



**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**

**CUSTOMARY LAWS IN
ETHIOPIA: A NEED FOR
BETTER RECOGNITION?**

A WOMEN'S RIGHTS PERSPECTIVE

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PROGRAMME
DANISH INSTITUTE FOR HUMAN
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WORKING PAPER BY
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of compliance with human rights standards concerning participation and accountability, fairness of procedures (including the protection of the vulnerable) and substantive outcomes.

During his stay at DIHR, Ayalew Getachew Assefa’s research work was supervised by Senior Legal Adviser Lone Lindholt.

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PART I

RESEARCH PROPOSAL, THEORETICAL AND LEGAL DISCUSSIONS

1 THE RESEARCH PROPOSAL

1.1 LEGAL PLURALISM IN ETHIOPIA: A HISTORICAL PERSPECTIVE

Ethiopia is one of the oldest states in the world.¹ It is a diverse country with more than 80 nations, nationalities and peoples. There are also numerous religious groups with Christian, Islamic, Judaic and Animist roots. Christianity and Islam were introduced into Ethiopia during 300 A.D and 700 A.D. respectively. As a nation of diverse languages, religions, and cultures, the country has its own traditional methods of resolving family, civil, and criminal conflicts.²

Regarding the source of the Ethiopian legal system, historically, at least three sources constituted the Ethiopian legal system.³ The first was the **Fitha Negast** (law of kings)- the pre-code source of private law. As Singer noted, it is believed to have been introduced into the country between the 14th century (era of Emperor Zer'a Yaekob, 1434-68) and the first half of the 16th century (reign of Emperor Eyasu, 1682-1706).⁴ Indeed, the **Fitha Negast** represents one of the received foreign laws imported to Ethiopia after it had been translated from Arabic to **Ge'ez**.⁵ It was mainly a

law applicable to Christian highland Ethiopians, hence its application to the Muslims and the many ethnic groups in the rest of the country was marginal. In other words non-Christians and the bulk of the other groups must have relied on customary dispute resolution mechanisms.⁶

The second legal system was the traditional public law as enshrined in the **Kebra Negast** (Glory of the Kings).⁷With the exception of the 20th century and shorter historical periods, Ethiopia existed as a political entity for most of its long history, principally with a monarchy and Orthodox Christianity serving as pillars of the political system. Written in 1320, **Kebra Negast**, defined the core of the Ethiopian ethos, the source of legitimacy of the emperor, links with Solomonic genealogy, and the rules of succession to the throne.⁸ These very elements were reflected in the 1931 and the revised constitution of 1955⁹ both of which were abrogated by the 1974 revolution.

The third source of the law in Ethiopia is represented by the code system introduced

in the 1960s, and subsequent laws issued by succeeding Ethiopian governments. These laws are proclaimed by the State with the principles, procedures and institutions to administer them. There were six codes enacted between 1857 and 1965, and the professed intention was to create a comprehensive set of laws that would serve the 'modern' Ethiopia. The key notion as coined by the drafter, Professor Rene David, was 'modernization of the legal framework'.¹⁰ The codes were mainly of European origin with limited rooting in Ethiopia. Some tolerated customary practices were included (for example, family arbitration and adoption). This massive codification takes away the applications of customary laws. This can clearly be inferred from article 3347 of the 1960 Civil Code that stipulated 'Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided in this code shall be replaced by this code and hereby repealed'.

Despite the position of the civil code, it was known that customary laws remained operative in several parts of the country including central highlands and urban areas where state institutions are assumed to have a strong presence.¹¹ The transplanted laws and institutions were not able to penetrate deep into rural Ethiopia. The formal system failed to reach the heart of those to whom they were intended to apply, and did not respond to the needs of the people and thus lacked legitimacy. The new codes were certainly not based on

the people's opinion on law or on a their understanding of justice.¹²

Thus the formal laws reflect only one aspect of a rather complex reality. In other words, a system of customary laws based on age-old community customs and norms runs alongside the official state laws. In many of the regional states of Ethiopia, customary laws are more influential and affect the life of the people more than the formal legal system. On a day-to-day basis, the society functions relatively well on these norms, which are based on its deeply held values.

One can only understand the Ethiopian legal system in general, and customary laws in particular, if one adopts the conception that 'law is not necessarily limited to formally proclaimed ones, but also includes the norms and customs that derive from the society and are effectively recognized as creating rights and duties in the community'.¹³

1.2 LEGAL PLURALISM AND CUSTOMARY LAWS IN THE CONTEMPORARY ETHIOPIA

In 1995, however, the country enacted its Constitution, which has introduced a federal arrangement based on ethnic and language lines. This structure has created two tiers of governments namely the federal and the regional governments.¹⁴

One of the most significant features of Ethiopia's federalism lies in the way that it

has granted official recognition to customary laws and practices in the process of dispute settlement. Customary laws and institutions play a pivotal role in conflict management and resolution among a significant number of local communities in Ethiopia. It appears to be in recognition of this fact that Article 38 of the Constitution states that groups and individuals can use their customary and traditional laws as far as their usage is consistent with the human rights provisions of the Constitution. Under Article 78, regional governments are given the power to promulgate legislation that establishes rules of procedure for the work of customary laws.

As indicated in the above discussion, although Ethiopia has codified its formal laws, the formal justice system is not the main player in addressing and resolving criminal and anti-social behaviors. Particularly, the criminal justice processes has little impact of the majority of the population, who prefer their own village and tribal processes of dispute resolution.¹⁵

Considering this fact, the 1995 Constitution of the Federal Democratic Republic of Ethiopia (the FDRE Constitution) has addressed the application of customary laws in the country. The position of the FDRE constitution towards the recognition of customary laws is reflected under the following provisions:

- Art.9 (1) - The constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of the state or a public official, which contravenes this constitution, shall be of no effect.
- Art. 34(4) - In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted. Art.34 (5) -This constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws with the consent of the parties to the dispute. Particulars shall be determined by law.
- Art. 78(5) - the House of People's representatives can establish and give official recognition to religious and customary courts.
- Member states of the federation may opt for governance under such customary or religious laws in their respective jurisdiction. Such a choice intensifies the extent of legal pluralism in the country.

The above cited constitutional provisions show that the recognition of customary laws under Ethiopia's constitutional order is confined only to personal status and family matters. The state legal system, therefore, carries on monopolizing the public law areas of criminal law, constitutional law, labor or employment law etc. Besides, given the absence of elaboration and indication, the Constitution simply includes the type of customary laws, which had recognition before its promulgation.¹⁶

Despite the above constitutional protection, there is a danger that customary institutions that reflect societal structures and represent dominant interests may pass judgments that go against the interests of women, children and minorities. Although the Constitution's article 34(4), specifies that disputes relating to personal and family can be adjudicated according to religious or customary laws with the consent of the parties to the dispute, as Meaza points out 'there are various social and economic factors that push women litigants to submit to customary and religious courts. In the rare event that women assert their right to submit their case to secular courts, religious courts may prevent them from exercising this right.¹⁷

1.3 CUSTOMARY LAWS AND WOMEN'S RIGHTS: STATEMENT OF THE PROBLEM

It is unfortunate that Ethiopian women, particularly those living in the rural areas, in most cases are given a lower status in terms of their social engagements. Most customary laws and practices consider women as unfortunate and weak. As the female grows older, she faces unlimited violations from the community, rooted in cultural practices. This can be observed from the customary laws and practices of the various peoples in Ethiopia, which are also the focus of this research.

Most of the customary laws and practices reflect discriminatory practices. Some consider the husband as the head of the family, therefore,

in cases of disputes the family arbitrators, disregarding the voice of the wife, usually listen only to the husband. As it is prevalent among the **Gurage**, women are excluded from attending customary proceedings and the society has traditionally been strongly male-oriented. Women are not allowed to attend traditional assemblies – they cannot even bring their own claims before them. Claims must be raised on their behalf by male relatives.

Most traditions do not consider women as complete human beings. This frequently results in discriminatory decisions that go against their interests. For instance, in cases where women are victims of violence of any kind, they are awarded compensation (usually in the form of cattle), which is half in number relative to that of a male victim. In most instances, as it is the case in Afar Region,¹⁸ for the sake of the family's reputation, the customary laws might compel a girl to marry the man who raped her.

Many of the customary practices result in substantial workloads for the women, early marriage, marriage by abduction, exchange marriage, marriage by payment of blood compensation, misunderstanding of religious canon and poor perception about females' education.

In some customary practices, it is observed that the family of a girl must give their daughter away as a means of compensating the victim's

family. A girl given away in this manner is immediately taken to the victim's family to marry one of the members of that family. Through such practices, the girl is regarded and treated as an object, not a human being.

In order to prevent such violations of women's rights, the formal system has taken certain measures regarding equal treatment and protection of women. Hence, the 1995 FDRE Constitution guarantees women rights that are equal to men.¹⁹ Accordingly, men and women have equal right before the law, when it comes to marriage and founding a family. Similarly, they are entitled equal rights while entering into, during, and at the time of divorce. The spouses are also expected to enter into a marriage contract with full and free consent of their own. The Constitution also provides that men and women have equal rights when it comes to the right to i.e. acquire, administer, control, use and transfer property, including land, and possess the right to equal inheritance of property. The constitution also declares the supremacy of the constitution, and any law or customary practice that contradicts the constitution is declared null and void.

Despite this constitutional protection, many studies reveal that informal justice systems in most communities in Ethiopia are male dominated, and women are largely excluded from the process.²⁰ Besides, there are still customs in place that permit harmful and discriminatory practices, such as female genital

mutilation, polygamy, early marriage, abduction and rape.

This troubled relationship between customary laws and women's rights leaves us with questions, such as: who judges whether a specific customary law violates the constitution or not? How should the interests of cultural diversity, and respect for universal rights (particularly with respect to women's rights), due process and equality, be balanced when it comes to the relationship between state and non-state justice systems?

1.4 THE RESEARCH QUESTION

The research question explored in this paper is whether protection of women's rights requires a better approach to the recognition of customary laws under the Ethiopian legal system?

1.5 GENERAL OBJECTIVE

The research basically aims at:

- Presenting an idea as to how the Ethiopia government can adopt an improved recognition model of customary laws so as to protect women's rights.

1.6 SPECIFIC OBJECTIVES

Specifically, the research aims at:

- Analyzing the development of legal pluralism in Ethiopia
- Examining the position of the current Constitution on issues of customary laws and women's rights

- Appraising and evaluating the customary laws of selected ethnic groups in Ethiopia in the light of national, regional and international human rights instruments.

1.7 RESEARCH METHODOLOGIES

Employing both primary and secondary data, the research is largely qualitative. Accordingly, relevant laws, regulations, general comments, concept papers, books, articles, conference papers, minutes, and policy documents are collected and analyzed. Interviews with relevant informants have also been conducted.

As a case study, the customary laws and applications among selected ethnic groups have been used. This gives an insight into the unique applications of customary laws in the respective societies, and helps to understand the plurality of norms and their implications for women's rights in the present Ethiopia. Multiple methods of data collection, such as observations, interviews, prerecorded documents and research have been employed to this effect. Accordingly, the following customary laws and traditional institutions are selected for the case studies: the case of customary laws and institutions among the **Gurage**; the case of **Gadaa** system among the Oromo; the case of **Wayyuu** and **Siinqee** among the Arsi Oromo; the Case of **Gora** among the Bale Oromo and the case of customary laws among the Guji Oromo

The above ethnic groups and customary systems are selected primarily because they have rich and established indigenous systems that evolved out of their culture and norms. In all of these communities, research confirms the prevalence of various forms of customary dispute resolution mechanisms that are rooted in their socio-cultural settings. Secondly, I have had personal encounters with most of the above-mentioned laws and practices, and have made my own observations regarding their implications for the rights of women.




2 LEGAL PLURALISM AND CUSTOMARY LAWS

Before exploring the historical and legal context of legal pluralism and customary laws in Ethiopia, I will briefly clarify relevant terminologies. This paper hardly aims at offering an ultimate solution to the definitional challenges of legal pluralism and customary laws and their wide-ranging debates. Rather, it presents a working definition of legal pluralism and customary laws, which shapes the subsequent discussion on their interaction with human rights in general, and women's rights in particular.

2.1 LEGAL PLURALISM: THEORETICAL DISCUSSION

Nowadays, for the most part, the state-society relationship is best articulated under the topic of legal pluralism. Although a large volume of literature has concerned it self with the nature and theory of legal pluralism, lack of consensus regarding both contemporary and long-established definitions renders the study of legal pluralism a complex undertaking. Thus, a comprehensible and distinctive definition of legal pluralism is still lacking.

The basic query regarding legal pluralism is how one conceptualizes law in such a way that it expresses common norms in which people can live together while also recognizing diversities. The concept implies the inclusion of different orders, which co-exist with the state law, while at the same time maintaining a level of autonomy.²¹ The mere existence of multiple norms and legal orders in any particular community is a **prima facie** manifestation of legal pluralism. Legal pluralism goes beyond, and concerns itself with the relationship between state law and non-state norms, such as customary laws.

