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THE LEGAL STATUS AND REGULATION OF CRYPTOCURRENCY IN ETHIOPIA



2021

THE LEGAL STATUS AND REGULATION OF CRYPTOCURRENCY IN ETHIOPIA

A Thesis Submitted in Partial Fulfillment of the Requirements of LL.M Degree in Business Law at the College of Law

Program (Extension)

By: Samuel Girma Buta

Supervisor: Solomon Abay (Ph.D.)

APPROVED BY BOARD OF EXAMINERS

Supervisor: Solomon Abay (Ph.D.) Signature …….

Examiners: 1. Biruk Haile (Ph.D.) Signature …….

2. Kinfe Yelma (Ph.D.) Signature …….

Declaration

I, Samuel Girma, hereby declare that this thesis is my original work, has not been presented for a degree in any other university and that all materials used have been duly acknowledged.

Signature: …….

Addis Ababa, Ethiopia

May 2021

Acknowledgement

Primarily I would like to extend my deepest gratitude to the almighty God. I would also like to express my deepest appreciation to my supervisor Dr. Solomon Abay for his profound belief in my work and for his valuable advice through the process of this work.

Plus, I'm deeply indebted to my father Mr. Girma Buta and my mother Mrs. Tigist Arega for their extended great amount of assistance throughout life journey. Thanks also to my sister Mrs. Rediet Girma and my brother Mr. Amanuel Girma for their love and support.

I'm extremely grateful to Mrs. Meazza Mersha, my post graduate education would not have been possible without the financial support and the continued nurturing I revived from you. Lastly, I'd like to recognize the patience and assistance that I received from my fiancée Lidya Fikre and my best friend Mr. Gutu Gemechu.

List of Acronyms/Abbreviations

AML	Anti Money Laundering Law
ASIC	Application Specific Integrated Circuit
BRM	Banque Regionale de Marches
CFTC	The Commodity Futures Trading Commission
DLT	Distributed Ledger Technology
EBA	European Banking Authority
ECB	European Central Bank
E-Commerce	Electronic Commerce
E-Money	Electronic Money
EU	European Union
FATF	Financial Action Task Force
FDRE	Federal Democratic Republic of Ethiopia
FIC	Financial Intelligence Center
FICP	Federal Income Tax Proclamation
FinCEN	The Financial Crimes Enforcement Network
FTAP	Federal Tax Administration Proclamation
GTP	Growth and Transformation Plan
ICO	Initial Coin Offering
ICT	Information and Communication Technology
IP	Internet Protocol
INSA	Information Network Security Agency
IOHK	Input Output Hong Kong
KYC	know your customer
NBE	National Bank of Ethiopia
NISS	National Intelligence and Security Service
OECD	Organization for Economic Co-operation and Development
P2P	Peer to Peer
PLC	Private Limited Company
PPSMLFT	Proclamation on Prevention and Suppression of Money Laundering and Financing of Terrorism
SMS	Short Messaging Service
TCCPA	Trade Competition and Consumer Protection Authority
TCCPP	Trade Competition and Consumer Protection Proclamation
US	United Sates of America
USD	United States Dollar
VAT	Value Added Tax

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Abstract

Cryptocurrency is a virtual currency formulated to function as a medium of exchange. Cryptocurrencies evolved on a blockchain altar that functions on a peer-to-peer foundation, enabling a beneficiary to receive encrypted payments directly from sender. Cryptocurrency transactions disregard intermediaries such as banks and financial institutions from the spiral. The role of financial intermediaries such as banks in guaranteeing the value of the currency is not needed in cryptocurrency transactions. Payments in the form of cryptocurrency are not using sufficiently secure payment systems that are permitted by NBE. This shows that cryptocurrency companies are not licensed by NBE, thus cryptocurrencies are not regarded as payment systems in Ethiopia. Additionally, Given the anonymity attached to cryptocurrency payments, it is difficult if not impossible to trace back perpetrators involved in cryptocurrency payments or reverse the payment back to the consumer. Hence, the Trade Competition and Consumer Protection Authority could face a challenge in the enforcement of consumer's right in case of cryptocurrency disputes. Because enforcing the provisions of TCCPP primarily requires identifying the offenders. Furthermore, NBE through the mechanism of receivership protects the rights of depositors in case banks are unable to perform their duties. Nonetheless, because banks in Ethiopia do not issue cryptocurrency wallet, laws that are applicable in the protection of bank depositors are not applicable to cryptocurrency wallet depositors. Therefore, in case a cryptocurrency wallet provider fails to perform it duties or if a cryptocurrency is lost, NBE won't cover the loss.

In Ethiopia, no person shall transact banking business or provide digital financial services in without obtaining a banking business license or digital financial services license or authorization from the national bank. However, cryptocurrency exchangers in Ethiopia are accepting fiat money in exchange of cryptocurrency tokens and this is clearly a digital financial service even if cryptocurrency is not accorded legal tender status in Ethiopia. Thus cryptocurrency exchangers in Ethiopia are providing digital financial services without obtaining a digital financial services license or authorization from the NBE.

Furthermore, the narrow definition provided in the FITP for business income and taxable asset excluded the applicability of income tax proclamation on persons who earn income as a result of exchanging cryptocurrency against fiat currency. Thus, the ministry of revenue is not collecting tax from such persons.

Lastly, the PPSMLFT by excluding actors involved in the activity of buying and selling cryptocurrencies, only obliges financial institutions and designated nonfinancial businesses or professions to keep records and report to the FIC any suspicious transactions. Nevertheless, because cryptocurrency transaction is conducted without the involvement of financial institutions or designated nonfinancial businesses or professions, FIC has no power to oversight the activities of those involved in the cryptocurrency industry. In short actors of cryptocurrency particularly cryptocurrency exchangers and cryptocurrency wallet providers are out of the ambit of PPSMLFT. Therefore, the incapability of FIC in accessing data in relation to cryptocurrency transactions could be a major hindrance towards the effective regulation of cryptocurrency related money laundering and terrorist financing activities in Ethiopia.

Therefore, in Ethiopia the relevant laws do not accord any legal recognition to cryptocurrencies and regulators which are entrusted to regulate cryptocurrencies are ignorant of the existing Ethiopian cryptocurrency market.

Key Words: Blockchain, Virtual Currency, Cryptocurrency, Bitcoin

CHAPTER ONE

INTRODUCTION

1.1 Background of the study

Now a day's listening to the news talking about how the price of Bitcoin raised is not a familiar thing. In short Bitcoin is a form of virtual currency, particularly a cryptocurrency. For the purpose of analyzing the concept of cryptocurrency, it is crucial to become familiar with the characteristics of cryptocurrency. Despite the fact that cryptocurrency is popular, cryptocurrency still cry out for harmonized definition.[1] Several national and international regulators bring forward different methods for defining cryptocurrency; hence they define cryptocurrency on one hand as a subgroup of digital currency[2] and on the other hand as a segment of virtual currencies.[3] Nevertheless, Dr. Rosario Girasa, an expert in the area defines Cryptocurrency as "a digital decentralized convertible currency or medium of exchange using encryption technology to verify its exchange and hinder counterfeiting." [4]

Generally, cryptocurrencies have several features. However, the most prominent are data transfer based on peer-to-peer connection and the use of public ledger called Block-chain which stores records of transactions.[5] In the current cryptocurrency market, Bitcoin is most widely used and popular cryptocurrency with approximately 100 million number of Bitcoin owners and 400,000 number of daily users.[6]

Therefore, even if the practice depicts that cryptocurrency is being used as money, cryptocurrency in its pure sense is not a substitute for money because the progeny of cryptocurrency is not a sovereign authority, hence intrinsically its worth is refutable.[7] The three fundamental characteristics of money are, first, money is the accepted medium of exchange, second, it can be used as a unit of account, and thirdly, money has a static store of value.[8] However, the market appraisal of cryptocurrencies being unpredictable in price makes them incapable

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[1] OECD, 'Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues' (OECD, Paris. 2020) 7

[2] Ciupa Katarzyna, 'Cryptocurrencies: Opportunities, Risk and Challenges for Anti-Corruption Compliance Systems' (OECD Global Anti-Corruption & Integrity Forum, Paris, 2019) 2

[3] Irina Cvetkova, 'Cryptocurrencies Legal Regulation' (2018) vol. 5 Brics Law Journal 128

[4] Rosario Girasa, *Regulation of Cryptocurrencies and Blockchain Technologies National and International Perspectives* (1st edn, Bernardo Nicoletti ed, Palgrave Macmillan 2018) 11

[5] Ibid, 29

[6] 'How Many Bitcoin Users Are There?' (*buybitcoinworldwide.com*) <https://www.buybitcoinworldwide.com/how-many-bitcoin-users/> accessed 16 April 2021

[7] Girasa, (n 4) 5

[8] ibid

to exhibit the role of a static store of value and unit of account.[9]Hence, persons who utilize cryptocurrencies use them as a medium of exchange.[10]Nevertheless, cryptocurrencies has drawbacks such as fluctuation. For instance, Bit-coin witnessed its worth rise in December 2017, then afterwards lost 30% of its worth in December 2018.[11] Plus, due to transactions subjected to crypto-currencies lack legal enforcement in many jurisdictions, cryptocurrency is prevented from being used as an official payment instrument.[12] Above all, there are serious risks associated with respect to the use of cryptocurrencies, such as customer protection legal issues, tax evasion and money laundering activities.[13]

The concept of cryptocurrency particularly Bitcoin is new for Ethiopia especially the younger generation is well aware of Bitcoin.[14]A report depicted that Ethiopians, are starting to invest huge money in cryptocurrency, specifically Bitcoins.[15]This seems the reason that there exist various Ethiopian cryptocurrency traders, whereby any person in desire of obtaining cryptocurrency could contact them and purchase Bitcoin or Ethereum, the leading cryptocurrencies in the world, without the involvement of any Ethiopian financial regulatory organ.[16] Thus, cryptocurrencies are traded openly in Ethiopia. Against this background, this study assesses to what extent cryptocurrency is considered money and legal tender under Ethiopian legislations.

1.2 Statement of the Problem

At present there are over one thousand cryptocurrencies in the world. Due to the current era of technological connections in the globe, Ethiopia is currently embracing blockchain technology, which is the underpinning technology behind cryptocurrency.[17]Blockchain can be utilized for various purposes, but the notable function of blockchain is related to cryptocurrency. However, cryptocurrency generally possesses various drawbacks. In the

[9] Ibid

[10] Ibid

[11]Ibid,38

[12] Cvetkova, (n 3) 133

[13] Daniela Sonderegger, 'A Regulatory and Economic Perplexity: Bitcoin Needs Just a Bit of Regulation' (2015) vol. 27 Wash. U. J. L. & POL'Y 176

[14] 'Blockchain, Bitcoin and Cryptocurrency in Ethiopia: The Million Dollar Return' (ALLABOUTETHIO) <https://allaboutethio.com/blockchain-cryptocurrency-bitcoin-in-ethiopia.html> accessed 16 April 2021

[15] Ibid

[16] Ruru Crypto, 'Buy crypto in Ethiopia in a fast and secure manner today and start earning profits' (FACEBOOK, 31 March 2021) <https://m.facebook.com/story.php?story_fbid=112117174307112&id=112054280980068> accessed 16 April 2021

[17] Rachel Wolfson, 'Cardano Founder Launches Enterprise Blockchain Framework In collaboration with Ethiopian Government' (Forbes 30 April 2019) <https://www.forbes.com/sites/rachelwolfson/2019/04/30/cardano-founder-launches-enterprise-blockchain-framework-in-collaboration-with-ethiopian-government/> accessed 16 February 2021

first place cryptocurrency can easily be lost. For instance, if the online wallet information is lost, the cryptocurrency will be removed from circulation, even if the cryptocurrency remains in the block-chain. The result is no retrieving the cryptocurrency by the user which means user is barred from transferring the cryptocurrency.[18] Therefore, technological drawbacks can cause irremediable loss of the cryptocurrency. Additionally, cryptocurrencies can be easily stolen through hacking attacks.[19] In 2013 and 2014 alone $473Million USD' worth Bitcoin was allegedly hacked.[20]

The other problem identified along the use of cryptocurrencies is their unregulated character, which opens door for risks on consumers. Most of the time consumers have no remedy when transactions are disputed; this is because anonymity of users is the essence of cryptocurrency, and it is difficult if not impossible to trace back and discover the perpetrator in cryptocurrency transaction.[21] Plus, the price of cryptocurrencies fluctuate tremendously, that their value is inconsistent.[22] For instance, in the span of two years' period from 2011 to 2013 Bitcoin's value varied between $0.50 USD to $1,130 USD.[23] Additionally, the price of Ethereum slid 20% in just one day trading in 10th of January 2021.[24] Hence, unlike the value of fiat currencies, cryptocurrencies don't possess adjusted currency worth allocated to them as a payment system. This conveys that the exchange rate of cryptocurrencies is subjected to high volatility.

Additionally, cryptocurrencies earn bad reputation because of practical cases that link cryptocurrency payments with criminal activities.[25] Cryptocurrency payments are connected to crimes such as money laundering, tax evasion, fraud and financing terrorist groups.[26] Besides, due to its decentralized essence, it is strenuous for police

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[18] U.S. Consumer Financial Protection Bureau, 'Risks to consumer posed by virtual currencies' (Consumer Advisory, August 2014) <http://files.consumerfinance.gov/f/201408_cfpb_consumer- advisory_virtual- currencies.pdf> accessed 16 April 2021

[19] Girasa, (n 4) 16

[20] Arthur R. Bos 'Cryptocurrencies and Regulation, a Master Thesis on the best practices for regulating cryptocurrencies within the EU' (LLM thesis, Leiden, 2018); Jeb Su, 'Hackers stole over $4 Billion From Crypto Crimes in 2019 So Far, Up From $1.7 Billion In All of 2018' (FORBES 15 August 2019) <https://www.forbes.com/sites/jeanbaptiste/2019/08/15/hackers-stole-over-4-billion-from-crypto-crimes-in-2019-so-far-up-from-1-7-billion-in-all-of-2018/> accessed 16 April 2021

[21] Apolline Blandin and others, *Global Crypto-asset Regulatory Landscape Study*, (University of Cambridge 2019) 55

[22] Girasa, (n 4) 62

[23] Matthew Kien-Meng Ly, 'Coining Bitcoin's "Legal-Bits": Examining The Regulatory Framework for Bitcoin and Virtual Currencies' (2015) vol.27 Harv. J.L. & Tech. 587

[24] Rachel McIntosh, 'Eth Price Slid Roughly 20% in 24 Hours, but Signs of Recovery Are Showing' (FINANCEMAGNATES 11 January 2021) <https://www.google.com/amp/s/www.financemagnates.com/cryptocurrency/news/eth-price-slid-roughly-20-in-24-hours-but-signs-of-recovery-are-showing/amp/?espv=1> accessed 16 February 2021

[25]Kien-Meng Ly, (n 23) 588

[26] Girasa, (n 4) 15

to uncover illegal doings made by cryptocurrency payments.[27] The notable example in connection with the use of cryptocurrency payments for criminal activities is the *Silk Road* case, where by individuals could purchase drugs and other illegal products online by using the cryptocurrency, Bitcoin.[28]

In a nutshell, the basic challenge with respect to the use of cryptocurrencies is their unregulated character, which opens door for illegal activities. Since, anonymity of users is the essence of cryptocurrencies; occasions are abundant for various legal issues in relation to cryptocurrency related activities.[29]

In the Ethiopian context, cyber security is at the heart of Ethiopia's national Information Communication Technology Policy and Strategy.[30] The policy acknowledged the necessity of developing legal framework to support the widespread application of ICT and implement appropriate cyber security measures for the prevention of unlawful practices in Ethiopia. Additionally, the growth and transformation plan (GTP II) stated the government's role in creating appropriate legal system and ensuring ICT service security.[31] Moreover, the Information Network Security Agency (INSA) is mandated to make sure that the cyber network in Ethiopia is safe. Additionally, INSA has the power to regulate cryptographic products and their transaction.[32]However, despite the aforementioned policy and legal documents cryptocurrencies are not regulated in Ethiopia. The national currency Birr is the only legal tender which has the power to settle of all public or private debts in Ethiopia.[33] This means transactions effected by the help of cryptocurrency payments are not valid since cryptocurrencies are not regarded as currency in Ethiopia. Nevertheless, online suppliers engaged in cryptocurrency related activities are using a payment system that is not sufficiently secure and which is not permitted by NBE. Meaning, cryptocurrency companies are not licensed by NBE, thus cryptocurrencies are not regarded as payment systems in Ethiopia.

