

## **The 2023 Re-Revitalized Treaty Establishing the Inter-Governmental Authority on Development: Does it fit to the 21<sup>th</sup> Century?**

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### **Abstract**

*After a decade and half debate and discussion, the Inter-Governmental Authority on Development (IGAD) was re-revitalized on June 12, 2023 with a view to adapt to the changes on the internal and international scene and the African Union reforms. This research investigates whether the new re-revitalized IGAD Treaty which would replace the 1996 Agreement Establishing IGAD fit to the 21<sup>th</sup> Century and suggests the way forward for its viability. Qualitative design was employed. It is found that in spite of the fact that the Treaty was adopted which re-revitalized IGAD, it has failed to incorporate major provisions critical for its viability in the 21<sup>st</sup> Century. These provisions include among others the establishments of organs like the Community Parliament, the Economic and Social Council, the Community Court of Justice; Specialized Technical Commissions; most favored nation treatment, a Committee of regional Central banks; immigration; granting special treatment of land-locked States; and adopting common positions within the Community on issues relating to international negotiations with third parties in order to promote and safeguard the interests of the region. This may imply that member states of IGAD are not yet ready to expand its mandate and cede power to various institutions that the 21<sup>th</sup> century requires for a vigorous REC in the Horn of Africa. So, for an effective economic integration to happen in the IGAD region, a strategy for creating a strong supranational authority and engaging the public through establishing independent institutions such as Parliament, Economic and Social Council, and Court of Justice, independent Professional Technical Committees, framing a legal framework to act together, and adopt common positions within the REC in order to promote and safeguard the interests of the region should be devised.*

**Keywords:** *IGAD, Re-revitalization, the New Treaty Establishing IGAD, viability, 21<sup>th</sup> Century*

### **1. Introduction**

Thirty-seven years ago, the countries of the Horn of Africa formed a regional bloc. The initiative to create regional bloc came from outside the region. Owing to the severe drought and famine and the economic hardship the Horn region undergone in the late 1970s and 1980s, the United Nations urged the countries of the sub-region to create a regional structure to tackle the problem. Accordingly, the Intergovernmental Authority on Drought and Development (IGADD) was established in 1986 in the Horn of Africa (HoA) for the first time with the narrow objective of addressing common problem of drought and desertification<sup>1</sup>. However, on 21 March 1996, the Heads of State and Government adopted a new Charter that expanded its mandate by incorporating peace and security, intra-regional trade and development of improved communication infrastructure other than food security and environmental protection with the aim of enabling the

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<sup>1</sup> IGADD (Intergovernmental Authority on Drought and Desertification) (1986) Assembly on Heads of State and Government, 1st session. Djibouti.

sub-region to interact and compete in the global economy, eventually leading to regional integration.<sup>2</sup> The revitalized IGADD was renamed the Intergovernmental Authority on Development (IGAD).

Regional economic communities (RECs) are considered as one of the top agenda in Africa and the ‘building blocks’ of the African Union (AU) under the African Economic Community (AEC) Treaty. IGAD was recognized as one of the eight RECs of AU/OAU in an attempt to realize the establishment of African Economic Community<sup>3</sup>, implying a commitment to establishing a Free Trade Area (FTA), macro-economic convergence, industrial development and investment promotion, infrastructure and transport development, information technology, tourism development, and the development of energy, agriculture, environment and natural resources.<sup>4</sup> IGAD is considered as a key building block for an overall common AEC and could play an important role in the economic integration of the continent. The member states could leverage their ports, dry-docks and infrastructure to bring more investments into the sector<sup>5</sup>.

However, two and half decade after the revitalization of IGAD, its progress to achieve a peaceful region and sustained integration has remained limited. Given national, regional and global dynamics as well as the lack of political will reflected on Member States to give executive independence to the Secretariat, the presence of similar composition of import-export items, divergence positions over the use of the Nile water<sup>6</sup>, and exceedingly relying on external donors, some voice their disappointment at the limited progress in regional market integration and conflict resolution. Some even question the relevance of IGAD as a basis for regional integration.<sup>7</sup> Some states like Somalia show interest to join the East African Community (EAC), and such expansion of duplication of function may lead to more divided loyalty and impose heavy financial and administrative burdens that may further weaken the IGAD as an economic bloc.

