becoming inevitable because of many reasons which I will discuss below. But having a share is one property right of a person and when that person needs that share this act of a commercial transaction is affecting and oppressing minority shareholders.[11]

When it comes to the Ethiopian commercial code the new Ethiopian commercial law enacted is said to be protecting minority shareholders more than the old commercial code.[12] Under this

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[7] ibid

[8] D. Christopher Wells, Involuntary Dissolution as a Remedy for Freeze-Outs of Minority Involuntary Dissolution as a Remedy for Freeze-Outs of Minority Shareholders: Two West Virginia Statutes Shareholders: Two West Virginia Statutes, west Virginia university volume 88 article 7 September 1985 p48

[9] F.Hodge O'Neal, Arrangements which Protect Minority Shareholders against Squeeze-outouts, University of Minnesota Law School Scholarship Repository 1961, p.537

[10] Gerard V. Mantese and Ian M. Williamson, LITIGATION BETWEEN SHAREHOLDERS IN CLOSELY HELD CORPORATIONS: PROTECTING MINORITY SHAREHOLDERS FROM ABUSE AT THE HANDS OF MAJORITY OWNERS, WAYNE STATE UNIVERSITY JOURNAL OF BUSINESS LAW [Vol. 1:1 2018] PROTECTING MINORITY SHAREHOLDERS FROM ABUSE, ps.2

[11] Ibid

[12] Samuel Maireg Biresaw, Appraisal of the Rules of Shareholders' Protection in the Commercial Code of Ethiopia 2021: Are there Improvements from the Old Commercial Code?, International Company and Commercial Law Review, 2022

new commercial code, so many new protections and provisions are included and the one new provision added in the code is under the group of company's section is squeeze-out of minority shareholders.[13] Squeeze-out provision have many rationales for accepting it but in the realistic process, squeeze-out of minority shareholders is an act depriving of private property by another private person. On the other hand, the right to private property is one of the rights given by the Ethiopian constitution. Which results an oppression of the person's private property right to minority shareholders in a company structure. So, the main importance of this study is to analyze the squeeze-out provision under the Ethiopian commercial code, analyze its constitutionality and its compliance with UNGP, and recommend some points.

1.2. Statement of the problem

Causes of oppression of minority rights include shareholders' disputes, greed, the desire of majority shareholders for absolute power over the enterprise, personality clashes among the shareholders, especially in family companies, marital discord, and family quarrels among shareholders.[14] Basic conflicts of interest and long-drawn-out disagreements over business policy are common causes of dissension. The most frequently occurring conflict of interest is between active shareholders, i.e., shareholder-officers or employees, and shareholders who are not active in the business.[15] The former wants the corporation to pay high executive salaries and declare small or no dividends, while the latter wants the corporation to keep salaries down, thus increasing corporate earnings, and pay generous dividends. Disregarding corporate rituals, neglecting to keep proper records, and failure of the participants to distinguish whether they are acting as shareholders, directors or officers are also common causes of friction.[16] An obstreperous or uncooperative minority shareholder is sometimes a cause of dissension. Time and again, when questioned about squeeze-out problems, lawyers and other business advisers comment on the problem of the minority shareholder who "throws his weight around" and makes life miserable for management.[17] An unreasonable and obstreperous minority shareholders gives company managers a "rough time" Some corporate officers say they have to spend more time and thought in keeping minority shareholders pacified than in operating the

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[13] Federal democratic republic of Ethiopia , federal Negarit gazette extra ordinary issue proclamation no. 1243/2021, article 558 ,2021

[14] F. Hodge O'Neal, Oppression of Minority Shareholders: Protecting Minority Rights, CLEVELAND STATE LAW REVIEW volume 35:121 1987. P. 122

[15] Ibid

[16] ibid

[17] ibid

business.[18] A minority shareholder may try to force a buy-out of his interest at an exorbitant price or may attempt to exact some other concession as a precondition to corporate peace.[19] Occasionally a minority shareholder will block action advantageous to the corporation or disrupt its business to aid a competing enterprise. Naturally, majority shareholders and corporate management welcome an opportunity to eliminate an unruly, uncooperative, or disloyal associate from the enterprise.[20]

An important cause of dissension in closed corporations is the difficulty an unhappy minority shareholder has in disposing of his interest. Usually, the only prospective purchasers of a minority interest in a close corporation are the other shareholders of the corporation, which of course, is under the control of the other shareholders. If the other shareholders refuse to buy or offer only a token purchase price, the unhappy shareholder is "locked" into the corporation. Even if the majority shareholders are initially inclined to treat a minority shareholder fairly when he decides to withdraw from the business, the difficulty of valuing a closely held business interest may lead to disagreement over the value of the minority holder's interest. By definition, there is no trading market for closely held stock.[21] Because of these motivated problems, minority shareholders are forced to sell their property, and as a result of this, minority shareholders face so many problems before they are squeezed out; they find themselves in a precarious position within corporate structures. Their limited voting power and influence can leave them vulnerable to decisions made by majority shareholders or controlling entities.[22] These are situations where the majority shareholders or controlling entities take actions that significantly diminish the rights, interests, or value of minority shareholders within a company.

In line with this problem the study will, This study aims to analyze the Ethiopian commercial law's new framework regarding Squeezing-Out, focusing on whether it adequately safeguards the rights and interests of minority shareholders during this process. The study investigates the constitutionality of the Squeezing-Out provisions under Ethiopian commercial law, their implications for human rights, and their compliance with the United Nations Guiding Principles (UNGP). This research aims to delve into the intricacies of minority shareholder rights, legal provisions, and constitutional principles within the Ethiopian context. By critically analyzing

[18] Ibid
[19] ibid
[20] ibid
[21] Ibid
[22] ibid

the commercial code's provisions and assessing their alignment with constitutional norms and international guidelines. The legal protection afforded to minority shareholders under the Ethiopian commercial code faces critical challenges, particularly concerning compliance with both the Ethiopian constitution and the United Nations Guiding Principles (UNGP). These challenges may result in the marginalization and vulnerability of minority shareholders within Ethiopian companies. Therefore, a comprehensive analysis is necessary to identify gaps, assess compliance, and propose necessary reforms to enhance minority shareholder rights and safeguard their interests.

1.3. Research question

Based on the brief problem analysis set forth above this thesis examines the following specific research questions:

1, Does the Ethiopian Commercial Code Protect the Rights and Interests of Minority Shareholders in Case's of Squeezing-Outs?

2, What are The Constitutional and Human Rights Implications of Squeezing-out Minority Shareholders Under Ethiopian law?

3, Does the Ethiopian Commercial Code protect minority shareholders' rights effectively in line with the UNGP's human rights standards?

1.4. Research objective

The main objective of this study is to analyze the Ethiopian commercial code squeeze-out provision its constitutionality and its compliance with UNGP.

In line with this study it also has the following specific objectives:

- Examining the extent to which the Ethiopian Commercial Code protects the rights and interests of minority shareholders in cases of squeezing-outs.
- Examining the constitutional and human rights implications of squeezing out minority shareholders under Ethiopian law.
- Examining the extent to which the Ethiopian Commercial Code protects the rights of minority shareholders in accordance with the human rights standards set forth by the United Nations Guiding Principles (UNGP) on Business and Human Rights.

1.5. Significance of the study

This study will

- Since the concept is new to the country it will Spread awareness the legal protection provided to minority shareholders under the Ethiopian commercial code.
- Catalyze legal reforms and amendments to enhance minority shareholder rights.
- Adds to the body of knowledge on minority shareholder protection, corporate law, and comparative legal analysis.
- This research has the potential to impact legal practice, corporate behavior, and investor confidence, ultimately benefiting both minority shareholders and
- Serve as a basis for further studies in the area.

1.6. Methodology of the study

This study is doctrinal legal research. It will make use of both primary and secondary sources. Ethiopian new commercial code, the constitution, UNGP guidelines, and other relevant domestic legislation will be used as primary sources to investigate how Ethiopian laws regulate, protect, and enforce Ethiopian minority shareholders' rights protection under squeeze-out.

Books, cases, law reviews, journal articles, reaserchs will be used as secondary sources to back up the analysis and provide a firm understanding of the subject matter. To enrich the study in general all applicable laws whether international or national within the context will be evaluated.

1.7. Literature Review

The subject of minority shareholder protection in the context of squeeze-out mechanisms has been extensively explored in international legal scholarship, though it remains underrepresented in Ethiopian academic literature. The absence of domestically written analyses highlights a critical gap in understanding the constitutional and human rights implications of squeeze-outs within Ethiopia. This literature review examines key international works that, while not directly addressing the Ethiopian context, provide valuable insights into the legal challenges and protections related to squeeze-out practices.

