



**Addis Ababa University**

**College of Law and Governance Studies**

**School of Law**

**Effectiveness of Delegated Prosecution of Federal Criminal Cases in Selected  
Regional States in Ethiopia**

**By: - Workie Bitew**

**Advisor: - Simeneh Kirose (PhD)**

A Thesis Submitted to the Law School of Addis Ababa University in Partial  
Fulfillment of the Requirements for the Degree of Masters of Laws/LLM/ in  
Criminal Justice

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**Statement of Declaration**

**I, Workie Bitew, hereby declare that the thesis titled ‘Effectiveness of Delegated Prosecution of Federal Criminal Cases in Selected Regional States in Ethiopia is my own work and that it has not previously been submitted for assessment to another university or another qualification, and every source is duly acknowledged.**

**Workie Bitew**

**ID No. GSR/9645/14**

**Signature ----- Date-----**

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**Approval by Board of Examiners**

1.	----- Advisor	----- Signature	----- Date
2.	----- Internal Examiner	----- Signature	----- Date
3.	----- External Examiner	----- Signature	----- Date

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## ACRONYM

AG	Attorney General
FAG	Federal Attorney General
FCC	Federal criminal cases
FDRE	Federal Democratic Republic of Ethiopia
FHC	Federal High Court
FP	Federal police
FPC	Federal Police Commission
MoJ	Ministry of Justice
RAMD	Regional Affair Monitoring Directorate

## ABSTRACT

*This thesis investigates the institutional and legal framework governing the delegation of prosecutorial authority to regional prosecution offices in Ethiopia. The constitution of Ethiopia has established a federal criminal prosecution and adjudication system within the federal and state structures. The Attorney General plays a pivotal role in overseeing prosecutorial functions at both federal and regional levels. The study examines the legal and institutional framework for delegating federal criminal prosecutions to selected regional states, identifying shortcomings in the Ministry of Justice's approach, including a lack of explicit authorization in Proclamation No. 943/2016 and unclear delegation procedures. Implementation challenges, such as inadequate assessment of regional capacities and absent monitoring systems, led to inconsistent delegation practices, power abuse, coordination failures, and potential human rights violations. The findings underscore the need for comprehensive reforms to enhance delegated prosecution effectiveness and fairness. Recommendations include amending Proclamation No. 943/2016 to explicitly authorize delegation and outline procedures, strengthening regional monitoring, classifying delegated cases, establishing clear collaboration guidelines, prioritizing delegation based on regional competence, resource availability, and jurisdiction, implementing robust oversight, and fostering inter-governmental cooperation.*

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## CHAPTER ONE: INTRODUCTION

### 1.1. Background of the Research

A federal system of government, characterized by two distinct tiers, comprises the federal government and individual states. Both tiers exercise independent authority within their constitutionally delineated spheres of responsibility. This power distribution prevents either level from unilaterally revoking the other's designated functions.<sup>1</sup> The Constitution of the Federal Democratic Republic of Ethiopia, established in 1995, enshrined this federal structure. It has evolved into a complex administrative apparatus, fostering power sharing among various state actors.<sup>2</sup>

Article 55 of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) explicitly delineates the powers and functions entrusted to the House of People's Representatives (HPR). Notably, the HPR holds the exclusive authority to enact legislation on all matters designated by the Constitution as falling within the purview of the federal government.<sup>3</sup> This includes the promulgation of a criminal code and related proclamations governing federal criminal offenses. While states are empowered to enact penal laws, this authority is limited to matters not expressly addressed by the Federal Criminal Code.<sup>4</sup>

As articulated above, the Federal government maintains central authority over criminal law through the HPR's legislative function. However, the responsibility for implementing and adjudicating these laws also falls to the regional states.

This division of power ensures clear delineation of responsibilities, with the federal government retaining autonomy over judicial and prosecutorial functions in federal matters.

Conversely, regional states have state courts and prosecution offices exercise jurisdiction over cases arising within their respective territorial boundaries. Given this framework, it becomes crucial to examine the mechanisms employed by regional states to apply federal criminal laws within their jurisdictions.

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1 George Anderson, *Federalism: An Introduction*, Forum of Federation, Oxford University Press (2008), 9.

2 Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect*, Asmara, Red Sea Press (1997), 35

3 Federal Democratic Republic of Ethiopia Constitution, 1995, Articles 55(1)

4 *Ibid.*, Article 55(5)

Delegation is not a new concept to Ethiopia, as evidenced by the Federal Government's long-standing practice of implementing its administrative functions through various forms in different states. One such example is the entrustment of federal criminal cases to regional justice offices` for prosecution demonstrating a delegation initiative by the Ministry of Justice.<sup>5</sup>

The definition and interpretations of the delegation concept vary among scholars. Osman defines delegation as the transfer of authority from a superior to a subordinate to perform specific tasks, or the process by which an administrative agency transfers some of its authority to another agency or a lower-level official within its agency.<sup>6</sup> In this context, delegation can refer to the transfer of authority within the same institution or to a subordinate entity. For instance, the practice of assigning federal criminal case prosecution to regional states by the Federal Attorney General (FAG) could be categorized as delegation within the same institution.

Previously, the Ministry of Justice established regional state accountable offices in the regional state capitals, and offices in zone cities to pursue federal criminal matters under the jurisdiction of federal criminal courts, as stipulated in the Federal Court Proclamation.<sup>7</sup> These offices operated between 1994 and 2005.<sup>8</sup> However, in 2006, the Ministry disbanded the city and zonal organizations and delegated federal criminal cases directly to regional states until 2015.<sup>9</sup>

Following the establishment of the Federal Attorney General in 2016, the delegated cases were revoked. Subsequently, the FAG established branch offices within states to handle the prosecution of federal criminal cases. However, these branch offices were soon closed, and in 2018, the FAG delegated the prosecution of federal criminal cases back to regional state justice bureaus.<sup>10</sup>

In the context of delegating federal criminal prosecutions to states, there are potential benefits and drawbacks to consider. Proponents argue that states could improve accessibility to justice, reduce burdens

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5 A Draft Study on the Issues that the States Delegate the Authority of the Ministry of Justice, unpublished paper (2023)

6 Osman Hessen, Effectiveness Delegation of Authority, Riyadh University (2019).

7 Ayana Simachew Bekele(2019) The Enforcement of Federal Laws in States in Ethiopian Ethnic Federalism: The Deadlock between the Federal Government and the Tigray Regional State on the New Law of Boundaries and Identity Issues' European Scientific Journal 2019 vol. 14-15:Delegate the Authority of the Ministry of Justice 14-24

8 A Draft Study on the Issues that the States Delegate the Authority of the Ministry of Justice, unpublished paper (2023)

9 Ibid

10 Ibid

on the federal government, and collaborate more effectively on local priorities.<sup>11</sup> Additionally, state prosecutors might be more accountable to local citizens, leading to better decision-making.<sup>12</sup> However, the delegation has disadvantages like reduced consistency in prosecution and sentencing, increased demands on state resources, potential political influence on the delegated cases, and potentially weaker accountability, which could be challenged.<sup>13</sup>

Effective delegation requires careful preparation (pre-delegation) and ongoing management (post-delegation). Before delegating, it is crucial to clearly define tasks and grant appropriate authority.<sup>14</sup> This also necessitates assessing the delegate's competence, including their skills and knowledge to handle the delegated responsibilities.<sup>15</sup>

Ethiopia operates as a federal system with the federal government and regional states sharing power.

The federal government creates criminal laws, while regional states implement and adjudicate them. This delegation of authority has advantages like increased accessibility and local focus but also challenges such as potential inconsistencies and resource strains for regional states.

## **1.2. Statement of the Problem**

The previous section elucidated the earlier delegation of federal criminal case prosecutions. Prior to 2018, the Federal Attorney General (FAG) established regional branches to handle such cases within the states. However, these branches were subsequently closed due to inefficiencies in their implementation of federal criminal prosecutions.<sup>16</sup> The FAG delegated the prosecution of federal criminal cases to the regional justice offices, citing Proclamation No. 943/2016, Article 8(3) (b).

The Federal Attorney General Establishment Proclamation No. 943/2016 (as amended by the Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, Article 40(1)), for the purpose to describe this thesis hereafter collectively referred to as the "Federal Attorney General

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11 John Malcolm, 'The Case for a State Prosecutor: Why We Need a More Localized Approach to Prosecuting Federal Crimes' (2017), 130 Harvard Law Review 2283-2328.

12 *Ibid*

13 Council of State Governments, *The Cost of Federalism: The Fiscal Impact of Delegating Federal Crimes to States* (2016)

14 Tumuhulawa, A., & Moonti, R. M. (2021). The Authority of Government Officials in Delegating and Mandating. *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*, 7(1), 47-60. [This source discusses the importance of task assignment and granting appropriate authority] (<https://doi.org/10.15294/ulj.v7i1.38778>) at pages 56-57.

15 U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. (2013). *Delegation to the states of federal criminal prosecutions: A research guide*.

16 A Draft Study on the Issues that the States Delegate the Authority of the Ministry of Justice, unpublished paper (2023)

Proclamation," establishes the FAG's power and duties concerning criminal law. Proclamation No. 1263/2021 explicitly states that the Ministry of Justice shall enforce the provisions outlined in the Federal Attorney General Proclamation except Proclamation No. 943/2016, Article 3.<sup>17</sup>

The FAG has vested with broad authority to investigate, prosecute, implement, and execute matters related to crime, as delineated in Proclamation No. 943/2016. Additionally, it wields a multifaceted mandate: upholding the constitution, enforcing the rule of law, implementing criminal law, safeguarding public interests,<sup>18</sup> and acting as the federal government's primary legal advisor.<sup>19</sup> Additionally, the Attorney General conducts criminal investigations under federal jurisdiction, oversees criminal prosecutions, enforces criminal court judgments, and represents the federal government in criminal proceedings.<sup>20</sup>

Proclamation No.943/2016 grants the Attorney General the authority to delegate certain functions to other entities. Notably, Article 8(3) stipulates that the Attorney General may "delegate his powers and duties, as may be necessary, to other bodies based on a predetermined system of execution, follow-up, and support."<sup>21</sup> However, the ambiguity surrounding this provision has sparked debate regarding the Federal Attorney General's ability to delegate prosecution of federal criminal cases to the states, because the establishment Proclamation No. 943/2016, Article 6, is silent on prosecution delegation power of the FAG'S. Furthermore, while Article 8(3) (b) of the proclamation grants the Attorney General (AG) the authority to delegate tasks, it remains unclear which specific FAG duties can be delegated and to whom."

The absence of explicit language authorizing delegation in Proclamation No. 943/2016 and other relevant legislation casts doubt on the Federal Attorney General's legal authority to undertake such action. Furthermore, even if such authority exists, existing practices arguably fall short of complying with the specific criteria outlined in Article 8(3) (b). These criteria demand a "predetermined system of execution, follow-up, and support," thorough evaluation of state resources, clear identification of delegated cases, and strict adherence to legal principles. Additionally, this delegation was undertaken without a

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17 Definition of Powers and Duties of the Executive Organs, Proclamation No. 1263/2021, Article 40(1)

18 Federal Attorney General Establishment Proclamation Proclamation No. 943/2016, Article 5(1-4)

19 Proclamation No.943/2016, Article 6(2)

20 Proclamation No.943/2016, Article 6(3)

21 Proclamation No. 943/2016, Article 8(3) b)

comprehensive assessment of the readiness and competency of these regional states justice bureaus to handle such cases.<sup>22</sup>

While the Attorney General has established a Regional Affairs Monitoring Directorate (RAD), its effectiveness in overseeing delegated federal criminal cases remains questionable, and concerns about the adequacy of oversight and adherence to the established criteria.

Researchers have consistently criticized the poor coordination among the three key organs, namely the Federal High Courts (FHC), the Ministry of Justice (MoJ), and the Federal Police Commission (FPC). A Diagnostic Study conducted by the Criminal Justice System working group highlighted that "weak coordination among investigation, prosecution, and enforcement organs" is a major challenge facing the Ethiopian criminal justice system.

On the other side, the FDRE Constitution is silent about the delegation power of prosecutorial and investigative to the Attorney General and the Federal Police. Notwithstanding, these institutions have delegated some of their powers to the regional states.

Due to the aforementioned issues, delegating federal criminal prosecutions to states has proven problematic. This research examines how regional states have executed such prosecutions and explores the factors behind implementation gaps.

### **1.3. Objectives of the Research**

#### **1.3.1. General Objective**

To comprehensively evaluate the Federal Attorney General's delegation of federal **criminal prosecutions in selected states.**

#### **1.3.2. Specific Research Objectives**

- ✓ To examine the legal ground and institutional framework of the Federal Attorney General for delegating the prosecution of federal criminal cases to regional states.

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<sup>22</sup> A Draft Study on the Issues that the States Delegate the Authority of the Ministry of Justice, Unpublished paper (2023)

- ✓ To examine to what extent the federal attorney general delegated federal criminal cases to the regional states.
- ✓ To identify the key challenges and limitations faced by the current system of delegated prosecution of federal criminal cases in the selected states.
- ✓ To recommend solutions to enhance the effectiveness and accessibility of delegated prosecution by the Ministry of Justice to regional states.

#### **1.4. Research Questions**

This study aims to investigate the effectiveness of delegated federal criminal law prosecution in regional states and identify key opportunities for improvement. The research questions formulated to guide this analysis are:

- What is the legal basis and institutional structure for delegating federal criminal case prosecution to regional states in Ethiopia?
- To what extent does, the Federal Attorney General delegated federal criminal cases to regional states in Ethiopia.
- What are the primary challenges and limitations associated with the current system of delegated federal criminal case prosecution in selected Ethiopian states?
- What strategies can be implemented to improve the effectiveness and accessibility of delegated federal criminal case prosecution by the Ministry of Justice in Ethiopian regional states?

#### **1.5. Methodology of the Research**

A review of existing literature revealed the absence of studies directly addressing this specific topic within the Ethiopian context. This gap suggested that the topic's novelty and prompted the researcher to adopt an exploratory research design. This design facilitated gathering of information and the development of a deeper understanding of the subject matter.

The research utilized a qualitative research approach, which is well-suited to exploring and addressing the research question. This approach involved the collection and analysis of non-numerical data, including interviews, observations, and relevant documents.

To complement the qualitative approach, the researcher also employed empirical and doctrinal research methods. The former is essential to assess status of implementation of prosecution of delegated FCC in the selected states, and explore practical challenges for implementation, while the latter focuses on analyzing the interpretation and application of legal principles. This multi-method approach facilitated a comprehensive understanding of the complex issue of the delegated cases.

To ensure the quality and relevance of data, purposive sampling was employed. This involved selecting well experienced justice organs they were working within federal and state justice organs, specifically chosen for their in-depth knowledge and direct experience with the delegation prosecution of federal criminal cases. Thus, key 36 informants were interviewed from Benshangul Gumze, Oromia and Amhara regional states, and FHC, FP C and from MoJ. The FHC, FP were Federal high court manager and court coordinators, Federal police commission investigation team leader, the MoJ Minister deata, Counselors, Directors, Deputy Directors, team leaders, and also the regional state justice bureau directors and team leaders.

The data collection approach employed both primary and secondary sources. Primary data was gathered firsthand through semi-structured interviews with key justice organ officials and a comprehensive analysis of relevant legal frameworks. Secondary data was meticulously sourced from scholarly publications, including books, peer-reviewed journals, articles, commentaries, dissertations, government reports, legal databases, and online library resources directly related to the study topic.

The researcher adopted an iterative approach to data collection and analysis, concurrently engaging in analysis as data was systematically collected. This flexible methodology enabled the researcher to refine the interview questions and tailor the analysis based on emerging themes and insights gleaned from respondents. The combined strategy of purposive sampling, mixed-methods data collection, and iterative analysis facilitated the acquisition of rich and comprehensive data regarding the delegation of federal criminal cases within the Ethiopian context.