In articulating these complexities of legal pluralism, it is not uncommon to observe the continuing discourse among sociologists, anthropologists and lawyers that reveals different definitions of legal pluralism, and different expressions of attitudes regarding the concept. The diverging discourses tend to reflect the ideological content of the respective disciplines. In this discourse, therefore, one can get lawyers who usually uphold the concept of legal centralism on the one hand and

legal anthropologists and sociologists who conceptualize law beyond 'lawyers law' or 'state law' on the other hand.

A shift in attention from state law to a range of other normative orders has become evident in the writings of academic lawyers, even beyond the boundaries of the anthropology and sociology of law.²² However, mainstream legal professionals continue to uphold what many writers refer to as legal centralism.²³ Legal centralism entails that 'law should be the law of the state, uniform for all persons, exclusive of all other laws, and administered by a single set of state institutions'.²⁴ To adherents of this concept of law, the only law that really exist is the law that is recognized and administered by the state. Furthermore, legal centralists would insist that within any given polity, 'the state is under no obligation to recognize any non-state norms; nor does the latter's existence necessarily provide any insulation from state laws and sanctions'.²⁵

Analysing such theories of law and legal pluralism, one may wonder how this approach works in a society with multiple layers of norms and non-state institutions, be it traditional or religious. The adherents of this classical juristic thought take the position that the only way in which legal pluralism can exist in a given polity is through state recognition of multiple sources, systems or regimes of law.²⁶

Criticising the idea embodied in legal centralism,²⁷ the anthropological and sociological ways of conceptualizing legal pluralism take the position that law is what people consider as law – nothing more and nothing less.²⁸

In this regard, the contribution of Eugene Ehrlich is central to the concept of legal pluralism. This Austrian sociologist developed the theory of 'living law' in a reaction to the ideology of an exclusively state-centred law.²⁹ Considering law as mainly independent from the state, Ehrlich proposes what he calls a 'scientific conception of law', which is concerned with the rules of conduct. Accordingly, he states, 'it is not an essential element of the concept of law that it be created by the state, nor that it constitute the basis for the decisions of the courts or other tribunals, nor that it be the basis of a legal compulsion consequent upon such a decision'.³⁰

Ehrlich argued that there is a living law independent of legal propositions and that this living law is a proper study of the science of law. Following Ehrlich's concept of living law, many contemporary writers on legal pluralism choose the concept of 'living law' as a working term to imply that they are adherents of non-state laws.³¹

Georges Gurvitch's³² theory also deserves a particular mention, since it develops an unquestionably pluralistic approach to law.

He identifies three main types of law, which are differently structured in every society: state-law, which monopolises legal activities, inter-individual or inter-group law, which brings together exchanging individuals or groups, and social law, which brings together individuals so as to constitute a collective entity. The latter is clearly non-statist, since it corresponds to the multiplicity of legal systems which social law generates.³³

In a similar vein, Vanderlinden Jacques³⁴ asserts that legal pluralism is the existence of various legal mechanisms within a particular society, that apply to identical situations.

Woodman³⁵ divides legal pluralism into two general categories. His typology holds direct relevance for this discussion. The first type of legal pluralism that he describes consists of circumstances with two segments of norms within the law of a state (legal pluralism in the weak sense). This is termed **state law pluralism**. This type of legal pluralism denotes the existence of two or more laws under the recognition of the state. The second type of legal pluralism relates to a situation with two segments of fundamental laws, the laws of the state, and normative orders not directly connected with the state (legal pluralism in the strong sense). This kind of legal pluralism is called **deep legal pluralism**. In legal pluralism of this kind, the state recognizes and authorizes the existence of other normative orders than those within its own domain.

Nonetheless, there is still a lack of unanimity among scholars as to which type of legal pluralism is most versatile. For example, J. Griffiths³⁶ claims that legal pluralism consists only of the second type, namely deep legal pluralism. Others like Star and Collier³⁷ reject the term legal pluralism based on the conviction that the term does not address power equality among various legal systems. According to these scholars, the centre of analysis should be the element of power in different legal orders.

In another, but related perspective, legal pluralism presupposes the existence of choice within the application of different legal orders. While Beckmann³⁸ illustrates this notion, he assumes that the national law provides recognition of the existence of various jurisdictions for a particular case. Thus, it suggests the existence of several courts, and individuals endowed with the rights to choose the courts they wish should resolve their cases. This legal setting is known as 'forum shopping'. The term 'forum' symbolizes the decision-making institutions, or any social field in which disagreeing parties resolve their problems. Similarly, freedom of choice, the trust that one draws from each legal order, and the interaction of each legal system can be recapped under the discourse of legal pluralism, according to Beckmann.³⁹

Despite the different approaches adopted in the above definitions, a critical point that

does emerge is the fact that legal pluralism is a practical reality in which many societies are currently over-involved. And, this in turn, seems to provide a new venture of legitimacy for the state by making the legal systems all encompassing and participatory.

Below, I therefore employ the definitions presented by Franz von Benda-Beckmann and John Griffiths, since I find them conceptually useful and directly related to the approaches of this paper. In its widest context, the term 'legal pluralism' denotes the existence of distinct normative systems that exist concurrently within the same social space.⁴⁰ As Beckmann describes, legal pluralism refers to the situation where a legal system permits a variety, or a multiplicity of substantive rules, from many sources, in one social space.⁴¹ It denotes a situation in which two or more legal systems coexist in the same social field, by discharging their responsibility as maintained by their jurisdictions.⁴² Among this plurality of norms in a given polity is customary law, which, I briefly discuss in the next section.

2.2 CUSTOMARY LAW: THEORETICAL DISCUSSION

The basic question in this paper – how do we recognize customary law under the formal legal system in Ethiopia, without compromising women's rights – can hardly be explained without first addressing a series of prior questions about the meaning and nature of the concept of customary law: What do we mean

when we speak of the concept of 'customary' law? How is it defined, and what is it defined against?

As is the case with the concept of legal pluralism, there are problematic definitional issues attached to customary law as well. Above all, the very concept of customary law is, by its nature, retrospective and backward looking. Ignoring the evolving nature of customary law, it forces us into a process of describing what traditional law has been, rather than allowing us to focus on what it might become. This renders the examination of the place of customary law in the dominant legal system very challenging, and makes the project of recognizing customary laws flawed at a fundamental level.⁴³ Besides, due to the existence of several contradictory as well as overlapping sociological and anthropological definitions of custom and customary laws, the meaning attached to the concept 'customary law' varies greatly.⁴⁴

Customary law has been given different names by different scholars. Some scholars have referred to customary law as folk law, people's law, unofficial law, indigenous law or primitive law, often implying its inferior position as compared with the modern Western state-originated laws.⁴⁵ This adds separate challenges to the task of distinctively defining the term.

The term has been used in different contexts to represent different meanings. As Muller

correctly notes, the term customary law may be used to characterize prevailing law in pre-colonial societies. Or it may denote that whatever people (the majority in a certain community) do, is customary law. It might also refer to a particular type of law developed in the colonial era.⁴⁶

Professor A. N. Allot, a recognized authority in the field of African Law, defines Customary Law as follows:⁴⁷

” It is unwritten and the rules can be traced to the people and have been handed down to succeeding generations. The law consists of different bodies of rules that may be invoked in different contexts. These rules are based on conceptions of morality and depend for their effectiveness on the approval and consent of the people. The law has evolved in response to the pressures put upon the people by their environment. It reflects their way of life and their adjustment to life in the particular society and environment.

Professor M. Guckman, in his extensive work on the subject of ideas and procedures in African Customary Law, defines Customary Law as the unwritten African traditional law which consists of a variety of different types of principles, norms and rules – some of them statewide and general principles of morality and public

policy – that constitute an apparently enduring ideological framework for justice.⁴⁸

Neville Rubin and Eugene Cotran, in their introduction to their work, ‘Reading in Africa’, discuss the problem of determining the precise point at which custom ends and law begins. They view Customary Law as:⁴⁹

” Continuum which begins with the observable phenomenon of human society to establish for itself ordered patterns of conduct and ends with the pragmatist lawyer’s view that law in any society is what the Courts will enforce. Therefore the term Customary Law will be used here to refer only to those rules that are enforced by the recognised courts of law in traditional or modern set up. The Customary Law should be distinguished from the term custom because it is used to designate rules of conduct which are not enforceable within the judicial system but are strictly observed by the community.

The Law Commission of New Zealand notes that the phrase ‘customary law’ is used in a variety of ways. At the most basic level, the term is used in a legalistic and narrow manner to refer to particular customs and laws derived from colonial masters, and indigenous laws and customs that have met particular legal tests, and thus are enforceable in the courts.⁵⁰ This colonial way of approaching customary

law, in my opinion, is flawed and denigrating. Despite the central place of custom, both in pre-colonial and post-colonial society, this definition portrays customary law as something that is somehow lesser than - or of a lower degree - than 'state law'.

Some states define customary law against some criteria of validity. Others, like South Africa define customary law against its sources. For instance, the South African Recognition of Customary Marriage Act defines customary law as 'the customs and usages traditionally observed among the indigenous African peoples of South Africa, which form part of the culture of those peoples'.⁵¹ This definition appreciates the existence of customary law in the indigenous law of the various ethnic groups of South Africa, even during the pre-colonial era, and its sources are rooted in the practices and customs of the people.⁵² This entails that the meaning of custom and customary law should be extracted from the respective society. If a state is entitled to define what law is in its own spheres, then logic requires granting the owners of customary practices the power to define what customary is, and what it is not. Custom is to society, what law is to the state.⁵³

Customary law is recognized, not because it is backed by the power of some strong individual or institution, but because each individual recognizes the benefits of behaving in accordance with other individuals' expectations, given that others also behave as he or she

expects. It is based on this nature of customary law, that Fuller describes customary law as the 'language of interaction'.⁵⁴ In contrast, if a government coercively imposes law from above, 'then law will require much more force to maintain social order than is required when law develops from the bottom through mutual recognition and acceptance'.⁵⁵

For the purpose of this paper, I therefore define customary law as a norm of action, or rules of conduct, which are generally accepted and practiced by a group of people. It is a rule or law set by the people themselves, by which they voluntarily accept to govern their actions. A custom can be partial, specific with regard to a certain subject matter or locality, or a general custom applicable throughout the country.




3 CUSTOMARY LAWS AND WOMEN'S RIGHTS: THE LEGAL FRAMEWORK

A worldwide endeavour has been made to address the plight of women in many respects. Several basic instruments are created to govern a wide range of women's rights. These instruments range from the United Nations Charter's (the UN Charter) endorsement of the equal rights of men and women, to the Universal Declaration of Human Rights (UDHR), and subsequent international treaties and declarations on human rights. Making the promotion and protection of women's rights their central concern, many conferences have also been held and declarations and program of actions have been formulated. These include, the World Conference on Human Rights and Program of Action (the Vienna Declaration of 1993), the Cairo Conference on Population and Development (the Cairo Declaration of 1994), the Fourth World Conference on Women (the Beijing Declaration of 1995). In its promotional works, the UN has also proclaimed the period 1976-1985 to be the United Nations Decade for Women.

In the past recent decades states, both at the national and the international level, have also shown much interest in customary laws and in

understanding how they interact with issues of women's human rights. This interest affects the development of both national and international laws. In addition, a number of private and public international organizations examine issues involving the applications of customary laws and women's human rights.

This section of the paper presents the way in which the question of customary laws and women's rights has been addressed in national (Ethiopian) and international instruments. As my case studies focus on the application of customary laws in relation to marital relationships and the representation of women in traditional institutions, the discussion answers the questions on how these issues are depicted in national and international legal instruments. Though references might be made to other instruments, the section mainly focuses on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) from the UN documents, and the Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women (the African Charter Protocol) from regional documents. However, before I directly proceed

to addressing these issues of women's rights, it is appropriate to demonstrate the position of customary laws under international and regional instruments. In this regard, the discussion mostly centres on the African Charter on Human and Peoples' Rights (The African Charter) as it stresses the importance of the 'historical tradition and the values of African civilization'.⁵⁶

3.1 CUSTOMARY LAWS UNDER INTERNATIONAL AND REGIONAL INSTRUMENTS

Article 27 of the UDHR gives everyone the right to participate freely in the cultural life of the community. The International Covenant on Economic, Social and Cultural Rights (ICESCR) article 15 compels states to recognize the rights of everyone to take part in cultural life. The UN Charter and the ICCPR, directly or indirectly, have also shown that customary law is part of a people's culture.

