



COLLEGE OF LAW AND GOVERNANCE SCHOOL OF LAW
REGULATING INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA:
THE CASE OF 'IKUB' IN GURAGE SOCIETY

LLM THESIS IN COMMERCIAL LAW

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HAWASSA UNIVERSITY, HAWASSA, ETHIOPIA

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**REGULATING INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA:
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LLM THESIS SUBMITTED TO THE **SCHOOL OF LAW**,
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DECLARATION

I hereby declare that this LLM thesis on “**REGULATING INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA THE CASE OF *IKUB* IN GURAGE SOCIETY**” is my original work and has not been presented for a degree in any other University, and all sources of material used for this thesis have been duly acknowledged.

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CERTIFICATION OF THE FINAL THESIS

I hereby certify that all the corrections and recommendation suggested by the Board of Examiners are incorporated in to the final thesis entitled “REGULATING INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA THE CASE OF *IKUB* IN GURAGE SOCIETY” by HAILU NIMA AYANTA.

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ACRONYMS AND ABRIVATIONS

CC = CIVIL CODE

CPC = CIVIL PROCEDURE CODE

G/G/W/W = GEDEBANO GUTAZER WELENE WEREDA

NASASA = NATIONAL STOCKVELS ASSOCIATIONS OF SOUTH AFRICA

NBE = NATIONAL BANK OF ETHIOPIA

OSCOLA = OXFORD UNIVERSITY STANDARD FOR CITATION OF LEGAL
AUTHORITIES

ROSCA = ROTATING SAVING AND CREDIT ASSOCIATION

ROSCAs = ROTATING SAVING AND CREDIT ASSOCIATIONS

SME = SMALL AND MEDIUM ENTERPRISES

Abstract

This thesis examines the legal and practical challenges of one of the most important Ethiopian informal financial institutions known as ROSCA or Ikub. These institutions play a vital role in solving financial problems among Gurage societies. While playing a key role in addressing financial issues in Gurage, many Ikubs lack auditors and do not conduct regular audits, leading to potential problems with financial transparency and accountability. In addition, there are Ikubs in Gurage that impose penalties each day due to noncompliance, even though the Ikub operates on a weekly basis. These institutions in Gurage often lack written internal bylaws, despite some having their own bylaws, which often conflict with the national laws. Moreover, this thesis found that, in most Ikub of Gurage the chairperson took full lot of Ikub without making any contributions to the entire season, which can result in the chairperson gaining unfair advantages. However, lessons from Thailand and South Africa show that a ROSCA manager does not gain any advantages besides being eligible to receive the central fund within a specified timeframe. Overall, this thesis sheds light on the complexities of informal financial institutions operating in Gurage, Ethiopia, and provides insights into the need to have a separate legal framework to govern informal financial institutions like Ikub in Ethiopia.

Key words: *Informal financial institutions, Rosca, Ikub, legal frameworks, Gurage Societies*

TABLE OF CONTENTS	PAGE
CHAPTER ONE	1
1.1 BACKGROUND OF THE STUDY	1
1.2. STATEMENT OF THE PROBLEM	3
1.3. RESEARCH QUESTION	6
1.4. OBJECTIVES OF THE STUDY	7
1.4.1. General objective.....	7
1.4.2. Specific objectives.....	7
1.5. RESEARCH METHODOLOGY.....	7
1.5.1. Data source and methods of data collection	8
1.5.2. Sample size, sampling technique, participants, and data collection tools	8
1.5.3. Data analysis.....	9
1.6. SIGNIFICANCE OF THE STUDY.....	9
1.7 SCOPE OF THE STUDY	9
1.8 LIMITATION OF THE STUDY	9
1.9. ORGANIZATION OF THE STUDY	10
1.10 ETHICAL ISSUES RELATED TO THIS RESEARCH	10
1.11. CITATION RULE.....	10
CHAPTER TWO: THEORETICAL AND CONCEPTUAL FRAMEWORKS OF INFORMAL FINANCIAL INSTITUTIONS.....	11
2.1 INTRODUCTION.....	11
2.2. GENERAL OVERVIEW OF FINANCIAL INSTITUTIONS	11
2.3 INFORMAL FINANCIAL INSTITUTIONS	12
2.3.1. Rosca or Ikub.....	13
2.3.2 Types of Ikub.....	15
2.4. ROLE OF ROSCA.....	17
2.4.1 Economic purposes.....	17
2.4.2 Rosca as insurance.....	18
2.4.3: Rosca as a social institution.....	18

2.5 OTHER COUNTRIES EXPRIANCE.....	19
2.5.1. Experience in Thailand.....	19
2.5.2 South Africa.....	23
CHAPTER THREE: THE REGULATIONS OF INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA	26
3.1 INTRODUCTION.....	26
3.2 CHALLENGES OF INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA	26
3.3 REGULATION OF INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA	32
3.3.1 Ikub in light of the NBE Proclamation:.....	33
3.3.2 Ikub under the commercial code of Ethiopia:	34
3.3.3 Exploring the connection between Ikub and the Cooperatives Societies’	35
3.3.4 Assessing Ikub in light of Civil Society’s Proclamation:.....	35
3.3.5 Exploring Ikub in light of law of contract under the Civil Code:.....	36
3.3.6 Loan practices in Ikub Versus the Civil Code:.....	37
3.3.7 Ikub in light of the 1960 Civil Procedure Code:	39
3.4 THE PRECEDENTS OF FEDERAL SUPREME COURT CASSAITION DECISIONS INVOLVING IKUB;.....	41
CHAPTER FOUR: THE PRACTICE OF REGULATION OF IKUB IN GURAGE SOCIETIES	44
4.1. HISTORICAL BACKGROUND.....	44
4.3. THE ROLE OF IKUB IN GURAGE SOCIETY	47
4.3.1 Starting New and Better Business:	47
4.3.2 Ikub serve as insurance in Gurage:.....	48
4.3.3 Overcoming financial hardships:.....	48
4.3.4 Wealth Creation:.....	50
4.3.5 Other Social Functions:	51
4.4. THE PRACTICE AND PRACTICAL CHALLENGES OF IKUB IN GURAGE	51
4.4.1 Absence of legal personalities	53
4.4.2 Noncompliance of bylaws and formal laws of the country	54
4.4.3 Absence of specific legal framework that governs <i>Ikub</i>	56
4.4.4 Lack of auditing system in the institution	58
4.5 HOW COURTS ENTERTAIN CASES OF IKUB?	62

4.5.1 Preliminary objections relating to competency to file a suit in a Gurage Zone Court .	65
4.5.2 Cheque-related issues involving <i>Ikub</i> in Gurage Zone Court.....	67
4.5.3 Practical applications of interest and penalties for <i>Ikub</i> in Gurage Zone Court.....	68
4.5.4 Non-compliance of the <i>Ikub</i> guarantee with the requirement of suretyship in CC	71
CHAPTER FIVE: CONCLUSION AND RECOMMENDATION	73
5.1. CONCLUSIONS	73
5.2. RECOMMENDATIONS	75
5.3 SUGGESTIONS FOR FUTURE RESEARCH WORK	78
BIBLIOGRAPHY	79
APPENDIXES	87

CHAPTER ONE

1.1 BACKGROUND OF THE STUDY

Saving is important due to the fact that it may increase human feelings of safety and tranquility while offering them monetary protection from life's distress.¹ To accumulate capital and guarantee a strong economic destiny, saving has a significant effect.² Individuals accumulate their capital through financial systems, and these systems can be classified into formal, semi-formal and informal financial systems.³ Formal financial institutions are those institutions that offer formal finance for individuals or the public, which include banks, insurance, and microfinance institutions.⁴ All those institutions that provide unofficial or informal finance are considered informal financial institutions, which include mutual aid lenders, professional money lenders, part-time money lenders, and rotating savings and credit institutions (ROSCAs).⁵ Ethiopia has both modern (formal) and customary (informal) financial institutions for saving money these days. The informal traditional financial sector consists of unregistered traditional informal institutions, along with '*Ikub*' (Rotating savings and Credit Association) and '*Iddir*' (death benefit associations) in Ethiopia.⁶

'*Ikub*' is an association established by using a small group of people to provide a wide range of rotating resources to improve members' lives and living conditions.⁷ It can be short-term or long-term; usually, it depends on the desires of the group members. Although countries have their own names for '*Ikub*', the name ROSCA (rotating saving credit association) is almost universally known.⁸ ROSCA originated with the people of China in 200 BC, when a small group of the ancient Chinese community experienced the concept as an informal financial way to meet their

¹ Barbara O'Neil, 'The Benefit of Saving Money' (February 2009).

² *ibid.*

³ Yifredew Adamu, 'Financial Sector in Ethiopia' <<http://www.linkedin.com>> accessed 1 August 2024.

⁴ *ibid.*

⁵ Willy Mwangi Muturi, 'Determinants of Participation in Rotating Savings and Credit Associations in Urban Informal Settlements: Evidence from Mathare Slums, Nairobi.' (Jomo Kenyatta 2012).

⁶ 'Financial Sector in Ethiopia' (n 3).

⁷ Ayele Bekerie, 'Iqub and Idir: Socio-Economic Traditions of the Ethiopians' [2003] TADIAS ONLINE.

⁸ Abbi M Kedir and Gamal Ibrahim, 'ROSCAs in Urban Ethiopia: Are the Characteristics of the Institutions More Important than Those of Members?' (2011) 47 *Journal of Development Studies* 998, 1 <<http://www.tandfonline.com/doi/abs/10.1080/00220388.2010.536219>> accessed 4 February 2024.

financial desires.⁹ The Japanese also practiced this kind of activity in the 12th or early 13th centuries.¹⁰ After the end of World War II, the activity of ROSCA grew quickly.¹¹ Nowadays, this informal credit institution (ROSCA) exists around the world, principally in developing countries.¹² Studies show that Rosca has social, cultural, and financial institutions. Rosca as financial organization, provides lending, insurance, and savings. Being a social institution, the Rosca can serve as a venue for social interaction, a source of social help, and a way to boost savings during hard times. As a cultural institution, norms of cultural justice influence the ideal organizational planning of Rosca.¹³ When we came to Ethiopia, ‘*Ikubs*’ originated in the Gurage society, and were an innovation of the women's of Gurage village, who earn money and purchase raw coffee, milk, butter, and the like for the purpose of annual ceremonies and weddings.¹⁴ It was used by the Gurage women to accumulate resources, including money.¹⁵

The people of Ethiopia in general and the Gurage societies in particular largely value traditional informal financial institutions like *Ikub*. These institutions provide a means for individuals to save money and accumulate capital, make stronger social ties, and encourage social perception in the Gurage community. However, there are defects that need to be modified so that the contribution of these institutions is more visible and the rights of the members are guaranteed. For instance, it can be seen from preliminary observation that in some ‘*Ikub*’, the number of members disobeying obligations after receiving their share is increasing, and the introduction of digital ‘*Ikub*’ also necessitates the enactment of laws to safeguard both the institutions and members interests.

⁹ Rashed Jahangir, Mehmet Bulut and Yusuf Dinc, ‘Evolution of ROSCA to Real Property Acquisition as a Form of Interest-Free SBF Model: A PRISMA-Compliant Systematic Review’ (2023) 41 *Property Management* 111, 3 <<https://www.emerald.com/insight/content/doi/10.1108/PM-03-2022-0025/full/html>> accessed 4 February 2024.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² Mary Kay Gugerty, ‘You Can’t Save Alone: Commitment in Rotating Savings and Credit Associations in Kenya’ (2007) 55 *Economic Development and Cultural Change* 251, 1 <<http://www.journals.uchicago.edu/doi/10.1086/508716>> accessed 5 February 2024.

¹³ Astrid Marie Jorde Sandsør, ‘The Rotating Savings and Credit Association - An Economic, Social and Cultural Institution’ (Thesis for the degree Master of Economic Theory and Econometrics Department of Economics, University of Oslo 2010) 2 <core.ac.uk>.

¹⁴ ‘The Culture of Gurage’ <<http://yeguragegoye.com>> accessed 5 September 2023.

¹⁵ *ibid.*

There are many literatures written about the role of those informal financial institutions in Ethiopia; however, as far as my know-how is concerned, there may be little or no literature that deals with the regulation of informal financial institutions in the study area. For instance, Dejene studied the role of informal and semi-formal financial institutions in Ethiopia. In rural Ethiopia, he contends, “*Ikubs*” might serve as a “launching pad” for contemporary financial institutions.¹⁶ They are considered to be among the most important informal financial organizations in Ethiopia.¹⁷

Further, Gebreyesus and friends studied in their articles the courts and traditional financial institutions in Ethiopia and the interplay between official and unofficial laws in rotating saving and credit associations (*Ikub*) in Tigray. They contend that normative practices centered around established financial institutions like *Ikub* and the formal legal system have a vibrant relationship.¹⁸ In addition, they state that there is a mixed reality of both formal laws and unofficial norms in practice within court, and this leads to abuse and legal uncertainty for ‘*Ikub*’ members.

It is obvious that the research has been used as a foundation for further investigation concerning the legal aspects of those informal financial institutions. However, as they had pointed out in the introductory part of their work, the scope of their study area was confined to Addis Ababa, Tigray, Amhara, and Oromiya regional states, whereas my study will cover the status of those informal institutions in the Gurage Zone, which was thought to be the origin of those informal financial institutions. Secondly, nowadays, there are emerging issues in connection with technological innovation, such as digital *Ikub*, that have not been explored in their research, and this study has tried to approach these and other similar new things.

1.2. STATEMENT OF THE PROBLEM

The FDRE Constitution, under Article 31 recognizes that the people of Ethiopia can assemble for whatever reason whenever they want unless they have formed organizations that violate the

¹⁶ Dejene Aredo, *The Informal and Semi-Formal Financial Sectors in Ethiopia: A Study of the Iqqub, Iddir, and Savings and Credit Co-Operatives* (African Economic Research Consortium 1993) 58.

¹⁷ *ibid* 1.

¹⁸ Wim Decock and others, ‘Customary Laws Regulating Traditional Financial Institutions in Tigray Regional State (Ethiopia): A Brief Introduction to Eqqub and Iddir’ <<https://zenodo.org/record/48039>> accessed 4 February 2024.

appropriate laws of the country. Accordingly, the people of Ethiopia have a long-standing tradition of forming an association of '*Ikubs*'. "*Ikub*" contributes hugely to individual development by promoting mutual support and saving culture in the absence of a modern financial system, and their part certainly continues to thrive at this moment.¹⁹ However, the following challenges should be addressed so that the services *Ikub* provides to the community can continue and grow in a better way:

The first challenges regarding informal financial institutions such as *Ikubs* are related to legal personalities. Attributing a legal personality to an institution means that the institution is subject to rights and duties, which means that if the law provides the organization as a legal entity, the organization itself may own the property, and rights and obligations may be made in the name of the institution. Nevertheless, these informal traditional financial institutions are not recognized as legal entities in Ethiopia.²⁰ For these reasons, they may face various difficulties, such as the incapacity to enter into contracts as a legal person, the right to sue and be sued, and the right to own property in their name, and so on. Accordingly, in my investigation, *Ikub* institutions that are found in Gurage Zone cannot enter into contracts as a legal entity, and they are unable to sue or be sued. Additionally, it was determined that they do not own property in their own name.

The second challenge associated with those informal financial institutions is related to *Ikub*'s noncompliance of their internal bylaws with the formal laws of the country. The Civil Code of the Empire of Ethiopia, under Art 3347, recognized customary norms as supplemental laws as long as they did not contradict the nation's legal system. For instance, Article 1725 of the Civil Code requires contracts of surety ship to be in writing, yet there are *Ikubs* in Gurage that make such contracts of surety ship verbally. In addition, Article 1920 and the following stipulate that a contract of guarantee must be clear and must explicitly state the amount of money pledged for performance, a requirement that is not always met in the *Ikub* suretyship contract in Gurage. Further, the legal interest stipulated under Article 1752 and 2479 of the Civil Code may not be followed by *Ikub* institutions in Gurage. These issues represent significant discrepancies between

¹⁹ *ibid.*

²⁰ Woubzena Tadesse Jifar, 'The Effects of New Housing Developments on Idir, a Self-Help Association, in Addis Ababa, Ethiopia' (thesis submitted in partial satisfaction of the requirements for the degree Master of Arts in African Studies, University of California 2013) <<https://escholarship.org>>.

the internal practices of *Ikub* and institutions and the formal legal framework of the country, potentially leading to conflicts and challenges in enforcing contracts and agreements made by these institutions.

The third critical challenge in Ethiopia is the absence of a specific legal framework that governs their activities. Although contract law can be used to resolve cases involving informal financial institutions, its adequacy to address all the issues of those institutions is debatable. For instance, contract law does not provide clarity issues such as membership criteria of an *Ikub*, the financial contributions required from members, the precise definition of *Ikub*, and the minimum and maximum numbers of participants allowed in a single *Ikub*, as well as questions regarding legal personalities and other related matters. Further absence of specific law governing informal financial institutions may cause unclear interpretation of *Ikub* in court litigation. The federal Supreme Court cassation division issued a binding decision regarding checks, stating that the act of cashing a cheque without sufficient funds can be established as a crime by confirming that the cheque was presented to the payment bank when there were insufficient funds to cover it.²¹ This means that whoever issues a cheque without sufficient funds may be held liable if it is proven that the cheque did not have sufficient funds at the time of presentation for payments, even if it was issued for the purpose of suretyship. However, this decision of Federal Supreme Court was revised, which states that, check writer who is charged with drawing a check without sufficient money to deposit can be acquitted if they issue the check for the purpose of suretyship or guarantee.²² The decision of Gurage Zone High Court was impacted by this type of discrepancy in the federal Supreme Court cassation division ruling. Accordingly, in the case Kaleab Tariku and Tariku Dulla against Gurage Zone public prosecutor, involved a cheque that was issued without adequate funds. The defendants had issued a cheque intended for suretyship at the Ematinde *Ikub* located in BZ hotel of Wolkite City. They were charged with nine offenses for violating Article 693(1) of the criminal code, and were subsequently found guilty.²³ Therefore,

²¹ Case involving Adugna Anbelo Vs Federal Attorney [2003] The Federal Supreme Court Cassation file number, 67947, volume 12 246.

²² A case between Federal Attorney Vs Yeshiemebet Tilahun, involving suretyship contracts [2013] The federal Supreme Court Cassation Cassation No. 161448, Volume 25 ; 450.

²³ Case between defendants Kaleab Tariku and Tariku Dulla (Chair person of Ematinde Ikub) Versus Gurage zone public prosecutor involving a cheque without sufficient fund [2014] Gurage zone high court file number 14304.

this shows an inconsistency in the interpretation of cheque related matters by the Supreme Court cassation division. Thus, the absence of a comprehensive legal framework for regulating these institutions may result in ambiguity and doubts.

The last critical challenge may relate to the absence of an auditing system. The absence of an auditing system in *Ikub* institutions in Gurage poses significant challenges since it leads to a lack of financial transparency and accountability. There are *Ikubs* in Wolkite that collect an additional 20 to 200 birr from members according to their participation in *Ikub* days, resulting in a significant amount of money being held by the chairman of the institutions.²⁴ This additional money is handed to the collector, but due to the lack of an auditing system within the *Ikub* institutions, the actual amount of this money is unknown at the end of the cycle.²⁵ Further, income generated from penalties, income from the sale of *Ikub*, income from loan interest, and income from any other sources is not audited, creating the potential for substantial sums of money to be managed without clear oversight. This lack of financial transparency presents a major challenge for *Ikub* institutions in Gurage and hinders their ability to ensure financial transparency and accountability. Additionally, this study aimed to examine the role and challenges of *Ikub* in Gurage Zone as well as the practices followed by the courts in the Gurage zone in relation to these matters.

1.3. RESEARCH QUESTIONS

Based on the aforementioned problems, the research question will be:

What legal framework did the Ethiopian courts use to make their decision in matters involving informal financial institutions when there were no particular legal frameworks in place?

What are the legal and practical challenges of *Ikub* in Gurage society?

What kind of experience and lesson can the Ethiopian legal system learn from other countries on the issues of informal financial institutions?

What sort of resolution does this study propose for the issues surrounding *Ikub* in Ethiopia?

²⁴ Interview with Mesfin Tibebu (17 June 2024).

²⁵ *ibid.*

1.4. OBJECTIVES OF THE STUDY

1.4.1. General objective

The main objective of this study is to examine and analyze the regulatory frameworks of informal financial institutions called '*Ikub*' in Ethiopia.

1.4.2. Specific objectives

1. To examine and analyze the legal frameworks used by Ethiopian courts to decide the issues when cases involving informal financial institutions are presented before them.
2. To identify the legal and practical challenges of '*Ikub*' in Gurage society.
3. To examine the experiences of other countries and to learn from the Ethiopian legal system.
4. To propose resolutions for legal reform to address the challenges of *Ikub* in Ethiopia.

1.5. RESEARCH METHODOLOGY

The researcher employed qualitative methodology in order to address the research questions and achieve the study's goals. It's widely acknowledged that using a qualitative research approach is best if the researcher wants to explore a more narrative understanding of the topic under study.²⁶ The objective of qualitative research is to provide a comprehensive understanding of a phenomenon,²⁷ and this research aims to examine the regulation of "*Ikub*" in depth. On the other hand, this study employed qualitative methodology because the data collected is not as complicated and statistical, or it is very simple numerical data that can be analyzed by a qualitative approach.

From a legal perspective, the researcher uses both doctrinal and non-doctrinal legal research approaches. Non-doctrinal methodology is employed because the research involves empirical data as opposed to relying merely on legal analysis. It used to assess the status of '*Ikub*' in the study area. Besides, the researcher used a doctrinal legal research approach to examine and analyze different laws and regulations on the subject matter.

²⁶ Jo Moriarty, 'Qualitative Methods Overview' [2011] The School for Social Care Research 2.

²⁷ *ibid.*

1.5.1. Data source and methods of data collection

The researcher used data gathered from primary and secondary sources in this study. Primary sources include different legislation, interviews, personal observations, and by-laws. Secondary sources include books or literature, meeting minutes, annual reports, journal articles, published and unpublished theses and dissertations, and internet sources.

1.5.2. Sample size, sampling technique, participants, and data collection tools

This study conducted in the Gurage Zone where there are 9 districts and 5 city administrations. The researcher selected 14 '*Ikub*'s from Wolkite City as sample size to observe the activities of those selected institutions, in Wolkite City. This is due to two main reasons: firstly, Wolkite is the capital city of Gurage people, so easily we can find diversity of *Ikub* in Wolkite; secondly, and more importantly, the status and characteristics of those informal financial institutions that are found in the Gurage Zone are more or less similar. Out of 14 *Ikubs*, 9 were founded by the Wolkite City business community, these are: Sebteseb, Nitrahebne, Beseb Yasena, Joka, Bereka, Nimaje, Fikir, Enideg, and Sarendem *Ikub*. While the remaining 5 were initiated by civil servants from the Gurage Zone offices, which include Gurage Zone Justice bureau *Ikub*, Culture and Tourism bureau *Ikub*, Revenue bureau *Ikub*, Finance bureau *Ikub*, and Agriculture and natural resource bureau *Ikub*. This helps to gather rich and detailed information regarding the status and nature of those institutions in Gurage societies and to analyze relevant documents such as meeting minutes, annual reports, and legal documents related to these *Ikub* to gather more accurate information about their role. The main reason for the small sample size is that the researcher believes that there is no significant nature or operational difference between those informal institutions (*Ikub*) that are found in the Gurage Zone. Thus, the sample size determination is made by taking into account the nature and status of *Ikub* in Gurage.