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[27] Dean Armstrong, Dan Hyde and Sam Thomas, *Blockchain and cryptocurrency: International Legal and Regulatory Challenges*, (Bloomsbury Professional 2019) 3

[28] Katarzyna, (n 2) 9

[29] Girasa, (n 4) 15

[30] The Federal Democratic Republic of Ethiopia, The National Information and Communication Technology (ICT) Policy and Strategy, (Addis Ababa September 2016) 7

[31] The Federal Democratic Republic of Ethiopia, 'The Second Growth and Transformation Plan (GTP II)' (National Planning Commission, Addis Ababa 2015) 34

[32] Information Network Security Agency Re-establishment Proclamation, No. 808/2013, FDRE Federal Negarit Gazzeta, 20th year No.6, Art. 6(9)

[33] A Proclamation to Amend the National Bank of Ethiopia Establishment Proclamation, No.591/2008, FDRE Federal Negarit Gazzeta,14th year No. 50, Art. 18(1)

Additionally, according to Banking (Amendment) proclamation No. 1159/2019 "No person shall transact banking business or provide digital financial services in Ethiopia without obtaining a banking business license or digital financial services license or authorization from the national bank." However, cryptocurrency exchangers in Ethiopia are accepting fiat money in exchange of cryptocurrency tokens and this is clearly a digital financial service even if cryptocurrency is not accorded legal tender status in Ethiopia. Thus cryptocurrency exchangers in Ethiopia are providing digital financial services in without obtaining a digital financial services license or authorization from the NBE.

Moreover, from tax perspective, the narrow definition provided in the FITP for business income and taxable asset excluded the applicability of income tax proclamation on persons who earn income as a result of exchanging cryptocurrency against fiat currency. Thus, the ministry of revenue is not collecting tax from such persons.

Lastly, the PPSMLFT by excluding actors involved in the cryptocurrency market only obliges financial institutions and designated nonfinancial businesses or professions to report to the FIC any suspicious transactions. Nevertheless, because cryptocurrency transaction is conducted without the involvement of financial institutions or designated nonfinancial businesses or professions, FIC has never received any report from actors of cryptocurrency. In short actors of cryptocurrency particularly cryptocurrency exchangers and cryptocurrency wallet providers are out of the ambit of PPSMLFT. Therefore, the incapability of FIC in accessing data in relation to cryptocurrency transactions could be a major hindrance towards the effective regulation of cryptocurrency related money laundering and terrorist financing activities in Ethiopia. Hence, activities in relation to cryptocurrencies are out of the reach from the government.

Nevertheless, Ethiopia already welcomed Blockchain, the technology behind cryptocurrency. Recently a cryptocurrency developer named Cardano in partnership with Ethiopia's ministry of education is underway to develop the world's biggest blockchain project in Ethiopia to create a digital identity for Ethiopian teachers and students.[34]Once the structure of blockchain technology is installed in Ethiopia it is easy to introduce a cryptocurrency to many Ethiopian users. Additionally, Ethiopian government signed a memorandum of understanding with the same cryptocurrency developer to launch a new payment modality which will enable Ethiopians to pay their utility bill in cryptocurrency.[35]

Consequently, this research will examine appropriate Ethiopian laws to evaluate whether cryptocurrencies are legally recognized under Ethiopian legal regime and attempts to set in motion a legal foundation for the regulation of cryptocurrency in Ethiopia.

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[34] AppsAfrica, 'Cardano launches blockchain development in Ethiopia with 5M students and teachers' (AppsAfrica 27 April 2021) <https://www.appsafrica.com/cardano-launches-blockchain-deployment-in-ethiopia-with-5m-students/> accessed 10 May 2021

[35] Wolfson, (n 17)

1.3 Research Question

The principal research question of this study is,

- To what extent is cryptocurrency considered money and legal tender under Ethiopian legislations?

Moreover, this study will try to address the following specific questions.

- What are the legal problems of cryptocurrency related activities in Ethiopia?
- What legislative reforms are required to regulate cryptocurrency practices in Ethiopia?

1.4 Objective of the Study

1.4.1. General Objectives

The principal objective of this study is to assess to what extent cryptocurrency is considered money and legal tender under Ethiopian legislations.

1.4.2. Specific Objectives

- Critically pinpoint and analyze Ethiopian legislations pertinent to cryptocurrency related activities
- To examine the effectiveness of pertinent Ethiopian legislations in addressing risks of cryptocurrency
- To provide a recommendation concerning legislative reforms in order to effectively regulate cryptocurrencies in Ethiopia.

1.5 Significance of the Study

With the coming of cryptocurrencies, payment systems globally are witnessing a slight change. Currently, many individuals and businesses around the world are utilizing cryptocurrency instead of fiat money. However, given the complex nature of cryptocurrencies, regulating them seems not an easy task.

Even if there are small numbers of cryptocurrency users in Ethiopia, there is a growing awareness both in the government level and in the society. A growing number of Ethiopians are engaging in cryptocurrency related activities each day. Nevertheless, the existing financial laws of Ethiopia does not recognize cryptocurrencies as legal tender. To this end, the findings of this study will aid the government in policy development and implementation. Further, the findings of this study will provide important impetus for those who desire to conduct further study in the area. The Thesis has significant importance/authenticity to the field and will make an important contribution to the area.

1.6 Literature Review

The most prominent study in connection with international cryptocurrency regulation is the one conducted by the European Central Bank (ECB) back in 2012, which called for international collaboration in order to flourish regulatory foundations for Cryptocurrencies.[36] The study highlighted the peril for users and risks with respect to criminal activities.[37]

European Banking Authority (EBA) also recommended moves to remedy complications with respect to the use of cryptocurrency.[38] The authority pin pointed several hazards connected to cryptocurrency usage and also outlined some provisional measures such as to put through exchanges of digital currency under anti money laundering stipulations.[39]

Moreover, a book written in 2018 by Dr. Rosario Girasa, a professor of law in Pace University, by the title "Regulation of Cryptocurrencies and Blockchain Technologies" which highlighted the digital transformation and the benefits and risks of using cryptocurrency while addressing legal issues of digital technology.[40] The book also discussed the evolving United States federal regulation towards cryptocurrency.

Additionally, a book titled "Blockchain and Cryptocurrency: International Legal and Regulatory Challenges" written by cyber law experts in 2019, identified regulatory gaps and attempted to establish applicable legal foundation for the effective regulation of cryptocurrencies.

Furthermore, Ciupa Katarzyna critically examined the opportunities, risks and challenges of cryptocurrencies in light of Anti-Corruption Compliance Systems. The researcher argued that cryptocurrencies could be utilized to facilitate money laundering activities since there is no third party intermediary in cryptocurrency transactions.

Moreover, Irina Cvetkova pinpointed the difference between electronic money and cryptocurrencies. Additionally, he examined the legal status of cryptocurrency in various countries and argued for the necessity of determining the essence of cryptocurrencies by legislations in order to structure an effective regulation.

Yohannes Mebrate, conducted a research on E-commerce and the future of competition regulation under Ethiopian law.[41]He examined relevant domestic laws and identified loopholes which are not addressed by these

[36] European Central Bank, 'Virtual Currency Schemes' (European Central Bank, Germany 2012)

[37] Ibid

[38] European Banking Authority, 'EBA opinion on 'Virtual currencies'' (EBA, Paris 2014)

[39]Ibid

[40] Girasa, (n 4)

[41]Yohannes Mebrate 'E-commerce and the future of competition regulation under Ethiopian law' (LLM thesis, Debre Berhan, 2020).

laws. He depicted the absence of adequate legal frame work for the effective operation of innovative commerce operations in Ethiopia.

Plenty of studies are conducted in relation to the legal status and regulation of cryptocurrencies around the world. However, even if the aforementioned works have contributed their findings in the area, there are no literatures written regarding to what extent cryptocurrencies are considered money and legal tender under Ethiopian legislations. Thus this research is a pioneer in its kind. Therefore, this study seeks to concentrates on the examination and analysis of Ethiopian legations to determine the extent in which cryptocurrencies are considered money and legal tender in Ethiopia.

1.7 Scope of the study

The scope of this study is limited to the examination of pertinent Ethiopian legislations in light of cryptocurrency related activities. Thus, Ethiopian federal laws will only be examined, excluding laws of Ethiopia at the regional level.

1.8 Methodology

The research will be employing both doctrinal and empirical research method because of the nature of the research topic.

1.8.1 Source of Data Collection

The researcher will use Primary data, such as pertinent laws of the U.S., UK, Canada, and Ethiopia. Plus, secondary data such as books, journals, periodicals and internet sources will be used specifically to examine issues dealing with the legal challenges of cryptocurrencies and how cryptocurrencies are regulated in these jurisdictions.

Comparative legal analysis will be employed aiming to clarify and convey regal rules regarding the regulation of cryptocurrencies. The assessment aims giving complete and detailed description. The analysis will stress on the experience of U.S., UK, and Canada on the utilizations of cryptocurrencies, and the extent to which they regulate the use of cryptocurrencies. These foreign jurisdictions are opted because they already developed legal framework for the regulation of cryptocurrencies and their legal materials are freely accessible which makes them suitable to conduct a research.

1.8.2 Data Collection Instrument

Interviews are conducted with government officials at the Ministry of Revenue, Information Network Security Agency, Financial Intelligence Center, and National Bank of Ethiopia to gather the empirical data used in the research.

The interviewees are selected on the criteria that they have direct knowledge and knowhow on the research topic due to their work position. In this regard, due to its flexibility unstructured interview is employed in the research. Finally, the data obtained are analyzed descriptively and analytically in light of pertinent Ethiopian legislations on the subject under consideration.

1.8.3 Technique of Analysis and Interpretation

The data collected through the above instruments will be analyzed comparatively, aiming to obtain understanding of different legislative and regulatory approaches to concerns regarding the regulation of cryptocurrencies, and what experience can be drawn for the development of proper regulatory foundation within Ethiopia, particularly in relation with legal concerns such as consumer protection, Taxation, terrorist financing and money laundering. Consequently, a detailed description will be given on the data collected while analyzing and interpreting the data qualitatively.

1.9 Organization of the Thesis

This study is structured in to four chapters.

Chapter 1 set forward the introduction and contains the background of the study, the research problem, the research questions and the objective of the study. Additionally, the significance of the study, the literature review and the methodology used in this study is outlined in this chapter.

Chapter 2 will discuss the concept of **c**ryptocurrency practice in general. Furthermore, the chapter outlined legal concerns related to cryptocurrency while examining the efficiency of Ethiopian legislations in the regulation of cryptocurrency practice in Ethiopia.

Chapter 3 will assess the regulation of cryptocurrency in foreign jurisdictions and examine the available regulatory approaches in Ethiopia towards regulating cryptocurrencies.

Chapter 4 Conclude the research and provide recommendations.

CHAPTER TWO

The Cryptocurrency Practice and Legal concerns in Ethiopia: An outline of Crucial Legal Concerns

2.1 Introduction

Currency is defined as "An item (such as coin, government note, or banknote) that circulates as a medium of exchange"[42] Additionally, Currency could also be found in digital form in which payments are transferred by the use of digital technologies. Dr. Rosario Girasa classified digital currencies as electronic money (e-money) and virtual currency.[43] E-money according to a report of the European Central Bank is broadly defined as

> "the electronic storage of monetary value on a technical device that can be widely used for making payments to undertakings other than the issuer without necessarily involving bank account in the transaction, but acting as a prepaid bearer instrument."[44]

Additionally, pursuant to the National Bank of Ethiopia's directive for licensing and authorization of payment system operator's directive no. ONPS/02/2020, E-money is a monetary value that is equivalent with Ethiopian birr and is stored in an electronic device.[45] Meaning, e-money is the electronic form of the national currency (Birr) that enables users to effect payment transactions.

Nevertheless virtual currency is a digital portrait of value which is not issued by central bank or government; as such it is not capable of being traded digitally and act as medium of exchange.[46]Thus, virtual currencies are designated in a dissimilar unit of money apart from the money furnished by government. It is created by private issuers and utilized between particular virtual actors. Moreover, almost in all countries virtual currency doesn't have legal tender status.[47]This basic feature distinguishes virtual currency from E-money, a legal tender that is capable of transferring value electronically and enables users to effect payment transactions.[48]Furthermore,

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[42] Currency is defined as "An item (such as coin, government note, or banknote) that circulates as a medium of exchange" Black's Law Dictionary (8th edn, Bryan A. Garner ed., Thomson West 2004) 328

[43] Girasa, (n 4) 9

[44] European Central Bank, (n 36) 7

[45] Licensing and Authorization of Payment System Operator's Directive, 2020, art 2.12, Directive No.ONPS/02/2020, in National Bank of Ethiopia Directive PSSD/0176/2020, Addis Ababa, 5th August

[46] European Central Bank, (n 36) 11

[47] Except "Sovereign" in short SOV, which is a legal tender cryptocurrency of the Marshal Islands, <https://www.google.com/url?sa=t&source=web&rct=j&url=https://sov.foundation/&ved=2ahUKEwiuxJTOrYjwAhVuSBUIHe8YC_QQFjANegQIBRAC&usg=AOvVaw1EKYwuN8Z1v5kpp65W63pq> accessed 13 January 2021

[48] Kien-Meng Ly, (n 23) 21

Cryptocurrency is categorized under virtual currency,[49]and the following part will provide an illustration of what cryptocurrency is, and how it works.

This chapter explores the general legal concerns there exists in connection with cryptocurrency related activities and in particular legal issues of cryptocurrencies in Ethiopia will be examined in light of pertinent Ethiopian legislations. Thus the chapter will provide the backdrop discussion on the concept of cryptocurrency and the contemporary legal challenges surrounding cryptocurrency practices in Ethiopia.