F. Hodge O'Neal in the law review writes "Arrangements which Protect Minority Shareholders against Squeeze-Outs" Each year squeeze-outs and attempted squeeze-outs bring friction, impaired efficiency of key personnel, and expensive litigation to hundreds, perhaps thousands, of businesses.[23] Sometimes strife, litigation, and unfavorable publicity destroy a business.[24] Damage to a minority owner caught in a squeeze play may be catastrophic.[25] He may lose any effective voice in making business decisions, He may be denied access to information on business affairs and decisions.[26] If he has put practically everything he owns into the enterprise and expects to support himself from the salary he receives from the company is frequently the case that he has been deprived of his principal means of livelihood by discharge from company employment.[27] Finally, the squeezed minority owner may find that his investment in the enterprise is practically worthless because he receives no income from it, he cannot use his interest as security for borrowing, and he cannot regain the funds he has in the business because a purchaser for his interest cannot be found.[28] Whenever provisions are inserted in the charter or by-laws to protect minority shareholders (including high vote requirements for shareholder and director action), precautions must be taken to prevent an amendment of the charter or by-laws to eliminate the protective clauses.[29] In other words, clauses designed to safeguard the rights of minority shareholders must be "backstopped" by high vote requirements for charter and by-law amendment, or by some other device to prevent majority shareholders from first removing the protective clauses from the charter or by-laws and then effectuating the squeeze-out.[30] In the paper, he raises the techniques of squeeze-out like:- withholding dividends, eliminating minority shareholders from company employment, siphoning off earnings by high compensation to majority shareholder, siphoning off earnings by high compensation to majority shareholder, issuing additional stock, siphoning off earnings by contractual arrangements and appropriating corporate opportunities; splitting off part of the business.[31] also, he recommends on what are ways of avoiding squeeze-outs like:- careful study of underlying causes of squeeze-outs, buy-out arrangements, arrangements for settling disputes, shareholders' agreements, provision requiring the declaration of dividends, long-term employment contracts between shareholder and corporation, charter or by-law provision requiring high vote for shareholder and director action, cautions in using high vote

[23] F.Hodge O'Neal, Arrangements which Protect Minority Shareholders against Squeeze-Outs, University of Minnesota Law School Scholarship Repository MINNESOTA LAW REVIEW (Vol. 45:537 1961)
[24] Ibid
[25] Ibid
[26] Ibid
[27] Ibid
[28] Ibid
[29] Ibid
[30] Ibid
[31] Ibid

requirements, providing a veto by tailoring the corporation's share structure, etc.[32] O'Neal emphasizes the importance of "backstopping" these protective clauses.[33] This involves establishing mechanisms to prevent majority shareholders from amending the company's charter or by-laws to eliminate minority protections, such as requiring supermajority votes for amendments.[34]

Another LLM thesis by Anton Babak "Adoption of Squeeze-Out and Sell-Out Rights of Shareholders in Ukraine based on a Comparison of EU, Germany, and USA" the thesis examines and compares issues of the regulatory framework, constitutionality, legal thresholds, and fair price definition of squeeze-out or sell-out procedures of the jurisdictions. When Ukraine accepts the provision of squeeze-out there are vivid debates in Ukraine regarding the implementation of squeeze-out and sell-out rights of shareholders.[35] In 2010 amendments that provided squeeze-out rights were suggested to the Law on JSC. [36]However, the President Ivetoed these amendments on the unconstitutionality ground. This illustrates the fact that public policy on this issue is active in Ukraine.[37]

Key points from Babak's study include:-[38]

- **Regulatory Framework and Constitutionality**: Babak discusses the constitutional debates in Ukraine surrounding squeeze-out rights. In 2010, the President on grounds of unconstitutionality vetoed proposed amendments to the Law on Joint Stock Companies aimed at introducing squeeze-out mechanisms. The primary concern was the infringement of property rights and the lack of adequate protection for minority shareholders.
- **Fair Price Definition**: The thesis underscores the importance of establishing clear criteria for determining fair compensation for minority shareholders. Without transparent valuation methods, minority shareholders risk receiving inadequate remuneration for their shares.

[32] Ibid
[33] Ibid
[34] Ibid
[35] Anton Babak, Adoption of Squeeze-Out and Sell-Out Rights of Shareholders in Ukraine on the Basis of a Comparison of EU, Germany and USA, LLM Thesis on the course of European company law, march 30, 2012.
[36] Ibid
[37] Ibid
[38] Ibid

- **Legal Thresholds**: Babak analyzes the percentage of share ownership required to initiate a squeeze-out, comparing Ukrainian proposals with practices in the EU, Germany, and the USA. He highlights the need for thresholds that balance the interests of majority and minority shareholders.
- **Public Policy Considerations**: The vigorous debates in Ukraine reflect a broader concern about protecting minority shareholders' rights and maintaining fairness in corporate practices.

While O'Neal and Babak provide valuable insights into the challenges faced by minority shareholders and potential safeguards against squeeze-outs, their works do not specifically address the constitutional and human rights implications within the Ethiopian context. Notably, there is a lack of domestic literature examining:

- The extent to which the Ethiopian Commercial Code protects the rights and interests of minority shareholders in cases of squeezing-outs.
- The constitutional and human rights implications of squeezing out minority shareholders under Ethiopian law.
- The extent to which the Ethiopian Commercial Code protects the rights of minority shareholders in accordance with the human rights standards set forth by the United Nations Guiding Principles (UNGP) on Business and Human Rights.

The international literature underscores the complex challenges posed by squeeze-out mechanisms and the necessity of safeguarding minority shareholders' rights. While the works of O'Neal and Babak offer critical insights into protective measures and the importance of constitutional compliance, they highlight a significant gap. When it comes to the Ethiopian legal landscape Addressing this gap requires dedicated research that examines the constitutional and human rights implications specific to Ethiopia, providing a foundation for legal reforms and enhanced protection of minority shareholders. The identified gap in Ethiopian literature signals a pressing need for comprehensive research that delves into the constitutional and human rights dimensions of squeeze-out mechanisms in Ethiopia. Such scholarship would be instrumental in Informing Legislative Reforms: Providing evidence-based recommendations to incorporate explicit protections for minority shareholders in cases of squeezing-out.

1.8. Scope and Limitation of the Study

The study is limited to addressing the issues of minority shareholder protection in cases of squeeze-out. The study only focuses on analyzing the Ethiopian commercial law squeeze-out provision by checking its constitutionality and its human rights implications by comparing it also to the UNGP. The analysis will not cover other concepts of minority shareholders' protection. The study has limitations of data availability since in Ethiopia the concept is new to the country and it is hard to find related literature on the concept.

1.9. Organization of the paper

The study will have four chapters, this introduction is chapter one. Chapter two will proceed by giving introductory remarks on Squeeze-out. Chapter three is devoted to briefly explaining the Legal Landscape and Regulatory Framework of Squeeze-out in Ethiopia and UNGP, will address Ethiopian Commercial Law Squeeze-out Provision vs Constitution and UNGP, and analysis of what oppression can be made because of Squeeze-out and other countries experience**.** Chapter four will wind up the study by giving concluding remarks and recommendations.

Chapter Two

Introductory Remarks on Squeeze-Out

2.1. Definition, Methods, Merits and Demerits of Squeeze-out

The term "squeeze-out" lacks a universally accepted definition despite various efforts by different authorities. However, it is commonly understood and defined in practical contexts by documents and scholars. According to Black's Law Dictionary, a squeeze-out refers to actions aimed at eliminating or reducing the minority interest in a corporation.[39] The squeeze-out right can be described as the right granted to majority shareholders under specified conditions, allowing them to compel minority shareholders to sell their shares at an appropriate price.[40]As a private law mechanism, a squeeze-out enables majority shareholders holding a certain percentage of shares in a company to unilaterally decide to buy out the shares of minority shareholders, becoming sole owners of the company. In corporate law, a squeeze-out often involves reducing the ownership stake of minority shareholders in the company's share capital.[41] More commonly, it results in the total exclusion of minority shareholders from the company. Essentially, a squeeze-out can be characterized as the compulsory removal of minority shareholders' shares without their consent.[42]

The concept of squeeze-out is often compared to related terms such as freeze-out and sell-out, which are occasionally used interchangeably. While they may appear similar, these terms have distinct meanings and implications. For instance, Black's Law Dictionary defines freeze-out as a process typically occurring in closely held corporations, where majority shareholders or the board of directors oppress minority shareholders to force them to liquidate their investment on terms favorable to the majority.[43] From this definition, it can be inferred that a freeze-out invariably results in the elimination of shareholders from the company.[44]

In contrast, a squeeze-out does not necessarily require the exclusion of shareholders from the company. Instead, minority shareholders may lose part of their interests or other associated

[39] Bryan A.Garner (editor in chief) blacks law dictionary, 9th edition Thompson Reuters, 2009.
[40] J.McCahery ETAL. Ing. Ferererini etal, REFORMING COMPANY AND TAKEOVERLAW IN EUROPE, P.635. (oxford university press) 2004
[41] Ibid
[42] Ibid
[43] Supra note 39
[44] Ibid

benefits, although the terms are sometimes used synonymously.[45] Meanwhile, a sell-out serves as a counterbalance for the minority shareholders, offering a quid pro quo in response to the majority's squeezing rights.[46] Scholars have highlighted the rationale behind implementing sell-out provisions in certain jurisdictions, as they represent the reverse arguments of the squeeze-out provisions.