## **1.6. Literature Review**

This study sought to identify existing research on the effectiveness of delegating federal criminal case prosecution authority to the states. However, a comprehensive examination of relevant literature yielded no directly comparable research, particularly at the national level. Given this lacuna, the researcher turned

to the broader field of federal criminal case prosecution in the states, examining relevant ideas and insights from various scholarly works.

While numerous researchers have delved into this subject matter, their approaches and thematic perspectives are diverse, resulting in a rich tapestry of investigations. This field boasts a significant number of scholarly contributions, yet it is crucial to acknowledge that only a limited portion has specifically explored the intricacies of prosecutorial delegation. For instance, Leake<sup>23</sup> in his recent article examines the value and function of centralized prosecution systems, highlighting the establishment of the Federal Attorney General as a noteworthy development that revives the legacy of centralized prosecution. However, this work does not address the specific issue of delegating specialized prosecution authority to regional levels.

Similarly, Roba<sup>24</sup> posits that the Federal Attorney General holds the responsibility of conducting criminal investigations, ensuring their legality, and safeguarding the pretrial rights of suspects. This legal mandate necessitates participation in investigative activities. However, empirical evidence suggests that public prosecutors often refrain from involvement in most investigations. Notably, this study, focused on the Addis Ababa region, identifies significant challenges faced by prosecutors but does not explicitly address the issue of delegated regions exercising prosecutorial functions.

The Legal and Justice Affairs Advisory Council conducted a comprehensive analysis of Ethiopia's criminal justice system, culminating in a detailed report. This report highlights the importance of delegation within the legal system, particularly regarding the delegation of federal investigative and judicial powers to regional courts. Notably, however, the report overlooks the delegation of power from the Attorney General to regional justice offices, encompassing both prosecutorial and litigation functions.<sup>25</sup>

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23 Leake Mekonnen Tesfay, 'Towards a Comprehensive Prosecution Service in Ethiopia: Noting the New Developments' (2017) *Revista Acadêmica Escola Superior do Ministério Público do Ceará*.

24 Roba Tsegaye, 'The Role of Federal Attorney General in Ensuring the Protection of Pretrial Rights of Criminal Suspects in Ethiopia: The Law and Practice in Addis Ababa' (LLM Thesis, Addis Ababa University, 2020)

25 Criminal Justice System working group, 'Diagnostic Study of the Ethiopian Criminal Justice System' (2021)

In his study, Abdi Gurmesa<sup>26</sup> examines the Ministry of Justice's (MOJ) federal criminal law enforcement, noting that Ethiopia's legislative criminal power is centralized yet decentralized, with both federal and regional actors executing and adjudicating laws. He argues that delegation is the optimal method for enforcing federal laws, but acknowledges that reimbursement budgetary issues remain inadequately regulated. Additionally, regional states often execute federal laws as their own, with the MOJ acting on behalf of the accused through delegation letters. This creates jurisdictional conflicts between federal and regional criminal justice actors, including the Federal Police Commission and Regional State Police Commission, further complicating criminal law enforcement.

The researcher's primary focus was the financial and jurisdictional challenges inherent in the delegation of criminal cases between federal and state governments. He argued that purely regulating financial costs associated with delegated cases would not guarantee optimal implementation in receiving states. Additional, fundamental factors necessitated regulation to ensure smooth and effective execution.

However, the study did not delve into the specific mechanisms of prosecution of federal criminal case delegation to states, nor did it analyze how states implement such cases, or how to effectively oversee, assess, and audit in this context. Additionally, the research did not explore the effectiveness of delegating federal criminal cases beyond the narrow scope of financial allocation.

While previous studies have examined the implementation of federal criminal cases, none have focused specifically on the effective implementation and prosecution of such cases in delegated states. This present research aims to address this gap by investigating the FAG's delegation practices, the methods and processes governing delegated prosecutions, and the actual prosecution of federal criminal cases in selected regional states.

### **1.7. Significance of the Research**

This thesis evaluates the legal and practical aspects of delegating federal criminal cases to selected states. The findings will improve the justice system in all its aspects, including the executive and judiciary. It will enable the system of federal and regional justice organs to address issues arising from federal criminal case prosecution delegation. Moreover, it will contribute to familiarizing academics, students,

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26 Abdi Gurmesa Amenu, 'Criminal Jurisdiction of State Courts Under The Constitution Of The Federal Democratic Republic Of Ethiopia' (2014) Addis Ababa University

policymakers, justice organs, legal professionals, and other interested parties with the delegation of federal criminal cases.

### **1.8. Scope of the Research**

This thesis investigates the implementation of delegated federal criminal case prosecution in the Benshangul Gumze, Oromia, and Amhara regional states, with a specific focus on federal criminal cases delegated from the year of 2018. The reason of the only selection of these three regional states is that the contexts of experiencing higher criminal rates in their areas , and due to the limitation of time to include more regional states`.

### **1.9. Limitations of the Research**

While research on the delegation of prosecutorial authority exists in other parts of the world, notably, such research in the context of Ethiopia is virtually non-existent. Despite this challenge, this thesis successfully gathered a significant amount of relevant materials, both in printed and digital formats, to conduct a thorough investigation.

The research process encountered certain obstacles related to data acquisition. Unfortunately, some individuals were reluctant, including professionals and concerned parties, to provide relevant and verifiable information and evidence. Additionally, the prevailing insecurity and instability within the country posed significant limitations, preventing the researcher from directly collecting data, especially in the states' Zonal and woreda cities of the country.

### **1.10. Ethical Consideration**

To ensure informed consent and safeguard participant privacy, the researcher implemented several meticulous measures. The study's purpose and objectives were clearly explicated to participants, with emphasis placed upon the voluntary nature of their involvement. Additionally, participants were explicitly informed of their right to withdraw consent at any point and were assured of the strictest confidentiality regarding their responses. Furthermore, to bolster privacy protections, the researcher employed pseudonyms, meticulously replacing participants' real names with fictitious ones. This approach effectively mitigated the risk of identification and potential harm, while simultaneously maintaining data accessibility within the research context.

By meticulously adhering to these ethical considerations, the researcher demonstrably upheld a commitment to safeguarding participant rights and preserving the integrity of the research process. Notably, the researcher assigned participants pseudonyms based on a systematic approach, utilizing the first letter of their profession and the date of data collection. Moreover, meticulous source referencing practices were employed to ensure proper citation of all primary and secondary materials, thereby precluding any concerns regarding plagiarism.

### **1.11. Organization of the Research**

The thesis structure comprises four distinct chapters. Chapter 1 serves as the introduction, encompassing background information, a succinct statement of the research problem, clearly defined research questions, a comprehensive literature review, the scope, significance limitations, and the methodology of the study.

Chapter 2 delves into the conceptual framework of prosecutorial delegation, outlining the historical evolution of prosecution within the criminal justice system. It further explores the roles and functions of prosecutors, analyzes the relevant legal and institutional frameworks, examines the delegation of federal criminal cases to states prior to 2018, and concludes with an analysis of the recent delegation implemented. Building upon the preceding chapters, Chapter 3 focuses on the practical realities of the delegation process. Finally, Chapter 4 presents a comprehensive summary of the study, including the conclusion and associated recommendations. This final chapter revisits and addresses the initial research questions, drawing upon the practical analysis to provide well-founded recommendations.

## **CHAPTER TWO: CONCEPTUAL FRAMEWORK, LEGAL GROUND AND INSTITUTIONAL FRAMEWORKS**

### **2.1. Introduction**

The effective and equitable administration of criminal justice is paramount to any state. In federal systems, the distribution of prosecutorial authority between the federal and regional levels is a critical aspect of this administration. This chapter delves into the complexities surrounding the delegation of federal criminal prosecution power from the Federal Attorney General (FAG) to selected regional states in Ethiopia. It examines the legal underpinnings, practical implementation, and potential implications of this arrangement. By exploring the conceptual and institutional frameworks that shape this delegation, the chapter aims to identify both strengths and weaknesses in the current system, paving the way for potential reforms.

### **2.2. Concepts of Delegation**

The term delegation possesses diverse interpretations across various fields of study. Within the realm of management, it signifies the entrustment of specific tasks to team members often within the context of a department or project.

Managers who previously handled responsibilities especially when the team was smaller or had fewer obligations may undertake this action now.<sup>27</sup> As teams flourish and undertake more intricate undertakings effective managers recognize the necessity of delegating responsibilities to entrusted individuals. This allows them to dedicate their focus to crucial management-related duties, such as training and performance assessments.<sup>28</sup>

In the legal sphere, delegation assumes a different form, entailing the transference of specific authority from one governmental branch to another entity. Additionally, it encompasses the distribution of actions and decision-making to individuals operating within lower levels of authority.

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<sup>27</sup> 'Delegation in Management: Definition, Traits, and Tips '(Indeed, 1 April 2023), <<https://www.indeed.com/career-advice/career-development/delegation-in-management>>, accessed 26 October 2023.

<sup>28</sup> Ibid

At the individual and organizational level, delegation involves the entrustment of authority by higher-level officials to subordinates.<sup>29</sup> This transference encompasses both responsibility and liability on the part of the delegate.<sup>30</sup> Ultimately, delegation functions as a mechanism empowering individuals and organizations to achieve objectives by enabling others to act on their behalf.<sup>31</sup> In the specific context of federal-state relations, the delegation of federal criminal case prosecution represents a transfer of prosecutorial power or authority from the federal government to individual states. This empowers states to undertake prosecutions on behalf of the federal government.<sup>32</sup>

Delegation refers to the entrustment of tasks or power from a higher level to a lower level, enabling individuals or organizations to achieve objectives more efficiently and effectively. This process involves transferring responsibility and liability to the delegated entities.

### **2.3. Federal Criminal Law: Définition and Scope**

Within the Ethiopian legal framework, Federal Courts Proclamation No. 1234/2021 plays a crucial role in defining the scope of federal criminal jurisdiction. Article 2(2) of this proclamation broadly defines "Laws of the Federal Government" as all applicable laws pertaining to subjects falling within the federal government's purview as outlined in the Constitution.<sup>33</sup> Additionally, Article 2(3) establishes the composition of Federal Courts, encompassing the Federal Supreme Court, the Federal High Court, and the Federal First Instance Court. Furthermore, Article 4(1-17) of the listed content of the proclamation comprehensively enumerates the specific criminal offenses subject to federal courts jurisdiction.<sup>34</sup>

Federal Criminal Law is defined by Federal Courts Proclamation No.1234/2021. This proclamation outlines the specific criminal offences that fall under federal jurisdiction, as well as the composition of the Federal Courts that handle these cases.

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29 Tumuhulawa, A., & Moonti, R. M. (2021). The Authority of Government Officials in Delegating and Mandating. *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*, 7(1), 47-60. <https://doi.org/10.15294/ulj.v7i1.38778> (cited Laws Number 30 of 2014 concerning Government Administration, p. 56)

30 Ibid

31 Ibid

32 Ibid, (n28).

33 Federal Courts Proclamation No. 1234/2021, Article 2(2)

34 Proclamation No.1234 /2021, Article 4

Thus, it is crucial to note the significant influence the FAG over federal criminal law Federal Courts Proclamation No. 1234/2021; Article 12(1) clearly establishes the Federal High Court's jurisdiction over these matters. Furthermore, Articles 3 and 4 of the same Proclamation delineate the broader jurisdictional scope of Federal Courts in federal criminal cases.<sup>35</sup>

Federal Attorney General Proclamation No. 943/2016 empowers the Federal Attorney General to initiate and oversee criminal investigations related to federal offences.

The proclamation, Article 6(3) (a), requires the FAG to provide regular progress reports on ongoing investigations. This power extends to prosecuting cases before all levels of federal courts, ensuring the proper completion of investigations and the effective prosecution of criminal offences under federal jurisdiction.

The aforementioned proclamation's article establishes a clear framework for the implementation of federal criminal laws. By entrusting specific tasks and responsibilities to designated entities, the system aims to achieve greater efficiency and effectiveness in investigating and prosecuting federal-level crimes.<sup>36</sup>

#### **2.4. Historical Development of Prosecution in the Criminal Justice System**

A prosecution refers to the formal legal process of instituting and conducting criminal proceedings against an individual suspected of wrongdoing in a court of law.<sup>37</sup> In essence, prosecution entails the pursuit of justice for alleged criminal acts through a structured trial aimed at determining guilt or innocence.<sup>38</sup>

Emperor Sigismund's establishment of the Office of Royal Prosecutor in 1437, entrusting Vilém of Lutice as its head, marked the formalization of this practice. This event, with its roots traceable to the mid-13th century, laid the foundation for the modern institution of public prosecution.<sup>39</sup> Initially focused on

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<sup>35</sup> Federal Courts Proclamation 1234/2021, Article 12(1), Article 3, and Article 4

<sup>36</sup> Proclamation No.943/2016, Article 6(3) a.

<sup>37</sup> 'History of Public Prosecution' (Verejna Zaloba, May 2020) <<https://verejnazaloba.cz/en/more-about-public-prosecution/history-of-public-prosecution/>> accessed 26 October 2023

<sup>38</sup> Ibid

<sup>39</sup> Prosecution: History of the Public Prosecutor' (Encyclopedia.com, May 22, 2023) <<https://www.encyclopedia.com/law/legal-and-political-magazines/prosecution-history-public-prosecutor>> accessed 26 October 2023

provincial courts, royal prosecutors gradually expanded their roles. They began gathering royal property claims, defending the crown's interests in court, pursuing offenses unaddressed by private prosecutors, and even representing the public interest in certain proceedings. This evolution from localized representation to broader public advocacy laid the groundwork for the modern prosecutor's role.<sup>40</sup>

Contrasting with this, England during the 17th and 18th centuries primarily relied on a system of private prosecution. While there was no official public prosecutor, some justices of the peace occasionally assumed this role. While the Attorney General held the authority to initiate prosecutions, he typically reserved this power for matters of significant importance to the Crown. Notably, he did attempt to regulate excesses of private prosecution by utilizing the writ of *nolle prosequi*, which essentially allowed him to dismiss any prosecution at his discretion.<sup>41</sup>

At the inception of the American republic, the role of the prosecuting attorney held minimal significance within the judicial system. Notably, only five of the original thirteen state constitutions explicitly mentioned the Attorney General, and all positioned the role within the judicial, rather than the executive, branch. Occasionally, separate statutory provisions pertaining to state judicial systems referenced the attorney general independently.<sup>42</sup> The transformation of the prosecutor from a minor local court functionary to a prominent member of the executive branch commenced during the 1820s, coinciding with the rise of Jacksonian democracy. This period witnessed the replacement of the limited republic of the early years with a broader franchise and the popular election of officials, including judges. The election of local judges paved the way for the election of the local prosecutor. Notably, in contemporary times, only a limited number of states maintain an appointed prosecutor system, typically selected by the governor.<sup>43</sup>

Over the past four decades, modern and advanced prosecution systems have undergone a notable shift in the mission and scope of prosecutors. No longer solely responsible for the vigorous prosecution of criminal cases, prosecutors are now also tasked with crime prevention, problem-solving, and community

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40 Ibid

41 Prosecution: Comparative Aspects' (Encyclopedia.com, May 22, 2023) <<https://www.encyclopedia.com/Law/Legal-And-Political-Magazines/ProsecutionComparative-Aspects>> accessed 26 October 2023.