2.2 What is Cryptocurrency?

Before heading to the discussion of what cryptocurrency is it is crucial having an understanding about Blockchain, the technology behind cryptocurrency. Blockchain is an online decentralized ledger technology that registers transactions between two parties connected in a peep-to-peer ("P2P") network. Intermediary is not needed to validate such transactions since consensus is reached in the network.[50] Hence, the ledger is decentralized and distributed and consequently rooted on Distributed Ledger Technology (DLT).[51] Block-chain protects the general ledger from data manipulation, since every data, before being registered in the ledger, is required to be verified by each devices involved in the Block-chain.[52] Once data is registered in the decentralized ledger, it can't be altered. Various kinds of data could be stored in a Block-chain. For instance, cryptocurrency's Block-chain is a ledger containing information concerning cryptocurrency transactions.[53]Even though most of the time Block-chain is referred in the application of cryptocurrencies, Block-chain can also be used in the application of decentralized voting, property registration and supply chain monitoring.[54]

In the application of Block-chain technology, there exists smart contract, a computer application planted and configured in Block-chain to furnish computerized monetary service once preconditions of a given agreement are fulfilled and verified by the devices connected to the Block-chain.[55] However, if preconditions are not satisfied, it is the task of the smart contract to assure the money is returned back to the primary holder. Hence, smart contract play a vital role in eliminating third party intermediary in cryptocurrency transactions.[56]

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[49] Girasa, (n 4) 9

[50] Armstrong, Hyde and Thomas, (n 27) 10

[51] Bart Custers and Lara, 'Overwater Regulating Initial Coin Offerings and Cryptocurrencies: A Comparison of Different Approaches in Nine Jurisdictions Worldwide' (2019) vol.10 European Journal of Law and Technology. 3

[52] Ibid

[53] Ibid

[54] Ibid

[55] Bank for International Settlements, 'Digital Currencies' (Committee on Payments and Market Infrastructures, 2015) 15

[56] Ibid

When we come to the definition of Cryptocurrency, it is a virtual currency formulated to function as a medium of exchange.[57]Cryptocurrencies evolved on a blockchain altar that functions on a peer-to-peer foundation, enabling a beneficiary to receive encrypted payments directly from sender.[58]Cryptocurrency transactions disregard intermediaries such as banks and financial institutions from the spiral. The role of financial intermediaries such as banks in guaranteeing the value of the currency is not needed in cryptocurrency transactions.[59]Thus, banks have zero roles in such transactions. Rather blockchain enabled 'miners' validate cryptocurrency transactions. This distinguishes cryptocurrency from early virtual currencies and real currency.[60]

The encryption enables the transaction and parties to the transaction to be veiled from the outsiders. As such law enforcement agencies or other interested parties cannot discover the transaction and the parties within. This is due to banks or other financial institutions don't have any role in cryptocurrency transactions.[61]

2.3 The Cryptocurrency Practice

Cryptocurrencies are exchangeable worldwide, individuals and businesses accept them as a payment or transact them as commodity in exchange of fiat currency or other cryptocurrency. The practice does not need the involvement of third party intermediaries such as banks and currency exchangers.[62]

2.4 Merits of Cryptocurrency

Due to the uniqueness of virtual currencies, there are various inbuilt benefits associated with transacting through cryptocurrency. The basic benefits of cryptocurrency are depicted as follows: -

2.4.1 Obliteration of Banking Fees

Payments effected with cryptocurrency are subjected to no transaction costs or minimal costs.[63] This is possible because cryptocurrency, as a virtual currency, is dispersed without the participation of banks. Hence, cryptocurrency users are not subjected to the recital of conventional banking costs related with fiat currency.[64]

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[57] Armstrong, Hyde and Thomas, (n 27) 17

[58] Ibid

[59] Ibid

[60] Girasa, (n 4) 31

[61] Armstrong, Hyde and Thomas, (n 27) 3

[62] Ryan Clements, 'Assessing the Evolution of Cryptocurrency: Demand Factors, Latent Value, and Regulatory Developments' (2018) Vol. 8 MICH. BUS. & ENTREPRENEURIAL L. REV. 76; Kien-Meng Ly, (n 23)

[63] Girasa, (n 4) 7

[64] Ibid

2.4.2 Accessibility

According to the latest report from World Bank, 1.7 billion adults in the world have no access to banks.[65] The dispersed networks that cryptocurrencies rest on furnish a financial infrastructure which is internet based and accessible. Thus, the decentralized nature of cryptocurrency circumvents state regulation over financial services and fetches opportunity to those unable to use banking service. [66] As such cryptocurrencies have a vital role in financial inclusion.

2.5 Risks Associated with Cryptocurrency Transactions

The in-built problems related to cryptocurrencies will be discussed under this part.

2.5.1 User's Anonymity

Cryptocurrency transactions are basically performed in private by the use of pseudonyms. Hence, users remain anonymous because their name is not disclosed while conducting cryptocurrency related activities, only private key is displayed. Therefore, cryptocurrency transaction is contemplated anonymous because the name of a user cannot be tied to the account that is associated with the cryptocurrency transaction.[67]

2.5.2 Loss

Cryptocurrency can easily be lost, for instance, if a user lost his/her private key to access a particular cryptocurrency wallet, the cryptocurrency will be removed from circulation, even if the cryptocurrency remains in the block-chain.[68] The result is no retrieving the cryptocurrency by the user which means user is barred from accessing the cryptocurrency.[69]Additionally, cryptocurrencies can easily be stolen through hacking attacks. In 2020 $1.9BUSD worth bit-coin was allegedly hacked.[70]All this shows that cryptocurrencies could easily be lost or stolen leaving the users in vain.

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[65] World Bank, Global Financial Development Report 2014, (Washington: World Bank, 2014) 1

[66] Girasa, (n 4) 9

[67] Kien-Meng Ly, (n 23) 593; Girasa, (n 4) 33; Rache-Rose O'Leary, We Have Entered the Age of Anonymous Crypto, coindesk, <https://www.coindesk.com/age-anonymous-crypto> (accessed January 22 2021)

[68] Girasa, (n 4) 17

[69] Jeffrey H. Matsuura, *Digital Currency: An International Legal and Regulatory Compliance Guide*, (USA, Bentham Science Publishers Ltd 2016) 20; Nathaniel Popper, Lost Password Lock Millionaires Out of Their Bitcoin Fortunes, The New York Times, <https://www.nytimes.com/2021/01/12/technology/bitcoin-passwords-wallets-fortunes.html> (accessed January 23 2021)

[70] Custers and Lara, (n 51) 5 ; Security, $1.9B in crypto currency stolen by hackers last year, <https://www.securitymagazine.com/articles/94627-19b-in-crypto-currency-stolen-by-hackers-last-year>(accessed January 23 2021)

2.5.3 Consumer Protection

The basic challenge with respect to the use of cryptocurrencies is their unregulated character, which opens door for risks on users. Most of the time consumers have no remedy when cryptocurrency transactions are disputed; this is because anonymity of users is the essence of cryptocurrency, and it is difficult if not impossible to trace back and discover the perpetrators in cryptocurrency transactions.[71]

2.5.4 Currency volatility

The continual origin of worry with cryptocurrency is the inconsistent nature of their value. Specifically, this is repetitive challenge for Bitcoin. For instance, in the span of two-year period from 2011 to 2013 Bitcoin's value varied between $0.50 USD to $1,130 USD.[72] Plus, Bitcoin lost one fourth of its value in a single day trading back in 2017.[73]Hence, unlike the value of fiat currencies, cryptocurrencies don't possess adjusted currency worth allocated to them as a payment system.[74]This conveys that the exchange rate of cryptocurrencies is subjected to high volatility.

2.5.5 Criminal Activity

The decentralized and anonymous nature of cryptocurrency is suitable for individuals to utilize cryptocurrency payments for criminal activities.[75] As such cryptocurrency payments are connected to crimes such as money laundering, tax evasion, fraud and financing terrorist groups.[76] Besides, due to its decentralized essence, it is strenuous for police to uncover illegal doings made by cryptocurrency payments.[77]The notable example in connection with the use of cryptocurrency payments for criminal activities is the *Silk Road* case, where by individuals could purchase drugs and other illegal products online by using the cryptocurrency, Bitcoin.[78]

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[71] Girasa, (n 4) 145

[72]Kien-Meng Ly, (n 23) 590

[73]Jill Treanor, 'Bitcoin Loses a quarter of its value in one day's trading' (The Guardian 22 December 2017) <https://www.google.com/amp/s/amp.theguardian.com/technology/2017/dec/22/bitcoin-price-plunges-2000-12-hours-year-end-rally-fizzles-out?espv=1> accessed 1 April 2021

[74] Daniela Lai, 'Should Cryptocurrencies and Initial Coin Offerings (ICOs) be Regulated under Australian Financial Services Laws?' (2019) Vol. 5 Global Markets Law Journal. 29

[75]Kien-Meng Ly, (n 23) 595

[76] Girasa, (n 4) 15

[77] Armstrong, Hyde and Thomas, (n 27) 3

[78] Lawrence Trautman, 'Virtual Currencies; Bitcoin & What now after Liberty Reserve, Silk Road and Mt. Gox?' (2014) Richmond Journal of Law and Technology. 54

2.6 The Cryptocurrency Practice in Ethiopia

"Do you want sell and buy Bitcoin? We buy and sell Bitcoin, contact us" reads the description of a telegram channel named "Digital Market".[79] This channel is currently being used to trade bitcoin in Ethiopia. Additionally, a telegram channel named "Bitcoin Exchange in Ethiopia" is an active telegram channel used by cryptocurrency traders to advertise their service of cryptocurrency exchange.[80]There are persons in Addis Ababa, who buy and sell Bitcoin and other forms of cryptocurrencies.[81] Most notable cryptocurrency trader in Addis Ababa Mr. Mesfin stated that Ethiopians aged from 15 up to 30 are most knowledgeable about cryptocurrencies. Moreover, the interviewee illustrated the manner how persons in Ethiopia obtain a cryptocurrency. If a person desires to obtain a cryptocurrency, he/she needs to download a blockchain wallet application and provide the wallet address to the cryptocurrency trader. The trader after receiving fiat money from such person immediately sends the cryptocurrency to the person's blockchain wallet address. However, the Ethiopian government did not recognize cryptocurrencies as legal tender, thus transactions made through the use of cryptocurrencies are undergone without the regulations of the National Bank of Ethiopia (NBE).[82] Besides the NBE regulates currency exchange businesses in Ethiopia,[83] but due to cryptocurrency is not treated as a legal tender in Ethiopia the cryptocurrency exchange business is left outside of the ambit of NBE.[84] Thus, NBE entirely ignored the existence and the factual situations in the ground concerning cryptocurrencies.

However, despite the unregulated nature of cryptocurrencies in Ethiopia, the underlying technology for cryptocurrencies, blockchain, seems to be favored by Ethiopian government. This is evidenced from the memorandum of understanding signed by Ministry of Science and Technology of Ethiopia and Input Output Hong Kong, a well-known company in the cryptocurrency market for the creation of the second most valuable cryptocurrency in the world, Ethereum.[85]By this Ethiopia expects to have a blockchain application that helps to eliminate problems in the administration of the agriculture industry, specifically tracking the coffee in the supply

[79] The researcher Accessed the channel on April 8 2021, and the channel has 9,000 subscribers https://T.me/bitcoinmarkettt

[80] The researcher Accessed the channel on April 8 2021, and the channel has 1,745 subscribers https://T.me/bitcoin_exchange_in_ethiopia

[81] Mr. Mesfin, a cryptocurrency trader in Addis Ababa starting from 2012 G.C. and currently operating a telegram channel called EVORICH (Evolution of Rich)- ETHIOPIA which is being used for broadcasting the exchange of cryptocurrency in Amharic language. Interview held on 14 May, 2021, at 10:45A.M.

[82] Mr. Frezer Ayalew, Director of Bank Supervision Directorate at NBE. Interview held on 19 May, 2021, at 2:05 P.M.

[83] A Proclamation to Amend the National Bank of Ethiopia Establishment Proclamation, (n 33) art 20

[84] Mr. Ayalew, (n 82) "the interviewee noted that NBE is not regulating cryptocurrency exchange businesses"

[85] Best Bitcoin Card, Best Bitcoin Card for Ethiopia, <http://www.bestbitcoincard.com/en/ethiopia/> accessed 12 April 2021

chain.[86] Hence, benefits of Blockchain technology such as the enhanced security and the increased efficiency and speed[87] seems to be identified by the Ministry of Science and Technology of Ethiopia. Consequently, this is a clear sign that shows Ethiopia is taking positive steps towards embracing Blockchain technology.

The other organization IOHK (Input Output Hong Kong), a Chinese company located in Hong Kong, has a blockchain application named Cardano, which is a record management program utilized in a cryptocurrency called ADA. IOHK is working to empower Ethiopians through training course focused on blockchain technology and in the long run for trainees to create cryptocurrencies in Ethiopia by utilizing Cardano technology.[88]In collaboration with Cardano, Ethiopia aims to implement blockchain applications to improve the agriculture sector. The Ministry of Science and Technology of Ethiopia announced the blockchain technology is hoped for tackling problems in the coffee supply chain management, plus the Ministry hopes that the blockchain technology will help to eliminate the deep rooted problems related to the registry of land.[89]Recently Cardano entered a contract with Ethiopia's ministry of education to develop the world's biggest blockchain project in Ethiopia aiming to create a digital identity for Ethiopian teachers and students.[90] Once the blockchain is successfully installed in Ethiopia, it is very easy to utilize cardano blockchain for the operation of ADA.[91]

Additionally, a developer called Metropolitan real estate PLC, American real estate Company known for construction of luxurious apartment units, is working to enable customers purchase apartments in Ethiopia using a cryptocurrency.[92]

Lastly, according to Ms. Seble Girma, some foreign business entities are in desire to invest in cryptocurrency business and mining activities in Ethiopia.[93]Plus, the interviewee disclosed the fact that many Ethiopians are actively engaged in cryptocurrency mining activity in Ethiopia.[94]Thus as illustrated above, the cryptocurrency practice in Ethiopia is expanding with an alarming rate.

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[86] Umaizi, 'Blockchain Being Used to Improve Ethiopia's Coffee Supply Chain' <https://umaizi.com/blockchain-being-used-to-improve-ethiopias-coffee-supply-chain/> accessed 12 April 2021

[87] H. Matsuura, (n 69) 4

[88] Laurel Sonneby, 'Empowering Coffee Farmers in Ethiopia' (The Borgen Project 10 March 2020) <https://borgenproject.org/coffee-farmers-in-ethiopia/> accessed 1 April 2021

[89] Ibid

[90] AppsAfrica, (n 34)

[91] Laurel Sonneby, (n 88)

[92] Metropolitan Real Estate, 'Cryptocurrency in Real Estate' (Metropolitan Real Estate PLC 22 March 2018) <https://metropolitanaddis.com/2018/03/22/cryptocurrency-real-estate/> accessed 1 April 2021

[93] Ms. Seble Girma, Director at Legal Affairs Directorate Director of INSA. Interview held on 20May, 2021, at 11:06 A.M.