The researcher conduct an interview with two government officials from the Gurage Zone Administration and Culture and Tourism Department, two Yejoka elders (who are members of customary law makers), two from national bank finance and legal experts, five attorneys or lawyers, and four judges who have been purposively selected and interviewed based on their experience and knowledge on the subject matter of the study. Interviewees had been selected on the basis of purposive and convenient sampling techniques of a non-probability nature.

Purposive sampling was applied to select persons who were expected to have full knowledge or information on traditional financial institutions such as '*Ikubs*' in Gurage society. The researcher conducted an interview with 14 participants from each *Ikub*'s. Thus convenient sampling has been applied to select and interview members of selected '*Ikub*'. Data had been collected from participants in the study through a semi-structured interview. A semi-structured interview is selected for its quality of enabling the researcher formal communications with possible flexibilities in order to investigate the views and opinions of the interviewees. This helps the researcher address evolving questions during the course of the interview.

1.5.3. Data analysis

Data collected through interviews was accompanied by documentary analysis, legislative analysis, and literature. In qualitative data collection the expected problem is biasness, and the researcher used a triangulation system during the interviews to control such failure. Data analysis and interpretation be made qualitatively by using descriptive and narrative approaches.

1.6. SIGNIFICANCE OF THE STUDY

The designed study has various significances; by identifying existing legal and practical challenges, it offer valuable insights for courts in Gurage for resolving disputes involving *Ikubs*. It may also serve as a relevant reference and piece of literature for further study by any interested person in the issues related to the legal status of informal financial institutions in Ethiopia. In the end, it will benefit the members of *Ikub* by providing them with proper service.

1.7 SCOPE OF THE STUDY

This research conducted with courts that are found in Gurage Zone Administration, and hence it was geographically impound within the administrative boundary of the Gurage Zone. However, the primary emphasis of this study's thematic scope was Wolkite's business community and civil servant *Ikub*.

1.8 LIMITATION OF THE STUDY

There is no special law that governs *Ikub* in Ethiopia, and there is also no authorized body that registers it. Therefore, it was challenging to find the legal meaning and scope of '*Ikub*', as well as to get accurate information about the numbers and place of meetings of *Ikub* institutions in the

study area. Further, literatures on the regulation of ‘*Ikub*’ in Ethiopia are meager, which limits the study.

1.9. ORGANIZATION OF THE STUDY

This study attempts to assess regulating informal financial institutions like ‘*Ikub*’ in Ethiopia. The research work is categorized into five chapters. Chapter one introduces the background of the study, the statement of the problem, the objectives and the scope of study, the research methods, the significance of the study, and the limitation of the study. Chapter two briefly covers the conceptual and theoretical framework of informal financial institutions. It explores the concept, definitional feature, historical background, and role of *Ikub* in Ethiopia. In addition, this chapter also addressed the experiences of Thailand and South Africa involving *Ikub* since it helped to strengthen the analysis under chapter four of this study.

Chapter three of the study assess the legal framework which may govern informal financial institutions in Ethiopia. Particularly, the laws that may govern informal financial institutions like ‘*Ikub*’ were analyzed critically. Chapter four generally discussed about the historical background, the role, the legal and practical challenges of *Ikub* in Gurage societies has been addressed critically. Further, it discussed how courts in Gurage entertain cases involving *Ikub*. Finally in the last chapter, conclusions, recommendations and suggestion for future research work has been forwarded under chapter five.

1.10 ETHICAL ISSUES RELATED TO THIS RESEARCH

This research is intended just for academic purpose; it doesn’t go extended to the rights and interests of any institution, group, or individual. The researcher also keeps the identities of individuals who have participated and provide the necessary information for this research.

1.11. CITATION RULE

To the knowledge of the researcher, all the prior works be cited. To this end, the researcher used the footnote citation rules of the Oxford University Standard for Citation of Legal Authorities (OSCOLA).

CHAPTER TWO: THEORETICAL AND CONCEPTUAL FRAMEWORKS OF INFORMAL FINANCIAL INSTITUTIONS

2.1 INTRODUCTION

Saving is important because it increases a person's feelings of safety and tranquility while offering them monetary protection from life's distress.²⁸ To accumulate capital and guarantee a strong economic destiny, saving has a significant effect.²⁹ It is generally believed that it is right to save the money earned today in order to have a better life tomorrow. However, if it is not possible to use the hard-earned money for today's needs and save the rest for the future, it is not wrong to assume that the future will be difficult. This chapter briefly covers the conceptual and theoretical framework of informal financial institutions. It explores the concept, historical background, and role of *Ikub* in Ethiopia as well as in Gurage societies.

2.2. GENERAL OVERVIEW OF FINANCIAL INSTITUTIONS

Individuals accumulate their capital through financial systems or institutions.³⁰ Financial institutions are institutions that conduct financial transactions such as investments, loans, and deposits. It plays a crucial role in the economy by channeling funds from savers to debtors, facilitating or assisting in the effective distribution of resources, and promoting the development and expansion of the economy. These systems can be grouped as formal, semi-formal and informal financial systems.

Formal financial institutions include banks, insurance firms, microfinance organizations among other institutions that provide formal finance to individuals and public at large. A firm becomes formal when it registers as a company and pays registration fee. The registration process includes various steps, such as inspection, obtaining health and safety certificates, and registering with the appropriate organ. The number of procedures and the level of effectiveness vary from country to country. Formal financial institutions in Ethiopia are not sufficient in terms of accessibility and fairness; most of them are based in the city center and have neglected the wider rural community. According to researches conducted in Ethiopia the role of banks or other formal financial

²⁸ 'The Benefit of Saving Money' (n 1).

²⁹ *ibid.*

³⁰ 'Financial Sector in Ethiopia' (n 3).

institutions in Ethiopia is inadequate in financing businesses, especially SMEs.³¹ Access to finance and economic growth however has shown that an efficient financial system that can provide essential services can significantly contribute to the economic development of a country; that is, greater economic development increases growth, reduces economic instability, creates job opportunities, and improves income distribution.³²

2.3 INFORMAL FINANCIAL INSTITUTIONS

Formal financial institutions have a largely urban focus, with banks preferring to put up their branches in cities and towns as well as concentrate their lending and deposit-taking activities there. For instance, because of inadequate infrastructure and poor linkages, financial institutions may have high costs if they want to start their operations in remote rural areas (World Bank 2004).³³ Given that bureaucratic loan distribution procedures are very complex, people living in the countryside or slums find it difficult to access bank.³⁴ Both formal finance and informal financial activities can be found in rural and urban areas; however, the informal sector is more prominent in rural area than formal finance is (World Bank 2004). It consists of mutual aid lenders, professional moneylenders, part-time moneylenders' rotating savings association schemes (ROSACAs), etc. These are flexible informal systems that do not operate under any regulatory body constituted by the government. The members themselves initiate this process based on reciprocity (Nqwababa & Visser 2000).³⁵ Although these informal financial organizations are widespread throughout Ethiopia's countryside, many rural Ethiopians lack access to mainstream financial institutions such as banks, MFIs, or insurance companies.

After weighing the costs and benefits, modern and transitional institutions decide between formality and informality; when formal costs exceed benefits, business may choose to operate

³¹ Tekeste Berhanu Lakew and Hossein Azadi, 'Financial Inclusion in Ethiopia: Is It on the Right Track?' (2020) 8 International Journal of Financial Studies 28, 2 <<https://www.mdpi.com/2227-7072/8/2/28>> accessed 7 February 2024.

³² Firewoini Gebreyesus, 'Access to Finance and Its Challenges for Private Sector in Ethiopia' (Indira Gandhi National Open University 2016) 24,25.

³³ Germidis Dimitri, 'INTERLINKING THE FORMAL AND INFORMAL FINANCIAL SECTORS IN DEVELOPING COUNTRIES' (1990) 14 Giordano Dell-Amore Foundation 5, 13 <<https://www.jstor.org/stable/25830210>>.

³⁴ *ibid.*

³⁵ 'The Rotating Savings and Credit Association - An Economic, Social and Cultural Institution' (n 13).

informally and base their decisions about participations and social institutions on those benefits.³⁶ Firms in developing countries may prefer informality over formalization due to similar obstacles faced by formal firms, such as high costs, limited access to infrastructure, and corruption³⁷

2.3.1. Rosca or Ikub

In the absence of formal financial service they act as self-insurance by increasing lump sums and requiring deposits.³⁸ A common way to save money in low-income nations is perhaps through Roscas. By providing unbanked people with access to digital financial services, digitizing Roscas may enhance financial inclusion. ROSCAs are closed membership organizations in which each member contributes a certain amount on a regular basis (daily, weekly, or monthly) to a common fund that is distributed to each member in turn (either at random or by bidding).³⁹ There are studies that indicate Rosca was started by the Chinese in 200 BC,⁴⁰ while other studies believe the Japanese did it in the 12th or early 13th century.⁴¹ Following World War II, ROSCA activity took off and is today widespread, mostly in developing nations.⁴² Because of the diversity of languages on our planet, ROSCA goes by different names in different nations. In Egypt, for example, it is known as Gamias; in Ghana, Susu; Hagbad; in Japan, Kou; in China, Pai in Thailand; Stockvels in South Africa, and so on.⁴³ In comparison to other regions of the World, Africa is where Roscas are most productive and have exceptionally high membership rates.⁴⁴

³⁶ Maria Sagrario Floro and Debraj Ray, 'Vertical Links Between Formal and Informal Financial Institutions' (1997) 1 *Review of Development Economics* 34, 11 <<https://onlinelibrary.wiley.com/doi/10.1111/1467-9361.00004>> accessed 5 February 2024.

³⁷ Akerele, Ezekiel Olaoluwa and others, 'DETERMINANTS OF PARTICIPATION IN ROTATING SAVINGS AND CREDIT ASSOCIATIONS (ROSCAs) IN OGUN STATE, NIGERIA' (2021) 11 *International Journal of Management Research and Emerging Sciences* 9 <<https://ijmres.pk/index.php/IJMRES/article/view/141>> accessed 5 February 2024.

³⁸ Shochrul Rohmatul Ajija and Asif Iqbal Siddiqui, 'Impact of Joining Rotating Savings and Credit Association (Rosca) on Household Assets in Indonesia' (2021) 55 *The Journal of Developing Areas* 205 <<https://muse.jhu.edu/article/791600>> accessed 5 February 2024.

³⁹ Aredo (n 16) 6.

⁴⁰ Jahangir, Bulut and Dinc (n 9) 6.

⁴¹ *ibid.*

⁴² Jahangir, Bulut and Dinc (n 9).

⁴³ 'Applied and Social Science Periodicals, Roscas, Encyclopedia.Com', , *Bibliography of Rosca* (encyclopedia.com).

⁴⁴ *ibid.*

Rosca serve as a tool for savings as well as credit. Every member of Rosca will lend to and borrow from the group due to its rotating process. A ROSCA member who withdraws money from the group at an early stage may be considered a borrower because they take advantage of an early payout by giving up a future payment stream.⁴⁵ On the other hand, a ROSCA member who withdraws funds from the group later can be considered a lender or creditor.⁴⁶ In the end, ROSCA is a pure savings instrument for the beneficiary.⁴⁷ Due to high interest rates and collateral requirements, many Ethiopians do not qualify for loans from banks.⁴⁸ Instead, Ethiopia has a long history of local, community-based revolving savings and credit groups as well as insurance societies, despite the country's underdeveloped institutional financial sector. The people of Ethiopia form their own informal financial groups called *Ikubs* to pool their financial resources together.

“*Ikub*” was an association that had been founded by a small team of individuals to offer a variety of rotational resources to enhance the quality of life and living circumstances of its members.⁴⁹ Tirfe described *Ikub* as a savings system in which individuals organize into groups and contribute a set amount of money on a regular basis.⁵⁰ This money is then accumulated in a common pool, and, over time, each group member receives one sizable sum, that is, the total amount paid by all members at one time.⁵¹ Small groups of people in Ethiopia established ROSCAs by consistently contributing to a fund, with each member getting a certain amount from the fund as a whole. *Ikub*'s establish social interactions that already exist, such as those with co-workers, neighbors, and members of the clan or tribe, can be used to develop *Ikubs*.⁵² Members

⁴⁵ TEMESGEN TESHOME, ‘ROLE AND POTENTIAL OF “IQQUB” IN ETHIOPIA’ (THE DEGREE OF MASTER OF SCIENCE IN ACCOUNTING AND FINANCE, ADDIS ABABA UNIVERSITY 2008) 49.

⁴⁶ *ibid.*

⁴⁷ Wail Mohamed Aaminou, Towards a Better Financial Inclusion in Maghreb Countries: Insights on the Role of Islamic Microfinance and Fintech (Islamic Economics (IKAM)) 19 <<http://rcid.org/0000-0001-5322-6300>>.

⁴⁸ Decock and others (n 18).

⁴⁹ Ayele Bekerie, PhD, ‘Iqub and Idir: Socio-Economic Traditions of the Ethiopians’ (Africana Studies and Research Center, Cornell University) (Addis Ababa).

⁵⁰ Tirfe Mammo, The Paradox of Africa’s Poverty: The Role of Indigenous Knowledge, Traditional Practices and Local Institutions - the Case of Ethiopia (1. print, Red Sea Press 1999).

⁵¹ *ibid.*

⁵² Yonas Bessir, ‘Salient Features behind Informal Financial Institutions: The Case of Edget Behibret Equb and Ras ZeSilasse Former Students Iddir By’ (Master thesis on Business Administration, St Mary’s University 2017) 8.

of *Ikub*'s contribute a fixed sum of money daily, weekly, or monthly, which is distributed among them in rotation outside of the formal sectors.

Regarding the historical origin of *Ikub*, although there are still controversial things about where and how it was founded, most studies suggest that it originated from the Gurage community. According to Victor Gerdes, the *Ikub* is of modern origin and most likely started with the Gurage, who have long had the practice of collecting money from villagers in order to aid a person in times of need, and this practice led to the development of the *Ikub*.⁵³ Similarly, the Gurage Goye Association believes that '*Ikub*'s' were invented by the women of Gurage village, who used their earnings to buy raw coffee, milk, and butter for weddings and other special occasions.⁵⁴ Most agree that *Ikub* predates the modern banking system and developed from prior customary institutions.⁵⁵ Individuals can participate in *Ikub* depending on their income, from the poor individual, who is managed by their daily income, to the rich, from the shoe shine boy to the government officials.⁵⁶

2.3.2 Types of *Ikub*

Previous researchers have classified *Ikub* into various categories based on factors such as the amount of *Ikub* contributions, distinguishing between large and small *Ikubs*, as well as the type of participants, merchants and service workers. However, for the purpose of this research, we would categorize *Ikub* into two main types: traditional and modern *Ikub*.

Traditional Ikub: It can be established based on the existing social relationship, which is a homogeneous group of colleagues who work in the same office, neighbors, and individuals who are related to the clan or tribe.⁵⁷ Depending on their income, individuals can participate in *Ikub*, from the poor individual who is managed by their daily income to the rich, from the shoe shine

⁵³ Victor Gerdes, 'Precursors of Modern Social Security in Indigenous African Institutions' (1975) 13 *The Journal of Modern African Studies* 209
<https://www.cambridge.org/core/product/identifier/S0022278X00053040/type/journal_article> accessed 9 February 2024.

⁵⁴ 'The Culture of Gurage' (n 14).

⁵⁵ 'ROLE AND POTENTIAL OF "IQUB" IN ETHIOPIA' (n 45) 1.

⁵⁶ Aredo (n 16).

⁵⁷ *ibid* 11.

boy to government officials.⁵⁸ A traditional form of Roscas usually depends on human attributes, like trust, social norms, shared identity, and interpersonal relationships, to facilitate effective lending and borrowing transactions.⁵⁹ For borrowers who don't meet typical financial requirements and lenders who don't know about or have access to traditional investment vehicles, they are an excellent alternative. *Ikub* is mostly used in cities, but there is also *Ikub* movement in rural areas. Even the poor rural community has savings potential, and *Ikub* can be used as a launching pad for rural community savings.⁶⁰

Modern or digital *Ikub*: Modern or online ROSCAs function through the use of mobile and internet technology, enabling participants to pay and interact without the need for in-person meetings. Compared to traditional ROSCAs, modern ROSCAs with internet and mobile technology may forget about social behavior and have difficulties at the basic level. For digital ROSCA, smartphones are recommended, especially for organizers. The ROSCA application design fulfills low literacy requirements. Group creation, record keeping, reminders, pot collection, and distribution are facilitated by digitization. The application supports the minimum standard for managing ROSCA groups and will assist organizers better.

Participants in the monitoring procedure don't know each other or share social networks; the entire process is done online. Because of this, it is challenging for ROSCA management to get information other than through "line" chat.⁶¹ Since online ROSCAs don't rely on the legal system to have participants pay their debts, they are typically riskier than traditional ROSCAs.⁶² Online ROSCA is considered to have high centralization, so it relies mostly on the ability to monitor and enforce. It is difficult to enforce other participants' participation in ROSCA online since they do not have social collateral such as shared acquaintances or pre-existing social relationships.⁶³

⁵⁸ *ibid* 6.

⁵⁹ C Benda, 'Community Rotating Savings and Credit Associations as an Agent of Well-Being: A Case Study from Northern Rwanda' (2013) 48 *Community Development Journal* 232, 5 <<https://academic.oup.com/cdj/article-lookup/doi/10.1093/cdj/bss039>> accessed 7 February 2024.

⁶⁰ Aredo (n 16) abstract.

⁶¹ Poomsiri Dumrongvute, 'Online Fundraising Through the Lenses of Law, Economics, and Sociology: Examples from American P2P Lending and Thai Rotating Savings and Credit Association' (dissertation degree of Doctor of the Science of Law, University of California, Berkeley 2019).

⁶² *ibid*.

⁶³ *ibid*.

2.4. ROLE OF ROSCA

Rotation savings and credit associations (ROSCAs) are very important to the Ethiopian economy as they cater to poverty reduction, education promotion, health improvement, and empowerment. They function as social, cultural, and economic institutions that support the basic needs of low-income households and enhance welfare.⁶⁴ In addition to safeguarding members against future wage losses, ROSCAs encourage the empowerment of women. According to studies, Rosca has financial, social, and cultural institutions. As a financial institution, Rosca can offer savings, credit, and insurance. As a social institution, the Rosca can function as a social meeting place, a provider of social assistance, and an opportunity to increase savings when saving is difficult. As a cultural institution, norms of cultural justice influence the optimal organizational planning of Rosca.⁶⁵

2.4.1 Economic purposes

Rosca functions as a financial intermediary to help people who need dependable, accessible, and adaptable ways of holding and using money for saving and consumption.⁶⁶ It also provides opportunities to borrow at reasonable rates and insure against incidents. In Rosca, members take turns getting the money, with the first member owing the others until everyone has received their share. This system allows members to save while waiting for their turn to take the bank. As a result, the Rosca functions as both a credit and savings institution.⁶⁷ In addition, a certain level of insurance gives the ability to change the rotation order if a member needs help. Through the offer, Rosca members benefit from business opportunities that would not be possible with a fixed contribution.⁶⁸ The most obvious function of these associations is that they contribute to small-scale capital accumulation or, more simply, to the creation of savings.

⁶⁴ ‘The Rotating Savings and Credit Association - An Economic, Social and Cultural Institution’ (n 13) 2.

⁶⁵ ‘The Rotating Savings and Credit Association - An Economic, Social and Cultural Institution’ (n 13).

⁶⁶ C Benda, ‘Community Rotating Savings and Credit Associations as an Agent of Well-Being: A Case Study from Northern Rwanda’ (2013) 48 *Community Development Journal* 232 <<https://academic.oup.com/cdj/article-lookup/doi/10.1093/cdj/bss039>> accessed 4 February 2024.

⁶⁷ ‘The Rotating Savings and Credit Association - An Economic, Social and Cultural Institution’ (n 13).

⁶⁸ *ibid* 9.

2.4.2 Rosca as insurance

One advantage of joining Rosca is the availability of insurance. In the event of a member requiring immediate funds, such as for medical or funeral expenses, they can receive their allocated pot earlier through the agreement of other members to exchange or change orders.⁶⁹ However, there may be conflicts of interest about the order in which members receive the pooled resources, as some members desiring immediate funds might come into opposition with other members who prefer to have future turns.⁷⁰ In such cases, a member whose regular income suddenly drops due to an income shock has to resort to direct persuasion through his social capital within the Rosca in order to convince another member of a reshuffling, reducing his or her order immediately later on. This is based on reciprocity, since that person whose order is changed may reciprocate by changing with her or his own next recruitment opportunity (cf. Roscoe 1974). But also when transaction costs are present concerning decisions about investments and debts, which depend on communal pooling mechanisms, intra-membership distribution preferences, besides membership composition criteria, intensify potential conflicts (cf. Baland/Platteau 2000:35). However, for all these possible preference conflicts regarding intra-membership decision quasi-rents, there is no general rule.⁷¹ In rural economies, such as in low-income countries, insurance mechanisms and risk spreading become very vital in fighting scarcity and insecurity. Within the context of these challenges, collective networks that draw on mutual assistance—like ROSCA—can bring a balanced response.

2.4.3: Rosca as a social institution

As a social institution, the Rosca can function as a social meeting place and provider of social assistance. In addition, Rosca can address social problems. With Rosca, a person who finds it difficult to save alone can tie their hands by joining Rosca. Rosca can also help a person who finds it difficult to save at home in cases of high demand to ensure a higher savings rate than

⁶⁹ Mastewal Yami, Christian Vogl and Michael Hauser, ‘Informal Institutions as Mechanisms to Address Challenges in Communal Grazing Land Management in Tigray, Ethiopia’ (2011) 18 *International Journal of Sustainable Development & World Ecology* 78 <<https://www.tandfonline.com/doi/full/10.1080/13504509.2010.530124>> accessed 5 February 2024.

⁷⁰ ‘Salient Features behind Informal Financial Institutions: The Case of Edget Behibret Equb and Ras ZeSilasse Former Students Iddir By’ (n 52).

⁷¹ ‘The Rotating Savings and Credit Association - An Economic, Social and Cultural Institution’ (n 13) 10.

would otherwise be possible by joining Rosca. Social factors, including status, trust, and social harmony, have an impact on Roscas participation. Second, Bisrat distinguished two financial advantages for participants in Rosca's or *Ikub*: interest savings and reduced transaction costs.⁷² ROSCAs or *Ikub* also teach financial discipline and help participants build up savings, especially among those who cannot afford to save or are unable to save through formal institutions.⁷³ The social security systems of developing countries are relatively undeveloped; however, mutual aid is a common form of support for individuals in developing countries. Providing assistance for funeral expenses and helping family, relatives, villagers, and colleagues has been a long-standing tradition in Ethiopia. Further, when deciding on Rosca's organizational structure, Rosca may be influenced by norms of cultural justice.⁷⁴

2.5 OTHER COUNTRIES EXPRIANCE

To this end, various countries have enacted distinct laws concerning ROSCAs in a bid to protect consumers and maximize the efficiency of services accorded to members of the public by financial institutions. Two countries have therefore been chosen, namely Thailand and South Africa. As with all three countries, the contributions of informal financial institutions have some sort of similarity. Besides that, ROSCAs also act as mechanisms through which informal financial services are provided to people who would have otherwise been excluded from the formal banking system. The specifics of the cases of Thailand and South Africa will be presented later for further learning by Ethiopia.

2.5.1. Experience in Thailand

In Thailand, the operation of Rotating Saving and Credit Association (ROSCAs) is governed by the Len-Share Act B.E. 2534.⁷⁵ This legislation aims to legalize informal credit systems, ensuring the protection of citizens against fraudulent activities while maintaining the integrity of these

⁷² Agegnehu Bisrat, Karantininis Kostas and Li Feng, 'Are There Financial Benefits to Join RoSCAs? Empirical Evidence from Equb in Ethiopia' (2012) 1 *Procedia Economics and Finance* 229 <<https://linkinghub.elsevier.com/retrieve/pii/S2212567112000275>> accessed 4 February 2024.