According to Abdi (2018), IGAD is on a deadly path towards the achievement of peace and security which calls for it to reconsider its policies and strategies to prevent further escalation of its predicaments if it is to move forward and achieve its laid-out objectives. In the same vein, Mehari (2019) postulates that IGAD needs to undergo a further transformation in order to serve as an effective deliberative and decision-making body. A decade and half ago, the idea of re-revitalizing IGAD began<sup>8</sup>. In 2012, the IGAD Council of Ministers directed the drafting of a Treaty that aims

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<sup>2</sup> IGAD (1996). IGAD Strategy Framework. Djibouti

<sup>3</sup> IGAD (1998) Communiqué by the Extra-ordinary Summit of the IGAD Heads of State

<sup>4</sup> Abdi, A.I., and Seid, E.H. 2013. Assessment of Economic Integration in IGAD. Horn of Africa Economic and Social Policy Institute, Working Paper No.13/2. Ethiopia: The Horn Economic & Social Policy Institute. [http://www.hespi.org/images/word\\_file/Assessment\\_of\\_Economic\\_Integration\\_in\\_IGAD1.pdf](http://www.hespi.org/images/word_file/Assessment_of_Economic_Integration_in_IGAD1.pdf)

<sup>5</sup> Hersi. A. and Sharamo, R. D. (2020). How an IGAD Regional Maritime Council can boost trade. Policy Brief. Institute for Security Studies

<sup>6</sup> Interview with lecturers, Bahr Dar University and Hawassa University

<sup>7</sup> See Tewodros Woldearegay and Gosa Abera Mamo (2019). The way-forward to make inter-governmental authority on development (IGAD) successful in actualizing a viable economic integration, African Journal of Political Science and International Relations Vol. 13(4), pp. 53-61, ; and Byiers, B. (2016). The Political Economy of Regional Integration in Africa Intergovernmental Authority on Development (IGAD). IGAD Study <http://ecdpm.org/peria/igad>

<sup>8</sup> IGAD (2008), COMMUNIQUE OF THE 12TH Summit Of Heads Of State And Government Of IGAD (2008), The 12th Ordinary Summit of the Intergovernmental Authority on Development (IGAD) was held at the Sheraton Hotel Addis Ababa, Ethiopia on 14th June 2008 Directed the Secretariat to undertake an

to substitute the 1996 IGAD (IGAD, 2012<sup>9</sup>); and on 27 February 2019, IGAD Council of Ministers in its 46<sup>th</sup> ordinary session deliberated agenda items related to IGAD institutional setup (IGAD, 2019).

Accordingly, after a decade and half debate and discussion, the Inter-Governmental Authority on Development (IGAD) was re-revitalized on June 12, 2023 with a view to adapt to the changes on the internal and international scene and the African Union reforms. The new IGAD Treaty, which would replace the 1996 Agreement Establishing IGAD, was adopted by the Heads of State and Government on June 12, 2023 with the objective of accelerating regional economic, social, environmental and political integration, and cross border cooperation among the Member States<sup>10</sup>. Therefore, the basic characteristics of this new 2023 re-revitalized Treaty and whether its fits to the 21<sup>st</sup> century needs to be assessed. Qualitative design was employed to identify the nature of re-revitalization IGAD and its missing link by comparing it with one of the African regional bloc, ECOWAS.

## **2. The New 2023 Re-Revitalized Treaty and Institutions that the 21th Century Requires**

On 12 June 2023, the Heads of State and Government of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda met in Djibouti and finalized the structure of the organization and adopted a new Treaty that replaces the Agreement Establishing the Inter-Governmental Authority on Development dated 21<sup>st</sup> March 1996 with a view to widen and deepen cooperation and achieve sustainable development<sup>11</sup>. However, the name of the organization is not changed. Unlike most RECs, the re-revitalized IGAD does not indicate the geographical location where it is found. It would have been more appropriate if the name was associated with the region, that is, the Horn of Africa.

