

## **THE CRIMINAL RESPONSIBILITY OF A PERSON WHO OWNS A VEHICLE APPREHENDED TRANSPORTING ILLEGAL COFFEE**

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### **ABSTRACT**

*A person who owns a vehicle apprehended transporting illegal coffee is punished by a fine of Birr 50,000 and an imprisonment of three to five years under Article 15(6) of the Federal Coffee Quality Control and Marketing Proclamation. The wording of the provision and different interpretation rules indicate that the crime is a strict or/and a vicarious criminal liability offence that punishes a person without the need for proving his guilty mind or guilty act. In practice, however, it is interpreted and applied inconsistently. Where some courts apply it as the direct meaning of the provision suggests, other courts penalize an owner of a vehicle apprehended transporting illegal coffee only where he carries out the illegal act personally. Furthermore, Article 23(6) of the Oromia Coffee Quality Control and Marketing Proclamation, which is intended to facilitate the implementation of the previous provision, conveys indefinite meanings as to the criminal responsibility of a person who owns a vehicle apprehended transporting illegal coffee. Hence, it further complicates the problem. Moreover, the provisions are encroaching on the fundamental human rights and the uniform application of the basic criminal principles in the country. In view of that, this article recommends that the Federal Legislature and Caffee Oromia should reconsider the criminal responsibility of a person who owns a vehicle apprehended transporting illegal coffee and reset the liability that goes with the spirit of the FDRE Constitution and the Criminal Code.*

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## INTRODUCTION

Coffee trade, which creates extensive job opportunities for Ethiopians and massively supports the economy of the country, is heavily affected by coffee quality problems and unlawful transactions. To reduce the factors that hold-down the income derived from coffee trade, the Federal Government of Ethiopia enacted Coffee Quality Control and Marketing Proclamation,<sup>1</sup> Regulation<sup>2</sup> and Directive<sup>3</sup> that aim at sufficiently supplying quality and competitive coffee to the global market. Pursuant to Article 12(4) of the Coffee Quality Control and Marketing Proclamation (hereinafter called the Federal Coffee Proclamation) any person who owns a vehicle or his agent is responsible to ensure the legality of coffee to be transported. Accordingly if a vehicle is apprehended transporting illegal coffee,<sup>4</sup> the owner of the vehicle or the agent who failed to discharge the obligation is punishable. Imprecisely, however, Article 15(6) of the Proclamation stipulates that any person who owns a vehicle apprehended transporting illegal coffee shall be penalized by fine and imprisonment. This provision fails to clarify the elements of the crime it establishes and the circumstance under which a person who owns a vehicle apprehended transporting illegal coffee is made criminally liable. The imprecision of the provision made legal practitioners interpret and apply the provision in contradictory ways. Some of them penalize a person who owns a vehicle apprehended transporting illegal coffee without proving fault and others penalize only where vehicle owners willfully or negligently allow their vehicle engage in illegal coffee transportation. The two differing decisions hold water independently. Where the first stand goes in line with other provisions of the proclamation and the circumstances under which it was promulgated,

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<sup>1</sup> Coffee Quality Control and Marketing Proclamation No. 602/2008.

<sup>2</sup> Coffee Quality Control and Transaction, Council of Ministers Regulation No. 159/2008.

<sup>3</sup> Coffee Quality Control and Transaction Directive No. 1/2009.

<sup>4</sup> The Federal and Oromia Coffee Proclamations did not clearly define the conditions under which coffee under transportation becomes illegal. Different provisions of the legislations, however, indicate that coffee under transportation that is not pre-inspected, unsealed or licensed can be labeled as illegal one.

the second one concurs straightforwardly with the general criminal law principles enshrined in the FDRE Criminal Code.

Article 19(3) of the proclamation authorizes regional states to issue laws necessary for the implementation of the proclamation. Pursuant to this authorization, (it can be argued that) Oromia Regional State promulgated a Coffee Quality Control and Marketing Proclamation<sup>5</sup> (hereinafter called the Oromia Coffee Proclamation). Article 23(6) of the proclamation establishes a criminal responsibility of an owner of a vehicle apprehended transporting illegal coffee in ambiguous wordings. It connects the subject of the sentence (an owner of a vehicle and a driver) with a conjunctive ‘and’. But it puts the next coming verb in singular. The subject-verb disagreement of the sentence made the provision render different and dissimilar meanings. All the possible meanings of the provision apparently stand inconsistent with Article 15(6) of the Federal Coffee proclamation.

Accordingly, this article assesses the meanings, applications and significances of the criminal responsibility of a person who owns a vehicle apprehended transporting illegal coffee under the Federal and Oromia Coffee Proclamations. It also evaluates the conformity of the liability with the basic criminal law principles.

## **1. ILLEGAL COFFEE TRANSPORTATION AND AN OWNER OF A VEHICLE: UNDER THE FEDERAL COFFEE PROCLAMATION**

### **1.1. THE MEANING OF THE PROVISION AGAINST OTHER PROVISIONS OF THE PROCLAMATION**

Article 15(6) of the Federal Coffee Proclamation reads that any person who owns a vehicle apprehended transporting illegal coffee, shall, in addition to confiscation of the coffee, unless punishable with a greater penalty as per any other relevant law, be penalized by a fine of Birr 50,000 and an imprisonment of not less than three years but not exceeding five years. Right from the start, the article deals with the

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<sup>5</sup> Proclamation Enacted to Decide Procedure of Coffee Quality Control and Coffee Trade in Oromia, Proclamation No. 160/2010.

criminal responsibility of a person who owns a vehicle apprehended transporting illegal coffee: it does not mention any act he failed to perform or a prohibited act he performed. Hence, the meaning of the provision is somewhat ornate and it needs interpretation.