Squeeze-outs raise concerns for corporate law because the controller can determine the timing and price of the squeeze-out, even against the wishes of the minorities, because in most jurisdictions approving a squeeze-out only requires a majority vote in its favor – which a controller can usually manage. This raises the prospect of opportunistic behavior by the controller against the minorities.[47]

2.2 Methods of Squeeze-out

In a corporate law shareholders to force minority shareholders to sell their shares, they will use many methods each with its own legal and financial implications. The common types are:-

1. Statutory Squeeze-out: This method is often governed by specific laws that allow majority shareholders to compel minority shareholders to sell their shares once a certain threshold of ownership is reached, typically around 90%,
2. Merger Squeeze-out: In this method, the majority shareholders merge the company with another entity they control, effectively forcing minority shareholders to accept cash or shares in the new entity,
3. Reverse Stock Split: This involves reducing the number of shares outstanding by consolidating them, which can force minority shareholders to sell their fractional shares,
4. Asset Sale: The company sells its assets to another entity controlled by the majority shareholders, leaving the minority shareholders with little to no value,

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[45] M.Ventoruzzo, freeze-out: Transcontinental analysis and reform proposals, virjiniya journal of international law p. 843(2010)

[46] Supra note 39

[47] Lucian Arye Bebchuk & Marcel Kahan, The "Lemons Effect" in Corporate Freeze-outs, NBER Working Paper 6938 (1999) 2, available at http://ssrn.com/abstract=226397; John C. Coates IV,

5. Freeze-Out: This method involves making the company unattractive for minority shareholders by stopping dividends, increasing management fees, or other means, pressuring them to sell their shares.[48]

2.4. Reason for Implementing Squeeze-out Provisions in Countries Laws

1. Consolidating Control: Majority shareholders often use squeeze-out provisions to gain full control over the company. This allows them to make decisions without needing to consider the interests of minority shareholders,

2. Simplifying Ownership Structure: By eliminating minority shareholders, the ownership structure becomes simpler and more streamlined. This can make management and decision-making processes more efficient,

3. Avoiding Conflicts: Minority shareholders may have different goals or interests that can lead to conflicts. Squeeze-out can help avoid these conflicts and ensure that the company's strategic direction is aligned with the majority shareholders' vision,

4. Facilitating Mergers and Acquisitions: In the context of mergers and acquisitions, squeezing out minority shareholders can be necessary to complete the transaction smoothly. It ensures that the acquiring company can gain full control without opposition from minority shareholders,

5. Regulatory Compliance: In some jurisdictions, regulatory frameworks require certain thresholds of ownership to be met for specific corporate actions. Squeeze-out provisions help meet these regulatory requirements.[49]

2.4 Advantages and Disadvantages of Squeeze-out

Implementing squeeze-out provisions in corporate governance has both advantages and disadvantages. Here are some key points:

Advantages

1. Consolidated Control: Majority shareholders can gain full control over the company, allowing for more streamlined decision-making and strategic planning,

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[48] F. Hodge O'Neal, Oppression of Minority Shareholders: Protecting Minority Rights, cleveland Law Review, (Law journal) 1987.P.125-134

[49] F. Hodge O'Neal, Oppression of Minority Shareholders: Protecting Minority Rights, cleveland Law Review, (Law journal) 1987

2. Simplified Ownership Structure: Reducing the number of shareholders simplifies the ownership structure, making management and administrative tasks easier,
3. Conflict Reduction: Eliminating minority shareholders can reduce conflicts and disagreements, leading to a more harmonious corporate environment,
4. Facilitates Mergers and Acquisitions: Squeezing out minority shareholders can make it easier to complete mergers and acquisitions, as it removes potential opposition,
5. Regulatory Compliance: Helps meet regulatory requirements that may necessitate certain ownership thresholds for specific corporate actions.[50]

Disadvantages

1. Minority Shareholder Rights: Minority shareholders may feel unfairly treated or forced out, leading to potential legal disputes and claims of unfair treatment,
2. Reputation Risk: The company may face reputational damage if the squeeze-out is perceived as aggressive or unfair,
3. Cost: Implementing a squeeze-out can be costly, involving legal fees, compensation for minority shareholders, and other expenses,
4. Regulatory Scrutiny: Such actions may attract regulatory scrutiny, leading to potential investigations and penalties if not conducted properly,
5. Potential for Litigation: Minority shareholders may challenge the squeeze-out in court, leading to prolonged legal battles and additional costs.[51]

[50] Ibid
[51] ibid

Chapter Three

Legal Landscape and Regulatory Framework of Squeeze-out

3.1 Regulatory Framework of Squeeze-out and Overview of Relevant Laws in Ethiopia

The new Ethiopian Commercial Code introduces several provisions not found in the 1960 Commercial Code, including regulations on squeeze-out and sell-out rights. Among these changes, Title Ten of the new Commercial Code introduces the concept of a "group of companies." This refers to a network of companies that includes a parent company along with its domestic and foreign subsidiaries. Under this framework, the subsidiaries are subjected to the control of the parent company, either directly or indirectly, through intermediary entities.[52] A corporate group refers to a structure where a dominant parent corporation oversees numerous subservient entities, including sub-holding companies, subsidiaries, and affiliated businesses. This organization often involves scores or even hundreds of these interconnected companies under the parent corporation's control.[53] The new Commercial Code, aimed at enhancing the protection of minority shareholders, introduces provisions for both squeeze-out and sell-out rights. It stipulates that a parent company holding more than 90% of the capital and voting shares of a subsidiary has the authority to acquire the remaining shares from the other shareholders in the subsidiary.[54] The right to sell out provides that when a parent company directly or indirectly holds more than ninety percent of the shares with voting rights in a subsidiary, the remaining shareholders have the option to request the parent company to purchase their shares. This right can also be enforced through the courts[55].

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[52] Federal Democratic Republic of Ethiopia, Federal Negarit gazette extra ordinary issue proclamation no. 1243/2021, article 550 ,2021

To understand the full concepts of group of companies in Ethiopia it is better to see the code title ten article 550-561.

[53] Mesfin Beyene, regulation of group of companies in Ethiopia: a comparative overview, MIZAN LAW REVIEW, Vol. 17, No.1 September 2023 p. 199 (Phillip Blumberg (1995). "The American Law of Corporate Groups", in Mc Cahery, Picciotto and Scott (eds.), Corporate Control and Accountability, Clarendon Press publication, p. 192)

[54] Federal Democratic Republic of Ethiopia , Federal Negarit gazette extra ordinary issue proclamation no. 1243/2021, article 558 ,2021

[55] Federal Democratic Republic of Ethiopia , Federal Negarit gazette extra ordinary issue proclamation no. 1243/2021, article 562 (1) and (2) ,2021

The New Commercial Code (NCC) defines squeeze-out as the right of a parent company that owns more than 90% of the capital and voting shares in a subsidiary to compel minority shareholders to sell their shares at an appropriate price. This law is designed with several objectives in mind:

- **Minority Shareholder Protection**: Ensuring that minority shareholders are treated fairly and have the option to exit the company at a reasonable price if they feel marginalized or disagree with decisions made by the majority.
- **Corporate Efficiency**: Allowing majority shareholders to consolidate ownership, streamlining decision-making processes, and reducing administrative burdens.
- **Market Confidence**: Enhancing investor confidence by providing clear and structured rules for minority buyouts, making the market more attractive to both domestic and foreign investors.
- **Legal Clarity**: Offering a legal framework that addresses conflicts between majority and minority shareholders, minimizing disputes and litigation.

Overall, the squeeze-out provisions aim to balance the interests of both majority and minority shareholders, fostering a more stable and predictable business environment.[56]

The main difference between squeeze-out and sell-out provisions under the NCC is that under Squeeze Out provision allows a parent company that controls more than 90% of the shares and votes of a subsidiary to purchase the remaining shares from minority shareholders and the Sell Out provision gives minority shareholders the right to demand that the parent company buys their shares at a fair price if the parent company controls more than 90% of the shares and votes. [57]

3.2 The United Nations Guiding Principles on Business and Human Rights

Business enterprises can profoundly impact the human rights of employees, consumers, and communities wherever they operate.[58] These impacts may be positive, such as increasing access to employment or improving public services, or negative, such as polluting the environment, underpaying workers, or forcibly evicting communities. For decades, local

[56] ibid

[57] https://www.cliffordchance/briefings/2023/02/ethiopians-new-commercial-code.pdf

[58] Mary Robinson, Business and Human Rights: A Progress Report Contents, Office of the United Nations High Commissioner for Human Rights.

communities, national governments, and international institutions have debated the responsibility of companies in managing these adverse impacts and the role of governments in preventing them. [59]

In 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs). The United Nations Guiding Principles on Business and Human Rights (UNGPs) hold a significant status as an internationally recognized framework.[60] While they are not legally binding, they serve as a global standard for responsible business conduct and human rights protection.[61] The UNGPs provide guidance for both states and businesses, emphasizing their distinct but complementary roles in respecting, protecting, and remedying human rights impacts.[62]

Their international status is reinforced by widespread endorsement from the United Nations Human Rights Council and their adoption by numerous governments, corporations, and civil society organizations.[63] The UNGPs are often used as a benchmark for evaluating business practices and shaping national and international policies related to business and human rights. [64]They also influence the development of laws, regulations, and voluntary initiatives worldwide, making them a cornerstone of global efforts to integrate human rights into business operations.[65]

The UNGPs consist of 31 principles, structured under three foundational pillars: Protect, Respect, and Remedy. These pillars outline the responsibilities of States and businesses in safeguarding human rights and addressing human rights impacts effectively.[66] Each pillar outlines actionable steps: Protect focuses on the State's duty to safeguard human rights from business-related abuses through policies, regulations, and enforcement; Respect emphasizes businesses' responsibility to avoid infringing on human rights by implementing policies, conducting human rights due diligence, and establishing remediation mechanisms for negative

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[59] Ibid

[60] UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMISSIONER , “implimenting the united nations protect, respect and remedy framework”NEW YORK AND GENEVA, 2011 https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

[61] Ibid

[62] ibid

[63] ibid

[64] ibid

[65] ibis

[66] ibid

impacts; and Remedy ensures that victims of human rights violations have access to effective remedies that are legitimate, accessible, predictable, equitable, transparent, and compatible with human rights standards. Pillar 3 also highlights the need for judicial and non-judicial grievance mechanisms to be effective and for operational-level grievance mechanisms to involve genuine engagement with affected stakeholders. Together, the three pillars provide a comprehensive framework that balances the complementary duties of States and businesses in promoting and protecting human rights within the context of business operations.[67]