[94] Ibid

2.7 Legal Concerns of Cryptocurrency Practice in Ethiopia

In spite of the latest advancements in the blockchain technology and the ever increasing cryptocurrency trading practice in Ethiopia, the official attitude of the government towards cryptocurrencies is still unknown. Hence, the speared of such uncontrolled and unsupervised cryptocurrency market in Ethiopia poses various legal concerns. Consequently, the following part will outline the legal concerns associated with the use of cryptocurrencies in Ethiopia.

2.7.1 Cryptocurrency and Customer Protection Laws

Cryptocurrency users utilize the product in many ways starting from forwarding the cryptocurrency to other person as a gift or use the cryptocurrency as a mode of exchange to buy products and services. Additionally, users purchase cryptocurrencies as speculative investment.[95] However, a user is advised to be aware of the dangers attached to utilizing cryptocurrencies because even if cryptocurrencies offer innovation for the payment system still unsettled legal problems surround cryptocurrencies.[96]

Regulators around the world pinpointed evidences on the risk linked to using cryptocurrencies and consequently released a cautionary advice for utilizers of cryptocurrency, however deceitful activities still prevail.[97] The practice depicts that persons come to have various types of cryptocurrencies with no awareness of securities afforded to them by regulations, consequently irremediable harm will result.[98] In this regards, the researcher will examine the existing consumer protection laws available in the U.S. and Ethiopia.

In the U.S. persons involved in the formation, acquisition, exchange or acceptance of cryptocurrencies must take in to account legal and regulatory rules administered at the federal level by the US Commodity Futures Trading Commission (CFTC)[99]and the Financial Crimes Enforcement Network (FinCEN)[100].

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[95] Armstrong, Hyde and Thomas, (n 27) 19

[96] H. Matsuura, (n 69) 17

[97] Ibid

[98] Apolline Blandin, (n 21) 56

[99] Commodity Futures Trading Commission (CFTC) has the power to prosecute fraud involving virtual currency, UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS CIVIL ACTION NO. 18-10077-RWZ COMMODITY FUTURES TRADING COMMISSION v. MY BIG COIN PAY, INC. et al. https://www.cftc.gov/sites/default/files/2018-10/enfmybigcoinpayincmemorandum092618_0.pdf accessed on July 7 2021

[100] FIN-2014-R001, Financial Crimes and Enforcement Network, Application of FinCEN's regulations to virtual Currency Mining Operation, (January 30,2014) https://www.fincen.gov/sites/default/files/shared/FIN-2014-R001.pdf ; FIN-2014-R002, Financial Crimes and Enforcement Network, Application of FinCEN's regulations to virtual Currency Software Development and Certain Investment Activity, (January 30,2014) https://www.fincen.gov/sites/default/files/shared/FIN-2014-R002.pdf accessed on July 7 2021

Accordingly, FinCEN has taken vital position in its administrative rulings and direction especially regarding the application of regulations under the Bank Secrecy Act.[101] This Act apply to cryptocurrencies in relation to persons who take part in the formation, acquisition, exchange or acceptance of cryptocurrencies.[102] This means that such persons are required to register with FinCEN as a Money Service Business, any they are obliged to comply with KYC and AML regulations.[103]

Similarly, the CFTC issued various customer advisories to create awareness for cryptocurrency users against potential fraudulent activities in relation to cryptocurrencies.[104] For instance, In December 2017, CFTC issued advisory concerning the risk of trading and using cryptocurrencies, whereby consumers are advised to report any fraud or suspicious activity to the CFTC complaint system.[105] This shows that in the U.S. cryptocurrencies are regarded as commodity and legal foundations are available for cryptocurrency consumers in case they encounter fraudulent activities while they engage in cryptocurrency activities. In this regards the following discussion will examine Ethiopian consumer protection legal regime from two perspectives. One from the point where online consumers utilize cryptocurrency as money in exchange of goods and services and the other from the relationship that exists between bank and client and compare this customary relation with deposits of money in the form of cryptocurrency.

In the examination of the Ethiopian consumer protection legal regime in light of cryptocurrency consumer concerns, "Trade Competition and Consumer Protection Proclamation No. 813/2013" (TCCPP)[106]is the most relevant legal instrument.[107]Accordingly, TCCPP requires businesses to disclose basic information regarding

[101] An Act to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in U.S. currency be reported to the Department of the Treasury, and for other purposes. Bank Secrecy Act, Pub.L. 91-508, 84 Stat. 1114-2.

[102] U.S. Department of the Treasury, Financial Crimes Enforcement Network, Application of FinCEN's Regulation to Persons Administering, Exchanging, or Using Virtual Currencies, FIN- 2013- G001, Mar. 18, 2013, https://www.fincen.gov/resources/statutes-regulations/guidance/application-fincens-regulations-persons-administering accessed on July 7 2021

[103] Financial Crimes and Enforcement Network, Application of Fincen's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, U.S. DEP'T OF THE TREASURY (Mar. 18, 2013), https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf accessed on July 7 2021

[104] Commodity Futures Trading Commission, Customer Advisories, https://www.cftc.gov/digitalassets/index.htm accessed on July 7 2021

[105] CFTC, Customer Advisory: Understand the Risks of Virtual Currency Trading, https://www.cftc.gov/sites/default/files/idc/groups/public/@customerprotection/documents/file/customeradvisory_urvct121517.pdf accessed on July 7 2021

[106] A Proclamation on Trade Competition and Consumer's Protection, No. 813/2013, Fed. Negarit Gazeta 20th year No. 28,

[107] Ibid, Art 4(1) "the proclamation is applicable to any commercial activities or transactions in goods or services conducted or having effect within the FDRE"

address and describe characteristics of the goods and services they offer,[108]however cryptocurrency exchangers in Ethiopia disregard this obligation because there exact location is not disclosed and mostly they operate their business of exchanging fiat currency against cryptocurrency online. For instance statutory requirements such as displaying trade name at overt place[109] or issuing a receipt to consumers[110] could be difficult to be implemented by cryptocurrency exchangers since they mainly utilize the internet. In addition, the most serious legal risk is when cryptocurrency is used as payment against goods and services. Here, in case the purchased good or service has a defect the consumer needs to be refunded.[111] Additionally, pursuant to the electronic transaction proclamation,[112] up on the cancellation of online transactions "online supplier must refund all payments back to the consumer. For instance, if one bitcoin was paid to the merchant on the day of June 10 2021 and the refund was claimed by the consumer on July 4 2021, within this short period of time there exists a price difference of USD 13223.75 in a single bitcoin price.[113] Therefore, refunding the money paid for the good or the service back to the consumer could be a point of dispute between the merchant and the consumer as a result of high volatility of a single bitcoin. The issue could be worse because, unlike CFTC, the consumer protection authority or any other government organ in Ethiopia does not receive consumer complaints in relation to cryptocurrencies.

In addition, the Electronic transaction proclamation[114] defines electronic commerce as "transaction of goods and services through the Internet or other information networks". [115] Thus, because cryptocurrency related activities are conducted through the use of the internet Electronic transaction proclamation is also relevant for the examination of cryptocurrency consumer legal concerns. Electronic transaction proclamation obliged online suppliers to utilize a payment system that is sufficiently secure with reference accepted technological standards at the time of the transaction.[116] However, online suppliers engaged in cryptocurrency related activities are not using sufficiently secure payment systems that are permitted by NBE. Meaning, the NBE is the only authority in Ethiopia empowered to authorize persons to establish and operate a payment system and allow such persons to issue payment instruments.[117] Nevertheless, in present Ethiopia there are persons who accept cryptocurrencies as

[108] Ibid, Art. 14 & 15

[109] A Proclamation on Trade Competition and Consumer's Protection, (n 106) art 18(1)

[110] Ibid, Art. 17(1)

[111] Ibid, Art 20(2)(a) (b)

[112] Electronic Transaction Proclamation, No. 1205/ 2020, Fed. Negarit Gazeta 26th year No. 57, Arts. 28(4)(B), 29(3), and 31(3)

[113] Within less than a month the price of bitcoin exhibited high fluctuation <https://ycharts.com/indicators/bitcoin_price> accessed July 4 2021

[114] Electronic Transaction Proclamation, (n 112) Art. 3(1)(b)

[115] Ibid. Art. 2(12)

[116] Ibid, Art. 28(5)

[117] National Payment System Proclamation, No. 718/2011, Fed. Negarit Gazeta 17th year No. 84, Art 4 (2) (a)

a payment by the help of various Blockchain payment systems, and this Blockchain payment systems are not licensed by the NBE.[118]

Thus, due to cryptocurrencies lack legal recognition from the NBE and given the anonymity of cryptocurrency payment beneficiary, it is difficult if not impossible to trace back online supplier or reverse the payment back to the consumer.[119] As a result cryptocurrencies miss crucial protections accorded to consumers. Therefore, a payment effected in the form of cryptocurrency is against the rule entrenched in the electronic transaction proclamation which obliged online suppliers to utilize sufficiently secure payment system. Consequently, consumers are advised to be cognizant of this legal problem before they utilize cryptocurrencies as a payment modality.

According to TCCPP consumers are entitled to payment of compensation against damages resulted due to defective goods and services.[120] Plus, according to electronic transaction proclamation consumers are entitled to compensation payment due to damages resulting from the failure of online supplier in the utilization of sufficiently secure payment system.[121] However, despite both TCCPP and the electronic transaction proclamation stipulated legal recourse against online suppliers, holding cryptocurrency perpetrators accountable is a difficult task because of the nature of anonymity attributed to the use of cryptocurrencies.[122] However, the USA experience depicts that the country is starting to defeat the obstacle of anonymity attached to only selected cryptocurrencies by the help of companies who are able to analyze encryption data from anonymous origins, and track persons that use Blockchain and its products.[123] Particularly, a company called Chainalysis, in known for tracking Bitcoin transactions, which in turn helps law enforcements to identify the true identify of Bitcoin perpetrators.[124] Nevertheless, it is impossible to identify the real identity of bitcoin users without obtaining additional information such as private bitcoin addresses.[125]

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[118] Mr. Ayalew, (n 82) "the interviewee noted that since cryptocurrencies are not regulated by NBE, they are not safe for use"

[119] Ibid

[120] A Proclamation on Trade Competition and Consumer's Protection, (n 106) Art. 20(3)

[121] Electronic Transaction Proclamation, (n 112) Art, 28(5)(6)

[122] Girasa, (n 4) 33

[123] Mike Orcutt, Criminals Thought That Bitcoin Was the Perfect Hiding Place, But They Were Thought Wrong, MIT Technology Review, Sept. 11, 2017, <https://www.technologyreview.com/s/608763/criminals- thought-Bitcoin-was-the-perfect-hiding-place-they-thought-wrong/> accessed July 4 2021

[124] Ibid

[125] Usha R. Rodrigues, 'Law and the Blockchain' (2019) vol.104 IOWA LAW REVIEW 711

In a nutshell, consumers should be cautious before engaging in cryptocurrency activities. They should obtain sufficient information as to the identity and physical address of online suppliers or cryptocurrency exchanges before engaging in any cryptocurrency transaction.

2.7.2 Bank Depositors Vs Cryptocurrency Depositors

Due to the anonymity attached to the use of cryptocurrency still customer protection legal issues persist in relation to cryptocurrencies and financial regulations. Consequently, this section will highlight the relationship that exists between bank and client and compare this customary relation with cryptocurrency holders.

Bank client relationship is created by a contract.[126] This contractual relationship between bank and clients enable the client deposit cash to his/her account and the savings acquire interest. Thus, under this legally binding contractual relation each party has complementary obligations and rights. The agreement that exists between the bank and its clients incorporates essential matters such as the manner in which clients would be notified before bank accounts are closed, disclosing relevant information to the client in connection with the bank account, notifying the clients any fraudulent activates on the bank account and keeping the relationship confidential.[127]The agreement between the bank and its clients ensures indicated amount of payment to be effected at determined occasion and vows to oversee resources to the greatest advantage of those who have interest. Subsequently, the contract signed between the bank and its clients establish the customary bank client relationship.[128]

Moreover, bank depositors are legally insured incase banks face financial problems. According to banking business proclamation 592/2008 the NBE is entitled the power to appoint a receiver[129] to take control of a bank if it is determined that if a bank becomes insolvent, when a bank has engaged in a pattern of unsafe and unsound practice which may likely constitute a significant danger to its depositors or when there is a strong likelihood that a bank may be unable to meet its depositors' demand in the normal course of business.[130] Regarding the task of the receiver, the receiver is under obligation to provide a solution such as maintaining the asset of a bank[131] and publishing a notice containing information about schedule of allowance claims in newspaper[132] in order to protect

[126] Muhammad Turki Alshurideh, 'A Theoretical Perspective of Contract and Contractual Customer-Supplier Relationship in the Mobile Phone Service Sector' (2017) vol.12 International Journal of Business and Management 203

[127] Ibid

[128] Mr. Ayalew, (n 82)

[129] Banking Business Proclamation No. 592/2008, FDRE Federal Negarit Gazzeta 14th year No.57, Art.2(16)

[130] Ibid, Art 33(1)(b)(d) (g)

[131] Ibid, Art 41(2)

[132] Ibid, Art 43(2)

the interest of bank depositors. These provisions depict the legal safeguard given to bank depositors as opposed to persons who deposit their money in the form of cryptocurrency.

Concerning the interest of bank depositors at the time of winding up of the bank the banking business proclamation stipulated the opportunity for the depositors to contest the schedule of allowable claims prepared by the receiver.[133] Above all banks are required to maintain their minimum capital and reserve not less than 25% of their net profit.[134] Furthermore, in its capacity of lender of last resort, NBE may extend advances or loans to banks and other financial institutions on the basis of obligations and conditions determined by its directive.[135]Such responsibility of the NBE is a vital instrument in ensuring consumers protection at times when banks face financial instability that might endanger the interests of bank depositors.

In contrast to the conventional way of depositing money in banks, depositing money in the form of cryptocurrency is not regulated by the financial laws of Ethiopia.[136] The cryptocurrency system is a decentralized platform whereby two or more persons interact straight away with one another without the intermediary of banks. Along these lines, the crucial matter related to cryptocurrency exchanges is the fact that cryptocurrency users are not legally protected, therefore as a result of the absence of bank client relationship, no perceived trustee or legally binding obligations live in between cryptocurrency depositors and wallet providers.[137] This is due to the nonexistence of a contractual obligation between the crypto wallet providers and Ethiopians who deposit their cryptocurrency in the wallet. Hence, cryptocurrency exchanges are not subject to financial regulations, consequently this endangers the interest of those who utilize cryptocurrency. [138]Therefore, financial regulatory rules that stood for the protection of bank depositors are not applicable for consumers who deposit their money in the form of cryptocurrency.[139]

Additionally, pursuant to NBE's directive banks are entrusted to conduct due diligence measures on existing customers and business relationships, including scrutiny of transactions undertaken throughout the course of the relationship.[140]However, in transactions that involve cryptocurrency, imposing NBE's customer due diligence directive is very difficult on the grounds that cryptocurrencies are not regarded as legal tender in Ethiopia. Furthermore, cryptocurrency exchanges are unknown and private records confine exchanges not to be observed

[133] Ibid, Art 44(1)

[134] Ibid, Art 19(1)

[135] A Proclamation to Amend the National Bank of Ethiopia establishment proclamation, (n 33) Art. 15(1)(d)

[136] Mr. Ayalew, (n 82)

[137] Ibid

[138] Ibid

[139] H. Matsuura, (n 69) 18

[140] Customer Due Diligence of Banks Directive No SBB/46/2010, Art 5

by government regulatory agencies. Thus cryptocurrencies are out of the ambit of NBE's directive. This is the point in which cryptocurrency depositors are casted aside unzipped to hazard appraisal in the financial consumer laws of Ethiopia.