The Treaty claims that the expanded mandate of IGAD will strengthen cooperation, serve as an important building block towards regional economic integration and support sustainable economic development. It further notes that it desires to accelerate trade, investment, social and economic development cooperation among the Member States by lowering trade and economic barriers; create a larger market with more opportunities and greater economies of scale for business<sup>12</sup>. About seventeen areas of cooperation<sup>13</sup> are identified including trade liberalization and development, transport and communications; tourism; energy, in particular renewable energy development, agriculture and food security, environment protection and natural resource management; enabling environment for the private sector, the civil society and professional bodies, gender equality and empowerment of women and girls, investment, free movement of goods, persons, labor, services

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inventory of what has been achieved so far in terms of harmonization and regional integration, and make recommendations on the way forward

<sup>9</sup> IGAD (2012), Communique of the 45th Ordinary Session of the IGAD Council Of Ministers Addis Ababa, 11 JULY 2012, the 45th Ordinary Meeting of the IGAD Council of Ministers urged the Secretariat to expedite the finalization of the new Treaty Establishing IGAD and submit to the next Council of Ministers meeting.

<sup>10</sup> IGAD (2023) Treaty Establishing the Inter-Governmental Authority on Development (IGAD), Assembly of Heads of State and Government. Djibouti - See Article 3 of the 2023 Treaty.

<sup>11</sup> IGAD (2023, Article 2) Treaty Establishing the Inter-Governmental Authority On Development

<sup>12</sup> See Article 3 and the Preamble of the Treaty (IGAD 203)

<sup>13</sup> Article 24 of the Treaty(IGAD, 2023)

and capital; good governance, peace and security, development and utilization of human resources, education, science and technology, social welfare, health, and culture and sports. However, these areas of cooperation were almost incorporated in the Agreement Establishing IGAD signed in 1996<sup>14</sup> as well as the 2021-2015 IGAD regional strategy framework<sup>15</sup> and even in the 2016-2020 regional strategy<sup>16</sup>. Yet, the attainment of this objective and the areas of cooperation calls for not only the development and implementation of appropriate strategies in economic, social, cultural, political and environmental sectors as envisaged in the 2021-2025 regional strategy framework but also requires political will and commitment, financial and human capacity as well as prioritization of projects by the Member States and the Secretariat.

Just like the 1996 IGAD Charter<sup>17</sup>, the structure of the new 2023 re-revitalized IGAD<sup>18</sup> is composed of four hierarchical policy organs: An Assembly of Heads of State and Government, a Council of Ministers, a Committee of Ambassadors and a Secretariat. The Assembly is, however, empowered to establish other organs<sup>19</sup>. The Treaty introduces Vice-chairperson and new requirements in terms of selection and order of chairpersonship. The Chairperson of the Assembly should be rotated in alphabetical order<sup>20</sup>, and there will be a Vice-chairperson who will be the next Chairperson of IGAD<sup>21</sup>, accordingly Eritrea will assume the Vice-chairperson position, and it will be the next Chairperson. Ethiopia will be the next Vice-Chairperson.

Two deputy Executive Secretaries (from different countries) will be appointed who assist the Executive Secretary<sup>22</sup>. The positions of Chairperson and Vice-Chairperson are designed to rotate in alphabetical order and this may reduce the tension and rivalry among the Member States for the post. As some informants' remark, this may contribute to make IGAD a rule based organization<sup>23</sup>, but there is no guarantee as far as its power rests on the top-leaders and it remains a top-down structure. Moreover, having two deputy executives may result in giving attention to the neglected economic integration by assigning one of them to economic issues and the other to peace and security<sup>24</sup>. It may, however, be a burden as it increases administrative cost of IGAD<sup>25</sup>. Otherwise, no major changes logged as to the functions of these organs. So, the barricades the IGAD region has been encountering for decades may not be abated.

In the same vein, the fundamental principles governing IGAD, the 2023 re-revitalized Treaty is also not different from the 1996 IGAD Charter which is based on sovereign equality of all member States, peaceful co-existence, good neighborliness, non-interference in the internal affairs of Member States and peaceful settlement of inter- and intra-State conflicts through dialogue. Furthermore, the implementation, monitoring and evaluation of the implementation of the Treaty,

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<sup>14</sup> See IGAD (1996). The Agreement Establishing IGAD, Assembly of Heads of State and Government. Nairobi.