Implementing the UNGPs offers significant benefits for a country. It helps establish a framework for protecting human rights within business operations and supply chains, ensuring that businesses respect human rights and address any adverse impacts.[68] By adopting the UNGPs, a country can enhance its reputation internationally, attract responsible investments, and foster trust among stakeholders, including citizens, businesses, and international partners.[69] Additionally, the UNGPs provide clarity and guidance for resolving conflicts between businesses and affected communities, reducing the risk of disputes and litigation. Overall, they contribute to creating a stable, equitable, and predictable business environment while promoting sustainable development and human rights protection.[70]

3.2.1. State's duty to protect human rights under UNGP

The **State's duty to protect human rights** under the UNGPs is a foundational principle that emphasizes the responsibility of governments to safeguard individuals from human rights abuses caused by third parties, including businesses.[71] This duty requires States to take proactive measures to prevent, investigate, punish, and redress such abuses through effective policies, legislation, regulations, and adjudication.[72] Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps, Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights, Provide effective guidance to business enterprises on how to respect human rights throughout their operations and Encourage, and where

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[67] Ibid

[68] Ibid

[69] ibid

[70] Ibid

[71] UNITED NATIONS GUIDING PRINCIPLES ON BUISNESS AND HUMAN RIGHT, United Nation Human Rights office of high commissioner, 2011, p 1-12

[72] ibid

appropriate require, business enterprises to communicate how they address their human rights impacts.[73] States are expected to establish a legal and regulatory framework that ensures businesses operating within their jurisdiction respect human rights. This includes setting clear expectations for corporate behavior, promoting accountability, and providing mechanisms for addressing grievances. While States are not directly responsible for human rights violations committed by private actors, they may breach their international obligations if they fail to take appropriate steps to prevent or address such abuses.[74] Additionally, the duty to protect extends to ensuring equality before the law, fairness in its application, and procedural transparency. States are encouraged to align their policies with international human rights standards and to promote coherence between their human rights obligations and other areas of governance, such as trade and investment.[75] This principle underscores the importance of collaboration between States and businesses to create an environment where human rights are respected and upheld.

3.2.2. State's duty to respect human rights

One of The foundational principles of UNGP on business enterprise is Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.[76] The responsibility to respect human rights serves as a universal standard for all business enterprises, regardless of where they operate. The responsibility stands independently of a State's capacity or willingness to uphold its human rights obligations and does not lessen those obligations. Additionally, it also extends beyond adherence to national laws and regulations designed to protect human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation, and where appropriate, remediation. Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. However, this does not offset a failure to respect human rights throughout their operations. Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.[77]

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[73] Ibid

[74] ibid

[75] Ibid

[76] UNITED NATIONS GUIDING PRINCIPLES ON BUISNESS AND HUMAN RIGHT, United Nation Human Rights office of high commissioner, 2011, p 13-26

[77] ibid

The responsibility of business enterprises to respect human rights refers to internationally recognized human rights understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.[78] Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review. An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions. Depending on the circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious, and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.[79]

The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership, and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary

[78] Ibid

[79] Ibid p.14

according to these factors and with the severity of the enterprise's adverse human rights impacts.[80]

This responsibility of states to respect has also an operational principle it provides a policy commitment As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:[81]

(a) Is approved at the most senior level of the business enterprise;

(b) Is informed by relevant internal and/or external expertise;

(c) Stipulates the enterprise's human rights expectations of personnel, business partners, and other parties directly linked to its operations, products, or services;

(d) Is publicly available and communicated internally and externally to all personnel, business partners, and other relevant parties;

(e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

In addition to a policy commitment it provides human rights due diligence as an operational principle and provides remediation Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

3.2.3. States duty to provide access to remedy under UNGP

In addition to the duty to protect and respect human rights, States are also obligated to provide access to remedies. As part of their responsibility to protect against business-related human rights abuses, States must take appropriate measures whether judicial, administrative, legislative, or other to ensure that those affected by such abuses within their territory or jurisdiction can access effective remedies.[82] Unless States take appropriate steps to investigate, punish, and redress business-related human rights abuses when they do occur, the State's duty to protect can be rendered weak or even meaningless. Access to effective remedy has both

[80] Ibid

[81] ibid

[82] UNITED NATIONS GUIDING PRINCIPLES ON BUISNESS AND HUMAN RIGHT, United Nation Human Rights office of high commissioner, 2011, p 27- 35

procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. The remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption, and free from political or other attempts to influence the outcome.[83]

The UNGPs outline operational principles for addressing business-related human rights abuses through various grievance mechanisms. States are required to ensure the effectiveness of domestic judicial mechanisms by taking appropriate steps to address legal, practical, and other barriers that may hinder access to remedies. Additionally, the UNGPs emphasize the importance of state-based non-judicial grievance mechanisms, which should be effective and complementary to judicial mechanisms, forming a comprehensive system for remedying such abuses. Furthermore, States are encouraged to facilitate access to effective non-state-based grievance mechanisms to address business-related human rights violations.[84]

3.3. Other Countries Experience

3.3.1. Squeeze-out in Ukraine

In 2009 the Law of Ukraine On Joint Stock Companies was adopted. This law was designated to introduce in Ukraine the best world practices of stock company regulation. Law on JSC includes a modern approach to public companies and resembles the best practices such as implementing only electronic forms of shares, better protection of minority shareholders, protection of the company from hostile takeovers, cumulative voting rights, etc. The Law as well as the provisions that can be the basis for the squeeze-out and sell-out rights such as the mandatory bid rule, the definition of the market value of the shares", mandatory buy-out of the shares from the shareholders of the company by the company itself. However, squeeze-out and sell-out rights of shareholders are not established by the Law on JSC and other legislative acts of Ukraine.[85]

[83] ibid

[84] IBID

[85] Laws of Ukraine" on Joint Stock companies" adopted 17/09/2008 No.514 article 65 and 68

Article 65 of the Law on JSC introduced a mandatory bid rule. According to this rule, the shareholder who obtained the controlling block of common shares is obliged to suggest to all other holders of common shares to buy out their shares at a price that should not be lower than the market price defined by Article 8 of the Law on JSC. The market price of the share is defined as the amount of money that can be obtained from the selling of the share in the active market. Here Ukrainian legislation follows the continental European conception of law. [86]

The mandatory bid rule is a crucial pre-condition for a squeeze-out. It is one of the key provisions introduced by the Takeover Directive. The mandatory bid rule can cause the mandatory bid in the result of which the major shareholder will achieve the certain threshold and will be entitled to squeeze-out the minority shareholders. The existence of such a precondition as a mandatory bid rule in Ukrainian legislation makes the implementation of squeeze-out and sell-out rights easier and more logical.[87] Article 68 of the Law on JSC establishes the mandatory buy-out of shares by the company itself. Under this provision, shareholders who disagree and vote against specific decisions at the general meeting, such as a) merger, acquisition, or division of the company; b) the company's engagement in significant transactions; or c) changes to the charter capital, can compel the company to redeem their shares at no less than market value. This mandatory buy-out provision closely resembles the concept of sell-out rights, as both serve to protect minority shareholders whose limited shareholding restricts their participation in the company's management.[88] These provisions ensure that minority shareholders have the ability to demand that their shares be purchased at a fair price. Consequently, introducing sell-out rights into Ukrainian legislation would align with existing principles and would not conflict with the Ukrainian legal framework.[89]

There are debates in Ukraine regarding the implementation of squeeze-out and sell-out rights of shareholders. Moreover, in 2010 there were introduced draft amendments to the Law on JSC that provided squeeze-out right. However, the President of Ukraine vetoed these amendments on unconstitutional grounds. This suggested squeeze-out provision was vetoed by the President of Ukraine and his veto was not overcome by the Parliament. The reason for the veto was the violation of Articles 41(4) and 41(5) of the Constitution of Ukraine. No one shall be unlawfully

[86] ibid

[87] Ibid

[88] Ibid

[89] Ibid

deprived of the right of property. The right of private property is inviolable.[90] As an exception to this rule, The expropriation of objects of the right of private property may be applied only as an exception for reasons of social necessity, on the grounds of and by the procedure established by law and on the condition of advance and complete compensation of their value. [91]The expropriation of such objects with subsequent complete compensation of their value is permitted only under conditions of martial law or a state of emergency.[92] The President pointed out the suggested squeeze-out provision significantly narrowed the existing rights of shareholders and violated the Constitution of Ukraine.[93]

3.3.2. squeeze-out in Germany

the general squeezing-out rule for shareholders was provided in Germany earlier than the takeover directive was adopted. The law that introduced the squeezing-out right came into force on the 1st of January 2002 and provided squeeze-out rights.[94] In 2006, the German takeover directives introduced squeeze-out and sell-out rights, providing a pathway for majority shareholders to pursue corporate squeeze-outs when conditions for takeover squeeze-outs are not met. Although the debate around squeeze-outs in Germany largely centered on procedural rather than substantive legal issues, the constitutionality of the process was challenged under German legal doctrine.[95] Under German law, corporate squeeze-outs require the offeror to hold at least 90% of the share capital, along with approval from the general shareholders' meeting to proceed.[96] With the takeover Squeeze-out, the German legislators chose the most conservative position and established the threshold at the level of 95% for the share capital carrying voting rights". "This means that preference shares without voting rights are not targeted. In practice, the threshold for a squeeze-out is rarely reached due to the activities of hedge funds - unless the bidder already held a substantial number of shares close to the ninety-five percent threshold.[97]