The emergence of a 'right to culture' since the 1950s provides additional support for the argument that states are bound by an obligation to foster customary laws. Many conferences held under the auspices of the United Nations Economic, Scientific, and Cultural Organization (UNESCO) have emphasized the central role of governments in promoting cultural development.⁵⁷ Participants at a 1965 UNESCO seminar on multinational society urged the 'recognition of the importance of maintaining permissible legal traditions' in many fields of law. The seminar's participants

unanimously agreed that states should not impose limitations on the customs of traditional groups. The 1970 Intergovernmental Conference on Institutional, Administrative and Financial Aspects of Cultural Policies⁵⁸ stressed that all governments are responsible for the adequate financing and appropriate planning of cultural institutions and programs. In 1972, the Intergovernmental Conference on Cultural Policies in Europe suggested that governments have a duty to promote the right to culture. Two years later, the UNESCO Seminar on the Promotion and Protection of Human Rights of National, Ethnic and Other Minorities encouraged public financing to support local customs.⁵⁹ These pronouncements suggest that international law guarantees a right to culture, and thus binds states.

Most importantly, the **African Charter** provides every individual with the right to freely take part in the cultural life of his/her community, and dictates that the promotion and protection of morals and traditional values recognized by the community shall be the duty of the state.⁶⁰ The Charter also obliges individual to preserve and strengthen positive African cultural values in his/her relations with other members of the society. This is to be done in the spirit of tolerance, inclusiveness, dialogue and consultation, and, should contribute to the production of the moral wellbeing of society. It obliges individuals to contribute to the best of his/her abilities, at all times and at all levels, to the promotion and achievement of African unity. Article 22 of the Charter also provides

all people with the right to their cultural development, with due regard to their freedom and identity and their equal enjoyment of the common heritage of humanity.

3.2 WOMEN'S PARTICIPATION IN CUSTOMARY INSTITUTIONS UNDER INTERNATIONAL AND REGIONAL INSTRUMENTS

With an increasing recognition among the international community, of women's historic exclusion from structures of power, a global commitment has been made to redress gender imbalance in politics, social, and cultural life. Women's enhanced participation in governance structures, both formal and informal, is viewed as the key to redressing gender inequality in societies. With a view to enhancing the participation of women in affairs of 'public life', many international and regional human rights documents have enshrined provisions that guarantee women's rights to this effect. Among these instruments, this discussion focuses on the provisions in CEDAW and in the Protocol to the African Charter.

CEDAW, adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women, and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as '...any distinction, exclusion or

restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'. CEDAW provides the basis for realizing equality between women and men, by ensuring women's equal access to, and equal opportunities in, political and public life, including the right to vote and to stand for election, as well as access to education, health and employment.

Article 7 of CEDAW obliges State parties to take all appropriate measures to eliminate discrimination against women in political and public life, and to ensure that they enjoy equality with men in political and public life. Since the adoption of the Convention, the phrase 'public life' has been subject to discussion. Some tend to disregard customary institutions in the definition, by relating public life to systems regulated only under the formal government structure. However, the CEDAW Committee extends the obligation specified in article 7 to all areas of public and political life as is not limited to those areas specified in subparagraphs (a), (b) and (c).⁶¹ The political and public life of a country is a broad concept and it includes many aspects of civil society, including public boards and local councils, and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations,

community-based organizations and other organizations concerned with public and political life.⁶² The preamble of the Convention has also stated deprivation of the equal participation of women in cultural life as a manifestation of discrimination against women, which in turn makes the full development of the potentialities of women in the service of their communities and humanity very difficult.⁶³

Moreover, the Protocol to the African Charter also imposes obligations on state parties to promote participative governance, both state and non-state, and to further the equal participation of women in issues concerning public affairs through enabling national legislation and otherwise.

3.3 WOMEN'S RIGHTS IN MARITAL RELATIONSHIPS UNDER INTERNATIONAL AND REGIONAL INSTRUMENTS

The CEDAW takes the most comprehensive approach to women's equality provisions within family and marriage. CEDAW Article 16(1) stipulates that: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations..." This Article lists eight sub-articles covering women's rights, on an equal basis with men, in all aspects of marriage. These include the right to freely choose a spouse, rights during marriage and at its dissolution, rights and responsibilities for children and guardianship, personal rights including choice of family name and profession,

and rights with respect to property. The notion of marriage as a voluntary union is particularly well established under international human rights law. Several United Nations instruments recognize the validity of a marriage on the premises that it is a union between parties that are of a sufficiently mature age to enter into marriage, and are in a position to choose to enter into the marriage freely and voluntarily without coercion.⁶⁴

Article 16(2) of CEDAW further states that underage marriage is null and void: 'the betrothal and the marriage of a child shall have no legal effect and all necessary actions, including legislation, shall be taken to specify a minimum age for marriage, and to make the registration of marriages compulsory'.⁶⁵

Similarly, the Protocol to the African Charter,⁶⁶ has also prescribed that state parties are obliged to 'combat all forms of discrimination against women through appropriate legislative, institutional and other measures'. Specifically, articles 6 and 7 of the Protocol provide provisions regarding women's rights during marital relationships. The minimum age of marriage for women is fixed at 18 years, to prevent the prevalent practice of early marriage in most African communities. Furthermore, during marriage, a woman has the right to acquire her own property and to administer and manage it freely. This, as Ebeku rightly points out, reverses the situation under most African customs where women, regarded as perpetual minors and as having no separate identity from

their husbands, could not acquire or hold any property in their own name.⁶⁷

Furthermore, according to most customary laws in Africa, a woman becomes part of the estate of her deceased husband upon his death to be inherited by his bothers.⁶⁸ In other words, a widow has no choice but to marry another member of her deceased husband's family appointed to her by the family. Responding to the violation of the rights of women embodied in such practice, Article 20 (C) of the Women's Protocol provides that a widow shall have the right to remarry any person of her choice. Moreover, under Article 21(1) of the Women's Protocol, a widow has the right to an equitable share in the inheritance of her husband's property. It is also remarkable that the Protocol revises the custom of several African communities that deny inheritance rights to female children, by providing that women and men have the right to inherit, in equitable shares, their parents' properties.⁶⁹

3.4 THE NATIONAL LEGAL FRAMEWORK: CUSTOMARY LAWS AND WOMEN'S RIGHTS IN ETHIOPIA

As it is indicated in the previous discussions, through its 1995 Constitution, Ethiopia created a devolutionary federal state structure that is devised as a means of holding together the polity. This political system combines federalism, self-determination (up to and including secession) and legal pluralism as solutions to the erstwhile unequal relationships among ethno-national groups in the country.

One aspect of the Ethiopian ethnically based federal system that needs to be looked into (from the viewpoint of customary laws and women's rights) is its official recognition of religious and customary laws and courts in family and personal matters. According to Vanderlinden, Ethiopia is an example of official legal pluralism or pluralism within the state law.⁷⁰ The Federal Constitution gives formal recognition to religious and customary laws and courts to operate side by side with the state legal system in the areas of family and personal matters.

Article 34(5):

” This Constitution shall not preclude the adjudication of disputes relating to the personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.

Article 78(5):

” Pursuant to Sub-Article 5 of Article 34 the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.

These articles imply that, at least in those areas mentioned, the customary system can exist separately from, and in parallel with, the state-sponsored legal-judicial system.

This of course is an official recognition of the social pluralism of the Ethiopian society in those limited areas. The traditional norms and ways of life of the various Ethiopian people have survived the modern state and its legal and administrative institutions, since the latter was superimposed on it, beginning from the turn of the 19th century, and they have continued to exist side by side with it. The penetration of the modern state apparatus and its laws into the traditional societies of the country has indeed been a very slow process, and it has not been wholly achieved. This has been the case despite the official policies of most of the 20th Century Ethiopia (during the regimes of Haile-Selassie I and a Military-socialist Government: 1930-1991) that were targeted at uprooting the traditional social relations and replacing them with a modern state system and laws.⁷¹

It suffices to cite a legal provision in the 1960 Ethiopian Civil Code regarding the position of the government policy:

” Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be replaced by this code and are hereby repealed.

There was an attempt at total replacement of the traditional with the 'modern' in all areas of civil law. This was also the case in criminal matters as evidenced by the enactment of the 1957 Penal Code, which did not leave any room for customary criminal justice administration. In spite of the attempts made by the state to centralize the law and legal institutions, the reality in Ethiopia today is that customary systems and institutions remain very active in most of the various Ethiopian societies.⁷² The current federal legal order of Ethiopia makes some changes in this regard. The Federal Constitution of Ethiopia has thus created a limited space for non-state law.

3.5 WOMEN'S RIGHTS IN ETHIOPIA: THE LEGAL FRAMEWORK

Recognition of customary systems can entail serious risks for individual human rights, notably those of women. The Ethiopian legal system, giving due consideration to this fact, has enacted various laws, both at the federal and regional level, to protect women's interests. The advocacy work and campaign of the Ethiopian Women's Lawyers Association achieved tremendous progress in obtaining the proclamation of the Revised Family Code in 2000 and the Revised Criminal Code in 2004.⁷³ This removed the discrimination between men and women which was evident in the 1960 Civil Code that had differential marriage ages for men and women, designated the husband as the household head with the right to choose common residence and manage common

property, and disallowed divorce until fault was proven. Likewise the previous Penal Code of 1957 criminalized abortion, did not recognize or criminalize domestic violence, or female genital mutilation, and provided an inadequate penalty for rape.

The FDRE Constitution has incorporated both specific and general provisions on the rights of women. It provides for the right to equality, which entitles both men and women to benefit from the catalogue of rights it prescribes. Equal rights of men and women and the principle of non-discrimination are enshrined in the Constitution,⁷⁵ hence there shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status.

Furthermore, The FDRE Constitution recognizes the effects of past discrimination against women and entitles them to affirmative measures, the purpose of which is to pay special attention to women, so as to enable them to compete and participate, on the basis of equality, with men in social and economic life, as well as in public and private institutions. The specific provision is devoted to the rights of women and contains several clauses covering important rights of women, including equal protection by the law, equality in marital affairs, entitlement to affirmative measures, protection from harmful traditional practices, maternity

rights in employment, the right to consultation, property rights, employment rights, and access to family planning information and services.

In addition, under the Constitution men and women have equal rights while entering, during, and at the time of the termination of marriage.⁷⁵ It is also stated that the Constitution is the supreme law of the land, and any law, customary practice or decision of an organ of the state or public officials who contravenes it, shall be of no effect.⁷⁶

Finally, it is also important to note the fact that the Constitution states that international instruments ratified by Ethiopia are considered part and parcel of the law of the land. Ethiopia has ratified a number of the human rights instruments including the ICCPR, the ICESCR, CEDAW, Convention on the Rights of Child (CRC), and the African Charter. As with any legal mechanism, the true measure of the benefit of constitutional protection is whether it translates into real change in women's lives. Though there are challenges to the application of these instruments before both the formal and traditional courts, their ratification should be taken as an opportunity to further women's rights protection in Ethiopia.

PART II

ON THE RELATIONSHIP BETWEEN CUSTOMARY LAWS AND THE FORMAL LEGAL SYSTEM IN ETHIOPIA

4 THE TENSION BETWEEN THE FORMAL STATE SYSTEM AND THE NON-STATE SYSTEM IN ETHIOPIA

As indicated in the above discussion, the 1995 federal Constitution stipulates that disputes relating to personal and family issues can be resolved by application of customary and religious laws, so long as the parties give their consent to that effect.⁷⁷

Article 34(5) of the Federal Constitution takes a permissive stance in relation to both religious and customary laws and courts in the areas of family and personal disputes, as regards consenting disputants. According to this article, the non-state laws and courts have jurisdiction only with respect to family and personal matters. Criminal jurisdictions are unequivocally denied to customary and religious laws and courts.

On the other hand, the article also depicts that jurisdictions of the non-state laws and courts are contingent on the consent of the disputing parties, and cannot take place without the latter. Conversely, we could note, that if the disputants agree to the jurisdictions of religious or customary courts and laws, the rules in the laws of custom or religion would

apply to the consenting disputants regardless of the nature and contents of those laws. In principle, by giving their consent, the disputants demonstrate willingness to absorb any kind of decisions, whether they are repugnant to constitutional rights and ordinary sense of justice, or not.⁷⁸ Of course, one may argue that by virtue of Article 9(1) of the Constitution, decisions or religious and customary laws will have to yield to the Constitution in the event that they contradict with the latter. But since the recognition accorded to customary courts and laws is given by the Constitution itself, a possible counter-argument would again be, that the very act of consent 'purifies' the 'defective' rules in custom and religion.⁷⁹

In spite of the imitative stance taken by the state, the empirical reality regarding traditional or customary laws (including those with some ritual practices) in the country provides for a completely different picture. Although the state tries to gloss over the traditional laws in the country as non-existent in most of the rural areas (especially those further away from the urban centres), the traditional laws and

institutions still display a complete vitality.⁸⁰ Many past and recent studies have confirmed that they exist in full force, and that society uses them to settle disputes in their day-to-day lives.⁸¹ For instance, one can see the applications of customary laws and institutions on homicide and blood feud cases in the Afar and the Somali regions. Studies on Afar and Somali regional states prove that it is indeed the formal law and the courts, not the non-state laws, which are marginalized.⁸² Given this reality, it is hardly possible to limit, as done by the constitution, the prevalent role of customary laws by the state.

