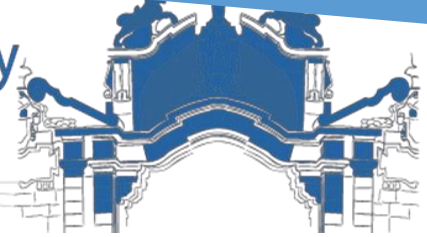




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COLLEGE OF LAW AND GOVERNANCE STUDIES SCHOOL OF LAW

POSTGRADUATE STUDIES

LLM PUBLIC INTERNATIONAL LAW STREAM

Legal Challenges and Opportunities in Managing Cross-Border Railway Business: A Case Study of the Ethio-Djibouti Railway

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTERS OF LAWS IN PUBLIC INTERNATIONAL LAW

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September 28, 2025

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DECLARATION


I, Wubshet kasaye, hereby declare that the thesis entitled “Legal Challenges and Opportunities in Managing Cross-Border Railway Business: A Case Study of the Ethio-Djibouti Railway” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that, to the best of my knowledge, all sources used in any form are duly acknowledged.

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This achievement is as much yours as it is mine.

Wubshet Kasaye

List of Abbreviation

AfCFTA – African Continental Free Trade Area

AGOA – African Growth and Opportunity Act

AU – African Union

CCECC – China Civil Engineering Construction Corporation

CET – Common External Tariff

CIM – Uniform Rules Concerning the Contract of International Carriage of Goods by Rail

CIV Uniform Rules – Uniform Rules Concerning the Contract of International Carriage of Passengers by Rail

COMESA – Common Market for Eastern and Southern Africa

CoPs – Communities of Practice

COTIF – Convention Concerning International Carriage by Rail

CREC – China Railway Group Limited

EAC – East African Community

EDR – Ethio-Djibouti Standard Gauge Railway Company

ERC – Ethiopian Railway Corporation

FDRE – Federal Democratic Republic of Ethiopia

FTA – Free Trade Area

GDP – Gross Domestic Product

IGAD – Intergovernmental Authority on Development

IPRs – Intellectual Property Rights

JRC – Joint Railway Commission

LDCs – Least Developed Countries

NTBs – Non-Trade Barriers

OTIF – Intergovernmental Organization for International Carriage by Rail

PTA – Preferential Trade Area

REG – Regional Economic Communities

SDCF – Société Djiboutienne de Chemin de Fer (Djibouti Railway Company)

TFA – Trade Facilitation Agreement

UNCTAD – United Nations Conference on Trade and Development

WTO – World Trade Organization

Abstract

This research comprehensively analyzes the legal challenges and opportunities of the Ethio-Djibouti Railway, a cross-border railway Business system between Ethiopia and Djibouti. The research deploys a qualitative research methodology, utilizing both primary sources (bilateral agreement, article of association, and shareholders agreement) and secondary sources. The analysis is further informed by the researcher's position as an insider and employee of the Company. The study examines international model legal frameworks for effective and seamless cross-border railway operation (CIM and CIV), trade agreements (TFA), along side regional and sub-regional instruments in Africa (AfCFTA, COMESA, IGAD). The study further examines the legal and institutional framework of the Ethio-Djibouti Railway. The finding of the study includes legal, operational and infrastructural challenges as well as opportunities it faces since its creation, stemming from misaligned national regulations and lack of political willingness resulting in inefficiencies, increment of cost and putting its reliability in jeopardy. In order to reduce such effects there needs to be a revision of the bilateral agreement and implementation of internationally recognized best practices, to create a harmonized legal, technical and operational environment.

Key words: Ethio-Djibouti Railway, cross-border railway, harmonization

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CHAPTER ONE

INTRODUCTION

1.1 Background of the study

History tells us, after 1876 GC, cross-border railways played a critical role in enhancing regional connectivity, fostering trade, and promoting economic integration. Its cost effectiveness, efficiency and sustainability for the movement of goods and passengers makes it reliable transport system both for global trading and traveling. Such advantages also give a reason for the building of the Ethio-Djibouti Railway.

The Ethio-Djibouti Railway is a standard gauge international railway that serves as the backbone of the new Ethiopian National Railway Network¹. The railway was inaugurated by Prime Minister Haile Mariam Desalegn on January 1, 2018. It provides landlocked Ethiopia with access to the sea, linking Ethiopia's capital Addis Ababa with Djibouti and its Port of Doraleh². More than 95% of Ethiopia's trade passes through Djibouti, accounting for 70% of the activity at the Port of Djibouti³. China Exim Bank provided 981 million \$ buyer's credit loan for the Addis Ababa-Djibouti Railway⁴. The total railway capacity is 24.9 million tons of freight and 330,000 Passengers annually.

The railway line is jointly owned by the Djibouti and Ethiopian governments. In Ethiopia, the state-owned Ethiopian Railway Corporation represents the owner of the railway. The Ethio-Djibouti Standard Gauge Rail Transport S.C, a bi-national public company headquartered in Addis Ababa, was formed in 2017 to operate the railway. It is owned by the government of Ethiopia (75% share) and Djibouti (25% share). Ethiopia holds the CEO post, represented through the Ethiopian Ministry of Transport. The company currently occupies an administrative role, but it will take over railway operations at the beginning of 2024⁵.

1. Addis Ababa–Djibouti Railway, *Wikipedia* https://en.wikipedia.org/wiki/Addis_Ababa%E2%80%93Djibouti_Railway accessed 8 August 2025.

2. Id.

3. Elias Meseret, 'Ethiopia's new coastal rail link runs through restive region', *Associated Press* (5 October 2016) <https://web.archive.org/web/20161009123456/https://apnews.com/article/8f84e9e8c5d44aaeb8d8cfa0bb5f83b8> accessed 8 August 2025.

4. AidData, 'China Eximbank provides \$981 million buyer's credit loan for the Addis Ababa–Djibouti Railway Project (Project ID 70085)' *AidData* <https://china.aiddata.org/projects/70085/?utm> accessed 8 August 2025.

5. What is in store to operate, manage rail transport?, *The Ethiopian Herald* (17 November 2017) <https://web.archive.org/web/20180124070902/http://www.ethpress.gov.et/herald/index.php/news/national-news/item/10022-what-is-in-store-to-operate-manage-rail-transport> accessed 9 August 2025.

operations at the beginning of 2024⁵. Through 2023, all operations on the new railway will be undertaken jointly by the China Railway Group Limited (CREC) and the China Civil Engineering Construction Corporation (CCECC). During this time, the companies trained local employees so that they can take over railway operations at the conclusion of the initial operation period. The Ethiopian Railway Corporation has also established the African Railway Academy in Bishoftu to graduate railway engineers⁶.

The Addis Ababa-Djibouti Railway runs roughly parallel to the old metre-gauge Ethio-Djibouti Railway for most of its length⁷. However, the standard-gauge railway is built on a new, straighter right-of-way that railway stations have been decommissioned⁸. There are 68 viaducts and bridges⁹, comprising 3% of the railways total length¹⁰. There are no tunnels. The total length of the railway line is 759 km (472mi), of which 754km (469mi) runs between the two terminal stations at Sebeta and the Port of Doraleh. The remaining 5km is for shunting operations. A total of 666km (414mi) of the railway line is in Ethiopia while a total of 93km (58mi) is in Djibouti. The Addis Ababa–Djibouti Railway modernization project is the first cross-border electrified railway in Africa. The project is part of China’s Belt and Road Initiative and the first overseas railway constructed by Chinese enterprises with complete adoption of international standards (1,435 mm gauge line and electrification at 25 kV), and Chinese equipment (CSR Zhuzhou for the rolling stock).

However, even though the railway has vital importance legal challenges have emerged because of the complexities of legal framework, technical standards and institutional arrangements that often vary between countries. Not only because of the complexities but also because of the legal obligation of the railway to navigate broader international trade and also transport regulations, such as outlined by the AU and the African Continental Free Trade Area (AfCFTA), may compel the challenge even more. Such challenges could cause inefficiencies and increase operational costs.

6. Ibid.

7. Javier Blas, ‘Chinese investment triggers new era of east African rail building’, *Financial Times* (27 November 2013) <https://www.ft.com/content/24bc5ae6-5756-11e3-b615-00144feabdc0> accessed 9 August 2025.

8. Paul Schemm, ‘Ethiopia has a lot riding on its new, Chinese-built railroad to the sea’, *The Washington Post* (3 October 2016) https://www.washingtonpost.com/world/africa/ethiopia-has-a-lot-riding-on-its-new-chinese-built-railroad-to-the-sea/2016/10/03/c069d4da-84be-11e6-b57d-dd49277af02f_story.html accessed 9 August 2025.

9. Ibid.

In addition to the legal challenges mentioned above, there are also operational challenges created because of the gaps and ambiguities in the bilateral agreement between Ethiopia and Djibouti, which governs the management, operation and dispute resolution mechanisms of the Ethio-Djibouti Railway.

1.2 Statement of Problem

As mentioned before, despite its economic and strategic significances, the Ethio-Djibouti Railway has legal and operational challenges that hinders efficiency, increase operational costs and reduce the effectiveness and reliability of the railway transportation.

Since cross-border railways require seamless integration of legal and regulatory frameworks of two border sharing sovereign states, which makes the frameworks complex, any misaligned laws and regulations between Ethiopia and Djibouti could create uncertainties in vital areas such as customs procedures, liability for damages or delays and technical standards for railways operations. In addition to such legal challenges, lack of comprehensive, harmonised legal framework further complicates the coordination between the two countries which could result in inefficiencies and potential disputes.

Additionally excessive and inconsistent border controls, including customs and immigrations procedures could affect its efficiency and competitiveness and also increase operation cost.

1.3 Objectives

1.3.1 General Objectives

The basic objective of the study is to examine the overall legal and operational challenges as well as opportunities in managing cross-border railways. It also explores practical solutions for overcoming institutional and operational barriers and provides recommendations for enhancing the legal and regulatory frameworks governing cross-border railway operation.

By examining the legal and regulatory challenges faced by the railway, as well as the opportunities for improvement, this study seeks to contribute to the development of more efficient and harmonized frameworks for cross-border railway operation.

1.3.2 Specific Objectives

The specific objectives of this study includes:

- To identify and analyse legal challenges affecting the operation of the Ethio-Djibouti Railway
- To explore the legal and institutional frameworks governing cross-border railways, including the bilateral agreement between Ethiopia and Djibouti, as well as regional and international agreements relevant to the railway sector.
- To assess the operational and regulatory opportunities in order to make the railway sustainable, efficient, cost-effective and well-coordinated by harmonizing technical standards and clear dispute resolution mechanisms.
- To propose actionable recommendation to solve the challenges mentioned before assessing the gaps and ambiguities found in the bilateral agreement between Ethiopia and Djibouti.
- To evaluate the experiences of other cross-border railways in order to suggest effective operational mechanisms and also potential threats that happened on those other railways.
- To assess the coordination between Ethiopia and Djibouti and propose better ways, if any, for the sake of enhanced regional connectivity and economic integration between the two countries.

1.4 Research Question

This research will try to answer the following questions:

1. What are the major challenges that the Ethio-Djibouti railway face in its operation, management, and the bilateral agreement signed by the two countries?
2. What are the solutions for the challenge created by the gaps and ambiguities in the bilateral agreement?
3. How can the complex nature of the cross-border railway operation be reduced?
4. In order to enhance operational efficiency, what are the legal opportunities that can be leveraged?
5. What roles do the international and continental frameworks play in resolving

- legal or operational conflicts and supporting cross-border railway operation?
6. How does the bilateral agreement signed between Ethiopia and Djibouti address cross-border issues such as liability, taxation, customs and immigration procedure, infrastructure ownership, and security procedures?
 7. What are the remedies for the lack of clear mechanisms of conflict resolution and enforcement of contractual obligation stipulated by the bilateral agreement?