<sup>15</sup> See IGAD (2020) IGAD Regional Strategy: The Framework., Djibouti ISBN: 978-87-971254-7-2

<sup>16</sup> IGAD (2016), GAD Regional Strategy - Volume 2 - Implementation Plan 2016-2020

<sup>17</sup> See Article 8 of the Agreement (IGAD 1996)

<sup>18</sup> See Article 10 of the New Treaty (IGAD 2023)

<sup>19</sup> See Article 10(5) of the Treaty

<sup>20</sup> Article 13(1) of the Treaty

<sup>21</sup> See Article 13(3) of the Treaty

<sup>22</sup> Article 19 of the Treaty

<sup>23</sup> Interview with Senior Expert, Ministry of Foreign Affairs, 2023

<sup>24</sup> Ibid

<sup>25</sup> Interview with Senior Ambassador, Ministry of Foreign Affairs, 2023

policies and programs are entrusted to Member States<sup>26</sup>. Most importantly, the Treaty does not recognize those critical institutions such as a court and a parliament which are imperative for a viable REC. The experiences of other RECs like ECOWAS<sup>27</sup> indicate that when a Member State or institution of the REC has failed to honor any of its obligations or has acted beyond the limits of its authority or has abused the powers conferred on it, an independent court renders binding decision. It may also give advisory opinion on any legal questions. Such a judiciary system where differences among the Member States can be settled is missing in the re-revised IGAD Treaty. It seems Member States prefer such cases to be settled by outside organs such as the UN International Criminal Court as Kenya and Somalia did recently. The two countries that have a maritime territorial water dispute took the issue to the International Court of Justice.

Besides, the Treaty fails to acknowledge a legislature in the region. The IGAD Inter-Parliamentary Union which was active between 2010 and 2018 should have been resumed its activities. The 8<sup>th</sup> Heads of State and Government which took place in November 23, 2000 in Khartoum proposed the establishment of an IGAD Inter-parliamentary Union for the sub-region. Consequently, the Protocol<sup>28</sup> for the establishment of Inter -Parliamentary Union of IGAD member states adopted in June 2001 after a consultative meeting in Djibouti. The Protocol came in to force on 28 November 2007 after being ratified by four IGAD member states, Ethiopia, Djibouti, Sudan and Somalia. The IPU-IGAD can play an important role with regard to people-to-people relations and can enhance its soft power. However, the Member States have not given attention to the parliament. This may imply that they are still not willing to cede any power, and as some informants<sup>29</sup> proclaim the Member States do not trust their own organization as well. This lack of autonomous institutional decision making and lack of commitment to cede power, as in the past, will continue to limit the effectiveness of IGAD in charging the mandate entrusted in it.

One of the new provisions introduced by this Treaty is about membership. Article 8 (1)(b) stipulates that one of the matters to be taken into account by the Member States for admitting any country to become a member of IGAD is adherence to acceptable principles of good governance, democracy, the rule of law, and observance of human rights and social justice. A member that fails to pay its contribution for two consecutive years will be denied the right to speak at meetings, the right to host or chair meetings, the right to vote, or any other such sanction the Assembly sees fit or determines<sup>30</sup>; or may be suspended for a period not exceeding 18 months<sup>31</sup>; or may be expelled for

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<sup>26</sup> The Treaty under Article 6 entitled “General Undertaking on Implementation” states: 1. The Member States shall: (c) monitor and evaluate the implementation of the Treaty, policies and programs; 2. Each Member State shall take all necessary measures, including the enactment of legislation, to effectively implement the Treaty.

<sup>27</sup> ECOWAS (1993) Revised Treaty Establishing the Economic Community of West African States Article 7 and 15

<sup>28</sup> IPU-IGAD (2001). Protocol for Inter-parliamentary Union of IGAD Member States, Addis Ababa

<sup>29</sup> Interview with lecturers from Hawassa University, Bahr Dar University and Dire Dawa University, 2023.