The other challenge regarding the relationship between the non-state system and the formal system in Ethiopia today, Getachew states, is the determination as to which body should be the highest judicial body that could give a conclusive end to claims that have been submitted to the customary and religious courts. For example, should the final decision of the highest religious or customary court be subject to review by the ordinary courts, or for that matter by the highest ordinary court?⁸³

According to Getachew Assefa⁸⁴ and Muradu Abdo,⁸⁵ the **Kedija Beshir** case illustrates this situation very well. This case involved a dispute over inheritance of a house among grandchildren of a Muslim family. In 1999, the plaintiffs opened a case before the first instance **Sharia** Court, claiming that they should be given their share, which was then under the

possession of the defendants. The **Sharia** Court received a response from the defendants who asserted that they did not consent to being adjudicated before a religious/**Sharia** court, and secondly that the case was pending before the regular court with jurisdiction. They made it clear in their reply to the Court that as per Article 34(5) of the Federal Constitution, the religious/**Sharia** court would have jurisdiction over the case, only if they consented to being bound, and since they made it unequivocally clear that they did not consent to having their case adjudicated here, the case should be closed for want of jurisdiction. The first instance **Sharia** Court set aside the preliminary objection of the defendants and went on to look at the merits in which it found the applications of the plaintiffs founded, and decided that the property be partitioned among the defendants and the plaintiffs. The court even imprisoned one of the defendants for 15 days (for court contempt) for having said during oral hearings, that the court did not have jurisdiction. The defendants appealed to the High **Sharia** Court and the Cassation Division of the Supreme **Sharia** Court one after the other, both of which affirmed the first instance **Sharia** court's decision.⁸⁶

As per the procedural laws of the country, the defendants submitted an application for review to the cassation division of the Federal Supreme Court of Ethiopia, claiming that the decisions of the courts of **Sharia** committed a grave error of law. However, to the dismay

of the petitioners, Federal Supreme Court's cassation division stated that there was no error of law committed by the courts of **Sharia**, and rendered the case inadmissible. The defendants, through the Ethiopian Women Lawyers' Association—a local women's rights advocacy group—petitioned the Council of Constitutional Inquiry for a review. The CCI admitted the case and decided in 2003 that the first instance **Sharia** Court could pass decision upon a given case only with a clear consent of the parties to the case, and its passing upon this case following clear rejection of its jurisdiction was unconstitutional. It submitted a recommendation to the House of Federation (the Upper House), that the decision of the **Sharia** courts be overturned.

As Getachew states, several interesting points of analysis emerge from this case. One is the possible ill-treatments that may result from the subjection of citizens to religious courts in light of the constitutional human rights principles and the broader international human rights regime to which Ethiopia is a party. Secondly, the judges who sit at the customary/religious courts harbour a lot of sentiments towards their own courts and laws. In this very case, they simply bypassed a very clear constitutional provision, which states that the consent of a disputant is the only way from which a religious court gets its jurisdiction on a case. In defiance, the judge of the first instance **Sharia** court in **Kedija Beshir** went on to incarcerate an objecting party for court contempt.⁸⁷

This, no doubt, is the case in several customary legal regimes within the multitudes of the cultural communities of Ethiopia. Despite this fact, most women still do not choose the formal justice system. Some of the reasons are very common as they are linked with lack of awareness about the formal legal system and its procedures, lack of money to cover expenses, and the fact that the process takes time, which in turn has many implications. However, the major reason is more serious and deep-rooted. Women generally tend to strongly reject the idea of using the formal legal system when resolving their marital conflict. This is mainly due to fear of social repercussion because courts tend to order divorce without attempts to reconcile the parties. Hence, the formal legal system approaches the conflict in a way that divides the married couple. In this sense, the court system seems disconnected from the norms and standards, by which both women and men live and come to respect. In many ways then, the formal legal system does not provide an adequate solution to women's lived experiences, and culturally specific constructions of their identities and dilemmas.⁸⁸

The strenuous relation between the police and the prosecution on the one hand, and the elders on the other is another challenge. As Assefa, Fekade and Gebre point out, any reconciliation made between the disputing parties with the help of the elders is supposed to end all court or police proceedings.

After reconciliation, the elders expect the aggressor's integration into the community. Elders also expect any charges filed before a court or before the police to be closed following the reconciliation. The legal proceedings continue only if the reconciliation fails. But according to one of my informants⁸⁹, there are some instances in which, regardless of the reconciliation concluded between the disputant parties through the help of the elders, the decision is challenged by the police and prosecutors. The reconciliation does not necessarily end the legal process and if it continues, the elders worry that the peace restored will be affected, and that the role of the elders may be undermined in the long run. The local community may then find itself in a situation where the elders are powerless. On the contrary, there are also instances where the reconciliation concluded by the elders has an impact on the legal proceedings. Thus, the elders may insist that the charges before the prosecution and the police be concluded once and for all.⁹⁰

Assefa, Gebre and Fekade, in their detailed study of customary laws in Ethiopia, confirm that there is also a challenge regarding competition over the jurisdiction of disputes, between customary institutions and the formal courts.⁹¹ In some cases, the same matter is dealt with twice. One of the parties may have gone through the formal system, has been found guilty, and served his or her sentence, yet that does not end the story. The same party has

to go through the customary system in order to be integrated into his or her community. The reverse scenario is also possible. This raises the problem of double jeopardy, which is something that has to be avoided. A law or policy should be issued to address the challenge.

In the case of customary courts and laws, the problem is frequently exacerbated by the absence of a clear legal regime that guides the citizens through the dispute settlement processes and specifies the remedies available to them. To begin with, to date there is no law neither at federal nor regional levels that regulates the state of affairs of customary law and courts. As a result, a lot of very important matters remain unregulated. For example, it is not clear what kind of procedural requirements should be observed by the customary courts; who should be a judge in customary courts; and whether they should observe any constitutional limitation as concerns the body of rules that they can legally apply regarding rights of disputants, etc.⁹²

As a result, there is a need to consider broader policy and legislative options for incorporating customary laws into the formal system. In this regard, lessons could be taken from South Africa where a law titled 'National Traditional Leadership and Governance Framework Act,' was enacted in 2004. The law has since been amended several times. The law sets out the roles and responsibilities of different

levels of traditional leaders, institutions and dispute resolution mechanisms, and specifies their relationship with different levels of government. Reform efforts in Ethiopia should attempt to clarify issues of jurisdiction between customary institutions and formal courts.

4.1 WHY BETTER RECOGNITION? IMPLICATIONS FOR WOMEN'S RIGHTS

Access to justice for women is the main reason why we need to have a better institutional recognition of customary laws in Ethiopia.

As can be inferred from the above facts and discussions, the state system in Ethiopia has limited outreach, is geographically or culturally distant, and difficult to access due to procedural and linguistic barriers. Therefore, rural dwellers and marginalized groups may find the local, traditional, or religious dispute resolution bodies important in providing a forum for seeking redress. In particular, these non-state justice systems may offer women an option that is more readily available – in terms of cost, vicinity, language, shared culture and values – than the formal one.

As World Development Report in Gender Equality and Development 2012 noted, the existence of alternative legal systems may be instrumental in enhancing women's access to justice.⁹³ In contexts where the principles of justice reflected in state-law are regarded as distant and foreign, traditional institutions are perceived as better able in responding to people's grievances and administering

justice. For example, in cases of domestic violence, retributive justice solutions such as incarceration may not be the preferred solution for a woman and her community, who would lose a productive member, and whose livelihood might be compromised. Compensatory and reconciliatory justice dispensed by traditional institutions has more appeal, and may also spare women from becoming ostracized within their community.⁹²

A better recognition can also create an opportunity for women to affect the process of change. Women's ability to participate in social practice and in negotiations over the definition and legitimacy of norms and institutions is key to ensuring the quality of those norms and institutions in terms of gender equality - and of development outcomes.⁹⁵ In effect, one can ask how women shape (or fail to shape) the rules of the game or the institutions that affect their daily lives.

CASE STUDIES

5 CUSTOMARY LAWS AND WOMEN'S RIGHTS AMONG THE GURAGE AND THE OROMO IN ETHIOPIA: CASE STUDIES

The Gurage Zone is located in the Southern Nations and Peoples' regional government of Ethiopia. With a population of 1.4 million, the Zone is divided into thirteen **Woredas** (local governments) and two city administrations.⁹⁶ The Zone has generally been classified into three categories: the Western (i.e. **Sabat Bet**), the Northern (i.e. **Kestane**) and the Eastern (the **Selte**-speaking cluster). Each clan has its individual customary institutions, customary laws and councils. Among these, the major ones are the **Gordena Sera** of the **Kestane (Sodo)**, **Debi Gogot** and **Yajoka Qicha** of the **Sebat Bet**.⁹⁷ My study focuses on the ultimate source of traditional authority among the **Sebat Bet Gurage**, i.e. **Yajoka Qicha**.⁹⁸ In exploring this deep rooted and inflectional customary practice, I have mainly drawn on facts from empirical studies developed, among others, by Bahru,⁹⁹ Gebreyesus,¹⁰⁰ Fecadu,¹⁰¹ Yewendwesn¹⁰² and Tigist;¹⁰³ and on my informants in Addis Ababa.¹⁰⁴ I have two main informants both of who are men that belong to the **Gurage** ethnic group living in Addis Ababa.

5.1 CUSTOMARY LAWS AND WOMEN'S RIGHTS AMONG THE GURAGE

5.1.1. CUSTOMARY LAWS IN THE FORMATION OF MARRIAGE AMONG THE GURAGE

As is the case in many African countries, customary laws have a great deal of impact on the lives of the majority of Africans in relation to matters such as marriage. Among the **Gurage** in Ethiopia this is no different. Marriage as a form of mediation and conflict resolution comprises one of the popular cultural practices among the Gurage, executed by elders who are the traditional custodians of cultural integrity.

The **Gurages'** marital relationship is governed by the rules of **Yanqit Sera**. This body of customary laws consist of norms, which establish the requirements and procedures that need to be complied with, during the formation of marriage, stipulate the role of the wife in cases of marital disputes, and the remedies for divorce.

Looking at the process of formation of marriage among the **Sebat Bet Gurage**, it is traditionally

the family who chooses and decides on a husband for a woman. In most cases, it is the father of the boy who looks for a suitable girl for his son during social arrangements, i.e. what one refers to as an arranged marriage. Social, economic, religious, and ethnic factors are taken into account when a father selects wives for his child. Often, even the boy is not aware of his father's plan for the marriage. If he is, he pretends not to be. The girl's position is the same.¹⁰⁵

Researchers, such as Gebreyesus,¹⁰⁶ who define the concept of arranged marriage in very simplistic terms, argue that such practices of arranged marriage no longer exist. For instance, Gebreyesus, while providing extensive and detailed descriptions of the practices and cultural procedures of marriage initiation in the traditional system, refers to these practices as being part of 'the old days'. He vaguely describes the 'new' culture, by noting that 'it is only these days that one chooses his girl or fiancée and gets married on the basis of the joint agreement of the bride and the bridegroom'.¹⁰⁷

Of course, looking narrowly at the case, one may consider the above procedure as an old fashioned way of forming marriage, which does not have any place in the current social set up among the **Sebat Bet Gurage**. However, one cannot leap from this observation to the conclusion that women enter into marriage with full, free and informed consent. In this

session, based on the stories I heard from my informants, I choose to conclude that the **Gurages** continue to practice arranged marriages albeit with some improvements.

Although Gebreyesus's position conveys ideas of 'choice' and mutual agreement, the author defines "arranged marriages" in a somewhat simplistic way, and goes on to define 'new' forms based on choice, in equally reductive ways. In particular, he refrains from paying attention to the involvement of the families in the 'joint agreement.' However, according to my informants this involvement of the family continues to remain mandatory among the **Gurage**, regardless of the type of marriage arrangement. Also significant about Gebereyesus's discussion, is the attention he draws to the fact that it is the man who chooses the woman whom he wants to marry. This points to the women's lack of freedom in choosing, and also confirms my key informants' testimony that, in most cases and until very recently, the woman has not had any say in the marriage arrangement, unlike the man.

As one of my informants pointed out, the marriage agreement involves only the men from both families. Meanwhile, women are excluded from the negotiation and treated as objects of exchange with no choice but to submit to their families' decision. The man, although he is not allowed to attend meetings with the woman's family and is culturally forbidden from making contact with the bride-

t-be before receiving the blessing of her family, has the right to choose the girl he wants to marry. He informs his family that he is ready for marriage and suggests to them his preferred girl. Then his family (i.e. the men in his family) go to the girl's family and makes a request for their daughter's hand in marriage. Her family (i.e. her father, brother (s) and elderly male relatives) then decide whether to accept or reject the marriage proposal.