1.5. Methodologies

To answer the previously discussed research questions, the study employs a qualitative research approach. The desk research involves an analysis of existing policies, memorandum of association, principles, and rules governing cross-order railway operations, with particular attention to international and continental agreements, such as the African Continental Free Trade Area agreement and best practices as well as the bilateral agreement between Ethiopia and Djibouti.

1.6. Significance of the study

This study provides a detailed assessment of the operation of the Ethio-Djibouti Railway, the challenges it faces and practical solution for overcoming those challenges. Such practical solution will help the railway's operation to enhance efficiency, economic integration and improve the collaboration on management and conflicts resolution mechanisms.

It also provides an improvement in the railway's cost effectiveness, reduction of vulnerability of both private and public stakeholders and sustainability for the movement of people and goods which could make the Ethio-Djibouti Railway a model for other cross-border railways and also complement long-term international and continental agreement. Such improvements could also result in enhancement of regional connectivity, fostering trade, promotion of economic integration and efficiency and making the railway a reliable mode of transport both for global trade and travel.

1.7 Organisation of the paper

The organization of this thesis follows a structured approach to systematically analyze the legal and operational challenges of cross-border railways, with a focus on the Ethio-Djibouti Railway. The first chapter introduces the research by outlining the background, problem statement, objectives, research questions, and significance of the study. The second chapter presents a comprehensive conceptual, international and regional framework, examining existing studies on cross-border railway regulations, legal harmonization, and regional integration efforts. The third chapter is about the legal and regulatory frameworks governing the Ethio-Djibouti Railway, analyzing the bilateral agreements and institutional mechanisms in place and evaluates the operational challenges and opportunities, exploring harmonization strategies, dispute resolution mechanisms, and best practices from other cross-border railway systems. Finally, the concluding chapter synthesizes key findings, provides policy recommendations, and suggests areas for further research, aiming to enhance regional connectivity and economic integration through improved railway governance.

1.8 Scope of the study

This research focuses primarily on the operation of the Ethio-Djibouti railway. To be specific, the operation includes, according to the bilateral agreement signed by Ethiopia and Djibouti on 14 July, 2012, ownership of the line infrastructure, liability, infrastructure management, contractual framework, control procedures, responsibilities and coordination between the two countries, institutional framework, and dispute settlement mechanisms.

The second focus is the challenges, i.e. the legal, operational and infrastructural challenges that the Railway face.

Lastly it focuses on the remedies that would solve such challenges in order to improve the efficiency of the railway.

1.9 Literature Review

Researchers made extensive studies on cross-border railways, in particular the East African and the Ethio-Djibouti Railways in order to evaluate challenges and the economic and strategic advantages of the Ethio-Djibouti Railway as well as the East African community. The researchers show that cross-border railways play a vital role not only in economic integration but also social and cultural integration between countries.

The first research was made by George Tabagna on May 2014 with the title “A case for efficient legal and institutional frameworks for cross-border railway development in the East African community”. In his research, Tabagna tries to show that cross-border railways were one of the keys for regional economic integration in Africa even though it faces political instabilities (for instance, the political differences occurred in the Kenya-Uganda Railway) as well as legal and institutional challenges that renders the railway from keeping such integration. Tabagna, in his research also tries to contribute remedies for such challenges and also tries to make his research model for cross-border infrastructure other than railways.

The second research titled “Evaluation of the Ethiopia-Djibouti Railway project using organization for economic co-operation development criteria” was studied by Eskendir Adinew on June 2021. Contrary to Tabagna, Eskendir’s study focuses particularly on the Ethio-Djibouti Railway. He tried to analyze the Ethio-Djibouti railway’s performance from the perspective of cost performance and economic development. In this study he also tried to point out the lack of the usage of local resources would benefit the local economy rather than outsourcing it to China’s resources and also the unfair land loss compensations as well as unfair wages and treatment of managers. With such findings he putted a remedies that would solve the problems he mentioned.

Unlike those studies this research tries to contribute in filling gaps and ambiguities created in the bilateral agreements which would create a potential threat on the efficiency, cost effectiveness, reliability and competitiveness of the Ethio-Djibouti Railway. It will also contribute a remedy for the legal and operational challenges that the railway faces.

CHAPTER TWO

CONCEPTUAL, INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

Introduction

Cross- border railway systems have a significant role to advance socio-economic ties as well as trade amongst countries. In Africa, particularly in the horn strategic interventions such as Ethio-Djibouti railway play a vital role in the realization of continental aspiration mentioned on Agenda 2063. However, the successful implementation is not merely dependant on physical infrastructure but also legal harmonization and effective operational framework.

2.2. Conceptual and Legal Framework

2.2.1. Concepts of Cross border Railway System

Cross-border railway system encompasses the activities, infrastructures, and flows that ensure the passage of passengers and freight across an international border¹⁰. Cross-border transportation can be facilitated, monitored, controlled, and even prevented¹¹. In the railway sector, effective cross border transport is dependent on effective legal , operational and technical framework in a coordinated manner.

Railway infrastructure, as defined by Directive 2012/34/EU, consists of the physical and technical components that form part of the permanent way (including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings) ¹². In a cross-border railway getting a mutual understanding on the above components is important to have a smooth operational set-up and interoperability among states.

10. Jean-Paul Rodrigue and William Anderson, '7.1 – Transborder and Crossborder Transportation' in *The Geography of Transport Systems* (2024) <https://transportgeography.org/contents/chapter7/transborder-crossborder-transportation/> accessed 11 August 2025.

11. Id.

12. RailNetEurope, 'Glossary – RailNetEurope' (XLS) (n.d.) https://rne.eu/wp-content/uploads/2024-03-19_NS_CID_Glossary_2024.xlsx accessed 8 August 2025.

In the African context, Agenda 2063 outlines Africa's aspiration by 2063 to have a world-class, integrated infrastructure¹³, that support Africa's accelerated integration and growth, technological transformation, trade and development. This includes a Pan-African High Speed Train Network that connects all the major cities and capitals acting as a catalyst for manufacturing, skills development, technology, research and development, integration and intra-African trade, investments and tourism¹⁴. Moreover, by 2030, there is an expectation to have consensus on the form of the continental government and institutions¹⁵. Cross-border railways such as the Ethio-Djibouti railway are essential in the realization of integration goals.

A key element in the effective operationalization of cross-border railway is interoperability, defined as: the ability of a rail system to allow the safe and uninterrupted movement of trains which accomplish the required levels of performance¹⁶. To make railway interoperable with other railways means to harmonize the technical parameters, operational procedures and legal environment¹⁷. This ability depends on all the regulatory, technical and operational conditions as well as the components mentioned in the definition of railways to complement each other¹⁸.

The three components of the railway interoperability (technical, operational, legal) are tightly interconnected.

- ✧ Regulatory: the unified legal framework in the relationship with the customers is essential, regardless of the level of technical and operational interoperability¹⁹.
- ✧ Technical: achieving a certain technical interoperability through large investments is not justified if this is not capitalized in achieving appropriate operational interoperability for obtaining the targeted competitiveness of railways on the market²⁰.
- ✧ Operational: Coordination, schedule and other day to day operations activities and schedules²¹.

13. African Union Commission, *Agenda 2063: The Africa We Want* (popular version, September 2015)

https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf accessed 8 August 2025, para 20.

14. *Ibid* para 25.

15. *Ibid* para 23.

16. Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union, art 2(2).

17. UN Economic and Social Commission for Asia and the Pacific, 'Enhancing Interoperability for Facilitation of International Railway Transport' (Bangkok, 2018)

<https://www.unescap.org/sites/default/files/Study%20on%20enhancing%20interoperability%20for%20Facilitation%20of%20International%20Rail%20Transport.pdf> accessed 8 August 2025, 20.

18. *Ibid*.

19. *Ibid*

20. *ibid*.

21. *ibid*

International experience shows that achieving railway interoperability may become in some cases an exceptionally difficult task, as it requires strong political support and active involvements from all involved countries to harmonize national policies and practices²². As the interoperability of railways is a very broad concept and its implementation requires the cooperation of many entities, large budgets and a long time, it is very important for the involved countries to define as precisely as possible the level of interoperability they intend to achieve, most likely in a gradual approach²³.

Border crossings are the points of fracture of continuity in transport services. There are three main models used by railways for the organization of activities for the border crossing²⁴.

- ✧ Mode 1: the various authorities of the two neighboring countries develop their procedures separately, sequentially, first in the exit border station and then in the entry border station
- ✧ Mode 2: the two neighboring countries agree to designate one single common border station, where the procedures of the authorities of both countries take place in parallel.
- ✧ Mode 3: the two neighboring countries decide to implement common procedures for border crossing without the train stopping; the specific border crossing activities are organized in designated major stations on the route of the train, agreed upon by the two neighboring states, in parallel with the procedures of the railway companies for processing the train (locomotive change, technical inspection of wagons, etc.).

Therefore, this highlights that legal, technical and operational arrangements should be made in a manner that gives a maximum advantage for cross-border railways as the Ethio-Djibouti railway.

22. ibid

23. ibid

24. ibid

2.2.2. Legal Framework

2.2.2.1. Model International Legal Frameworks

2.2.2.1.1. The Convention concerning International Carriage by Rail (COTIF)

The Convention concerning International Carriage by Rail (COTIF), adopted on 9 May 1980 and later modified by the Protocol of 3 June 1999 (Vilnius Protocol)²⁵, establishes the legal and organization framework for international railway transport. It governs the running of the Intergovernmental Organization for International Carriage by Rail (OTIF), as well as its objectives, attributions, relations with the member states and its activities in general²⁶. COTIF enables legal interoperability to be extended and technical interoperability to be improved and contributes to the development of multi-modal transport²⁷.

Although, Ethiopia is not a state party to this convention, it serves as a valuable model in structuring the legal and institutional framework for cross-border railway system. The convention plays a crucial role as it provides guidance on regulatory, technical and operational interoperability as discussed in the above section. Under Article 2 of this convention it provides the OTIF's aim to promote, improve and facilitate, in all respects, international traffic by rail, this includes:

- ✧ Developing a system of uniform law for contract of international carriage of passengers and goods, contract of use of wagons, contract of use of infrastructure and carriage of dangerous goods in international rail traffic²⁸.
- ✧ Removal of obstacles to the crossing of frontiers in international rail traffic, while considering special public interests²⁹.
- ✧ Contributing to interoperability and technical harmonization in the railway field³⁰.
- ✧ Establishing a uniform procedure for the technical admission of railway material³¹.
- ✧ Developing a uniform law, rules and procedures taking account of legal, economic and technical developments³².

25. OTIF, 'The COTIF 1999' https://otif.org/en/?page_id=172 accessed 11 August 2025.

26. Ibid.

27. Ibid.

28. Convention concerning International Carriage by Rail (COTIF) (adopted 9 May 1980) art 2(1)(a) 1-4.

29. Ibid art 2(1)(b)

30. Ibid art 2(1)(c).

31. Ibid art 2(1)(d).

32. Ibid art 2(1)(f).

The convention further provides a framework for member states to develop other international conventions aiming to promote, improve and facilitate international rail traffic³³.