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[90] Article 41 (4) of the constitution of Ukraine 28/06/1996, No 254k/96-BP

[91] Ibid

[92] Ibid sub article 5

[93] Ibid

[94] Anton Babak, adoption of squeeze-out and sell out rights of shareholders in Ukraine on the basis of comparison of EU, Germany and USA, central European university March 30,2012 p.13

[95] ibid

[96] Ibid

[97] ibid

This issue was raised in the crucial decision of the German Federal Constitutional Court the Fedmuhle fall decision adopted back in 1962 in the decision the court claimed that the property right of a share represents not just a possession of an object, but rather the right to participate in managing the company.[98] The Court enabled limitations on the property rights of minority shareholders, which could be imposed by majority shareholders. It meant that squeeze-out of minority shareholders was possible, whenever approved by the majority of shareholders. This would allow achieving the balance between the majority and the minority shareholders, to avoid offering the minority shareholders too much protection, which could infringe the rights of the majority.[99]

The decision of the Federal Constitutional Court regarding Moto-Meter Corporation relates to this issue. The former minority shareholders of the company claimed the squeeze-out was unlawful, as in their opinion it breached Article 14 of the German Constitution concerning private property. Despite this fact, the Court concluded that the Moto-Meter minority shareholder could not claim the loss of his membership as the basis of an objection to the squeeze-out.[100] The Court mentioned that Article 14 of the German Constitution 'does not protect against the loss of membership, which results from the exclusion from the corporation'.[101] The Court concluded that the majority's right to squeeze out the minority complies with Article 14 of the German Constitution, as long as the protection of minority shareholders' interests is guaranteed 'the Court emphasized that the minority shareholders' interests should be protected at the stage of evaluation of the fair price for their shares and that the ruling out of the minorities is constitutionally justified as long as they are compensated sufficiently".[102]

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[98] BVerfGE,14,263, decided on august 7, 1962 (decision by the German constitutional court)

[99] Nozadze Ani, Comparative analysis of EU, German and Georgian regulations on squeeze-outout, Budapest: CEU, Budapest College, 2011.

[100] Peer Zumbansen, German Corporate Law in Constitutional perspective: The Squeeze-outreviewed, German Law Journal, Vol. 2 No. 2-1, February 2001, § 11 36 Ibid, § 8

[101] Ibid

[102] Newsletter Getsadze & Pateishvili LP, The Squeeze-outrule in Georgia and Germany, September 2009 #9, http://www.google.com.ua/url?sat&rctj&q&esrcs&sourceweb&cd1&ved0CCgQFjAA&urlhttp%3A %2F%2Fwww.g-p.ge%2Ffiles%2Fupload-file%2Fpdf%2Fnewsletter-9pdf&ei=Mqt1T4mvL8fDswaGl XDAw&usg=AFQjCNFdx8pygAL- sq9Wo9eFasOSEuHmpg&sig2=sip3m_m-eJ2QrknlfGp3sg

3.4. Analysis

3.4.1. Ethiopian Squeeze-out Provision: Constitutional Challenges and Considerations

share is defined as a unit of ownership in a company, representing a portion of its capital. Shareholders, who hold these shares, are entitled to a proportion of the company's profits and may have voting rights depending on the type of shares they own.[103] As to the Ethiopian NCC "A share company is a company whose capital is fixed in advance and divided into shares and whose liabilities are met only by the assets of the company."[104]

Based on the physical or material nature of things or objects can be classified as corporeal and incorporeal things.[105] Corporeal things are things that have material or physical existence and unity and hence, can occupy space and can be seen or touched and Incorporeal things are things that do not have a material or physical existence, that cannot occupy space and hence that cannot be perceived by the senses. This category primarily includes rights, particularly those that have economic value and can be expressed in terms of money which includes shares.[106]

Property can be understood as an exclusive legal entitlement that grants an individual or entity the authority to control, use, and transfer an object or item of economic significance along with its associated benefits.[107] This right enables the owner to exclude all other individuals or entities from accessing, utilizing, or enjoying the property and its benefits. Furthermore, this right includes the ability to pursue the object and its associated fruits, even in cases where it has been wrongfully appropriated or unlawfully taken by another party. [108]

When a person holds shares in a particular company, it constitutes a property right. This ownership right provides the shareholder with the exclusive authority to manage, utilize, and transfer their stake in the company, along with any financial or economic benefits derived from it.[109] It also allows them to prevent others from interfering with their ownership or enjoyment of this right.[110] Should their share or its benefits be unlawfully appropriated, they retain the ability to assert their rights and reclaim what belongs to them. Importantly, property rights are

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[103] Henry Campbell Black *Black's Law Dictionary, 2nd Ed*

[104] Federal Democratic Republic of Ethiopia proclamation no. 1243/2021, Article 245 sub article 1

[105] Fassil Alemayehu, Law of Property Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute, p. 2009 p24

[106] Ibid

[107] Blacks law dictionary, fifth edition, https://famguardian.org/TaxFreedom/CitesByTopic/ownership.html

[108] Ibid

[109] https://www.bajajfinserv.in/what-are-shares

[110] Ibid

not arbitrary or without foundation; they are firmly rooted in constitutional principles and legal frameworks.[111] These laws serve as the basis for recognizing and protecting property rights, ensuring their enforceability and safeguarding them against infringement.[112]

Every Ethiopian citizen is entitled to the right of private property ownership. This right encompasses the ability to acquire, utilize, and, within the bounds of compatibility with other citizens' rights, dispose of property through sale, bequest, or other means of transfer. Exceptions to this right may be established by law in cases where public interest requires it.[113] "Private property", for this Article, shall mean any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.[114] Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.[115]

A squeeze-out refers to a situation in which a shareholder who controls more than 90% of the capital and voting shares in a subsidiary exercises their right to purchase the remaining shares from minority shareholders.[116] This process occurs involuntarily and does not require the consent of the minority shareholders, meaning it can proceed even against their will. The squeeze-out mechanism is designed to consolidate ownership and simplify corporate governance for the controlling shareholder.[117] On the other hand, under the Ethiopian constitution, ownership of shares is considered a private property right.[118] The constitution explicitly guarantees every Ethiopian citizen the right to own private property. This includes the ability to acquire property, use it, and transfer it in ways that align with the rights of others.[119] These transfers can occur through sale, bequest (passing property through inheritance), or other forms of transfer. This principle underscores the significance of property ownership as a fundamental right, ensuring citizens have control over their assets. However,

111 Ibid
112 Ibid
113 Constitution of The Federal Democratic Republic of Ethiopia Proclamation No.1/1995, article 40 (1)
114 Constitution of The Federal Democratic Republic of Ethiopia Proclamation No.1/1995, article 40 (2)
115 Constitution of The Federal Democratic Republic of Ethiopia Proclamation No.1/1995, article 40 (8)
116 Supra note 52
117 Ibid
118 Supra note 113
119 Ibid

the right to private property ownership is not absolute under Ethiopian law. The constitution provides an exception to this right in the form of expropriation, which allows the government to take private property under specific circumstances. Expropriation is permitted when the property is needed for public purposes. For example, this might include land required for infrastructure development, public facilities, or other projects serving the public interest. Importantly, the government must provide compensation in advance to the property owner. This compensation must be fair and commensurate with the value of the property, ensuring that the individual is not left at a disadvantage.[120]

The balance between the rights of property owners and the need for public interest reflects the Ethiopian constitution's approach to safeguarding private property while acknowledging the broader needs of society. In the context of a squeeze-out, the rights of shareholders whether majority or minority intersect with constitutional protections for private property. While a controlling shareholder may legally acquire shares through the squeeze-out process, the constitution ensures that shareholders' rights to private property are respected, with appropriate legal safeguards in place.

In Ethiopia, expropriation primarily pertains to the appropriation of landholdings for public purposes and the provision of compensation. According to the law, a woreda or urban administration is empowered to expropriate rural or urban landholdings for public use, provided compensation is paid in advance. This can occur if the land is considered essential for a development project to be executed by public entities, private investors, cooperative societies, or other organizations. Moreover, such expropriation may also be determined by the relevant higher regional or federal government body for the same purpose.[121] on the other hand public purpose means the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development."[122] So, this leads to the conclusion that for an expropriation to take place, there must be (1) some kind of benefit, direct or indirect, for the people and (2)

[120] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No.455/2005

[121] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No.455/2005 article 3

[122] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No.455/2005 article 2 (5)

sustainable socio-economic development. This is indisputably a very broad and generous definition of when expropriation can take place.[123]

The squeeze-out of minority shareholders is a legally intricate process, as it involves the expropriation of their shares within a company. This act is inherently controversial, as it often creates tension with both constitutional and international legal principles. These laws generally stipulate that the expropriation of property must serve a public interest. However, when minority shareholders are squeezed out by majority shareholders, the expropriation is typically motivated by the interests of a single company or a specific group of companies. Such circumstances do not align with the broader concept of public interest as envisaged by law.

Furthermore, the implications of these squeeze-out actions extend beyond property rights alone. Minority shareholders often face additional challenges that amount to violations of their fundamental human rights. These include, but are not limited to, infringements on property rights, which are protected under human rights frameworks. The disproportionate impact of such practices highlights the vulnerability of minority shareholders and underscores the need for legal protections to ensure fairness, transparency, and respect for their rights in corporate decision-making. Minority share holders in addition to the above violation they face many violation of rights:-

- Property Rights፡- The primary violation occurs to property rights, as minority shareholders are forced to relinquish their ownership stakes. This expropriation often happens under terms they might perceive as unfair, especially if the compensation provided does not reflect the true value of their shares.
- Right to Fair Treatment:- Minority shareholders are entitled to equitable treatment within a company. Squeeze-outs can bypass their ability to participate in key decisions, undermining their rights as stakeholders and creating an imbalance of power in favor of the majority shareholders.
- Contractual Rights:- Shareholders often enter agreements based on mutual understanding and contractual obligations. A squeeze-out might breach these agreements if the terms of the minority shareholders' rights and protections are disregarded.