There are different rules of interpretation that can be used to elaborate the meaning of a provision. Accordingly, the literal rule of interpretation, which is the most known one, provides that words of a statute must be given their plain, ordinary, and literal meaning.<sup>6</sup> The ordinary and plain meanings of the words are the representative of intention of the parliament. Where words of a statute are precise and unambiguous, therefore, there is no room for interpretation. In view of that, Article 15(6) of the Proclamation penalizes a person whose vehicle is apprehended transporting illegal coffee without the need for considering his guilty mind or/and guilty act.

On its part, the golden interpretation rule provides that words must be given their plain, ordinary, and literal meaning as far as they do not produce absurdity or an affront to public policy.<sup>7</sup> To mitigate some of the potential harshness arising from the use of the literal rule of interpretation, the golden rule provides that the meanings of words may be slightly modified to match with the rest of the instrument. Accordingly, the plain meaning of Article 15(6) is not absurd. It gives definite denotation that can be practically applied and gives sense. It also deters illegal coffee transaction and helps the country to derive more benefit from the lawful coffee marketing. Above all, as it is examined below, the ordinary meaning of the provision, most likely, agrees with the rest of the proclamation. Hence, it is more logical to insist on the plain meaning of the article even in accordance with the golden rule of interpretation.

The purposive approach is another interpretation rule that seeks the meaning of a provision with the intention of giving effects to its general purpose. It allows the court to look beyond the wording of the legislation

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<sup>6</sup> Finch Emily and Stefan Fafinski, *Legal Skills* (Oxford University Press, 2007), p72.

<sup>7</sup> *Ibid.*

to deduct parliament's intention in enacting a particular provision.<sup>8</sup> As expressed in the preamble of the proclamation, sufficiently supplying quality and competitive coffee to the global market is the general purpose of the proclamation. For adequately and sustainably exporting coffee is the primary goal, it can be argued that, illegal coffee transaction that reduces and interrupts coffee supply to the global market stands against the general purpose of the proclamation. Moreover, to control illegal coffee transaction it is not enough to penalize drivers and other instigators who personally involve in the illegal coffee transaction leaving behind the owner of the vehicle -the influential person and whose hand is invisible. For that reasons it is logical to argue that, it is more fruitful and falls within the general purpose of the proclamation to punish an owner of a vehicle apprehended transporting illegal coffee.

Intrinsic system of interpretation, searching a meaning of a provision within the context of the whole document, makes a meaning of the provision clearer. Article 15(4) of the Proclamation penalizes any person who unlawfully or inappropriate manner transports coffee by a fine of Birr 50,000 and an imprisonment of not less than three years but not exceeding five years. Accordingly, any person including an owner of a vehicle who involves in the illegal coffee transportation is answerable under this article. In other words, Article 15(4) punishes an owner of a vehicle who transports unlawful coffee by his vehicle or hires his vehicle for such activity or supports the transportation of same. For that reason, it is logical to argue that Article 15(6) is included to serve other purpose that is not covered by Article 15(4): a responsibility emanates from one's own undertakings.

Correspondingly, the punishment that Article 15(4) carries is the same as that established under Article 15(6) in imprisonment and fine. It is logical to argue that, had the legislature intended to penalize an owner of a vehicle who participates in the crime under the provision in different capacities other than the rest offenders, it would have established different punishments. It follows that Article 15(6) penalizes an owner of

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<sup>8</sup> Johnstone Quintin, *An Evaluation of The Rules of Statutory Interpretation*, Kansas Law Review (1954), Vol. 3, p14.

a vehicle who, at least, failed to control his vehicle from transporting illegal coffee but not for his involvement in the crime personally.

Article 12(3) of the proclamation provides that the owner of a vehicle that sustained malfunctions or against which a crime is committed while transporting coffee is responsible to report the same immediately to a concerned organ in the locality. A vehicle owner may not always be the driver of his vehicle to immediately witness the malfunctioning of the vehicle or the commission of a crime committed against it. Similarly, he may not be in a position to control his vehicle where he leases rents out it for long or short period of time. In all such circumstances, it is almost impossible for him to immediately report the malfunctioning of the car or the commission of a crime to a concerned organ situated at the place where such happenings take place. It is somewhat awkward to make him criminally responsible where he is not in the position to discharge the obligation. To uphold the interest of the country at the cost of an owner of a vehicle, the legislature intentionally made him bear the responsibility. In view of that, it is logical to argue that the wording of Article 12(3) also supports the direct meaning of Article 15(6).

The Coffee Quality Control and Marketing Directive under section 6.3.2.4 puts that an owner of a vehicle that transports coffee is fully responsible for the quality and amount of the coffee until it is delivered to the concerned organ at Ethiopian Commodity Exchange or at a port. While a vehicle is under the control of a leaseholder the quality or amount of coffee it transports to Ethiopian Commodity exchange or port may be damaged on the way. In such circumstances, primarily, the law makes the owner answerable for the damage of the coffee notwithstanding that the vehicle is under the control of the leaseholder. This provision also indicates that the law pays much attention to the quality and amount of coffee exported rather than the person who uses the vehicle. This civil responsibility also gives a clue that the law calculatedly made a person criminally responsible whenever his vehicle apprehended transporting illegal coffee.

Similarly, Article 12(4) of the Proclamation stipulates that an owner of a vehicle or his agent, before loading coffee, shall verify the coffee has

been prepared for transportation in conformity with the requirements provided by the law. As an agent is the representative of his principal the provision also informs and obliges the owner of a vehicle to load and transport only lawful coffee. Where the obligation is not fulfilled it makes him criminally responsible under Article 15(6). This article also establishes the idea that an owner of a vehicle apprehended transporting illegal coffee is criminally responsible where he failed to fulfill the obligation enshrined under Article 12(4).