2.2.2.1.2. Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM)

The Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM), as revised in 1999, constitute one of the key instruments on the Convention on International Carriage by Rail (COTIF). This legal framework outlines vital in providing legal interoperability, which is a necessary requirement for technical and operational matters of interoperability discussed in section 2.2.1.

In the meaning of the 1999 CIM Uniform Rules the carrier is a contractual carrier with whom the consignor has concluded the contract of carriage pursuant to these uniform rules, or a successive carrier who is liable on the basis of the contract³⁴. The rules apply to every contract of carriage of goods by rail for reward when the place of taking over of the goods and the place designated for the delivery are situated in two different Member States, irrespective of the place of business and the nationality of the parties to the contract of carriage³⁵. They shall also apply to the contracts of carriage of goods when at least one of the States is a Member State and the parties to the contract agreed on the uniform rules and when international carriage, being the subject of a single contract, includes carriage by road or inland waterway in international traffic of a Member State as a supplement to trans-frontier carriage by rail³⁶. Under specific conditions the uniform rules apply also when international carriage, being the subject of a single contract of carriage, includes carriage by sea or trans-frontier carriage by inland waterways as a supplement to carriage by rail³⁷. The period of responsibility covers the time between taking over the goods and the time of delivery as well as exceeded transit periods³⁸. A central principle of CIM is the carrier's is liable for loss or damage resulting from the total or partial loss of, or damage to, the goods whatever the railway infrastructure used³⁹.

33. Ibid art 2(2)(b).

34. Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM) art 3(a).

35. Ibid art 1(1).

36. Ibid art 1(2).

37. Ibid art 1(3).

38. Ibid art 6(1)

39. Ibid art 23(1).

The carrier is relieved of such liability if the loss or damage or the lapse of the transit period is caused by:

- ✧ The fault on the part of the person entitled,
- ✧ Orders given by the person entitled other than as a result of a fault of the carrier,
- ✧ Inherent defect in the goods, such as decay and wastage, or
- ✧ Circumstances which the carrier could not avoid and the consequences of which he was unable to prevent, or by the special risk inherent in certain circumstances⁴⁰.

The burden of proof lies with the carrier⁴¹, and if the carrier entrusted the performance of the carriage to a substitute carrier, the carrier nevertheless remains liable in respect of the entire carriage⁴². The carrier must pay compensation calculated according to the commodity exchange quotation or, if there is no such quotation, according to the current market price⁴³. Compensation shall not exceed 17 units of account per kilogram of gross weight short⁴⁴. Additionally, the carrier must refund the carriage charge, custom duties already paid, and other sums paid in relation to the carriage of the goods⁴⁵. However, the limits of liability do not apply if it is proved that the loss or damage results from an act or omission which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result⁴⁶.

The consignment note is another key element of the CIM. The consignment note is prima facie evidence of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier⁴⁷. It is also prima facie evidence of the condition of the goods and their packing indicated therein if the carrier has loaded the goods⁴⁸. The consignment note and its duplicate can be established in the form of electronic data registration, which can be transformed into legible written symbols⁴⁹. The wording of the consignment note is specified in the CIM Uniform Rules and all consignment notes must contain the required particulars⁵⁰.

40. Ibid art 23(2).

41. Ibid art 25(1).

42. Ibid art 27(1).

43. Ibid art 30(1).

44. Ibid art 30(2).

45. Ibid art 30(4).

46. Ibid art 36.

47. Ibid art 12(1).

48. Ibid art 12(2).

49. Ibid art 6(9).

50. Ibid art 7(1).

In terms of cost allocation, unless otherwise agreed between the consignor and the carrier, the costs the carriage charges, incidental costs, customs duties, and other costs incurred from the time of the conclusion of contract to the time of delivery are paid by the consignor⁵¹. When by virtue of the agreement between the consignor and the carrier the costs are payable by the consignee and the consignee has not taken possession of the consignment note or asserted his rights, the consignor remains liable to pay the costs⁵².

For dispute resolution, the CIM stipulates that claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action can be brought⁵³. A claim may be made by persons who have a right to bring an action against the carrier, which means by the person who made the payment, by a consignor and by the consignee⁵⁴. The general rule is that the period of limitation to bring an action arising out of the contract of carriage is one year⁵⁵. Actions based on the uniform rules may be brought before the courts and tribunals of Member States designated by agreement between the parties or before the courts or tribunals of a State on whose territory the defendant has his domicile or habitual residence, or his principal place of business or the branch or agency which concluded the contract of carriage, or goods have been taken over by the carrier, or delivery is designated. Other courts or tribunals may not exercise jurisdiction⁵⁶.

For a broader perspective, CIM creates a uniform and predictable legal environment towards international railway transport. For railways such as the Ethio-Djibouti railway, which brings a significant impact on external trade for both countries by enhancing legal uncertainty across borders. Even though, Ethiopia is not a member of the CIM, this legal framework brings benchmark framework for national legislation's as well as bilateral agreements towards railways in Africa.

51. Ibid art 10(1).

52. Ibid art 10(2).

53. Ibid art 43(1).

54. Ibid art 43(2).

55. Ibid art 48(1).

56. 56. Ibid art 51.

2.2.2.1.3. The Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV Uniform Rules)

This legal framework provides a regulatory space for international carriage of passengers by rail. The new CIV Uniform Rules apply to all contracts for international carriage. Previously, under the 1980 version, the Rules applied only to travel over a 'listed line' notified by a Member State and covered by a travel document for international journeys between countries⁵⁷. The rules also apply to contract of carriage of passengers by rail for reward or free of charge, when the place of departure and the place of destination are situated in two different Member States, irrespective of the domicile or the place of business and the nationality of the parties to the contract of carriage⁵⁸. The CIV Uniform Rules also apply when international carriage, being the subject-matter of a single contract, includes carriage by road or inland waterway in internal traffic of a Member State as a supplement to trans-frontier carriage by rail⁵⁹.

The CIV regime also introduced new definitions of carrier, substitute carrier, general conditions of carriage, and vehicle⁶⁰. Carrier is the contractual carrier with whom the passenger has concluded the contract of carriage pursuant to the CIV Uniform Rules, or a successive carrier⁶¹. In some circumstances, the member states may conclude agreements providing for derogations from the CIV Uniform Rules for carriage by means of shuttle trains between frontier stations, including the carriage in the Channel Tunnel⁶². Also, even though the obligation to carry has been withdrawn, Member States may impose the obligation on rail carriers through agreements, insofar as this is not prohibited by public international law⁶³. With respect to the carriage performed between two member states, passing through a non-member state, these states may conclude agreements which derogate from the Uniform Rules⁶⁴. Besides these exceptions, the CIV Uniform Rules are mandatory and any derogation from them is null and void, but this does not affect the other provisions of the contract of carriage⁶⁵.

57. Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV Uniform Rules) art 1.

58. Ibid art 1.

59. Ibid art 1(2)-(3).

60. Ibid art 3(2).

61. Ibid.

62. Ibid art 4(1).

63. Ibid art 4(3).

64. CIV Uniform Rules (n 71) art 4(3).

65. Ibid art 5.

Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in the uniform rules⁶⁶. The contract of carriage obliges the carrier to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination⁶⁷. The contract of carriage must be confirmed by one or more tickets issued to the passenger⁶⁸. Such ticket is prima facie evidence of the conclusion and the contents of the contract of carriage⁶⁹. Nevertheless, the absence, irregularity, or loss of the ticket does not affect the existence or validity of the contract⁷⁰.

A core feature of the CIV is the liability of the carrier for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger caused by an accident arising out of the operation of the railway⁷¹. The liability of the carrier does not depend on the infrastructure used⁷². The CIV Uniform Rules provide also for exoneration from liability in specified cases⁷³. The carrier is relieved of the liability if the accident has been caused by circumstances not connected with the operation of the railway and which the carrier was unable to avoid although he has taken due care⁷⁴. The next exoneration is when the accident is due to the fault of the passenger. The last one applies if the accident is due to the behaviour of a third party which the carrier could not prevent or avoid⁷⁵. Compensation in case of death of the passenger covers any necessary costs following the death⁷⁶. If a deceased passenger's dependents are deprived of his financial support as a result of his death such persons are also compensated⁷⁷. When personal injury or any other physical or mental harm to the passenger occurs, the damages cover any necessary costs, in particular those of treatment and of transport and compensation for financial loss resulting from the total or partial incapacity to work, or from increased needs⁷⁸.

66. CIV Uniform Rules (n 71) art 5.

67. Ibid art 6(1).

68. Ibid art 6(2).

69. Ibid art 7.

70. Ibid.

71. Ibid art 26.

72. Ibid.

73. Ibid.

74. Ibid.

75. Ibid

76. CIV Uniform Rules (n 71) art 27.

77. Ibid.

78. Ibid

However, for the purposes of the CIV Uniform Rules, the upper limit per passenger is set at 175,000 units of account.⁷⁹

The uniform rules also extend for liability in case of failure to keep to the timetable and in case of cancellation, late running of trains, and missed connections⁸⁰. The carrier cannot invoke the limits of liability if it is proved that the loss or damage results from an act or omission which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result⁸¹. Furthermore, the uniform rules contain provisions on liability in respect of hand luggage, animals, registered luggage, and vehicles as well as provisions on the liability of the passenger towards the carrier⁸².

Actions based on the CIV Uniform Rules similar with CIM Uniform Rules may be brought before the courts or tribunals of member states designated by agreement between the parties or before the courts or tribunals of the Member State on whose territory the defendant has his domicile or habitual residence, his principal place of business or the branch or agency which concluded the contract of carriage. Other courts or tribunals may not exercise jurisdiction⁸³. The CIV Uniform Rules similar with the CIM Uniform Rules aim to bring legal predictability and an efficient legal framework surrounding international railway transportation particularly towards passengers. For Africa, where cross border railway services for passengers is limited but still mentioned as one major aspiration under Agenda 2063's Pan-African High Speed Rail Network, this legal framework serves as a reference. Moreover, even though Ethiopia is not a member to this instrument aligning its bilateral agreement as well as regional commitments with the CIV could enhance passengers as well as their properties protection.

79. Ibid.

80. Ibid art 30.

81. Ibid art 32.

82. Ibid.

83. Ibid art 33.

2.2.2.1.4. WTO Agreement on Trade Facilitation (TFA)

The Agreement entered into force on 22 February 2017 when the WTO obtained the two-thirds acceptance of the Agreement from its 164 Members⁸⁴. This agreement has a significant impact on customs procedure, border clearance and logistics efficiency for railway.

Although this agreement does not directly specify cross-border railways, its provisions have implications that affect cross-border railway. Effective customs procedure, border clearance and logistics efficiency are critical to realize interoperability. For railways such as the Ethio-Djibouti railway, where goods cross borders of both states the TFA's principles are directly relevant. This agreement, to enhance transparency, requires member states to promptly publish procedures for importation, exportation, and transit, including required forms and documents⁸⁵, rates of duties and taxes⁸⁶, fees and charges⁸⁷, rules for the classification or valuation⁸⁸, laws, regulations, and administrative rulings⁸⁹ in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them⁹⁰. Moreover, members are expected to make available, and update customs procedure including procedures for appeal or review, that informs governments, traders, and other interested parties of the practical steps needed for importation, exportation, and transit additionally the forms and documents required for importation into, exportation from, or transit through the territory of that Member. The agreement also includes provisions taking into consideration accessibility, for members to make available further trade-related information through the internet⁹¹ and to establish enquiry points to answer reasonable enquirers of governments, traders, and other interested parties on matters⁹². The agreement also states that a member to issue an advance ruling in a reasonable, time-bound manner to reduce uncertainty.