⁷³ Ajija and Siddiqui (n 38) 5.

⁷⁴ Getachew Mequanent, 'The Role of Informal Organizations in Resettlement Adjustment Process: A Case Study of Iqubs, Idirs, and Mahabers in the Ethiopian Community in Toronto' [1996] *Refuge: Canada's Journal on Refugees* 30, 1 <<https://refuge.journals.yorku.ca/index.php/refuge/article/view/21195>> accessed 5 February 2024.

⁷⁵ ROTATING SAVINGS AND CREDIT ACT B.E. 2534 (1991) (SHARE ACT) OF THAILAND 2534.

community-based financial structures. According to Section 4 of the Act, a ROSCA is an activity in which three or more people agree to participate and donate money or assets to create funds for a predetermined number of rounds. This establishes a minimum number of members in any Roscas in Thailand are three, and explicitly excluding judicial persons from forming or managing ROSCAs. Which means legal entities cannot establish a ROSCA or act as ROSCA finders managers.⁷⁶

Objectives of the Len-Share Act: The primary goal of enacting the Len-Share Act (B.E. 2534) is to protect and safeguard citizens from public frauds associated with informal lending practices. By regulating ROSCAs, the act seeks to prevent exploitation and ensure that these institutions operate within a framework that prioritizes member welfare. Key provisions include:

1/ Prohibition on commercial operations: The act clearly prohibits ROSCAs from acting as businesses and prohibits their operations.⁷⁷ Which helps deter the commercialization of these community-based financial systems. Additionally, Section 8 forbids a juristic person to make promises to pay money or any kind of asset on behalf of the head or organizer of Rosca on behalf of its members. Additionally, business names that incorporate the word "share" or anything closely related to it are forbidden by Section 10 of the act.

2/ Restrictions on membership and management: Section 6 of the act prohibits a ROSCA necessarily having some of the following characteristics: one with more than 30 participants, and preventing any single individual from managing more than three ROSCA groups simultaneously.

3/ Prohibition of public lobbying: All Rosca entities are prohibited from lobbying members of the public to join or participate in a ROSCA under Section 9 of the ROSCA Operation Act. Thus, maintaining their nature as close-knit community groups. On the other hand, managers or members of the ROSCA are free to privately persuade friends, family, or acquaintances to join the organization. The prime objective of this law is to ensure that the commercialization of

⁷⁶ *ibid.*

⁷⁷ *ibid* SECTION 10.

ROSCAs and disruptive practices are stopped. With this objective in mind, this law prohibits any charging of fees from the side of the ROSCA managers.⁷⁸

4/ Regulatory oversight: Section 30 of the act states that it is the Ministry of Finance, under whose guidance, the rules governing the ROSCA Operation Act will be enacted and implemented. Policies can be better formulated, and all aspects of banking, including lending and fundraising, can be better handled by the Bank of Thailand.⁷⁹ Since the Bank of Thailand provides oversight over its covered persons, the Ministry of Finance exercises no active control over ROSCAs.⁸⁰ The ROSCA Operation Act only comes into effect when the Office of Public Attorney files cases through the proper legal channels.⁸¹ From this perspective, most of the informal banking operations, including ROSCAs like Ethiopia, remain outside the regulations of the Bank of Thailand through financial regulations and policies.

5/ Limitations on fund value: There are restrictions on the total fund value that a Rosca can manage, which is determined by the ministry of finance.⁸² Traditional ROSCAs in Thailand are prohibited from functioning at high levels other than relationship-based ones by compliance with the ROSCA Operation Act. Perhaps this provisions aims to mitigate risks associated with larger financial pools that could lead to greater vulnerabilities. Since traditional ROSCAs are based on relationships, those conducted locally among friends and family cannot be up to assemble for business purposes. Additionally, since most of the traditional ROSCAs are limited to their social circles or local areas, most of them have in the past embodied the Bank of Thailand's legislation and the ROSCA Operation Act. Traditional ROSCAs are not subject to the regulatory measures of the Bank of Thailand.⁸³ Furthermore, the Bank of Thailand has never imposed rules or regulations on traditional ROSCAs.

⁷⁸ *ibid* SECTION 6(4).

⁷⁹ 'Online Fundraising Through the Lenses of Law, Economics, and Sociology: Examples from American P2P Lending and Thai Rotating Savings and Credit Association' (n 61) 94.

⁸⁰ *ibid*.

⁸¹ *ibid*.

⁸² SECTION 6(3) OF ROTATING SAVINGS AND CREDIT ACT B.E. 2534 (1991) (SHARE ACT) OF THAILAND 2534.

⁸³ 'Online Fundraising Through the Lenses of Law, Economics, and Sociology: Examples from American P2P Lending and Thai Rotating Savings and Credit Association' (n 61) 97.

6/ Most ROSCA in Thailand have a ROSCA Manager, who is a selected participant responsible with forming, recording, and managing the ROSCA. The ROSCA managers have tight relationships with their members and require detailed personal information from them and others around them. Further, the ROSCA managers also have accountable for covering default payments if a participant steals the fund and run away.⁸⁴ To compensate for such onerous obligations and dangerous duties, a ROSCA manager is granted the right to withdraw the first-round cash without having to pay any interest to other participants.⁸⁵ This encourages ROSCA managers to put up their best effort in forming and managing ROSCAs. When joining rotating savings and credit, an organizer or the holder of the credit receives any benefit other than the right to receive the central fund within one of the designated periods without having to pay interest.⁸⁶ A person who guarantees to contribute funds or other assets on behalf of an organizer or someone holding rotating savings and credit will be regarded as an organizer or someone holding rotating savings and credit for the purposes of adhering to this section.⁸⁷

7/ Criminal liability: Any person who violates the SHARE ACT “shall be subject to imprisonment for a term of not exceeding six months or a fine of not exceeding one hundred thousand baht or both”.⁸⁸ Further, “any juristic person who violates the mandatory provisions of the act shall be subject to a fine of not exceeding two hundred thousand baht”.⁸⁹

Online ROSCA in Thailand: Although online ROSCA schemes are closely related to traditional ones, the current legal environment has significant limitations.⁹⁰ This includes the ROSCA Operation Act and regulations by the Bank of Thailand. Due to the fact that Online Roscas rely on publicly viewable online media for recruiting and advertising, they are liable to pass the regulatory framework. Therefore, the ROSCA Operation Act effectively makes it illegal.⁹¹

⁸⁴ *ibid* 63.

⁸⁵ *ibid*.

⁸⁶ (SHARE ACT) SECTION 6(4).

⁸⁷ *ibid* SECTION 6(4).

⁸⁸ *ibid* SECTION 17.

⁸⁹ *ibid* SECTION 18.

⁹⁰ ‘Online Fundraising Through the Lenses of Law, Economics, and Sociology: Examples from American P2P Lending and Thai Rotating Savings and Credit Association’ (n 61) 99.

⁹¹ *ibid*.

While online ROSCAs may be performed with certain efficiencies through the integration of the internet and mobile technologies, they lose aspects of interpersonal interactions that might lead to basic issues when compared to traditional ROSCAs. The laws in Thailand, designed as a response to traditional fraudulent fundraising, do not take into account the legality of online ROSCAs or the issues they raise.⁹²

2.5.2 South Africa

Stokvels are the most common form of savings system in South Africa, they have been, for a long time, the backbone of community-based savings.⁹³ The term "Stokvel" is thought to have originated from the word "stock fair" (Mulaudzi, 2017), which referred to livestock auctions performed in the 19th century.⁹⁴ This was a venue where farmers and laborers could socialize and combine their money to buy animals. The first Stokvel in South Africa, known as the "Bantu burial society" Mulaudzi (2017), began in 1932.⁹⁵ They are group savings or investment clubs wherein the members contribute money to a pool system, either on a continuous or periodic basis, which is then reshuffled to the individual members or used for common purposes.⁹⁶

Legal framework governing Stockvels: The South Africa's Stokvel groups are informal savings organizations, and so they fall outside the Banks Act. They involve the regular saving of a group of people with the intention of investing the sum at a particular time, purchasing some item, or keeping part of the money for a credit. Despite their informal nature, Stockvels function within a specific legal framework established by the Stokvels Act (No. 97 of 1988). This legislation acknowledges Stokvels as legal entities and legislation lays out the fundamental conditions for Stokvels, including membership guidelines, financial contributions, and the fund's objectives.⁹⁷ The Stokvel Act (No. 97 of 1988), which, is the main legislation that governs them, and this Stokvel agreement or regulation should define guidelines for financial management and

⁹² *ibid* 98.

⁹³ Heidi Barter, 'Understanding Stokvels in South Africa: A Legal Perspective' 1.

⁹⁴ Thandile Xiphu, 'Stokvels: Bringing Together Borrowers, Savers, and Investors' (dissertation, University of Cape Town 2019) 5.

⁹⁵ *ibid*.

⁹⁶ 'Understanding Stokvels in South Africa: A Legal Perspective' (n 93) 1.

⁹⁷ *ibid*.

distribution procedures, member obligations, and codes of conduct.⁹⁸ A good governance framework and effective dispute resolution mechanisms is the key to the credibility and success of Stokvels. Members should adhere to the law and ethical practices and be wary of schemes that are fraudulent. Being aware of the laws governing Stokwele enables participants to engage in the activity with assurance and safety.

The role of NASASA: in recognition of the need for a self-regulatory framework within the Stokvel sector, the South African Reserve Bank (SARB) founded the National Stokvel Association of South Africa, or (NASASA)⁹⁹ through Government Notice 404 published in Gazette 35368 on May 25, 2012. The NASASA defined them as informal, voluntary, and dependent on trust for financial security. The mission of is NASASA's to represent the interests of the Stokvel sector and promote best practices within this informal saving landscape.¹⁰⁰

The National Stokvel Association of South Africa (NASASA) has developed a model constitution for community-based deposit-taking organizations, outlining essential principles for governance. This document provides Stokvel groups with a framework to establish their own constitution, which sets out the foundation of the Stokvel group. The constitution of the National Stokvel Association of South Africa (NASASA) is a set of fundamental guidelines that oversee the functioning of Stokvels and other community-based deposit-taking institutions.¹⁰¹ The National Stokvels Association of South Africa NASASA also constructed the Stokvels constitution, which includes the general guidelines on the management of the group savings scheme.

The constitution within the Stokvel concern outlines its aims like individual and overall growth, pooling of finances towards a common goal, and stability of membership.¹⁰² Each one of the members is required to provide membership information including (ID number, residential

⁹⁸ 'Understanding Stokvels in South Africa: A Legal Perspective' (n 93).

⁹⁹ Barbara Calvin and Gerhard Coetzee, 'A REVIEW OF THE SOUTH AFRICAN MICROFINANCE SECTOR', A Review of the South African Microfinance Sector Section IV: Special Products (University of Pretoria, Centre for Microfinance 2009) 1.

¹⁰⁰ *ibid.*

¹⁰¹ 'Understanding Stokvels in South Africa: A Legal Perspective' (n 93).

¹⁰² Article 1, of the Stokvel Constitution: This constitution has been drafted and published by the National Stokvel Association of South Africa or (NASASA). NASASA is a self-regulatory organisation authorised by the South African Reserve Bank in terms of Government Notice 404 in Gazette 35368 25 May 2012.

address and date of birth) and adhere to the constitution.¹⁰³ The day-to-day activities of the organization and powers and jurisdiction of the constitution are delegated to a body called the Stokvel executive committee, which comprises the chairperson, secretary, and treasurer.¹⁰⁴ Such alterations can be made by members by a majority vote to dissolve the office holder, event. However, in such cases, a 60-day notice prior to replacing any change therein should be issued. A minimum of one third of the members will required for a meeting.¹⁰⁵ It is written in the code of conduct of the members of Stokvel that they are not allowed to carry out business activities under the name of Stokvel.

To address the demands of Stokvels, legislation was also adopted by the South Africa Reserve Bank in 2006, with an amendment to the 1990 Banks Act. This allowed Stokvels to accept deposits only from its members, yet it barred them from keeping over R9.99 million at any time.¹⁰⁶ Any Stokvel that exceeds this limit is regulated by the Mutual Banks Amendment Act, 1994, and is required to register as a mutual bank. Digital Stokvels have multiplied to such an extent that members should now be wary of scam schemes claiming to be actual Stokvels.¹⁰⁷

Annual financial report: A group in a Stokvel shall, within 120 days of the end of each financial year, cause annual financial statements pertaining to its affairs and business with respect to that financial year to be made out in one of the official languages of the Republic of South Africa; a group shall fix a date on which, in each year, its financial year shall end, and such financial year shall be a group's annual accounting period; a person duly registered as an accountant and auditor under the terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005).¹⁰⁸

Therefore, Stokvels represent an essential aspect of South Africa's financial landscape, offering community-driven solutions to savings and investment challenges. Governed by the Stockvels Act and supported by initiatives from NASASA, these informal organizations provide valuable opportunities for members to pool resources and achieve collective goals.

¹⁰³ *ibid* Article 2.

¹⁰⁴ *ibid* Article 3.

¹⁰⁵ *ibid* Article 5.

¹⁰⁶ 'A REVIEW OF THE SOUTH AFRICAN MICROFINANCE SECTOR' (n 99) 1.

¹⁰⁷ 'Understanding Stokvels in South Africa: A Legal Perspective' (n 93) 1.

¹⁰⁸ SOUTH AFRICAN RESERVE BANK, BANKS ACT, 1990 2006 ARTICLE 3(L).

CHAPTER THREE: THE REGULATIONS OF INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA

3.1 INTRODUCTION

The FDRE constitution guarantees every Ethiopian the right to engage in economic activities and peruse a livelihood of their choice anywhere within the national territory.¹⁰⁹ The constitution, also under Article 31, recognizes that the people of Ethiopia can assemble for whatever reason whenever they want unless they have formed organizations that violate the appropriate laws of the country. Accordingly, the people of Ethiopia have a long-standing tradition of forming an association of '*Ikubs, Iddirs, and Debo*' and so on. These institutions contribute massively to individual development by promoting mutual support and saving culture in the absence of a modern financial system, and their part will certainly continue to thrive at this moment.

Rotating Savings and Credit Associations (ROSCAs), or *Ikub*, are informal financial institutions that are popular among developing nations and immigrant communities of developed nations.¹¹⁰ Participating in *Ikub* can be seen as a way for individuals to exercise their constitutional right to engage in economic activities by pooling resources with others to support their financial goals. By participating in *Ikub*, individuals can access capital for various purposes, such as starting or expanding a business, investing in education, or meeting personal financial needs.

3.2 CHALLENGES OF INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA

The FDRE Constitution under Article 31 recognizes that the people of Ethiopia can assemble for whatever reason whenever they want unless they have formed organizations that violate the appropriate laws of the country. Accordingly, the people of Ethiopia have a long-standing tradition of forming an association of '*Ikubs*'. "*Ikub*" contributes hugely to individual development by promoting mutual support and saving culture in the absence of a modern financial system, and their part will certainly continue to thrive at this moment. However, the

¹⁰⁹ Article 41(1&2) Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia.

¹¹⁰ Elias Teshome and others, 'Participation and Significance of Self-Help Groups for Social Development: Exploring the Community Capacity in Ethiopia' (2014) 3 SpringerPlus 189 <<https://springerplus.springeropen.com/articles/10.1186/2193-1801-3-189>> accessed 5 February 2024.

following challenges should be addressed so that the services *Ikub* provides to the community can continue and grow in a better way.

3.2.1 Absence of legal personality

A person is legally classified into two categories: natural persons and juridical persons.¹¹¹ The concept of "legal" personality refers to the attribution of mental and moral consciousness to nonhuman entities, in the context of law.¹¹² A natural person refers to a human being, which is an individual capable of accepting obligations and exercising rights, whereas a juridical person includes entities with juridical existence, such as collective persons, social persons, and legal entities.¹¹³ To enable them to function, an organization's legal personality was established to include five legal rights: the right to own property, the right to a corporate seal (i.e., the right to make and sign contracts), the right to sue and be sued (to enforce contracts), the right to hire agents (employees), and the right to make by-laws (self-government).¹¹⁴ While natural persons acquire legal personality "naturally" by being born, juridical persons must have legal identity conferred on them through an "unnatural" legal process, which is why they are frequently referred to as "artificial" individuals.¹¹⁵ Legal personality is often achieved through registration with a government agency established for that purpose.¹¹⁶ If an institution lacks legal personality, it does not have rights and duties; therefore, this may create challenges to the effectiveness of the institution. Accordingly, the first challenges regarding informal financial institutions such as *Ikubs* in Ethiopia are related to legal personalities. As we have said before, attributing a legal

¹¹¹ 'Elvia Arcelia Quintana Adriano, The Natural Person, Legal Entity or Juridical Person and Juridical Personality, 4 PENN. ST. J.L. & INT'L AFF. 363 (2015). Available at: <https://elibrary.law.psu.edu/jlia/vol4/iss1/17> The Penn State Journal of Law & International Affairs Is a Joint Publication of Penn State's School of Law and School of International Affairs.' 366.

¹¹² Mortimer N.S. Sellers, 'International Legal Personality' (2005) 11 University of Baltimore 67 <<https://scholarworks.law.ubalt.edu>> accessed 4 March 2024.

¹¹³ 'Elvia Arcelia Quintana Adriano, The Natural Person, Legal Entity or Juridical Person and Juridical Personality, 4 PENN. ST. J.L. & INT'L AFF. 363 (2015). Available at: <https://elibrary.law.psu.edu/jlia/vol4/iss1/17> The Penn State Journal of Law & International Affairs Is a Joint Publication of Penn State's School of Law and School of International Affairs.' (n 111) 367.

¹¹⁴ 'Legal Person', , Wikipedia.

¹¹⁵ 'Elvia Arcelia Quintana Adriano, The Natural Person, Legal Entity or Juridical Person and Juridical Personality, 4 PENN. ST. J.L. & INT'L AFF. 363 (2015). Available at: <https://elibrary.law.psu.edu/jlia/vol4/iss1/17> The Penn State Journal of Law & International Affairs Is a Joint Publication of Penn State's School of Law and School of International Affairs.' (n 111) 366.

¹¹⁶ *ibid* 369.

personality to an institution means that the institution is subject to rights and duties, which means that if the law provides the organization as a legal entity, the organization itself may own the property, and rights and obligations may be made in the name of the institution. Nevertheless, these informal traditional financial institutions, such as *Ikubs*, are not recognized as legal entities in Ethiopia.¹¹⁷ For these reasons, they may face various difficulties, such as the incapacity to enter into contracts as a legal person, the right to sue and be sued, the right to own property in their name and so on.

3.2.2 Inconsistency with formal laws

The second challenge associated with those informal financial institutions is related to the fact that sometimes the decisions given by these institutions are against the formal laws and may violate the rights of individuals. The Civil Code of the Empire of Ethiopia, under Art 3347, is considered to acknowledge the legitimacy of customary norms as supplementary laws as long as they are not in conflict with the formal law of the country. Even though, there are '*Ikubs*' that have their own internal bylaws or dispute resolution mechanisms for resolving disagreements in Ethiopia, however, contradictions exist between the bylaws of *Ikub* institutions and the formal laws of the country.¹¹⁸ For instance, Article 1725 of the Civil Code requires contract of suretyship to be in writing, yet there are *Ikub*'s in Gurage that make such contracts of suretyship verbally. In addition, Article 1920, and the following stipulate that a contract of guarantee must be clear and must explicitly state the amount of money pledged for performance, a requirement that is not always met in the *Ikub* suretyship contract in Gurage. Further, the legal interest stipulated under Article 1752 and 2479 of the civil code may not be followed by *Ikub* institutions in Gurage; instead, managements of *Ikub* institutions may impose penalties greater than the legal interest stipulated under the civil code on members who fail to pay *Ikub* money on time as per court cases. These matters are typical of the remarkable deviations of internal *Ikub* institutions' practices from the formal legal framework of the country. These may lead to conflicts and problems in the enforcement of contracts and agreements that these institutions' parties make.

¹¹⁷ 'The Effects of New Housing Developments on Idir, a Self-Help Association, in Addis Ababa, Ethiopia' (n 20).

¹¹⁸ Gebreyesus Abegaz Yimer and Wim Decock, 'Courts and Traditional Financial Institutions in Ethiopia: Selected Case Studies on Legal Hybridity' <<https://zenodo.org/record/7398565>> accessed 5 February 2024.

3.2.3 Inadequacy of the regulatory framework and enforcement mechanisms

The third critical challenge in Ethiopia is the lack of a specific legal framework that governs their activities. Among the challenges are the lacks of specific legal frameworks governing *Ikub* and the absence of institutions in charge of enforcement. Although contract law can be used to resolve cases involving informal financial institutions, its adequacy to address all the issues of those institutions is debatable. Whereas the majority of contract law's provisions are meant to fill gaps rather than address every unique issue that arises in *Ikub*, What if there are inconsistencies between contract law and customary law? For instance, Article 1725 of the Civil Code requires a contract of surety ship to be in writing, but there are *Ikubs* that make a contract of surety ship verbally. Can we disregard their agreement in this situation due to the inconsistencies with the law of contract?

Further, the absence of specific laws governing the informal financial institution may lead to a vague interpretation of *Ikub* in court litigation.¹¹⁹ In Ethiopia, people who do not have access to formal financial institutions often get credit from the informal credit market. However, the lack of a comprehensive legal framework regulating these markets leads to ambiguity and uncertainty. Because of the very fundamental nature of *Ikub*, applying all provisions of contract law to it, may end up doing more harm than good. For instance, the civil code clearly states that capacity is one of the requisites of valid contracts. It implies that the parties ought to have the legal capacity to contract and give consent recognized by the law.¹²⁰ However, there are individuals who participate in an *Ikub* even though they have not yet reached the age of majority,¹²¹ which is 18 years according to the relevant laws of the country. This may raises a question: how do we reconcile this contradiction with the absence of a specific law? Should we conclude that these individuals do not have the right to claim their share of the lot?

3.2.4 Technological advancement

The last critical challenge was related to technological advancement of 'Ikub' (since online or digital Ikub started in Ethiopia), where technology is used to facilitate financial transactions.

¹¹⁹ *ibid.*

¹²⁰ ARTICLE 1678 (a) OF Proclamation No. 165/1960 The Civil Code of the Empire of Ethiopia.

¹²¹ Aredo (n 16).

According to a study online ROSCAs are typically riskier than traditional ROSCAs.¹²² Furthermore, it is challenging to effectively enforce other participants when participating in ROSCA online because they lack social collateral such as common social networks or established interpersonal ties.¹²³ There are thus three major customer challenges in the online and mobile payments industry, according to the OECD report.¹²⁴ First is the regulatory framework, which includes legal guidelines and how they relate to the initiatives of the private sector. This may be made more difficult by differing opinions about roles and legal frameworks, especially for mobile payments when several parties may be involved. The second category of obstacles comprises common customer complaints such as non-delivery, late delivery, and unauthorized payment charges.¹²⁵ The third group of difficulties relates to technical payment-related concerns with transactions, such as security, consumer payment options, and cross-border e-commerce. According to Professor Poomsiri Dumrongvute, online ROSCAs may lack four key elements of institutions: these are certainty, information asymmetry, interpersonal trust, and institutional trust, which are pillars of institutions.¹²⁶

Uncertainty: Traditional ROSCA organizers are likely to have the same interests as the member, given that the organizer is usually a friend or relative. Online ROSCAs are uncertain because of the high default risk and weak interpersonal links among members.¹²⁷ Online ROSCA organizers, since they do not have any personal relationship with the members, have less incentive to exert much effort on behalf of the entire group.