<sup>30</sup> Article 51(1) of the Treaty states: Any Member State which defaults in meeting its financial contributions in the preceding two years shall be denied the right to speak at meetings, the right to host or chair meetings, the right to vote, or the right to present candidates for any position or post within IGAD, or to benefit from any activity or commitment of IGAD or any other such sanction the Assembly sees fit or determines

<sup>31</sup> Article 52 Suspension of a Member State: 1. The Assembly may suspend a Member State from taking part in the activities of IGAD for a period not exceeding 18 months or until the Member State fulfils the fundamental principles and objectives of the Treaty including its financial commitments.

consistent pattern of gross violation of the principles and objectives of the Treaty<sup>32</sup>. As stated under Article 54, a Member State may withdraw from IGAD by giving to the Executive Secretary twelve month's written notice of its intention to withdraw, but can apply to the Assembly for admission in accordance with the provisions of article 8 of this Treaty<sup>33</sup>. However, all these may remain in paper as there is no authority to make binding decision. As stipulated in Article 59, the Treaty shall enter into force sixty days after the deposit of the instrument of ratification of two-thirds of the Member States of IGAD with the Executive Secretary.

Regarding language, English, French and Arabic, which are not the language of the region, are considered as the official languages of IGAD (Article 49), which is contrasting the 1993 revised Treaty of ECOWAS that recognized local languages as official language of the REC. The 1993 revised Treaty establishing ECOWAS under Article 87(1) of Treaty stipulates: "The official languages of the Community shall be all West African languages so designated by the Authority as well as English, French and Portuguese".

To recap, compare to the 1993 revised Treaty of ECOWAS, the new re-revitalized 2023 IGAD Treaty lags far behind and neglects the multi-level governance approach of the 21 century characteristics of regional bloc. Even though the IGAD re-revitalized Treaty came out after twenty-seven years since it was first revitalized and 30 years of after the revised ECOWAS Treaty, it has failed to incorporate major provisions critical for its viability in the 21 century such as fundamental principles like equality and inter-dependence of Member States, solidarity and collective self-reliance, and non-aggression between Member States<sup>34</sup>; the establishments of organs like the Community Parliament, the Economic and Social Council, the Community Court of Justice; the Fund for Co-operation, Compensation and Development, and Specialized Technical Commissions<sup>35</sup>; most favored nation treatment, a Committee of regional Central banks comprising the Governors of Central Banks of Member States<sup>36</sup>; immigration<sup>37</sup>; granting special treatment of land-locked States<sup>38</sup>; the compatibility of agreements concluded by member states<sup>39</sup> and adopting

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<sup>32</sup> Article 53(1), Expulsion of a Member State: 1. The Assembly may expel a Member State from IGAD for consistent pattern of gross violation of the principles and objectives of the Treaty, after giving such Member State twelve months written notice.

<sup>33</sup> Article 8(3). The matters to be taken into account by the Member States for admitting any country to become a member of IGAD shall include that State's: (a) acceptance of the principles and objectives of IGAD as set out in the Treaty; (b) adherence to acceptable principles of good governance, democracy, the rule of law, and observance of human rights and social justice; (c) potential contribution to the strengthening of economic co-operation and integration within the IGAD region; (d) geographical proximity to and inter-dependence between it and the Member States; (e) economic and social policies being compatible with those of IGAD.

<sup>34</sup> See Article 4 (a, b & d) of the 1993 Revised Treaty establishing ECOWAS

<sup>35</sup> See Article 6 of the 1993 revised Treaty establishing ECOWAS about the Institutions of the Community

<sup>36</sup> See Article 52 of the Treaty

<sup>37</sup> Article 59 about Citizens of the Community shall have the right of entry, residence and establishment and Member States undertake to recognize these rights of Community citizens in their territories in accordance with the provisions of the Protocols relating thereto

<sup>38</sup> See Article 68

<sup>39</sup> Article 84 states: Member States may conclude agreements among themselves and with non-Member States, regional organizations or any other international organization, provided that economic agreements are not incompatible with the provisions of this Treaty. They shall, at the request of the Executive Secretary, transmit copies of such economic agreements to the Executive Secretary who shall inform Council thereof

common positions within the Community on issues relating to international negotiations with third parties in order to promote and safeguard the interests of the region<sup>40</sup>. All this indicates that member states of IGAD are not yet ready to expand its mandate and cede power to various institutions that the 21th century requires for a viable REC in HoA.