42 Criminal Law Reform: Historical Development in the United States' (Encyclopedia.com, May 25, 2023) <<https://www.encyclopedia.com/Law/Legal-And-PoliticalMagazines/Criminal-Law-Reform-Historical-Development-United-States>> accessed 26 October 2023

43 Ibid

partnerships. Their primary objective remains the protection of the community and the facilitation of justice through law enforcement. Traditionally, the prosecutor's role was limited and passive, centered on the evaluation and prosecution of police arrests. However, this role has undergone significant expansion and evolution.<sup>44</sup>

The concept of prosecution has a long history, evolving from representing the king or the state's interest in court to a more modern role focused on public safety and crime prevention. Early forms of prosecution can be traced back to medieval Europe, while the US initially had a limited role for prosecutors. Today, prosecutors play a much broader role in the criminal justice system.

## **2.5. Historical Development of Ethiopian Prosecution in the Criminal Justice System.**

Prosecution, within the Ethiopian criminal court system, refers to the formal process by which the government brings charges against individuals accused of violating Ethiopian criminal law. In this capacity, the prosecution acts as the government's representative in court, aiming to establish the defendant's guilt beyond a reasonable doubt.

Before the 1930s, prosecution in Ethiopia was primarily a private matter undertaken by individuals or families. The Fetha Nagast, a thirteenth-century legal code, was the foundation for such proceedings. Victims had two options: reach a settlement with the offender through the payment of blood money or pursue a penalty determined by a judge or a community of elders.<sup>45</sup>

In 1930, the government enacted reforms, introducing the position of Attorney General and incorporating it into the penal code. However, this nascent legal development was disrupted by the Italian invasion of 1935, halting progress until 1941. Subsequently, in 1942, the government established the Public Prosecution Office. As stipulated in Article 2 of its founding proclamation, the office was tasked with representing the Ministry of Justice (MOJ) in court for cases concerning public safety, and appointing public prosecutors to handle such matters.<sup>46</sup>

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44 'The Role of the Modern Prosecutor: Spearheading Innovation' (National Center for Prosecution Ethics, 2020) <<https://pceinc.org/wp-content/uploads/2020/10/20201013-National-Report-Final.pdf>> accessed 26 October ,2023.

45 Andargachew Tesfaye, *The Crime Problem and its Correction*, Vol. II (Addis Ababa: Addis Ababa, 2004)

46 Tesfaye (n 44), 64

Further changes arrived with Proclamation No. 123/1952, which saw the Emperor appoint an Advocate General and a deputy. This office, directly under the MOJ's supervision, held authority over foreign-born prosecutors assigned to cases from regional (woreda) to Supreme Court levels, operating from 1945 until 1961. The Criminal Process Act of 1966 further empowered the Attorney General's office, granting it the authority to prosecute violations of any provision within the penal code.<sup>47</sup> During the turbulent decades of the 1960s and 1970s, the government utilized the prosecution system to target individuals deemed politically undesirable, including students and activists who opposed its policies.<sup>48</sup>

Following the 1974 overthrow of Emperor Haile Selassie, Ethiopia's prosecution system remained in flux for years. In 1987, the establishment of the People's Democratic Republic of Ethiopia's prosecution office was enacted (Pro No.11/1987). The office achieved independence, severing its supervisory and managerial ties with the MOJ, and creating a new, multi-branched structure overseeing regional, military, and provincial legal matters.<sup>49</sup>

Subsequent to the 1991 overthrow of the Dergue regime and the establishment of the Ethiopian Transitional Government, Proclamation No. 22/1992 instituted a Special Public Prosecutors Office tasked with prosecuting Dergue officials accused of red terror-related crimes. Proclamation No.39/1992 formally established the Attorney General Office in 1993.<sup>50</sup>

Proclamation No.73/93 created the Public Prosecution Office, which was then integrated into the Ministry of Justice. Its role primarily involved representing the Federal Government in federal court cases.<sup>51</sup>

However, the restructuring of the executive branch resulted in the MOJ losing its prosecutorial authority, leading to the establishment of specialized prosecution bodies.<sup>52</sup> Notably, the Ethiopian Revenues and Customs Authority and the Federal Ethics and Anti-Corruption Commission were established, further diminishing the MOJ's prosecutorial capacity. In 2016, the Federal Attorney General was established

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47 Tesfaye (n 44), 65

48 Bahiru Zewdie, *A History of Modern Ethiopia* (2nd ed., 2001)

49 Tesfaye (n 44), 69

50 Tesfaye (n 44), 74

51 Definition of the Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 4/1995

52 Reorganization of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 256/2001

with sweeping authority over all government departments, incorporating functions of the Ethiopian Revenues and Customs Authority, the Federal Ethics and Anti-Corruption Commission, and others.<sup>53</sup>

Beyond criminal prosecution, the Federal Attorney General holds extensive powers outlined in Article 6 of Proclamation No. 943/2016.<sup>54</sup> The proclamation defines the stated objective of the Federal Attorney General as establishing "one strong law enforcement public prosecution institution that can comprehensively protect public and government interests and deliver uniform, effective, and efficient service."<sup>55</sup> The creation of this office and its vested authority can be viewed as a pivotal step towards establishing a comprehensive, respected, and independent prosecution agency committed to upholding the rule of law, human rights, and public interest.

Ethiopia's prosecution system has changed dramatically throughout history. Originally a private matter, it became a government function in the 1930s. The structure of the system evolved many times, with a recent shift towards centralization under the Federal Attorney General, established in 2016. This Attorney General has broad powers and aims to be a comprehensive and independent body upholding the rule of law.

## **2.6. The Role and Function of Prosecutors and Prosecution in Criminal Justice**

Prosecutors occupy a vital role within the criminal justice system, tasked not only with enforcing the law but also with safeguarding the interests of all involved parties. This solemn responsibility necessitates the upholding of human dignity, fundamental rights, and public safety. As government-appointed officials, they play a critical role in maintaining law and order by diligently prosecuting offenders. The core of their responsibility lies in ensuring justice prevails. This requires the presentation of all relevant evidence, regardless of whether it benefits or hinders the accused. This duty demands impartiality, free from bias or prejudice, to maintain the integrity of the judicial process. Their role is instrumental in preserving the criminal justice system's integrity and protecting society's interests.<sup>56</sup>

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<sup>53</sup>The Establishment of the Attorney General Proclamation No. 943/2016

<sup>54</sup> Ibid., Article 6

<sup>55</sup> Proclamation No. 943/2016, the First Preamble

<sup>56</sup> 'Role of Public Prosecutor and Judge in Criminal Justice System' (Geeks for Geeks, 2009) <<https://www.geeksforgeeks.org/role-of-public-prosecutor-and-judge-in-criminal-justice-system/>> accessed 10 June 2023

The centrality of prosecutors to criminal justice systems globally prompted the course's exploration of diverse national systems. This comprehensive investigation delved into the organisational structure and function of prosecution, encompassing investigation, indictment, trial proceedings, punishment, and the involvement of public prosecutors in national criminal policy development. By examining these multifaceted aspects, the course provided a nuanced understanding of the crucial role prosecutors' play within global criminal justice systems.<sup>57</sup>

Similarly, public prosecutors hold an essential societal role as true guardians of the criminal justice system. Their initiative is the cornerstone for the prosecution and repression of criminal activity, effectively making them the legal system's gatekeepers. Serving as the primary means by which society seeks punitive measures for criminal behaviour, they act as the interface between the adjudicative power and the public.<sup>58</sup> Judges rely on public prosecutors to present and adjudicate cases, further solidifying their critical role. Therefore, public prosecutors are an indispensable element of a functioning legal system, upholding the fundamental principles of justice and fairness.<sup>59</sup>

In nations where public prosecution operates autonomously from the government, ensuring the lawful establishment of its independence is crucial, both in nature and scope.<sup>60</sup> This necessitates adequate measures from the state. Crucially, public prosecutors must be empowered to prosecute public officials for offences ranging from corruption and power abuse to serious human rights violations and internationally recognised crimes, unimpeded by any external influence. Safeguarding against such hindrances is paramount to preserving the integrity of the legal system and upholding the rule of law.<sup>61</sup>

In Ethiopia, the power and duties of prosecutors have expanded considerably compared to the past. The Federal Attorney General Establishment Proclamation No. 943/2016 defines these functions, including a detailed enumeration of responsibilities.<sup>62</sup> The prosecution office seeks to streamline its extensive

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57 Jonathan John Mwalili, 'The Role and Function of Prosecution in Criminal Justice' (Resource Material Series No. 53, n.d.) 21–22

58 General issues Public Prosecutors as the "Gate Keepers" of Criminal Justice' (United Nations Office on Drugs and Crime, 2008) <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-14/key-issues/2--general-issues--public-prosecutors-as-the-gate-keepers-of-criminal-justice.html>> accessed June 3, 2023.

59 Ibid

60 'The Role of Public Prosecution in the Criminal Justice System' (United Nations Office on Drugs and Crime, 2000) <file:///C:/Users/heaven/Desktop/Rec (2000)19E.pdf> accessed 4 June 2023

61 Ibid

62 Proclamation No. 943/2016, Articles 6 and 8.

duties by formulating criminal justice policies, coordinating with relevant agencies, and ensuring their implementation. Additionally, it serves as the principal legal advisor and representative of the federal government, covering both criminal and civil legal matters. This includes drafting laws and policies, conducting legal research and training, and engaging in other activities that contribute to achieving its objectives and fulfilling its legal obligations.<sup>63</sup>

Prosecutors are central figures in the criminal justice system. They uphold human rights, ensure justice prevails, and present evidence objectively. Globally, prosecutors' roles encompass various stages of criminal proceedings, solidifying their importance within the legal system. Similarly, their independence from government influence is crucial to safeguarding the integrity of the justice system and the rule of law. In Ethiopia, the Federal Attorney General leads the prosecution system and has a wide range of duties.

## **2.7. Delegation of Federal Criminal Prosecution to the States**

The Ethiopian Constitution establishes a framework for delegating authority and duties between the federal government and regional states. Article 50(9) empowers the federal government to delegate authority to the states, ensuring accountability and preventing excessive regional autonomy. Similarly, Article 78(2) permits the Federal High Court and the First-Instance Courts to delegate to the state courts, entrusting them with functions previously held by the federal courts. This constitutional framework ensures a structured and effective transfer of responsibilities while upholding the rule of law, which is vital for a well-functioning justice system.

However, questions arise regarding the constitutionality of delegating prosecutorial authority to regional states by the Attorney General. Although Proclamation No. 943/2016, Article 8(3)(b), grants the Attorney General the power to delegate to other entities, it lacks an explicit definition of the delegation's scope. Notably, the proclamation fails to explicitly state that the Federal Attorney General can delegate powers and responsibilities to regional authorities.

As a result, the delegation of federal criminal cases to the states under Proclamation No. 943/2016 raises concerns due to the ambiguity of the legal language. Furthermore, the constitutionality of such a delegation remains open to debate.

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<sup>63</sup> Ibid

Proclamation No. 943/2016, specifically Article 8(3) (b), empowers the Attorney General to delegate their authority, excluding the Federal Attorney General. Article 8(3) comprehensively outlines the Attorney General's duties and powers, including delegating them" to other bodies based on a predetermined system of execution, follow-up, and support." However, it must be noted that this delegation power under Proclamation 943/2016 operates within specific criteria. Therefore, while the Attorney General can delegate their duties to other entities, such delegation is subject to the predetermined execution, follow-up, and support system. Consequently, the Federal Attorney General's delegation of duties requires careful consideration of the Proclamation's provisions.<sup>64</sup>

This delegation scenario represents the Attorney General exercising the powers outlined in Article 6. While Article 6 allows delegation, it shows that the Federal Attorney General's powers are non-delegable, remaining solely within their jurisdiction.

The Attorney General possesses significant authority, including delegating responsibilities to other bodies. However, the interpretation of "other organs" in Article 8(3) (b) remains ambiguous. This ambiguity hampers the effective exercise of the Attorney General's power and hinders the legal system's proper functioning. Therefore, a comprehensive and unambiguous definition of "other organs" is crucial for the optimal application of the Attorney General's delegated powers.

Proclamation No. 1263/2021, particularly Article 19(13), outlines the power and duties of executive organs, including ministries and their delegation authority. The proclamation allows the ministries to delegate specific responsibilities to regional states under certain circumstances.<sup>65</sup> Pursuant to Proclamation No. 1263/2021, the Ministry of Justice is vested with the authority to delegate its powers and duties to regional states. This delegation of authority has effectively empowered regional states to assume the responsibilities previously held by the Ministry.

Further to the preceding, Proclamation No. 1176/2020, Article 38(3), unequivocally asserts the Federal Attorney General's legal authority to delegate the responsibility for handling terrorism-related offences to regional prosecutors. This confers upon the Ministry of Justice (MoJ) the prerogative to entrust regional authorities with prosecuting such crimes. Additionally, Article 36(4) of the same proclamation

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<sup>64</sup> Proclamation No. 943/2016, Article 8(3)(b)

<sup>65</sup> Proclamation No. 1263/2021, Article 19(13)

empowers the Federal Police Commission to delegate investigative authority for federal criminal cases to regional counterparts. Consequently, observing the assumption of prosecutorial duties by regional states, this research investigated the delegation of power in the context of terrorism-related offences.

While these proclamations provide a legal basis for delegation, it is crucial to emphasise the importance of accountability and transparency. The Federal Democratic Republic of Ethiopia (FDRE) Constitution does not inherently grant the Federal Attorney General the authority to delegate prosecutions of federal criminal cases to regional states.<sup>66</sup>

Similarly, the authority of the Federal Police Commission to delegate investigations requires careful assessment because commencing federal criminal cases is the duty of the federal attorney general, and the process of prosecution begins with an investigation. Proclamation No. 720/2011 clearly establishes the federal police's responsibility for investigating crimes under federal court jurisdiction.<sup>67</sup> While Article 6(6) allows regional police to assist in such investigations when delegated, it underscores the limitations of their authority.<sup>68</sup> While Article 6(6) allows regional police to assist in such investigations when delegated, it underscores the limitations of their authority.<sup>69</sup>

The Ethiopian Constitution allows for delegating authority between the federal government and regional states. However, the legality of delegating federal criminal case prosecution to regional states by the Federal Attorney General is unclear due to ambiguous legal provisions. While some laws permit delegation under specific circumstances, others are silent. This ambiguity raises concerns about accountability and the potential for abuse of power.

## **2.8. The Legal Basis for Delegation of Federal Criminal Prosecution.**

This section delves into the legal frameworks established by the FAG and the Federal Police Commission for delegating federal criminal cases to state authorities. It analyses the subsequent impact on federal criminal case investigations. Additionally, the section examines Article 78(2) of the Federal Democratic Republic of Ethiopia (FDRE) Constitution, which touches upon the delegation of federal court

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<sup>66</sup> Ayana Simachew Bekele (2019), The Enforcement of Federal Laws in States in Ethiopian Ethnic Federalism: The Deadlock between the Federal Government and the Tigray Regional State on the New Law of Boundaries and Identity Issues' *European Scientific Journal* 2019, vol. 15

<sup>67</sup> Proclamation No. 720/2011, Article 6(4)

<sup>68</sup> Proclamation No. 720/2011, Article 6(4)

<sup>69</sup> Proclamation No. 720/2011, Article 6(6)

jurisdiction to the states. However, an extensive discussion of this topic has been excluded from the present study.

### **2.8.1. FDRE Criminal Justice Policy**

The implementation and enforcement of criminal laws and associated policies by federal and state justice institutions adhere to established principles and regulations governing their vertical and horizontal interactions. As outlined in the FDRE Criminal Justice Policy (2011), these interactions are guided by well-defined principles and rules. However, the delegation of the prosecution of federal criminal cases to state authorities currently lacks explicit legal grounding.