Information asymmetry: Online ROSCAs, unlike traditional ROSCAs, may have managers who are not as close to the members personally and not as skilled at gathering and sharing vital

¹²² ‘Online Fundraising Through the Lenses of Law, Economics, and Sociology: Examples from American P2P Lending and Thai Rotating Savings and Credit Association’ (n 61).

¹²³ *ibid.*

¹²⁴ ‘Report on Consumer Protection in Online and Mobile Payments’, vol 204 (2012) OECD Digital Economy Papers 204 <https://www.oecd-ilibrary.org/science-and-technology/report-on-consumer-protection-in-online-and-mobile-payments_5k9490gwp7f3-en> accessed 23 March 2024.

¹²⁵ *ibid.*

¹²⁶ ‘Online Fundraising Through the Lenses of Law, Economics, and Sociology: Examples from American P2P Lending and Thai Rotating Savings and Credit Association’ (n 61).

¹²⁷ *ibid.*

information, hence giving rise to more serious information asymmetry problems.¹²⁸ Since the managers and participants are not able to provide or obtain precise and comprehensive information, it will raise information asymmetry issues for online ROSCAs.¹²⁹ Others who invest by withdrawing money later would like to know about others who did so early in order for them to assess their risk and adjust accordingly. Online ROSCAs are informal procedures depending on the private information of participants, which might not be as accessible as it is for traditional ROSCAs.

Lack of interpersonal trust: Instead of treating participants like friends and family, online Rosca administrators treat participants like clients, and these make online ROSCAs lack interpersonal trust.¹³⁰ Without trust, it is difficult for institutions to accomplish their mission, and participants may become weaker as a result of this lack of trust and permit others to take money before them.

Institutional trust: Because rules and regulations don't offer the same external assurance as traditional ROSCAs, online ROSCAs may be less effective. Compared to traditional ROSCA managers, the online ROSCA manager is less likely to take their obligations seriously.¹³¹ They are responsible for ensuring proper functioning and providing an informal guarantee for fund distribution.

The traditional *Ikub* in Ethiopia has been modernized by the creation of the "Digital Ikub" app in 2020, and it was aimed at modernizing Ethiopia's significant socio-economic asset.¹³² According to the Addis standard it allows members to join the institutions without their physical presence, using mobile banking or Tele birr to pay contributions. Most members of digital *Ikub* are individuals living abroad; for this reason it will be helpful in bringing foreign currency into the country.¹³³ However, the researcher expresses concerns about the effectiveness of digital *Ikub* in Ethiopia without a specific legal framework, despite not finding digital *Ikub* members in the

¹²⁸ *ibid* 69.

¹²⁹ *ibid*.

¹³⁰ *ibid* 71.

¹³¹ *ibid* 72.

¹³² Biruk Alemu, 'Innovation: Digital Equb: Modernizing Ethiopia's Revered Socio-Economic Asset' (Addis Ababa, Ethiopia, 4 January 2023) <<https://wp.me/p7BpQh-8dU>>.

¹³³ *ibid*.

study area, based on the nature of digital *Ikubs* (since they depend on reliable infrastructure) and experience from other countries outside Ethiopia.

Digital *Ikub* platforms rely heavily on digital connectivity to facilitate both transactions and communication among members. Should there be an interruption in the internet in a certain region at any given time, it will automatically pose challenges for online *Ikub* users when logging in, making transactions, or communicating with other participants. It could result in not getting money sent or not being able to send money on time and a lack of coordination for groups. In addition, the unstable electricity in some parts of Ethiopia will equally affect members' access to web-based platforms, such as *Ikub*. If there is no reliable power supply, members will find it difficult to charge their devices or go online to participate in any digital ROSCA. Hence, unreliable electricity, disruptions to internet access, and challenges from the changing of contact information can indeed compromise the effectiveness and usability of online ROSCA in Ethiopia. In addition, on digital *Ikub* platforms, when one mistakenly sends money to the wrong account, a lack of specific laws regulating the platforms can surely be a major challenge. Members may face uncertainty regarding their rights and obligations in cases of payment errors, making it difficult to recover funds or seek compensation.

3.3 REGULATION OF INFORMAL FINANCIAL INSTITUTIONS IN ETHIOPIA

Traditional informal financial institutions, such as *Ikubs*, are governed by customary or traditional laws and practices.¹³⁴ These institutions are deeply rooted in the cultural and social fabric of the communities in which they operate, and their operations are often guided by longstanding customs, norms, and community agreements. According to the study, *Ikubs* are a type of traditional cooperative.¹³⁵ In fact, traditional informal financial institutions such as *Ikubs* share some goals and characteristics with cooperatives. For instance, both informal (such as *Ikub*) and semi-formal (cooperative society) societies develop and encourage saving among their members. Some others argue that *Ikubs* are governed by civil society's organizations. Although these institutions have things in common with cooperatives and civil society organizations, it can

¹³⁴ Decock and others (n 18).

¹³⁵ Bethelhem Zerihun, 'LEGAL FRAMEWORK ANALYSIS ETHIOPIA NATIONAL REPORT' (2021) International Co-operative Alliance-Africa 2.

be understood that *Ikub*'s are governed neither by civil society proclamation no. 1113/2019 nor by cooperative societies' proclamation no. 985/2016. Both proclamations excluded *Ikub* from their scope of applications. Here is how *Ikub* is excluded from all of the aforementioned and other proclamations.

3.3.1 *Ikub* in light of the NBE Proclamation:

The national bank of Ethiopia establishment proclamation number 591/2008 specifies that the National Bank of Ethiopia has the powers and obligation to license and supervise banks, insurance companies, and other financial institutions.¹³⁶ As we have evidenced from the literature, *Ikubs* are an example of informal financial institutions; thus, the question arises: whether the national bank of Ethiopia has the power to regulate these informal financial institutions? Or are informal institutions included as other financial institutions under the proclamation?

The National Bank of Ethiopia has the power to license and supervise banks, insurance, and other financial institutions.¹³⁷ In the proclamation other financial institutions includes micro-finance institutions, postal savings, money transfer institutions, and other similar financial institutions established in accordance with the appropriate law of Ethiopia and as determined by the National Bank.¹³⁸ In this sense, therefore, *Ikub* is not included under the supervision and regulation of the national bank of Ethiopia. However, according to studies, the National Bank of Ethiopia dissolves Gojo *Ikub* in Addis Ababa and certain other *Ikub* in Amhara regional states,¹³⁹ where these institutions try to spread their activities outside their traditional roles.¹⁴⁰ These institutions operate similarly to microfinance business, collecting money without necessary licenses or permissions.¹⁴¹ The question here is: What are the traditional roles of *Ikub*? For me, it is difficult to answer this question since there are no laws that specify the function of those informal financial institutions, such as *Ikub*'s, in the country. The traditional role of *Ikub* may differ from place to place and time to time. The NBE may informally regulate these institutions,

¹³⁶ Article 5/7/ of Proclamation No. 591/2008 National Bank of Ethiopia Establishment Proclamation.

¹³⁷ Article 5/7/ of *ibid*.

¹³⁸ Article 2/10/ of *ibid*.

¹³⁹ Decock and others (n 18) 12.

¹⁴⁰ Interview with Tafesse, 'Legal Officer of NBE' (4 March 2024).

¹⁴¹ *ibid*.

citing the legal tender protection directives, which limit transactions to 200,000 Ethiopian birr per day for companies and 100,000 birr per day for individuals under CMD/01/2020 and CMD/02/2020.¹⁴² In contrast, the South African experience reveals that the 1990 Banks Act allowed Stokvels to accept deposits exclusively from their members, with a restriction on holding more than R9.99 million at any given time; Stokvels exceeding this limit are subject to the Banks Amendment Act, 1994, and must register as a mutual bank.¹⁴³

3.3.2 Ikub under the commercial code of Ethiopia:

There are six forms of business organization in Ethiopia. These are general partnerships, limited partnerships, ordinary partnerships, joint ventures, Share Companies and private limited companies.¹⁴⁴ Among these organizations, a joint venture is not a legal person like *Ikub*. However, *Ikub* is perhaps somewhere between a business organization and a civil association and it has economic motives but not profit. In my opinion, *Ikub* may appear to be a joint venture, but actually it is not. A joint venture is a business organization that carries out business for profit. By profit, it means economic gain, not moral satisfaction or a relief of problems.

Is the new commercial code governing those informal financial institutions? The new commercial code specifies seven forms of business organizations: general partnership, limited partnership, limited liability partnership, joint venture, share company, private limited company, and single person private limited company.¹⁴⁵ According to earlier studies, there are more or less similar to ordinary partnerships.¹⁴⁶ Although *Ikubs* have internal rules, as per Articles 404 and 405 of the Civil Code, perhaps it may be difficult to contemplate, as bylaws of an association; the Civil Code prohibits the establishment of associations and groups for financial gain. This may leave the legal status of *Ikub* unclear.¹⁴⁷ Three categories of partnerships - general partnership, limited partnership, and ordinary partnership - are governed by the 1960 Commercial code.¹⁴⁸ Among them, the one that was interrelated to *Ikub* was an ordinary

¹⁴² *ibid.*

¹⁴³ 'Understanding Stokvels in South Africa: A Legal Perspective' (n 93).

¹⁴⁴ Article 212 of Proclamation No. 166/1960 The Commercial Code of Empire of Ethiopia

¹⁴⁵ Article 174 of The Commercial Code of the Federal Democratic Republic of Ethiopia.

¹⁴⁶ Decock and others (n 18).

¹⁴⁷ Yimer and Decock (n 118) 12.

¹⁴⁸ Article 212 of the commercial code of the empire of Ethiopia 1960.

partnerships¹⁴⁹ nevertheless, *Ikub* does not need to be registered with the relevant government office or adhere to other formalities. The new commercial code of Ethiopia, however, expounded on ordinary partnerships and came up with two other forms of business organizations: limited liability partnerships and single-person or one Man Companies.¹⁵⁰ Therefore, *Ikub* is not a types of business organization and may not be governed by the new commercial codes at all.

3.3.3 Exploring the connection between Ikub and the Cooperatives Societies’ Proclamation:

According to the study, *Ikubs* are a type of traditional cooperative.¹⁵¹ Both *Ikub* and cooperative societies share some common features. For instance, Cooperative Proclamation No. 985/2016 of Ethiopia defines a cooperative as “an autonomous association having legal personality and democratically controlled by persons united voluntarily to meet their common economic, social, and cultural needs and other aspirations, which could not be addressed individually, through an enterprise jointly owned and operated on the basis of cooperative principles.¹⁵² From this definitions and the objectives of the Proclamation, we can infer that both cooperative societies and *Ikubs* share similar objectives, such as collectively overcoming economic and social problems, coordinating knowledge, resources, and labor, promoting self-reliance, reducing production and service costs, promoting entrepreneurship, developing a saving culture, providing loans, loan-life insurance coverage, and minimizing damage. They are democratically controlled, motivated by service, and exempt from income tax. However, *Ikub* is an informal financial institution, while cooperatives are semi-formal financial institutions. Cooperative societies have legal personalities¹⁵³ and special laws governing them, but *Ikub* does not. Therefore, *Ikub* doesn’t governed by the proclamations of cooperative.¹⁵⁴

3.3.4 Assessing Ikub in light of Civil Society’s Proclamation:

According to study, *ikub* and *iddir* are an example of community based civil society organization in Ethiopia.¹⁵⁵ Civil societies and *Ikub*’s play important roles in promoting community

¹⁴⁹ Yimer and Decock (n 118) 12.

¹⁵⁰ Article 174 of The Commercial Code of the Federal Democratic Republic of Ethiopia.

¹⁵¹ Zerihun (n 135).

¹⁵² Article 2(1) of Cooperative Societies Proclamation Proclamation No. 985/2016.

¹⁵³ Article 2(1) of *ibid*.

¹⁵⁴ Article 2(3) *ibid*.

¹⁵⁵ Teshome and others (n 110) 1.

development, social cohesion, and advocacy for social changes in Ethiopian societies. Literally speaking, both are typically non-profit organizations that operate for the benefit of members or the community rather than for financial gain. According to Article 2/1/ of the Civil Societies Proclamation, Civil Societies Organizations means a non - governmental organization or entity established at least by two or more persons on a voluntary basis that is not for profit and registered to carry out any lawful purpose and includes non-government organizations, professional associations, mass based societies and groups. Whereas local organization means a civil society organization established under the laws of Ethiopia, either by Ethiopians, foreigners resident in Ethiopia, or both (Article 2/1).

The proclamation clearly excludes religious institutions, *Iddir*, *Ikub*, and other similar traditional institutions, and organizations formed under other laws from its scope of application.¹⁵⁶ The proclamation obliges any organization to be registered by the agency.¹⁵⁷ However, registration is not mandatory for *Ikub*'s. In line with this article 13/8 of the former South nation regional states power and authority of executive organ proclamation number 178/2018, justice bureau has powers and responsibilities, including the registration of Ethiopian charitable organizations and associations that operate within the region. They also handle matters related to legal personality, supervise their activities, and have the authority to verify and cancel them in accordance with the law. It is important to note that both foreign and local charitable organizations are governed by proclamation number 1113/2019. However, it is explicitly stated in this proclamation that *Ikub* and *Iddir* are not included within its scope of application.¹⁵⁸

3.3.5 Exploring *Ikub* in light of law of contract under the Civil Code:

“The Civil Code defines a contract as an agreement whereby two or more persons, between themselves, create, vary, or distinguish obligations of a proprietary nature.”¹⁵⁹ A contract is an agreement with legal obligations upon the parties where they agree to do something. For example, Article 1678 of the Civil Code provides that unless a contract is entered into by capable parties who express their free consent to the applicable law, the object of the contract should be

¹⁵⁶ Article 3 of Proclamation No. 1113/2019 Organizations of Civil Societies Proclamation.

¹⁵⁷ Article 57 of *ibid*.

¹⁵⁸ Article 3(3) *ibid*.

¹⁵⁹ Article 1675 of Proclamation No. 165/1960 The Civil Code of the Empire of Ethiopia.

sufficiently determined, and if the law requires a particular form, the contract should not contravene it. If all these criteria are fulfilled, the contract becomes legally enforceable, which means if any contracting party fails to fulfill their obligations specified by the contract, the other party can seek legal remedies to enforce the agreement. The contract could either be made in written form, or verbally or impliedly based on their agreements. Therefore, in order to say there is a legally binding agreement, it must fulfill four pillars of contract law, these are; capacity, consent, objects, and form, as per Article 1678 of the Civil Code. However, as noted by Dejene Aredo, there are minors in Ethiopia who participate in *Ikub*, which means capacity, one of the four requirements for a valid contract, is not fulfilled. Similarly, the Civil Code, under Article 1725, orders contracts of guarantee to be in writing. However, in some *Ikub* in Gurage, not only the contracts of guarantees but even the main *Ikub* contracts are not in written form.¹⁶⁰ The civil code requires that where a special form is expressly prescribed by law, such form shall be observed.¹⁶¹ This is where Article 1725 and Article 1719(2) of the Civil Code orders contracts for guarantees to be in writing and shall be respected

Most of the time, issues of *Ikub* are decided in courts according to social norms rather than following formal legal standards.¹⁶² For these reasons, courts frequently encounter legal challenges when assessing them. Due to their lack of formality, they are not regarded as association bylaws or standard partnership agreements. Though their legal status is unknown in the Ethiopian legal system, certain *Ikubs* in Ethiopia have their own internal bylaws.¹⁶³ In most cases, the internal bylaws of *Ikub* have lack the signatures of all members. Further the awareness among members for the internal bylaws also very weak. However, even with these difficulties, judges nonetheless view internal *Ikub* regulations as legally binding in formal settings.

3.3.6 Loan practices in *Ikub* Versus the Civil Code:

Although *Ikubs* should be viewed in terms of the law of contract and not under association or business partnership law, it is still arguable whether the credits that are given in *Ikub* should be regarded as loans under the Civil Code. However, one finds that contracts are formulated based

¹⁶⁰ Interview with Tibebe (n 24).

¹⁶¹ Article 1719(2) of Proclamation No. 165/1960 The Civil Code of the Empire of Ethiopia.

¹⁶² Yimer and Decock (n 118).

¹⁶³ Decock and others (n 18).

on social relations, and credit is often extended due to already existing social relations. If so, any loan payment above 500 birr should be evidenced in conformity with the requirements of Article 2472 of the civil code. That article provides that for contracts of loans that are more than 500 birr, the Civil Code requires written proof; yet, most of the loan agreements in Ethiopia are not in writing.

Under the Civil Code, a loan is a contract whereby a lender undertakes to deliver money or other fungible assets to the borrower upon the obligation of the latter to pay for the same kind of products. Written evidence is required only for cash loans; no written evidence is required for loans in kind. Written contracts have to abide by the formalities dictated by the general contract rules in the Civil Code, including witnesses and attestations. The Ethiopian Civil Code upholds the freedom of contract, giving relative freedom to the parties to determine under what terms and conditions the contract shall be implemented. It provides that the purpose of the contract has to be specified, possible, lawful, and morally acceptable. Provided these conditions are met, contracts are considered binding upon the parties in a court of law. Agreements may be written, oral, or even made by signing, as provided for in Articles 1681 and 1719. Nonetheless, where there are compelling rules, certain formal requirements must be adhered to. For instance, oral testimony or assumption cannot support a loan contract for more than 500 birr.¹⁶⁴ Or contracting parties are allowed to choose the type and structure of their agreements. The civil code requires that the purpose of the contract be well-defined, possible, lawful, and morally acceptable. If these conditions are met, then contracts are considered binding on the parties and will be held in court. According to Articles 1681 and 1719 of the Civil Code, contracts can either be oral, written, or signed. If there are mandatory provisions, however, certain formal requirements are added.

In Ethiopia, loans from friends and family are a common form of credit and are frequently given verbally without legal caution. This is true in the *Ikub* of Gurage. Thus, the problem of oral contracts and loans taken without a spouse's consent in Gurage has always been a complicated link between traditional customs and modern legal requirements in Ethiopia, particularly in the context of *Ikub* groups.¹⁶⁵ While the Civil Code of Ethiopia requires that agreements valued at

¹⁶⁴ Article 2472 of Proclamation No. 165/1960 The Civil Code of the Empire of Ethiopia.

¹⁶⁵ Interview with Mesfin Tibebe lawyer and former Judge at Wolkite City First instance Court (17 June 2024).

more than 500 Ethiopian birr be proved in writing, the fact that most agreements between *Ikub* groups are oral implies disconnects between tradition and formal legal expectation. The traditional configuration of an *Ikub* group in Gurage culture is based on trust, shared values, and oral contracts among its members.¹⁶⁶ The relative informality of these arrangements, with the absence of written documents and so on, implies inbuilt trust and social cohesion within Gurage communities.¹⁶⁷ However, the requirement for written evidence under the civil code of Ethiopia raises questions about the legal validity and enforceability of oral contracts, especially in cases where disputes or disagreements arise. The absence of written documentation can complicate legal proceedings and make it challenging to prove the terms of an agreement in a formal setting. Further, the practice of taking loans without the spouse's consent adds more problems with marital rights and financial transparency. To prove loans over 500 birr, courts may accept oral evidence or require writing. There is also uncertainty with regard to how the code should apply to transactions in informal financial institutions because courts apply the Civil Code to transactions.¹⁶⁸

3.3.7 *Ikub* in light of the 1960 Civil Procedure Code:

“According to Article 33/2 of the Civil Procedure Code, no person may be a plaintiff unless he has a vested interest in the subject matter of a suit.” The concept of a vested interest in a suit refers to the requirement of the law that the person filing the suit must have, first of all, a direct and personal interest in the outcome of the case. This principle is meant to ensure standing, prevent inappropriate lawsuits, and entrust fairness and justice to the legal system.

Further, Article 33/3 of the Civil Procedure Code stipulates, "No person may be a defendant unless the plaintiff alleges some claim against them." That will be a cardinal principle of the law, averting any defendant from being denied proper notice and a chance for a defense in court. This is, therefore, a principle core to due process rights and ensures that people have a proper opportunity to clear themselves of any process in court. Further, the principle avoids frivolous

¹⁶⁶ Interview with Meseret Amerga, ‘Head of Gurage Zone Culture and Tourism Department’ (13 March 2024).

¹⁶⁷ *ibid.*

¹⁶⁸ Gebreyesus Abegaz Yimer, ‘Uncertainties in the Enforcement of Loan Agreements in the Informal Credit Markets in Ethiopia’ (2019) 13 *Mizan Law Review* 472 <<https://www.ajol.info/index.php/mlr/article/view/195052>> accessed 5 February 2024.

lawsuits by compelling that a legal action can only be filed if there is a legitimate legal basis for doing so. It further avoids unwarranted accusations against a defendant and saves them from filing unnecessary lawsuits.

Article 58 of the Ethiopian Civil Procedure Code provides that a party may be represented in court by a representative who is a first-degree relative. The representative must be the spouse, brother, child, father, or grandfather of the party he or she represents.¹⁶⁹ This section allows for close relatives to represent the parties to a proceeding without being paid for such representations. Article 63 of the Civil Procedure Code allows for parties to be represented in court by attorneys. This means that the parties are free to engage the services of legal professionals for representation in court. A lawyer represents the parties in court before the court and argues the case before the court while offering legal advice throughout the proceedings of the case.

While the CPC allows for a party to have close relatives represent him in court, it also provides that parties may appoint their litigation representatives or lawyers to do their work in court. As a result, these provisions open the avenue for parties to have their representation in court through close relations or legal professionals. Unless the Ethiopian Civil Procedure Code offers parties the capacity to represent themselves in court without an attorney or any other representative, this possibility can be useful in protecting rights and going through procedures. However, the practice is that, if a member doesn't contribute *Ikub* money once he starts, victims have three options: firstly, they can file a lawsuit on their own, with other members, or the leaders can file a lawsuit on the group's behalf as per the civil procedure code of Ethiopia.

It is not uncommon for *Ikub* officials or leaders to file lawsuits on behalf of the members, such as a lawsuit against those members who did not meet their financial obligations, among others, to *Ikub*.¹⁷⁰ Quite often, a good number of the members grant power of attorney to *Ikub* officials or leaders to represent them legally on their bylaws. This delegation of authority can be formalized through the rules and regulations of the *Ikub*, spelling out what roles and responsibilities members have in managing the affairs of the association.

¹⁶⁹ Article 58 of Decree No 52/1965 Civil Procedure Code of Empire of Ethiopia.

¹⁷⁰ Interview with Daneal Mitiku, 'Lawyer and Assistant Professor of Law at Wolkite University' (15 June 2024).

3.4 THE PRECEDENTS OF FEDERAL SUPREME COURT CASSATION DECISIONS INVOLVING IKUB;

The interpretation of the law rendered by the Cassation Division of the Federal Supreme Court with not less than five judges shall be binding from the date the decision is rendered.¹⁷¹ Accordingly, the Federal Supreme Court renders mandatory legal decisions related to *Ikub* at different times. In a case involving Mr. Ayele Debel, Vs Mulegeta Desalew, and three others (the heirs of Mr. Desalew Fenta),¹⁷² the plaintiff filed a petition in the Federal First Instance Court, claimed that the defendant failed to make payments totaling birr 342,600.00 (three hundred and forty-two thousand and six hundred), along with costs and damages as per their *Ikub* agreements leading them to ask the court to decide on an unpaid payment of which they are obliged to pay according to the agreement,. The defendants argued for the rejection of the case citing the period of limitation stipulated under article, 2024/f of the Civil Code.

Article 2024 reads as follows; the following debts shall be deemed to have been paid where two years have elapsed since they fell due:

- (a) Debts due to physicians, surgeons, dentists, midwives, pharmacists, or veterinary surgeons in respect of professional services or supplies; and
- (b) Debts due to advocates, notaries, or other members of the legal profession in respect of professional services; and
- (c) Debts due to handicraftsmen in respect of work done by them; and
- (d) Debts due in respect of rents for houses or agricultural estates; and
- (e) Arrears of periodical dues; and
- (f) Interest on loans and generally any sum payable annually or at shorter periodical intervals.