84. Ibid art 55.

85. World Trade Organization and Trade Facilitation Agreement Facility, 'Trade Facilitation Agreement' (Trade Facilitation Agreement Facility, 2013) <https://www.tfafacility.org/publications-resources/trade-facilitation-agreement> accessed 15 August 2025

86. World Trade Organization, 'Trade Facilitation Agreement' (2013) https://www.wto.org/english/docs_e/legal_e/tfa_e.htm accessed 15 August 2025, art 1(1)(a)

87. Ibid art 1(1)(b).

88. Ibid art 1(1)(c).

89. Ibid art 1(1)(d).

90. Ibid art 1(1)(e).

91. Ibid art 1(1).

92. Ibid art 2(1)(a)

In terms of border clearance, member states are expected to maintain procedure that allows the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival, provide electronic payment⁹³. The TFA further enhances logistic efficiency by promoting member states to adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations⁹⁴. Special provisions are also included for expedited shipments such as perishable goods are prioritized by minimizing the documentation required for the release to the extent possible, provide for release based on a single submission of information on certain shipments⁹⁵.

By aligning national procedures with the TFA both countries can increase the attractiveness of the Ethio-Djibouti railway. While, the previous legal frameworks mentioned in the above sub-section regulate the legal interoperability of railways, the TFA creates a smooth process for goods once they reach another countries border not to affect the railways efficiency.

93. WTO, 'Trade Facilitation Agreement' (n 99) art 2(1)(a).

94. Ibid art 2(1)(b).

95. Ibid art 2(3).

2.2.2.2. Regional Frameworks

2.2.2.2.1. African Continental Free Trade Area (AfCFTA)

Building on international legal frameworks such as the COTIF, it is also important to look into regional legal frameworks that are relevant for cross-order railway transportation in Africa. Among the relevant instruments is the AfCFTA.

The decision to establish the AfCFTA was taken at the eighteenth Ordinary Session of the AU Assembly of Heads of State and Government in Addis Ababa, Ethiopia in 2012⁹⁶. Subsequently, the AfCFTA negotiation was launched during the twenty fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa from June 14–15, 2015⁹⁷. The agreement was brokered on March 21, 2018 at the end of the tenth Extraordinary Session of the Assembly of AU Heads of State and Government in Kigali, Rwanda, and entered into force on May 30, 2019⁹⁸. Trading under the AfCFTA officially started on January 1, 2021, but the first consignment of goods traded under the agreement took place on September 23, 2022 when Kenya shipped goods, including locally produced tea and car batteries to Ghana⁹⁹.

Similar to the COTIF, as it sought to create uniformity across multiple jurisdictions, the central objectives of the AfCFTA are outlined in Articles 3–8 of the AfCFTA Agreement¹⁰⁰. According to these articles, the AfCFTA seeks to provide a single market for goods, services, investment, intellectual property rights (IPRs), and competition policy¹⁰¹. Unlike the COTIF, which solely regulates rail transport, the AfCFTA is broader in scope which encompasses multiple sectors that may affect cross-border railway such as the Ethio-Djibouti railway.

96. African Union, 'The African Continental Free Trade Area' (2022) <<https://au.int/en/african-continental-free-trade-area>> accessed 12 August 2025.

97. Thomas Kwasi Tiekou and Afua Boatemaa Yakohene, 'Analyzing the African Continental Free Trade Area (the AfCFTA) from an Informality Perspective: A Beautiful House in the Wrong Neighborhood' (2023) 3(3) *Global Studies Quarterly* ksad043 <<https://doi.org/10.1093/isagsq/ksad043>> accessed 16 August 2025.

98. African Union, 'The African Continental Free Trade Area' (n 120).

99. Kate Hairsine, 'Africa's AfCFTA Free Trade Agreement Takes Baby Steps', *DW Africa* (12 May 2022) <<https://www.dw.com/en/african-continental-free-trade-agreement-takes-baby-steps/a-63983721>> accessed 16 August 2025.

100. *Ibid.*

101. Tiekou and Yakohene (n 121).

2.2.2.2.2. The Common Market for Eastern and Southern Africa (COMESA)

Following the discussion of the AfCFTA, it is also important to consider sub-regional frameworks that shape trade and by extension cross-border railways. COMESA provides a good example.

COMESA originated as a preferential trade area (PTA) in 1982 and now has 19 members. Of these, eleven of the nineteen member states participate in a free trade area (FTA); others trade on preferential terms¹⁰². The FTA is established in October 2000 as the result of a long period of tariff reductions and has followed some of the principles of open regionalism¹⁰³.

In contrast to earlier legal frameworks mentioned on this chapter, the COMESA reaches beyond border measures and provides for the monitoring of non-trade barriers (NTBs)¹⁰⁴. There is an extensive program of cooperation and technical assistance in trade facilitation and harmonization of standards¹⁰⁵. Furthermore, it includes a formal dispute settlement mechanism in the form of a COMESA Court of Justice is provided, but disputes in general have been successfully handled through an informal process of diplomatic consultation and the court is not yet operational¹⁰⁶. The agreement also incorporates temporary balance of payments related safeguards¹⁰⁷.

In the long run, COMESA has plans for eventual formation of a common market and a monetary area, but those plans are in the distant future¹⁰⁸. However, similar to AfCFTA and other regional efforts, the realization of this goal is dependent on political will of member states to align domestic framework with this initiative. Unless this obstacle gain an effective remedy, the efficiency of cross-border railways will also be affected by fragmented regulatory framework.

102. Padamja Khandelwal, 'COMESA and SADC: Prospects and Challenges for Regional Trade Integration' (IMF Working Paper WP/04/227, Policy Development and Review Department, December 2004) 8 <https://www.imf.org/external/pubs/ft/wp/2004/wp04227.pdf> accessed 20 August 2025.

103. Ibid 8.

104. Ibid 10.

105. Ibid.

106. Ibid.

107. Ibid.

108. Ibid

2.2.2.2.3. The Intergovernmental Authority on Development (IGAD)

In addition to international and broader regional frameworks such as AfCFTA, sub regional groupings such as the COMESA play a huge role in shaping of economic integration in Africa. Within the horn of Africa, IGAD a sub-regional framework plays a vital role.

Since its establishment, IGAD has mainly concentrated on the issue of conflict in countries such as Somalia, Sudan and South Sudan. Nevertheless, since the Abuja treaty in 1991 wherein AU accepted eight regional economic communities including IGAD¹⁰⁹ it seems it has also given some attention to the idea of economic integration in the Horn of Africa. The Abuja Treaty set a timetable for the continental integration that would be fulfilled in stages and completed by 2028 with a step-by-step process ¹¹⁰.

Ethiopia as a member state of IGAD proposed insightful economic initiatives that have been appreciated by other member states¹¹¹. For instance, Lamu Project initiated by Ethiopia, Kenya and South Sudan, Ethio-Djibouti railway (from Ethiopia's Sebeta to Somali Region's Dewale), Mekele (Ethiopia) to Tajura pipe line project, energy connection was set by Ethiopia and Djibouti as integration work¹¹². However, many economic integration projects of IGAD remain on papers ¹¹³. The practical implementation of joint projects in the region is bilateral or trilateral initiatives rather than at IGAD level¹¹⁴.

The trade flow among member states of IGAD show this unevenness. Formal trade flows between IGAD member states is by far low compared to the average trade flows of inter-African countries in general while informal trade or economic exchange between IGAD member states constitute more than 40% of the GDP of the region. A study conducted by Healy indicates that there are strong economic exchanges between Ethiopia and that of Kenya, Sudan and Djibouti. For example, Ethiopia exported to the aforementioned countries trade items that included beans, livestock, chat and coffee worth of millions of dollars.

109. Endale Aman, 'Regional Integration in Africa: The Case of Intergovernmental Authority on Development (IGAD)' (School of Diplomacy and International Relations, Ethiopian Civil Service University) 78.

110. Ibid.

111. Ibid.

112. Ibid.

113. Ibid.

114. Ibid

Given the porous nature of boundaries between horn states as peoples across boundaries share cultural traits such as language, religion, the amount of informal trade flows between Ethiopia and its neighboring countries could go beyond the stated amount¹¹⁵. Political developments also influence IGAD's economic integration process. The Ethio-Eritrea reconciliation that broke the 20 years deadlock between the two countries initially raised hopes of new opportunities as major prospects for regional integration in terms of peace and economic development for sustainability¹¹⁶. However, this momentum has deteriorated, since the relation between these countries have once again become unstable. This renewed tension shows how political instability affect economic integration efforts, including cross-border railways that required sustained cooperation among countries.

Uganda, South Sudan, and Ethiopia are landlocked countries that need to use the ports of other member states¹¹⁷. This geographic imperative of access to the sea for these countries is a major impetus for enhancing regional integration¹¹⁸, particularly through cross-border infrastructures. For example, Ethiopia and Djibouti bilaterally interconnected themselves through infrastructural developments¹¹⁹. Ethiopia secures access to the port of Djibouti via a jointly owned railroad, and Djibouti benefits from revenues generated from Ethiopia's use of the port.

115. Healy, 'Hostage to Conflict' (n 188).

116. Awet T Weldemichael, 'The Peace that Led to War: Ethio-Eritrean Relations since 2018' (2021)

https://www.aiepeditore.com/wp-content/uploads/2023/07/AO_interno-2_2021_Weldemichael.pdf accessed 19 August 2025.

117. Healy, 'Hostage to Conflict' (n 188).

118. *Ibid.*

119. Aman, 'Regional Integration in Africa' (n 181)

CHAPTER THREE

THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE ETHIO-DJIBOUTI RAILWAY CHALLENGES AND OPPORTUNITIES

Introduction

The Ethio–Djibouti Railway modernization project is the first cross-border electrified railway in Africa¹²⁰. The railway line is a 753 km electrified single-track standard gauge line between Ethiopia’s capital Addis Ababa and the Port of Djibouti, with 20 stations in total¹²¹. The new standard gauge line runs parallel to and replaces an abandoned 1 m gauge railway, which was built more than 100 years ago¹²².

As a landlocked country, the line serves as the main transport corridor for Ethiopia to its gateway of the Port of Djibouti, which handles over 90% of Ethiopia’s international trade¹²³. The line runs from Addis Ababa/Sebeta through the two large Ethiopian cities of Adama and Dire Dawa and links industrial parks and dry ports¹²⁴. The railway line is owned by the EDR, a joint venture company of the two state-owned companies the ERC and SDCF¹²⁵. The project was constructed by Chinese state-owned companies CREC and CCECC, which are operating the railway for a period of six years following construction completion¹²⁶. The line was opened for freight in October 2015 and was formally inaugurated for passenger services in October 2016¹²⁷. It became officially commercially operational as of 1 January 2018¹²⁸.

This chapter analyzes the challenges and opportunities on the legal and regulatory frameworks governing the Ethio-Djibouti Railway, with a focus on six critical areas:

120. PPIAF Global Infrastructure Hub, ‘Case Studies: Addis Ababa–Djibouti Railway’ (30 November 2020) 73 <https://cdn.gihub.org/umbraco/media/3748/addis-ababa-djibouti-railway.pdf> accessed 20 August 2025.

121. *Ibid.*

122. *Ibid.*

123. *Ibid.*

124. *Ibid.*

125. *Ibid.*

126. *Ibid.*

127. *Ibid.*

128. *Ibid.*

1. Employment Law
2. Customs Law
3. Freight Forwarding and Customs Clearance Laws
4. Immigration Law
5. Proprietary Law
6. Future Upgrades and Financing Constraints

Analyzing the 2016 Bilateral Agreements, 2017 Shareholders Agreement, Memorandum of Association, also explores institutional mechanisms in place and legal harmonization strategies, and dispute resolution mechanisms.