### **2.8.2. Federal Attorney General Establishment Proclamation No. 943/2016**

The extent to which the FAG can delegate authority to regional states remains a subject of debate. While Article 8(3) (b) of Proclamation No. 943/2016 permits such delegation to other bodies, it fails to explicitly delineate the boundaries of this authority. The specific degree of permissible delegation by the FAG remains unclear within the confines of this proclamation.

Article 6 of the proclamation details the powers and duties bestowed upon the Federal Attorney General, and Article 8 outlines the powers and duties of the Attorney General. Thus, while the Attorney General possesses the ability to delegate functions, its core powers and duties remain exclusively within its jurisdiction and cannot be further delegated. Carefully analysing this distinction is crucial for understanding the Attorney General's authority and limitations and ensuring all legal responsibilities are fulfilled.

"In conclusion, the ambiguity surrounding the delegation of authority from the Attorney General to regional states, as reflected in the wording of Proclamation No. 943/2016, Article 8(3)(b), presents a potential challenge. While the proclamation permits such delegation, the type and extent of permissible delegation remain undefined. This lack of clarity, coupled with the unknown delegation power of the Attorney General's Office (FAG), could lead to legal disputes and impede the effective administration of justice. Consequently, it is imperative for the Attorney General to clearly define the scope of its delegation powers, ensuring transparency and upholding the rule of law."

### **2.8.3. Executive Organs Proclamation No.1263/2021**

Proclamation No.1263/2021 defines the authority and responsibilities of executive organs, encompassing ministries and their designated representatives. The Ministry of Justice is classified as a ministry; the latter has the authority to delegate part of its powers and duties to regional states, as explicitly stipulated in the proclamation. Article 19(13) grants ministries the ability to delegate specific powers and duties to other federal or regional entities when necessary. Consequently, the Ministry of Justice can delegate its powers and duties to regional states, a decision with potentially significant and far-reaching implications.

This delegation of the Federal Attorney General's powers and duties to regional states aligns with the principles of federalism and decentralization enshrined in the Ethiopian Constitution. The Ministry of Justice facilitates collaborative governance between federal and state governments by entrusting regional states with specific responsibilities and powers.

Proclamation No.1263/2021 empowers the Ministry of Justice to delegate its powers and duties to regional states, upholding Ethiopia's constitutional principles of federalism and decentralization. This delegation fosters collaborative efforts between federal and state authorities, enabling regional states to assume certain responsibilities and powers in federal criminal cases. It also promotes equal access to justice services for all citizens, ultimately transforming the Ethiopian justice system into a more equitable and inclusive institution.

#### **2.8.4. Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020**

Prevention and Suppression of Terrorism Crimes The Proclamation grants the Federal Attorney General the power to delegate the prosecution of terrorism offences to regional state prosecutors. This implies that the Ministry of Justice possesses the authority to empower regional authorities to handle terrorism cases.

Furthermore, Article 36 of Proclamation No. 176/2020, the Federal Police Commission Establishment Proclamation, empowers the Federal Police Commission to delegate the investigation of federal criminal cases to regional police commissions. This provision fosters greater autonomy and active participation in maintaining law and order by regional police forces. Delegating the prosecution of terrorism crimes to regional state prosecutors represents a significant step towards ensuring effective investigation and prosecution of such offences. However, the federal government must exercise its delegation power in a manner that upholds accountability and transparency within the justice system.

## **2.8.5. The Federal Police Commission Establishment Proclamation No. 720/2011**

Examining the delegation of federal criminal case investigations from the Federal Police Commission to regional police commissions is essential. Article 6(4) of Proclamation No. 720/2020 stipulates that the Federal Police hold responsibility for investigating crimes falling under the jurisdiction of federal courts. Therefore, the delegation of these investigations to regional police commissions aligns with the provisions of Proclamation No. 720/2021.

The proclamation specifies the authority to "delegate, where necessary, regional police commissions to prevent and investigate crimes falling under the jurisdiction of federal courts."<sup>70</sup> The establishment of the Ethiopian Federal Police Commission and the subsequent devolution of power to regional police commissions have significantly impacted the administration of criminal justice within the country. Despite delegating the authority to investigate federal criminal cases to regional police, a lack of clear and defined criteria for applying this delegation has posed challenges.<sup>71</sup>

## **2.9. Institutional Framework**

The research examines the offices and directorates, within the Ministry of Justice, potentially responsible for overseeing the application of federal criminal laws.

### **2.9.1. Regional Affairs Monitoring Directorate**

The proclamation specifies the authority to "delegate, where necessary, regional police commissions to prevent and investigate crimes falling under the jurisdiction. Recognizing the need for a dedicated unit to oversee, support, and manage federal criminal cases handled by regional states, the Regional Affairs Monitoring and Directorate (RAMD) was established. Initially, the directorate was established in the 2021 fiscal year. Although the directorate has been established to monitor the delegated states, its focus has primarily been on requesting reports.

### **2.9.2. Legal Auditing and Inspection Directorate**

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<sup>70</sup> Ibid

<sup>71</sup> Criminal Justice System working group, 'Diagnostic Study of the Ethiopian Criminal Justice System' (2021), available at <<http://www.ethcriminalawnetwork.com/system/files/Ethiopian%20Criminal%20Justice%20System%20-%20Diagostic%20Study%202021.pdf>> accessed 23, on August 2023.

Established under Proclamation No. 943/2016, Article 6(13) the Legal Auditing and Inspection Directorate operates under the Federal Attorney General. The Directorate inspects and audits the MoJ branch offices especially in the federal level. However, it has not audited and inspected delegated prosecution of federal criminal cases in the states.

### **2.9.3. Federal Laws Applicability Directorate**

Recognizing its responsibility to ensure consistent and effective implementation of federal laws, the Ministry of Justice (MoJ) established the Directorate of Federal Law Applicability. However, its current focus is solely on monitoring civil matters within federal institutions.

While the delegation of federal criminal prosecution authority to regional states is a step towards shared governance and collaboration, the government must clarify the scope of delegated cases and ensure their effective and transparent implementation. Proclamation No. 943/2016, Article 8(3)(b) with its ambiguous language, has raised concerns about the undefined extent of this delegation..

## CHAPTER THREE: ACTUAL PRACTICE OF DELEGATION

### 3.1. Introduction

Having established the legal and conceptual framework for the delegation of federal criminal prosecutions in the preceding chapters, this chapter shifts focus to the practical implementation of this policy. It delves into an empirical examination of how delegation has been operationalized in selected regional states. By analyzing the data collected, this chapter aims to provide insights into the strengths, weaknesses, challenges, and opportunities associated with the delegation process. A critical evaluation of the implementation and monitoring mechanisms employed by the relevant authorities will also be undertaken.

### 3.2. Beyond Delegation: Regional state Practices in Prosecution of Federal Criminal case

In this section, the researcher examined the impact of delegating federal criminal prosecution to the Benshangul Gumze, Oromia, and Amhara regional States` Justice Offices with a focus on the key implications of this system. Answers from respondents are shown for each category within the chosen regional state.

#### 3.2.1. The Benshangul Gumze State Experience

The researcher held discussions with participants to gather their insights and experiences on how federal criminal prosecution is delegated in this region. Accordingly

One respondent noted that:

In an effort to decentralise the prosecution of federal criminal offenses, the Ministry of Justice delegated this responsibility to the state, excluding offences motivated by ethnicity or religion. However, challenges have arisen due to the state's limited financial resources and insufficient training for state prosecutors. Additionally, federal prosecutors have exhibited reluctance to collaborate with their state counterparts in handling these cases. Consequently, the investigation of delegated federal criminal cases has encountered significant hurdles.<sup>72</sup> Notably, the entire

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<sup>72</sup> PP 25, interview with the researcher, June 25, 2023, audio recording

committed criminal cases in Metekel, Asossa, and Kamashea Zones where regional and zonal higher administrators have been directly or indirectly involved did not investigated.<sup>73</sup>

Others highlighted a distinct issue:

The Benshangul Gumze Regional State faces significant obstacles in effectively handling federal criminal cases due to the absence of a delegated Federal High Court. This lack of authority impedes regional investigators from presenting suspects to the appropriate court in the Asossa, Metekel, and Kamashea zones. This has resulted in unlawful detention without trial for suspects, arising from jurisdictional conflicts between state and regional courts. Disputes arise when state courts proceed with federal criminal cases beyond their jurisdiction, while Federal courts decline to assume jurisdiction. The absence of clear guidelines and the failure to delegate authority to the state Federal High Court have led to protracted delays in adjudicating cases, infringing upon the rights of suspects.<sup>74</sup>

Furthermore, regional investigators and prosecutors have allegedly altered the charges against suspects to enable their trial in regional courts. This practice of changing offenses to fit within regional court jurisdiction violates the suspects' right to a prompt trial. Respondents argue that the lack of a delegated Federal High Court in the state has led regional courts to overstep their jurisdictional boundaries, violating fundamental rights.<sup>75</sup>

One respondent highlighted an issue whereby the number of federal police investigators was insufficient to effectively handle delegated federal criminal cases. These investigators reportedly relied heavily on witness and suspect statements, neglecting scientific and systematic investigative methods. Furthermore, state police were observed taking up federal investigations without proper authorization and lacking necessary skills, hindering effective case pursuit.<sup>76</sup>

A respondent,

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73 Ibid

74 PP 7, 8, 32, 36:29, interview with the researcher, May 23, 2023, June 19, 2023, August 11, 2023, and October 17, 2023, respectively, audio recorder: PJ 29, interview with the researcher, July 10, 2023, audio recorder

75 Ibid

76 PP 8, interview with the researcher, June 19,2023, audio recording

Described instances where regional state investigators, citing impartiality concerns, declined to present witnesses and defendants in court, leading to the dismissal of numerous delegated federal criminal cases. This irregular practice, allegedly supported by Kebele administrators, also resulted in extended pre-trial detention for some defendants. In a concerning example, the Metekel Zone Court dismissed all delegated federal criminal cases due to the police's failure to produce the accused before the court of competent jurisdiction. Regrettably, the victim's family attended the hearing only to be informed that the accused individual remained within the area, despite the lack of presentation.<sup>77</sup>

Upon being apprised of the matter and recognizing its gravity, the esteemed judges of the Federal High Court issued a formal directive to law enforcement authorities for the apprehension of the accused individual, then known to be in hiding. However, through unknown means, the accused seemingly gained prior knowledge of this impending action and subsequently absconded. This unfortunate turn of events instilled a profound sense of fear and insecurity within the victim's family, ultimately prompting their relocation from the area. The ensuing termination of the case due to the apparent lack of intent to pursue the accused by the local police raises serious concerns regarding the impartiality and potential influence exerted by Kebele administrators.<sup>78</sup>

Similar concerns were expressed by other respondents, who noted “the dismissal of federal cases due to the absence of witnesses and defendants in the regional state.”<sup>79</sup> Conversely, concerns regarding the competency of regional state prosecutors were also raised. Respondents reported inappropriate objections, verdicts diverging from testimonies, and inadequate case presentations due to a lack of understanding of delegated federal criminal cases. This could potentially indicate pressure on prosecutors, compromising their ability to effectively uphold the law. Additionally, concerns were raised regarding state prosecutors' failure to provide supporting evidence in certain cases, such as telecom fraud and other serious criminal charges.<sup>80</sup> Additionally, concerns were raised regarding state prosecutors' failure to provide supporting evidence in certain cases, such as telecom fraud and other serious criminal

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<sup>77</sup> PJ 29, , interview with the researcher, July 10, ,2023, audio recording

<sup>78</sup> **Ibid**

<sup>79</sup> PJ 28, 29,32, interview with the researcher, July 03,2023, July 10, ,2023, August 11, 2023 respectively , audio recording :Research done to make the prosecution of federal criminal cases accessible to the states of the Federal General Law, in Metekel and Asossa more than 57 defendants have been detained without trial for a long time due to non-appearance of witnesses

<sup>80</sup> PP, 8, PJ 29, interview with the researcher, June 19,2023, July 10, 2023, audio recording

charges.<sup>81</sup> Furthermore, a respondent stated as, "state prosecutors were reportedly filing charges in federal criminal cases that had not been delegated to the state without authorization from the Ministry of Justice. This unauthorized action led to the dismissal of a significant number of cases by the court, raising concerns about the effectiveness of delegated federal prosecutions at the state level."<sup>82</sup>

A respondent stated an issue as, "The state prosecutors handle federal criminal cases in a manner that favors the accused, because of that the conviction rate below 10% as evidence, suggesting a lack of impartiality and incapacity. To substantiate their claims, they recommended examining closed files from the Federal High Court. These files, they argued, "provide irrefutable proof of the disappointing outcomes" of delegated cases."<sup>83</sup>

Additional participants provided specific examples of alleged misconduct:

Respondents stated as, "The MoJ did not check the files of terminated cases in the regional state, hindering proper oversight of delegated prosecutions."<sup>84</sup> "State prosecutors did not separate files of the federal delegated cases from their cases."<sup>85</sup> They illegally terminated delegated federal criminal cases for discriminatory purposes; the mining case against foreign nationals could be an example of the issue.<sup>86</sup>

A respondent stated a specific case as,

State prosecutors are allegedly utilizing their delegated authority in federal criminal cases to engage in discriminatory practices against a specific group. This allegation is supported by cases such as Federal Prosecutor vs. Abdu Hussein et al., Federal High Court Crime File No. 262221, which raises concerns regarding potentially unlawful and illicit conduct. Specifically, it is claimed that the regional prosecutor divided the investigated cases into two segments, selectively targeting specific individuals within a particular group for charges, and subsequently presenting them for trial in the state court.<sup>87</sup>

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81 PJ 29, interview with the researcher, July 10, 2023, audio recording

82 PP 8, interview with the researcher, June 19,2023, audio recording

83 PP 8, interview with the researcher, June 19,2023, audio recording: PJ, , interview with the researcher, July10,2023,

84 PP 8, 10, 36 interview with the researcher, June 19,2023, August 10,2023, October 17, 2023 respectively audio recording

85 PP 32, 36 interview with the researcher, August 11,2023,, 17, 2023 respectively audio recording

86 PP 3, 30, 32, interview with the researcher, May 23,2023, July 31,2023, August 11,2023 respectively, audio recording

87 PP 7, interview with the researcher, May 23, 2023, audio recording : Federal Prosecutor vs Abdu Hussein et al. (262221), Federal High Court Crime

It is noteworthy that further investigation into the remaining suspects, whose files had been forwarded to the Ministry of Justice for adjudication, revealed that none was culpable. Regrettably, the individuals charged and brought to trial by regional prosecutors were ultimately acquitted in state court.<sup>88</sup> Subsequent scrutiny of the records pertaining to the second group, whose case was presented to the MoJ Prosecutors, uncovered evidence suggesting criminal activity on the part of those previously acquitted at the regional level, warranting further prosecution.<sup>89</sup>

The aforementioned allegations raise concerns regarding the effectiveness of delegated federal criminal case implementation by state investigators and prosecutors. It is asserted that investigators and state prosecutors failed to implement the delegated prosecution of federal criminal cases effectively, misused the implementation for discriminatory purposes, targeting specific groups, terminated cases illegally under the guise of delegated federal criminal prosecution, and contributed to the violation of suspects' rights by acting without the appropriate delegation from the Federal High Court.

Furthermore, despite being the principal advisor and representative of the federal government on legal matters<sup>90</sup> and having the responsibility to ensure the consistent application and implementation of federal laws<sup>91</sup>, the Ministry of Justice has been criticised for failing to adequately oversee or consider the implementation of the delegated federal criminal case implementation in this state.

The lack of a robust oversight and accountability system, coupled with insufficient cooperation and communication among justice organs, is suspected to contribute to these issues. This allegedly leads to the violation of rights for victims, suspects, and accused individuals, ultimately jeopardising the effectiveness and fairness of the delegated prosecution system. Both federal and state authorities, including police investigators and prosecutors, may be failing to fulfil their legal obligations regarding delegated federal cases. Allegations of discrimination, illegal file termination, and inadequate oversight raise serious concerns about the overall competence and effectiveness of the justice system.