## 1.2. THE APPLICATION OF THE PROVISION

Courts of the Oromia Region give various meanings to Article 15(6) and implement it in contradictory manner. They are primarily categorized into three. The predominantly used meaning goes in line with the Article 23 of FDRE Criminal Code principle which establishes that crime is only completed when all its legal, material and moral ingredients are present.<sup>9</sup> Accordingly, the courts insist that an owner of a vehicle is criminally responsible and punished under Article 15(6) only where he personally participates in the illegal coffee transportation by his vehicle.<sup>10</sup> They also support their argument by Article 12(4) of the Proclamation that puts obligation on an owner of a vehicle or his agent to verify the legality of coffee to be transported.

The provision puts obligation not only on the owner of a vehicle but also on the agent who has the opportunity to manage the vehicle. So, an owner of a vehicle should not be made always liable. The courts also rule in line of this argument. For example, in *Public Prosecutor vs. Rekik Begashaw*,<sup>11</sup> the defendant was charged under Article 15(6) for her vehicle was apprehended transporting illegal coffee. The Public Prosecutor did neither establish guilty mind nor guilty act. The defendant

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<sup>9</sup> Criminal Code of FDRE, Art 23(2). Article 57 of the Criminal Code also provides that a person is punished only where he has been found guilty thereof under the law. The latter article gives much emphasis on the importance of *mens rea* among the three elements of a crime.

<sup>10</sup> For example, see cases such as *Public Prosecutor vs. Hangasa Bite* and et.al, Gimbi District Court, File No. 15811 (June 2012) *Public Prosecutor vs. Bekele Gemechu*, Dendi District Court, file No. 26881 (August 2012)

<sup>11</sup> *Public prosecutor vs. Rakik Begashaw*, West Wollega High Court, File No. 19387 (August 2011)

adduced a written agreement that shows she leased out the car for chilli (pepper) transportation. Finally, the court ruled that Article 15(6) punishes an owner of a vehicle who in one or other involves in the commission of the crime. Correspondingly, in *Public Prosecutor vs. Abebe Haile*<sup>12</sup> and *Public Prosecutor vs. Negessa Bikila*<sup>13</sup> the courts ruled that an owner of a vehicle apprehended transporting illegal coffee is penalized only where he participates in the process of transporting the coffee or supported the undertaking in one of the capacities recognized in the FDRE Criminal Code.

The second applicable meaning given to Article 15(6) implies that an owner of a vehicle apprehended transporting illegal coffee is criminally penalized whenever the vehicle is under his control. Where a vehicle apprehended transporting illegal coffee is not rented/leased or managed by an agent, the owner is punishable under the provision though he participates not in the commission of the crime (for the reason that he failed to control the vehicle). Many cases have been discharged pursuant to this argument. For instance, in *Nurhusen Abdu vs. Public Prosecutor*<sup>14</sup> the defendant was charged under Article 15(6) for the reason that his vehicle was apprehended transporting illegal coffee. But he tried to defend himself that he sold the car a year before the commission of the crime. But the ownership title was not yet transferred to the buyer. Declining the defense, the High Court punished him by fine and imprisonment. The Appellate Court, Oromia Supreme Court, however, reversed the decision and reasoned that the vehicle was not under his control during the commission of the crime. A case between *Public Prosecutor vs Azmera Sinishawu*<sup>15</sup> also rendered in the same fashion. The court reasoned that a defendant is answerable only where he failed to discharge the responsibility enshrined under the proclamation: looking over the legality of the coffee to be transported.

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<sup>12</sup> *Public prosecutor vs. Abebe Haile*, Dendi Woreda, File No 6824 (September 2012)

<sup>13</sup> *Public prosecutor vs. Negessa Bikila*, Dendi Woreda, file No. 26823 (August 2012)

<sup>14</sup> *Nurhusen Abdu vs. public prosecutor*, Oromia Supreme Court, file No. 123260 (January 2012 ).

<sup>15</sup> *Public prosecutor vs. Azmera Sinishawu*, Dendi Woreda, file No. 12393 (August 2012).



The third meaning given to the article states that an owner of a vehicle apprehended transporting illegal coffee is penalized without the need to establishing further elements or criteria as to *mens rea* or/and *actus reus*. This stand goes in line with the straight and literal meaning of the provision. To cite an example, in *Public Prosecutor vs. Meri W/Yohanis*<sup>16</sup> and *Public Prosecutor vs. Huseen Abdu*<sup>17</sup> the defendants were owners of vehicles apprehended transporting illegal coffee. They adduced evidences which showed that they did not only participate in the illegal coffee transportation but also made agreements with the drivers not to transport the same in any circumstances. Without ensuring fault on the part of the defendants with regards to commission or omission, the courts penalized them under Article 15(6) of the Proclamation by fines and imprisonments. Supporters of this version of interpretation of the provision argue that, pursuant to Article 3 of the Criminal Code, the deviation of the provision from the general principles of the Criminal Code is acceptable. Graven also argues that for just exceptions it is possible to depart from the general principles of the criminal law.<sup>18</sup> Since, coffee plays crucial role in Ethiopian economy, it is possible to reason out that, it is acceptable to make the provision exception to the general principles of the Code with regards to *mens rea* and *actus reus* of the criminal elements.

### **1.3. IS ARTICLE 15 (6) OF THE PROCLAMATION A STRICT OR VICARIOUS CRIMINAL LIABILITY?**

In order for an accused to be found guilty of a criminal offence, according to the general principle of criminal law, the prosecution must prove that the accused committed the *actus reus* of the offence with the appropriate *mens rea*. However, there are two exceptions to this general principle: the strict and vicarious criminal liabilities.<sup>19</sup> Strict criminal liability is a liability for which guilty mind (*mens rea*) does not have to

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<sup>16</sup> *Public prosecutor vs. Meri W/Yohanis* and et.al, Western Wollega High Court, file No. 16360 (July 2010).