¹⁷¹ Article 26/3/ of the Federal Courts Proclamation Number 1234/2021.

¹⁷² Federal Supreme Court cassation decision, a case between Mr. Ayele Debel Vs Mulegeta Desalew and 3 others (the heirs of Mr. Desalew Fenta), Volume 10, file No. 46019

The Federal First Instance accepted the defendant's preliminary objection citing a Civil Code article stating unpaid money for two years is considered paid. The Federal High Court overturned this decision, that Article 2024(f) of the Civil Code was not applicable to the return of *Ikub* money. The Federal Supreme Court, upheld the High Court's decision, confirming *Ikub* is not a loan type of agreement, but rather a social value that people use to save money based on their financial abilities rather than a loan or contract.¹⁷³

In another similar case involving *Ikub* between plaintiff Girmai Kahesai and defendant Seyum Tadese, it concerns the parties to whom an *Ikub* member can request a refund of the money he has paid if he terminates his membership before the final draw.¹⁷⁴ The plaintiff filed civil action against the respondent in federal first instance court, which was included in the weekly *Ikub*. The petitioners stopped paying before the end of the *Ikub* without receiving the *Ikub* lot, despite having paid 63,300.00 (thirty-three thousand three hundred birr). He was given 30,000 birr, and in return, the defendants promised to reimburse the remaining 33,300 birr to him when the *Ikub* was over. However, the defendants did not at all follow up on their request for the remaining funds from the respondent. The defendants raised a preliminary objection, stating that under the *Ikub* and the civil procedure code, the petitioners did not have any legal authority to sue them. The Federal First Instance Court rejected the objections and decided that the money must be paid to the complainant once and for all. The defendants appealed to the Federal High Court, but their appeal was dismissed. Then they filed a petition against that decision of the federal Supreme Court Cassation to correct a fundamental error of law. They argue that the decision of the lower courts to pay the amount to the plaintiff without legal or contractual obligation does not take into account the provisions of the Civil Code and bylaws of *Ikub* and it must be corrected. However, the cassation bench confirmed the decision of the Federal High Court and rejected the claim.

In the case of Adugna Anbelo vs Federal General Attorney, the Federal Supreme Court cassation division ruled that cashing a cheque without sufficient funds can be a criminal offence. The decision stated that presenting a cheque with insufficient funds to the bank for payment

¹⁷³ Federal Supreme Court cassation decision, a case between Mr. Ayele Debel Vs Mulegeta Desalew and 3 others (the heirs of Mr. Desalew Fenta), Volume 10, file No. 46019 *ibid*.

¹⁷⁴ Federal Supreme Court cassation decision, between plaintiff Girmai Kahesai and defendant Seyum Tadese in volume 11, file number 55794.

constitutes a crime, regardless of whether it was issued for suretyship.¹⁷⁵ There are many individuals in Gurage often provide cheque without sufficient funds as a guarantee for winners in *Ikub*. However, this ruling was revised in a subsequent case between the Federal Attorney and Yeshiemebet Tilahun, where it was determined that issuing a cheque for guarantee purposes is not punishable if it meets the legal requirements.¹⁷⁶ This is because if the cheque given as a guarantee or pledge contract complies with the requirements of the Civil Code and Article 952 of the old commercial code, then it is not punishable. This inconsistency in interpreting check-related matters by the Supreme Court cassation division has impacted other court cases, such as the one involving defendants Kaleab Tariku and Tariku Dulla Versus Gurage Zone public prosecutor in the Gurage Zone High Court.¹⁷⁷ The defendants were found guilty of multiple offenses related to issuing a cheque without sufficient fund for the purpose of suretyship.

There is also a significant discrepancy in other similar cases involving penalties and interest rates between the federal Supreme Court cassation decisions. For instance, in the case between Derese Alemu and Mulisa Worku, a court held that an agreement in a contract that requiring repayment of double the loan amount is invalid.¹⁷⁸ However, in another case, the court confirmed penalty agreements in certain contracts are acceptable unless stated otherwise by the creditor.¹⁷⁹ As per the decision, penalty clauses can be implemented, unless the creditor specifically states otherwise. This means that the creditor can demand the fines as per the contract. Thus the court's interpretation on fines and interest rates in contracts appears to be contradictory, as seen by the comparison of rulings. Since informal saving and lending systems like *Ikub*, where penalties and interest the main source of profit, the lack of consistent legal framework regarding penalties and interest may create uncertainty. To ensure consistency and predictability in judicial decisions, a clear legal standard for *Ikub* and related issues like guarantee or suretyship, interest rates, and penalties is necessary, highlighting the need for specific legal framework for cases like *Ikub*.

¹⁷⁵ A case between Adugna Anbelo Vs Federal General Attorney involving checks, Federal Supreme Court cassation decision volume 12 file numbers 67947

¹⁷⁶ A case between Federal Attorney Vs Yeshiemebet Tilahun, involving suretyship contracts. (n 23).

¹⁷⁷ Case between defendants Kaleab Tariku and Tariku Dulla (Chair person of Ematinde Ikub) Versus Gurage zone public prosecutor involving a cheque without sufficient fund. (n 22).

¹⁷⁸ Case between Derese Alemu and Mulisa Worku Federal Supreme Court Cassation file number 43372, volume 8.

¹⁷⁹ The case between Solomon Merdokiyos and Sisay Labene Federal Supreme Court Cassation file number 162776, Volume 23.

CHAPTER FOUR: THE PRACTICE OF REGULATION OF IKUB IN GURAGE SOCIETIES

4.1. HISTORICAL BACKGROUND

Gurage is located in Central Ethiopia Regional State. It shares borders with Hadiya and Yem Zone to the southeast, Kebena Special Woreda to the northwest, Oromiya Region to the north and east, and Silt'e to the southeast.¹⁸⁰ They are known for a strict saving culture whose main instrument is *Ikub* (rotating saving and credit association).¹⁸¹ *Ikub* helped the Gurage entrepreneurs to acquire startup capital, the main challenge in the creation of new ventures and businesses.¹⁸² There are controversial things about where and how *Ikub* was founded; however, most studies suggest that *Ikub* originated from the Gurage community. For instance, according to Victor Gerdes, the *Ikub* is of modern origin and most likely started with the Gurage, who have long had the practice of collecting money from villagers in order to aid a person in times of need, and this practice led to the development of the *Ikub*.¹⁸³ The Gurage Goye Association believes that '*Ikub*'s' were invented by the women of Gurage village, who used their earnings to buy raw coffee, milk, and butter for weddings and other special occasions.¹⁸⁴

The scarcity of rainfall marked the beginning of *Ikub* in Gurage society; once upon a time, a shortage of rainfall in the Gurage area or drought led to a scarcity of food for cattle, resulting in a decrease in milk production. This, in turn, made the women of the Gurage community come together to find a way out of this problem. They all agreed with the least amount of milk to put their devices together and make a few butter and cheese out of the milk. This practice, known as "Wjo" in the local language marked initiation into history for *Ikub*, signifying the creativity and resilience of the Gurage people.¹⁸⁵

¹⁸⁰ 'GURAGE ZONE' WIKIPEDIA.

¹⁸¹ 'The Culture of Gurage' (n 14).

¹⁸² *ibid*.

¹⁸³ Gerdes (n 53).

¹⁸⁴ 'The Culture of Gurage' (n 14).

¹⁸⁵ ታዲሳ ለገሰ, የጉራጌ ብሔራዊ ጥበቃ ባህል (የደቡብ-ጠቅላይ ብሔራዊ ህዝቦች ክልላዊ ማኅበት የባህልና ተረጎሞርዳዎች 2015) 74.



Image 1 and 2: Traditional butter Ikub called 'Wijo' among Gurage women



Image 3: A traditional butter measuring tool or rope

Generally, *Ikub* was established before the introduction of cash money in Ethiopia.¹⁸⁶ Historically, the development of *Ikub* in cash by Gurage societies was at a time when Christian men and women of the Gurage community celebrated the days of Angel Mikael and the commemoration of Saint Virgin Mary, respectively.¹⁸⁷ These celebrations have a rotating nature, with the ceremonies organized by different members in turns every month. The participants offer resources to the people holding the ceremonies. On the same note, the Muslims celebrate Mewlid, the birth of Prophet Mohammad, through the offering of resources to the organizers.

A good explanation as to why the *Ikub* system spread beyond the Gurage, according to Gerdes, was due to two major factors.¹⁸⁸ First, it was the Italian invasion that resulted in the loss of lives, homes, and property, thus angering people to pool resources to buy livestock or housing

¹⁸⁶ *ibid* 96.

¹⁸⁷ *ibid* 80.

¹⁸⁸ Gerdes (n 53).

materials. Secondly, urbanization and the availability of jobs seemed to favor the expansion of the *Ikub* system beyond the Gurage.¹⁸⁹

4.2. THE ROLE OF IKUB IN GURAGE SOCIETY

There are approximately 23 zone sectors in Wolkite City, and nearly all have formed at least one *Ikub* group; these include Gurage Zone High Court and Gurage Zone Police. The fact that almost all institutions have at least one *Ikub* group clearly shows how commonly widespread and significant this traditional system of savings is. The fact that at least 91% of the sectors are *Ikub* underlines its prevalence and importance in the community context. By pooling their resources through regular payments, they create a fund that can be used for various purposes, such as solving financial problems, making investments, or building future assets. They have no internal rules, no official minutes of meetings, and do not require guarantees from participants. Instead, these arrangements are based on trust and mutual understanding between members. As per my interview and prior literature *Ikub* plays a significant role in the Gurage community. It acts as insurance during emergencies, a way to start a business to help overcome one's financial difficulties, and a means through which wealth could be created among the members. Let us get into it.

4.3.1 Starting New and Better Business: The "*Ikub*" in Gurage enables members with access to capital for investment in their own businesses. The shoeshine boy Temesgen in Wolkite City narrates on his idea of the power for transformation by *Ikub*. He explained how his friends have reaped over time the fruits by improving their economic status through *Ikub*'s daily initiative. For many others, Bajaj taxis have been in place for years now, a sign of the ownership of lucrative business and entrepreneurship altogether. Others have opted for the entertainment industry through the ownership of DSTV rooms, showing the diversification of the business interests altogether. "*Ikub*" has not only provided financial stability but also nurtured entrepreneurship ventures in different sectors. Others have gone on with university education and are university students showing how well "*Ikub*" has become supportive, financially stable.¹⁹⁰ According to

¹⁸⁹ *ibid.*

¹⁹⁰ Interview with Temesgen Gebre, 'Member of *Ikub* in Wolkite' (10 March 2024).

Temesgen, some of the friends have started their own shops, which means from being shoeshine boys or informal workers, they have now turned to established business people with a business setup. Temesgen said that he wants to learn from these incidents and be involved in similar projects of *Ikub* so that he can have his Bajaj like his friends. His expectations show his beliefs in the positive effects of *Ikub* in an economic situation through wise savings with the help of others.¹⁹¹

4.3.2 *Ikub* serve as insurance in Gurage: It is an informal insurance system whereby members contribute at regular intervals into a fund, in return for which they are covered against possible expenditure at any one time.¹⁹² Access to this kind of financial assistance is of special importance to those people who do not have access to banking services or credit. It has been most helpful in enabling individual and family financial strategies to meet unexpected expenses and emergencies.¹⁹³ More than any other culture, community support and solidarity are stressed by the Gurage during times of need, either during serious illness or at times of death. As *Ikub* is a financial service provider, it should put financial aid in times of serious sickness or death first.¹⁹⁴ Clearly, highly community-minded and socially responsible features of Gurage culture, whereby affected individuals or families need not worry about the cost of cure. According to the traditional leaders and members of Yejoka Elders Azmach Habte and Seyfe Wolde, *Ikub* prioritizes aiding its family members who are either sick or dead by pooling money from the group and giving it with compassion and social responsibility deeply engraved in Gurage society.

4.3.3 Overcoming financial hardships: By pooling resources, an *Ikub* can help members emerge from difficult financial situations that would otherwise be heavy on their shoulders. Over time, this creates a collective support system to fall back on in times of need. This was observed in various Gurage *Ikubs*, and I come from one *Ikub*. According to Meseret, head of the Department of Culture and Tourism Bureau of Gurage, this is deeply rooted in Gurage culture

¹⁹¹ *ibid.*

¹⁹² Interview with Azmach Habte, ‘Member of Yejoka Elders (Customary Law Makers of Gurage)’ (12 March 2024).

¹⁹³ *ibid.*

¹⁹⁴ Interview with Seyfe Wolde, ‘Customary Leaders and Members of Yejoka Elders’ (29 March 2024).

and society, originating into Gurage community.¹⁹⁵ This makes the activity very central in the region from a historical importance perspective, whereby Meseret also argues that almost every Gurage accepts and appreciates *Ikub*, which makes it so important in the history and social cultural settlements of those who are Gurage. She also believed that *Ikub* is a solution to the financial problems that may be given to people and support when needed.¹⁹⁶ She believes that Gurage women introduced *Ikub*, which shows their act and contribution towards this financial activity. She further stated that *Ikub* enabled civil servants to build houses for themselves, therefore serving their long-term financial goals. In the absence of any documentary evidence, Meseret has forcefully brought out the close association of *Ikub* with Gurage culture and its cultural significance. In sum, *Ikub* in Gurage represents an important part of Gurage tradition and practice. It is attached with deep historical, social, and economic significance among the community. Tariku, a member of *Ikub* in the Justice Department in the Gurage Zone, believed the collective solidarity and mutual help of the group members contributed much to his house construction.¹⁹⁷ Although *Ikub* does not cover all house construction expenses, its role in supporting the members for constructing their houses is quite realistic and supportive. More importantly, he said that such *Ikub* is based on collective solidarity and mutual assistance, where the members are willing to provide money, in cases of financial emergencies.¹⁹⁸ It builds community spirit, cooperation, and social strength to improve collective well-being and individual agency among the Gurage. In this justice department, the number of *Ikub* members ranges from approximately ten members, and they save 5,000 birr from their monthly salaries. Normally, this *Ikub* starts in November and ends at the end of July.¹⁹⁹ Of course, there's no bylaw, minute, or recordkeeping to support this.²⁰⁰ Normally, the organizer, who always gets financially constrained, is entitled to take his lot before others. There are two ways of drawing lots in this *Ikub*: either drawing lots on the first day for everybody or having a monthly draw after the exclusion of those whose lot has already been taken. It is this *Ikub* that has played a

¹⁹⁵ Interview with Amerga (n 166).

¹⁹⁶ *ibid.*

¹⁹⁷ Interview with Tariku Wachago, 'Members of Gurage Zone Justice Department Public Prosecutors *Ikub*' (12 March 2024).

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

²⁰⁰ *ibid.*

major role in helping its members realize their educational dreams, and I am no exception. The funds are usually invested in the participants' future careers such as a lawyer. The resources are also used to purchase tools such as laptops and desktops, financing of holidays as well as construction of a house. Members also invest the money they receive in courses as well as costs related to getting a driver's license among other needs. As a member, Justice Department *Ikub* allowing me to continue my LLM program by giving me the first lot.

In the Gurage Zone revenue bureau, two informal groups of *Ikubs* operate with a total of 21 members-one group consisting of 10 members and the other with 11.²⁰¹ According to Woynshet, each member contributes 2,000 birr on a monthly basis, putting together for mutual benefit. The contributions are either in cash or through mobile banking, to the organizer or the current winner of the *Ikub*.²⁰² No written bylaws or fixed procedures that are binding operate, but merely mutual trust and friendship within members.²⁰³ The members draw lots each month for that gets the pooled funds, with a proviso that those who got their payout are not allowed to win a second time until all others have received theirs. A system of this nature achieves bonding or an outcome related to a sense of belonging since the money is primarily used by its members for essential items in the house, such as refrigerators, television sets, and beds, among others, and even covers expenses during holidays.²⁰⁴

4.3.4 Wealth Creation: Because of regular contributions, *Ikub* is able to help its members create wealth through savings and capital distribution over time. This can create financial stability and development for both members and their families.²⁰⁵ According to Meseret, many have started businesses, made regular contributions to *Ikub*, and in turn become wealthy. For instance, the Gurage young man who migrates to urban areas and who finally makes it big in business is morally called upon to reach out and care for his close kin. An example of such a person should support these relatives to start the business and further make sure they become prosperous as long as they work in his business as employees, whereas the initial one will not get the salary,

²⁰¹ 'Interview with Woynshet Wirga, Member in One of Gurage Zone Revenue Office *Ikub* in Wolkite' (24 August 2024).

²⁰² *ibid.*

²⁰³ *ibid.*

²⁰⁴ *ibid.*

²⁰⁵ Interview with Amerga (n 166).

but the *Ikub* will enter join in their name.²⁰⁶ Eventually, such collaboration may give birth to successful business and personal outcomes.²⁰⁷

4.3.5 Other Social Functions: Gurage society utilizes this for social objectives: to increase a feeling of intimacy among group members and a sentiment of belonging.²⁰⁸ Mutual trust and collaboration in a group increases their social bonding and strengthens feelings of belonging and support. In Gurage culture, Desalegn highlights the importance of "*Ikub*" with an emphasis on strong communal ties in traditional savings and credit groups. He said that communicates continuously and shows memberly care for each other's well-being, thus they create a sense of belonging and social bond inside the group.²⁰⁹ The culture of care and assistance gives meaning to the functioning of "*Ikub*", in the framework of interpersonal and communal relations that have big importance in traditional institutions. The *Ikub* money is also spent to buy basic household goods like refrigerators, TVs, and beds, and to finance holiday expenses.²¹⁰ All interviewees have underlined the multifunction of *Ikub* in Gurage society in general, focusing on its economic functions and social and community-building roles. I have been a member of the community in my life, thus I have seen the role played by *Ikub* myself.

4.4. THE PRACTICE AND PRACTICAL AND LEGAL CHALLENGES OF IKUB IN GURAGE

In this research paper, I conducted personal observations of 14 *Ikubs* in Wolkite City. Of these, 9 were founded by the local business community, while the remaining 5 were initiated by civil servants from the Gurage Zone offices.²¹¹ Interviews were conducted with one member from each institution to review their bylaws, minutes, meeting books, and other important documents. There are approximately 23 zone sectors in Wolkite city, and almost all of them have established at least one *Ikub* group with the exception of Gurage Zone High Court and Gurage Zone Police,

²⁰⁶ 'Customary Leaders and Members of Yejoka Elders' (n 194).

²⁰⁷ Interview with Amerga (n 166).

²⁰⁸ Interview with Desalegn Fekede, 'Head of Gurage Zone Administration Office' (12 March 2024).

²⁰⁹ *ibid.*

²¹⁰ Interview with Girma Bilatu, 'Member of *Ikub* in Gurage Zone Finance Office' (17 December 2016).

²¹¹ 'Among 14 *Ikubs* in Wolkite City 9 Were Founded by the Local Business Community, Specifically: Sebteseb, Nitrahebe, Beseb Yasena, Joka, Bereka, Nimaje, Fikir, Enideg, and Sarendem *Ikub*. While the Remaining 5 Were Initiated by Civil Servants from the Gurage Zone Offices, Which Include Gurage Zone Justice Bureau *Ikub*, Culture and Tourism Bureau *Ikub*, Revenue Bureau *Ikub*, Finance Bureau *Ikub*, and Agriculture and Natural Resource Bureau *Ikub*.'

indicating the widespread popularity and importance of this traditional savings system. It is difficult to come up with the exact number of *Ikub* institutions in Wolkite due to their lack of legal status and not being registered with any institution. I also managed to get a sample of business community *Ikub* and their meeting places in Wolkite City by locating them through posted advertisements and verifying the address, date, and time of the meeting. I chose convenient sampling method to interview the parties. Furthermore, the researcher conducted interviews with two government officials from Gurage Zone Culture and Tourism Bureau and the Gurage Zone Administration Office. These participants were selected using purposive sampling techniques of a non-probability nature.

Despite its advantages, “*Ikub*” confronts several serious difficulties in Gurage society, such as fraud involving the management of *Ikub*, the absence of auditing mechanisms in the institutions, a lack of institutional bylaws, and so forth. This study categorizes the primary obstacles as the lack of legal personality, the failure to comply with national formal laws and bylaws of institutions, the absence of a legal framework governing institutions, the absence of an auditing system in the institutions, fraud, and poor management. Before moving on to the practical challenges of *Ikub* in Gurage, let me briefly mention the institutions here at the table.

No	Name of <i>Ikub</i>	Bylaws	Assignment of rights or sell of <i>Ikub</i>	Auditing system	Time of <i>Ikub</i> payments		
					Daily	Weekly	Monthly
1	Sebteseb <i>Ikub</i>	Yes	Yes	No		✓	
2	Nitrahbne <i>Ikub</i>	No	Yes	No		✓	
3	Bereka <i>Ikub</i>	Yes	No	No		✓	
4	Beseb yasena <i>Ikub</i>	Yes	Yes	No		✓	
5	Joka <i>Ikub</i>	No	No	No	✓		
6	Fikir <i>Ikub</i>	No	Yes	No		✓	
7	Enideg <i>Ikub</i>	No	Yes	No		✓	
8	Ker <i>Ikub</i>	No	Yes	No		✓	
9	Sarendem <i>Ikub</i>	No	Yes	No		✓	

10	Justice bureau <i>Ikub</i>	No	No	No			✓
11	Revenue bureau <i>Ikub</i>	No	No	No			✓
12	Finance bureau <i>Ikub</i>	No	No	No			✓
13	Culture and tourism bureau <i>Ikub</i>	No	No	No			✓
14	Agriculture and natural resource bureau <i>Ikub</i>	No	No	No			✓

Table 1: *Ikub* institutions those were included in this research

4.4.1 Absence of legal personalities

The first challenges regarding informal financial institutions such as *Ikubs* are related to legal personalities. Attributing a legal personality to an institution means that the institution is subject to rights and duties, which means that if the law provides the organization as a legal entity, the organization itself may own the property, and rights and obligations may be made in the name of the institution. In any case, all these informal traditional financial institutions are not considered legal entities in Ethiopia. For these reasons, they may face a number of problems, including the incapacity to enter into contracts as a legal person, the right to sue and be sued, the right to own property in their name, and so on. Accordingly, *Ikub* institutions that are found in the Gurage Zone cannot enter in to contracts as a legal entity, and they are unable to sue or be sued. No *Ikub* institutions are sued or to be sue in the case study of this research, which means the absence of legal personalities for *Ikub* institutions makes the *Ikub* not sue or to be sued. Among the 39 *Ikub* cases that are brought to Gurage Zone Court, which are included in this research paper, no *Ikub* sued in the name of the institution and there are no assets that were registered as property of *Ikub* as institutions. Additionally, it was determined that they do not own property in their own name. ‘*Ikubs*’ are traditional and informal, they lack the benefits attached to formal and well organized institutions.

Dependency on institutions and system is much better than dependency on individuals. Individuals fear to join *Ikub* institutions and feel insecure because of their very informality, that means lack of legal personality. This will contribute for uncertain and unpredictable court

decisions which result in destruction of the business environment. However, as we have seen from the experiences of Thailand and South Africa under Chapter 2 of this thesis, both nations have separate legislation involving ROSCA.

The Len-Share Act B.E. 2534 of Thailand and the Stokvel Act (No. 97 of 1988) of South Africa are legislation that acknowledges them as legal entities in both states. This means ROSCA in Thailand and South Africa have the right to acquire property on their own name and have the right to sue and be sued. On the other hand, ROSCA, or *Ikub* in Ethiopia, isn't recognized as a legal person, which means the institution doesn't have the right to acquire property in their own name and doesn't have the right to sue and be sued. Lack of such recognition may create problems with the realization of the institutions as well as their members. Therefore, it would be beneficial to follow the experience of South Africa and Thailand by recognizing *Ikub* as a legal entity.