### **3.2.2. The Oromia Regional State Experience**

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<sup>88</sup> *ibid*

<sup>89</sup> PP 7, interview with the researcher, May 23, 2023, audio recording : Federal Prosecutor vs Abdu Hussein et al. (262221), Federal High Court Crime [Reference to court file]

<sup>90</sup> Proclamation No.943/2016, Article 6(2)

<sup>91</sup> Proclamation No. 943/2016, Article 5

The delegation of federal criminal prosecution was the subject of a research discussion between participants and researchers in this region. Accordingly

Respondents' stated as,

Several concerns have emerged regarding the transparency and clarity of the delegation process for federal criminal prosecution authority to the regional states. The Attorney General (AG) has not provided clear and comprehensive explanations about the categories of crimes fall under prosecution of delegated federal criminal cases authority, the degree of authority granted to regional states in carrying out these prosecutions.<sup>92</sup> In addition to that, the way of entry into the states on the delegated cases remains unclear.<sup>93</sup> The absence of a unified execution manual between the MoJ and the state is a concern of procedural consistency of the implementation of delegated federal criminal case.<sup>94</sup>

On the other hand, the State of Oromia has enacted its own legislation, namely Proclamation No. 214/2018, titled "Establishment of the Attorney General Office of Oromia Regional State."<sup>95</sup> This proclamation powers the delegation of federal criminal cases to the Attorney General of the Oromia Region, as outlined in Article 8.

The state prosecutors actively pursue delegated federal criminal cases based on this proclamation. Notably, during court proceedings, state prosecutors argue according to this proclamation rather than the FAG delegation document.<sup>96</sup>

A respondent raised additional issues as, "Since the 2018 delegation, concerns have been raised regarding a lack of consistent oversight in this region. While brief MOJ visits occurred in 2023, their purpose appears limited to data collection, not follow-up on ongoing cases."<sup>97</sup>

Others stated as,

An investigation into corruption crimes committed by the accused, Genet Tulu, at the Asela Branch of the Ethiopian National Bank in Oromia was recently conducted, and prosecuted. They presented

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92 PP 19, 23 interview with the researcher, May 31,2023, June 01, 2023 respectively, audio recording

93 Ibid

94 Ibid

95 Ibid

96 PP 19, 22, 23, interview with the researcher, May 31, 2023, June 1, 2023, and June 2, 2023, respectively, audio recorder

97 PP, 19, interview with the researcher, May 31, 2023, audio recording

the case before the Federal High Court's fourth Corruption Court. However, the court ultimately terminated the case due to an objection raised by the accused. Subsequently, on July 26, 2022, the MoJ transferred the accused's records to the Oromia State Justice Bureau.<sup>98</sup>

In a communication from the MoJ, the regional state was advised to take into account the previously delegated cases that fell under its jurisdiction. Notably, the MoJ, without the regional state prosecutors' participation, investigated and prosecuted the Buleahora University corruption case despite the delegation of such matters to the regional level. This action by the MoJ suggests a potential divergence in the interpretation of jurisdictional boundaries and responsibilities relating to these delegated cases. The MoJ has revoked the delegation of economic criminal cases from different parts of the regional state. However, it did not clarify its reasons to the state.<sup>99</sup>

Other respondents stated several concerns regarding the delegation of federal criminal prosecutions to the Oromia Regional State. In the absence of a dedicated Federal Police force within the state, the investigation of delegated federal criminal cases fell to the state police. However, this presented challenges due to limitations in specialized training and expertise in handling federal criminal matters. Additionally, “state prosecutors faced similar hurdles in adequately comprehending the intricacies of federal criminal law and the nuances of federal prosecution.”<sup>100</sup>

Due to a recurring issue, law enforcement officials repeatedly present individuals suspected of criminal activity before the courts. However, the system fails to adequately protect these individuals' rights. However, the presiding judge fails to fulfil crucial responsibilities. Acting as both investigator and prosecutor, judges did not rigorously evaluate the investigative efforts undertaken by the investigator. Consequently, the judge grants only the specific date requested by the investigator, resulting in prolonged detentions for suspects without judicial decisions.

Despite the relevant power being informed of these issues by the Justice Office of the Oromia State, no one has been held accountable for this improper and unlawful implementation.<sup>101</sup>

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98 PP.23, 24, interview with the researcher, June 1, 2023: The Federal Attorney General, A letter sent to the Attorney General of Oromia Regional State on July 26, 2022

99 Ibid

100 P 19, interview with the researcher, May 31,2023, audio recording

101 Ibid

Instances have been documented, in 2022, particularly in conflict zones like North and South Showa and East and West Wollega, where suspects have been detained for extended periods without court hearings, violating their fundamental rights.<sup>102</sup> Despite these violations, the Ministry of Justice has reportedly failed to hold responsible parties accountable.<sup>103</sup>

Notwithstanding the Ministry of Justice's (MoJ) rescinding the delegated criminal cases of matters of ethnicity and religion, regional state prosecutors proceeded to implement the aforementioned revocation. Notably, following the tragic demise of artist Hachallu Hundesa, instances of ethnically and religiously motivated attacks proliferated throughout the Oromia state. Upon the conclusion of the investigation into the associated criminal cases in Shashemene, the investigative teams duly submitted the compiled files to the Shashemene prosecution.<sup>104</sup>

After the assassination of Hachalu Hundessa, regional state prosecutors and native speakers participated in the investigation and subsequent legal proceedings.<sup>105</sup> Although the crimes committed based on ethnicity were revoked from the regional state, the Ministry of Justice provided case files to the state prosecutors prior to the court trial process at Jemma High Court.<sup>106</sup>

Consequently, regional state prosecutors, including those fluent in the local languages, conducted hearings at Jemma High Court and other locations within the region. Despite these efforts, a majority of the cases ultimately terminated.<sup>107</sup>

Following an analysis of the provided information, the researcher pinpointed two crucial concepts: the implementation of delegated prosecution for federal criminal cases and Proclamation No. 214/2018 issued by the Oromia Regional State Attorney General Office. Participants expressed concerns regarding the lack of clarity and oversight associated with the delegated authority for state-level prosecution of federal criminal offenses. Furthermore, the absence of an implementation manual for handling delegated cases and inadequate skills in investigators and prosecutors with handling the prosecution of delegated federal criminal cases identified as a significant problem and a cause of violation of rights.

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102 Ibid

103 Ibid

104 PP 3 ,interview with the researcher, May 23,2023

105 105 PP 8, interview with the researcher, ,June 19,2023, audio recording

106 Ibid

107 Ibid

Proclamation No. 214/2018 is the second point. The proclamation grants power to the regional attorney general to initiate federal criminal cases investigations into matters falling under the purview of regional courts.<sup>108</sup> Furthermore, Article 26 of the aforementioned proclamation empowers the Attorney General to "render a lawful determination on criminal investigation files, institute legal proceedings on behalf of the government, conduct litigation, and withdraw charges deemed necessary in the public interest."<sup>109</sup>

The FDRE Constitution empowers regional state judges to adjudicate federal criminal cases. Similarly, Proclamation No. 214/2018, established by the State Attorney General, authorizes regional state prosecutors to pursue federal criminal matters.

The state courts jurisdiction stems from the Federal Democratic Republic of Ethiopia Constitution. Specifically, Article 24(1)(d) and (e) of the Oromia Regional State Courts Proclamation No. 216/2018 states that regional courts have jurisdiction over matters falling under the jurisdiction of regional courts and cases arising within the region's boundaries, or federal matters as per Article 78(2) of the Federal Constitution.<sup>110</sup> Thus, the Oromia Regional State Courts delegated authority over federal criminal cases from the Constitution.

However, it is crucial to note that the regional state Attorney General does not possess the power to pursue federal criminal matters under the FDRE Constitution. Instead, its power to implement federal criminal cases emanates from the FAG's delegation.

The shreds of evidence presented above suggest that the FAG's delegation of federal criminal case prosecution to a regional state has faced problems. The House of People's Representatives holds exclusive authority to enact federal criminal matters, while states retain the power to enact criminal matters not covered by it. However, the regional states have powers the authority of federal criminal laws to the State Attorney General by Proclamation No. 214/2018.

This raises concerns about the Proclamation's compatibility with the FDRE Constitution. Article 9(1) explicitly states that any law or decision by a state organ that contravenes the Constitution is deemed

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<sup>108</sup> Establishment of the Attorney General Office of Oromia Regional State Proclamation No. 214/2018, Article 8.

<sup>109</sup> Proclamation No. 214/2018, Article 26

<sup>110</sup> Oromia State Courts Proclamation No. 216/2018, Article 24( 1)(d) and (e)

invalid.<sup>111</sup> Additionally, Proclamation No. 214/2018, Article 7(8), arguably disregards the Federal Government's powers outlined in Article 50(8) of the FDRE Constitution.<sup>112</sup> Similarly, it may violate the FDRE Constitution's Article 55(1), which vests legislative power in all matters assigned to Federal jurisdiction.<sup>113</sup> Furthermore, inconsistencies exist with other proclamations, like, 943/2016, 1263/2021, and 1234/2021.

While Proclamation No. 943/2016, Article 6(2), declares the FAG the government's legal representative, it arguably lacks control over delegated federal criminal cases within the state and fails to consider the potential ramifications of Proclamation No. 214/2018. The experience of the Oromia State Attorney General/Justice Office with delegated federal criminal case prosecution suggests that the region's judicature may have been granted undue latitude, potentially infringing upon the rights of victims, suspects, and accused persons.

Moreover, prevailing of impunity by criminals has demonstrably contributed to a surge in criminal activity, leading to the displacement of citizens from their homes and inflicting substantial harm to their lives and livelihoods. This, in turn, has exacerbated the prevailing climate of insecurity within the region.

Delegating federal criminal case prosecution to regional states has proven problematic. Unclear laws, inadequate training for investigators and prosecutors, and a lack of federal oversight hinder the system. These issues have led to challenges in effectively implementing the system, resulting in potential rights violations, difficulty securing convictions, and overall concerns about fairness and effectiveness. The absence of a robust system to handle these cases at the regional level suggests that the current delegation model may be unworkable.

### **3.2.3. The Amhara Regional State Experience**

Respondents in this region engaged in a discussion with the researcher regarding their experiences and observations surrounding the delegation of federal criminal case prosecution. Their perspectives, as expressed, were as follows:

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111 FDRE Constitution, Article 9(1)

112 FDRE Constitution, Article 50(8)

113 FDRE Constitution, Article 55(1)

Respondents expressed ambiguity regarding the Federal Attorney General's delegation of federal criminal cases to the Amhara Regional Justice Office. Concerns included the absence of an execution manual, case termination or revocation criteria, and a pre-delegation study. Additionally, the system is absent for communication between regional and federal prosecutors to discuss complex cases.<sup>114</sup>

The Prevention and Suppression of Terrorism Crimes Proclamation No. 1176/2020 affected a transfer of the responsibility for prosecuting terrorism-related offenses from the MoJ to the state justice office.<sup>115</sup> However, state prosecutors have encountered uncertainties regarding the implementation of certain aspects of these delegated cases. The confusion stems from the Ministry of Justice (MoJ) and state prosecutors simultaneously investigating the same criminal cases already delegated by the federal government. This redundancy, exemplified by terrorism offences, creates unnecessary duplication of efforts and potential conflicts in jurisdiction.<sup>116</sup>

The Ministry of Justice (MoJ) has encountered a concerning lack of monitoring and support for the Gondor and Desie branches, even amidst the delegation of federal criminal cases to the respective states.<sup>117</sup> Notably, no representatives from the MoJ have inquired about the applicability of these delegated cases, nor have they offered any support or follow-up measures.<sup>118</sup> This lack of engagement is further compounded by the MoJ's sole request for a report during their visit to Bahirdar. Additionally, the absence of a crosschecking system creates an accountability gap, as the region's reports to the MoJ lack a mechanism for verification and record keeping. It is crucial to emphasize that the reporting of delegated criminal cases serves solely as a justification for the allocated budget, and does not reflect the broader need for comprehensive support and monitoring.

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During the years 2022 and 2023, the Amhara region witnessed a series of terrorist attacks. Throughout this period, the MoJ and State prosecutors collaborated in investigating these offences. However, the lack of clear identification of the cases, jurisdictional problems, and the absence of its execution scope led to

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114 PP 11,12,13,14,15,interview with the researcher, May 30,2023, May 30,2023, May 29,2023, May 29,2023, May 30,2023 respectively, audio recording.

115 115 PP 7, interview with the researcher, May 23, 2023, audio recording

116 **Ibid**

117 117 PP 11, 15, 16, 17, , 18, 8,interview with the researcher, May 30,2023, May, 30, 2023, June 6, 2023, June 7, 2023, June 18,2023,June 19, 2023 respectively, audio recording

118 **Ibid**

119 **Ibid**

confusion and jurisdictional disputes between the federal and regional state prosecutors. This issue has been observed in the specific location of North Showa Atayie.<sup>120</sup>

Regarding the delegation of terrorist crimes to the states for prosecution, it is important to note that, while such delegation aligns with established federal crime laws, the practice has deviated from this standard practice. In recent events, the investigation records filed charges and initiated proceedings in the Federal High Court.<sup>121</sup> However, 35 cases were terminated under the pretext of the Pretoria Agreement. Among the terminated cases are: Federal Prosecutor vs. Ayalew Shemelese Kebede et al., Federal High Court Crime File No. 02079339; Federal Prosecutor Vs Mekete Abate et al., Federal High Court Crime File No 02079339; Federal Prosecutor vs. Shambel Getachew Sebru et al., Federal High Court Crime No.0207937. This termination of cases raises concerns regarding its propriety and legality, as the alleged crimes contravene Article 28(1) of the FDRE Constitution.<sup>122</sup>

Respondents also stated that during the years 2022 and 2023, the Amhara region witnessed a series of terrorist attacks. Throughout this period, the Ministry of Justice (MoJ) and State prosecutors collaborated in investigating these offenses.<sup>123</sup> However, the lack of clear identification of delegated criminal cases led to confusion and jurisdictional disputes between the aforementioned entities. This issue has been observed in the specific location of North Showa Atayie.<sup>124</sup>

Other respondents expressed concern over long-standing delays in state-investigated cases due to the MoJ reclaiming files without making timely decisions. This resulted in prolonged stagnation and hindered justice delivery.<sup>125</sup> Financial limitations were identified as a significant hurdle, and respondents pointed to the MoJ's failure to provide adequate training and support for state prosecutors handling

The Ministry of Justice's draft document raises concerns about potential political interference during the implementation of delegated federal criminal proceedings transferred to state governments.<sup>126</sup> This suggests a risk of political forces influencing justice organs, potentially compromising adherence to legal

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<sup>120</sup> PP 7, 8, 11 interview with the researcher, May 23, 2023, June 19, 2023 and May 30, 2023 respectively, audio recording

<sup>121</sup> 121 PP 7, interview with the researcher, May 23, 2023, audio recording

<sup>122</sup> *Ibid*

<sup>123</sup> *Ibid*

<sup>124</sup> *Ibid*

<sup>125</sup> PP 12, 15, interview with the researcher, May 30, 2023, audio recording

<sup>126</sup> A draft study (2023) examined the issues related to delegating Ministry of Justice authority to the states.

principles and professional standards in delegated prosecutions. These factors could contribute to a flawed criminal justice system.