<sup>17</sup> Supra note 14.

<sup>18</sup> Philip Graven, *An Introduction to Ethiopian Penal Law* (Oxford University Press, 1965), P12.

<sup>19</sup> Peter J. Henning and Neil P. Cohen, *Mastering Criminal Law* (Oxford University Press, 2008), P73.

be proven in relation to one or more elements comprising guilty acts.<sup>20</sup> According to this principle, a person will be convicted even though he was genuinely ignorant of one or more factors that made his acts or omissions criminal. The defendants may not be culpable in any real way, i.e. there is not even criminal negligence, the least blameworthy level of guilty mind.

Strict liabilities are created by statutes. Unfortunately, statutes are not always clear enough in connoting crimes as strict liability offences: the courts are left to decide for themselves.<sup>21</sup> Courts can penalize a person without proving his guilty mind where the statute necessarily implies the non-requirement of the same. The test of necessary implication connotes an implication that is compellingly clear. Such an implication can be found in the language used, the nature of the offence, the mischief sought to be prevented and any other circumstances which may assist in determining what intention is properly to be attributed to parliament when creating the offence.<sup>22</sup> Additionally, necessary implication may arise not only from the statutory provision under review but also from the rules governing that provision to be deduced from other provisions. As the criminal responsibility of an owner of a vehicle apprehended transporting illegal coffee is created by a proclamation, the crime exactly fits with the first criterion of the strict criminal liability.

The seriousness of a crime is also used as a mechanism of ascertaining whether a crime is strict liability offence or not. Grave crimes that carry heavy sentences and bring about social stigma require the proof of blameworthiness and not categorized into strict criminal liability. In the case of *Sweet vs. Parsley*, Ms Sweet subleased a farmhouse outside Oxford.<sup>23</sup> She rented the house to tenants, and rarely spent any time there. Unknown to her, the tenants were smoking cannabis on the

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<sup>20</sup> Christine T. Sistare, *On The Use of Strict Liability in the Criminal Law*, Canadian Journal of Philosophy ((1987), Vol. 17, No. 2, P395.

<sup>21</sup> Richard G. Singer, *The Resurgence Of Mens Rea: III- The Rise and Fall of Strict Criminal Liability*, Boston College Law Review (1989), Vol. 30, Issue 2, No. 2, P341.

<sup>22</sup> Catherine Elliott and Frances Quinn, *Criminal Law*, 9<sup>th</sup> ed. (Cambridge, 1999), P41.

<sup>23</sup> *Ibid.*

premises. When they were caught, she was found guilty of being concerned in the management of premises which were being used for the purpose of smoking cannabis, contrary to the Dangerous Drugs Act of 1965. Ms Sweet appealed, on the ground that she knew nothing about what the tenants were doing, and could not reasonably have been expected to have known. The Appellate Court considered the crime as being a ‘true crime’ – the stigma had, for example, caused her to lose her job: they held that it was not a strict liability offence. The criminal liability of an owner of a vehicle apprehended transporting illegal coffee, however, carries five years imprisonment and a fine of 500,000 Birr. Since the punishment is grave, the crime falls short of squarely fitting with the second criterion of strict criminal liability.

Opposed to true crimes, strict liabilities are more often considered as regulatory offences.<sup>24</sup> A regulatory offence is one in which real moral issue is not involved. The requirement of *mens rea* is less strong for non-truly criminal offences.<sup>25</sup> Regulatory offences are the kind created by the rules on hygiene and measurement standards within the food and drink industry and regulations designed to stop industry polluting the environment in England. Similarly, most air safety regulations and operations of aircraft and un-manned rockets are enacted as strict liability offences in Australia.<sup>26</sup> In the case discussed above (*Sweet v Parsley*) the First Instance Court found the accused guilty of being concerned in the management of premises which were being used for the purpose of smoking cannabis, contrary to the Dangerous Drugs Act of 1965. The Applet Court also did not deny that the accused was responsible for the management of the premise. It reversed the judgment depending on the seriousness and consequential effects of the penalty. The ultimate objective of Article 15 (6) of the proclamation shares behaviors of regulatory offences: controlling the impacts of a business. Thus, the punishment described under the provision realizes the goal of controlling

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<sup>24</sup> G.Singer, Supra note 21, p362.

<sup>25</sup> In the case of *Sweet vs. Parsley*, Lord Reid acknowledged that strict liability was appropriate for regulatory offences, or ‘quasi-crimes’: offences which are not criminal ‘in any real sense’, and are merely acts prohibited in the public interest.

<sup>26</sup> Supra note 22.

a vehicle from transporting illegal coffee. Hence, there is a high possibility for the crime to be categorized into strict criminal liability offenses.

The fourth criterion deals with social concerns. Accordingly, crimes that affect public safety, health and economy of a country can be sorted out as strict criminal liability offence.<sup>27</sup> In many countries including England and United States, statutory rape crime attracts strict liability. Accordingly, the Sexual Offence Act of 2003 of England punishes an act of sexual intercourse with a person under age of 13 carries a life imprisonment punishment whether or not the accused has the knowledge as to the age of the child.<sup>28</sup> In the *R v G* the defendant in the case had only been 15 at the time of the alleged incident and the victim admitted that she had lied to him on an earlier occasion that she was above 13. The prosecution accepted the boy's claim that he had believed the 12-year-old girl to be 15, but he was nevertheless sentenced to 12 months detention.<sup>29</sup> Similarly, in United States statutory rape and drunk driving carry crimes that bear higher penalties which fall into this category. In the same way, in *Pharmaceutical Society of Great Britain v Storkwain*<sup>30</sup> a pharmacist supplied drugs to a patient who presented a forged doctor's prescription, but was convicted even though the House of Lords accepted that the pharmacist was blameless. The justification is that the misuse of drugs is a grave social evil and pharmacists should be encouraged to take unreasonable care to verify prescriptions before supplying drugs. In light of these practices, for a crime committed against coffee attracts social and state concern in Ethiopia the experience of many countries urge one to align Article 15(6) with strict liability offences.