3.1. Legal Framework

3.1.1. Employment Law

The Ethio-Djibouti Railway, as a joint cross-border infrastructure project, necessitates a robust and harmonized labour management framework. Given that the railway system is operated by personnel from both Ethiopia and Djibouti, as well as foreign nationals, a comprehensive regulatory framework is essential to ensure effective governance, compliance, and coordination across jurisdictions.

The framework, however should not be limited to domestic legislation's of both countries, but it should also take into consideration international principles and legal frameworks that are mentioned under chapter two of this research. Cross-border employment is not an easy or straight forward process as domestic hiring. As a result, companies need to learn how to navigate international labor laws to ensure compliance¹²⁹.

The key focus areas of employment law include:

- ✧ Employment contracts: International hiring begins with a contract that specifies the terms of employment. It encompasses crucial details such as jurisdiction, dispute resolution, terms of employment, and governing law. The contract must comply with local rules and regulations of the employee's country even if the employer doesn't technically operate there¹³⁰.

129. Mayank Bhutoria, 'Cross-Border Employment: Key Things to Consider When Building an International Workforce' (Gloroots, 1 August 2024) <https://www.gloroots.com/blog/cross-border-employment> accessed 20 August 2025.

130. Bhutoria, 'Cross-Border Employment' (n 198)

- ✧ Labor standards: Employers must comply with the labor laws of the employee's country, which govern working hours, safety standards, minimum wage, and overtime compensation, these standards may differ significantly across countries¹³¹.
- ✧ Termination of employment: Some countries have varying termination policies for employees. Employers have to ensure they follow the appropriate legal procedures when terminating employees, which include notice periods, severance pay, etc¹³².

Ethiopia adopted a new Labor Proclamation in 2019, replacing the old law that had been in place in Ethiopia for 16 years. The current labour proclamation reflects changes in investments, labor markets, and the business environment in Ethiopia. Several of the provisions from the new proclamation have relevance to the Ethio-Djibouti railway management:

Employers Responsibilities: Employers have the obligations as giving tasks to employees¹³³, paying salaries in a timely manner¹³⁴, and respecting all employees rights¹³⁵. Alongside these, the new law makes it mandatory for employees to deduct union dues, if the employee agrees, from a worker's salary and then, , transfer the money into the trade union's bank account¹³⁶. For a cross-border railway as the Ethio-Djibouti railway, this responsibility bestowed to the railway company creates an institutional oversight which ensures transparency and compliance.

Minimum Wage: There have been many struggles in Ethiopia when it comes to the minimum wage. Although the 2019 Labour Proclamation (No. 1156/2019, Article 55(2)) provides for the establishment of a Wage Board composed of representatives from the government, employees, and trade unions,¹³⁷ the Wage Board has not yet been formed or become operational. These groups, along with other stakeholders, are to come together and conduct studies to revise the minimum wage at regular intervals based on how the economy is performing¹³⁸.

131. Ibid.

132. Ibid.

133. Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Labour Proclamation No 1156/2019, 25th Year No 89 (Addis Ababa, 5 September 2019) art 12(1)(a)

134. Ibid.12(2)

135. Ibid. 12(4)

136. Ibid 12(3)

137. Ibid 55(2)

138. Id

Although the employees of the Ethio-Djibouti are nationals of both countries and foreigners, Ethiopia's evolving wage-setting may influence future bilateral agreements on introducing an equitable wage standard.

Employee Benefits: The new Proclamation states that female employees are entitled to fully paid maternity leave of 120 days (30 days pre-natal and 90 days postnatal)¹³⁹. The law also, for the first time ever, allows paternity leave of three consecutive days for male workers¹⁴⁰. The effort made by the new proclamation shows Ethiopia's demonstration to align its legal framework with international standards.

Annual Leave Entitlement: According to the new Proclamation, workers will receive 16 days of annual leave (working days) in the first year that they work for an employee¹⁴¹, with incremental increases thereafter¹⁴². This provides a predictable rest period for employees especially in labour intensive work environment such as the Ethio-Djibouti railway. Foreign nationals who wish to work in Ethiopia are required to obtain a work permit¹⁴³. It is issued for three years by the Ministry of Labor for a specific type of work and is renewed every year¹⁴⁴. Work permits are issued based on the type of work for the permit being requested and upon providing appropriate educational and experiential documents¹⁴⁵. The requirements vary based on the employing organization. For the Ethio-Djibouti Railway, foreign staff are expected to go through the mentioned process. Additionally, the Overseas Employment Proclamation No. 923/2016 regulates Ethiopian nationals' working abroad; it requires the existence of bilateral agreements between Ethiopia and the receiving countries as a prerequisite for the deployment of workers¹⁴⁶. The Proclamation specifies that the agreements must address the issue of working conditions, means and venues of enforcement¹⁴⁷, among other details which is directly applicable for the Ethio-Djibouti Railway, where Ethiopian workers may operate in Djibouti border.

139. Ibid art 88(2)

140. Ibid art 81(2)

141. Ibid art 77(1)(b)

142. Ibid art 176(1).

143. Ibid art 176(2).

144. Ibid art 176(3)

145. Ibid art 176(3)

146. Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Overseas Employment Proclamation No 923/2016, 22nd Year No 44 (Addis Ababa, 19 February 2016) art 12.

147. Ibid. art 17.

Finally, the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) provides that all international agreements ratified by Ethiopia are an integral part of the law of the land¹⁴⁸. Moreover, the FDRE Constitution provides that the fundamental rights and freedoms recognized under Chapter 3 of Constitution shall be interpreted in a manner conforming to the International Covenant on Human Rights and the other international instruments adopted by Ethiopia¹⁴⁹. The FDRE Constitution has the primacy over all the other laws, it proclaims that any law, customary practice, decision of an organ of State or public official that contravenes the Constitution has no effect¹⁵⁰. Once a treaty or an international agreement is made, its ratification will be made by the Parliament, and is issued as proclamation and published in the official Negarit Gazetta¹⁵¹. In this context, Proclamation No. 1014/2017, a proclamation to ratify the bilateral agreement between the government of the federal democratic republic of Ethiopia and the government of the republic of Djibouti for the development, operation, and management of standard gauge railway network, ratified on July, 14, 2012, forms part of the law of the land by virtue of the above mentioned provisions of the constitution. Djibouti's employment law outlines a detailed framework for employment relations, probation period, termination procedure, working hours, and overtime regulations.

Probationary Periods

Djibouti's employment law stipulates different probationary periods based on the type of employment contract. For employees under indefinite contracts¹⁵²:

- ✧ Hourly-paid employees: The probationary period shall not exceed fifteen days¹⁵³.
- ✧ Monthly-paid employees: The probationary period shall not exceed one month¹⁵⁴.

148. Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, *Constitution Proclamation No 1/1995*, 1st Year No 1 (Addis Ababa, 21 August 1995) art 9(4).

149. FDRE Constitution (n 218) art 13(2).

150. *Ibid.* art 9(1).

151. Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, *International Agreements Making and Ratification Procedure Proclamation No 1024/2017*, 23rd Year No 55 (Addis Ababa, 7 July 2017) art 11.

152. Global Expansion, *Global Hiring Guide: Djibouti* (April 2023) 2 <https://www.globalexansion.com/hubfs/Countrypedia%20PDFs/In%20use/Djibouti%20%20Global%20Employer%20Guide.pdf> accessed 21 August 2025.

153. *Ibid.*

154. *Ibid.*

- ✧ Executive-level employees: The probationary period shall not exceed three months¹⁵⁵.
- ✧ For fixed-term contracts, the probationary period is calculated as one business day per week, with a maximum of one month for hourly employees and three months for executive-level employees¹⁵⁶

A distinctive feature is that foreign workers in Djibouti must be employed under a written fixed-term contract, and the probationary period applicable to fixed-term contracts applies to them¹⁵⁷. To be valid, the probationary period must be included in the employment agreement¹⁵⁸. For the Ethio-Djibouti Railway, which relied heavily for its construction on foreign staff, this formality requirement poses strict formality compared to the Ethiopian labour law.

Termination During Probationary Period

Employers in Djibouti can terminate an employment relationship during the probationary period without cause, notice, or compensation, provided the probationary period is explicitly stated in the employment contract. For indefinite contracts, the probationary period can be extended once¹⁵⁹

This can raise significant issues when it comes to the management of employees for the Ethio-Djibouti Railway, as it may be required to apply different termination policy depending on where the employee is domiciled.

Working Hours, Overtime, and Rest Breaks

The standard work week in Djibouti is forty-eight hours, which can be extended under specific circumstances, such as overtime, time recovery, or collective bargaining agreements¹⁶⁰.

155. Ibid

156. Ibid.

157. Komlavi Atsou and Patty Shapiro, 'Employment Law Basics in Djibouti: A Guide for U.S. and Multinational Companies' (Ogletree Deakins, 23 May 2025) <<https://ogletree.com/insights-resources/blog-posts/employment-law-basics-in-djibouti-a-guide-for-u-s-and-multinational-companies/>> accessed 21 August 2025.

158. Atsou and Shapiro, 'Employment Law Basics in Djibouti' (n 226).

159. Global Expansion, 'Djibouti Global Employer Guide' (n 221)7.

160. Atsou and Shapiro, 'Employment Law Basics in Djibouti' (n 226).

Employers must inform the labor inspector if employees are required to work overtime, which should not exceed five hours per week per worker¹⁶¹. For overtime beyond five hours, express authorization from the labor inspector is required¹⁶². The total number of hours worked, including overtime, cannot exceed sixty hours per week or twelve hours per day¹⁶³. In Djibouti, as long as employees are at the workplace, whether clocked in or clocked out, they must be compensated¹⁶⁴.

For the Ethio-Djibouti Railway, this provision can be burdensome as crews waiting on-site during delays, inspections and cross-border clearance would be entitled to more compensation, which potential raises the amount paid compared to Ethiopia. Furthermore, having the labour inspector to approve regarding overtime, can be less flexible causing operational obstacles.

Overtime Premiums and Rest Breaks

Overtime work must be compensated at a premium rate, typically specified in collective bargaining agreements¹⁶⁵. As long as the collective bargaining agreement is not violating any mandatory provisions of the labor code, the collective bargaining agreement controls the employment relationship¹⁶⁶. While Djibouti's labor code does not mandate rest breaks, employers usually provide them to ensure productivity. Employees are entitled to a mandatory weekly rest period of at least twenty-four hours¹⁶⁷. With the majority of the Djibouti population being of the Muslim faith, rest is typically taken on Fridays to allow people to attend mosque¹⁶⁸. However since the same leave structure is not mirrored in Ethiopia, this introduces an additional coordination issue. The train schedule is expected to operate seamlessly across both countries, but this issue brings constraints. In conclusion, the challenges faced in harmonizing labor practices between Djibouti and Ethiopia are both concrete and consequential. The disparity in compensation structures where Djibouti mandates payment for all on-site time, including delays, while Ethiopia does not results in unequal labor costs and risks of employee dissatisfaction.