Furthermore, the Criminal Justice System Working Group has identified potential concerns regarding the independence of the implementation of prosecution. Specifically, the group suggests that the Attorney General or prosecutor may require prior authorization from political figures before initiating investigations or prosecutions involving high-ranking officials.<sup>127</sup>

From the above, it can be argued that the delegated federal criminal cases in the regional state face impediments of guidelines, insufficient funding, and undue political influence, unlimited scope of delegation and lack of operational autonomy, Consequently constitutional rights are violated. The cumulative effect of these factors has resulted in the escape of criminals from accountability, the persistence of criminals and crimes and the displacement of citizens from their communities.

### **3.3. The Investigation of Delegated Federal Criminal case in the Selected States**

As stipulated in Proclamation No. 943/2016, Article 3(a), the MOJ possesses the authority and responsibility to initiate and monitor investigations into federal criminal cases. Therefore, it is imperative to evaluate whether the Federal Police Commission entrusted the regional police commissions with the investigation of federal criminal cases, considering the delegation of federal criminal case prosecution to the regional states by the Federal Attorney General.

The Federal Police Commission Establishment Proclamation No. 720/2011 mandates that the Federal Police undertake investigations into criminal matters falling within the purview of federal courts.<sup>128</sup> Notably, Article 6(6) of the proclamation empowers the Federal Police Commission to delegate such federal criminal cases to the state police commission, stipulating, "Where necessary, regional police commissions may be entrusted with the prevention and investigation of crimes falling under the jurisdiction of federal courts, and shall provide reports on the execution of this delegated authority."<sup>129</sup>

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<sup>127</sup> Criminal Justice System Working Group, 'Diagnostic Study of the Ethiopian Criminal Justice System '(2021), 119

<sup>128</sup> Proclamation No. 720/2011, Article 6(1)

<sup>129</sup> Proclamation No. 720/2011,Article 6(4)

Interviews with respondents revealed that the Federal Police Commission delegated investigation of federal criminal cases to the Amhara, Oromia, and Tigray states, excluding terrorism criminal cases. However, this delegation lacked a formal structure or system for monitoring and control. In 2022, the FPC revoked delegated powers and established its branches in those states. However, it delegated terrorism-related criminal case investigations to the Oromia Police Commission without adequate mechanisms to safeguard legality.<sup>130</sup>

Participants highlighted as,

Currently, the Oromia state lacks federal police force equipped to investigate federal criminal cases within its jurisdiction. Consequently, the responsibility for such investigations falls upon the state police, raising concerns regarding potential competency and skill incongruence with the specialized demands of federal investigations. This mismatch may contribute to inefficiencies and potentially hinder the successful investigation of federal criminal cases within the state.<sup>131</sup>

The State Police stand accused of engaging in unlawful detentions, holding suspected individuals for periods exceeding six months, and in some instances, even exceeding one year, without presenting them before a court of law. This alleged practice has been reported in the eastern and western regions of Wollega, as well as the northern and western regions of Shewa. While the sample provided serves as an illustration, the scope of this issue may be broader. Notably, the Ministry of Justice and other state justice organs have reportedly failed to take action against those who implemented this practices, which is considered to violate the constitutional rights of suspected and accused persons, as well as the rights of victims.<sup>132</sup>

A limited number of federal police criminal investigators deployed within the Benshangul-Gumze Region. Notably, concerns have been raised regarding the adequacy of their skills and expertise in handling complex federal criminal cases.<sup>133</sup> Instances have been identified where state police,

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130 PO 27, interview with the researcher, May 03,2023, audio recording

131 PP 19, interview with the researcher, May 31, 2023, audio recording

132 Ibid

133 PP 8, interview with the researcher, June 19,2023, audio recording : PO 27, interview with the researcher, May 03, 2023, audio recording,

without proper authorization from the Federal Police Commission, have assumed investigative responsibilities in terrorism-related matters, which fall under the purview of federal authorities.<sup>134</sup>

An examination of participant statements reveals the absence of a controlling supporting rule or system seen in the Federal Police Commission delegation of federal criminal case investigations to state police commissions. Instead, the Federal Police Commission appears to have delegated these investigations based on prior delegations from the Federal Attorney General. In the absence of a comprehensive investigation manual, a defined system, and mechanisms for support, control, monitoring, and auditing, the Federal Police Commission delegated federal criminal case investigations to state police commissions.

Due to the aforementioned circumstances, regional state police investigators engaged in unauthorized investigations of federal criminal cases. Notably, Proclamation No.242/2021,Article 41(16), concerning the powers and responsibilities of Oromia state executive bodies, seemingly grants regional police authority to investigate any crimes committed within the region under the jurisdiction of the state court.<sup>135</sup> This interpretation suggests that the state police commission may investigate federal crimes within the state's borders, irrespective of any delegation from federal law enforcement.

The lack of federal criminal cases investigation oversight on investigations by delegated police forces creates problems for state-level criminal justice. The recent decision by the state legislatures to empower state police forces to conduct investigations into federal criminal offenses has unfortunately resulted in the state police commissions assuming control over these investigations in a manner that appears to prioritize their own internal preferences and procedures over the established federal criminal laws/federal police commission's proclamations.

Concerns have been raised regarding the potential for illegality and arbitrary investigations in the context of delegated federal criminal cases delegation. These concerns primarily focus on potential violations of the rights of suspects and accused individuals, the possibility of enabling criminals to evade justice, and the potential for contributing to a cycle of criminality, ultimately leading to involuntary civilian

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<sup>134</sup> PP 30 , interview with the researcher, July 31, 2023, audio recording

<sup>135</sup> The power and duties of executive organs of Oromia regional state proclamation No. 242/2022, Article 41(16)

displacement. It is further argued that these detrimental effects extend beyond individual states, potentially generating national instability.

### **3. 4. The Hearings of Federal Criminal Matters in the Delegated States**

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) of 1995, in Article 78(2), outlines the authority of the Federal Courts to delegate their powers to State Courts.<sup>136</sup> This provision states, "The jurisdictions of the Federal High Court and the First-Instance Courts may be delegated to the State Courts, as prescribed by law." While Article 78(2) enables the delegation of Federal High Court matters to State Courts, Proclamation No. 322/2003 establishes limitations in specific regions. This proclamation restricts the delegation of federal criminal cases, outside the purview of established law, to regional courts in Gambela, Afar, Somalia, North Peoples, and Benshangul Gumze.<sup>137</sup> Consequently, within these designated regions, federal criminal cases not explicitly covered by existing legislation are brought before the regional courts. This practice has raised concerns regarding potential violations of suspects' rights, as evidenced by occurrences in the Benshangul Gumze regional state.<sup>138</sup>

The Ethiopian Constitution authorizes the delegation of federal judicial authority to certain regions. However, the Benshangul-Gomez region currently lacks jurisdiction over federal high courts due to the absence of such delegation. This has raised concerns regarding potential violations of suspects' rights within the region.

### **3.5. Challenges in Overseeing prosecution of Delegated Federal Criminal Cases by the Ministry of Justice**

#### **3.5.1. Reporting mechanism**

The MoJ requires annual reports from delegated states. However, a clear and consistent reporting mechanism remains absent. Consequently, regional states have exhibited inconsistent adherence to the mandate of submitting delegated criminal cases reports. Additionally, reports submitted by some states have been demonstrably incomplete, often serving as instruments to secure budgetary support rather than

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<sup>136</sup> The FDRE Constitution, Article 78(2)

<sup>137</sup> Federal High Court Establishment Proclamation No. 322/2003

<sup>138</sup> PP, 7, 8, 32, 36, interview with the researcher, May 23, 2023, June 19, 2023, August 11, 2023, and October 17, 2023 respectively, audio recording

providing accurate data. Furthermore, the MoJ has not implemented a robust verification process to assess the veracity of the reported information.<sup>139</sup>

### **3.5.2. Monitoring Mechanism**

Respondents reported a significant lack of MoJ oversight in the prosecution of delegated federal criminal cases across various regional states, particularly in Benshangul Gumuz, Oromia, and Amhara.<sup>140</sup>

### **3.5.3. Auditing Mechanism**

Respondents actively stated the absence of audits for delegated federal criminal cases. The MoJ lacks a crosschecking mechanism and has not conducted audits of delegated cases within states. Although states submit reports, tracking systems are inadequate. While the MoJ Legal Auditing and Inspection Directorate conducts audits of crimes committed by MoJ branches, delegated federal criminal cases within states remain unmonitored.<sup>141</sup>

### **3.5.4. Evaluating the System**

In their evaluation of the system, the respondents noted that the MoJ initially oversaw the application of delegated economic criminal cases in various states. Subsequently, the MoJ withdrew these delegated cases from the states. The termination occurred because the responsible party failed to implement the delegated economic criminal cases according to applicable law.<sup>142</sup>

### **3.5.5. Supporting Mechanism**

The responses received highlighted a perceived inadequacy in the MoJ support for regional state prosecutors in handling delegated federal criminal cases.

They noted a discrepancy between the intended purpose and the observed practices, stating that the MoJ focused more on supervising specific areas rather than providing assistance, and that allocated funding

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139 PP 1, 5, 11, 12, 13, 14, 15, 16, 17, 18,19, 20, 21, 22, 23, 24, 25, 35, interview with the researcher, May 19, 2023, May 2, 2023, May 30, 2023, May 30, 2023, May 29, 2023, May 29, 2023, May 30, 2023, June 6, 2023, June 7, 2023, June 18, 2023 May 31, 2023 June 01,2023 June 01, 2023 June02, 2023, June 01, 2023, June 01, 2023, June 01, 2023, May 23, 2023 respectively, audio recording

140 (P.8,11,16,18,19)PP 8, 11, 16, 18, 19, interview with the researcher, June 19, 2023, May 30, 2023, June 6, 2023, June 18,2023, May 31, 2023 respectively, audio recording

141 PP, 10, 11, 19, 35, interview with the researcher, August 10, 2023, May 30, 2023, May 31, 2023, May 23, 2023 respectively, audio recording

142 PP 3, 4, 5, 25, interview with the researcher, May 23,2023, May 19, 2023, May 2, 2023, June 25,2023 respectively, audio recording

was deemed insufficient to effectively carry out these responsibilities.<sup>143</sup> Similarly, concerns were raised regarding the Federal Attorney General's support for delegated federal criminal prosecutions in the Amhara, Oromia, and Benshangul-Gumze regional states. Respondents indicated that the FAG's support was perceived as inadequate, potentially hindering the successful prosecution of these cases.<sup>144</sup>

The analysis reveals the ineffectiveness of delegated federal criminal case prosecution to regional states in Ethiopia due to several factors. The MoJ's failure to establish a clear and concise reporting mechanism has resulted in a lack of transparency and accountability. States have not voluntarily submitted comprehensive reports, and the MoJ has not conducted adequate oversight. Additionally, the MoJ has failed to evaluate the effectiveness of non-economic delegated cases, despite potential risks to human rights, justice system failure, and national security instability. Consequently, it can be argued that the lack of evaluation, oversight, support, adequate funding, and training has impeded the effective implementation of delegated cases. As a result, the execution of delegated federal criminal cases in Ethiopia has been ineffective.

### **3.6. Justice Organs' Role in Federal Criminal Cases implementation**

The Criminal Procedure Code and the Executive Organ Powers and Duties Proclamation No. 1263/2021, Art. 40(2) (c) 1) the revised pro. No. 943/2016, Art, six establish the cooperative relationship between the police and the prosecutor. The Code provides the legal foundation for the public prosecutor's activities, obligations, and authority to issue directives and instructions regarding police-conducted criminal investigations.<sup>145</sup> Furthermore, Federal Police Commission Establishment Proclamation No. 720/2011 mandates the Commission to coordinate crime investigations with the Ministry of Justice and other relevant organizations.<sup>146</sup> These legal frameworks demonstrate the interconnectedness and cooperation expected between police and prosecutors in criminal investigations.

It is here by noted that the authority of the Federal High Courts does not extend to the Benshangul Gumze State. Consequently, Federal High Court judges preside only over routine hearings within

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143 PP 2, 5, 13, 14, 16, 17, 18, 19, interview with the researcher, May 17, 2023, May 2, 2023, May 29, 2023, May 29, 2023, June 6, 2023, June 7, 2023, June 18, 2023, May 31, 2023 respectively, audio recording

144 Ibid

145 The 1954 Criminal Procedure Code, Articles 8 and 9

146 Proclamation No. 720/2011, Article 6(2)

the State's jurisdiction. Notably, individuals suspected of committing federal criminal offenses are not presented before the Federal High Courts. However, within the regional court system, a concerning trend has emerged. The refusal of the State police to deliver suspects, and accused individuals to court proceedings constitutes a violation of their fundamental rights and has resulted in the dismissal of numerous cases. Additionally, State Prosecutors have further exacerbated the issue by failing to collaborate effectively with the police to address the problem of case closures.<sup>147</sup>

As previously established, investigations into federal criminal cases necessitate a collaborative effort between the Ministry of Justice and the Federal Police. Furthermore, Proclamation 1263/2021, Article 40(2) (c), entrusts the Ministry of Justice with the responsibility of supervising, monitoring, and coordinating all criminal investigation activities. Additionally, Article 6(2) and (4) of Proclamation No. 720/2011 establishing the Federal Police mandate that these two entities work cooperatively on federal criminal case investigations.

The MoJ ought to accord the delegation of federal criminal case prosecution to states an equal level of importance as that accorded to the investigation of such cases by the Federal Police Commission and the subsequent adjudication by federal high courts. However, the current approach to delegation employed by the MoJ appears to deviate from this principle.

This deviation arises from the lack of integration between the delegation of prosecution and the investigation of federal criminal cases, as well as an apparent deficiency in efficacy assessments of such delegations. Notably, the Federal Police Commission possesses the authority to delegate the investigation of federal criminal cases to states, suggesting a precedent for similar delegation in the prosecution realm.<sup>148</sup>

The Ethiopian criminal justice system thrives on the cooperation between police and prosecutors, as evidenced by relevant legal instruments. By fulfilling its supervisory and coordinating role, the Ministry of Justice plays a crucial role in ensuring this collaboration. However, the Ministry's current delegation practices regarding federal criminal cases deviate from this established principle. Additionally, the

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147 PP 7, 8, 19, 36, interview with the researcher, May 23, 2023, June 19, 2023, October 17, 2023 respectively, audio recording

148 Proclamation No. 720/2011, Article 6(6)

delegation fails to address the application of the trial process for such cases in states and lacks an efficacy evaluation. Implementing a delegation approach that prioritizes seamless integration with the investigation stage, incorporates clear guidelines for state-level handling of trials, and undergoes thorough efficacy assessments is crucial for upholding the system's core values of collaboration and effectiveness.

### **3.7. Other**

#### **3.7.1. Impacts of Withdrawal of Delegated Federal Criminal Cases prosecution**

This section analyzes the consequences of the Ministry of -Justice revoking delegated federal criminal cases from various states at different times. The revocation encompassed delegated economic criminal cases, mining crimes, and offenses motivated by ethnicity and religion.

#### **3.7.2. Revocation of Delegated Economic Criminal Cases**

Regarding this matter, a respondent has stated, "a letter issued on September 20, 2022, by the MoJ revoked the delegation of economic crime cases involving tax and customs matters from the Somali state."<sup>149</sup> Similar delegations responsible for tax and customs cases were revoked in the Amhara Region, specifically in Bahirdar and its surrounding areas, South Gondar, Awi National Administration Zone, West Gojjam, and East Gojjam Zone. Furthermore, revocations of delegations for tax and customs crimes occurred on the same date in the Oromia Region, encompassing the Adama Special Zone, East Shewa Zone, and Asala.