Tigist, in her extensive research on the **Gurage** customary marital relationship, includes a reflection by one her interviewees, who explains the silencing of women in this arrangement quite clearly:¹⁰⁸

” I was born and grew up in the countryside ...You have to follow your family order in rural area such as ours [Gurage] ... your father gave your hand for a person he liked. You had no option but to accept his choice.

Going through Tigist's research, the majority of the women who participated in the in-depth interview have similar stories to tell about the processes leading to their marriage. Until recently, according to established practices in **Gurage** culture, women were married to the husbands they were given to. In other words, marriage was arranged.

It has been said that this tradition has changed recently, and a woman is given some measure

of freedom to choose whom to marry. However, acceptance and blessing by the girl's family is still mandatory. Since the extended family takes part in the formation of the marriage, they are also seen to have the power in decision-making when it comes to dealing with marital conflicts, a point which I elaborate on below.

5.1.2.CUSTOMARY LAWS DURING MARITAL DISPUTE AMONG THE **GURAGE**

As the above paragraphs explain, the **Yanqit Sera** empowers the extended family and the elderly men with an absolute power in the formation of marriage in the **Sebat Bet Gurage**. The interesting question that remains pertains to the role of customary practice during the marriage. This involves questions, such as whether the couples handle their marital conflicts individually and whether the extended family still has influence in the marriage, once it has been contracted.

In **Gurage**, as it is common to all societies, conflicts occur in different forms and among different parties. Disputes could crop up among and between different clan groups, individuals, with neighbouring ethnic groups and within family setups. The most common form of family disputes, according to my informants and research, happen between a husband and a wife. In cases of such disputes, the **Yanqit Sera** sets the rules of customary dispute resolution mechanisms including the procedures and remedies to be rendered. According to **Yanqit Sera**, marital disputes

must be handled through the elderly and trusted family members, and it is against the rules and considered shameful for the parties to take their case before formal courts or the police. This serves to demonstrate how the customary laws consider marriage and marital conflicts strictly as a 'private' matter. It is up to the couple or their close relatives to settle the disagreements.

One of my informants, Alemu, stated that if the woman takes her case before formal courts, it amounts to a serious violation of the **Yanqit Sera**. Not even the sympathy of her own family is afforded her. If the woman is disappointed by the verdict of the elders in the community or the clan, she has the right to appeal and take the case to the **Kitcha** Supreme Court called **Yejoka**, which comprises leaders from each of the **Sebat Bet Gurage** tribes. Every clan has the power and authority to deal with its own social and economic issues. It is only when the case is too difficult to solve, that it comes to the attention of the **Yejoka**. For this reason, women who skip the chain of the customary system and choose to take their case legally through the formal court system, face severe social repercussions.

Alemu states that one of the main reasons for dealing with such a conflict among trusted family members is that marital conflict has its own stigma in the society. It is considered 'shameful' to go public with marital problems. Most women are haunted by the guilt of failing

to be the 'shock absorber' in the case of all tensions within marriages, and mothers teach their daughters to be submissive and handle 'marriage problems' secretly or silently. As far as is possible, women in different societies try to keep their abuse or mistreatment secret, and to hang on to their marriage.¹⁰⁹

When marital conflict, in one way or another, is brought to public attention, to elders or rarely to court, it is generally a serious concern. The women themselves, and other individuals directly involved in the private matter such as mothers or sisters of the woman in question, would already have tried to resolve the issue by other means. In Tigist's finding, one of the women participants in the in-depth interview explains the social construction of marital responsibilities of women.¹¹⁰

“ Since earlier times ... we grew up listening and being told how marriage is difficult and that we have to be able to endure all the unpleasant circumstances.

The gender role construction, as the above testimony implies, includes preparing women for marriage responsibilities and obligations. Women are brought up to internalize the norms that prohibit or discourage divorce and the public airing of marital problems, whilst submitting to the will of their husbands, the extended family, and the elders. The question is, what happens if the woman leaves her

marriage, and what other alternatives are there for the women?

The following words of Belecha, a woman who left her husband, claiming that she did not love him, show the degree of interference from the extended family very vividly:¹¹¹

” I just hate him. I did not really like him in the first place. He does not farm and help me. I just left him because I failed to see a bright future living with him as he did not farm, work and help me. I have bothered my family to get me a divorce. But, he said he loves me and would not like to divorce me. His families also said they love me, thus they would not like to let me go even if he lets me go. My family told me that they could not get me a divorce while he says he loves me and does not want to divorce me. According to my family, I have to live with him whether I love him or not, they say it is my obligation. The elders also blame me why I entered the marriage in the first place and gave him two children. But, I told them that I hate him so much and I do not want to live with him.

As her words indicate, in the Gurage community, the marriage arrangement involves the extended families' and elder's decision. Similarly at the time of divorce, alongside the husband, the elders and the families have

the power to accept or reject the initiation of divorce. The blame always shifts to the woman, when the marriage fails to succeed. The elders blame her for entering into the marriage, although she has initially been pressured into marrying her husband. Moreover, in Gurage society, divorce is never regarded as a solution. The elders place more emphasis on creating harmony between couples. But if ever considered, according to Yanqit Sera, the husband, the elders and the extended family must agree upon it. Even if she is brave enough to leave him, as Blecha did, according to the rule, she cannot remarry for at least two years. Due to fear of such social pressure, the women usually tend to tolerate the violations and mistreatments, and 'choose' to live with their husbands.

One of my informants, Belay, indicated that the other reason women cannot leave their husbands is due to fear of the traditional curse. Gurage people strongly believe in the materialization or fulfilment of blessing and curse, and its impact on one's life. It is believed that there is a curse attached to any 'supposed' wrongdoing, by God and/or a divine spiritual power. The social significance of taboos in the society is evident in the way that 'wrong-doing' is subject to social censure in the form of curses. The main popularly known curses that are used in day-to-day life are Berche and Anqit.¹¹²

Tigist explains that Berche does not have gender boundaries. Every Gurage person,

who lives in this system, has knowledge of its power, and the majority fear, and is governed by it. Ironically, the elders, even if they are the ones who are considered to have the power to put a curse on the people, also fear the curse, especially when handling marital conflicts. **Berche** applies to everyone, it is used to create order and enforce morality in the society.¹¹³

Anqit seems to have unique features compared to **Berche**. First, the curse only works on people who are married. Secondly, it only works on women. Thirdly, it works on women who left their husbands, defying the **Kitcha** customary legal practices by divorcing their husbands. From the moment a woman walks out on her marriage against the will of elders, it is believed that she has been caught by **Anqit**. It seems that this sanction has effectively deterred women from seeking divorce, no matter how badly their husbands treat them. This limited right is strongly perpetuated by traditional belief.¹¹⁴

In addition to the curses, as Yewendweson puts it, the elders advise and force the women to be patient and tolerate their husband's behaviour and stay in their marriage 'for the sake of their children'.¹¹⁵ In most African countries the basic interest of the extended family in marriage is reproduction. Hence, if a woman fails to reproduce, it is 'rational' for her to be mistreated not only by her husband but also by the extended family, especially the husband's side (in-laws). However, if she has children, then it is reason enough for the extended family

to influence the elder's decision, to make the woman stay in the marriage with or against her will. In addition, the social construction of motherhood in Gurage society teaches women to sacrifice their rights and needs in general for their children sake. Hence, the women themselves connect motherhood with the same responsibility. Due to this fact, Tigist observes, that sometimes the elders make the woman guilty of abandoning her children even when the woman has been put in a situation where returning to her husband and home is not possible.¹¹⁶

5.1.3 CUSTOMARY INSTITUTIONS AND WOMEN'S PARTICIPATION AMONG THE GURAGE

The ultimate source of traditional authority in the **Sebat Bet Gurage** is embodied within a customary institution called **Yajoka Qicha (or Kitcha)**, and the laws enacted by such institutions are termed **Gordanna Sera**.¹¹⁷ The term **Yajokais** is believed to have been derived from the **zegba (Podocarpus)** tree that serves as the venue of the assembly. The term expresses the special feature of the tree, whose branch is buried in the ground (**yoka**), only to sprout again.¹¹⁸

Regarding the establishment of this institution, particularly among the **Sabat Bet**, was the state of civil war and political anarchy. Establishing internal harmony, and strengthening the capacity to defend themselves against external aggression (notably from their **Hadiya** and

Maraqo, as well as subsequently from the **Oromo**) were also among the reasons.¹¹⁹ Others, including one of my informants, attribute the establishment of **Yajoka**, mainly to religious beliefs. Traditional religion, as embodied in the deities **Waq** and **Damwamit**, feature rather prominently in traditions of the promulgation and administration of **Yajoka**. As Yewendwosen states, the **Waq**,¹²⁰ through his prophets, ordered the creation of **Yajoka** in order to address questions of injustice and unfairness committed by those who were in power.¹²¹

The **Yajoka** assembly seems to combine legislative and judiciary functions. Representatives of the constituent units of the **Sabat Bet** and the **Kestane** respectively, were assembled to agree on the fundamental rules governing their community. Periodic meetings were also held to revise the laws when such revisions were deemed necessary. At the same time, the assemblies served as courts of final recourse.

The **Yajoka Qicha** entertains different kinds of cases dealing with marriage and divorce, homicide, arson, and land use. The prevalent penalty appears to have been payment of compensation, formerly in kind but more recently in cash. Although some writers allege that in earlier times, death sentences were dealt for homicide cases, this seems to have been rather rare.

Gurage people have been socialised in to maintaining immense respect for elders. The

society refers to older men and women with the title **Baliqe**, which literally means elderly. The name serves a much broader function than merely that of identify individuals according to age group. It suggests that the individual earns respect from the community and acquires wisdom through age.¹²² Usually, if not always, male **Baliqes** are the ones that become the chiefs of the customary law and mediators of social matters in general. Elder women can have the title but are not permitted to be judges, or even to participate in decision-making. According to my key informants, for a person to become a mediator in the traditional sense, he must be considered wise, eloquent, calm, and a role model in the community.

The traditional judges are also called **Abegaz** in their communities. This title used to be given to those men who were war heroes at the time of ethnic conflict.¹²³ Women, by no means, are allowed to play any role in this institution. In fact, they are not even allowed to attend the meetings and proceedings, including in cases where they are parties to the litigation.

The system described above, with its mixture of legal force and moral/religious sanction, seems to have operated for centuries with remarkable efficacy. It applied equally to the rich and the poor, the titled and the untitled. Where its overall egalitarian character foundered—as in so many other indigenous systems—was in its exclusion of women and minority groups. **Gurage** society has traditionally

been a strongly male-oriented society and this fact has been reflected in the systems of governance under discussion. There are no women representatives in the assemblies. They are rarely allowed to present their cases themselves. Their social role is largely confined to composing poems in the nature of social commentaries, praising the brave and chiding the cowardly.¹²⁴

It is such restrictions that have given rise to one of the most remarkable Gurage woman, Yaqaqe Wardwat. Her defiant struggle against the male-dominated norms of her society has been celebrated in poems and anecdotes. Tradition has it, that she led a delegation of women to one of the Yajoka assemblies, demanding that, at the very least, they should be permitted to attend meetings and they should have the right to divorce their husbands. Her eloquent oration has been recorded in the following manner in Bahru's book:¹²⁵

” We women, your sisters, your mothers and your obedient servants for all time, appear before you today to ask for our rights if we, at all, have any! We women are treated as if we are created only for the pleasure of men. You never make us participate in things you are doing or planning. We have no security. If you like us, we are lucky, we live with you, and when you dislike us, we are chased out empty-handed. Therefore, we came here to Yejoka today to beg for

some rights even if it is not the same rights as for men. It is not to beat our husbands as you do your wives or to scold them. We shall remain obedient to our husbands, continue to wash their feet and cook food for them. We are not asking you either to test us in the battlefield at the initial stage. This can come eventually. All we are asking you is to give us some minimum rights, like to be free to come to Yejoka and share our views with you concerning all the problems pertaining to “your country” or if we will be allowed to say so, “our country”. Second, when we feel repressed, to leave our husbands and go without being tied up by the rigid procedures of divorce, which remain based upon rigid customary laws and traditional beliefs, the Anq'it. When you divorce us, you just say go because you are not tied up by anq'it. Let us have the same right, although we cannot tell you go from your establishments. But for us to be able to say, “I am going, and goodbye”.¹²⁶

5.2 GADAA SYSTEM AND WOMEN'S RIGHTS AMONG THE OROMO IN ETHIOPIA

The Oromo are the largest Cushitic ethnic group in the Horn of Africa.¹²⁷ According to the recent national statistical report of Ethiopia, the Oromo constitute 34.5% of the population and the majority of them live in the regional state

of Oromiya with larger protrusion towards the South and West.¹²⁸ They make up the largest proportion in Arsi, Bale, Hararghe, Guji, Borena, Shawa, Wallegga, Wollo, Ilu- Abbabor, and Kafa Zones; and they constitute the minority in Gamu Gofa, Gojjam, Sidamo, and even Kenya. The Oromo speak Afaan Oromo (the language of Oromo), which belongs to the Eastern Cushitic family of Afro-Asiatic phylum.¹²⁹ Outside Ethiopia, the language is spoken by thousands of other Oromo tribes in Kenya.¹³⁰ In terms of religion the Oromo, prior to the expansion, had their own traditional African religion called **Waaqeffannaa**, the belief in **Waaq** (the supreme God). Currently, the major religions are Islam and Christianity.¹³¹ However, in places such as Arsi, Guji and Borena, where the **Gadaa** System, an age-based social organization, escaped demise, thousands of people are still **Waaqeffattootaa**, followers of the traditional religion.¹³² This section therefore discusses and analyses the status of women in the Oromo's **Gadaa** system as it is practiced among the Arsi, Bale and Guji Oromo.