Social policy also plays an important role in deciding an offence as strict liability. For example, in England, during the 1960s there was intense social concern about what appeared to be a widespread drug problem and

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<sup>27</sup> Supra note 19, P85.

<sup>28</sup> England Sexual Offence Act, 2003, Art 5 [http://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga\\_20030042\\_en.pdf](http://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga_20030042_en.pdf) (Accessed on March 31, 2015)

<sup>29</sup> *R vs. G* (2008) UKHL 37 (June 2008): <http://www.bailii.org/uk/cases/UKHL/2008/37.htm> (Accessed on April 15, 2014)

<sup>30</sup> *Pharmaceutical Society of Great Britain vs. Storkwain* (1986) 2 ALL ER 635.

courts imposed strict liability for many drug offences. Ten years later environment pollution had become one of the main topics of concern, and the justification of the decision depends on the importance of curtailing the impact. As mentioned above, coffee is the leading export item that earns foreign exchange to the country above other tradable commodity in Ethiopia, especially during the enactment of the proclamation. Its tradable volume and value, yet, fluctuates from time to time. Due to such fluctuations, during 2007-2010 Ethiopia was plagued by acute foreign exchange shortage; at the end of 2008, at the time when the Coffee Quality Control and Marketing Proclamation was promulgated. The foreign exchange reserves of the country dropped to less than one months of imports coverage.<sup>31</sup> To raise foreign exchange the government took many measures such as a trade balance improvement, better services trade performance, increased remittances and substantial official transfers.<sup>32</sup> Therefore, it is logical to argue that the then circumstance gives a clue that the parliament intentionally enacted Article 15(6) as strict criminal liability offence in order to increase coffee export volume and tackle the foreign exchange shortages. Accordingly, in general, it is reasonable to categorize the criminal liability of a person who owns a vehicle apprehended transporting illegal coffee into strict criminal liability.

In the same way, vicarious liability refers to legal responsibility for the actions of another.<sup>33</sup> It is the responsibility of any third party that had the right, ability or duty to control the activities of a violator. Pursuant to this liability, for example, the registered owner of a vehicle is expressly made liable by statute for fixed-penalty and excess parking charges even

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<sup>31</sup> Doing business in Ethiopia (2012) Country Commercial Guide For U.S Companies , page 3: <http://photos.state.gov/libraries/ethiopia/427391/PDF%20files/Final%202012%20Ethiopia%20Country%20Commercial%20Guide.pdf>, (accessed on May 16, 2014)

<sup>32</sup> Ibid.

<sup>33</sup> In the criminal law, courts and commentators use the term (vicarious liability) in several different ways. Sometimes, it refers only to cases that hold one criminally responsible for someone's conduct based on the relationship between them. In different time, it may be used to describe someone having liability for another's conduct even though he was not at fault. The term may also be used to refer to all situations in which one is held criminally liable for another's conduct.

if he is not at fault.<sup>34</sup> As discussed earlier, article 15(6) of the Federal Coffee Proclamation punishes an owner of a vehicle apprehended transporting illegal coffee though he was not the operator of the vehicle nor supported the commission of the crime at any degree. In view of that the criminal responsibility of an owner of a vehicle apprehended transporting illegal coffee can be fairly grouped into vicarious offences.

#### **1.4. ARTICLE 15(6) OF THE PROCLAMATION AND THE CRIMINAL JUSTICE SYSTEM OF ETHIOPIA**

Article 3 of the FDRE Criminal Code rules that the general principles enshrined in the code are applied to regulations and special laws except as otherwise expressly provided therein. Pursuant to Article 23(2) and 57(1) of the Code, a person who deals with coffee quality and transaction is criminally responsible only where he carries out a prohibited act with appropriate *mens rea* unless the application of the basic criminal principle is suspended by the Coffee Proclamation. However, the proclamation is not clear enough as to its deviation from the general criminal principles. Where the proclamation has not indicated the non-application of the basic criminal rules to coffee quality and marketing offences, therefore, the plain meaning of the provision does not stand up to the principles enshrined in the Criminal Code.

The absence of express diction, according to Article 3 of the Criminal Code, obliges judges to punish a person who owns a vehicle apprehended transporting illegal coffee only where he has contributed in the commission of the crime illegally transporting coffee. Interpreting the provision in view of that, however, refutes the very inclusion of the article in the proclamation for it overlaps with direct meaning of Article 15(4). Additionally, such interpretation neglects the overall meaning of different provisions of the coffee regulations: it appears to disagree with the intention of the legislature. The existence of the two confronting meanings and standings on Article 15(6) cancels out the general purpose of Article 3 of the Criminal Code: ensuring consistent agreements

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<sup>34</sup> Theodore J. Williams Jr., *Criminal Law- Municipal Ordinance Imposing Vicarious Criminal Liability Upon Registered Owner Of Automobile For Parking Violations Does Not Violate Due Process*, Tulsa Law Review, (1974), Vol. 10, Issue 2, P301

between the Criminal Code and especial criminal legislations and then uniform applications of criminal provisions in the country.<sup>35</sup>

Article 15(6) of the Proclamation punishes an owner of a vehicle apprehended transporting illegal coffee even where he do not perform the prohibited act or he is not mentally guilty of performing the act. Such criminal liabilities disagree with the right to choose and decide on one's own future. The right and competence of a person to control his character<sup>36</sup> is the central concern of criminal law. Similarly, as discussed above, the proclamation is not clear enough whether an owner of a vehicle apprehended transporting illegal coffee is punishable in accordance with strict criminal liability principle. The lack of clarity, however, resulted in contradictory applications of the law and perhaps made innocent individuals thrown into jail. H.L.A Hart argued that the clarity of a law and the criminal law's function of guiding behavior are taken as the key requirements of the rule of law.<sup>37</sup> The ambiguity of the law challenges the rule of law.