161. Global Expansion, 'Djibouti Global Employer Guide' (n 221) 2.

162. Atsou and Shapiro, 'Employment Law Basics in Djibouti' (n 226).

163. Ibid.

164. Ibid.

165. Ibid.

166. Ibid.

167. Ibid.

168. Ibid.

Termination policies also diverge significantly, with Djibouti allowing probationary dismissals without notice or compensation, unlike Ethiopia's more protective approach. This inconsistency can lead to legal complications if not clearly addressed in employment contracts. Additionally, the lack of a unified immigration and work permit system, despite promises in bilateral agreements, causes onboarding delays and potential legal exposure for non-compliance. Finally, the absence of a shared labor framework and dispute resolution mechanism creates fragmented governance, making it difficult to enforce rights and obligations across jurisdictions. These challenges underscore the urgent need for coordinated legal and administrative reforms to ensure smoother cross-border labor operations.

3.1.2. Customs Law

Customs procedures and clearance processes in railway freight involve a systematic series of steps designed to ensure compliance with national and international regulations. As highlighted in Chapter two of this research, frameworks such as the COTIF and AfCFTA seek to reduce trade friction through harmonized rules among trading state. In railway, these procedures facilitate the lawful movement of goods across borders via railways, minimizing delays and legal risks. Initially, carriers and shippers submit required documentation, such as bills of lading, commercial invoices, and certificates of origin, to customs authorities for review¹⁶⁹. Customs officials then authenticate these documents, verifying compliance with applicable laws and regulations¹⁷⁰. This verification process often includes inspecting cargo, especially when irregularities or discrepancies are suspected¹⁷¹. Once approved, customs clearance is granted, allowing the goods to proceed to their destination¹⁷². Any issues identified during review may result in additional inspections, delayed processes, or penalties if violations are found¹⁷³. The customs laws of Ethiopia and Djibouti, while both aiming to regulate cross-border trade and ensure proper revenue collection, differ in several operational procedures that create challenges for smooth trade facilitation. One of the notable differences lies in how each country assigns voyage numbers to shipments.

169. Lawqora Team, 'Understanding Railway Freight Documentation and Customs Laws for Seamless Cross-Border Transport' (Law Qora, 18September2024)<https://lawqora.com/railway-freight-documentation-and-customs-laws/#Customs_Procedures_and_Clearance_Processes_in_Railway_Freight> accessed 22 August 2025. Lawqora Team, 'Understanding Railway Freight Documentation and Customs Laws' (n 241).

170. Ibid

171. Ibid

172. Ibid.

173. Ibid.

Ethiopia follows its own system of recording and tracking consignments, while Djibouti applies its own system which is a different format from Ethiopia for identifying voyages arriving through its port. Since Ethiopia is a landlocked country that relies heavily on Djibouti's port for its imports and exports, these discrepancies in assigning voyage numbers often result in mismatches in documentation, delays in clearance processes, and difficulties in aligning trade data between the two countries.¹⁷⁴

This lack of harmonization in voyage numbering not only complicates the work of customs officials but also places an additional burden on importers, exporters, and freight forwarders who must reconcile the two systems. It often leads to administrative inefficiencies, disputes over cargo identification, and delays in the release of goods, ultimately raising the cost of trade. The challenge highlights the need for greater coordination and harmonization of customs procedures between Ethiopia and Djibouti, possibly through bilateral agreements or regional frameworks, to ensure consistency and predictability in trade logistics. Standardizing voyage numbering could significantly reduce clearance times, improve transparency, and enhance the competitiveness of both countries in regional and global trade.¹⁷⁵

3.1.3. Freight Forwarding and Customs Clearance Laws

Freight forwarding and customs clearance constitute the practical part of cross-border railway operations. While the customs law (discussed in section 3.1.2) outlines the legal field for shippers and carriers, this section focuses on the institutional and operations procedure. As discussed on Chapter two, International conventions, such as the Convention concerning International Carriage by Rail (COTIF) and its associated protocols, establish standardized procedures for documentation and customs processing. At the national level, each country enforces its customs regulations, often aligned with these international standards, to regulate railway freight operations effectively. Laws governing railway freight documentation specify the mandatory documents, such as bills of lading, commercial invoices, and certificates of origin¹⁷⁶. These regulations aim to streamline customs clearance processes, prevent illegal trade, and ensure compliance with safety and trade standards¹⁷⁷.

174. A. Berkesa, personal communication, March 15, 2023

175. Ibid.

176. Lawqora Team, 'Understanding Railway Freight Documentation and Customs Laws' (n 241).

177. Ibid.

Understanding this complex legal structure is vital for legal professionals navigating railway law and freight compliance¹⁷⁸. However, the Ethio-Djibouti Standard Gauge Railway (EDR) faces significant operational challenges due to differences in the legal frameworks of Ethiopia and Djibouti concerning freight forwarding and customs clearance services.

Under Ethiopian law, companies are permitted to engage in both freight forwarding and customs clearance, allowing for integrated logistics services that streamline cargo movement from origin to destination. In contrast, Djibouti's legal framework restricts customs clearance activities to entities that are either natural persons of Djiboutian nationality or legal entities established under Djiboutian law, with all shares held by Djiboutian nationals. Given that the Ethiopian government is the majority shareholder in the Ethio-Djibouti Standard Gauge Railway Share Company (EDR), this legal restriction poses challenges for EDR to engage in both freight forwarding and customs clearance services on the Djiboutian side. This divergence creates a legal and procedural gap that complicates the seamless flow of goods along the railway corridor, as operators must navigate two different systems within a single transport chain.

The lack of harmonization in these regulations directly affects EDR's efficiency and competitiveness. For instance, Ethiopian freight forwarders handling customs clearance on the Ethiopian side are unable to extend the same service once goods reach Djibouti, forcing shippers to rely on different intermediaries or government agencies. This leads to duplicated processes, higher transaction costs, delays in cargo clearance,¹⁷⁹ and increased potential for miscommunication or documentation errors. Ultimately, the difference in legal provisions undermines the objective of EDR as a fast, reliable, and cost-effective transport corridor, highlighting the urgent need for bilateral legal coordination or regional agreements to align customs and logistics practices between the two countries. The 2017 Bilateral Agreement recognize that the success and competitiveness of rail transport services on the Network are closely dependent on the establishment of an administrative and regulatory environment that allows for a smooth operation of international freight and passenger traffic¹⁸⁰.

178. Lawqora Team, 'Understanding Railway Freight Documentation and Customs Laws' (n 241).

179. Discussion with Ethiopian Freight Forwarders Association, June 19, 2025.

180. Ethio-Djibouti Railway Bilateral Agreement (n 240), art 5(1).

In the event that the procedures and controls put in place by one state do not respect the objectives set out in the bilateral agreement, that state shall make monthly compensatory subsidy payments to the Share Company, of an amount equal to the direct, actual and certain loss caused by its decision, including loss of traffic revenues with oversight by the Independent Regulatory Commission of Railway Activities¹⁸¹.

The bilateral agreement also states the tariffs of freight and passengers rail transport services must not exceed the level suitable for ensuring the competitiveness of the Network¹⁸². Furthermore, it talks about the coordination of the legal and regulatory framework for rail transport infrastructure and activities on adjacent networks specifying that both states will each have the right to construct and agree to consult and coordinate with each other for the adoption of any new technical standards or measures (including any technical, environmental, safety, security or competition standards or regulations)¹⁸³.

3.1.4. Immigration Law

Immigration law plays a vital role in the operations of cross-border railways.

3.1.4.1. The Migration For Employment Convention (Revised), 1949 (No. 97)

This Convention entered into force in 1952, address the protection of migrant workers. Neither Ethiopia nor Djibouti have ratified this Convention. In order to protect migrant workers from miserable working conditions, the Convention requires member states to have special provisions concerning migrant workers and to inform the ILO and other member states on their work and livelihood conditions¹⁸⁴. This provision warrants the continuous flow of information between the recipient country and the country of origin¹⁸⁵. Although, Ethiopia and Djibouti have not ratified this convention, its principles are vital for Ethio-Djibouti railway. This convention stipulates that state parties are obligated to provide an adequate and free service to assist migrant workers¹⁸⁶.

181. Ethio-Djibouti Railway Bilateral Agreement (n 240), art 5(9).

182. Ibid, art 6.

183. Ibid, art 8.

184. International Labour Organization, Migration for Employment Convention (Revised), 1949 (No 97) art 1(a).

185. 'The Ethiopian Overseas Employment Proclamation No 923/2016: A Comprehensive Analysis' (first published 2017) 30.

186. Migration for Employment Convention (Revised) (n 261) art 2.

This assistance, includes provision of information, interpretation, and any other services that a migrant worker and his/her family may need until he/she is acquainted with the system of the host country¹⁸⁷. As freedom of movement is one of the basic rights recognized by international and domestic instruments, this Convention also requires state parties to ensure this right. Accordingly, while a country of origin is required to facilitate the departure and journey of workers who desire to undertake overseas employment, a recipient country, on the other hand, is duty bound to facilitate their reception¹⁸⁸.

However, unclearly, the state parties have not the discretionary power to allow or not the deployment of workers, although the incidence of temporary ban with the objective of protecting workers is not specifically regulated¹⁸⁹. Contrary to the Ethiopian Proclamation, which does not provide about the families of migrant workers, the Convention provides for state parties to protect the health of these workers and their families through adequate medical attention¹⁹⁰. Moreover, unlike the Ethiopian counterpart, which is silent about transit states such as Djibouti, implies that such protection extends even when the worker and his/her family are in a third state for transit purposes¹⁹¹. The Convention also stipulates the equal treatment of nationals and migrant workers with regard to remuneration, work-hours, overtime pay, and social security¹⁹².

3.1.4.2. The International Convention on the Protection of the Rights of all Migrant Workers And Members of their Families

This Convention was adopted in 1990 and entered into force in 2003 after being ratified by 20 member states¹⁹³. The Convention provides a definition of migrant worker¹⁹⁴ and obligates the states of transit to protect this category of migrants. The entire migration process, for both domestic and non-domestic workers, which includes preparation, departure, transit, and stay in the recipient country, is covered in the Convention¹⁹⁵.

187. Migration for Employment Convention (Revised) (n 261) art 6.

188. Ibid, art 4

189. Ethiopian Overseas Employment Proclamation (n 262) 30.

190. Migration for Employment Convention (Revised) (n 261) art 5 (a).

191. Ibid, art 5(b).

192. Ibid, art 6.

193. Ethiopian Overseas Employment Proclamation (n 262) 31.

194. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art 2.

195. Migrant Workers Convention (n 271), art 1.

In terms of protection, the Convention does not discriminate documented and undocumented migrants¹⁹⁶. Similar to the above mentioned convention (discussed on 3.1.4.1), Ethiopia and Djibouti has not ratified this convention, and its provisions are relevant for Ethio- Djibouti Railway. The conventions scope of application is broad, as it extends protection to overseas workers while at home and while in the recipient country, without making any reference to their situation while in transit. The other striking feature of the Convention is that it gives adequate protection to the families of migrant workers, either at home or in the host country, in terms of equality of treatment to nationals and access to education¹⁹⁷ The Convention further recognizes arrested migrants the right of a due process, including the right to fair trial equal to that of nationals of the recipient state¹⁹⁸.

The convention also extends equal treatment to nationals with respect to remuneration, conditions, and terms of employment is also guaranteed¹⁹⁹, while it also respectively prohibit the confiscation and destruction of travel documents and the collective expulsion²⁰⁰. Furthermore, the Convention calls for exchange of information and cooperation among member states to increase their capacity to combat illegal migration and trafficking²⁰¹. The Convention also prohibits recruitment undertaken in the absence of mutual agreement between the country of origin and the host state, without the involvement of public bodies or agencies established by the law²⁰². It also requires the state parties to enable the creation of a conducive economic environment for the resettlement of migrant workers and their families and to facilitate their durable social and cultural reintegration in the state of origin²⁰³. In this light, the bilateral agreement and legal frameworks of both countries exhibit shortcomings, especially concerning the due process right, the equality of treatment of arrested overseas workers, and the measures for the resettlement and reintegration of returnees. The bilateral agreement promises a protocol setting out all aspects relating to immigration procedures to be adopted within three months of the signature of the agreement²⁰⁴. However, no protocol has been introduced since the signing of the bilateral agreement.