5.2.1 THE OROMO GADAA SYSTEM: A BACKGROUND DISCUSSION

The Oromo people are known by their uniquely democratic socio- political traditional system called **Gadaa**. The **Gadaa** system is highly complex. Every eight years, political, military, judicial, legislative and ritual responsibilities are handed over among the male members of the society on the basis of age group.¹³³ **Gadaa** has three interrelated meanings: it is the

grade during which a class of people assumes politico-ritual leadership; a period of eight years during which elected officials take power from the previous ones; and the institution of Oromo society.¹³⁴

Asmarom Legesse, in his book titled '**Gadaa**' described the system as 'one of the most astonishing and instructive turns, the evolution of human society has taken'.¹³⁵ Indeed, it is one of the most fascinating sociopolitical structures of Africa, and has influenced the lives of other neighboring peoples including the Sidama, Walayita, Konso, Darasa, Nyika, Nabdi, Maasai, etc.¹³⁶ Although it is not known with any degree of certainty where and when the **Gadda** system started, it is known and documented that the Oromo have been practicing it for well over 500 years.¹³⁷ As Bonnie Holcomb asserts, the **Gadaa** system 'organized the Oromo people in an all-encompassing democratic republic even before the few European pilgrims arrived from England on the shores of North America, and only later built a democracy.'¹³⁸

Gadaa has guided the religious, social, political and economic life of Oromo for many years, and also their philosophy, art, history and methods for keeping time. The activities and life of each and every member of the society are guided by **Gadaa**. It is the law of the society, a system by which Oromo administer, defend their territory and rights, maintain and guard their economy and through which all their aspirations are fulfilled.

The **Gadaa** system encompasses various principles of governance, similar to those that 'modern' democracy articulates. Principles such as checks and balances (through periodic succession of every eight years), division of power (among executive, legislative, and judicial branches), and power sharing between higher and lower administrative organs to prevent power from falling into the hands of despots, underlie the system. Other principles of the system have included balanced representation of all clans, lineages, regions and confederacies, accountability of leaders, the settlement of disputes through reconciliation, and the respect for basic rights and liberties.¹³⁹

Discussing the philosophy of Oromo democracy, Asmarom notes, '[w]hat is astonishing about this cultural tradition is how far Oromo have gone to ensure that power does not fall into the hand of war chiefs and despots. They achieve this goal by creating a system of checks and balances that is at least as complex as the systems we find in Western democracies'.¹⁴⁰

5.2.2 MEMBERSHIP OF THE GADAA SYSTEM

Although all the people of Oromo in a given area have the right to air their concerns and views in any public gathering without fear, membership of the system is limited to male members of the society who are of age and of **Gadaa** grade. The system organizes male Oromo according to age-sets (**hiriyya**) based on chronological age, and according to generation-

sets (**luba**) based on genealogical generation.¹⁴¹ These two concepts, **Gadaa**-sets (age-sets) and **Gadaa**-grades (generation sets), are important if one is to obtain a clear understanding of the system. All newly born males would enter a **Gadaa**-set at birth, which they would belong to along with other boys of the same age, and for the next forty years they would go through five eight-year initiation periods. The **Gadaa**-grade would then be entered into on the basis of generation, and boys would enter their **luba** forty years after their fathers.¹⁴²

The **Gadaa** grades differ in number (7-11), and name, in different parts of Oromiya although the functions are the same. The following are the **Gadaa** grades:¹⁴³

1. Dabballee (0-8 years of age)
2. Folle or GammeTitiqaa (8-16 years of age)
3. Qondaala or GammeGurgudaa (16-24 years of age)
4. Kuusa (24-32 years of age)
5. Raaba Doorii (32-40 years of age)
6. Luba or Gadaa (40-48 years of age)
7. Yuba I (48-56 years of age)
8. Yuba II (56-64 years of age)
9. Yuba III (64-72 years of age)
10. Gadamojjii (72-80 years of age)
11. Jaarsa (80 and above years of age)

The **Dabballee** are sons of the **Gadaa** class who are in power. They are boys up to 8 years of age. Thus, this is a stage of childhood. Upon reaching their eighth year, they enter the **Folle** grade. At this age they are allowed to go further

away from their villages and to perform light work. At 16 years old, they enter the **Qondaala**. They may now travel long distances to hunt, and perform heavy work. Three years before the **Qondaala** ends, those of the **Gadaa** class come together and nominate the future group leaders (**hayyu** council) who eventually will constitute its presidium and thereby become the executive, judicial and ritual authorities. The final election is preceded by an, often lengthy, campaign of negotiations. After nomination, the candidates tour the region accompanied by their supporters to win the backing of the people prior to election. The individuals are elected on the basis of wisdom, bravery, health, and physical fitness.¹⁴⁴

In the **Kuusa** grade, the previously elected leaders are formally installed in office, although they do not yet assume full authority except in their own group. This is one of the most important events in the life of the individual and of the **Gadaa** system over all. In the next grade, **Raaba Doorii**, members are allowed to marry. This and the **Kuusa** grade constitute a period of preparation for the assumption of full authority. At the end of this period, the class members enter **Luba** or **Gadaa**, the most important class of the whole system, attain full status, and take up their position as the ruling **Gadaa** class. The former ruling class, the **Luba**, becomes **Yuba**. The **Yubas**, after passing through three separate eight-year periods, are transferred to the **Gadamojjii** class. Then they enter the final grade called **Jaarsa**, and retire completely.¹⁴⁵ As briefly described above, when the Oromo

man passes from one stage to the next, his duties and way of life in society change. For instance, during the grades of **Qondaala**, **Kuusa** and **Raaba Doorii**, the individuals learn war tactics, Oromo history, politics, ritual, law and administration over a period of 24 years. When they enter the **Gadaa** class or **Luba** at the age of 40 years, they have already acquired all the necessary knowledge to handle the responsibility of administering the community, and the celebration of rituals.¹⁴⁶

5.2.3 INSTITUTIONAL STRUCTURE OF THE GADAA SYSTEM

1. All Gadaa officials are elected for eight years by universal adult male suffrage and assume varied responsibilities. The officials include:
- 2.
3. Abbaa Bokku (Abbaa Gadaa) – President
4. Abbaa Bokku - First Vice-President
5. Abbaa Bokku - Second Vice-President
6. Abbaa Caffee - Chairman of the Assembly (**Caffe**)
7. Abbaa Dubbi - Speaker who presents the decision of the presidium to the Assembly
8. Abbaa Seera - Memoriser of the laws and the results of the Assembly's deliberations.
9. Abbaa Alanga - Judge who executes the decision
10. Abbaa Duula - In charge of the army
11. Abbaa Sa'a - In charge of the economy

The Abbaa Bokku¹⁴⁷ is the chairman who presides over the assembly. According to Hunting Ford 'the Abbaa Bokku and his two

colleagues are chosen from the oldest or most distinguished families, which are known as 'families of **Hayyu**.' The principal function of the **Abbaa Bokku** is to preside over the parliament (**Caffe**) to proclaim the laws, and to act when necessary as ritual expert in the Gadaa-ceremonies'.¹⁴⁸ The holders of these posts can remain in office for eight years only, and are then replaced by a new group of officers.

Despite the fact that kinship relationship is such an important factor in Oromo society, those who are elected to office are expected to serve without regard for kinship ties. Nobody is above the rule of law in Oromo democracy. Lemmu Baissa expresses the view that the **Gadaa** system as a whole 'provided ... the machinery for democratic rule and enjoyment of maximum liberty for the people'.¹⁴⁹

5.2.4 WOMEN IN THE **GADAA** SYSTEM

As can easily be observed from the above discussion, despite all its positive attributes as an egalitarian social system, the **Gadaa** system excludes women from passing through age-sets and generation-sets. Within the system, there are laws and various other manifestations of gender stereotypes that directly or indirectly reinforce gender inequality among the Oromo. For instance, among the Borana Oromo where the **Gadaa** system is still working, there are various customary laws, which aim at regulating the women's behavior in the community. One of these laws governs and controls the

modesty of women in society. This is the Law of Feminine Modesty that checks the indecently dressed woman. According to this law, 'should a woman be improperly dressed, the husband is responsible and shall be punished'.¹⁵⁰ The reason why the husband is enjoined with the responsibility for controlling the modesty of his wife is either, that the wife does not have an existence separate from her husband, or that she is under his full protection.¹⁵¹

In this section, I briefly discuss and analyze the position given to women in the **Gadaa** system as practiced among the Arsi, Bale, and Guji Oromo. I have selected these groups based on the consideration that here, the **Gadaa** system, as has been confirmed by many researchers,¹⁵² is still active albeit with decreasing intensity, in regulating the socio-political affairs of the respective communities. Moreover, since I was born and raised in Bale zone, I have had personal experience of its function, and have observed the applications of some of the customary laws, particularly among the Bale and Arsi Oromo.¹⁵³ The discussion includes information from prior empirical studies, words from informants, and personal observations.

5.3 THE CASE OF **WAYYUU** AND **SIINQEE** AMONG THE **ARSI OROMO**

Arsi Oromo is one of the branches of Oromo people inhabiting the Oromiya Region, mainly in the Arsi and Bale Zones. They claim to have descended from a single individual called **Arse**. The Arsi in all zones speak the same language,

Afaan Oromo, and share the same cultures and traditions. Among the cultural norms observed, the concept of **Wayyuu** is the primary one.

Wayyuu, constituting part of the **Gadaa** system, is one of the major constructs in a traditional Oromo worldview and is a concept with clear religious connotations. It is reflected in various cultural practices and has played a decisive role in defining the position and the rights of women in traditional Oromo society. Among other things, **wayyuu** seems to have played a preventive role when it comes to sexual abuse and sexual harassment.¹⁵⁴

Not easily translated into English, the following are some representations given by researchers¹⁵⁵ in attempts to give meaning to the word **wayyuu**: something which is sacred or something that should not be touched.

The respect which is reflected in **wayyuu** is not ordinary respect. It is a special respect that comes from God. It is a mutual respect. God has given respect to all things. Everything has its **wayyuu**. God is also **wayyuu** (**Waqnii Wayyuu**). Heaven is also **wayyuu** (**Samii Wayyuu**). As a result, people dare not speak bad things about heaven because heaven is the home of God. This is the holiest place since it is the place of God and it is **wayyuu**. God is the greatest **wayyuu**. He is the one who created everything.¹⁵⁶

This concept of **Wayyuu** in Arsi Oromo is also extended to women of different status. For

instance; a female in-law is **Wayyuu**, a woman who gave birth to you is **Wayyuu** to you, co-wives of your mother is **Wayyuu**, a married woman is **Wayyuu**, a virgin girl is **Wayyuu**, a pregnant woman is **Wayyuu**, a woman who wears the **qanaffa**¹⁵⁷ is **Wayyuu**, a woman who wears **Hanfala**¹⁵⁸ is **Wayyuu** and a woman who holds **siinqee**¹⁵⁹ is **Wayyuu**. The list could be extended even further. As Marit states 'everything has its **wayyuu**'.¹⁶⁰ This list suggests the considerable extent to which the Arsi Oromo associate **wayyuu** with women, and with material objects and locations, which belong to the female sphere. Since it is beyond the scope of this paper to embark on a detailed discussion of the various implications of the different persons and objects that are said to be **wayyuu**, I will rather focus on the **Wayyuu** as it is symbolized by the **Siinqee** stick.