Article 20(3) of the FDRE Constitution stipulates that, during proceedings, accused persons have the right to be presumed innocent until proved guilty. Pursuant to this constitutional right an accused is presumed guiltless until the prosecutor proves he is blameworthy of the alleged facts. With regard to Article 15(6) of the Proclamation, it is not the prosecutor who proves the blameworthiness of a person who owns a vehicle apprehended transporting illegal coffee but it is the accused, largely, that disproves the assumption that he has the knowledge of the involvement of his car in illegal coffee transportation. In all cases presented to courts it was the accused that proved that he had no involvement in the carrying out of the illegal activities. For instance, in

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<sup>35</sup> Graven, Supra note 18.

<sup>36</sup> Charles Fried, *Nature and Importance of Liberty*, (W.W. Norton 2006), P39; Personal autonomy is a value that underlies the doctrine of *mens rea*. Limiting criminal liability to the blameworthy means that people are held "responsible" for what can be reasonably expected. It leaves men free from fear of restrictions... so long as they choose to act reasonably in view of the law's prohibition.

<sup>37</sup> H.L.A Hart's *Rule of Law: The Limit of Philosophy in Historical Perspective*, (Lacey, Nicola 2007) P13. <http://www.centropgm.unifi.it/quaerni/index.htm>, (assessed on May 8, 2013)

*Public Prosecutor v. Rekik Begashaw* (discussed before) the prosecutor proved the accused was only the owner of the vehicle apprehended transporting illegal coffee and the burden of disproving the assumption transferred to the accused. Hence, it logical to argue that, the wording of Article 15(6) of the Proclamation and its enforcement method challenge the right to be presumed innocent until proven guilty.

According to the Criminal Code,<sup>38</sup> rehabilitating a criminal is the chief purpose of a punishment. However, the main rationale of categorizing a crime as strict criminal liability and punishing a person accordingly lies on deterring other persons from involving in similar activities.<sup>39</sup> Penalizing a person not guilty of a wrong act and to make him example for others and reduce unwanted doings in the society directly contravenes individual rights. Additionally, the Constitution does not empower the state to use a person in such a manner.<sup>40</sup> Therefore, it is possible to argue that the purpose of Article 15(6) of the Proclamation fails to squarely fit to the rehabilitation underlying principle of the criminal justice system.

An owner of a vehicle may not be in a position to control his vehicle as to its involvement in illegal coffee transportation. For example, an owner of a vehicle who leased or appointed a managing agent on the vehicle for years is out of the reach of managing the vehicle. In that circumstance he may not be only devoid of guilty mind, but also participates not in the illegal activity in any capacity. Actually a person may not be penalized even according to strict liability without the person performed the *actus reus*. In the case of Article 15(6), however, many persons were penalized even where they did not perform the *actus reus* element of the crime depending on vicarious liability. Vicarious criminal liability, in principle, carries simple punishments,<sup>41</sup> but one that recognized in Article 15(6) is rigorous both in imprisonment and fine. In line with the degree of punishment, hence, the criminal responsibility of a person who owns a

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<sup>38</sup> For example, look at the preface of the Code.

<sup>39</sup> J.M. Kelly, *A Short History of Western Legal Theory* (1992), P 449 as quoted by J.G. Murphy and J. Coleman, *Philosophy of Law* (Cambridge University press 1990) P121.

<sup>40</sup> *Ibid.*

<sup>41</sup> J. Williams, *Supra* note 34.



vehicle apprehended transporting illegal coffee does not fully agree with the vicarious criminal liability itself.

The law of agency and Article 12(4) of the Proclamation give a clue that an owner of a vehicle can assign the power of management of the vehicle to a person who acts on behalf of him. Pursuant to Article 2211(1) of the Civil Code the assigned agent has the obligation to manage and control the vehicle from involving in illegal activities with due diligences. He is expected to verify the legality of coffee to be transported in accordance with the coffee regulations. In point of fact, Article 12(4) of the Proclamation personally warns an agent to make sure of the legality of coffee ready to be loaded on the vehicle he manages. Hence, the agent should have borne the outcome personally.<sup>42</sup> Nevertheless, the proclamation has not provided a provision that punishes or reprimands him, if he fails to discharge the responsibility. Failing to take the nature of crime put on the agent into consideration, Article 15(6) of the Proclamation penalizes an owner of a vehicle in general terms even where the vehicle transports illegal coffee due to the fault of the agent.

In general, the criminal responsibility of a person who owns a vehicle apprehended transporting illegal coffee sounds awkward to the criminal justice system of Ethiopia, especially with reference to the right of innocent individuals. Furthermore, it restricts vehicle owners to lease out vehicles, and thus brings impacts on restraining business transactions.