[123] Martin Persson, Compensation Practices in the Ethiopian Expropriation Process, A Case Study from Amhara National Regional State, Ethiopia, p 34

- Right to Participate in Corporate Governance:- Shareholders generally have the right to vote on significant matters affecting the company. Squeeze-outs can deprive minority shareholders of their participation in governance and decision-making processes.
- Right to Access Information:- Shareholders have a right to transparency and access to corporate information. In some cases, majority shareholders might withhold relevant information during a squeeze-out, creating an environment of coercion and lack of informed decision-making.
- Right to Due Process:- The process of expropriating minority shareholders must comply with legal procedures and fairness principles. Arbitrary or biased actions during a squeeze-out may violate the right to due process and legal recourse.
- Human Rights (Broader Context):- In a broader context, forced expropriations can lead to violations of fundamental human rights. Beyond property rights, the lack of fairness, equity, and recourse in corporate practices can contribute to economic exploitation and disenfranchisement of minority stakeholders.
- Right to Economic Security:- By losing their shares, minority shareholders may face economic instability, especially if those shares represented a significant source of their income or investment portfolio.

Squeezing-out minority shareholders not only infringes upon their right to ownership but also violates fundamental constitutional principles, including the right to equality, the right to fair treatment, and other protected constitutional rights. While some economists may argue that such provisions have economic justifications, particularly in a developing country like Ethiopia, these arguments cannot override the fundamental constitutional rights of individuals.

Under any nation's legal framework, the constitution is considered the supreme law of the land. This principle is explicitly affirmed in the Ethiopian Constitution, which declares: “The Constitution is the supreme law of the land. Any law, customary practice, or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.” This reinforces the idea that no action or decision whether by public or private entities can override the constitutional guarantees provided to citizens.[124]

[124] Constitution of The Federal Democratic Republic of Ethiopia Proclamation No.1/1995, article 9 (1)

Ownership of shares in a company constitutes personal private property, a right explicitly protected under the Ethiopian Constitution. The Constitution categorizes fundamental rights into two broad groups: human rights and democratic rights. Among the democratic rights, the right to private property is given prominent emphasis. The Constitution clearly states: “Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use, and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.” It is evident that the forced squeezing-out of shares under the guise of majority shareholder actions disregards these constitutional protections. Such actions do not align with the principle of public interest as envisioned by the Constitution. Instead, they often serve narrow, private interests at the expense of minority shareholders' rights. This highlights the importance of safeguarding constitutional supremacy and ensuring that economic or corporate practices do not undermine the fundamental rights enshrined in the nation's legal framework.[125]

3.4.2. A Comprehensive Analysis of Ethiopian Commercial Law's Squeeze-out Provision Compared to the UN Guiding Principles on Business and Human Rights (UNGP)

Under the Ethiopian NCC, the sole provision addressing the right to Squeeze-out is Article 558. However, it lacks clarity on key aspects such as the mechanism, types of Squeeze-outs, valuation of properties, and other critical issues. While countries may adopt such provisions, the UN Guiding Principles (UNGP) establish broader guidelines to ensure human rights protection. The UNGP outlines three core principles for states to Protect human rights from business-related violations, Respect human rights in business practices and Provide access to justice for victims of such violations.

Under the UNGP we cannot find that squeezing out of minority rights violate property right of human right. But, The relationship between property rights and the United Nations Guiding Principles (UNGP) on Business and Human Rights can be understood through the lens of human rights and corporate responsibility.

When we talk about Understanding Property Rights in the international aspect Property rights are recognized as a fundamental human right under international law. UDHR states that "Everyone has the right to own property alone as well as in association with others" and "No

[125] Ibid qrticle 40 (1)

one shall be arbitrarily deprived of their property."[126] These rights ensure that individuals and communities can own, use, and benefit from property without unjust interference. Property rights are essential for personal dignity, economic stability, and social development.

On the other hand The UN Guiding Principles on Business and Human Rights (UNGP) endorsed by the UN Human Rights Council in 2011, provides a global framework for preventing and addressing the adverse impacts of business activities on human rights which is built on three pillars State Duty to Protect dectates Governments must protect individuals from human rights abuses by third parties, including businesses, Corporate Responsibility to Respect that Businesses must avoid infringing on human rights and address any negative impacts they are involved in and Access to Remedy Victims of human rights abuses must have access to effective remedies.

When it comes to property right Governments are obligated to safeguard property rights as part of their duty to protect human rights which includes ensuring that businesses do not unlawfully seize or damage property, especially in vulnerable communities, Corporate Responsibility to Respect which Companies must respect property rights in their operations and Access to Remedy when property rights are violated, the UNGP emphasizes the need for accessible and effective remedies. This could involve legal action, mediation, or company-led grievance mechanisms. In essence, the UNGP reinforces the importance of property rights by integrating them into a broader human rights framework. It ensures that both states and businesses play their roles in respecting and protecting these rights.

The squeeze-out provision in Ethiopia's Commercial Code allows majority shareholders (holding 90% or more of a company's shares) to force minority shareholders to sell their shares. While this provision strengthens corporate governance and efficiency, it lacks certain protections compared to the UN Guiding Principles on Business and Human Rights (UNGPs):-

- Human Rights Safeguards: The UNGPs emphasize respect for human rights, including fair treatment of all stakeholders. Ethiopia's squeeze-out provision does not explicitly require human rights due diligence before forcing minority shareholders out.
- Clear Justification for Removal: The UNGPs stress transparency and accountability in business decisions. Ethiopia's law does not clearly define acceptable grounds for forcing minority shareholders to sell.

[126] Universal Declaration of Human Rights (UDHR) Article 17

- Access to Remedy: The UNGPs require effective grievance mechanisms for affected parties. Ethiopia's squeeze-out provision does not provide strong legal recourse for minority shareholders who feel unfairly treated.
- Consultation and Consent: The UNGPs encourage stakeholder engagement before major business decisions. Ethiopia's law does not mandate consultation with minority shareholders before enforcing a squeeze-out.

3.5. The effect of accepting squeezing-out

The squeeze-out provisions embedded in commercial laws across various jurisdictions generally follow similar procedures. This is because such provisions do not grant minority shareholders the option to voluntarily relinquish their shares. Consequently, these provisions often result in constitutional rights violations, particularly concerning the fundamental human right to private property.

The oppression of minority shareholders manifests in multiple forms. Despite the absence of a uniform legal definition of oppression or a clear standard for oppressive acts, case law consistently demonstrates substantial similarities in interpretation. Some courts have characterized actionable minority shareholder oppression as conduct that is burdensome, harsh, and wrongful, or as a significant departure from principles of fair dealing and equitable treatment—rights upon which shareholders are entitled to rely. Other courts have equated oppression with breaches of fiduciary duties, including the obligations of good faith and loyalty, which shareholders in closely held corporations owe to one another.[127]

Minority shareholder oppression can take various forms, which will be elaborated upon below.

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[127] Gerard V. Mantese and Ian M. Williamson, LITIGATION BETWEEN SHAREHOLDERS IN CLOSELYHELD CORPORATIONS: PROTECTING MINORITY SHAREHOLDERS FROM ABUSE AT THE HANDS OF MAJORITY OWNERS, WAYNE STATE UNIVERSITY JOURNAL OF BUSINESS LAW [Vol. 1:1 2018] (Oppressive schemes by controlling parties to cut off a minority shareholder's access to the benefits of ownership are frequently described as a "squeeze out" or "freeze out" of the minority shareholder.)

3.5.1. Failing to Pay Dividends on a Pro Rata Basis to Both Majority and Minority Shareholders, Alike

3.5.1.1. Dividend Starvation

It is generally accepted that shareholders have a right to receive their pro rata share of corporate dividends.[128] One of the most frequent grounds for a shareholder oppression claim is dividend starvation: unreasonable withholding of corporate dividends from minority shareholders when the corporation has the financial means to make a dividend distribution.[129] Not every corporate refusal to declare dividends constitutes actionable oppression, as directors must balance a corporation's future needs with their responsibility to maximize shareholder value. Thereafter, applying this specific articulation of the business judgment rule, for example, the U.S. District Court for the Eastern District of Michigan found a question of fact in another case asserting oppression where the minority shareholder presented evidence that the corporation was financially able to distribute profits without detriment to its operations, and the company's failure to distribute dividends had disproportionately affected the minority shareholder.[130]

3.5.1.2. Paying a Majority Shareholder Compensation That Amounts to a De Facto Dividend (to the Exclusion of a Minority Shareholder)

Another common tactic used by oppressors is to pay selective dividends only to majority shareholders, or to provide majority shareholders with other forms of compensation in a manner that suggests that the compensation is a de facto dividend made only to those in control of the company.[131] "if a minority shareholder can show that another shareholder employed by the company is receiving compensation so far over what is reasonable for his position and level of responsibility that he is, in actuality, receiving a de facto dividend to the exclusion of the minority shareholder, such an act may support a finding of minority shareholder oppression."[132]

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[128] Ibid p.6

[129] Ibid

[130] Blankenship v. Superior Controls, Inc., 135 F. Supp. 3d 608, 621 (E.D. Mich. 2015).