5.3.1 SIINQEE: WOMEN'S CUSTOMARY INSTITUTION IN ARSI

Siinqee is a stick (**Ulee**) symbolizing a socially sanctioned set of rights exercised by women.¹⁶¹ The **siinqee** is a special stick, which a woman who gets legally married will receive on her wedding day. My informant¹⁶² describes the **siinqee** as 'a woman's weapon', symbolizing the respect and the power that a married woman has. The **siinqee** stick is given to a woman in order to protect her rights. My informant explained that: 'if a woman has a **siinqee** she has to be respected, nobody should fight with her'.¹⁶³ Here, it is very important to note that **siinqee** is applicable to women who have been

married in accordance with the **Gadaa** system. If the marriage is concluded outside the rules and regulations of **Siinqee**, like in the cases of marriage by force (*butta*), the woman does not enjoy the protection accorded by **Siinqee**. On the other hand, if a woman is married based on **Siinqee**, like in the case of *kadhacha* (marriage based on agreement between two families), she has full rights to enjoy her privileges under **Siinqee**.¹⁶⁴

Regarding the origin of **Siinqee**, Tolosa states that 'this symbolic matter [**Siinqee**] was handed over to **Abba Gadaa** by the **Qallu**-the ritual leader of the Oromo society in the framework of the **Gadaa** system'.¹⁶⁵ It is believed that the **Qallu** gave it to the **Abba Gada** in order to hold the **Bokkuu**¹⁶⁶ (another important wooden stick among the Oromo) for himself, and the **Siinqee** to his wife.¹⁶⁷ Due to the strong attachment that the Oromo people have to the **Gadaa** system, every sanction it imposes on the society has a chance of being met with respect. Therefore, it is warranted to conclude that the value embedded in **Siinqee** emanates from the overall respect given to the **Gadaa** system, and reverence to the stick has long been associated with this respect.

It is also important to note that **Siinqee** is not merely a term for a material symbol, it also refers to an institution, namely to a women's organization that excludes men, and that has both religious and political functions. Kuwe indicates that the **Siinqee** institution was given

to women by **Gadaa** laws and it was highly respected by the society.¹⁶⁸ Women used to use their **Siinqee** in various religious, social, political and economic contexts, to protect their property rights; to assert control over sexuality and fertility; to protect their social rights and to maintain religious and moral authority.¹⁶⁹

The word **Siinqee** is thus often used to describe various mobilizations conducted by women. As Kumsa states, when there were violations of their rights, women left their homes, children, and resources, and travelled to a place where there was a big tree called *qilxxu* and assembled there until the problems were solved through negotiation by elder men and women.¹⁷⁰ According to Kumsa,¹⁷¹ married women have the right to organize and form the **Siinqee** sisterhood and solidarity. Kelly explains this more and states that¹⁷²:

” A man who violated women’s individual and collective rights could be corrected through reconciliation and pledging not to repeat the mistakes or through women’s reprisal ritual. A group of women ambush the offender in the bush or on the road, bind him, insult him verbally using obscene language that they would not normally utter in the direct presence of an adult male . . . pinch him, and whip him with leafy branches or knotted strips of cloth. In extreme cases, they may force him to crawl over thorny or rocky ground

while they whip him . . . They demand livestock sacrifice as the price to cease their attack. If he refuses, they may tie him to a tree in the bush and seize one of his animals themselves. Other men rarely intervene.”

The following words by a woman who exercised her privilege in Siinqee illustrate how Siinqee has been applied in an attempt to mobilize women against violations and the injustices they face from their communities:¹⁷³

” Two years ago one of my male neighbors, insulted me sexually saying; ‘all women are like old empty milk containers (koonka), but above all you are the worst’. I found this insult to be so serious that I brought it up before our women elders. They discussed the case and concluded that it was necessary to call for ateete.¹⁷⁴ All the women in my neighborhood went to the man’s house with our sticks (Siinqee). We confronted him with what he had done. The man refused to admit his offence and to settle the case. He did not respect our ateete; arguing that he did not believe in this tradition anymore, now that he had become a Muslim. All the women in our neighborhood gathered outside his house regularly for more than two months. Outside his house we were chanting songs dominated by sexual insults; (among others saying that we

hoped he would be infected with HIV) in order for him to accept his wrongdoings. He refused this, and we ended up cursing him. After a few weeks we saw him coming to the clinic with a serious skin infection on his face. He also lost 5 of his cattle, they were hit by lightening. All this happened in accordance with our curse.”

These facts illustrate how disrespect for women, and in particular denial of women’s requests when they have mobilized within their siinqee, can have serious consequences that manifest themselves in various forms. My informant has also clearly expressed his view on his fear of women in general, and during Siinqee mobilizations in particular, and with no doubt this is related to a strong fear of the female curse. The respect for, and fear of the married women, seems to have given Arsi-Oromo women some degree of religious as well as political power. But why do these women enjoy this sacred respect? The answer to this question is related to the religious role of the Arsi-Oromo women.

Marit T. Østebø has conducted extensive research on this question. During an International Conference on Ethiopian Studies in 2009 on ‘Wayyuu: women’s respect and rights among the Arsi-Oromo’, she stated that the fear of the Siinqee stems mainly from the perception that women are closer to God than men. This notion, she writes ‘was continuously

supported by all [her] informants, and in turn sustains the idea that women among the Arsi Oromo have had an important religious role'.¹⁷⁵ My informant has also confirmed that women are feared and respected because of their religious power. Women are closer to God because they are more humble; they are soft, they are innocent and they do not fight.¹⁷⁶ This leads to the conclusion that God tends to listen more to women than men. This idea was best articulated in the following expression among the Arsi Oromo: 'what a woman blesses will be blessed, what she curses will be cursed'.¹⁷⁷

Despite all the contributions and functions it renders to the society in general, and to women in particular, the **Siinqee** institution has faced several challenges through time. As Tolosa has indicated¹⁷⁸, the institution has recently been exposed to an unprecedented degree of influence by religious institutions. With the advent of religious revival after the collapse of the socialist regime in 1991, and the developments of various new sects like Wahhabism in Islam and Protestantism in Christianity, **Siinqee** has been viewed as an utterly traditional, if not unreligious institution, and has been barred from playing its previous role. The role played by the Siinqee institution is increasingly reduced to a ritualistic role.¹⁷⁹ In addition, processes of modernization and formal education – by distancing the youth from their culture – have endangered the very survival of the **Siinqee** institution. With regard to women's mobilization against sexual harassment and injustices,

it is currently reported that women rarely organize themselves under **Siinqee** against the perpetrators. This is partly because of their husbands' insistence on maintaining loyalty towards mosques and churches rather than traditions.¹⁸⁰ This in turn results in a new form of gender challenge. The role of the Siinqee institution is clearly declining, undoubtedly affecting the peace of the society. This does not necessarily mean that Siinqee must cease to exist, but its role and function as an institution for the protection of women's rights is diminishing, eventually reducing the institutions to its ritualistic aspects.

5.4 THE CASE OF GORA AMONG THE BALE OROMO

This sub-section discusses the manner through which an unacceptable sexual behavior is regulated under the customary laws of the Bale Oromo. The Bale Oromo is located in the Bale Zone of the Oromiya Region. The following observations are based on my personal observation. I was born and raised in this very part of Oromiya region, and during my childhood I have witnessed the applications of most of the customary practices. I have also drawn on findings from empirical studies, including Marit's¹⁸¹.

In the Bale Oromo, the **Gadaa** system has provided a mechanism through which the young virgin, as well as any married woman is protected against an unacceptable sexual behavior. In order to have a better understanding of regulation of these sexual

offences, a brief overview of some of the features of the customary law as articulated in the Eastern-lowlands of Bale is required. According to many researchers¹⁸² and my informant, the customary laws among the Bale Oromo regulate four levels of crime:

1. Guma- where there is manslaughter.
2. Gora - where there is visible injury or the injury has a psychological impact - the latter related to shame. Often mentioned examples are a broken front tooth or a broken leg. Gora is also applied to rape and loss of virginity.
3. Qotaa - less serious injuries that are not visible, often illustrated with the damage of a person's back teeth.
4. Yakka - a minor issue, if one insults a person.

It appears that these terms are used both for the crime as well as for the corresponding punishment. If a crime is classified as Gora, the punishment will be Gora, which in cases of sexual crime is equal to 8 cattle.¹⁸³ Since sexual crimes are grouped under Gora, I limit my discussion to **Gora** and to how it regulates the sexual crimes perpetrated against the women in Bale Oromo.

A better understanding of **Gora** requires a discussion on the concept of **Wayyuu** as it relates to clothes among the Bale Oromo. As I have indicated in the previous discussion, among the Oromo everything has its own **Wayyuu**. With regard to clothes, my informant has indicated

that **qirii**, a large piece of cloth, which a woman (or a girl) ties around her neck leaving her shoulders bare, is considered **Wayyuu**. Thus it is prohibited for a man to touch or untie these clothes without the will of the woman or the girl. This concept is well elaborated in the following saying: **Qiriin obolessa kute yoo isiin toola gote, tola yoo isiin goragote, gora**, meaning; when a man unties the clothes (**qirii**) of a woman, if she says that it is ok, it is ok; if she says that it is **Gora**, it is **Gora**.

This expression seems to emphasize the decisive role of the girl (woman), as she is said to be the one who determines whether the sexual action is acceptable or not. First, unless the girl reports an unacceptable sexual behavior, such as rape or loss of virginity, there will be no action, as nobody will have knowledge about it. Secondly, and this is perhaps the most important implication articulated through this expression, if a girl or woman says it is **Gora** (a crime), it will be **Gora**. This expression appears to reveal a strong trust in the girl's word in such cases; it is believed that these cases are of such a character that she will not lie.¹⁸⁴

As Marit indicated, there might be cases where the man will deny the accusations, but if a man has been accused by a woman of rape or of taking a girl's virginity, the elders in his clan will do everything possible to convince him to accept the accusation. What can be prevented is for the case to reach the level of oath-giving

(**kakuu**). If a case reaches such a level it can have serious consequences. This is particularly so, if the man does not speak the truth. It is believed that if a man lies while under oath, not only will he, but also his whole clan as well as his descendants, be cursed. For a woman to be under oath appears to be very rare. This strong belief in the words of a woman, as I have explained above, has resulted from the representation of a woman as humble, soft, and closer to God. Once again, one can see an illustration of how a woman's traditional and religious position among the Bale Oromo plays a great role in protecting women from unacceptable sexual behavior.

5.5 WOMEN UNDER THE CUSTOMARY LAWS OF THE GUJI OROMO

The Guji people are members of the larger Oromo group in Ethiopia and occupy the southern highland and lowland's semiarid areas. The Guji social structure consists of **gosa** (clan) at the highest level, and extends down to **mana** (lineage), **warra** (extended family), and **maatiior maayaa** (nuclear family). The latter consists of the husband, his wife (wives), and their children. **Warra** includes the brothers of the husband, his father and mother, and his brothers' children, in addition to the nuclear family members.¹⁸⁵ **Gadaa** constitutes the customary practice of the Guji Oromo. This sub-section therefore, aims at explaining the representation of women in the **Gadaa** system of the Guji Oromo.

5.5.1 WOMEN'S REPRESENTATION IN TRADITIONAL INSTITUTIONS OF THE GUJI OROMO

The **Gadaa** broadly encompasses the social, political, and economic institutions of the Guji and other Oromo branches. Before the invention of the **Gadaa** institution, according to the Guji tradition, five kings and five queens ruled their people.¹⁸⁶ The transition to the **Gadaa** system took place due to bad governance and widespread lawlessness under the queens and kings. The queens' and kings' administrations did not effectively maintain peace and stability, and arbitrary measures became the rule rather than the exception. In addition, there was population growth and territorial expansion, but kings and queens did wield effective control over the people living within their enlarged territory. As the territories under the Guji increased, it became necessary to delegate power to the clans and to introduce the **Gadaa** administration. As it is also practiced across other Oromo sects, the system allows only men to become members of the **Gadaa** grades.

According to Dejene,¹⁸⁷ women are totally excluded from membership and can achieve this status only through their husbands.¹⁸⁸ Although women have active roles in ritual practices of the Guji Oromo, men, however, control the leadership positions of the **Gadaa** system. As Asmerom puts it, the **Gadaa** in Guji empowers only the men to control the military and political activities, to engage in warfare, to take part in the elections of leaders

of camps or of age-sets and Gadaa classes.¹⁸⁹ Here one may ask why the Gadaa in Guji Oromo excludes women from taking these key political and social positions. The popular story told among the Guji Oromo, of a legendary queen that ruled the Guji people with an iron fist, could provide a possible explanation. In fact, this story has also been told among the other Oromo branches, including the Borena, Arsi and Bale. Dejene presents the Guji version of the story as follows:¹⁹⁰

” Akko Manoyye was one of the queens that ruled the Guji. During her rule, every task, including caring for children, was performed by husbands, and every decision was made by women. One day she ordered her people to bring a bag full of fleas, an order they were unable to carry out and, therefore, they consulted a wise poor man called HiyyoKulle. He told them to collect a bag full of donkeys’ dung and spill it on the ground. They did it accordingly and the dung was filled with mosquitoes. The queen thought the mosquitoes were fleas and made another difficult directive, which was building a house on the air. Once again the people went to consult the poor man on how they would carry out the order. He told them to ask her to put up the door poles, which customarily is done by the owner of the house. When they asked her to do so, she knew that she was outmaneuvered and failed to

respond to their request. The poor man continued to give advice to the people and told them to dig a deep hole, cover it with animal skin, and stand a seat on it for her. When she sat on the chair, she went down the hole, during which she uttered a message to women: ‘sobisobadhuubuli,’ which means ‘pretend to respect male authority.’ Following her death, according to the story, a man called Durii Dulloo became the first king.