### **3. Conclusion and the Way Forward**

Although after a decade and half debate, the new re-revitalized IGAD Treaty was adopted on June 12, 2023 with a view to widen and deepen cooperation to achieve sustainable development, it has failed to consider major provision that fits to the 21th century. Adhering to the principle of non-interference in the internal affairs of member states as stipulated in the new 2023 IGAD Treaty under Article 4B limits the effectiveness of IGAD in charging the mandate entrusted in it; and its action is limited as it only appeals and urges to the disputing parties to refrain from further action without passing binding resolution. Moreover, though some IGAD Member States have been engaging in sending trooping as a peacekeeping mission within the region, the Treaty does not provide authority to undertake a peace support mission in a member state. Therefore, IGAD to be rule based and an effective regional peacemaker, it needs to enhance its role as a regional peacemaker through establishing IGAD standby force (ISF) which is composed of military, police and civilian components. This may help it to play a more visible and pro-active role in conflict prevention, and in maintaining peace by contributing to the restoration of existing conflicts.

Although the IGAD Inter-Parliamentary Union came in to force on 28 November 2007 after being ratified by four IGAD member states, Ethiopia, Djibouti, Sudan and Somalia, it is not functioning. So, Member States need to reinstate the IGAD-Inter-Parliamentary Union. Like AU and ECOWAS, it would strengthen IGAD if IGAD-IPU is considered as one of the organs of IGAD. People to people relations can also be reinforced through IPU. Moreover, the creation of Judiciary and parliament institutions in the region will help build a true check and balance system of administration in order to materialize the objectives of the re-revitalized IGAD.

As one of the eight recognized RECs, IGAD, just like ECOWAS & AU, needs to establish its own Economic and Social Council. Besides, designing an enforcement mechanism on Member States to honor financial contribution to be bound by the new Treaty enshrined under Article 42 and 52. Without financial contribution by Member States, IGAD will remain paralyzed. So, strong enforcing mechanism should be designed to make the sanction and suspension realistic. This requires on the part of Heads of States and Governments to cede power to the Secretariat or to the Court.

Although in the preamble, the 2023 re-revitalized Treaty recognizes the need to strengthen the Secretariat with robust mandate, adequate powers and resources, as evidenced under Article 18 of the new Treaty, it is not as such properly installed that improves its capabilities of decision making power. So, in order to make IGAD a viable regional bloc, reconsidering not only to empower the secretariat but also the way the secretariat should be selected is critical. The secretariat should be given wide-ranging mandates and responsibilities that makes it powerful to effectuate the objective of IGAD.

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<sup>40</sup> See Article 85

Establishing an Independent Professional Technical Committees or Commission with the view to engage professional and to delegate responsibility for the guidance of specific technical issues including the design of a coordinated program of studies to materialize workable economic integration among IGAD member states. The experience of other RECs like EU and ECOWAS shows that professionals have supported the integration process in designing the roadmap and providing technical assistance for effective integration. So IGAD should establish an independent committee in its governance framework for getting regular monitoring and evaluation procedures by professionals to make its integration program successful.

Besides, the committee formed along various sectors may provide research based alternative solutions and appropriate forums through which members and key non-state actors of the bloc can collectively evaluate policies, strategies, and experiences of other RECs to actualize greater economic integration at IGAD region. Engagement of Professionals in the IGAD governance framework may help reduce the mistrust among political elites as well as in enhancing the legitimacy of the organization. In particular the participation of professionals and think tanks may help in formulating roadmap of IGAD as well as providing advice service to leadership based on research-based fact which is also common trend in other RECs like the European Union<sup>41</sup>.

Article 7 (1) (f) of the new 2023 IGAD Treaty states that Member States shall: (f) “foster and maintain an atmosphere that is conducive to peace and security through co-operation and consultations on issues pertaining to constitutionalism, democracy, human and people’s rights, the rule of law, accountability, transparency, governance, peace and security”; and Article 8 (3) (b) stipulates that one of the requirement of Membership of IGAD is to “adherence to acceptable principles of good governance, democracy, the rule of law, and observance of human rights and social justice”. A strategy to materialize these provisions need to be devised. The problem in this regard is the existence of diverse political system in Member States and some even ratified laws to oust the political participation of non-state actors from their domestic political system. At the regional level, therefore, there should be a mechanism to enhance democratic governance in the Member States which makes governments accountable and encourages public participation through establishing independent institution such as Parliament, Economic and Social Council, and Court of Justice.

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<sup>41</sup> Interview with Lecturers from Bahr Dar University, 2023