[131] Supra note 86, See, e.g., Toscano v. Koopman, 148 F. Supp. 3d 679, 682 (N.D. Ill. 2015) (finding that "consulting fees" of $11,666 per month which were not disclosed to all shareholders, were not approved by the board of directors and for which majority shareholder performed no actual services, were "disguised dividend payments which should have been provided to all shareholders.").

[132] ibid

3.5.2. Majority Shareholders Treating Themselves Better Than They Treat Minority Shareholders

Majority Shareholders Treating Themselves Better Than They Treat Minority Shareholders can be expressed in many ways As Professors O'Neal and Thompson state: In another commonly-used technique, majority shareholders siphon off corporate wealth by causing a corporation to pay its majority shareholders, and perhaps members of their immediate family or other relatives, excessively high compensation for services rendered as directors, officers or employees . . . Instead of treating all of the stock alike, and distributing the profits fairly and proportionately by way of dividends, the majority first elect themselves directors, then as directors elect themselves officers, and then distribute among themselves a substantial part of the profits in the way of excessive salaries, additional compensation, and other devices.[133]

Where those in control of corporations authorized substantial salary increases for majority shareholders, but not minority shareholders, increasing their salaries claiming that the company was losing money and could not afford to increase salaries or other compensation for minority shareholders,[134] Unfair valuation of a minority shareholder's interest in a corporation can provide a solid basis for finding oppression.[135] Offering to buy out the minority shareholder's interests on grossly disproportionate terms to more favorable terms proposed for majority shareholders has also been deemed oppressive.[136] In that same vein, orchestrating a merger that is based on an unfairly low valuation of the minority owner's shares can also constitute oppression.[137] The payment of "bonuses" of various types, and how such bonuses are disclosed

[133] O'NEAL AND THOMPSONS OPPRESSION OF MINORITY SHAREHOLDERS AND LLC MEMBERS § 3:7, Westlaw (database updated Nov. 2017).

[134] Supra note 92 See Berger v. Katz, No. 291663, 2011 WL 3209217, at *5 (Mich. Ct. App. July 28, 2011) (holding that "the trial court did not clearly err in finding that defendants' use of their power as majority shareholders to pay themselves higher salaries, while at the same time claiming that the corporation was not profitable to justify their refusal to make any distributions to plaintiff, supported the jury determination that defendants engaged in willfully unfair and oppressive conduct.").

[135] Ibid See, e.g., Etowah Envtl. Grp., LLC v. Walsh, 333 Ga. App. 464, 468, 774 S.E.2d 220, 224 (2015) (discussing arbitrator's application of Delaware law, which applies an "entire fairness" standard to valuation and corporate fiduciary obligations generally)

[136] Ibid See, e.g., Schimke v. Liquid Dustlayer, Inc., No. 282421, 2009 WL 3049723, at *3 (Mich. Ct. App. Sept. 24, 2009) (explaining that the discrepancy between price at which "defendants were willing to consider redeeming plaintiff's stock" and value of majority-held stock affected the value of plaintiff's shareholder interest in corporation was "indicative of substantial interference with plaintiff's rights as a shareholder").

[137] Ibid

or approved by the board or the shareholders, has proven to be a fertile basis for oppression claims for example, in the New Mexico case, the majority shareholder was held to have acted improperly where he: (1) knowingly and intentionally paid himself bonuses to the economic detriment of both the plaintiffs and to the corporation itself; (2) failed to inform plaintiff minority shareholders of these bonuses; (3) knowingly submitted false information about his bonuses to plaintiffs at shareholder meetings; and (4) failed to inform plaintiffs of other material facts generally relating to the corporation's business and financial affairs.[138]

3.5.3. Stealing or Misuse of Corporate Funds, and/or Misrepresenting the Financial Condition of the Company

Not surprisingly, where a majority or controlling owner uses corporate funds or other assets for his benefit, such actions can constitute oppression, Causing or contributing to a false and artificially low valuation of the company as a whole can also constitute oppression, Similarly, using (or diverting) corporate funds for the benefit of separate entities owned by, or benefitting only, the controlling shareholders also constitutes oppression, where a minority shareholder knowingly participates with those controlling the corporation in improper or illegal conduct, courts are unlikely to grant relief if the minority shareholder complains of oppression.[139]

3.5.4. Majority Shareholder Causing Corporation to Engage in Self-Interested Transaction, or Directly Usurping Corporate Opportunity

A common form of oppression arises when those in control of the corporation commit the corporation to engage in transactions that benefit the controlling shareholder, whether directly or indirectly. This can include causing the corporation to buy from specific vendors in which the controlling shareholder is financially interested, [140]as well as standard usurpation of

[138] Ibid Jones v. Auge, 2015-NMCA-016, ¶ 39, 344 P.3d 989, 1000 (analyzing under a theory of breach of fiduciary duty to a minority shareholder); see also Beale v. O'Shea, 319 Ga. App. 1, 6–7, 735 S.E.2d 29, 33-34 (2012) (holding that plaintiff stated facts sufficient to survive a summary judgment motion on his breach of fiduciary duty claim because there was evidence that a self-interested Change in Control Agreement executed by the defendant would cause a potential buyer of the company to pay less for the shares, which would damage plaintiff as a shareholder).

[139] ibid

[140] Ibid, See, e.g., Inca Materials, Inc. v. Indigo Const. Servs., Inc., 2015 Ill. App. Ct. (1st) 141345-U, ¶¶ 37-40 (affirming trial court's finding that defendant usurped a corporate opportunity when she caused the corporation to purchase materials at marked-up prices from a second "middleman" company that defendant controlled).

corporate opportunities by those in control of a corporation.[141] In addition, once a self-interested transaction is in place, failure to modify the terms when later circumstances viewed objectively dictate such a change can also constitute oppression.[142]

3.5.5. Withholding Corporate Information

Not every form of oppression involves money there are a wide variety of ways to oppress a minority shareholder by denying that individual access to essential information about either the corporation or the shareholder's interest in the corporation. It is commonly understood that the right to examine corporate financial books and records is a key shareholder right.[143] Thus, failing to provide copies of financial statements and other corporate information to which a shareholder is entitled can be actionable.[144] The likelihood of a finding of oppression increases when a defendant majority shareholder's refusal to produce financial records is combined with other actions, such as the case in which the defendant responded to a minority owner's request for financial records by dissolving the corporation.[145]

3.5.6. Failing to Satisfy Dictates of Internal Corporate Agreements

When those in charge of the corporation breach the terms of the governing corporate documents (bylaws, operating agreements, shareholder agreements, etc.) such action is universally recognized as a breach of contract. Courts in some states go further and recognize that such

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[141] See, e.g., In re Mandel, 578 F. App'x 376, 387 (5th Cir. 2014) (interpreting Texas' usurpation and shareholder oppression law); see also Scafidi v. Hille, 180 So. 3d 634, 643-44 (Miss. 2015) (affirming the trial court's finding that the plaintiff adequately pled breach of fiduciary duty and oppression, based on the defendant's actions, specifically, defendant purchased shares of the other minority shareholders during litigation, with money in which the plaintiff had equal interest, to obtain further control over company and then tried to vote plaintiff off the board of the directors).

[142] Ibid

[143] Ibid See, e.g., Franchino v. Franchino, 263 Mich App 172, 184 (2004) ("Shareholder's rights are typically considered to include . . . examining the corporate books.")

[144] Ibid See Baker v. Baker, No. A-10-901, 2011 WL 3505500, at *5 (Neb. Ct. App. Aug. 9, 2011) ("failure to provide financial statements to plaintiffs between 2004 and 2007 . . . creates an issue of fact . . . as to whether defendants have engaged in oppressive conduct against plaintiffs")

[145] Ibid See McConnell v. Bare Label Prods., Inc., 2015-Ohio-1206, slip op. at ¶ 50 (Ohio Ct. App. Mar. 31, 2015) (affirming an award of punitive damages, upon uncontradicted testimony establishing that plaintiff never received a single payment in salary or dividend, and after defendant dissolved the corporation, she was able to acquire the corporation's real estate for a price that was less than its tax value).

action can also constitute actionable oppression when the challenged breaches satisfy the jurisdiction's standards to prove oppression or a breach of fiduciary duty claim.[146]

The Michigan Supreme Court recently so held, recognizing that a majority shareholder's breach of express terms contained in a shareholder agreement could constitute conduct that "substantially interferes with the interests of the shareholder as a shareholder"[147] and thus such a breach could be used to establish statutory shareholder oppression.[148]

3.5.7. Denying Minority Shareholders/Members Involvement in the Corporation

Denying a minority shareholder the right to participate in the management of the corporation or denying her a voice in decision-making can also constitute oppression.[149] This is especially likely to be oppressive where it represents a change in the status quo, such as where a minority shareholder is arbitrarily assigned to a different position within the company or excluded from participation in management or decision-making.[150] Unilateral changes to the number or

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[146] Ibid

[147] Ibid MICH. COMP. LAWS ANN. § 450.1489(3) (West 2018) (Michigan's Oppression Statute) (providing "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure." (emphasis added)).

[148] Ibid 5 Madugula v. Taub, 496 Mich 685, 717–20 (2014) (reasoning, with little difficulty: (1) that Michigan statutes permit shareholders to modify several of their statutory rights and interests; (2) that the shareholder agreement at issue had in fact modified certain of the plaintiff shareholder's rights in a manner that was effective among all shareholders; so (3) violation of this agreement could be evidence of shareholder oppression because its terms violated the minority shareholder's interests as a shareholder).