In a nutshell, as seen above NBE through the mechanism of receivership protects the rights of depositors in case banks are unable to perform their duties. Nonetheless, because banks in Ethiopia do not issue cryptocurrency wallet, laws that are applicable in the protection of bank depositors are not applicable to cryptocurrency wallet depositors. In case a cryptocurrency wallet provider fails to perform it duties or if a cryptocurrency is lost, NBE won't cover the loss.[141] According to Banking (Amendment) proclamation No. 1159/2019 "No person shall transact banking business or provide digital financial services in Ethiopia without obtaining a banking business license or digital financial services license or authorization from the national bank."[142] However, cryptocurrency exchangers in Ethiopia are accepting fiat money in exchange of cryptocurrency tokens and this transaction is witnessed by the researcher up on obtained a cryptocurrency called USDT from local cryptocurrency exchanger, RURU crypto. Exchanging of fiat money against cryptocurrencies is clearly a digital financial service even if cryptocurrency is not accorded legal tender status in Ethiopia. Thus despite, the above legal prohibition cryptocurrency exchangers in Ethiopia are providing digital financial services in Ethiopia without obtaining a digital financial services license or authorization from the NBE. Therefore, users are bearing their own risk when they deposit or transact cryptocurrencies in Ethiopia. Furthermore, the absence of specific regulation concerning cryptocurrency dealings in Ethiopia exposed users to serious legal risks. Consequently, Ethiopians should refrain from depositing their money in cryptocurrency wallets because cryptocurrencies are not seen as legitimate delicate, consequently not lawful money in Ethiopia.

2.7.3 Legal Problems Related to Taxing Cryptocurrency

2.7.3.1 Characterization

In the U.S. the IRS treats cryptocurrencies as property, thus persons are required to maintain record regarding the sale and purchase of cryptocurrencies and are liable for the capital gained on account of obtaining goods or services with cryptocurrency.[143] Similarly, in the U.S. any person who obtained income as a result of cryptocurrency sale in exchange of fiat money will also be responsible to pay tax on the income gained.[144]

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[141] Mr. Ayalew, (n 82)

[142] Banking (Amendment) Proclamation, No.1159/2019, FDRE Federal Negarit Gazzeta, 25th year No. 88, Art. 3(1)

[143] IRS Notice 2014-21 Guidance on Virtual Currency, March 2014 <https://www.irs.gov/pub/irs-drop/n-14-21.pdf> accessed on July 6 2021

[144] Ibid

Additionally, United Kingdom tax cryptocurrencies earned through the process of mining depending on factors such as risk, level of organization, commerciality and frequency of activity.[145]

When we come to Ethiopia, the Federal Income Tax Proclamation (FITP) 979/2008[146] define income as every form of economic benefit, including non-recurring gain, in cash or in kind from whatever source derived and in whatever form paid, credited, or received. Now the crucial question is does this definition include earnings derived from cryptocurrency activities as income? Well, according to the above broad legal definition, cryptocurrency is under the ambit of FITP. This is so because cryptocurrency is a form of economic benefit obtained from electronic source and paid in the form of virtual currency. But the real question should be in what schedule does cryptocurrency income should be treated? The FITP is silent in this regards, because there is no explicit legal provision in it that clearly define earnings derived from cryptocurrency activities. Additionally, the FITP under article 59 stipulated that the tax on gains on the disposal of certain investment asset is only applicable to person who derives a gain on the disposal of immovable asset, a share, or bond (referred to as a "taxable asset") shall be liable to pay income tax.[147] This very narrow definition given to taxable asset excluded the applicability of the FITP on persons who acquire cryptocurrency in exchange of fiat money or other digital currency. This means person who acquire lofty amount of income in birr as a result of sale of cryptocurrencies are not liable to pay tax in Ethiopia. As a result, cryptocurrencies could be utilized by persons to evade their tax liability undetected from the revenue authority.

2.7.3.2 Valuation of cryptocurrency for Tax Purpose

For taxation purpose valuation is significant in the calculation of taxable income and in the determination of deductible amount. However, the value of cryptocurrencies varies from time to time. For instance, in the span of two years' period from 2011 to 2013 Bitcoins' value varied between $0.50 USD to $1,130 USD.[148] Plus, Bitcoin lost one fourth of its value in a single day trading back in 2017.[149] Additionally, Ethereum price slid 20% in just one day trading in 10th of January 2021.[150] Hence, unlike the value of fiat currencies, cryptocurrencies don't possess stability. This conveys that the exchange rate of cryptocurrencies is subjected to high volatility.

In Ethiopia, even if determining the value of a cryptocurrency is very challenging, for the taxation purpose the ministry of revenue could utilize the procedure laid down in the Federal Tax Administration Proclamation (FTAP)

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[145] Policy paper Crypto-assets: tax for businesses, <https://perma.cc/L7V9-59ML> accessed 29 June 2021

[146] Federal Income Tax Proclamation, No.979/2016, FDRE Federal Negarit Gazzeta, 22nd year No.104, Art.2(14)

[147] Ibid, Art. 59

[148] Girasa, (n 4) 62; Kien-Meng Ly, (n 23) 591

[149] Treanor, (n 73)

[150] McIntosh, (n 24)

983/2016[151]to determine the exact value of a cryptocurrency. However, there exists major trouble because of the great variance in cryptocurrencies even across a short period of timeframe that determining the value of cryptocurrencies for tax remains a major challenge for tax authorities around the world.

2.7.3.3 Cryptocurrency and Tax Evasion

Taxation issues related to cryptocurrency gains are a crucial consideration for revenue authorities. When cryptocurrencies are utilized as money in exchange for goods or services by organizations or individuals, the issue of taxation arises. The fact that cryptocurrency exchanges are undergone without the involvement of a third intermediary bodies and the user anonymity nature of cryptocurrencies, challenges revenue authorities to identify incomes as a result of cryptocurrency activity.[152]Hence, the imperceptibleness nature of cryptocurrencies makes them suitable to be utilized for tax evasion purpose. Since cryptocurrency is not recognized a currency in Ethiopia, persons could easily evade their tax liability by concealing their income in cryptocurrency without the tax authority identifying. However, as seen above the FITP's broad definition on income[153] seems to include incomes in cryptocurrency, because cryptocurrency is a form of economic benefit obtained from electronic source and paid in the form of virtual currency and stored in a computer network system. Hence, persons in Ethiopia who are deriving income from cryptocurrency activities and not declaring their income to the tax authority are committing tax evasion crime according to FTAP.[154]Besides, cryptocurrency is made with the point of guarding exchanges hidden and mysterious and at last untraceable, opening a room for tax evasion when exchanges are made by utilizing cryptocurrencies.[155]

2.7.4 Cryptocurrency, Money Laundering and Terrorist Financing

Money launderers since the creation of cryptocurrencies in 2008 found another way whereby they can effectively clear their dirty money. Money launderers utilize cryptocurrencies to conceal the illegal source of money, utilizing different techniques and they prefer cryptocurrency because of the pseudonymous nature of cryptocurrency transactions.

A basic technique for cleaning the unlawful money is to introduce it as the consequence of a lucrative business. Hence, any online business that acknowledges cryptocurrency installments could change a cryptocurrency

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[151] Federal Tax Administration Proclamation, No.983/2016, FDRE Federal Negarit Gazzeta, 22nd year No.103, Art.3

[152] Michael S Sackheim and Nathan A. Howell, *The Virtual Currency Regulation Review* (2st edn., law business research Ltd 2019) 157

[153] Federal Income Tax Proclamation, (n 146) Art. 2(14)

[154] Federal Tax Administration Proclamation, (n 151) Art. 125 "Whosoever, with the intention to evade tax, conceals his income or fails to file a tax declaration shall be punishable with a fine of birr 100,000 (One Hundred Thousand Birr) to 200,000 (Two Hundred Thousand Birr) and rigorous imprisonment for a term of three to five years."

[155] OECD, 'Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues' (n 1) 18

obtained from illegal activity into honest, legitimate cryptocurrency. Then the washed cryptocurrency will be sent to nations with practically no AML guidelines, where by launderers could easily change the washed cryptocurrency into cash to buy extravagance or other expensive goods.[156]

Additionally, given the lack of central organ that regulate the operation of cryptocurrencies, their utilization is highly associated with anonymity risks. This is true due to the real identity of the users and their address is not associated with the cryptocurrency account they use to receive or send payments in the form of cryptocurrency.[157] Unlike the practice in banks, the requirement of producing identification is not necessary for a person to make payments using cryptocurrency.[158]That's why the EU expressed its concern that actors in unlawful activities could benefit from payments from cryptocurrencies.[159]

Cryptocurrencies are captivating for those who engaged in financing terrorist groups due to the possibility of moving money without being restricted by state borders and without disclosing the financer's identity.[160]In this regards, a terrorist organization known as Al-Qaeda were soliciting cryptocurrency donations to expand their terrorist activities. Al-Qaeda in their web address provided a video guideline on the method how donators can anonymously donate money to the terrorist group by using Bitcoin. Consequently the terrorist group collected donations from all over the world by using a Bitcoin network.[161] Thus, given the innovative approach of terrorist groups in the utilization of cryptocurrency to raising fund, Canada back in 2017 amended its terrorist financing act to particularly regulate cryptocurrencies in connection with terrorist financing.[162]

In Ethiopia, Proclamation on Prevention and Suppression of Money Laundering and Financing of Terrorism No. 780/2013 (PPSMLFT)[163]is the primary legal instrument available for the regulation of activities of money laundering and financing of terrorism. Nevertheless, the out stretch of these legal provisions to cryptocurrencies may be trammeled. This is due to article 2(25) of the PPSMLFT define currency, as banknotes and coins of Ethiopia or any other country that are in circulation as a medium of exchange. This definition is very narrow and not cognizant of the existence of cryptocurrency. On the other hand, the PPSMLFT stipulated a broader definition

[156] Ciupa Katarzyna, (n 2) 9

[157] Kien-Meng Ly, (n 23) 595

[158] Custers and Lara, (n 51) 19

[159] European Central Bank, (n 36) 44

[160] Department of Justice, 'Largest Ever Seizure of Terrorist Organizations' Cryptocurrency Accounts' (August 13, 2020) <https://www.justice.gov/opa/pr/global-disruption-three-terror-finance-cyber-enabled-campaigns> accessed 12 April 2021

[161] Ibid

[162] Sackheim and Howell, (n 152) 82

[163] Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, No.780/2013, FDRE Federal Negarit Gazzeta, 19th year No.25,

for "funds or property" seemingly incorporating cryptocurrencies.[164]Nevertheless, the PPSMLFT was designed ignoring the existence of cryptocurrencies without encompassing actors involved in cryptocurrency practice. Subsequent articles of the PPSMLFT only encompass main stream financial institutions[165]and designated nonfinancial businesses or professions[166] in the fight against money laundering and terrorist financing crimes.

The PPSMLFT criminalized money laundering and terrorist financing under article 29 (1), (a), (b) and (c) and article 31(1) respectively. Furthermore, financial institutions and designated nonfinancial businesses and professions are obliged to take procedures of customer due diligence and know your customer (KYC) procedures.[167] Additionally they are obliged to identify and examine the possibility of financing of terrorism and money laundering in advance of starting commercial dealings with customer.[168]However, actors involved in cryptocurrency dealings in Ethiopia are not obliged to conduct KYC system or customer due diligence. Moreover, in Ethiopia, exchanges conducted by the use of cryptocurrency are not regulated as financial service by the NBE. Thus, given the anonymity character of cryptocurrency users and the zero role of financial institutions and designated nonfinancial businesses and professions in cryptocurrency operations the applicability of the PPSMLFT in the regulation of cryptocurrency facilitated money laundering and terrorist financing activities is inapplicable.

Besides, financial institutions and designated nonfinancial businesses and professions are the only organs obliged to maintain relevant records.[169] However, actors involved in cryptocurrency dealings in Ethiopia are not obliged to maintain relevant records, records which could help detect money laundering and terrorist financing crimes. Thus records in cryptocurrency transactions are not kept by cryptocurrency actors because cryptocurrency transactions are conducted without the involvement of financial institutions or designated nonfinancial businesses or professions. Therefore, keeping relevant records by cryptocurrency actors is very important for the identification of cryptocurrency enabled money laundering and terrorist financing activities in Ethiopia. Thus, the anti-money laundering and terrorist financing legal regime of Ethiopia does not adequately address cryptocurrency legal issues that may arise in connection with money laundering and terrorist financing activities in Ethiopia.

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[164] Ibid, Art. 2(5) "funds or property means any asset, whether movable or immovable, or tangible or intangible, including legal instruments in any form evidencing title to or interest in such asset such as bank credits, traveler's cheques, banks cheques, money orders, shares, bonds, and any interest, dividend or other income or value generated by such assets;"

[165] Ibid, Art. 2(9)

[166] Ibid, Art. 2(10)

[167] Ibid, Art. 6

[168] Ibid, Art.6 (1) (3)

[169] Ibid, Art. 10 (1) (a) and (b)

2.8 Conclusion

Despite the ever increasing activities related to cryptocurrencies in Ethiopia, cryptocurrencies are not the legal tender of Ethiopia. The relevant Ethiopian laws discussed in this chapter ignored the existence of cryptocurrencies. Therefore, based on this premises the following chapter will concentrate on the proper application of pertinent Ethiopian laws and the role of regulatory bodies in the regulation of cryptocurrency activities in Ethiopia. The discussion will provide the methods used by other countries in the regulation of cryptocurrencies aimed to gain insight. Furthermore, the discussion will also focus on the assessment of relevant Ethiopian laws to find an adequate mechanism on how Ethiopia should regulate this contemporary legal phenomenon.

CHAPTER THREE

Regulating Cryptocurrency Practice in Ethiopia

3.1 Introduction

This chapter assesses the available legislative and regulatory approaches in Ethiopia towards regulating cryptocurrencies. It states that pertinent Ethiopian laws are not adequate in the regulation of cryptocurrency related activities in Ethiopia.

Cryptocurrencies brought a change in perspective in the financial and monetary framework by supplanting the role of banks by cryptography.[170]But cryptocurrencies are not stable and are very volatility. Hence, this basic character of cryptocurrencies is a challenge for regulators in various sectors. Therefore, this part examines the existing legislative and regulatory mechanisms available on the possible approaches of cryptocurrency regulations in Ethiopia.