4.4.2 Noncompliance of bylaws and formal laws of the country

The other challenge associated with those informal financial institutions is related to *Ikub* in Gurage societies are, noncompliance of their internal bylaws with the formal laws of the country. For this research, I investigated around 39 court cases in the study area. According to this data, around 79.5% of *Ikub* cases that are filed in the Gurage Zone Court have no internal by-laws, (for instance, cases involving Desalegn Tenkir Vs Adane Berga in Edja District Court, Wendimu Teka Vs Melkamu Bessir in Wolkite City First Instance Court, Tsige Nurga Vs Teklil Berga in Mihur Aklil District Court, Birhanu Teni Vs Misganu Awol in Gummer District Court and so on) which makes it difficult to ascertain members' accountability and responsibility in court.²¹² Further, if one of the parties does not admit the circumstances in court, the burden of proof may be difficult for the other party since it is based on trust between them. To elaborate on this, within the 39 *Ikub* cases that are brought in Gurage Zone Courts, only 8 of them are internal bylaws, and surprisingly, it would be difficult to accept these bylaws as a contract made between parties since the majority of them are poorly drafted²¹³ and most members, may not have signed on them. For instance, none of the above eight bylaws that are brought to court are signed by all

²¹² Interview with Hailu Shikure, 'Judge at Edja Wereda First Instance Court' (5 April 2024).

²¹³ Interview with Tibebe (n 24).

members of the institutions. Membership books are used mainly to track payments with the chairperson signing for those who have paid rather than specify rights and obligations. Therefore, it is difficult to impose an obligation in the absence of prior agreements made by parties.

Whereas most of the provisions of contract law are designed to be gap fillers rather than individually addressing every special problem that arises with *Ikub*,²¹⁴ most of the bylaws of the institutions are also poorly drafted, while the Civil Code of the Empire of Ethiopia, under Art. 3347, considers the legitimacy of customary norms as supplementary laws as long as they are not in conflict with the formal law of the country. However, there are contradictions between the bylaws of *Ikub* and the formal laws. For instance, Article 1725 of the Civil Code requires contracts of surety ship should be in writing, yet there are *Ikub*'s in Gurage that make such contracts of surety ship verbally.²¹⁵

In addition, Article 1920 and the following stipulate that the contract of guarantee must be clear and must explicitly states the amount of money pledged for performance, a requirement that is not always met in the *Ikub* suretyship contract in Gurage.²¹⁶ The civil code also stipulates that suretyship agreements or guarantees must be expressed and that contracts for guarantees shall have no legal force unless they specify the maximum amount for which the guarantee is given. However, many *Ikub* institutions might not adhere to this stringent process in Gurage.²¹⁷ They typically refer to a member or members of the *Ikub* as guarantors instead of following this mandatory requirement of contract law.²¹⁸ Further, the legal interest stipulated under Article 1752 and 2479 of the civil code may not be followed by *Ikub* institutions in Gurage; instead, the managements of *Ikub* institutions may impose penalties greater than the legal interest stipulated under the civil code on members who fail to pay *Ikub* money on time as per their bylaws.²¹⁹ These are serious deviations of the internal practices of the *Ikub* institutions from the formal legal framework of the country and thus can result in open conflicts between the two systems and

²¹⁴ Interview with Daneal Mitiku Lawyer and Asistance Professor of Law at Wolkite University (15 June 2024).

²¹⁵ Interview with Shikure (n 212).

²¹⁶ Interview with Sisay Genzebe, 'Lawyer in Any Federal and Central Ethiopia Court' (5 April 2024).

²¹⁷ Interview with Tibebe (n 24).

²¹⁸ *ibid.*

²¹⁹ Article 3/e/ of the Bylaws of Beseb Yasena Ikub 2004.

difficult enforcement of contracts or agreements made by those institutions. Similarly, one party can make a suretyship contract without the prior consent of the spouse.²²⁰ This can present serious problems, particularly if the winners of the *Ikub* lot leave the area before *Ikub* cycle is over. In this situation, the responsibility of giving the members their *Ikub* money may fall on the sureties. In the event that the guarantor is unable to make the payment, legal action may be pursued against them, and the court may eventually order the spouse's property to be attached. It may question the rights and duties of spouses concerning financial matters and the possible impacts on the family's assets and welfare. While the Federal Family Code permits a spouse to invalidate surety agreements made without their consent within two years, applying this to *ikub* cases, where spouse often enter agreements without mutual approval, may threaten the survival of *ikub* institutions in Gurage. In this respect, Gurage *Ikub* faces a complicated, repeated problem.²²¹ It should be made clear to all parties what each role is, what their particular obligations are, and that proper consent is acquired prior to entering into such agreements by specific regulation.

4.4.3 Absence of specific legal framework that governs *Ikub*

The third critical challenge in Ethiopia is the absence of a specific legal framework that governs their activities. There is no specific legal framework that governs *Ikub* in Ethiopia. Although contract law can be used to resolve cases involving informal financial institutions; its adequacy to address all the issues of those institutions is debatable. For instance, contract law does not provide clarity issues such as membership criteria of an *Ikub*, the financial contributions required from members, the precise definition of *Ikub*, and the minimum and maximum numbers of participants allowed in a single *Ikub*, as well as questions regarding legal personalities and other related matters. Further, applying directly all provisions of contract law to *Ikub* may potentially cause harm rather than good due to their *Ikub* basic nature. However, the experience of Thailand and South Africa under chapter 2 shows that Thailand enacted legislation involving Rosca called Len-share Act B.E. 2534. The objectives of the Len-share Act B.E. 2534 are to safeguard citizens against public fraud. The legislation under Article 4 defines ROSCA as an activity in

²²⁰ Interview with Genzebe (n 217).

²²¹ *ibid.*

which three or more people agree to participate and donate money or assets to create funds for a predetermined number of rounds. Therefore, the minimum numbers of members in any Roscas in Thailand are three, and forbid ROSCAs having more than 30 participants in one group, while with the absence of specific laws that govern *Ikub* in Ethiopia, it's up to participants to set the minimum and maximum limits of members in the institution. Further, in Thailand, participants of Rosca must be natural persons, and judicial persons are not permitted to form a ROSCA or serve as ROSCA managers. The act also forbids managing more than three ROSCAs at once. Under Section 30 of the Act, the Thailand Ministry of Finance is authorized to establish regulations and implement the ROSCA Operation Act, which is very essential for the effectiveness of the act since mere enactment of a law without strong institution that enforcing it's pointless.

Similarly, ROSCA, or Stokvels, functions as a separate legal entity in South Africa. The Stokvel Act (No. 97 of 1988), which acknowledges them as legal entities, This is the main legislation that governs them and it lays out the fundamental conditions for Stokvels, including objectives of Stockvels membership guidelines, financial contributions and the fund's. Being aware of the laws governing Stokwele enables participants to engage in the activity with assurance and safety. However, as we have said before enacting a law without a strong institution to enforce it, is meaningless. To this end, the South African Reserve Bank founded the National Stokvel Association of South Africa (NASASA), which has released a model constitution for the institutions and their members. This publication provides Stokvel groups with a framework to establish their own constitution, which sets out the foundation of the Stokvel group. The model constitution of the National Stokvel Association of South Africa (NASASA) is a set of fundamental guidelines that oversee the functioning of Stokvels and other community-based informal financial institutions.²²² Therefore, any Stockvels institution found in South Africa, can easily get the model constitution of Stockvels associations, and then they can formulate their own bylaws based on the model constitutions.

On the other hand, the legal system of our country was more or less adopted from a different legal system abroad; it doesn't give more attention to the rich indigenous knowledge and customs of the country. Or as an informal sector, *Ikubs* operate without government regulation,

²²² 'Understanding Stokvels in South Africa: A Legal Perspective' (n 93).

and these informal sector largely ignored and neglected.²²³ Consequently, there's no one advocating for the rights of creditors and depositors involved in *Ikubs*.²²⁴ Therefore, it would be more beneficial to incorporate community-based indigenous customs and knowledge, such as *Ikub* and other similar institutions, into the country's economic policies, like in South Africa, and then formulate legal framework and strengthen the protections for participants in *Ikub*'s to ensure fair treatment and resolution of *Ikub*-related disputes. Providing a legal framework can help the institutions as well as important to safeguard the interests of all participants. Almost all legal professionals involved in this research agree with the necessity of separate legal frameworks concerning *Ikub* and argue that most of the problems involving *Ikub* are associated with the absence of separate legal frameworks for the institutions. Because there is no specific legislation in Ethiopia pertaining to *Ikub*, there are legal gaps that affect how *Ikub*-related conflicts are resolved before the courts.²²⁵ Joining *Ikub* helps participants to overcome certain cultural, social, and financial hindrances; nevertheless, in the event that disagreements between members occur, it might be challenging to resolve them in the absence of specialized institutions and laws.²²⁶ Further, with the exception of one individual who is the chairperson of Beseb Yasena, one of *Ikub* institutions that are found in Wolkite City, all participants in this interview who are members of at least one *Ikub* institution in Wolkite agree to have specific legal frameworks that govern *Ikub*. However, they do have a clear fear that there may be government intervention of for the purpose of regulation and taxation will occur if the institution has separate legal frameworks.²²⁷ Therefore, there is a need to establish a national regulatory body to oversee the activities of informal financial organizations and to implement specific legal frameworks that govern their operations.²²⁸

4.4.4 Lack of auditing system in the institution

The last critical challenge for *Ikub* in Gurage may relate to the absence of an auditing system. This is not the only problem, with huge problems posed by the fact that institutions in *Ikub* of

²²³ 'ROLE AND POTENTIAL OF "IQQUB" IN ETHIOPIA' (n 45) 62.

²²⁴ *ibid.*

²²⁵ Interview with Mitiku (n 170).

²²⁶ *ibid.*

²²⁷ Interview with Tsegaye Bezu, 'Electronics Merchant and Members of *Ikub* in Wolkite City' (15 June 2024).

²²⁸ Interview with Mitiku (n 170).

Gurage lack auditing systems, resulting in a lack of transparency and accountability in their financial matters. There are four primary sources of profit for *Ikub*, 1) interest earned from the sale of *Ikub*, 2) interest earned from bank balances, 3) interest earned from loans, and 4) penalties.²²⁹ In Gurage *Ikub*, income which emanates from penalties, the sale of *Ikub*, extra money collected from members during *Ikub* days, and interest from the loan, is not audited,²³⁰ and huge amounts of money are managed with the huge potential of being misused. There are *Ikub*'s in Wolkite that collect an additional 20 to 200 birr from members according to their participation in *Ikub*'s days, resulting in a significant amount of money being held by the chairman of the institutions.²³¹ This lack of financial transparency presents a major challenge for *Ikub* institutions in Gurage and hinders their ability to ensure financial transparency and accountability. An institution's auditing system ensures accuracy and trustworthiness, which means that in financial statements and reports' accuracy and reliability are confirmed by auditing, which guarantees that there are no significant inaccuracies or misstatements in the financial data that the organization presents.²³² Auditing also increases confidence and credibility.²³³ On the other hand, financial institutions run a greater risk of fraudulent activity, which could harm the institution's reputation and cause financial losses for stakeholders.²³⁴ Accordingly, most *Ikub*'s in Gurage do not conduct any audits.²³⁵ Further, the absence of auditing, particularly in big *Ikub*'s, can result in probable mismanagement of funds, no transparency, and disputes among members. In the absence of proper financial oversight, the chance of embezzlement or misapplication of funds within the group could happen. Based on its by-law, most of the *Ikub*'s keep 20 to 200 birr besides the regular savings of *Ikub* every week. This additional money is handed to the collector, but due to the lack of an auditor within the *Ikub* institutions, the actual amount of this money is unknown at the end of the cycle.

²²⁹ 'ROLE AND POTENTIAL OF "IQQUB" IN ETHIOPIA' (n 45) 55.

²³⁰ Interview with Bezu (n 228).

²³¹ Interview with Tibebe (n 24).

²³² Jaya Sharma, 'Types of Audit and Their Advantages' *Shiksha online* <<http://www.shiksha.com>> accessed 29 July 2024.

²³³ *ibid.*

²³⁴ *ibid.*

²³⁵ Interview with Hebib Kedir, 'Member of Joka *Ikub*' (12 March 2024).

Furthermore, the chairperson has power over money collected from penalties and the sale of *Ikub* assets. Without any proper auditing structure, this money engenders a risk to the institutions' credibility and member interests. Misappropriation or mishandling of this money will jeopardize the sustainability and reliability of the *Ikub* institutions unless it is properly controlled. Big *Ikub* institutions shall maintain transparent financial practices, including regular auditing, in order to maintain accountability for all members' interests. It would, therefore, where necessary, institute sufficient checks and balances in its financial dealings to avoid any inconsistencies that may affect the institution's reputation as a trustworthy and ethical enterprise. On the other side, financial institutions that do not conduct audits may not publish their information in a transparent manner. This could sabotage the confidence and trust of members. Inaccurate financial information: the institution can easily provide its stakeholders with inaccurate or unreliable financial information without undergoing audits.²³⁶ This has the risk of promoting ineffective and inefficient management of its finances and misleading its stakeholders' financial decisions.

When we say the absence of proper auditing as a primary challenge for *Ikub* in Gurage, it poses a significant risk of fraud, particularly involving the chairperson. This lack of oversight can lead to the chair person gaining unfair advantages by misappropriating funds from penalties, interest, and other sources. During my interview among 10 *Ikub* members in Wolkite, nine out of ten agreed that none of them received the profit derived from penalties that may result from late payments. Instead, it was personally used by the chairperson of the institution without the prior consent of participants. Surprisingly this is also supported by their bylaws, (for instance article 1(f) of the bylaws of Beseb Yasena *Ikub*) states that the deposit and income generated from penalties and other of the *Ikub* are not disbursed to the depositors, however, the chairperson utilizes these funds for necessary expenses and is not accountable for this action, as he is responsible for managing the *Ikub*. This situation may foster a significant risk of fraud by the chairperson. In addition the chairperson is not permitted to distribute the winnings to the winner immediately; after a period of time, he may provide a dry cheque to the winner and utilize the funds to expand his own business. According to several participants in this interview and members of the *Ikub*, it may take an additional six months to deposit the money in to the winner's

²³⁶ 'Types of Audit and Their Advantages' (n 233).

account, and the winner has to wait for up to six months before the winner actually receives their *Ikub* funds.

Most of the by-laws of *Ikub* have been mentioned in this study, showing that the selling or transferring of a lot is very common. The majority of their internal bylaws allow for the sale of *Ikub* lots. Larger “*Ikub*” members have a strong desire to acquire a lot from someone in order to receive the money collected sooner rather than later. Sometimes members prefer not to wait around in uncertainty for their lot, which is determined by chance. As a result, they would rather take control by purchasing the lot from someone. Some *Ikub*'s distribute the winnings on the first week and allow for selling in the second week, while others allow for selling from one to twenty weeks before distributing the collected *Ikub* money by chance. The problem here is that members don't have the right to claim profits generated from the sale of *Ikub*, meaning all the profits go towards the personal uses of the chairman. In my interview with members of *Ikub*, 8 out of 9 participants revealed that they don't receive any profit from the sale of *Ikub*, and they were opposed to incorporating the sale of *Ikub* into their bylaws. They expressed that the income generated from selling of *Ikub* leads to disagreements within *Ikub*, as they do not benefit from it. However, the sale of *Ikub* lot is rare in small Roscas, which are mostly founded by friends, coworkers, or those with strong interpersonal ties. Likewise, according to Article 6 of the bylaws of Bereka *Ikub* (this *Ikub* registered as a contract in the Wolkite City Justice Bureau) selling or transferring of lot is prohibited; instead, the lot may only be donated or transferred for free.

Moreover, the longevity of the *Ikub* cycle also provides ample opportunity for chairpersons to engage in fraudulent activities, creating challenges for both *Ikub* institutions and members. Usually, the number of participants in an *Ikub* is greater than 100, (for instance, according to their bylaws, Beseb Yasena *Ikub* has 164 members, Bereka *Ikub* has 121 members and Seb Teseb *Ikub* has 114 members) which means it can take a minimum of two years or more if the activity is for one week of selling and another week of distribution by chance. This is a big burden for the members of an *Ikub* and can also raise the chances of mistakes happening within the group. Indeed, limiting the number of participants in an *Ikub*, like in Thailand, could have been a potential solution to this sort of mismanagement. Further, most members of *Ikub* which are participants in this interview, argue that the chairman may receive one or more lots for his personal use dubiously even after the *Ikub* cycle ends, since no one strictly follows the final date

of *Ikub*. Therefore, it is important to enact legislation for these and other issues to be addressed and the proper procedure to be followed within *Ikub*'s.

4.5 HOW COURTS ENTERTAIN CASES OF IKUB?

In Gurage Zone, there are nine districts and five city administrations. Among these one district, and four city administrations that were founded during the last five years or less. As a result, the courts in these areas are not adequately organized. I conducted my case study in four districts out of the eight that remain and one city administration, namely 1/ Edja, 2/ Mihur and Aklil 3/ Gedebano Gutazer Welene 4/ Gumer district court and Wolkite city administration first instance court. Additionally, I included cases from Gurage Zone High Court. The information I received from the Gurage Zone High Court led me to choose these districts. Additionally, I conducted interviews with four judges from various locations: one from Edja District, one from Gummer District, one from Wolkite City Administration First Instance Court, and one from Gurage Zone High Court. Additionally, I interviewed five lawyers in the area, including two who are lecturers at Wolkite University School of Law and two who serve as lawyers for two *Ikub* institutions in Wolkite involving the practice of *Ikub* in Gurage Zone Court. Here are cases in the table:

No	File number	Plaintiffs	Defendants	Auditing system	District or Wereda	Internal by laws
1	12450	Desalegn Tenkir and Zeberga Bade	Adane Barega and 2 others	NO	Edja	NO
2	12592	” ”	Aschalew Girma and 2 others	NO	” ”	No
3	12779	” ” ” ”	Mesfin Degfe and Derbachew Kifetew	No	” ”	No
4	12064	” ”	Adane Berga and Mebratu Neri	No	” ”	No
5	12450	” ”	” ” ” ”	” ”	” ”	No
6	12371	Mekya Heyu	Yared Girma		” ”	NO

7	08620	Zerfu Wolde	Kibrom Aregawi and 2 others	” ”	Wolkite City	YES
8	08631	” ”	Tigstu Gebru and 6 others	” ”	” ”	” ”
9	11930	” ”	Mimi Nassir and Yossef Nassir	” ”	” ”	YES
10	12386	” ”	” ”	” ”	” ”	” ”
11	12924	Haji Worake Awol	Jemmal Hussien	” ”	” ”	” ”
12	13100	” ”	Mare Degu	” ”	” ”	” ”
13	13099	” ”	Aschalew Techane	” ”	” ”	” ”
14	13098	” ”	Geletaw Tefera	” ”	” ”	” ”
15	07788	Wondimu Teka	Melkamu Bessir 3 others	” ”	Gumer Wereda	NO
16	07794	Birhanu Teni and	Misganu Awol	” ”	” ”	NO
17	08249	Worku Abebe	Abebe Tesfaye and 2 others	” ”	” ”	NO
18	07670	Abidat Melis	Yisreshiwet Bedru	” ”	” ”	NO
19	08323	Kinfe Tere and 3 others	Haron Kedir and 3 others	” ”	” ”	NO
20	11530	Tsige Nurga and 2 others	Teklil berga and 2 others	” ”	Mihur Aklil Wereda	NO
21	12807	Siraj Mohammed and Sefa Bedewi	Hussien Aleme	NO	” ”	” ”
22	014108	Ashenafi Mulat	Mebratu Abegaz 2	” ”	G/G/W/	NO

			others		Wereda	
23	014085	Mekbib Girma	Abdu Kemal 2 others		” ”	NO
24	014041	Seada Giragn	Abdulfeta Jemal	” ”	” ”	NO
25	013811	Began Tollosa	Bahirtaso Awol 6 others	” ”	” ”	NO
26	013390	Maru aultan	Emebet Geremu and 2 others	” ”	” ”	No
27	013450	Mohammad Nassir	Ediris Hussien	” ”	” ”	NO
28	013341	Maru Sultan	Ayele Maru and 3 others	” ”	” ”	NO
29	013471	Mekibib Girma	Wossen Debisa and 3 others	” ”	” ” ” ”	” ”
30	013328	Mohamod Tulu	Mudesir Ebrahim	” ”	” ”	” ”
31	013340	Maru Sultan	Emebet Geremu and 2 others	” ”	” ”	NO
32	013414	Mekbib Girma	Kiyar Gelete 2 others	” ”	” ”	NO
33	012662	Began Tolossa	Taye Legesse 2 others	”	” ”	NO
34	012632	Teshome Biftu	Feleke Bezu 3 others	” ”	” ”	NO
35	011891	Bezu Mossa	Teshome Biftu	” ”	” ”	NO
36	011897	Mohammad Sani and 2 others	Muntiha Mohammed and Mohammed Nur	” ”	” ”	NO
37	14082	Muntiha Mohammed(appea l file)	Mohammed Sani and 2 others	” ”	Gurage zone H/Court	NO
38	14182	Tariku Dula and 2	Ibrahim Hayatu and 3	” ”	” ”	YES

		others	others			
39	14304	Gurage zone Public prosecutor	Tariku Dula and 2 others	” ”	” ”	YES

Table 2: Court cases included in this research

4.5.1 Preliminary objections relating to competency to file a suit in a Gurage Zone Court

Based on my observation of over 39 cases at Gurage Zone Court, only two defendants were represented by a lawyer raising preliminary objections in court. In the first case, the Gurage Zone High Court examined a civil dispute between plaintiffs Tariku Dula and two others and defendants Ibrahim Hayatu and three others.²³⁷ This *Ikub* has its own bylaws, and the bylaw gives the first plaintiff the power to represent the institution in any matter, including suing and being sued on behalf of the institution in court, and the power to represent a third person. After receiving the charge and the related evidence, the defendants submitted their objections to the case according to articles 33/1/ and 244/2(d) of the civil procedure code. The defendants have contended that the plaintiff does not have legal standing to bring legal action against them under article 33/1/ of the civil procedure code of Ethiopia.²³⁸ They argue that, as the chairperson of the *Ikub*, he has already received his own share or lot, and therefore, the civil procedure code only allows members who have not received their *Ikub* share to initiate legal proceedings.²³⁹ This is on the grounds that, having been the chairperson of the *Ikub*, he has already been allotted his share or lot, and thus, the provisions of the civil procedure code only permit members who have not been allotted an *Ikub* share to file a suit.

According to the CPC, a person cannot plaintiff unless they have a vested interest in the subject matter of the suit in question.²⁴⁰ Article 58 of the Civil Procedure Code provides that a party may

²³⁷ Case between plaintiffs Tariku Dula (chairperson of the Ematnde Ikub) and two others and defendants Ibrahim Hayatu and three others [2014] Gurage Zone High Court file number 14182.