[149] Ibid See, e.g., In re Dissolution of Clever Innovations, Inc., 94 A.D.3d 1174, 1176, 941 N.Y.S.2d 777 (2012) ("We hold that petitioner's admitted conduct in operating the company to the exclusion of respondent substantially defeated the estate's reasonable expectations for cooperation and disclosure of relevant business information between the parties."); see also Villalobos v. Villalobos, No. 32,973, 2015 WL 8676440 (N.M. Ct. App. Nov. 24, 2015) (finding oppression where majority shareholder froze minority shareholder out of important decisions concerning the company and prohibited minority shareholder from participating in corporate affairs).

[150] Ibid Kaible v. Gropack, No. A-5666-11T3, 2013 WL 2660995, at *4 (N.J. Super. Ct. App. Div. June 14, 2013); see also Madugula v. Taub, Case No. 2008-537-CK (MI Washtenaw Cir. Ct., May 26, 2016) (holding, on remand from the Michigan Supreme Court, that there was clear evidence of shareholder oppression where defendant cut plaintiff out of management of the company and violated the parties' Stockholders' Agreement: "[the Court finds that Taub's cutting off and freezing out Madugula from Dataspace's decision-making and involvement in

identity of the corporation's board of directors can also constitute oppression where such actions adversely impact the minority shareholder.[151]

3.6. The NCC regime in protecting minority shareholder's right

The new commercial code of Ethiopia includes many provisions to protect minority shareholders to enhance the rights and protections for minority shareholders, promoting fairness and transparency in corporate governance:-

- **Right-to-Call Meetings**

Minority shareholders holding a certain percentage of shares have the right to call an extraordinary general meeting. This empowers them to bring up issues of concern, convene meetings to discuss and vote on important company matters, and influence decision-making.[152]

- **Right to Propose Resolutions**

Minority shareholders can propose resolutions to be discussed and voted on at general meetings. This includes resolutions related to the conduct of the company and the rights of shareholders.[153] **Which** allows minority shareholders to propose resolutions at shareholders' meetings, giving them a voice in the decision-making process.

- **Right to Challenge Decisions**

If minority shareholders believe that a decision made by the company is detrimental to their interests, they have the right to challenge it in court. This provision ensures that minority shareholders have a legal recourse to protect their rights.[154] This article provides minority

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Dataspace's operations constituted "illegal, fraudulent, or willfully unfair and oppressive" conduct under MCL § 450.1489. The Court finds that Taub's denial of access to and withholding from Madugula information regarding Dataspace's operations constituted "illegal, fraudulent, or willfully unfair and oppressive" conduct under MCL 450.1489."); Ballard v. Roberson, 399 S.C. 588, 597, 733 S.E.2d 107, 112 (2012) (finding oppression where there was clear intent by defendants to "freeze-out" plaintiff and "exclude him from involvement [in the company], and from the benefits of ownership.").

[151] ibid

[152] The new Ethiopian commercial code proclamation no. 1234/2019 it can be found by the general reading of shareholders right in general.

[153] Ibid

[154] Ibid

shareholders with the right to challenge company decisions that they believe are unfair or detrimental to their interests.

- **Independent Audit**

Minority shareholders can request the appointment of an independent auditor to review the company's financial statements. This is especially important for ensuring transparency and accuracy in financial reporting.[155] This article ensures that minority shareholders have the right to request the appointment of an independent auditor to review the company's financial statements.

- **Access to Information**

Minority shareholders have the right to access important company information, including financial statements and minutes of meetings. This allows them to stay informed and make well-informed decisions.[156] This article grants minority shareholders the right to access important company information, ensuring transparency and informed decision-making.

- **Voting Rights**

This article ensures that minority shareholders retain their voting rights on important matters, including mergers, acquisitions, and changes to the company's bylaws.[157] This article protects the voting rights of minority shareholders, allowing them to participate in key corporate decisions.

- **Fair Treatment**

The Code includes provisions that mandate fair treatment of all shareholders, regardless of the size of their holdings. This includes equitable distribution of dividends and fair consideration in case of buyouts or mergers.[158]

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[155] Ibid
[156] Ibid
[157] Ibid
[158] Ibid

- **Protection Against Oppression**

Minority shareholders are protected against oppressive conduct by majority shareholders. If majority shareholders engage in actions that unfairly prejudice the interests of minority shareholders, the latter can seek legal remedies.[159]

- **Right to Dissent**

Minority shareholders have the right to dissent and obtain fair value for their shares in case of significant changes to the company's structure, such as mergers or sales of substantial assets.[160]

- **Legal Remedies**

The Code provides various legal remedies for minority shareholders, including the ability to seek injunctions, damages, or other appropriate relief in cases of unfair treatment or violation of their rights.[161]

[159] Ibid
[160] Ibid
[161] Ibid article 290

Chapter 4

Conclusion and Recommendation

4.1. Conclusion

The Ethiopian Commercial Code, Proclamation No. 1243/2021, introduces several protections for minority shareholders, but there are still areas where these protections might fall short, especially in the context of squeeze-outs. While the squeeze-out mechanism is designed to streamline corporate control and enhance economic efficiency, its implementation must consider the broader economic implications. Ensuring fair treatment of minority shareholders not only fosters trust and confidence in the business environment but also encourages investment and participation in the corporate sector. A balanced approach that protects minority interests while enabling economic growth is essential for sustainable development. The journey of aligning the Ethiopian Commercial Code with constitutional and international human rights standards is both a legal obligation and a moral imperative. Ensuring that the squeeze-out mechanism respects minority shareholders' rights will contribute to a more just and equitable business environment in Ethiopia.

The analysis of the squeeze-out mechanisms under the Ethiopian Commercial Code reveals significant concerns regarding their compliance with both the Ethiopian Constitution and the UN Guiding Principles on Business and Human Rights (UNGP). Despite the economic rationale behind enabling majority shareholders to consolidate their control, the potential adverse impacts on minority shareholders must not be overlooked.

One of the findings of the paper is that Legislative Gaps in The Ethiopian Commercial Code, while progressive in certain aspects like providing a framework for corporate governance, lack specific provisions that protect the rights of minority shareholders during squeeze-outs that The Code does not explicitly detail the process for ensuring fair compensation during squeeze-outs, a lack of clear procedures for conducting squeeze-outs, which can lead to ambiguity and potential abuse and the effectiveness of legal recourse in practice may vary, and minority shareholders might still face challenges in obtaining fair outcomes. This legislative gap results in practices that may infringe upon constitutional guarantees of fair treatment and property rights.

The second finding is Constitutional Alignment which The Ethiopian Constitution provides for the protection of property and equal treatment under the law and violates mainly The

Constitution protects individuals' property rights, including shares in a company. If minority shareholders are not provided with fair compensation during a squeeze-out, this could be seen as a violation of their property rights and, a violation of equal treatment The Constitution ensures equal treatment under the law. If the squeeze-out process disproportionately favors majority shareholders and neglects the interests of minority shareholders, it could be considered a violation of the principle of equal treatment and a violation of the right to have fair compensation The Constitution implies that any deprivation of property must be accompanied by fair compensation. So, in general specifically Articles 40 and 25, individuals are guaranteed the protection of property rights and equal treatment before the law. The deprivation of minority shareholders' property rights without fair compensation infringes upon Article 40, which safeguards citizens' rights to acquire and dispose of property. Additionally, the disproportionate favoring of majority shareholders violates the principle of equality enshrined in Article 25, as it fails to ensure equitable treatment of all shareholders regardless of their shareholding percentage. If the Commercial Code does not explicitly ensure fair compensation during squeeze-outs, it could be seen as falling short of constitutional requirements.

The existing squeeze-out provisions fail to fully align with these constitutional mandates, leading to potential abuses of power by majority shareholders and UNGP Compliance the UNGP emphasizes the responsibility of businesses to respect human rights and remedy any adverse impacts. The current squeeze-out framework falls short of these principles, highlighting the need for more robust regulations to ensure fair compensation and transparent processes.

4.2. Recommendation

- **Enacting new law:** The legislature should enact new law to incorporate explicit legal provisions that protect minority shareholders during squeeze-outs. This includes clear definitions of rights, obligations, and protections to prevent arbitrary deprivation of property rights.
- **Fair Compensation Mechanisms**: Establish statutory guidelines for determining fair compensation, ensuring that minority shareholders receive remuneration that reflects the true and full value of their shares. This mechanism should involve independent valuation processes to prevent undervaluation.
- **Transparent Procedural Framework**: Implement detailed procedures outlining the steps and requirements for executing a squeeze-out. This

framework should mandate disclosure obligations, timelines, and avenues for minority shareholders to contest unfair practices, thereby enhancing transparency and accountability.

- **Enhanced Regulatory Oversight**: Strengthen the role of regulatory bodies, such as the Ethiopian Capital Market Authority, to monitor compliance with the revised provisions. Regulatory oversight should include the power to audit transactions, enforce penalties for non-compliance, and provide a platform for grievances.
- **Stakeholder Engagement and Dialogue**: Promote active engagement among all stakeholders, including minority shareholders, majority shareholders, regulators, and legal practitioners. This dialogue is essential to develop a balanced squeeze-out framework that respects the rights of minority shareholders while accommodating legitimate business interests.

By implementing these recommendations, Ethiopia can fortify its legal framework to ensure compliance with constitutional mandates and international human rights standards. The protection of minority shareholders is not merely a domestic legal issue but a reflection of Ethiopia's commitment to uphold the rule of law and human rights obligations. It is essential for fostering a fair, transparent, and equitable business environment that encourages investment and upholds the principles of justice and equality enshrined in both national and international law.

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