3.2 Regulation of Cryptocurrency: Global Perspective

When it comes to regulating cryptocurrency, countries of the world could be broadly classified into three groups. In the first group we find jurisdictions that allow cryptocurrencies, meaning these group of counties introduced particular laws that give recognition for and regulate cryptocurrency.[171]Additionally, jurisdictions in this category collect tax from the earnings of cryptocurrency. Among those jurisdictions that gave legal recognition to cryptocurrencies, some introduced specific legal rules to supervise and regulate actors of cryptocurrency in order to avert illegal activities. In the second group we find jurisdictions that prohibit any dealings in connection with cryptocurrencies. And the third groups of countries are those who prefer silence towards the activities of cryptocurrencies.[172]

3.3 Regulatory Challenges

3.3.1 Absence of Clear Definition

The nonexistence of a clear definition and characterization for cryptocurrencies is identified as a major factor that hinders the development of a comprehensive regulation across the globe. Since cryptocurrencies operate by disregarding state boarders, different meanings attributed to cryptocurrency by various regulators may create an arbitrage regulatory approach.

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[170] Girasa, (n 4) 29

[171] Matsuura, (69) 38

[172] Ibid, 9

In Ethiopia there is no law that define the term cryptocurrency. For instance, the computer crime proclamation[173] tried its best towards the creation of a holistic legal framework for a robust regulation of computer crimes in Ethiopia. However, the proclamation did not clearly stipulated provisions that could regulate cryptocurrency related crimes. Plus the criminal code of Ethiopia,[174]did not envision criminalizing latest and complex computer related crimes, because new technologies such as blockchain and cryptocurrencies are contemporary legal issues. But, even if the Ethiopian criminal code lack explicit legal provision to penalize crimes in relation with cryptocurrency practices, the computer crime proclamation fills the gap by making computer related forgery and computer related fraud crimes punishable by law. [175] According to article 9 of the proclamation, whosoever use a computer data[176]to injure the right or interests of another or to procure for himself or for another person any undue right or advantage is criminally liable because he/she committed computer related forgery.[177]Plus, according to article 10 of the proclamation, any person is criminally liable, if he/she fraudulently causes a person to act in a manner prejudicial to his rights or those of third person by misrepresenting his status, concealing facts which he had a duty to reveal or taking advantage of the person's erroneous beliefs.[178]

Since, cryptocurrency is a virtual data found in a computer system, the definition forwarded for the term computer data seems to encompass cryptocurrencies as well. Thus, even if there is no law that specifically regulates the cryptocurrency related crimes in Ethiopia; the computer crime proclamation is an important legal instrument towards the regulation of cryptocurrency related crimes in Ethiopia.

In a nutshell, regulatory bodies should consider practical facts and the experiences of different regulators in order to introduce a comprehensive and full bodied terminology for cryptocurrency.[179]

3.3.2 Inconsistent Regulations

The nonexistence of coordination in regulations permits actors involved in cryptocurrency activities to abuse such regulatory gaps. Consequently actors involved in cryptocurrency activities could easily avoid rigorous regulatory responses.[180] Thus, in the international plane, it is advised that regulatory responses towards cryptocurrency

[173] Computer Crime Proclamation, No.958/2016, FDRE Federal Negarit Gazzeta, 22nd year No.83,

[174] The Criminal Code of the Federal Democratic Republic of Ethiopia, No. 414/2004,

[175] Computer Crime Proclamation, (n 173) Arts 9-10

[176] Ibid, Art 2(4) "Computer data means any content data, traffic data, computer program, or any other subscriber information in a form suitable for processing by means of a computer system"

[177] Ibid, Art. 9

[178] Ibid, Art. 10

[179] Apolline Blandin, (n 21) 54

[180] Ibid, 55

transactions should be coordinated and harmonized in order to reduce apparent negativities attached to cryptocurrency.[181]

3.3.3 Constraints of Technology Neutrality

Technology neutrality means regulations should not assume a specific technology and regulations must not limit the utilization of contemporary and modern technologies.[182] However, there are challenges to the rule of technology neutrality in practice. For instance, law makers may be challenged to address cryptocurrencies effectually, due to cryptocurrencies are not regarded as asset or currency, it is essential to particularly address the issue, by designating cryptocurrencies as an asset or currency by law. This obviously influences the principle of not taking in to account any particular technology when making laws.[183]

3.4 The Practice of Cryptocurrency in Africa

The legal scenario regarding the regulation of cryptocurrencies in African states is unique due to businesses involved in the cryptocurrency market remain unregulated in almost all Africa African states.[184] This part concentrate on how selected African countries tried to respond to the widespread public use of cryptocurrencies in their respective jurisdiction.

Ghana

The national Bank of Ghana after recognizing the expanding cryptocurrency usage in the country, the bank released a public notice in January, 2018.[185] The public notice made it clear that holding, using and trading of cryptocurrencies is not permitted pursuant to the Ghanaian Payments System Act.[186] In its public notice the bank stated that it is examining how the blockchain technology would be used in the countries financial regulation framework. Furthermore, the public notice pinpointed the importance of doing business with those financial

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[181] Ibid

[182] Ibid

[183] Ibid

[184] Dr. Iwa Salami, 'Crypto-assets regulation in Africa: RegTech and SupTech consideration' (June 2020) THE AFRICAN REINSURE 28

[185] Bank of Ghana, 'Notice to Banks and Specialized Deposit-Taking Institutions (SDIs) and The General Public Notice No. BG/GOV/SEC/2018/02'<https://www.bog.gov.gh/wp-content/uploads/2019/07/Digital-and-Virtual-Currencies-Operations-in-Ghana.pdf> (accessed June 29 2021)

[186] Ibid

entities that are licensed by the national bank of Ghana. Conducting transaction by the help of licensed financial institutions will make sure that transactions will be subjected to the existing Ghanaian financial laws.[187]

Tanzania

In November 2019, the central bank of Tanzania released a public notice after realizing the growing cryptocurrency activities in the country.[188] The bank in its public notice affirmed its position regarding the use of cryptocurrency in Tanzania by advising the public not to use, market or trade in cryptocurrencies. The bank stated that involving in any activity related to cryptocurrencies is not permitted because the bank of Tanzania does not issue cryptocurrencies as a banknotes or coins, and cryptocurrencies are not declared legal tender in Tanzania.[189] This notice shows that the Bank of Tanzania is providing warning to the public regarding the risks attached to the use of cryptocurrencies.

These public notices depict that unlike NBE, the national bank of Ghana and the central bank of Tanzania are aware of the legal problems of cryptocurrencies and they took appropriate steps forward to protect the soundness and safeness of their respective financial industries. Nonetheless, unlike the aforementioned African counties, the NBE did not issue any guideline or public notice whether holding, using or trading of cryptocurrencies is permitted or not in light of the existing financial laws of Ethiopia. Still now the NBE is silent against the emerging cryptocurrency market in Ethiopia. As a result, the dangers of using cryptocurrencies could not be clearly understood by Ethiopian cryptocurrency users and traders. It is known that the NBE has the power and function to execute its purposes as central banks customarily perform.[190] Thus, the NBE in cognizant of the Ethiopian cryptocurrency market shall issue a public notice in order to create public awareness regarding the risks associated to the use of cryptocurrencies.

3.5 Banking Business Regulations for Cryptocurrency Activities in Ethiopia

The other important discussion in this part is the relevancy of banking business regulations for activities relegated to cryptocurrencies. In Ethiopia, even though e-commerce is in a rudimentary stage, banks are the prominent users of e-commerce in the country through mobile banking. Mobile banking, (M- banking) is a mode of using banking services, through mobile SMS or mobile applications. This mode of transaction with banks reduces expenses for customers to pay bills or transfer funds without the need to paper physically at their banks. In Ethiopia, the national

[187] Ibid

[188] The Bank of Tanzania, 'Public Notice on Cryptocurrencies', (November 2019) <https://www.bot.go.tz/Adverts/PressRelease/en/20200313072404242O8.pdf> (accessed June 29 2021)

[189] Ibid

[190] A Proclamation to Amend the National Bank of Ethiopia Establishment Proclamation, (n 33) Art, 5(19)

Bank of Ethiopia prepared directive no. FIS/01/2012 for regulation of mobile agents banking service,[191]The directive under article 8 put obligation on financial institutions to ensure their agents fully comply with the requirements laid down in PPSMLFT.[192]Additionally agents involved in the mobile banking activities are obliged to perform due diligence and KYC requirement on natural persons before registering them for the service.[193]

Moreover, the latest regulation in the financial industry, the National Bank of Ethiopia's directive for licensing and authorization of payment system operator's directive no. ONPS/02/2020 put various strict obligations on payment system operators. For instance, a payment system operator shall insure maximum customer protection while carrying out its business.[194] Furthermore, a payment system operator is obliged to disclose essential information to its customers while providing a payment services.[195] The most important provision from consumer protection perspective is article 19 whereby a payment system operator is mandated to handle customer's compliant with regard to the service of payment system.[196]However, the downside of these two directives is that they only regulate electronic money which is denominated in the legal tender of Ethiopia, Birr. Therefore, both directives of the NBE are not applicable in the regulation of cryptocurrencies. Because cryptocurrencies are virtual currencies distinguished from electronic money. Electronic money is a legal tender that is capable of transferring value electronically and enables users to effect payment transactions.[197]

It is known that bank client relationship is established based on the contractual commitments between bank and client. However, most platforms of cryptocurrencies have no client concession dissimilar to banks, which give customers the fundamental paperwork in connection to client utility agreements.[198]The problem with cryptocurrency is the absence of the bank client relationship, even if a person loses his cryptocurrency deposit, the financial regulatory rules that stood for the protection of bank depositors are not applicable to such person. This is the point in which cryptocurrency exchanges are casted aside unzipped to hazard appraisal in the consumer regulatory financial laws of Ethiopia.

[191] Regulation of Mobile and Agent Banking Services Directive No. FIS/01/2012

[192] Ibid, Art 8

[193] Ibid, Art 9.1.1 (I)

[194] Licensing and Authorization of Payment System Operator's Directive NO. ONPS/02/2020, Art 18.1

[195] Ibid, Art. 18.2

[196] Ibid. Art. 19

[197] Ibid. Art. 2.12

[198] Hossein Nabilou, 'How to Regulate Bitcoin? Decentralized Regulation for a Decentralized Cryptocurrency' (2019) International Journal of Law and Information Technology. 18

According to Mr. Frezer Ayalew, the financial regulatory organ of Ethiopia, NBE, through different financial regulatory mechanisms stood to protect the interest of customers in the financial industry.[199] But the financial regulation laws of Ethiopia do not apply to users of cryptocurrency.[200] Hence, in case a user sustained a damage resulting from his/her involvement in cryptocurrency related activities, the financial regulatory laws of Ethiopia won't safeguard the interest of cryptocurrency users. Because cryptocurrencies are not recognized as money by NBE thus lack a centralized control from the NBE.[201]

Therefore, even if the use of cryptocurrency is growing in Ethiopia the NBE seems ignorant of this fact. Thus, cryptocurrency practices in Ethiopia necessitate an appropriate legislative and regulatory measures to be taken for the sake of consumers involved in cryptocurrency activities.

3.5.1 The Regulation of Customer Protection in Cryptocurrency Activities in Ethiopia

In Ethiopia, since cryptocurrencies are new legal phenomenon the effectiveness of the relevant consumer protection laws towards the proper regulation of cryptocurrency is very doubtful. For instance, pursuant to article 20(3) of the TCCPP, consumers are entitled to claim payment of compensation in accordance with the relevant laws. Similarly, the electronic transaction proclamation stipulated an obligation on online suppliers to refund all payments back to the consumer in case the online business deal is cancelled. [202] But Imagine a person paid in cryptocurrency and received a defective good from online supplier. How could this person effectively claim compensation on the online supplier? This is a legal issue which needs to be addressed.

Due to the anonymity attached to the use of cryptocurrencies there exists a challenge in identifying the true identity of cryptocurrency users. Thus, given the anonymity of cryptocurrency payment beneficiary, it is difficult if not impossible to trace back online supplier or reverse the payment back to the consumer.[203] Additionally, the irrevocability nature of cryptocurrencies makes the above legal provisions inapplicable in cases involving cryptocurrency disputes.[204] As such a consumer, who paid in cryptocurrency, may not get his/her money back in case the business deal broke.[205]Therefore, the basic challenge for consumer involved in cryptocurrency transactions is enforcing compensation claims against cryptocurrency perpetrators.

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[199] Banking Business Proclamation, (n 129) Art. 33

[200] Mr. Ayalew, (n 82)

[201] Ibid

[202] Electronic Transaction Proclamation, (n 112), Arts. 28(4)(B), 29(3), and 31(3)

[203] Girasa, (n 4) 30

[204] Bank for International Settlements, (n 55) 9

[205] Ibid,

Accordingly, the anonymity of cryptocurrency usage and the difficulty to identify the real personality of such persons[206] Trade Competition and Consumer Protection Authority (TCCPA)[207] could face a challenge in the enforcement of consumers right in cases involving of cryptocurrency payments. Even if TCCPA is empowered to utilize the criminal procedure code of Ethiopia in conducting adjudication pursuant to TCCPP,[208] arresting a cryptocurrency perpetrator primarily requires identifying the offender. This means perpetrators in cryptocurrency disputes could easily be left without being held liable and pay compensation as stipulated under TCCPP.

Therefore, online consumers who utilize cryptocurrency as payment should be aware of the challenges surrounding enforcement of cryptocurrency disputes.[209]Accordingly, online consumer who utilizes cryptocurrency is engaging in such transaction taking his/her own risk. This is evidenced from the impossibility for a user to claim any Ethiopian authority at this moment in the event that the value of cryptocurrency drops or a cryptocurrency wallet is hacked or closed in any reason. Moreover, given the unregulated nature of cryptocurrencies in Ethiopia, it could be difficult for TCCPA to fully understand and handle consumer cases that arise in connection with cryptocurrencies.

In addition, among other powers and functions, the regulation of cryptographic products and their transaction in Ethiopia is left for INSA.[210] Cryptocurrencies use technology from cryptography to authenticate the transfer of transactions as depicted by thousands of such currencies by utilizing Blockchain.[211] Thus, the proclamation bestowed the power to regulate cryptocurrency transactions, the power to set necessary criteria and the power to develop operating procedures and implement cryptography infrastructure to INSA. This shows that in Ethiopia INSA has major role when it comes to regulating cryptocurrencies. However, still now INSA has not enacted any specific directive to practically regulate cryptocurrency transactions in Ethiopia.[212]

Furthermore, according to Dr. Solomon Guadie, who is well aware of cryptocurrencies and their emergence in Ethiopia, told the researcher that INSA is conducting a research on the Blockchain to fully comprehend the technology.[213] But, Dr. Solomon Guadie noted that even if INSA is empowered by law to regulate cryptocurrency transactions in Ethiopia, INSA is not functioning its regulatory role towards cryptocurrency practices in Ethiopia

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[206] Girasa, (n 4) 30

[207] A Proclamation on Trade Competition and Consumer's Protection, (n 106) Art. 27

[208] Ibid, Art. 41

[209] Ibid

[210] Information Network Security Agency Re-establishment Proclamation, (n 32) Art. 6(9)

[211] Girasa, (n 4) 9

[212] Ms. Seble Girma, Director at Legal Affairs Directorate Director of INSA. Interview held on June 26 2021, 5:03 PM "the interviewee disclosed the fact there is no specific directive issued by INSA in relation with cryptocurrencies."