²³⁸ *ibid.*

²³⁹ *ibid.*

²⁴⁰ Article 33/2 of Decree No 52/1965 Civil Procedure Code of Empire of Ethiopia.

be represented in court by a representative who is a first-degree relative. The representative must be the spouse, brother, child, father, or grandfather of the party he or she represents. Here, the plaintiff has to look for express and specific representation under article 2205 of the civil code or article 63 of the civil procedure code before filing a petition in the competent court. Without such a representation, he or she cannot plead any right or vested interest to prosecute such a lawsuit on behalf of other persons under articles 33(2) and 244/2/D of the civil procedure code. It also challenged the validity of the steps that the *Ikub* management had taken. This reveals how vital legal representation is in any complex legal matter, especially when the decision or authority of an officer in an organization such as the *Ikub* associations needs to be challenged. Significantly, this also indicates that there was a need for information about the law with respect to their rights and obligations during the disputes within the family setup. This lack of legal representation among defendants in cases relating to *Ikub* can therefore be attributed to limited access to legal services, a lack of awareness about legal rights, and cultural norms. A similar case was between plaintiff Zerfu Wolde and defendant Tezera Seifu,²⁴¹ wherein the preliminary objections of the defendant were accepted because he had a legal attorney. The provisions of this article guarantee everyone a very fundamental right: the right to bring a justiciable matter to a competent judicial authority or court. This highlights the importance of legal representation in navigating complex legal matters, especially when challenging the authority or actions of officials within community-based organizations like *Ikub* associations. It also emphasizes the significance of understanding one's legal rights and obligations in disputes within traditional community structures. Thus, it makes sense to argue that, if defendants in *Ikub*, represented by attorneys, may object on the ground of vested interest.

In other similar cases involving plaintiff Desalegn Tenkir, and defendants Adane Barega and Mebratun Neri, because the defendants cease to pay the *Ikub* contribution before the end of the *Ikub* cycle, the chairperson opens a legal pleading against the defendants.²⁴² Here, the defendants do not raise any kind of preliminary objection, which may be because they are not represented by

²⁴¹ Case involving plaintiff Zerfu Wolde chief of Beseb Yasena Ikub and defendant Tezera Seifu at Wolkite City Administration First Instance Court file number 08631.

²⁴² Case involving plaintiff Desalegn Tenkir, the chairperson of Befrehot Ikub, and defendants Adane Barega and Mebratun Neri [2015] Gurage Zone Edja Wereda court File number 12064,.

legal professionals. However the court's argument prior to the decision impressed the researcher and revolved around the legality of *Ikub*. It says that even though *Ikub* is an association formed by more than two individuals and practiced throughout the country and plays a significant role in overcoming financial burden among members, there is no specific law governing *Ikub* in Ethiopia, and as, they are excluded from civic society proclamation number 1113/2019 under Article 3/3, and they are also not registered as legal entities, and therefore, they don't have the legal capacity to sue or be sued in their own name.²⁴³ Further, the court maintains that there is no authorized body to register such organizations as associations under the civil code of empire of Ethiopia.²⁴⁴ However, the court also recognizes that individuals involved in *Ikub* institutions have access to justice as guaranteed by Article 37 of the FDRE constitution. This article guarantees everyone the right to bring a justiciable matter to a competent judicial authority or court.

The liability of *Ikub* leaders for unpaid members is also creating a big legal problem. Members often sue courts to pass judgments holding *Ikub* officials responsible for their unpaid debts. In most cases, they do not, however, refer to some of the clauses in the Ethiopian Civil Procedure Code or the civil codes. They assume that the courts will have to listen to questions concerning payments to the traditional *Ikub* institution and, therefore, give the necessary judgment needed to cement their argument. Most of the time, judges rule that, indeed, leaders are allowed to sue on behalf of all members due to some internal *Ikub* regulations. It is also possible that an *Ikub* leader might raise vested interest as an immediate objection if they are sued as a consequence of their members failing to fulfill an obligation provided for in the internal bylaws of *Ikub*.

4.5.2 Cheque-related issues involving *Ikub* in Gurage Zone Court

The FDRE criminal code stipulates that anyone who intentionally draws a cheque without cover or knows that there will not be full cover at the time of presentment for payment is punishable with simple imprisonment, or, according to the gravity of the case, with rigorous imprisonment not exceeding ten years, and a fine. Further, the federal Supreme Court cassation division interpreted these provisions in volume 12, and issued a binding decision regarding cheques, stating that issuing a cheque without sufficient funds can be a crime by confirming that the

²⁴³ *ibid.*

²⁴⁴ *ibid.*

cheque was presented to the payment bank when there were insufficient funds to cover it.²⁴⁵ This means that whosoever issues a cheque without sufficient funds may be held liable if it is proven that the cheque did not have sufficient funds at the time of presentation for payments, even if it was issued for the purpose of suretyship. The decision of Gurage Zone High Court was impacted by this type of discrepancy in the federal Supreme Court Cassation division ruling. Accordingly, this decision was influenced by Gurage Zone High Court case involving defendants Kaleab Tariku and Gurage zone public prosecutors.²⁴⁶

The federal Supreme Court cassation decision decided that issuing a cheque without sufficient fund is a crime even though it was issued for purpose of suretyship.²⁴⁷ However, as we have said before this decision was revised, allowing cheque writers to be acquitted if they issue cheque for purpose of suretyship or guarantee.²⁴⁸ This means if the cheque given as a guarantee or pledge contract complies with Article 2864-2866 of the civil code and Article 952 of the old commercial code, then it is not punishable. This shows an inconsistency in the interpretation of cheque-related matters by the Supreme Court cassation division, impacting the Gurage zone high court's decision.

4.5.3 Practical applications of interest and penalties for *Ikub* in Gurage Zone Court

The Civil Code of Empire of Ethiopia establishes an annual maximum legal interest rate of 12% and a default rate of 9% for loans. "The National Bank of Ethiopia has liberalized interest rates for financial institutions to allow private banks to enter the market, but NBE has not issued any directive nor a set of guidelines for the interest charged on loans acquired from informal sources; rather, it has bestowed commercial banks with the flesh to fix their interest rates in accordance with market principles. This calls into question whether Proclamation No. 591/2008 has revoked the lawful interest rate specified in the Civil Code and whether it is still effective.

²⁴⁵ Federal Supreme Court Cassation Decision between Adugna Anbelo and Federal Attorney in volume 12 file number 67947.

²⁴⁶ Case between defendants Kaleab Tariku and Tariku Dulla (Chair person of Ematinde Ikub) Versus Gurage zone public prosecutor involving a cheque without sufficient fund. (n 22).

²⁴⁷ Federal Supreme Court Cassation Decision between Adugna Anbelo and Federal Attorney, volume 12 file number 67947.

²⁴⁸ Federal Supreme Court Cassation Decision Volume 25, Cassation No. 161448; a case between Federal Attorney vs. Yeshiemebet Tilahun.

The chairpersons of *Ikub* in Gurage often prefer penalties over legal interests when it comes to nonperformance of obligations. This could be due to the fact that legal interest is calculated annually, while penalties can be imposed daily, weekly, or monthly based on the fixed amount of money owed. Another reason for this preference may be that the civil code specifies a low legal interest rate of 9% in default, with a maximum of 12% annually. They are, however, very minimal compared to the penalties meted out by *Ikub* leaders. The civil code also does not give any limit on the amount of penalties, and thus parties are at liberty to agree on penalties in their contractual agreements. Further, how interest is calculated the federal supreme court cassation decision under volume 17 ruled mandatory decision, which states that regarding the loan contract, calculating interest monthly is illegal and it should be calculated annually.²⁴⁹

Through my investigation, however, I have found that certain *Ikub* internal bylaws enforce daily penalties, even if the *Ikub* operates on a weekly basis. For instance in a case, involving plaintiff Zerfu Wolde and defendants Mimi Nassir and Yosef Biru, the first respondent was a member of Beseb Yasena *Ikub*, and the second was her husband and guarantor, while the first respondent was the secretary of the Beseb Yasena *Ikub*; she took the *Ikub* money early but later stopped contributing or paying the *Ikub* money for 22 cycles.²⁵⁰ As per Article 8 of the bylaws of the Beseb yasena *Ikub*, mandate that a punishments of 100 birr is imposed daily for non-fulfillment of obligations or delayed payments. The debts are 122,000 birr plus a penalty of 154 days, which equals 15,400 birr. The total amount of relief requested is, therefore, 127,600 birr. The defendants admit they owe the original amount but dispute the additional charges that were penalties. The court ruled in favor of the plaintiff, ordering the defendants to pay both the unpaid money and penalties while rejecting the legal interests.²⁵¹ This and other similar *Ikub*'s in Gurage evaluate penalties per day, even if the *Ikub* is conducted weekly, however, this practice may lead to unfair financial burdens on *Ikub* members and could contribute to tensions within the *Ikub* group.

²⁴⁹ Federal Supreme Court Cassation Decission, a case between Fentayo Fisha and Mr. Dejene Marye, Volume 17, file number 102711.

²⁵⁰ Case involving plaintiff Zerfu Wolde (chief of Beseb Yasena *Ikub*) Vs defendants Mimi Nassir and Yosef Biru [2010] Wolkite City Administratracion First Instance Court file number 11930.

²⁵¹ Case involving plaintiff Zerfu Wolde (chief of Beseb Yasena *Ikub*) Vs defendants Mimi Nassir and Yosef Biru [2010] Wolkite City Administratracion First Instance Court file number 11930.

Most of the time, the court in Gurage Zone didn't simultaneously decide on penalties and legal interest; instead, the court either instructed the defendant to pay a legal interest that is stipulated under the civil code or imposed penalties as per their internal bylaws. A case involving plaintiff Zerfu Wolde versus defendant Kibrom Aregawi and three others²⁵² the defendant eventually stopped making payments to the before the end of *Ikub* cycles while he receives the lot. According to the *Ikub's* internal regulations, as stated in Article 3/e of their internal bylaw, anyone who stops paying before the end of the *Ikub* is subject to a fine of 100 birr per day. As per the pleading, the total unpaid principal amount is 13,370 birr, with a penalty of 58 weeks, or 406 days. This means that the unpaid amount is 13,370 birr, and the penalty amounts to 40,600 birr, which is more than three times the unpaid amount. Therefore, the total relief requested is 54,370 birr. Finally, the court ruled that the sureties are free from any liability, and only the first defendant is held responsible for the unpaid amount, along with legal interest but not penalties. While in the above case in file number 11930, involving plaintiff Zerfu Wolde and defendants Mimi Nassir and Yosef Biru, the court decided on penalties but not legal interest, even though the plaintiff claims both at the same time.

Based on the indication obtained from file numbers 08620, 11930, and others, it is evident that the court didn't simultaneously decide on penalties and legal interest. Instead, the court either ordered the defendant to pay a legal interest or imposed penalties as per their internal bylaws. One may argue that if the parties agree to a high amount of penalties in their internal bylaws, the court should enforce the agreements. As the Ethiopian Civil Code promotes contract freedom by allowing the parties to determine the terms and conditions of the agreement freely, the code explicitly states that the purpose of the contract must be specifically stated and possible, lawful, and morally permissible.²⁵³ If these requirements are met, then contracts are considered to have the force of law. But these sanctions tend to have adverse effects on the interests of the defendants, sometimes even more than the initial money lent. This is one that I verified during my case review and by personally interviewing a member of *Ikub* in Wolkite City.

²⁵² Case involving plaintiff Zerfu Wolde president of Beseb Yasena Ikub and defendant Kibrom Aregawi, along with three others [2008] Wolkite city administration first instance court file number 08620.

²⁵³ Article 1678 of Proclamation No. 165/1960 The Civil Code of the Empire of Ethiopia.

4.5.4 Non-compliance of the *Ikub* guarantee with the requirement of suretyship in CC

The CC provides different obligatory provisions on suretyship. The civil code provides that the guarantor of an obligation should perform it in case the debtor fails to do so.²⁵⁴ If a guarantee exceeds the amount of the debt or has more burdensome terms, it is not void but can be reduced to the amount of the primary debt. Different mandatory decisions involving suretyship have been issued by the federal Supreme Court cassation at different times. For example, in the case between Mr. Leul Zwede and Amera Gold Trading Pvt.Ltd.,²⁵⁵ It clarifies that "the surety's obligation must be clear and expressed in writing, and the liability must not be beyond the limit of debt to which he cannot. The contract of agreement for suretyship should be for the amount for which the guarantor is about to be liable for debt. The Civil Code describes formality requirements, and it states that contracts of guarantee must be clearly stated and must not exceed the limits set in the contractual agreement."²⁵⁶ In addition, it states that the guarantee is valid only if it states the maximum amount for which the guarantee is given Article 1922(2&3). Article 1923 of the CC emphasizes that a guarantee can only be given for a valid obligation. The limits of contracts of guarantee, cannot exceed the debtor's amount or be contracted on more burdensome terms.²⁵⁷ It can only be contracted for part of the debt and subject to less burdensome terms.

Most of the *Ikub* suretyship contracts in Gurage do not meet the requirements of Articles 1725 and 1922 of the Civil Code, which provide for written contracts with maximum guarantees and formal consent for suretyship agreements. For instance, case involving plaintiff Abidat Melis and defendant Yisreshewet Melis, both were members of *Ikub* which was organized by Nesru Kedir (Chairperson) and Tariku Tesema (secretary) in Gummer district.²⁵⁸ The *Ikub* money was collected Monday and Thursday in market that were found in Gummer Wereda. The defendant received her lot or share of *Ikub* and the plaintiff was surety for the unpaid or rest of the *Ikub*,

²⁵⁴ Article 1920 of *ibid*.

²⁵⁵ Federal Supreme Court Cassation Decision, in between Mr. Leul Zwede and Amera Gold Trading Pvt. Ltd., vol. 16, file number, 94837.

²⁵⁶ Article 1922 of Proclamation No. 165/1960 The Civil Code of the Empire of Ethiopia.

²⁵⁷ Article 1924 of the *ibid*.

²⁵⁸ *Ikub* case between plaintiff Abidat Melis Vs defendant Yisreshewet Melis [2010] Gummer Wereda court file number 07670.

money. She agreed verbally that, if the first defendant did not pay, she would pay. Unfortunately, the defendant failed to pay the remaining amount of birr after she received the lot and then the plaintiff paid the said amount since she was her guarantors. Then the plaintiff or former guarantors open civil suit in Gummer Wereda court against the defendant, and finally the court decided in favor of the plaintiff even if a contract of suretyship agreement was made verbally. Therefore, even if the law obliges contract of suretyship to be in written form, the practice in Gurage Zone shows there is a situation in which a contract of suretyship is made verbally or orally and the court accepts it even if the requirements are not fulfilled.

While Article 1922 of the civil code requires that guarantors be express and clearly identify the maximum amount for which they are issued, many guarantors in traditional *Ikub* in Gurage culture, fail to meet these legal standards. In these informal arrangements, guarantors are frequently not expressly articulated or established in writing, which can lead to future misunderstandings and disputes. As I have witnessed in Gurage societies, most *Ikub* guarantors are typically based on trust and verbal agreements rather than formal written contracts. This informal method may not comply with the civil code's strict legal standards for the clarity and precision of guarantors. It is possible that a lack of a clear statement of terms and a set maximum amount of guarantor may cause uncertainty about the duties of the guarantor and the rights of the parties. Although traditional guarantors are rich with cultural meaning and bear social importance, attention must be given to legal conditions that ensure clarity and could prevent possible disputes with respect to guarantors. When agreements regarding the guarantor are turned down in black and white, the terms and limits of the guarantor are noted down. Thereby, parties can develop a clear knowledge of their obligations, protecting their interests under CC. But in most cases, the courts in the Gurage Zone hold guarantors liable despite non-fulfillment of the requirements set under the Civil Code.²⁵⁹ This in effect points to the fact that the formal laws and the customary practices can eventually run side by side, even in a state of contradiction among them.

²⁵⁹ *ibid.*

CHAPTER FIVE: CONCLUSION AND RECOMMENDATION

5.1. CONCLUSIONS

This thesis investigates the practical and legal issues facing *Ikub*, an informal financial institution in Ethiopia. These institutions are widely present and are essential in helping Gurage societies to resolve their financial issues. It provides a means for the individual to save money and accumulate capital. As an informal sector, *Ikubs* operate without government regulation, and these informal sectors are widely ignored and neglected. Consequently, there's no one who stood for the rights of creditors and depositors involved in *Ikubs*.

Attributing a legal personality to an institution means that the institution is subject to rights and duties, which means that if the law provides the organization as a legal entity, the organization itself may own the property, and rights and obligations may be made in the name of the institution. Among the 39 *Ikub* cases that are brought to Gurage Zone Court, which are included in this research paper, no *Ikub* sued in the name of the institution and there are no assets that were registered as property of *Ikub* institutions. However, Rosca or *Ikub* function in a legal person in South Africa as well as Thailand.

Absence of separate legal frameworks governing informal financial institutions are the critical challenges that *Ikub* facing in Ethiopia, mainly in the Gurage. While contract law can be used to resolve cases involving informal financial institutions it is inadequate to address all the specific issues arise from those institutions. For instance, contract law does not provide the definition of *Ikub*, membership criteria, the financial contributions required from members, and the minimum and maximum numbers of participants allowed in a single *Ikub*, and other related matters.

However, lessons from South Africa shows, the Stokvel Act (No. 97 of 1988), lays out the fundamental conditions for Stokvels, including membership guidelines, financial contributions, and the financial objectives. Further, as per the civil code capacity is among the requirements of valid contract; however, there are minors in Gurage who participate in *Ikub* which raises question about legal capacity to enter in to contract.

This research also found that absence of an auditing system in Gurage *Ikub*, resulting in a lack of transparency and accountability in their financial matters. There are four primary sources of

profit for *Ikub* these are, interest earned from the sale of *Ikub*, interest earned from bank balances, interest earned from loans, and penalties. However, in Wolkite *Ikub*, income which emanates from penalties, the sale of *Ikub*, extra money collected from members during *Ikub* days, and interest from the loan, is not audited, and huge amounts of money are managed with the huge potential of being misused. In addition, the majority of *Ikubs*, in Wolkite except for those involving civil servants, the chairperson can take the first lot without contributing *Ikub* funds throughout the cycle.

Further, There are four primary sources of profit for *Ikub* in Gurage, these are, interest earned from the sale of *Ikub*, interest earned from bank balances, interest earned from loans, and penalties. However, all these income are not audited, and huge amounts of money are managed with the huge potential of being misused. Thus, absence of auditing presents opportunities for chairpersons to engage in fraudulent activities, creating challenges for both *Ikub* institutions and members.

Nevertheless, lessons from Thailand and South Africa show that a Rosca chairperson does not gain any advantages besides being eligible to receive the central fund within a specified timeframe without paying interest. Therefore, lack of financial transparency and accountability presents a major challenge for *Ikub* institutions in Gurage and hinders their ability to ensure financial transparency and accountability. In addition, the number of participants in an *Ikub* is greater than 100, which means it can take a minimum of two years or more which can increase the risk of fraud within the group. Limiting the number of participants, like in Thailand, could have potentially solved this problem.

Further, inconsistency of bylaws with the formal laws of the country is another challenge that *Ikub* faced in Gurage. While the Civil Code of the Empire of Ethiopia, under Art. 3347, considers the legitimacy of customary norms as supplementary laws as long as they are not in conflict with the formal law of the country. However, these institutions in Gurage often lack written bylaws, despite some having their own bylaws, which often conflict with the national laws.

For instance, Article 1725 of the Civil Code requires contracts of suretyship should be in writing, yet most of the *Ikub* suretyship agreements in Gurage don't comply with the Civil Code's strict

legal standards. In addition, Article 33/2/ of the civil procedure Code states that, a person cannot be a plaintiff unless they have vested interest in the suit. However, cases involving *Ikub* in Gurage, court have often ruled that managements of *Ikub* can sue on behalf of all members by citing their bylaws. The court accepts the suit even if the legal requirements are not fulfilled.

Penalties and interest rate are distinct concepts governed by different provisions of contract law. While parties can agree on penalty clauses, the law restricts interest rate to a maximum of 12% per year. The practice of courts in Gurage show that Parties claim both penalties and legal interest concurrently; however, court didn't simultaneously decide on penalties and legal interest involving *Ikub*. Instead, the court either orders the party to pay a legal interest or imposed penalties as per their internal bylaws. However, the chairperson of *Ikub* in Gurage often prefer penalties over legal interests due to the fact that legal interest is calculated annually, while penalties can be imposed daily, weekly, or monthly based on their agreement.

Therefore, having identified the consequences and the associated inherent problems with the existence of informal financial institutions, this paper therefore looks at how these issues may probably find solutions through a set of relevant, specific laws that must exist in the holding environment.

5.2. RECOMMENDATIONS

1. The need to have separate legal framework for *Ikub* institutions in Ethiopia: The legal system of our country was more or less adopted from a different legal system, disregarding the rich indigenous knowledge and customs. It would thus be more beneficial if indigenous traditions and ways of knowing, such as *Ikub* and other similar institutions, were legitimized by the policies in the country.

Thus, the Ethiopian government should create a specific regulatory framework to address the challenges faced by informal financial institutions like *Ikub*, since they are not subject to any particular regulatory framework. This would involve the formulation of distinct laws and policies to ensure comprehensive legal protections and address the specific issues faced by these institutions.

2. Recognize as legal entities: '*Ikubs*' are traditional and informal; they lack the benefits attached to formal and well-organized institutions. Individuals fear to join *Ikub* institutions and feel insecure because of their very informality, which means lack of legal personality. If *Ikub* relies solely on individual preferences, it may struggle to grow as an institution. However, by obtaining legal personality, it can strengthen its foundation and operations.

3. Create mandatory bylaws for *Ikub* institutions that align with the country's formal laws, just as the South African Stokvel Association has established mandatory bylaws for Stokvel institutions, the *Ikub* sector in Ethiopia should create model bylaws that reflect the interests of the institutions as well as members. By doing so, it would provide a solid foundation for these institutions, ensuring they operate within a clear legal and regulatory framework that are align with formal laws of the country while promoting sustainable growth and resilience.

4/ Establish an auditing system in the institutions; There are a serious risk of fraud when thorough audits are not conducted. By introducing auditing system, we can significantly reduce fraud and other related issues, ultimately improving overall effectiveness and integrity of *Ikub* institutions. For instance, in South Africa a group in a Stokvel shall, within 120 days of the end of each financial year, cause annual financial statements. This would help to reduce fraud and related risks and promote financial accountability and transparency.

4. Learn from international practices: Drawing insights from the regulatory frameworks of other countries, particularly Thailand and South Africa's laws governing similar institutions can provide valuable lessons for regulating *Ikub* in Ethiopia. Studying best practices and adapting them to the Ethiopian context can contribute to more effective regulation and oversight of informal financial institutions.

Further, Similar to South Africa and Thailand, there should be a dedicated institution in Ethiopia responsible for overseeing or regulating *Ikub* activities. For instance, the Thailand Ministry of Finance is authorized to establish regulations and implement the ROSCA Operation Act, which is very essential for the effectiveness of the act since mere enactment of a law without strong institution that enforcing it's pointless.

I recommend that either Ministry of Finance or the Ministry of Trade oversee these institutions. This would ensure that *Ikub* operations are conducted within a structured framework, promoting accountability and sustainability.

5.3 SUGGESTIONS FOR FUTURE RESEARCH WORK

The success of digital or modern *Ikub* can be significantly impacted by disruption electrical availability and internet connectivity. Since the institution is not specifically governing by any laws, the effectiveness of digital *Ikub* is quite questionable. However, despite efforts to find members of the digital *Ikub* in the study area, the researcher was unable to locate any, which is why the efficiency of digital *Ikub* in Ethiopia- specifically in the Gurage society-has not been conclusively demonstrated. Thus, I would recommend that researchers conduct more research on this area.