## **2. ILLEGAL COFFEE TRANSPORTATION AND AN OWNER OF A VEHICLE: UNDER THE OROMIA COFFEE PROCLAMATION**

Article 19(3) of the Federal Coffee Proclamation authorizes regional states to enact laws that are necessary for the implementation of the same. The Oromia Regional State issued Coffee Quality Control and Marketing Proclamation<sup>43</sup> to facilitate the implementation of the Federal

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<sup>42</sup> For the illegal coffee transportation is not falling within the ambit of personal principal-agent relations, the approval of the errors and faults committed by the agent pursuant to Article 2207 and 2214 of the Civil Code should not release him from the resulting consequences.

<sup>43</sup> Supra note 5.

Coffee Proclamation. It almost copied the Federal Coffee Proclamation provisions as to coffee quality control and marketing issues (including the criminal clauses). However, the provision deals with the criminal responsibility of a person who owns a vehicle apprehended transporting illegal coffee tends to disagree with the provision of the Federal Coffee Proclamation dealt with above. In view of that, this sub-topic scrutinizes the provision that deals with the criminal responsibility of an owner of a vehicle apprehended transporting illegal coffee under the Oromia Coffee Proclamation.

The Oromia Coffee Proclamation also establishes criminal responsibility of a person who owns a vehicle under Article 23(6)<sup>44</sup> in amorphous and ambiguous words. On one hand, the English version and the Afan Oromo and Amharic versions of the provision give completely different meanings.<sup>45</sup> On the other hand, the Afan Oromo and Amharic versions of the provision bear drafting problems. For example, the Afan Oromo version that reads, ‘*Abbaan konkolaataa fi konkolaachisaan kamiyyuu buna seeraan alaa fe’ee yoo shocho’e...*’ employs a verb in singular (*socho’e*) for the plural subject (*abbaa konkolaataa* and *konkolaachisaa*). The two versions connect an owner of a vehicle and a driver with a conjunctive word ‘and’ and made the subject plural.<sup>46</sup> The next coming verb (transport), however, was put in singular (transports) as though the subject was singular. The shortfalls in the sentence construction, in general, and the use of the word ‘and’, in particular, have brought about difficulties. For this reason, to make the sentence (provision) meaningful, as a solution, it is imperative to take the subject plural and the next

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<sup>44</sup> When the Afan Oromo and Amharic versions of the provision are put as they are read that an owner of a vehicle and a driver *transports* illegal coffee are penalized by a fine of Birr 50,000 and an imprisonment of not less than three years but not exceeding five years

<sup>45</sup> The English translation fails to agree with the Afan Oromo and Amharic versions. It simply punishes any person who commits manipulative acts to coffee quality and transactions with general terminologies and which somewhat obscure the smooth implementation of the same.

<sup>46</sup> ማንኛውም ባለሙኪና እና ሾፈር በሕገወጥ ቡና ጭኖ ቢንቀሳቀስ በወንጀል ሕግ የበለጠ የሚያስቀጣ ካልሆነ በስተቀር ቡናው ተወርሶ ብር 50000(ሃምሳ ሺህ) እና 3(ሦስት) ዓመት በታች ያልሆነ እና ከ5(አምስት) ዓመት ባልበለጠ እስር ይቀጣል።

coming verb in plural or to take ‘and’ as ‘or’ and put the next coming verb in singular.

To begin with, let us give ‘and’ its connective meaning and make ‘an owner of a vehicle’ and ‘a driver’ the subject of the sentence (provision): plural subject. Then the next coming verb (transport) becomes in plural. Accordingly, the sentence can be reconstructed as ‘An owner of a vehicle *and* a driver who *transport* illegal coffee are penalized by a fine of Birr 50,000 and an imprisonment of not less than three years but not exceeding five years’. Technically speaking, such construction makes the provision only punishes the two individuals where they engage in the crime jointly. Constructing the sentence in such a style also bears out other problems. For example, pursuant to this interpretation, an owner of a vehicle or a driver that transports illegal coffee on his own may not be punished. This side of the meaning of the provision lessens the effort to control illegal coffee transportation. Furthermore, it punishes an owner of a vehicle or a driver who personally engages in illegal coffee transportation. This conclusion, to some extent, becomes the replica of Article 23(4) of the same proclamation (discussed below).

Alternatively, to accord subject-verb agreement, it is important to make the subject of the sentence singular and the next coming verb in singular. Accordingly, the sentence can be reconstructed as, ‘An owner of a vehicle *or* a driver who *transports* illegal coffee is penalized by a fine of Birr 50,000 and an imprisonment of not less than three years but not exceeding five years’. To put differently, an owner of a vehicle is penalized by imprisonment and fine only where he personally transports illegal coffee: he is not punished for the fact that illegal coffee is transported by his vehicle. In line with this language, the provision appears to stand paradoxical with the plain meaning of Article 15(6) of the Federal Coffee Proclamation. As cases and practitioners make known, persons who are accused of their vehicles are apprehended transporting illegal coffee prefer to be treated under the Oromia proclamation to the Federal proclamation, and judges are always confused as to choosing the law they should put into effect.

Although the phraseology of the provision seems plain the purpose of the phrase ‘an owner of a vehicle’ is ambiguous and unclear. For the reason that a word ‘driver’ can take account of ‘an owner of a vehicle who drives a vehicle of his own’, it is possible to argue that, using the word ‘a driver’ only services the same goal. Hence, it is futile to use the phrase ‘an owner of a vehicle’. In the same way, if an owner of a vehicle was not treated as a driver, it was also possible to reframe the provision as ‘Any person who transports illegal coffee by his vehicle shall be penalized by fine and imprisonment’. For Article 23(4) of the proclamation penalizes any person who transports unlawful coffee being a driver or otherwise, and the word ‘any person’ encompasses an owner of a vehicle again it becomes useless to Article 23(6). The other side of the interpretation also gives the meaning that an owner of a vehicle who transports or makes to be transported unlawful coffee by his vehicle is punishable. The contrary reading of this interpretation indicates that an owner of a vehicle who transports illegal coffee by a vehicle belongs to another person is not penalized. This version of interpretation, however, contradicts Article 23(4) and the general purpose of the proclamation and it is almost unacceptable.