[213] Dr. Solomon Guadie, Cyber Research Division Head at INSA. Interview held on 18May, 2021, at 2:45 P.M.

and pointed that the issue of cryptocurrency regulation is a matter of national issue which requires a comprehensive legislative and regulatory response from all stake holders such as the NBE, Ministry of revenue, INSA and the parliament.[214] Moreover, Ms. Sable Girma added that the existing legal instruments are not adequately sufficient to handle consumer's cryptocurrency legal concerns in Ethiopia.[215] As such, market actors of cryptocurrency in Ethiopia seem to be enjoying the unregulated cryptocurrency market.

Moreover, the INSA Re-establishment Proclamation also bestowed the power to draft laws that enable to ensure information and computer based key infrastructures security and oversight their enforcement upon approval.[216] This, is a positive addition to the power of INSA, because by identifying the security concerns related to cryptocurrency wallets, INSA could draft laws that enable to secure the functioning of cryptocurrency wallets whereby users of cryptocurrency could be benefited from such kind of legal frameworks.

More importantly, Pursuant to Information Network Security Agency Re-establishment Proclamation Execution Council of Minister Regulation, No. 320/2014[217] INSA is also empowered to conduct cyber operation to prevent cyber action that threaten citizen's security [218] and carry out digital forensic investigation in cooperation with relevant investigating bodies.[219] These are essential statutory powers of INSA that enable the agency to prevent and detect security issues in relation to cryptocurrencies For instance, INSA could investigate the soundness of a given cryptocurrency exchange against potential hacks and the system's susceptibleness for cyber security issues.

Nonetheless, the anonymity attached to the use of cryptocurrencies could hinder the effective identification of cryptocurrency perpetrators through cyber operations. Because perpetrators of cryptocurrency opt to use virtual currencies due to their advantage of undisclosed real identity of users. But, the down side is, even though the agency is empowered to regulate cryptographic products and their transactions,[220] the agency has not enacted any specific directive to specifically regulate the transactions of cryptocurrencies. Still cryptocurrency wallet providers, exchangers and other actors are freely operating their business without any guideline and directive. And this is a potential risk for cryptocurrency users, in case there arises fraudulent activities, theft or hack the

[214] Dr. Solomon Guadie, Cyber Research Division Head at INSA. Interview held on 18May, 2021, at 2:45 P.M.

[215] Ms. Girma, (n 94) the interviewee stated that from security perspective INSA is closely following cryptocurrency practices in Ethiopia

[216] Information Network Security Agency Re-establishment Proclamation, (n 32) Art 6(2)

[217] Information Network Security Agency Re-establishment Proclamation Execution Council of Minister Regulation, No.320/2014, FDRE Federal Negarit Gazzeta, 20nd year No.78,

[218] Ibid, Art. 9, 2(5) "Cyber operation means a technique that is used to exploit intelligence and digital forensic evidence, curb cyber activities that threaten national security and citizen's safety or defend the state sovereignty from an attack by cyber and electromagnetic technologies"

[219] Ibid, Art 10

[220] Information Network Security Agency Re-establishment Proclamation, (n 32) Art 6(9), Art 11

consumers are left without any legal remedy. Hence, there exists a legislative gap in the regulation of cryptocurrency practices in Ethiopia. The absence of specific law that address issues of cryptocurrencies is a must in Ethiopia. Thus, the legislature should take appropriate legislative measures in order to safeguard the interest of consumers involved in cryptocurrency related activities.

3.6 The Regulation of Cryptocurrency Tax in Ethiopia

Before going to the evaluation of pertinent Ethiopian federal tax laws in light of cryptocurrency practices first it is important to examine how Canada treats cryptocurrencies for taxation purpose. In Canada cryptocurrency is not treated as legal tender this is due to the definition given to legal tender under the Canadian Currency Act,[221] in which only bank notes and coins issued by the national bank of Canada are regarded as legal tender. However, even if cryptocurrencies are not treated as legal tender in Canada, the Canadian Income Tax Act[222] is applicable in cryptocurrency transactions by considering cryptocurrencies as commodities.[223] Hence, the rules that are applicable to barter transactions are also applicable to transitions of cryptocurrencies.[224] The way Canadian central bank treats cryptocurrencies is identical with that of NBE. Meaning, both Ethiopia and Canada only regard bank notes and coins issued by their respective National Banks as legal tender. However, unlike the Ethiopian ministry of revenue, the Canadian tax authority has its own legal foundation to exercise its taxation power over cryptocurrencies. This could be a lesson for Ethiopia, whereby the ministry of revenue could by its own exercise its taxation power over various cryptocurrency exchanges.

When we come to Africa, even though, cryptocurrencies are not considered legal tender in South Africa, the country's tax authority treats cryptocurrencies as an intangible asset. Consequently, penalty awaits those who don't disclose their earnings from cryptocurrency related activities.[225]

In Ethiopia, the FITP[226] define income as every form of economic benefit, including non-recurring gain, in cash or in kind from whatever source derived and in whatever form paid, credited, or received. This very broad definition seems to include the gain of cryptocurrency as income. Since, the wording used by the income tax proclamation says "…from whatever source derived and in whatever form paid", earnings obtained from

[221] Canadian Currency Act, R.S.C. 1985, c C-52, <https://perma.cc/4A4E-3XBH> accessed June 29 2021

[222] Canadian Income Tax Act, R.S.C. 1985, c 1 (5th Supp.), <https://perma.cc/2BFF-87QL> accessed June 30 2021

[223] Douglas J. Cumming, Sfia Johan and Anshum Pant, 'Regulation of the Crypto-Economy: Managing Risks, Challenges, and Regulatory Uncertainty' (2019) Journal of risk and financial management. 9

[224] Ibid

[225] Baker McKenzie, 'Blockchain and Cryptocurrency in Africa, A comparative summary of the reception and regulation of Blockchain and Cryptocurrency in Africa' (Johannesburg 2018) 10

[226] Federal Income Tax Proclamation, (n 146) Art. 2(14)

cryptocurrency activities are covered by the proclamation. This is so because cryptocurrency is a form of economic benefit obtained from electronic source and paid in the form of virtual currency.

Additionally, the scope of the Federal income tax proclamation includes residents of Ethiopia who earns income from worldwide source to be taxed.[227]Since cryptocurrency activities are conducted without the limitation of state borders, Ethiopian residents who earn income from activities of cryptocurrency are under the ambit of the FITP. Plus, the FITP clearly obliges every person earning income to pay tax in accordance with the FITP and FTAP.[228]Furthermore, the proclamation subjected a person who derives any income that is not taxable under the schedules stipulated under the proclamation to be liable for income tax at the rate of 15% on the gross amount of the income.[229]These legal provisions could be utilized to collect tax from earnings obtained from cryptocurrency activities. In this regards the researcher conducted an interview with a senior legal expert at the ministry of revenue and the expert reaffirmed the above assertion by stating that persons who earn income in whatever form are obliged to pay tax.[230]However, the interviewee stated factors that hinder the ministry of revenue in collecting tax from earnings of cryptocurrency activities such as, the low level of awareness of the ministry of revenue, lack of explicit legal provisions in taxing cryptocurrencies in Ethiopia and persons not declaring their earnings derived from cryptocurrency activities to the ministry. The interviewee highlighted the absence to declare earnings derived from cryptocurrency activities as a main challenge towards realizing tax from earnings obtained from cryptocurrency activities.

However, the difficult situation in Ethiopian tax law regime is the characterization of cryptocurrencies. The manner in which the tax authority collects tax from persons who earn huge profits from cryptocurrency activities is a vague area. For instance, even if article 2(2)(a) of the FITP provides a broad definition of business, article 21 of the FITP does not envision the existence of innovative and contemporary business incomes such as incomes derived from cryptocurrency exchanges as business income. Furthermore, pursuant to the FITP article 59 the income tax on gains on the disposal of certain investment asset is only applicable to person who derives income on the disposal of immovable asset, a share, or bond (referred to as a "taxable asset").[231] This very narrow definition given to taxable asset excluded the applicability of the FITP on the capital gained through the activities of cryptocurrency. Therefore, multiple obstacles are present to the proper regulation of cryptocurrency tax in

[227] Ibid, Art. 7(1)

[228] Ibid, Art. 9

[229] Ibid. Art. 63

[230] Mr. Hailemelekot Abebe, senior legal expert at the Ethiopian Ministry of Revenue. Interview held on 17May, 2021, at 2:06 P.M.

[231] Federal Income Tax Proclamation, (n 146) Art. 59

Ethiopia. These obstacles originate from the reasons that cryptocurrencies are not well recognized by relevant financial and tax laws of Ethiopia.

Concerning valuation of cryptocurrency for tax purpose, in the UK for instance the value of a cryptocurrency will be determined based on the corresponding value of the cryptocurrency in fiat money.[232] Likewise, the market value of a given cryptocurrency as of the date of obtainment is considered to determine the value of the cryptocurrency in US.[233]

In Ethiopia, for the purposes of valuation of a given cryptocurrency the ministry of revenue could utilize the principle of fair market value enshrined under FTAP[234]. Accordingly, fair market value of goods, an asset, service, or benefit at a particular time and place is the ordinary open market value of the goods, asset, service, or benefit at that time and place. However, because cryptocurrencies don't exhibit a stagnant character of ordinary goods or assets their price is highly volatile that the principle of fair market value may not be satisfactory in the valuation of cryptocurrencies. Additionally, the FTAP further stipulated that if it is not possible to determine the fair market value of goods or assets, the fair market value will be determined in consideration of any similar goods or asset. But implementing this legal provision is a major trouble because of the great variance in the price of cryptocurrencies even across a short period of timeframe.

Seeing that the value of cryptocurrencies can differ in distinct exchange platforms, sensible attempt should be made to utilize the right valuation method for cryptocurrencies. Therefore, the Ethiopian tax authority being cognizant of the pertinent legal provision of the FTAP[235] should further provide a directive on the implementation of the existing legal provision in order to find a lasting solution concerning the valuation of a cryptocurrency for the taxation purpose.

As seen above the FITP's broad definition on income[236] encompasses incomes earned from cryptocurrency activities, because cryptocurrency is a form of economic benefit obtained from electronic source and paid in the

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[232] UK HM Revenue & Customs (2019), 'Crypto-assets; tax for individuals – Policy Paper, https://www.gov.uk/government/publications/tax-on-cryptoassets/cryptoassets-for-individuals (accessed on 7 July 2021) accessed on July 7 2021

[233] US Internal Revenue Service (2014), Internal Revenue Bulletin: 2014-16, <https://www.irs.gov/irb/2014-16_IRB> (accessed on July 7 2021)

[234] Federal Tax Administration Proclamation, (n 151) Art. 3(1)

[235] Federal Income Tax Proclamation, (n 146) Art. 3(4) "If the fair market value of goods, an asset, service, or benefit cannot be determined under the preceding sub articles of this Article, the fair market value shall be the amount determined by the Authority provided it is consistent with generally accepted principles of valuation."

[236] Ibid, Art. 2(14)

form of virtual currency which is stored in a computer network system. However, in Ethiopia persons who are currently earning income in the form of cryptocurrency are not disclosing their income to the tax authority. Hence, pursuant to FTAP it can be argued that such persons are committing tax evasion crime.[237]Besides, cryptocurrency is made with the point of making exchanges hidden and untraceable; as such this feature of cryptocurrency creates a suitable environment for persons to evade tax by circumventing taxation burdens without being identified by the ministry of revenue.[238]Thus currently ministry of revenue is not collecting tax from cryptocurrency activities.[239] And If any person is engaged in cryptocurrency activity in Ethiopia, he/she is not liable to pay tax. Cryptocurrency related activities means buying and selling cryptocurrencies, exchanging cryptocurrencies for other assets, exchanging cryptocurrencies for goods or services and mining.

Thus, as identified in the case of Silk Road, tax evasion and money laundering are among the regulatory challenges resulted from the lack of regulation of cryptocurrencies. In this regard, the ministry of revenue nor minister of finance did not come forward to provide a clear guideline on taxing incomes earned as a result of cryptocurrency activities. As such, the current legislative and regulatory lacuna may open a door for systematic tax evasion as a result of cryptocurrency activities. At last, internationally recognized general principles of tax are still available to usher notwithstanding the current position of cryptocurrencies under Ethiopian tax laws.[240]

3.6.1 VAT and Cryptocurrency in Ethiopia

Before the examination of Ethiopian tax law in light of cryptocurrency transactions, it is important to assess what the UK VAT rules say about cryptocurrencies. In the UK, exchanging cryptocurrency for legal tender is considered as a financial service and exempted from VAT.[241] Similarly, obtaining a new cryptocurrency token through mining is also exempted from VAT due to mining activity is not considered economic activity for VAT purposes due to the absence of end user customer.[242]

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[237] Federal Tax Administration Proclamation, (n 151) Art. 125 "Whosoever, with the intention to evade tax, conceals his income or fails to file a tax declaration shall be punishable with a fine of birr 100,000 (One Hundred Thousand Birr) to 200,000 (Two Hundred Thousand Birr) and rigorous imprisonment for a term of three to five years."

[238] Dr. Houben R., and Snyers A., 'Cryprocurrencies and Blockchain Legal Context and Implications for financial Crime, Money Laundering and Tax Evasion' (European Parliament, Brussels 2018) 30

[239] Mr. Abebe, (n 230) The interviewee noted the challenge for disclosing incomes as a result of cryptocurrency activities.

[240] Sackheim and Howell, (n 152) 247

[241] Value Added Tax Act 1994, Item 5, Schedule 9, Group 5
https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/politics/research/statorg/uk/party/Tax_Law-Value_Added_Tax_Act_1994.pdf accessed on July 8 2021

[242] HMRC, Cryptoassets Manual, CRYPTO45000-Cryptoassets for businesses: Value Added Tax (VAT) https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto45000 accessed July 8 2021

In Ethiopia, since cryptocurrencies are not categorized as currency it is practically difficult to exactly allocate where the VAT burden lies in cryptocurrency transactions. However, according to value added tax proclamation 285/2002 the rendering of financial services and the supply or import of national or foreign currency is exempted from VAT liability.[243] Additionally, according to the Council of Ministers Value Added Tax Regulation VAT regulation 79/2002 financial services such as transactions concerning money (including the exchange of currency), deposit, savings, and current accounts, payments, transfers and debts are exempt from VAT.[244] This may be true for exchanging cryptocurrency for legal tender or exchanging cryptocurrency for other cryptocurrencies. Nevertheless, if cryptocurrency is used as a payment for goods and services VAT is due and the merchant shall collect 15% for the value added from the customer who paid in cryptocurrency. Obviously, there exists a challenge at this point regarding the valuation of a given cryptocurrency. Moreover, the Council of Ministers Value Added Tax Regulation seems to favor cryptocurrency transactions because financial services that are listed under the regulations are exempt, whether rendered by a registered bank or financial institution or by any other person.[245] In nutshell, the Ethiopian VAT rules are silent regarding taxation of virtual currencies. Hence, meaningful legal reform is needed to clearly classify what types of cryptocurrency activity are exempted from VAT and what types of cryptocurrency activities are subjected to VAT rules.