BIBLIOGRAPHY

Ajija SR and Siddiqui AI, 'Impact of Joining Rotating Savings and Credit Association (Rosca) on Household Assets in Indonesia' (2021) 55 The Journal of Developing Areas 205 <<https://muse.jhu.edu/article/791600>> accessed 5 February 2024

Akerele, Ezekiel Olaoluwa and others, 'DETERMINANTS OF PARTICIPATION IN ROTATING SAVINGS AND CREDIT ASSOCIATIONS (ROSCAs) IN OGUN STATE, NIGERIA' (2021) 11 International Journal of Management Research and Emerging Sciences <<https://ijmres.pk/index.php/IJMRES/article/view/141>> accessed 5 February 2024

'Among 14 Ikubs in Wolkite City 9 Were Founded by the Local Business Community, Specifically: Sebteseb, Nitrahebne, Beseb Yasena, Joka, Bereka, Nimaje, Fikir, Enideg, and Sarendem Ikub. While the Remaining 5 Were Initiated by Civil Servants from the Gurage Zone Offices, Which Include Gurage Zone Justice Bureau Ikub, Culture and Tourism Bureau Ikub, Revenue Bureau Ikub, Finance Bureau Ikub, and Agriculture and Natural Resource Bureau Ikub.'

'Applied and Social Science Periodicals, Roscas, Encyclopedia.Com', , *Bibliography of Rosca* (encyclopedia.com)

Aredo D, *The Informal and Semi-Formal Financial Sectors in Ethiopia: A Study of the Iqqub, Iddir, and Savings and Credit Co-Operatives* (African Economic Research Consortium 1993)

Astrid Marie Jorde Sandsør, 'The Rotating Savings and Credit Association - An Economic, Social and Cultural Institution' (Thesis for the degree Master of Economic Theory and Econometrics Department of Economics, University of Oslo 2010) <core.ac.uk>

Ayele Bekerie, PhD, 'Iquib and Idir: Socio-Economic Traditions of the Ethiopians' (Africana Studies and Research Center, Cornell University) (Addis Ababa)

Barbara Calvin and Gerhard Coetzee, 'A REVIEW OF THE SOUTH AFRICAN MICROFINANCE SECTOR', *A Review of the South African Microfinance Sector Section IV: Special Products* (University of Pretoria, Centre for Microfinance 2009)

Barbara O'Neil, 'The Benefit of Saving Money' (February 2009)

Bekerie A, 'Iquib and Idir: Socio-Economic Traditions of the Ethiopians' [2003] *TADIAS ONLINE*

Benda C, 'Community Rotating Savings and Credit Associations as an Agent of Well-Being: A Case Study from Northern Rwanda' (2013) 48 *Community Development Journal* 232 <<https://academic.oup.com/cdj/article-lookup/doi/10.1093/cdj/bss039>> accessed 7 February 2024

—, 'Community Rotating Savings and Credit Associations as an Agent of Well-Being: A Case Study from Northern Rwanda' (2013) 48 *Community Development Journal* 232 <<https://academic.oup.com/cdj/article-lookup/doi/10.1093/cdj/bss039>> accessed 4 February 2024

Berhanu Lakew T and Azadi H, 'Financial Inclusion in Ethiopia: Is It on the Right Track?' (2020) 8 *International Journal of Financial Studies* 28 <<https://www.mdpi.com/2227-7072/8/2/28>> accessed 7 February 2024

Biruk Alemu, 'Innovation: Digital Equb: Modernizing Ethiopia's Revered Socio-Economic Asset' (Addis Ababa, Ethiopia, 4 January 2023) <<https://wp.me/p7BpQh-8dU>>

Bisrat A, Kostas K and Feng L, 'Are There Financial Benefits to Join RoSCAs? Empirical Evidence from Equb in Ethiopia' (2012) 1 *Procedia Economics and Finance* 229 <<https://linkinghub.elsevier.com/retrieve/pii/S2212567112000275>> accessed 4 February 2024

Decock W and others, 'Customary Laws Regulating Traditional Financial Institutions in Tigray Regional State (Ethiopia): A Brief Introduction to Eqqub and Iddir' <<https://zenodo.org/record/48039>> accessed 4 February 2024

Dimitri G, 'INTERLINKING THE FORMAL AND INFORMAL FINANCIAL SECTORS IN DEVELOPING COUNTRIES' (1990) 14 *Giordano Dell-Amore Foundation* 5 <<https://www.jstor.org/stable/25830210>>

'Elvia Arcelia Quintana Adriano, The Natural Person, Legal Entity or Juridical Person and Juridical Personality, 4 *PENN. ST. J.L. & INT'L AFF.* 363 (2015). Available at:

<https://elibrary.law.psu.edu/jlia/vol4/iss1/17> The Penn State Journal of Law & International Affairs Is a Joint Publication of Penn State's School of Law and School of International Affairs.'

Firewoini Gebreyesus, 'Access to Finance and Its Challenges for Private Sector in Ethiopia' (Indira Gandhi National Open University 2016)

Gerdes V, 'Precursors of Modern Social Security in Indigenous African Institutions' (1975) 13 The Journal of Modern African Studies 209 <[https://www.cambridge.org/core/product/identifier/S0022278X00053040/type/journal article](https://www.cambridge.org/core/product/identifier/S0022278X00053040/type/journal%20article)> accessed 9 February 2024

Gugerty MK, 'You Can't Save Alone: Commitment in Rotating Savings and Credit Associations in Kenya' (2007) 55 Economic Development and Cultural Change 251 <<http://www.journals.uchicago.edu/doi/10.1086/508716>> accessed 5 February 2024

'GURAGE ZONE' WIKIPEDIA

Heidi Barter, 'Understanding Stokvels in South Africa: A Legal Perspective'

Interview with Meseret Amerga, 'Head of Gurage Zone Culture and Tourism Department' (13 March 2024)

Interview with Azmach Habte, 'Member of Yejoka Elders (Customary Law Makers of Gurage)' (12 March 2024)

Interview with Tsegaye Bezu, 'Electronics Merchant and Members of Ikub in Wolkite City' (15 June 2024)

Interview with Girma Bilatu, 'Member of Ikub in Gurage Zone Finance Office' (17 December 2016)

Interview with Desalegn Fekede, 'Head of Gurage Zone Administration Office' (12 March 2024)

Interview with Sisay Genzebe, 'Lawyer in Any Federal and Central Ethiopia Court' (5 April 2024)

Interview with Hebib Kedir, 'Member of Joka Ikub' (12 March 2024)

Interview with Daneal Mitiku, ‘Lawyer and Assistant Professor of Law at Wolkite University’ (15 June 2024)

Interview with Seyfe Wolde, ‘Customary Leaders and Members of Yejoka Elders’ (29 March 2024)

Interview with Hailu Shikure, ‘Judge at Edja Wereda First Instance Court’ (5 April 2024)

Interview with Tafesse, ‘Legal Officer of NBE’ (4 March 2024)

Interview with Temesgen Gebre, ‘Member of Ikub in Wolkite’ (10 March 2024)

Interview with Mesfin Tibebu (17 June 2024)

Interview with Tariku Wachago, ‘Members of Gurage Zone Justice Department Public Prosecutors Ikub’ (12 March 2024)

Jahangir R, Bulut M and Dinc Y, ‘Evolution of ROSCA to Real Property Acquisition as a Form of Interest-Free SBF Model: A PRISMA-Compliant Systematic Review’ (2023) 41 Property Management 111 <<https://www.emerald.com/insight/content/doi/10.1108/PM-03-2022-0025/full/html>> accessed 4 February 2024

Jaya Sharma, ‘Types of Audit and Their Advantages’ *Shiksha online* <<http://www.shiksha.com>> accessed 29 July 2024

Jo Moriarty, ‘Qualitative Methods Overview’ [2011] The School for Social Care Research

Kedir AM and Ibrahim G, ‘ROSCAs in Urban Ethiopia: Are the Characteristics of the Institutions More Important than Those of Members?’ (2011) 47 Journal of Development Studies 998<<http://www.tandfonline.com/doi/abs/10.1080/00220388.2010.536219>> accessed 4 February 2024

‘Legal Person’, , *Wikipedia*

Mammo T, *The Paradox of Africa’s Poverty: The Role of Indigenous Knowledge, Traditional Practices and Local Institutions - the Case of Ethiopia* (1. print, Red Sea Press 1999)

Mequanent G, 'The Role of Informal Organizations in Resettlement Adjustment Process: A Case Study of Iqubs, Idirs, and Mahabers in the Ethiopian Community in Toronto' [1996] *Refuge: Canada's Journal on Refugees* 30 <<https://refuge.journals.yorku.ca/index.php/refuge/article/view/21195>> accessed 5 February 2024

Mortimer N.S. Sellers, 'International Legal Personality' (2005) 11 *University of Baltimore* 67 <<https://scholarworks.law.ubalt.edu>> accessed 4 March 2024

Poomsiri Dumrongvute, 'Online Fundraising Through the Lenses of Law, Economics, and Sociology: Examples from American P2P Lending and Thai Rotating Savings and Credit Association' (dissertation degree of Doctor of the Science of Law, University of California, Berkeley 2019)

'Report on Consumer Protection in Online and Mobile Payments', vol 204 (2012) *OECD Digital Economy Papers* 204 <https://www.oecd-ilibrary.org/science-and-technology/report-on-consumer-protection-in-online-and-mobile-payments_5k9490gwp7f3-en> accessed 23 March 2024

Sagrario Floro M and Ray D, 'Vertical Links Between Formal and Informal Financial Institutions' (1997) 1 *Review of Development Economics* 34 <<https://online.library.wiley.com/doi/10.1111/1467-9361.00004>> accessed 5 February 2024

TEMESGEN TESHOME, 'ROLE AND POTENTIAL OF "IQQUB" IN ETHIOPIA' (THE DEGREE OF MASTER OF SCIENCE IN ACCOUNTING AND FINANCE, ADDIS ABABA UNIVERSITY 2008)

Teshome E and others, 'Participation and Significance of Self-Help Groups for Social Development: Exploring the Community Capacity in Ethiopia' (2014) 3 *Springer plus* 189 <<https://springerplus.springeropen.com/articles/10.1186/2193-1801-3-189>> accessed 5 February 2024

Thandile Xiphu, 'Stokvels: Bringing Together Borrowers, Savers, and Investors' (dissertation, University of Cape Town 2019)

'The Culture of Gurage' <<http://yeguragegoe.com>> accessed 5 September 2023

Wail Mohamed Aaminou, Towards a Better Financial Inclusion in Maghreb Countries: Insights on the Role of Islamic Microfinance and Fintech (Islamic Economics (IKAM)) <<http://rcid.org/0000-0001-5322-6300>>

Willy Mwangi Muturi, 'Determinants of Participation in Rotating Savings and Credit Associations in Urban Informal Settlements: Evidence from Mathare Slums, Nairobi.' (Jomo Kenyatta 2012)

Woubzena Tadesse Jifar, 'The Effects of New Housing Developments on Idir, a Self-Help Association, in Addis Ababa, Ethiopia' (thesis submitted in partial satisfaction of the requirements for the degree Master of Arts in African Studies, University of California 2013) <<https://escholarship.org>>

Yami M, Vogl C and Hauser M, 'Informal Institutions as Mechanisms to Address Challenges in Communal Grazing Land Management in Tigray, Ethiopia' (2011) 18 International Journal of Sustainable Development & World Ecology 78 <<https://www.tandfonline.com/doi/full/10.1080/13504509.2010.530124>> accessed 5 February 2024

Yifredew Adamu, 'Financial Sector in Ethiopia' <<http://www.linkedin.com>> accessed 1 August 2024

Yimer GA, 'Uncertainties in the Enforcement of Loan Agreements in the Informal Credit Markets in Ethiopia' (2019) 13 Mizan Law Review 472 <<https://www.ajol.info/index.php/mlr/article/view/195052>> accessed 5 February 2024

Yimer GA and Decock W, 'Courts and Traditional Financial Institutions in Ethiopia: Selected Case Studies on Legal Hybridity' <<https://zenodo.org/record/7398565>> accessed 5 February 2024

Yonas Bessir, 'Salient Features behind Informal Financial Institutions: The Case of Edget Behibret Equb and Ras ZeSilasse Former Students Iddir By' (Master thesis on Business Administration, St Mary's University 2017)

Zerihun B, 'LEGAL FRAMEWORK ANALYSIS ETHIOPIA NATIONAL REPORT' (2021) International Co-operative Alliance-Africa

ታደሰ ለገሰ, የጉራጌ ብሔረሰብ የስራና ቁጠባ ባህል (የደቡብ ብሄር ብሄረሰቦች ህዝቦች ክልላዊ ሙንግስት የባህልና ቱሪዝም ቢሮሐዋሳ 2015)

‘Interview with Woynshet Wirga, Member in One of Gurage Zone Revenue Office Ikub in Wolkite’ (24 August 2024)

A case between Federal Attorney Vs Yeshiemebet Tilahun, involving suretyship contracts [2013] The federal Supreme Court Cassation No. 161448, Volume 25 ; 450

Case between defendants Kaleab Tariku and Tariku Dulla (Chairperson of Ematinde Ikub) Versus Gurage zone public prosecutor involving a cheque without sufficient fund [2014] Gurage zone high court file number 14304

Case between Derese Alemu and Mulisa Worku Federal Supreme Court Cassation file number 43372, volume 8

Case between plaintiffs Tariku Dula (chairperson of the Ematnde Ikub) and two others and defendants Ibrahim Hayatu and three others [2014] Gurage Zone High Court file number 14182

Case involving Adugna Anbelo Vs Federal Attorney [2003] The Federal Supreme Court Cassation file number, 67947, volume 12 246

Case involving plaintiff Desalegn Tenkir, the chairperson of Befrehot Ikub, and defendants Adane Barega and Mebratun Neri [2015] Gurage Zone Edja Wereda court File number 12064,

Case involving plaintiff Zerfu Wolde (chief of Beseb Yasena Ikub) Vs defendants Mimi Nassir and Yosef Biru [2010] Wolkite City Administration First Instance Court file number 11930.

Case involving plaintiff Zerfu Wolde (chief of Beseb Yasena Ikub) Vs defendants Mimi Nassir and Yosef Biru [2010] Wolkite City Administration First Instance Court file number 11930,

Case involving plaintiff Zerfu Wolde president of Beseb Yasena Ikub and defendant Kibrom Aregawi, along with three others [2008] Wolkite city administration first instance court file number 08620

Ikub case between plaintiff Abidat Melis Vs defendant Yisreshewet Melis [2010] Gummer
Wereda court file number 07670

The case between Solomon Merdokiyos and Sisay Labene Federal Supreme Court Cassation file
number 162776, Volume 23

Bylaws of Beseb Yasena Ikub 2004

Cooperative Societies Proclamation No. 985/2016

Decree No 52/1965 Civil Procedure Code of Empire of Ethiopia

Federal Courts Proclamation 2021

Federal Supreme Court cassation decision

Proclamation No. 165/1960 the Civil Code of Empire of Ethiopia

Proclamation No. 166/1960 the Commercial Code of Empire of Ethiopia 1960

Proclamation No. 591/2008 National Bank of Ethiopia Establishment Proclamation

Proclamation No. 1113/2019 Organizations of Civil Societies Proclamation

Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia

ROTATING SAVINGS AND CREDIT ACT B.E. 2534 (1991) (SHARE ACT) OF THAILAND
2534

SOUTH AFRICAN RESERVE BANK, BANKS ACT, 1990 2006

Stokvel Constitution: This constitution has been drafted and published by the National Stokvel
Association of South Africa or (NASASA). NASASA is a self-regulatory organization
authorized by the South African Reserve Bank in terms of Government Notice 404 in Gazette
35368 25 May 2012.

The Commercial Code of the Federal Democratic Republic of Ethiopia

APPENDIXES

ውድ የዚህ ቃለመጠየቅ ላይ የምትሳተፉ ተባባሪዎች አስቀድመው ውድ ጊዜዎትን ሰውተው ይህን ቃለመጠየቅ ለመስጠት ፈቃደኛ ስለሆኑልን ከልብ እያመሰገንኩኝ፤ ለመተዋወቅ ያክል እኔ ስሜ ኃይሉ ንማ ሲሆን በጉራጌ ዞን ፍትህ መምሪያ ውስጥ የሙስና ወንጀሎች ዋና የስራ ሂደት ዐ/ሕግ ስሆን በአሁን ሰዓት በሐዋሳ ዩኒቨርሲቲ ሕግ ትምህርት ቤት በንግድ ሕግ ሁለተኛ ድግሪዬን ለማጠናቀቅ እቁብ የሚመራበትን የህግ ማዕቀፍ በሚመለከት ወይም በእንግሊዝኛ (Regulating informal financial institutions in Ethiopia the case of *Ikub* in Gurage society) በሚል ርዕስ ጥናታዊ ጽሁፍ እየሰራሁኝ እገኛለሁ። ለዚህ ጥናት ትብብር እንዲደረግ በሚል ሐዋሳ ዩኒቨርሲቲ በቁጥር ሕግ ት/ቤት 176/16 በቀን 27/06/16 ዓ.ም ፣ ከጉራጌ ዞን ከፍተኛ ፍርድ ቤት በቁጥር ጉዞከፍ/1165/16 በቀን 02/07/2016 ዓ.ም እንዲሁም ከጉራጌ ዞን ፍትህ መምሪያ የድጋፍ ደብዳቤ ተሰጥቶኛል። እርሶ ፈቃደኛ ሆነው የሚሰጡኝ ቃለመጠየቅ ለዚህ ጥናታዊ አላማ ብቻ የሚውል እንጂ በምንም መልኩ እርሶን ወይም የሌላን አካል መብት የሚጎዳ አይደለም። ስለ ራሴና ስለጥናቱ ካልኩኝ ወደ እርሶ ልምጣና ይተዋወቁኝ ፤

1ኛ. ለሕግ ባለሙያዎች የቀረበ መጠይቅ (interviews)

- 1/ በኢትዮጵያ የሕግ ማዕቀፍ ውስጥ ኢ-መደበኛ የፋይናንስ ተቋማትን በተለይም እቁብ የሚመራባቸው የሕግ ማዕቀፎች አሉ ብለው ያምናሉ ካሉ ምንምን ናቸው? -----
- 2/ እርሶ ዳኛ/ጠበቃ ሆነው ሲሰሩ ከእቁብ ተቋማት ጋር የተያያዙ ጉዳዮችን ሲመለከቱ ፍርድ ቤቶች የሚያጋጥሟቸው ህጋዊ እና ተግባራዊ ተግዳሮቶች በእርስዎ ልምድ ምን ምን ናቸው?
- 3/ በክርክር ሒደት ውስጥ እቁብን በተመለከተ የሚቀርቡ መቃወሚያዎች ምን ምን ናቸው? ፍርድ ቤቱ ለሚነሱ መቃወሚያዎች ምን ምላሽ ይሰጣል? ----- እቁብ ፍረድ ቤቱ ላይ እንዴት ይተረጎማል?-----
- 4/ በመደበኛ ችሎት ክርክር ሒደት ውስጥ የእቁቡ መተዳደር ደንብና መደበኛ ሕጉ ላይ ተቃርኖ ሲኖር በምን አግባብ እየተፈቱ ይገኛሉ?
- 5/ የሕግ ሥርዓቱ መደበኛ ያልሆኑ የፋይናንስ ተቋማትን በተለይም እቁብ በኢትዮጵያ ማኅበረሰብ ውስጥ ያላውን ባህላዊ ጠቀሜታና ልማዳዊ አሠራር ተገንዝቦና አክብሮ እንዴት በተሻለ ሁኔታ መደገፍ ይችላል ብለው ያምናሉ?-----
- 6/ እርሶ እንደ የሕግ ባለሙያነቶ በኢትዮጵያ መደበኛ ያልሆኑ የፋይናንስ ተቋማትን በተለይም እቁብ ተቋማት ውስጥ ግልጽነት እና ተጠያቂነት ለማሳደግ ምን መደረግ አለበት ይላሉ?-----

2. ለብሔራዊ ባንክ የፋይናንስ አካታችነት ዳይሬክቶሬት እና ለሕግ ክፍል የቀረበ

- 1/ የፋይናንስ አካታችነት በኢትዮጵያ ምን ያክል ነው?
- 2/ እንደ እቁብ ያሉ መደበኛ ያልሆኑ የፋይናንስ ተቋማት በኢትዮጵያ ውስጥ ላሉ ማህበረሰቦች ማህበራዊና ኢኮኖሚያዊ እድገት አስተዋፅዖ የሚያደርጉት እንዴት ነው?
- 3/ ከመደበኛ የፋይናንስ ተቋማት ተደራሽ ባልሆነባቸው የገጠር ህዝቦች መካከል የፋይናንስ ተሳትፎን በማስተዋወቅ ረገድስ የእቁብ ሚናዎች ምን ምን ናቸው? -----
- 4/ እነዚህ ኢ-መደበኛ የፋይናንስ ተቋማት በተመለከተ ብሔራዊ ባንክ ቁጥጥር እንደሚያደርግባቸው አዋጅ ቁጥር 591/2008 አንቀጽ 3 ላይ በግልጽ ተደንግጓል ነገር ግን ከዚህ በፊት በተለምዶ ከሚሰሩት ስራ በላይ ሰርተዎል በሚል የተለያዩ እቁቦችን እንዳፈረሰ ይታወቃል ለምን ሆነ? እቁብን ለመቆጣጠር ብሔራዊ ባንክ ስልጣኑስ አለው ወይ?
- 5/ እቁብተኞች ከባንክ ጋር አብረው ቢሰሩ እቁብ ለባንኩ አንዲሁም ባንኩ ለእቁብ ተቋማት ሊኖራቸው የሚችለው ጥቅም ምንድነው?

3. ለእቁብተኞች የቀረበ መጠይቅ

- 1/ እቁብ ለምን ያክል ጊዜ ተሳትፈው ያውቃሉ?
- 2/ አሁን ባለብት እቁብ የእርሶ ድርሻ ምንድነው?
- 3/ በእርሶ ልምድ እቁብ ምንድነው?
- 4/ እቁብ ላይ መሳተፍ ምን አይነት ጥቅም ያስገኛል ብለው ያስባሉ? ወይም እርሶ ምን አይነት ጥቅም አገኙ?
- 5/ እርሶ በሚሳተፉበት እቁብ ወስጥ መቀጠል ያለባቸው ምን አይነት መልካም ተሞክሮዎች አሉ? መስተካከል ያለባቸው ብልሽቶች ምን ምን ናቸው?
- 6/ በእቁቡ ውስጥ ያሉ እነዚህ ችግሮች ወይም ብልሽቶች በምን አግባብ እየተፈቱ ነው?
- 7/ እንደተቋም መፍታት ያልተቻሉ ችግሮች አሉ? ካሉ እነዚህ ችግሮች ለመፍታት ምን መደረግ አለበት ብለው ያስባሉ?
- 8/ በተቋሙ እንደ ቅጣት ፣ ወለድ ፣ ዋስትና የመሳሰሉ ጉዳዮች አሰራር በተመለከተ ቢገልጹልን ፡

4/ ለጆካ ባሕላዊ ዳኝነት አባላት እንዲሁም ለጉራጌ ዞን አስተዳደር ጽ/ቤት ሃላፊ እና ለባህል ቱሪዝም መምሪያ ሃላፊዎች የቀረበ መጠይቅ

- 1/ ጉራጌና እቁብ ያላቸው ታሪካዊ ትስስር ምን እንደሚመስል ቢገልጹልኝ?
- 2/ የጉራጌ እቁብ መርህና እሴቶች ምን ምን ናቸው?
- 3/ በጉራጌ ማህበረሰብ ዘንድ እቁብ ያለው ሚና ምንድነው?

4/ ባህላዊ ዳኝነቱ እቁብ እና ሌሎች መሰል ተቋማት ጋር በተገናኘ ግጭቶች በተፈጠሩ ጊዜ ችግሮቹ የሚፈቱበት አግባብ ምን ይመስላል?

5/ እንደ ሀገር ሽማግሌ እና የባህላዊ ዳኝነት አባልነቱ እቁብ በተመለከተ ለሀገር ያለው አስተዋጽኦ በተሻለ መልኩ እንዲቀጥል ምን መደረግ አለበት ብለው ያምናሉ?