Pursuant to this interpretation Article 23(4) also punishes a driver who transports unlawful coffee opposed to Article 15(6) of the Federal Coffee Proclamation. A driver who transports illegal coffee is, as discussed above, penalized under Article 23(4); the Federal Coffee Proclamation also treats a driver under Article 15(4). The two articles punish a driver who transports illegal coffee by the same penalties. Therefore, it sounds meaningless to legislate two articles to punish a person for the same act. Hence, it can be said that, with regards to criminal responsibility of a driver, Article 23(6) is a mere repetition of Article 23(4).

Now let us presume that the word ‘and’ connects two titles- being a driver and an owner of a vehicle- rather than connecting two persons. Accordingly, the provision gives the meaning that a vehicle owner who transports illegal coffee being a driver of his vehicle is punishable by fine and imprisonment. This interpretation makes Article 23(6) deals only with a person who owns a vehicle as Article 15(6) of the Federal Coffee

Proclamation does. However, this side of the meaning of the provision also squarely falls within the meaning of Article 23(4) of the Proclamation for it punishes any person (including an owner of a vehicle that operates the same) who transports illegal coffee being a driver of his vehicle.

In general, due to drafting shortcomings or otherwise, the attempt of Article 23(6) of the Oromia Coffee Proclamation to reduce the practical dilemma created by the Federal Coffee Proclamation results in vain. It gives various meanings that lead practitioners implement the provision in contradictory manners. Furthermore, all possible meanings of the provision fail to make good agreement with the Federal Coffee Proclamation and it paves the way for conflict of laws.

### 3. CONCLUSIONS AND RECOMMENDATIONS

Article 15(6) of the Federal Coffee Proclamation penalizes an owner of a vehicle apprehended transporting illegal coffee even without the need for proving guilty act or guilty mind or both. The liability neither exactly matches with the *actus reus* and *mens rea* elements of a crime nor it is made exception to the basic criminal principles enshrined in the Criminal Code. The failure of the provision to conform to the rules of the Criminal Code has brought encumbrances to the endeavor to guaranteeing the uniform applications of criminal provisions in the Country.

The punishment can be grouped into both strict and vicarious criminal liability offences. But it has a proclivity for vicarious criminal liability. The provision imposes absolute liability that makes an owner of a vehicle criminally liable whenever his vehicle apprehended transporting illegal coffee (regardless of a showing that he is innocent).<sup>47</sup> As a result, the

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<sup>47</sup> With regards to vehicle ownership and criminal responsibility there are two types of liabilities in criminal justice system. The first is a criminal liability that provides the facts of violation and ownership together raise a *prima facie* presumption that the owner also a partaker of the commission of the crime in one or other. The second omits any reference to a *prima facie* presumption; it declares merely that whenever a vehicle participated in illegal activities the registered owner shall be subjected to the penalty for the violation. (J. Williams Jr., Theodore, *criminal law-Municipal ordinance imposing vicarious criminal liability upon registered owner of automobile for parking violations does not violate due process*, Tulsa Law Review, Vol.10, Issue 2, (1974), page 301.

provision shifted the burden of adducing evidences and proving from the prosecution to the accused. The practice also reveals the same. The public prosecutor proves only the ownership of a vehicle apprehended transporting illegal coffee and the defendant is presumed criminal. Opposed to the presumption of innocence recognized in the FDRE Constitution.

In principle, both strict and vicarious criminal liabilities are often considered as regulatory offences. Regulatory offences usually impose non-jail sentences such as fines. In rare cases, they carry imprisonments that are not rigorous. In view of that, Article 15(6) of the Proclamation should not have carried heavy penalties: an imprisonment of three to five years and a fine of Birr 50,000. Thus, it is totally unfair to penalize an owner of a vehicle with such potential incarceration and majority of fine who absolutely innocent of the involvement of his vehicle in illegal coffee transportation or who only failed to control his vehicle from transporting illegal coffee.<sup>48</sup> Therefore, it is recommendable that the Federal Legislature should bring the provision into agreement with the Constitution and the Criminal Code so as to ensure the fundamental human rights and freedoms as well as the consistent implementation of criminal liabilities in the country through the provision.

Regarding the criminal responsibility of a person who owns a vehicle apprehended transporting illegal coffee, Article 23(6) of the Oromia Coffee Proclamation tends to stand inconformity with Article 15(6) of the Federal Coffee Proclamation. With indeterminate number of subject of the sentence (the provision), it penalizes a person who owns a vehicle and transports illegal coffee being a driver of the same. Additionally, it punishes a driver who drives a vehicle apprehended transporting illegal coffee that already punished under article 23(4) of the same proclamation. In line of this interpretation, the provision becomes totally the replica of article 23(4) though it tries to be specific. As a result, it falls short of serving a purpose of its own.

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<sup>48</sup> Actually the Criminal Code of FDRE does not specifically recognize vicarious and strict criminal liabilities with reference to the criminal responsibility of natural persons. It only clearly recognizes them in the responsibilities of juridical persons under Article 23.

Due to a sentence construction problem the provision fails to pass a definite meaning. It passes meanings that other article entertains or contradicts with the general goal of the proclamation. Additionally, the English version and Afan Oromo and Amharic versions of the provision give dissimilar meanings. Hence, it is advisable that the *Caffee* Oromia should redraft the provision to get rid of the problem of sentence construction in such a way that it takes other provisions of the proclamation into consideration and conforms to the regulations and the goals of enacting the proclamation.