3.7 The Regulation of Cryptocurrency Enabled Money laundering and Terrorist Financing in Ethiopia

In the international plane, Financial Action Task Force (FATF), an international institution, is in charge of issuing international noncompulsory Anti Money Laundering Laws (AML). FATF was established with the objective of setting standard and advance effectual enforcement of legal and regulatory measures for battling money laundering and terrorist financing activities.[246] Thus according to the annual report of FATF, criminals are using cryptocurrencies to launder illicit proceeds and to finance terrorists.[247]

[243] Value Added Tax Proclamation No. 285/2002, FDRE Federal Negarit Gazzeta 8th year No.33, Art. 8(2) (b)(c)

[244] Council of Ministers Value Added Tax Regulation No. 79/2002, FDRE Federal Negarit Gazzeta 9th year No.19, Art. 20 (2) (b)

[245] Ibid, Art. 20 (5)

[246] Gabrielle Chasin Velkes, 'International Anti Money Laundering Regulation of Virtual Currencies and Assets' (2020) vol.52 International Law and Politics. 878

[247] FATF, 'Financial Action Task Force - Annual Report 2019-2020' (FATF/OECD, Paris 2020) 10

The activity of converting illicitly obtained proceeds to appear as legally earned money is called money laundering.[248] And to combat such illegal activity there exists AML.[249] However, the basic character of cryptocurrencies, anonymity of users is an existing legal issue that challenges the effectiveness of AML.[250]

To examine the practice of US, cryptocurrency exchanges are subjected to AML pursuant to the definition given to cryptocurrency exchanges by the commodity futures trading commission and financial crimes enforcement network.[251] These organs recognized cryptocurrency exchanges as money service businesses, thereby subjecting cryptocurrency exchanges to anti money laundering regulations. [252]

The other best example in this regard is the practice in Canada towards the regulation of cryptocurrencies. Recently in June 1 2020 the Canadian AML Proceeds of Crime (Money Laundering and Terrorist Financing Act)[253] was amended in order add regulatory obligations for businesses dealing in virtual currencies.[254] These obligations include the requirement to be registered as money services business for foreign and domestic persons engaged in cryptocurrency exchange business.[255] Thus, those involved in cryptocurrency dealings will be required to report to the Analysis Centre of Canada any transactions that they suspect may be related to money laundering or terrorist financing activity.[256]

In Ethiopia financial institutions[257] and Financial Intelligence Center (FIC)[258] play a major role in the regulation of money laundering and terrorist financing activities. In its attempt towards the regulation of money laundering

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[248] Sackheim and Howell, (n 152) 247

[249] Danton Bryans, 'Bitcoin and Money Laundering: Mining for an Effective Solution' (2014) vol. 89 Indiana law journal 442

[250] Cipher Trace, 'Cryptocurrency Crime and Anti-Money Laundering Report' (2021) 47

[251] Pymnts, 'Deep Drive: Why AML/KYC Regulations Left Cryptocurrency Exchanges With A difficult Choice' (PYMNTS 19 February 2021) <https://www.pymnts.com/aml/2021/aml-kyc-crypto-exchanges-choice/> accessed 16 April 2021; Girasa, (n 4) 84

[252] Ibid

[253] Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 Part 1 Application, (iv) <https://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-1.html#h-398214> accessed July 7 2021

[254] Alix D Chatillon and Ramandeep Grewal, 'Canadian AML Amendments to Virtual Currency Transaction Reporting Take Effect' mondaq, (08 June 2021) <https://www.mondaq.com/canada/money-laundering/1077016/canadian-aml-amendments-to-virtual-currency-transaction-reporting-take-effect> accessed on July 07 2021

[255] Ibid

[256] Ibid

[257] Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, (n 163) Art. 2(30) According to the proclamation Financial Institution means "the national bank with respect to financial institutions and, with respect to each designated non-financial business or profession, a government organ empowered by law to regulate such business or profession"

[258] Ibid, Art. 2(21); Financial Intelligence Center Establishment Council of Minister Regulation, No.171 /2009, FDRE Federal Negarit Gazzeta, 16th year No.5,

and terrorist financing activities, FIC has the power to conduct research relating to the source, mechanisms of commission, type, nature and danger of money laundering and financing terrorism and indicate solutions to the relevant bodies.[259]Consequently, being well aware of cryptocurrencies FIC is currently conducting an independent research in order to identify the risks associated with the use of cryptocurrencies.[260]

However, the PPSMLFT by excluding actors involved in the cryptocurrency market only obliges financial institutions and designated nonfinancial businesses or professions to report to the FIC any suspicious transactions.[261]Nevertheless, because cryptocurrency transaction is conducted without the involvement of financial institutions or designated nonfinancial businesses or professions, FIC has never received any report from actors of cryptocurrency.[262]In short actors of cryptocurrency particularly cryptocurrency exchangers and cryptocurrency wallet providers are out of the ambit of PPSMLFT. Therefore, the incapability of FIC in accessing data in relation to cryptocurrency transactions could be a major hindrance towards the effective regulation of cryptocurrency related money laundering and terrorist financing activities in Ethiopia.[263]

The other challenge is related to the investigation of money laundering and financing of terrorism crimes in connection with cryptocurrency. Pursuant to the PPSMLFT in order to obtain evidences the courts may authorize federal police[264] to investigate alleged money laundering or terrorist financing crime.[265] Nevertheless, in order to track the activities of money launders or terrorist financers in the context of cryptocurrency activities and held them criminally liable, federal police primarily needs to link the identity of cryptocurrency users with the cryptocurrency address. Hence, given the anonymity of cryptocurrency users, identifying their IP address is a challenging task for law enforcement agents.[266]The interviewee added that, cryptocurrency transactions are conducted by the use of a cryptocurrency wallet which is regulated neither by NBE nor by FIC. Consequently, applying the provisions of PPSMLFT to the regulation of cryptocurrencies in relation to money laundering and terrorist financing activities is inapplicable.

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[259] Ibid, Art 13(3)

[260] Mr. Yebelu Alemayehu, Director of Financial Transaction Examination and Analysis Directorate at FIC. Interview held on 18May, 2021, at 3:10 P.M

[261] Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, (n 163) Art. 17 & 18

[262]Mr. Alemayehu, (n 260)

[263] Ibid

[264] Ethiopian Federal Police Commission Establishment Proclamation, No. 720/2011, FDRE Federal Negarit Gazzeta, 18th year No.2, Art. 6(5)(a)(b)

[265] Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, (n 163), Art. 25 (1)

[266]Mr. Alemayehu, (n 260)

Additionally, in case of conviction for money laundering or financing of terrorism the court may order the confiscation of properties constituting the proceeds of crime.[267] But how would the court and law enforcement organs execute the confiscation order on the cryptocurrencies involved in a crime? This is a challenging task because, cryptocurrencies are very strenuous for law enforcement organs, and anonymity of users is still an existing legal issue that may hinder the effectiveness of actually confiscating an intangible virtual item.[268]Therefore, given the lack of appropriate legislative and regulatory body to address problems of cryptocurrencies, the effectiveness of law enforcement organs in obtaining cryptocurrencies as evidence or executing confiscation order on cryptocurrencies is impracticable in Ethiopia.

On the positive side, FIC provided training concerning cryptocurrencies for Addis Ababa Revenue Authority, and for National Intelligence and Security Service (NISS) to create awareness about cryptocurrencies. Moreover, FIC is planning to regulate cryptocurrencies in relation to money laundering and terrorist financing activities, that's why FIC is chairing a technical committee constituting NBE, NISS, INSA, Federal Police and Ministry of Finance. The committee is formed to conduct a study about cryptocurrency activities in Ethiopia and come up with a report that may be used as an input for further legislative and regulatory attempts toward the regulation of cryptocurrencies in Ethiopia.[269]

Consequently, albeit the positive effort by the FIC towards the regulation of cryptocurrencies, as illustrated above still there exists a legislative and regulatory lacuna in the area of regulating cryptocurrency activities in Ethiopia. Thus, the practice viewed in the above counties could be a lesson for Ethiopia towards the effort in amending PPSMLFT to specifically include cryptocurrency related money laundering and terrorist financing activities.

3.8 Conclusion

In spite of the fact that in Ethiopia the awareness towards cryptocurrencies and the number of users and traders are increasing, the relevant laws of Ethiopia such as, the TCCPP, laws in the banking industry, the FITP, and PPSMLFT does not embody appropriate legal provisions to regulate cryptocurrency related activities in Ethiopia. Thus lack of adequate legal provisions disabled the creation of appropriate regulatory organs to address legal issues of cryptocurrencies in Ethiopia. However, there are attempts underway by FIC towards the effective regulation of cryptocurrencies. To summarize, in Ethiopia appropriate legislative and regulatory responses are required in order to effectively regulate activities of cryptocurrencies. Ethiopia could thus adopt the practice of exemplary countries depicted above and engulf cryptocurrency into appropriate regulatory laws.

[267]Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, (n 163), Art. 35

[268] Bryans, (n 249) 447

[269]Mr. Alemayehu, (n 260)

CHAPTER FOUR

Conclusion & Recommendation

4.1 Conclusion

Cryptocurrency is a virtual currency evolved on a blockchain altar that functions on a peer-to-peer foundation, enabling a beneficiary to receive encrypted payments directly from sender. Cryptocurrency transactions disregard intermediaries such as banks and financial institutions from the spiral. Thus, this feature of cryptocurrencies has brought regulation challenges.

Since cryptocurrency was introduced recently Ethiopian legal instruments examined in this study such as TCCPP, Electronic Transaction Proclamation No. 1205/2020, FITP, FTAP, PPSMLFT and various NBE directives have not attempted to address cryptocurrency related activities in Ethiopia.

Even though, TCCPP and Electronic Transaction Proclamation outlined the obligation of online suppliers in case of damage suffered by online consumers, those who stained damage due to cryptocurrency related activities could not hold accountable the online supplier due to the nature of anonymity attributed to users of cryptocurrencies. Therefore, TCCPP is not applicable in the protection of consumers in case they suffer damage as a result of involvement in cryptocurrency related activities. Thus, TCCPP and Electronic Transaction Proclamation don't have adequately sufficient legal provisions for the regulation of cryptocurrency consumer's legal issues.

Concerning bank client relationship in light of cryptocurrency practices, depositing money in the form of cryptocurrency is not subjected to financial regulations in Ethiopia, thus cryptocurrency users are not legally protected as bank depositors, therefore as a result of the absence of bank client relationship, there is no contractual obligation that lives between the crypto wallet provider and those who deposit their cryptocurrency in the wallet. This means in case the cryptocurrency is lost holders have no legal remedy unlike bank depositors that are protected through the mechanism of receivership.

Additionally, in connection with taxation issues of cryptocurrencies, the definition provided by the FITP article 2(14) seems to encompass cryptocurrencies. However, the narrow definition provided in the FITP for business income and taxable asset excluded the applicability of income tax proclamation on incomes from cryptocurrency related activities. Thus, presently ministry of revenue is not collecting tax from incomes generated through cryptocurrency activities. Therefore, those who earn income from cryptocurrency activities in Ethiopia are evading their income from tax.

Lastly, concerning money laundering and financing of terrorism crimes in Ethiopia, PPSMLFT excluded actors of cryptocurrency and only recognized financial institutions and designated nonfinancial businesses or

professions in the fight against money laundering and terrorist financing crimes in Ethiopia. The PPSMLFT disregarded the existence of cryptocurrencies which are currently a vital tool in money laundering and terrorist financing activities. Only recognized the role of financial institutions and designated nonfinancial businesses or profession to report to the FIC any suspicious transactions. However, since cryptocurrency is not legal tender in Ethiopia and cryptocurrency transaction is conducted without the involvement of financial institutions, FIC is not getting any report from actors of cryptocurrency regarding cryptocurrency exchanges and other similar cryptocurrency activities. In short the law does not oblige cryptocurrency exchangers or wallet providers to report to FIC. Thus the incapability of FIC in accessing data in relation to cryptocurrencies is a major hindrance towards the effective regulation of cryptocurrency related money laundering and terrorist financing activities in Ethiopia. Plus, the thesis has identified challenges on the investigation and execution of money laundering and financing of terrorism crimes in connection with cryptocurrency. Therefore, the PPSMLFT is inapplicable to regulate money laundering and terrorist financing activities facilitated through cryptocurrencies. Thus, given the nature of anonymity associated with cryptocurrencies and the lack of legislative and regulatory organ in Ethiopia to regulate such issue, cryptocurrency could be used as money laundering mechanism and utilized to fund terrorist groups in Ethiopia and across the globe.

In the nutshell, despite the ever increasing activities related to cryptocurrencies in Ethiopia, still the relevant laws of the country are ignorant of the practice. Consequently, this study identified that cryptocurrency is not recognized as legal tender in Ethiopia; Birr is the only legal tender in the country. Cryptocurrency actors such as creators, miners, cryptocurrency users, wallet providers and cryptocurrency exchangers are not given legal recognition by relevant Ethiopian laws. In addition, among other powers and functions, the regulation of cryptographic products and their transaction in Ethiopia is left for INSA. The proclamation bestowed the power to regulate cryptocurrency transactions, the power to set necessary criteria and the power to develop operating procedures and implement cryptography infrastructure to INSA. However, still now INSA has not enacted any detailed law to practically regulate cryptocurrency transactions in Ethiopia.

4.2 Recommendation

By now it is clear that cryptocurrencies in Ethiopia are operating in the grey area of the law. Therefore, holistic and driven law and regulatory institution should be designated to bring up to date with manipulations of cryptocurrency activities. Particularly, Ethiopia should take into consideration the following measures

- With the increase of cryptocurrency usage in Ethiopia, it is important that the TCCPP crystal clearly address cryptocurrency customer protection issues. In particularly article 20(3) of the TCCPP should be amended to encompass the user anonymity and irrevocability nature of cryptocurrencies.

- In order to tax incomes of cryptocurrency exchanges, the definition of "taxable asset" in article 59 of FITP should be amended as …disposal of immovable asset, a share, bond or cryptocurrency (referred to as a "taxable asset") shall be liable to pay income tax. This will enable cryptocurrency to be treated equally as an asset for taxation purpose.
- To regulate incomes in relation to cryptocurrencies, the ministry of finance pursuant to article 99(2) of the FITP should introduce a directive on taxing profits gained through cryptocurrency activities.
- To subject cryptocurrency for money laundering and terrorist financing regulation the definition of "currency" in article 2(25) of the PPSMLFT should be amended as …banknotes and coins of Ethiopia or any other country that are in circulation as a medium of exchange or cryptocurrencies.
- The definition of "**financial institutions**" in article 2(9) and "**designated nonfinancial businesses and professions**" in article 2(10) of the PPSMLFT should amended to encompass cryptocurrency actors.
- In order to empower FIC, receive suspicious activities from cryptocurrency exchangers article 17 & 18 of PPSMLFT should be amended so as to obliged cryptocurrency exchangers report suspicious transaction to FIC.
- In order to specifically regulate activities related to cryptocurrencies in Ethiopia, pursuant to article 6(2) of the INSA Re-establishment Proclamation, INSA should prepare a draft law concerning the regulation of cryptocurrency activities and propose the draft to the parliament for ratification. This legal framework will empower INSA to oversight and regulate cryptocurrency activities in Ethiopia.

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