196. Ethiopian Overseas Employment Proclamation (n 262) 31.

197. Migrant Workers Convention (n 271), art 30.

198. Ibid, art 18.

199. Ibid, art 25 & 70

200. Ibid, art 20 & 22

201. Ibid, art 65.

202. Ibid, art 66.

203. Ibid, art 67

204. Ethio-Djibouti Railway Bilateral Agreement (n 240), art 5 (5).

3.1.5. Proprietary Law

Proprietary laws are at the core of any cross-border railway as it determines who owns the infrastructure, who bears liability and how profits as well as risks are divided. The Ethio-Djibouti railway Bilateral Agreement cumulative with the Article of Association of the joint share company outline a dual ownership of the railway between Ethiopia and Djibouti.

The bilateral agreement establishes that both states will have the ownership of the infrastructure on the sections of the Network located in their national territory²⁰⁵. This agreement also stipulates that both states assume the burden of the loans they have contracted in connection with the construction of the sections of the infrastructure of the Network located in their national territory²⁰⁶.

From the perspective of a cross-border railway, the dual ownership arrangement established under the Ethio-Djibouti Bilateral Agreement and the Articles of Association of the joint share company presents structural challenges that affect both operations and sustainability. While the agreement secures sovereign control by assigning ownership of infrastructure to each country within its own territory, this framework creates asymmetrical responsibilities in terms of financing, liability, and maintenance. If one state under-invests in maintaining its section of the network or struggles to service its contracted loans, the entire corridor's efficiency is compromised.

Since the railway must function as an integrated system, uneven investment or delays in one jurisdiction immediately impact the viability and reliability of operations across the border. Such asymmetries are especially problematic in cross-border railways, where seamless connectivity is essential to ensure competitiveness against road transport and other trade routes.

Furthermore, the governance model of the Ethio-Djibouti Standard Gauge Railway Share Company introduces complexities in decision-making and long-term strategic planning. Although Ethiopia holds a dominant 75% share compared to Djibouti's 25%, the indivisible nature of shares and restrictions on their transfer, governed by Ethiopian commercial law,

²⁰⁵ Ethio-Djibouti Railway Bilateral Agreement (n 240), art 2.

²⁰⁶ Ibid,

may limit flexibility in restructuring ownership or attracting external capital when needed. This rigid structure ensures national control but may also restrict adaptive responses to financial or operational crises. In practice, differences in national priorities, fiscal capacities, and legal frameworks could lead to disputes over cost-sharing, profit distribution, or liability allocation, thereby undermining the stability of the joint venture. Thus, while the proprietary laws safeguard sovereignty and prevent external takeover, they also embed potential institutional and financial tensions that could impede the effectiveness of the cross-border railway system. The absence of unified ownership or management body has hindered efficiency and created uncertainties about long-term viability.

3.1.6. Future Upgrades and Financing Constraints

This statement reflects a legal challenge for the Ethio-Djibouti Railway (EDR) because it highlights the tension between sovereign rights of each state to construct or extend infrastructure within its territory and the collective financial governance rules established under the shareholders' agreement. On the one hand, the bilateral agreement recognizes the independence of Ethiopia and Djibouti to build line extensions at their own cost, safeguarding national sovereignty over infrastructure development. On the other hand, the shareholders' agreement requires formal authorization for borrowing that equals or exceeds 10% of shareholder capital.²⁰⁷ This dual framework creates a potential conflict: while a state may legally decide to extend or upgrade the railway within its borders, it cannot independently finance such projects if the borrowing exceeds the set threshold without approval from the joint governance body. This restriction, though designed to prevent unilateral debt accumulation that could burden the company, effectively limits each country's autonomy in financing railway improvements.

From a cross-border railway perspective, this creates a legal and operational challenge because upgrades, maintenance, and expansions must be both nationally initiated and jointly authorized, even when the benefits are unevenly distributed. For example, if Ethiopia seeks to extend the line deeper into its territory to connect industrial parks, it cannot secure financing above the 10% threshold without Djibouti's consent, even though the extension lies entirely within Ethiopia's borders.

207. Ethiopia–Djibouti Railway Shareholders' Agreement (n 289), Schedule 3, 2(k).

This slows decision-making, increases the risk of deadlock, and may delay critical infrastructure upgrades. At the same time, if authorization is granted without strong financial safeguards, one state's borrowing decisions could impose risks on the other, jeopardizing the sustainability of the joint railway company. Thus, the scattered and partly conflicting provisions in the bilateral and shareholders' agreements create legal uncertainty, which complicates planning, financing, and implementing future upgrades essential for the railway's competitiveness.

3.2. Institutional Framework

3.2.1. The Governments

At the apex of the institutional framework for the Ethio-Djibouti Railway, there are two sovereign states (The Republic of Djibouti and the Federal Democratic Republic of Ethiopia). The direct involvement of both states simulates from the fact that cross-border railway systems cannot be governed by private operators only, instead they require inter-governmental coordination. The bilateral agreement for the development, operation and management of a standard gauge railway network signed between both states on 14 July 2012, affirms that the railway network between Ethiopia and Djibouti will strengthen the economic cooperation, stimulate economic development and improve the living standard of the respective citizens²⁰⁸. Three functions of the government are noteworthy:

1. Ownership of the infrastructure

Each state retains ownership of the infrastructure on the sections of the Network located in its national territory and assume the burden of the debuts finance construction²⁰⁹. This arrangement safeguards sovereign and also dual ownership of the railway which requires constant coordination among the states.

2. Share Company Establishment

The states jointly established a bi-national operating company (the Share Company) with shares discussed on section 3.1.5. of this research²¹⁰. The states delegate the day to day management of the railway to the share company while retaining control through share holding.

208. Ethio-Djibouti Railway Bilateral Agreement (n 240), preamble.

209. Ibid, art 2.

210. Ibid, art 3(2).

3. Compensation

The bilateral agreement states that any compensation owed by the Republic of Djibouti and the Federal Democratic Republic of Ethiopia to the Share Company under the Concession Contract shall be borne by the Parties, in proportion to their share in the Share Company²¹¹.

This institutional framework may pose a challenge as the efficiency of the railway is dependent on the continued political cooperation between the two states and any distortion in bilateral relations can affect the operation of the railway.

3.2.2. The Joint Railway Commission (JRC)

The JRC is established by the bilateral agreement, with the mandate for regulations, technical standards, setting up and managing right of ways to ensure a proper coordination of the operation of the network²¹². The JRC is the supervisory organ for the implementation of this Bilateral Agreement²¹³.

The Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of Djibouti established the JRC composed of the Ministries responsible for Transport, Foreign Affairs, Justice or Attorney General (as applicable) and Finance²¹⁴. The JRC shall be chaired interchangeably by the Minister responsible for Transport of both states and co-chaired alternately²¹⁵. Its existence exemplifies in the absence of bodies like OTIF (discussed on chapter 2), bi-national institutions such as the JRC governs strategic cross-border railways. However, this institution can be seen as a politico-legal body, creating potential challenges if political divergence exist between the two states.

The JRC has four principal functions:

1) The JRC is the driving force and policy organ for the implementation of the bilateral agreement. In specific terms, the JRC shall be responsible for the provision of²²³:

- ✧ Political leadership;
- ✧ Policy direction;

211. Ethio-Djibouti Railway Bilateral Agreement (n 240), art 11(1).

212. Ibid, art 9(4).

213. Ibid, annex A, arts 6(2) & 9.

214. Ibid, annex A.

215. Ibid.

216. Ibid, annex a

- ✧ Resource mobilisation;
- ✧ Overall oversight²¹⁷.

- 2) Concession Contract: The JRC carry out on behalf states the obligations put on the concession contract, coordinate the adoption of necessary measures for the implementation of the concession contract , and officially represent states in their dealings with the operator of the Network²¹⁸.
- 3) Harmonized Regulation: The Joint Railway Commission shall make proposals to the governments of the Federal Democratic Republic of Ethiopia and the Republic of Djibouti for the development of a harmonised technical and administrative regulation for the access and usage of the network. These include safety standards, authorisation and certification for staff and equipment as well as other administrative or technical standards intended to apply to the network including customs procedures personnels and sanitary, phytosanitary, border and police administrative controls²¹⁹.
- 4) Tariff-Setting: The Joint Railway Commission shall fix the maintenance charges for using the network and the tariffs of freight and passenger rail transport services, based on the share company proposals²²⁰.

The Coordinating Committee

The Coordinating Committee supports the JRC, and its composed of Chief Executive Officers of the Railway organizations from both states, two Coordinators based in Addis Ababa and Djibouti respectively and other qualified and relevant personnel to be engaged in support of the functions of the Coordinating Committee as needs arise²²¹. While the JRC conducts its other functions the Coordinating Committee performs technical and operational arm for the implementation of this bilateral agreement²²². These include from providing day-to-day leadership, direction and guidance for the implementation of this bilateral agreement, monitoring implementation, formulating technical policies and standards and any other duties delegated by the JRC.

217. Ethio-Djibouti Railway Bilateral Agreement (n 240), annex A.

218. Ibid, art 9(3).

219. Ibid, art 9(5).

220. Ibid, art 6(2).

221. Ibid.

222. Ibid, annex a & 9(4)

But, the establishment of these committees doesn't bring a solution for instance for the Société Djiboutienne de Chemins de Fer (SDCF) fails to pay its 25% share contribution to the Ethio–Djibouti Railway Share Company, that creates both financial and legal challenges for the sustainability of the railway. Financially, the subscribed capital of the company was designed to be divided 75% to Ethiopia (through Ethiopian Railway Corporation) and 25% to Djibouti (through SDCF). If Djibouti does not meet its obligation, the company becomes undercapitalized, reducing its ability to cover operational expenses, maintenance, and debt servicing. This imbalance increases pressure on Ethiopia to shoulder a disproportionate financial burden, which undermines the principle of shared responsibility that the bilateral agreement sought to guarantee.

Legally, the non-payment of SDCF's contribution could also trigger shareholder disputes under the Articles of Association and Ethiopian commercial law, which governs the company. Since all shares are indivisible and registered in the name of shareholders, Ethiopia cannot unilaterally appropriate Djibouti's unpaid portion without breaching the agreement. At the same time, SDCF's failure to pay undermines the equity balance between the two countries, potentially weakening Djibouti's voting power and decision-making influence within the company. This scenario creates a legal deadlock: EDR cannot fully enforce financial obligations without straining bilateral relations, yet allowing SDCF to remain a shareholder without fulfilling its commitment erodes trust, governance, and the company's financial credibility in the eyes of lenders and investors.

3.2.3. The Ethio-Djibouti Standard Gauge Railway Share Company

The governance of the Ethio-Djibouti Railway relies heavily on the Ethio-Djibouti Standard Gauge Railway Share Company, which has an initial capital of USD 500 million divided into 10,000 shares. Shareholding is distributed as ERC (72%), SDCF (25%), MPE (1%), MoT (1%), and MoFEC (1%) [Shareholders' Agreement, art 3.1]. Shareholders' rights and responsibilities include the forfeiture of benefits upon ceasing ownership, the maintenance of confidentiality, and no fiduciary obligations toward other shareholders [arts 14.1, 15.1]. Reserved matters, requiring ERC and SDCF approval, cover constitutional changes, finance, dividend policy, material contracts, and line works exceeding 10% of capital [Schedule 3, 2]. The general meeting of shareholders is the supreme organ of the company [Articles of Association, art 11].