#### **3.7.3. Revocation of Delegated Criminal Cases Committed by Religion or Ethnicity**

The MoJ revoked its authority to prosecute crimes committed based on religion or ethnicity in the Amhara, Oromia, and Southern Nations, Nationalities, and People's Region on December 31, 2019. The stated reason was concern over neutrality, yet participants pointed to confusion generated by the MoJ's use of a broad category "crimes committed because of race or religion" that blurred jurisdictional lines

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<sup>149</sup> The MoJ Economic Directorate report, 'Economic Crimes Supervision (June 2013)

between state and federal authorities. This resulted in uncertainty and disputes between regional and federal prosecutors, effectively halting investigations into these offenses.

#### **3.7.4. Revocation of Delegated Mining Criminal Cases**

On February 15, 2023, the MoJ revoked the delegation of mining criminal cases from the Benshangul Gumze state.<sup>150</sup> Respondents cited concerns among state prosecutors that termination of these cases was motivated by the desire to maintain diplomatic relations, potentially leading to illegal termination of cases involving foreign suspects.

#### **3.7.5. Inconsistencies in revocation of delegation and its impact on crime rates**

During interviews, participants indicated that the cessation of economic crime delegation to the states appears to have stemmed from a lack of clearly communicated rationale.

Respondents expressed concern that "the MoJ cancelled the delegation of economic criminal cases without providing a clear explanation. This unilateral action has negatively impacted the efficiency of handling other delegated criminal matters." <sup>151</sup>

The respondents' reports indicate that the category of a crime committed may not be determined until the investigation has concluded and presented to the court. However, the Ministry of Justice's (MoJ) general classification of crimes motivated by ethnicity or religion has created confusion regarding the jurisdictional purview of state and federal justice agencies. This ambiguity has resulted in the withdrawal of certain cases, leading to uncertainty and disputes between regional state and MoJ prosecutors, effectively halting investigations into these offenses. <sup>152</sup>

Following the murder of artist Hachallu Hundesa, ethnic tensions arose within the Oromia regional state leading to diverse legal proceedings handled by separate courts. The Ministry of Justice facilitated access to relevant documentation; the Shashemene investigation records were provided to prosecutors in Shashemene City, while the Jemma cases were entrusted to Jemma's prosecutors. Native language-speaking prosecutors were involved in the investigative and litigation processes.

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150 PP 30, 32, interview with the researcher, July 31, 2023, August 11, 2023 respectively, audio recording : Ministry of Justice, Letter to nshangul Gumze Regional State Justice Office revoked delegation in February 2023.

151 PP 14,24, interview with the researcher, May 29, 2023, June 01, 2023 respectively, audio recording

152 PP 7, 8, 15, 16, 17, 19, interview with the researcher, May 23, 2023, June 19, 2023, May 30, 2023, June 6, 2023, June 7, 2023, May 31, 2023 respectively, audio recording

However, some prosecutors were not neutral in executing the cases.<sup>153</sup> "Despite the Ministry of Justice revoking criminal cases involving ethnicity and religion in the Amhara region, particularly in North and South Gondor, Desie, and North Showa, no investigations or prosecutions of the identified perpetrators were undertaken. Furthermore, the investigation records have reportedly been in the possession of the MoJ since 2020." In such instances, where criminal activity persists, societal displacement of the perpetrators from their communities has been observed. Therefore, it is alleged that the MoJ failed to prosecute the revealed criminal acts within this regional state.<sup>154</sup>

The Ministry of Justice has exercised its authority to withdraw federal criminal cases from Amhara, Oromia, and Benshangul-Gumze. This action was reportedly motivated by concerns regarding the neutrality of the judicial proceedings in these regions. However, state prosecutors have raised objections to the MoJ's decision, citing a lack of transparency in the justification for the case revocations and alleging that certain cases were terminated in violation of established legal procedures.

The recent actions of the Ministry of Justice regarding the revocation of delegated federal criminal prosecutions have generated significant concern among state prosecutors. This inconsistency in practice has fostered confusion and uncertainty, hindering the effective completion of other delegating cases. Specifically, the MoJ has revoked delegated power of certain crimes in certain states while simultaneously seeming to allow other states to prosecute similar offences.

The lack of uniformity is further compounded by the MoJ's apparent failure to comprehensively investigate and prosecute federal delegated cases involving crimes motivated by ethnicity or religion, even in instances where delegated authority has been revoked.

The lack of transparent and consistent implementation creates an environment of arbitrariness and undermines accountability between the federal and state judicial systems. This situation, in turn, has the potential to contribute to increased crime rates and social instability.

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<sup>153</sup> P 8, interview with the researcher, June 19, 2023, audio recording

<sup>154</sup> PP 7, 8, 12, 31, 34, interview with the researcher, May 23, 2023, June 19, 2023, May 30, 2023, July 31, 2023, July 31, 2023 respectively, audio recording

## CHAPTER FOUR: CONCLUSION AND RECOMMENDATION

### 4.1. Conclusion

The final section of the thesis explores the conclusions drawn from the investigation, considering relevant literature, interview data, and case studies. The key findings are as follows:

Proclamation No. 943/2016 does not explicitly authorize the FAG to delegate FCC prosecution. The Proclamation, Article 8(3) b) also doesn't clarify which power of the FAG listed in Article 6 can be delegated, and to whom it will be delegated? In addition, in this article of the sentence the phrase "other bodies" is not identified whom it will be identified.

On the other side, the MoJ did not assess the capabilities of states before delegating prosecution authority. The delegated cases have not been identified, and the extent of implementation has not been limited or determined. Even though the MoJ organized the Regional State Monitoring Directorate, the directorate did not effectively monitor, support, and audit the delegated cases; it was mainly focused on requesting reports from the delegated states. The Federal Laws Applicability Directorate & Legal Auditing and Inspection Directorate (MoJ) yet not start to monitor and control the delegated federal criminal prosecution in the regional states.

Because of the above instances the delegated prosecution of federal criminal cases has implemented inconsistently, illegal & arbitrarily. As a result premature termination of delegated cases, evade criminals from justice, violation of laws and rights, political influence, perpetration of injustice are occurred.

### 4.2 Recommendation

In order to address the challenges posed by the current delegation system and improve the efficiency of federal criminal prosecution in the states, it is imperative to implement decisive actions that bring about institutional and attitudinal transformations. Failure to undertake substantial reforms in this regard political interference, injustice, limited access to justice, violations of rights, displacement of citizens, and instability within the nation. Thus, the Ministry of Justice should be committed to addressing the challenges of the delegated federal criminal cases. Therefore,

#### **Legal and Institutional Framework:**

- Legislators should amend Pro No.943/2016, Article 8(3) b, which powers and duties of the FAG can be delegated to others & put explicitly the phrase "other bodies".

- The MoJ should strengthen the regional affairs monitoring organs.

**To what extent:**

**The MoJ should**

- Classify the delegated criminal cases according to the amount of criminal cases,
- Limit the delegated power and establish criteria about the termination and revocation Processes.
- Define the scope of autonomous power granted to delegated states in handling cases,
- Develop written document guidelines or (e.g., memoranda of understanding, delegation **orders**)/Outline procedures or agreements for collaboration that explicitly outline the delegated authority for each case.

**Challenges:**

**The MoJ should**

- Consider state competency, criminal type, resource availability before delegated federal Criminal cases to the state
- consider jurisdictional complexities during delegating cases,
- conduct adequate oversight, and support to the selected states and examine the legality of the state's legal frame,
- create state-branch monitoring teams,
- develop consistent system for the implementation of delegated federal criminal cases,
- prevent political influence in legal matters,
- evaluate the implementation of non-economic delegated cases,
- Foster strong cooperation & coordination between federal and state justice systems.
- Develop communication and knowledge-sharing mechanisms.

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### **Interview Questions**

1. In 2010, why is it necessary to give delegation prosecution of federal criminal cases to the states? Regions' overall carrying capacity budget; Permanent organization Capacity of the executor; did the study distinguish between educational preparation and experience? What is the content of the study if it has been studied?
2. Has the FAG held a discussion with the states regarding the representation? If so, do the states have a memorandum of understanding? Has training been given to the regional prosecutors who implement federal criminal cases to implement them appropriately?
3. When delegation is given to the states, are the types of crimes identified in detail as to which crimes they are delegated to pursue? Is the delegation clear? Is it clearly mentioned in the delegation how far the states could carry out the matters given by the delegation?

4. Is a performance monitoring system in place to monitor the performance of delegated federal crimes? Are there rules or Regulations? How is support being provided to the regions? In what way is the Ministry of Justice monitoring, controlling and auditing the crimes committed and delegated by the states in an appropriate manner? When?
5. In federal criminal cases delegated to the states, an indication of why the delegation may be terminated; is there a detailed operating manual that can be used to find out how the FAG could enter and work in the cases in which it has been represented in the region without withdrawing its representation?
6. Which of the cases delegated to the region by the FAG did the delegation take up? In which cases did the FAG go in and work without making a delegation? To what extent did the FAG clarify the reason for the regional justice office when it made a delegation or when it came in? If there is a display
7. Has the region established a working system that enables it to carry out the delegated tasks? For example, is there a specific directorate or focal person who only deals with the delegated federal criminal cases? Are records kept independently? Has there been an opportunity for states to discuss with the MOJ directorates prosecutors in to enable them to carry out their delegated tasks?
8. Is there a procedure to hold the judicial bodies responsible for actions other than those given by delegation? If there is a demonstration, how is the Federal High Court dealing with federal criminal cases, scheduling and regular hearings in regions where the Federal High Court does not have delegation, for example, Benshangul Gumze region?
9. When the Federal Attorney General authorizes states to prosecute federal criminal cases, Has the Federal Police Commission delegated to the State Police Commission to carry out the investigation? If so. When it gave a delegation, did it identify the investigative capacity and budget of the regional police? Which regions and type of crime did it delegate to investigate? Since when?
10. According to the delegation, whether or not they are conducting an investigation, in what way will they monitor and control? If investigation is conducted without delegation given by the region, how would it be held accountable? Is there a demo? What happened to the investigation of the delegation that was not given?
11. Delegation of federal criminal cases to the state; did it make the performance of delegation effective? If you have, a reason to say yes or no please say something.

## Appendix





ኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
The Federal Democratic Republic of Ethiopia  
Attorney General

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21/02/2012

ለሎግራፊካል ዘልላጭ መንግስት  
ለአርግጥሎ ፌዴራላዊ ዘልላጭ መንግስት  
ለአደባባይ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ዘልላጭ መንግስት

ለውጥን ተከትሎ በሀገራችን በተለያዩ ወይም እና ክፍተቶች የተከሰቱት ተጽዕኖት ውስጥ  
ሀይማኖትን እና ፌዴራል መሰረት ያደረጉ ተደጋጋሚ ግጭቶች እየተከሰቱ መሆኑ የሚታወቅ  
ነው። ፌዴራል እና ሀይማኖትን መሰረት ያደረጉ ግጭቶችን የሚታወቁት በፈጠራ ዘመናት  
ፍቅር መሆኑ በላዕኛ ተገር 321/1995 መሰረት የፈጠራ ክፍተቶች ፍቅር በልላጭ የተደገገ  
እና በዚህም መሰረት እነዚህን የሚመለከቱ ግጭቶችን የመመርመር እና የመከሰስ ስልጣን  
የፈጠራ ፖሊስ እና የጠቅላይ ሀሀን መሆኑ አውግ ነው። ሆኖም በተሰጣቸው ውክልና  
መሰረት ክልሎች ሀይማኖት እና ፌዴራል መንግስት አድርገው የሚፈጸሙ ወገኖቻችን  
በመመርመር እና በመከሰስ ላይ እንዳሉ እንዲሁ የሚታወቅ ነው። ከሀይማኖት እና ከፌዴራል  
ጋር የተያያዙ ወገኖቻችን በወሰዱት ስስ (sensitive) እና በክፍተቶች ግንባታ መያዝ እና  
መታየት ያለባቸው መሆኑ ግልፅ ነው። ነገር ግን ከዚህ ጉዳይ ጋር በተያያዘ በክልሎች  
እየተመረመሩ ላሉ ጉዳዮች ላይ በተደጋጋሚ በተለያዩ መንገድ ክግጠራተኝነት አገገር ቅሬታ  
እየተረጎ ይገኛል። ስለሆነም ከወገኖቻችን ጋር ግንኙነት እንዲኖራቸው እና እየተረጎ ያለውን ቅሬታዎች  
በመመልከት ፌዴራል እና ሀይማኖትን መሰረት አድርገው የተፈጸሙ እና ወደፊትም ሊፈጸሙ  
የሚችሉ ወገኖቻችን በተሰማሰሱት ዋና ፌዴራል መንግስት መታየቱ የተሻለ መሆኑ  
ታያይዞታል። ስለሆነም ሁሉም ክልሎች ጠቅላይ ላይ ያሉ ጀምሮ የምርመራ መዝገቦችን  
በፈጠራ ፖሊስ እንዲሁም የምርመራ የተጠናቀቁ የምርመራ-መዝገቦችን ጥናትን ለጠቅላይ  
ወሰን ተራውን በፈጠራ ፖሊስ እንዲታሰሩ እናሳውቃለን።

ከሰነድ ጋር  
*[Signature]*  
2012/02/21  
የጠቅላይ ላይ ሰነድ

ለሰነድ ላይ ሰነድ  
For Law, Justice, Equity

ፋክስ  
FAX 011-11-34-31  
011-51-77-75

ፖስታ  
Postbox 1379

ስልክ  
Tel 011-11-34-31  
011-51-50-99

አዲስ አበባ  
Addis Ababa - Ethiopia





ቤ.ጠ.ክ.ዐ.1/ሐ.ሀ/518/2012  
 21 ግምብ 2012

በዝርዝር ለተመለከቱት

ባሉበት

**ጉዳይ፣ ውክልና ግልፅ ስለማድረግ**

የደቡብ ብ/ብ/ሕ/ክ/ መንግሥት ጠቅላይ ዕቃቤ ሕግ በቁጥር 852/60/2010 በቀን 05/08/2012 ዓ/ም በተፃፈ ደብዳቤ በኢ.ፌ.ዴ.ሪ ጠቅላይ ዕቃቤ ሕግ ለክልሉ በተሰጠን ውክልና መሰረት ክስ መመስረት፣ መከራከርና ክስ የማንሳት ስራ ሲከናወን የቆየ ቢሆንም የፌዴራል ከፍተኛ ፍርድ ቤት 13ኛ ተዘዋዋሪ ችሎት በውክልናው ላይ ክስ ለመመስረት፣ ለመከራከር እና ክስ ለማንሳት ተብሎ በግልፅ ካልተጠቀሰ በስተቀር ክስ ለመክፈትም ሆነ ክስ ለማንሳት አያስችላቸውም በመባላቸው መቸገራቸውን በመጥቀስ ከፌዴራል ከፍተኛ ፍርድ ቤት ጋር በመነጋገር ችግሩ እንዲፈታ ወይም ውክልናው ተስተካክሎ እንዲላክላቸው ጠይቀዋል። ከሌሎች ክልሎች እስከሁን በውክልናው ግልፅነት ላይ ያጋጠመ ችግር ስለመኖሩ የቀረበልን ጥያቄ ባይኖርም ተመሳሳይ ጥያቄ ሊነሳ እንደሚችል ግንዛቤ ተይዘንታል።

ስለሆነም ከኢ.ፌ.ዴ.ሪ ጠቅላይ ዕቃቤ ሕግ በቁጥር ፌ/ጠ/ዐ/የዘ2/133 ቀን ታሕሳስ 21 2012 ዓ/ም በተፃፈ ደብዳቤ ሃይማኖትንና ብሄርን መነሻ በማድረግ ከሚፈፀሙ ወንጀሎች በተመለከተ ብቻ ውክልናው ከተነሳባቸው ክልሎች ለማንሳት በስተቀር ለክልሉ ጠቅላይ ዕቃቤ ሕግ/ፍትሕ ቢር የተሰጠው ውክልና የተቋማችን ቅርንጫፍ በክልሉ ተቋቁሞ ሲሰራቸው የነበሩ የወንጀልና የፍትሕ-ብሄር ጉዳዮች የተመለከተ መሆኑና ይህንንም በሕግ መሰረት ክስ የመመስረት፣ የመከራከር እና በጠቅላይ ዕቃቤ ሕግ ፍቃድ ክስ የማቋረጥና የማንሳት ስልጣን የሚያጠቃልል ነው።