3.2.3.1. Internal Organs

Board of Directors: Composed of four members (ERC 3, SDCF 1), appointed by the general meeting. The Board oversees strategic management, supervises the General Director, endorses budgets, accounts, auditors, and shareholder reserved matters [arts 14.15; Schedule 3, 1].

Director General: Acts as CEO, managing day-to-day operations, personnel, court representation, bank accounts, and preparing reports for the Board [arts 26(2-9); Schedule 1]. Transparent appointments are essential to avoid power imbalance.

Auditor: Appointed by the general meeting for a three-year term, responsible for auditing books, verifying board reports, reporting irregularities, and participating in general meetings [arts 27(1-2)].

3.2.4. Independent Regulatory Commission of Railway Activities

Established under the bilateral agreement, the Regulatory Commission operates independently to ensure transparency and a level playing field. It has seven members (three appointed by each state, with a jointly appointed chairman) serving a 10-year non-renewable term [art 10(2-3)]. Its mandate includes dispute settlement, financial oversight, pricing and competition regulation, applying proportional sanctions, and advising the Joint Railway Commission on efficient operations [art 10(4)]

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1. Findings

The research reveals that the Ethio–Djibouti Railway, while strategically vital for Ethiopia’s access to the sea and regional integration, continues to face multifaceted legal, institutional, and operational challenges. Chief among these are the misalignment of national laws and regulatory frameworks between Ethiopia and Djibouti, which has created uncertainty in critical areas such as customs clearance, immigration procedures, liability for damages or delays, and technical standards for railway operations. These inconsistencies have led to inefficiencies, increased transaction costs, and reduced reliability of the railway as a competitive mode of transport.

The bilateral agreement of 2012, which governs the railway’s management and dispute resolution mechanisms, contains gaps and ambiguities that undermine effective coordination. For example, the agreement does not clearly allocate responsibilities for infrastructure ownership, financing, and long-term maintenance, nor does it provide robust mechanisms for resolving disputes or enforcing contractual obligations. This lack of clarity has weakened institutional cooperation and created room for conflicting interpretations by the two governments and the Ethio–Djibouti Railway Company.

Operationally, the railway has been hampered by excessive border controls and inconsistent customs practices, which delay the seamless movement of goods and passengers. Immigration procedures remain fragmented, and the absence of harmonized technical standards has complicated interoperability. These challenges are compounded by limited political will and insufficient institutional capacity to implement reforms, leaving the railway vulnerable to inefficiencies and reputational risks.

At the same time, the study identifies significant opportunities. The Ethio–Djibouti Railway could serve as a model for cross-border infrastructure in Africa if reforms are undertaken. International frameworks such as CIM and CIV Uniform Rules, the WTO Trade Facilitation Agreement (TFA), and regional instruments like the AfCFTA, COMESA, and IGAD protocols provide tested legal and operational models that could be adapted to harmonize the railway’s governance. Moreover, the railway’s strategic role in Ethiopia’s trade — handling more than 95% of the country’s imports and exports

through Djibouti — positions it as a critical driver of regional economic integration under Agenda 2063.

In summary, the findings highlight a dual reality: the Ethio–Djibouti Railway is both a cornerstone of Ethiopia’s trade and connectivity strategy and a system constrained by legal fragmentation, institutional weaknesses, and operational inefficiencies. Addressing these challenges through harmonization of laws, revision of the bilateral agreement, and adoption of international best practices is essential to unlock its full potential.

4.2. Conclusion

Cross-border railways, just like other cross-border infrastructures, play essential role on the integration of countries not only on the economic side but also in the cultural and social dynamics. Such integration in Africa, in addition to the economic advantage, could harness unification of which the AU stands and fights for since the beginning of its creation.

Although such advantages could benefit both the involving countries and the continent, it is not achievable without efficient operation which could only be obtained by interoperability, meaning the cooperation or integration of systems or operation in our context, it means the integration of the operation of railways of the involving countries. Interoperability occurs when it meets all the regulatory, technical and operational standards in wholesome. But acquiring it is very difficult since it requires strong political support and active involvements from all involved countries and with such requirement, it is near to impossible to achieve interoperability particularly in Africa where political instabilities occur very often.

One way for the Ethio-Djibouti Railway to achieve interoperability, even though Ethiopia is not member of the convention, is to take into consideration international legal framework models such as the article 2 of The Convention Concerning International Carriage by Rail (COTIF) which provides recommendations on the regulatory, technical and operational elements of interoperability other than Article 2, the COTIF also provides relevant provisions which will help to improve the efficiency of the Ethio-Djibouti Railway.

The other way is implementing the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM) which provides legal interoperability.

CIM constitutes a central principle of making the carrier liable for the loss or damage resulting from the total or partial loss or damage of goods whatever the railway infrastructure used with the exceptions listed under article 23(2) of the CIM. In addition to what the CIM provides for the interoperability, such principle could also play a very important role on making a railway a reliable mode of transportation. CIM also provides clear provisions for cost allocation and conflict resolution which could help on filling gaps and ambiguities found in the bilateral agreement between Ethiopia and Djibouti.

The third method is implementing the Uniform Rules Concerning the Contract of International Carriage of Passengers by Rail (CIV Uniform Rules) which provides regulatory standards of interoperability for passengers. Just like CIM rules, CIV uniform rules put clear provisions for liabilities and conflict resolution which could provide an efficient legal framework to once again help filling the gaps and ambiguities found in the bilateral agreement. CIV also have an advantage like the CIM rules on increasing reliability of a railway by enhancing protection of passengers and their carriages.

The other assurance for achieving interoperability is incorporating the WTO Agreement on Trade Facilitation (TFA). Even though it does not specifically contain provisions about cross-border railways, its provisions on customs procedures, border clearance and logistics efficiency are essential to effective interoperability which makes it vital for the efficiency and competitiveness of the Ethio-Djibouti.

In addition to the international conventions and agreements discussed above, regional frameworks such as the African Continental Free Trade Area (AfCFTA), the Common Market for Eastern and Southern Africa (COMESA) and The Intergovernmental Authority on Development (IGAD) could also play a vital role enhancing the efficiency, reliability and competitiveness of the Ethio-Djibouti Railway. The African Continent Free Trade Area (AfCFTA) is not an agreement designed specifically to govern cross-border railways in Africa but rather to provide a single market for goods, services, investments, intellectual property rights (IPR) and competition policy but still affects cross-border railways and their performances as well as their operations since both the railway and the agreement works for integration of countries. In order to enhance economic integrations and promote industrial development, the AfCFTA removes or reduces tariffs and non-tariff barriers. From business perspective, it is

strategic for the Ethio-Djibouti Railway to take full advantage of such actions for intercontinental trade that would take place in the railway.

The second framework named The Common Market for Eastern and Southern Africa (COMESA) which incorporates an extensive program of cooperation and technical assistance in trade facilitation, harmonization of standards as well as formal dispute settlement mechanism all of which are vital in all aspects of the performance and operation of the Ethio-Djibouti Railway.

The Intergovernmental Authority Development (IGAD), like the AfCFTA and COMESA, plays an essential role in economic integration in the horn of Africa since the Abuja treaty in 1991. Integrating the Ethio-Djibouti Railway with IGAD would be a smart thing to do since they both share the same goal of economic integration and such act could get economic and strategic advantages from the protection of IGAD. However, incorporation of all these regional frameworks entirely depends upon the political willingness of both the Ethiopian and Djibouti government to situate their respective domestic rules and regulation in accordance with these regional frameworks.

The legal, operational and regulatory framework of the railway and the challenges as well as the opportunities can be analysed by assessing employment laws, customs laws, freight forwarding and custom clearance laws, immigration law, property law, construction law, memorandum of association, the bilateral and shareholder agreements in brief.

The Ethio-Djibouti Railway, which is operated by workers from both sides and foreigners, needs an effective labour management framework. Its effectiveness relies upon the implementation of international frameworks that govern employment since limiting the framework to domestic employment and legislation for either countries could cause more harm than good. But not being limited does not mean not incorporating domestic legislations at all. There are some relevant provisions that we can find for the railway from the Ethiopian labour laws. From the new Labour Proclamation in 2019 we can find vital provisions about employer responsibilities, minimum wages, employee benefits, annual leave entitlement, and easier ways of obtaining work permit. In addition to these provisions, the Overseas Employment Proclamation number 923/2016 and the Constitution of the Federal Democratic Republic of Ethiopia provide furthermore provisions that would encourage workers,

both nationals and foreigners, to work on the railway in more productive way. However, some of the Djibouti's labour laws, such as provisions about the probationary periods, the authority of terminating employment during probationary period, working hours, overtime and rest breaks and overtime premiums and rest breaks, would discourage workers to contribute their respective shares.

In order to reduce trade friction (by minimizing delays and legal risks) and ensure national as well as international regulations (like COTIF and AfCFTA), the Ethio-Djibouti Railway took some measures like putting complete tax exemption for the company (with the exception of the employees) and designing systematic customs procedure and clearance process. In case of freight forwarding and customs clearance laws, which focuses on the institutional and operational procedure, the bilateral agreement between Ethiopia and Djibouti recognizes the vital role it plays with regard to streamlining customs clearance processes, preventing illegal trade and ensuring compliance with safety and trade standards. Furthermore, the agreement tries to ensure the success of the railway on the network, the seamless and not exhaustive custom controls and the immunity of authorized representatives for the purpose of effective operation.

4.3. Recommendation

As it was discussed in this research, the Ethio-Djibouti Railway has economic and strategic significance for both countries. However, it also carries a number of legal, operational and political challenges that would affect the efficiency, competitiveness and reliability of the railway. Among those challenges , some of them are:

- ✧ The complex nature of the legal and regulatory frameworks
- ✧ The absence of clear mechanisms for dispute resolution and enforcement of contractual obligations.
- ✧ The fact that interoperability and seamless integration between Ethiopia and Djibouti completely relies upon their respective political awareness
- ✧ The absence of uniform labour law

In order to address the challenges the Ethio-Djibouti Railway faces and to harness the opportunities the following actionable recommendations are proposed:-

1. Legal Reform

One way to achieve such a goal is by revising the bilateral agreement, and other supporting documents in order to clear out ambiguities and fill gaps. Furthermore, adopting the supporting protocols (e.g. Immigration Protocol) which address specific gaps.

The other way is incorporating international and regional legal frameworks. COTIF, CIM(e.g Articles 23, 27,30,43, 48 on carrier liability, compensation, claims and PoL), CIV (e.g. Articles 26, 27, 30 on passenger liability and compensation). TFA, AfCFTA, COMESA, IGAD, all have the potential to fill gaps, clear ambiguities and also achieve interoperability.

2. Uniform Cross-Border Employment and Operations

Because of the possible differences between the two countries' respective laws, cross border employment is more sophisticated than the domestic ones. Therefore, implementing international and continental best practices could be the best solution to reconcile any potential conflicts that would happen in trying to enforce two different legislations.

3. Political Willingness

In addition to the previous solutions, the political willingness for seamless integration of legal and regulatory frameworks is also vital to secure interoperability of the railway and to reduce the complexity of operation. Because of such reasons both governments should take such willingness seriously and not make their respective politics get in the way of making the Ethio-Djibouti Railway competitive, efficient, cost effective, reliable and a role model for all types of cross border infrastructures.

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