በተጨማሪም የኮሮና ሻይረስን ለመከላከል እና ለመቆጣጠር የወጣውን የአስቸኳይ ጊዜ አዋጅ ቁጥር 3/2012 እና የአዋጁ ማሰፈጫዎ ደንብ ቁጥር 466/2012 እንደታስፈፀሙ ውክልና የሰጠን መሆኑን እየገለጽን በቀጣይም በኢ.ፌ.ዴ.ሪ ጠቅላይ ዕቃቤ ሕግ ለክልሎች በተሰጠ ውክልና መሰረት ስራዎች እየተከናወኑ ስለመሆኑ የክትትልና ድጋፍ ስርአቱን በማጠናከር አፈፃፀሙን የምንከታተል፤ እንደ ጉዳዩ ውስብስብነትና አስፈላጊነት እየታየ በተቋማችን በተናጠል ወይም ከክልሎች ጋር በመቀናጀት የሚሰሩ የወንጀል ጉዳዮች ሲኖሩ ውክልና ልናነሳ የምንችል መሆኑን እና የፌዴራልና የክልል ፍርድ ቤቶችም ውክልናው በዚህ መሰረት የተሰጠ መሆኑን ታውቆ አስፈላጊው ትብብር እንዲደረግ እንጠይቃለን።

ከሰላምታ ጋር

*(Handwritten signature)*  
 አዳነች አበቤ ደሣ  
 ጠቅላይ ዕቃቤ ሕግ

[Type text]

ለሕግ፣ ለፍትህ፣ ለርትዕ  
 For law, Justice, Equity

41ሰ  
 FAX 0115-51-77-75

ፖ.ሣ.ቁ  
 P.O Box 1370

ስልክ  
 Tel 0115-51-50-99

አዲስ አበባ ኢትዮጵያ  
 Addis Ababa - Ethiopia



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
የፍትሕ ሚኒስቴር የጠቅላይ ፍርድ ቤት ስነ ስርዓት  
The Federal Democratic Republic Of Ethiopian  
Ministry Of Justice, Prosecution General Division



የፍትሕ ሚኒስቴር  
MINISTRY OF JUSTICE

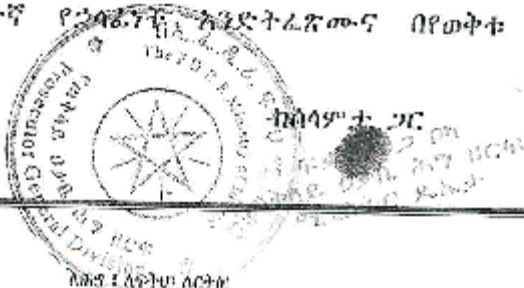
የጥያቄ ቁጥር: 3-0-2014  
ቀን: 3-0-2014

ለደቡብ ምዕራብ ኢትዮጵያ ህዝቦች ክልላዊ መንግስት ፍትሕ ቢሮ  
ባለቤት

**ጉዳዩ:- ውክልና ስለመስጠት**

የኢ.ፌ.ዲ.ሪ. ፍትህ ሚኒስቴር በሀገራችን የህግ የበላይነት ለማረጋገጥ፣ በሕግ መንግስትና ሕገ መንግስት ስርዓት ላይ የሚፈጸሙና የህዝብ ሰላምና ደህንነት የሚጎዱ ወንጀሎች ተፈጽመው ሲገኙ የመመርመር፣ ክስ የመመስረትና ተከራክር ወንጀሎች ተገቢውን ቅጣት እንዲያገኙ ለማድረግ አንዲሁም የዚህን ሰብዓዊ መብት በማክበርና በማስከበር ተጠቃሚው ሲገኝ ተገቢውን የዕርምጃ እርምጃ ለመውሰድ የተሰጠውን ተልዕኮ ለማሳካት እየሰራ ይገኛል።

ተቋሙ የሚሰጠውን አገልግሎት ተደራሽ፣ ውጤታማና ቀልጣፋ ለማድረግ ከሚያከናውናቸው ተግባራት መካከል የተወሰኑትን ለክልል ፍትህ ቢሮዎች በውክልና መስጠት አስፈላጊ በመሆኑ በአዋጅ ቁጥር 943/2008(እንደተሻሻለ) አንቀጽ 8/3/ለ በተሰጠ ስልጣን መሰረት ኃይማኖትንና ብሔርን መነሻ በማድረግ ከሚፈፀሙ ወንጀሎች በስተቀር የሽብር ወንጀል ጉዳዮች ጨምሮ ከገንቦት 29 ቀን 2014 ዓ.ም. ጀምሮ በፌዴራል ፍርድ ቤቶች ስልጣን ስር የሚወደቁ የወንጀልና የፍትሕ ስርዓት ጉዳዮችን በተመለከተ በህግ መሰረት ክስ የመመስረት፣ የመከራከርና በፍትህ ሚኒስቴር ፈቃድ ክስ የማቋረጥና የማንሳት ስልጣን በውክልና የተሰጣቸው መሆኑን እያስታወቅሁ የተሰጣቸውን ተልዕኮ በከፍተኛ የኃይማኖትና ብሔርተፈጽሞና በየወቅቱ ሪፖርት እንድታቀርቡ አሳስባለሁ።



ፋክስ  
FAX 011 2732271

ፖ.ሣ.ቁ  
P.o.Box 1370

ለሕይወት ለፍትሕ ለሰላም  
For Law, Justice, Equity  
ሰበሰብ  
Tel 011 2732271

አዲስ አበባ ኢትዮጵያ  
Addis Ababa, Ethiopia



በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ፈተሰይዘ  
 በፍትህ ሚኒስቴር የጠቀላይ ዐቃቤ ስግ ዘርፍ  
 The Federal Democratic Republic Of Ethiopian  
 Ministry Of Justice, Prosecution General Division



የፍትህ ሚኒስቴር  
 MINISTRY OF JUSTICE

የፕሮታይክት ቁጥር 3-0111559/15  
 የተሰጠበት ቀን 08 2015  
 Date

**ለ ቤንሻንጉል ጉሙዝ ክልላዊ መንግስት ጠቅላይ ዐቃቤ ስግ አሰጣጥ**

**ጉዳዩ፡- ውክልና በክፍለ የተነሳ መሆኑን ስለማሳወቅ**

ፍትህ ሚኒስቴር በክልሎች የነበረውን ቅርንጫፍ ለጊዜው እንዲታጠፍ ባደረገበት ጊዜ የፍትህ ተደራሽነትን ለማረጋገጥ በማሰብ በፌዴራል መንግስቱ ስልጣን ስር የሚወድቁ ፍትህ ሚኒስቴር ሲከታተላቸው የነበሩ በክልላችሁ የሚፈጸሙ ወንጀል ጉዳዮችን ክትትል እንድታደርጉ በቁጥር 852/60/2010 በቀን 05/08/2012 ዓ.ም በተፃፈ ደብዳቤ ውክልና የተሰጣችሁ መሆኑ ይታወቃል።

ይሁን እንጂ ከህገወጥ ማዕድን ግብይት እና ተያያዥ ወንጀሎች ጋር በተገናኘ የሚፈጸሙ ወንጀሎች በቅርብ መከታተል አስፈላጊ ሆኖ በመገኘቱ ከህገወጥ የማዕድን ግብይት እና ተያያዥ ወንጀሎች ጋር በተገናኘ ብቻ ከ ጥር 25, 2015 ዓ.ም ጀምሮ ውክልናው እንዲነሳ የተወሰነ መሆኑን እየገለጸን በውሳኔው መሰረት እንድትፈጸሙ አስታውቃለሁ።



ክሰላምታ ጋር

የተደራሽነት ጉዳይ  
 የፍትህ ሚኒስቴር ደ.አ.ታ

**ግልጻዊ ፡-**

- > ለፍትህ ሚኒስቴር ሚኒስትር
- > ለአካላዊ ወንጀል ጉዳዮች ዳይሬክቶሬት

**ፍትህ ሚኒስቴር**

- > ለ ቤንሻንጉል ጉሙዝ ጠቅላይ ፍርድ ቤት
  - > ለ ፌዴራል ጠቅላይ ፍርድ ቤት → አሰጣጥ
  - > ለ ፌዴራል ፖሊስ ኮምሽን
- አዲስ አበባ

ለሕግ፣ ለፍትህ፣ ለርትዕል For Law, Justice, Equity!  
 ርዕሰ ጽ/ቤት PAX 0115-51-77-75 ፖ.ሣ.ቤ P.O.Box 1370 ስልክ Tel. 0115-51-50-99 ኃይለ አበበ ኢትዮጵያ Addis Ababa - Ethiopia



ቁጥር 9/00/ር/24/5  
Ref.No  
ቀን 10 2015  
Date

ለአርሚያ ብሔራዊ ክልላዊ መንግስት ጠቅላይ ዐቃቤ ህግ  
አዲስ አበባ

**ጉዳዩ፡- ውክልና ማንሳትን ይመለከታል**

ፍትህ ሚኒስቴር በክልሎች የነበረውን ቅርንጫፍ ለጊዜው እንዲታጠቁ ባደረገበት ጊዜ ፍትህ ተደራሽነትን ለማረጋገጥ በማሰብ በፌዴራል መንግስቱ ስልጣን ስር የሚወድቁ ፍትህ ሚኒስቴር ሊከታተላቸው የነበሩ በክልላችሁ የሚፈፀሙ የወንጀል ጉዳዮችን ከትትል እንድታርጉ በቁጥር ጠ/አ-9/261/10 በቀን 26/11/2010 ዓ.ም በተጻፈ ደብዳቤ ውክልና የተሰጣችሁ መሆኑ ይታወቃል።

ይሁን እንጅ በህገር ኢኮኖሚ ላይ የሚፈፀሙና ከፍተኛ ጉዳት እያስከተሉ ባሉ የታክስ እና ጉምሩክ ወንጀሎችን በቅርብ መከታተል አስፈላጊ ሆኖ በመገኘቱ ከጉምሩክ ኮሚሽን፣ ገቢዎች ሚኒስቴር እና ፌዴራል ፖሊስ ጋር በጋራ የሰምምነት ሰነድ በመፈራረም በተመረጡ አካባቢዎች ቅርንጫፍ ጽ/ቤት እንዲቋቋም ወሰነናል።

በዚህም መሰረት ጉምሩክ ኮሚሽን እና ገቢዎች ሚኒስቴር እየሰሩባቸው ባለበት አዳማ ከተማ በፍትህ ሚኒስቴር የኢኮኖሚ ወንጀል ጉዳዮች ዳይሬክቶሬት ቅርንጫፍ የተከፈተ እና ዐቃቤያን ህግ የተመደቡ በመሆኑ በአዳማና አካባቢው በመታየት ላይ ያሉ የታክስ እና ጉምሩክ ወንጀል ጉዳዮች ላይ ብቻ የተሰጠውን ውክልና ማንሳት አስፈላጊ ሆኖ አግኝተነዋል።

ስለሆነም ከታክስ፣ ግብር እና ጉምሩክ ወንጀሎች ጋር በተያያዘ፤

- በአዳማ ልዩ ዞን ዞን ከፍተኛ ፍርድ ቤት የሚታዩ የታክስና ጉምሩክ ጉዳዮች
- ምስራቅ ሸዋ ዞን ከፍተኛ ፍርድ ቤት የሚታዩ የታክስና ጉምሩክ ጉዳዮች
- አርሲ ዞን ከፍተኛ ፍርድ ቤት የሚታዩ የታክስና ጉምሩክ ጉዳዮች (አሰላ ብቻ)

ላይ ብቻ የተሰጠው ውክልና ከመሰከረም 10 ቀን 2015 ዓ.ም ጀምሮ እንዲነሳ የተወሰነ መሆኑን እየገለጽን በተጠቀሱት አካባቢዎች በመታየት ላይ ያሉ ጉዳዮችን ጭምር ባሉበት



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Logo of the Oromia Regional Government  
Logo of the Oromia Regional Bureau of Agriculture and Rural Development  
Logo of the Oromia Regional Office of the Ministry of Agriculture and Rural Development

Loxix 02-01114  
Gotta 04/12/2014

Biuroo Abba Alangaa Waliigala Oromiyaatti Damee Adaamatiif

Handwritten signature  
09-12-14

**Adaamaa**

**Dhimmi isaa:- Galmee Qorannaa Isiniif Erguu Haala.**

Akkuma aramaan olitti ibsamuuf yaalametti galmee qoraanna shakkamtu Gannata Tulluu hojjattuu Bulchiinsa Lootorii Biyyoolessaa Damee Asallaa taatee yeroo hojjacha turtettii qarshii 1,467,708.61 hir'isuudhan kan shaakkamte yoo ta'u

Yakka Malaammaltuumma Naannicha keessatti raawwatame kan Daantaa Mootuumma Federaala ta'e himachuuf bakka bu'uumman naannichaaf waan kennameefi himannichiis kan dhiyaatu Mana Murtii Waaliigala Oromiyaa Dhaadacha Bahaattii waan ta'eef galmee qorannoo fuula 361 qabu gara keessaan kan ergine ta'uu isiniif ibsina

G/G

Hoggara Damee Yakka Ma'atiif

Dar/Ya/Ma/Diinagdeetiif

BAAWC



Nagaa Wajjin

Oliyaa Nagaa Nagii  
D.A.S. 1120/14

Qindeessaa Garee Abbaa Alangaa  
Yakka Malaammaltuummaa  
P.N.A. 200/14  
D.A.S. 1120/14

## Respondent Pseudonyms, Codes, Positions, and Interview Dates

**PP**- Prosecutor, **PJ** -Judges, **Po**-police

Most of the participants have extensive experience and hold in senior positions.

Participants	Participants Position	Date of interviewed
PP 1	Executive Director	May 19, 2023
PP 2	Vice director	May 17, 2023
PP 3	Director	May 23, 2023
PP 4	Director	May 19, 2023
PP 5	Director	May 2, 2023
PP 6	Director	May 23, 2023
PP 7	Senior PP	May 23, 2023
PP 8	senior PP	June 19, 2023
PP 9	Higher PP	May 24, 2023
PP 10	Senior PP	August 10,2023
PP 11	Director	May 30, 2023
PP 12	Senior PP	May 30, 2023
PP 13	Senior PP	May 29, 2023
PP 14	Senior PP	May 29, 2023
PP 15	Director	May 30, 2023
PP 16	Senior PP	June 6, 2023
PP 17	Senior PP	June 7, 2023
PP 18	Director	June 18 2023
PP 19	Vice director	May 31, 2023
PP 20	Senior PP	June 01, 2023
PP 21	Senior PP	June 01, 2023
PP 22	director	June02, 2023
PP 23	Team leader	June 01, 2023
PP 24	Director	June 01 2023
PP 25	Senior PP	June 01,2023
PP 26	Head, Branch office	June 07, 2023

Po 27	Inspector, Investigation team leader	May 03, 2023
PJ 28	Court manager	July 03, 2023
PJ 29	Court coordinator	July 10, 2023
PP 30	Vice of the Minister	July 31, 2023
PP 31	Vice director	July 31, 2023
PP 32	Counsellor of the deputy Ministry	August 11,2023
PP 33	Team Coordinator	July 31, 2023
PP 34	Senior PP	July 31, 2023
PP 35	senior PP	May 23, 2023
PP 36	Senior PP	October 17,2023