This story is remarkable in demonstrating to the Guji how the concentration of power in the hands of men is justified. It rationalizes the view that women are ineffective for politics and administration. The corrupt practices during the queen’s rule are dramatized in the story in order to justify the marginalization of women from the customary administration. A different story, with similar implication, regarding the military capacity of women has also been told among the Guji Oromo. The tale told here, is of women warriors who failed to successfully carry out their mission in the past. The story goes that:¹⁹¹

” Women fighters went to war in a group of ten. They raided animals and other belongings (waatoo,) from the enemy and headed back to their camp. However, the enemy followed them to retrieve the raided animals and the waatoo. Then the commander of the squad ordered her troops as follows:

Waatiibuusimaleewaatoohinbuusin
meaning: You can lose the animals to
the enemy but never let the waatoogo.
The troops of women followed the order
of their commander and surrendered
the animals but retained the waatoo.
On their way home, the commander
suggested counting the troops to check
if any of their members had died. The
women took turns counting each other,
but every one of them came up with
only nine and reported one person
missing. Finally, they wanted to be sure
about their number and sought help
from a man to count them. The man
asked them to sit down, counted ten
of them, and reported that no member
had died. It is said that because of this
incompetence, women were declared
unfit for fighting.

This story stresses two areas of ineffectiveness during the conduct of the war: failure in counting the exact number of troop members, and in making the wrong choice of perfumes over the important asset, livestock. After this time, according to the story, women stopped going to war, but they continued helping their husbands with the necessary preparations for war. The Gaada system continues the legacy of such stories, reserving the positions for men.




6 FACTORS REINFORCING GENDER EQUALITY IN THE CUSTOMARY LAWS AND PRACTICES

As it can be inferred from the details in the above case studies, despite the existence of policy instruments and legislative and institutional commitments to women's causes, in actuality, a vast majority of Ethiopian women, particularly in rural areas, are far from possessing independence, and from directly enjoying the benefits of development initiatives at the national level. Their status in the sociopolitical, economic and cultural context is far behind the expected level. And there are various factors, which—even today—mean that the extent of their problems and disadvantages remains critical. In particular, the inequalities embedded in the customary laws are reinforced by various social, cultural, and economic factors. This section explains some of these factors as they reinforce the gender discrimination and inequality under the different customary laws in the case studies.

6.1 POWER RELATIONS

Gender roles and power relations are evident in the customary order where individuals or groups impose their will on others through motivations of reward or punishment. As a

result, the powerless individuals or groups comply with the others' wishes, out of fear of retribution, or in seeking reward and a sense of 'belonging' within societies.¹⁹² As it is illustrated in the case studies above, the communities and their traditional beliefs, reinforce the notion of men's power in marriage as well as in other social institutions, to determine laws and practices of representation in traditional institutions, marriage, marital conflicts and resolutions. For instance, the case of arranged marriage in the Gurage illustrates the unbalanced power relationship between the man and the woman during their marital relationship. In order to uncover the oppression suffered by Gurage and Oromo women, one needs to unfold these layered internal power conflicts along the lines of ethnicity, class and gender identity factors, and examine how the integration of these factors reveals multiple structures of power and power relations among individuals within the group.

6.2 ETHNICITY AND BELONGING

It is very important to re-conceptualize and differentiate state and ethnic identity. Although

the two identities are not mutually exclusive, being Ethiopian is different from being Gurage or Oromo. Since identity is a progressing performance and achievement, Gurage or Oromo identity requires an everyday life struggle to belong and achieve acceptance from the specific ethnic group. The decisions these groups make, have an effect on citizen's lives. Within the categorization of Gurage ethnicity for instance, being a 'Gurage Woman' requires a specific gender play in cultural and ethnic identity construction. This paper tries to uncover the distinct gender performances that symbolize membership and/or the crossing of boundaries of the group's cultural identity, when women are forced to choose a system or regulation by which to settle their marital conflicts, such as having to choose between the **Kitcha customary** law and the formal legal court system. This shows how ethnic identities intersect with gender relations in marriage and other social institutions.

6.3. ATTRIBUTES ATTACHED TO ELDERS AND THE EXTENDED FAMILY

Family and kinship are potentially relevant to gender inequality in various ways. African women's lives, in terms of personal independence and equality of decision-making, are subjected to the needs of the family. Family ties serve to subordinate the interests of women as persons to the interests of the wider group. This notion embodies the idea of marriage as an alliance between two kinship groups for purposes of realizing

goals beyond the immediate interests of the particular husband and wife. Accordingly the 'norm' and 'value' of Gurage and Guji Oromo for instance, carries implicit and explicit significance for females and males in the society and in their respective power position in a marital relationship. As it is inferred from the discussion on the Gurage **Yanqit Sera**, the inclusion of extended family members into the marriage relationship makes it difficult to understand and respect individual rights at the time of conflict. This is especially true for women because of the societal expectations, which they are required to fulfil.

In the Gurage custom, the extended family plays a major role both in the formation of the marriage and in dealing with marital conflicts. The **Yanqit Sera** imbues the extended family and the elderly men (**Baliqe**) with an absolute power in relation to the formation of marriage in the **Sebat Bet Gurage**. Moreover, a marital dispute has to be handled through the elderly¹⁹³ and trusted family members, and it is against the rules and considered shameful for the parties to take their case before formal courts or the police. Similarly at the time of divorce, along side the husband, the elders and the families have the power to accept or reject the initiation of divorce. If the woman walks out of her marriage, against the will of the elders or the family members, she is blamed for entering into the marriage, even in cases where she was initially pressurised into marrying her husband.

6.3 RELIGIOUS AND TRADITIONAL BELIEFS: THE POWER OF STORIES

In all nations, the most significant factors inhibiting women's ability to participate in public life have been the cultural frameworks of values and religious beliefs. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity, and in excluding them from active participation in public life.¹⁹⁴ In the above case studies, these religious and traditional beliefs have been manifested in the form of traditional stories and ways of thinking. For instance, the girls among the Gurage are raised listening to stories of the difficulty of marriage, and are taught to endure the unpleasant circumstances with which marriage comes. The various stories constitute part of the traditional and religious beliefs, and women internalize these beliefs as norms that prohibit or discourage divorce or their public airing of marital problems, whilst submitting to the will of their husbands, the extended family, and the elders.

Moreover, as has been explained in the case studies, most of the women in Gurage strongly believe in the materialization or fulfilment of blessing and curse, and its impact on one's life. As we have seen in the practices of **Anqit**, the social significance of taboos in society is evident in the way that 'wrong-doing' is subject to social censure in the form of curses. The same case applies with regard to the **Gadaa** system in Oromo. The popular stories among

the Guji Oromo, demonstrate why power is concentrated in the hands of men, and why women are not allowed to hold political and military positions.

PART IV

CONCLUDING REMARKS AND THE WAY FORWARD

7 CONCLUDING REMARKS

In Ethiopia, customary laws and practices as a system of governance and an institution of ritual performance, play a great role in regulating the social, political and religious lives of the people in Ethiopia. Despite their drawbacks in marginalizing women in some aspects, these systems developed a unique and innovative mechanism for protection of the rights and interests of women. For instance, as has been demonstrated in the case studies, the customary laws and practices, including the **Wayyuu**, **Siingee** and **Gora**, have revealed a greater degree of protection of women's rights. Therefore, these institutions and practices provide an alternative to the human rights narrative. If the role of governments and other organs, including activists, in fighting for women's rights is based on stereotypical assumptions of the 'oppressed African woman' it can have significant negative consequences for women's lives. To uncritically apply notions of human rights, without taking into account the local context, ultimately risks destroying the mechanisms, values and institutions, such as **Siingee** and **Gora**, that have traditionally given women respect, and protected them from violence and abuse. Efforts to strengthen

human rights should therefore be made with great cultural sensitivity, and with the aim of both revealing and incorporating positive traditional notions of human rights into the discourse.

On the other hand, it is also clear from the case studies, that customary laws could seriously disadvantage women in many respects because they have not been created in consultation with women. They consider women as minor/subordinate (especially with reference to marriage), and their custodians are elders, the majority of whom are patriarchal men. In most of the customary laws, women are marginalised to the extent that they are prevented from attending customary proceedings, even in cases where they are parties to the litigation. They have no say as regards the application of custom in questions of justice that affect their lives, because customarily women are required to be represented by male members of their families: father, brother, and sometimes uncles. Hence, it is fair to say that many violations of women's basic human rights occur within families, and are justified by reference to customary and religious norms. This results

in discrimination against women, which contradicts with national and international standards, as has been discussed under the legal framework.

It is in consideration of these facts, that the Human Rights Committee notes that inequality in the enjoyment of rights by women is often deeply embedded in tradition, culture and religion, thus violations of women's human rights originate in social custom, belief or practice rather than (or as well as) in state law, and are perpetrated by individuals and social groups rather than by the state.

Contrary to what has been envisaged under international instruments, in many instances women are not given the right to participate in customary institutions. Article 9 of the Maputo Protocol deals with the duty of member states in ensuring an increased and effective representation and participation of women at all levels of decision-making. These instruments obligate states to ensure representation of women in bodies exercising public authority, both at state and non-state levels.

Moreover, most of the customary laws are not in agreement with the provisions of the ICCPR and CEDAW in relation to the equal rights of women during marital relationships. Article 17 of the ICCPR prohibits arbitrary or unlawful interference with a person's privacy, family or home, and recognizes the right of every person to legal protection in this regard. Article 23 (4) requires states parties to take appropriate steps

to ensure equality of rights and responsibilities of spouses in the contracting of marriage, during marriage, and in the event of its dissolution. Article 16 of the CEDAW similarly entitles women and men to equal rights before, during, and at the dissolution of marriage, and invokes various international standards of women's equality in marriage and the family.

It is due to these apparent contradictions that the Human Rights Committee suggested that a review of all existing customary laws in ethnic groups be carried out in order to evaluate them as to their substance and their compatibility with international conventions and national legislation.¹⁹⁵

In general, the whole question of the mandate of customary laws and institutions and their relations and interactions with the formal justice system deserves careful reconsideration in order to allow for greater recognition, while ensuring that human rights abuses are avoided and that the rights of women are respected. I am not as such proposing that all customary laws and institutions are worthy of legal recognition, nor arguing that they do not have weaknesses. However, I believe there is a strong case for acknowledging the value of certain customary laws. The non-state system can contribute, through partnership and collaboration with the formal system, to providing culturally acceptable and meaningful justice.




8 RECOMMENDATIONS: WHAT SHOULD BE DONE TO USE THE CUSTOMARY SYSTEM WITHOUT VIOLATING WOMEN'S RIGHTS?

8.1 ENACTING DETAILED LAW

This calls for a careful study of the interface between the customary justice system and the formal structure. Although there is no specified level of interaction, the constitution has in fact created a space for both customary and formal justice. However, the specific roles of customary laws and institutions, and the formal laws and institutions respectively, remain to be defined by law. Owing to the limited capacity of the formal State, as well as due to the continued role of customary laws and institutions, because of easy access, proximity and low cost, there is a widespread use of customary systems. Given this reality, the role, jurisdiction, procedure, and impact of the customary system needs to be defined in law.

Such detailed law can best be made by recognizing custom as the effective, locally-valid means that communities have established over time to administer and manage their social, political and economic affairs. The process should also allow each local community to determine and define for itself, its rules and governance structures

through fully participatory processes. The law should establish opportunities for each community to publicly self-define the customs by which it shall govern itself. Through such discussions, the community can arrive at a clear understanding and agreement as to what its customs are, as well as self-identify those practices that serve their interests and those that do not, or that contravene national laws and must be changed.

While such processes bear with them the danger of fixing and calcifying customary rules, they also have the power to clarify what those customary rules are, so that local elites or more dominant community groups cannot twist the rules to their advantage. Once the rules are known and published, villagers (and the state) can hold their leaders accountable to enforcing them fairly. Such laws and practices harbour the potential to merge custom, democracy and human rights in new and innovative ways. The law should also address mechanisms through which these systems can collaborate. The formal system could assist the customary system in the enforcement process where

individuals attempt to manipulate the gap in the system.

Moreover, the law should also provide answers to questions such as, what rules and systems may best protect the most powerless and disadvantaged members of a community. These groups particularly include women, girls and widows. Of course, these rules are included in the FDRE Constitution. However, it is not enough to simply declare that women have equal rights with men. The law also needs to mandate expressed protection, in order to ensure that those rights are implemented and enforced.

8.2 PROVISION OF LEGAL ADVOCACY AND SOCIAL SERVICE SUPPORT

Various legal advocacy and social service support measures must be put in place to help women enforce their rights. Even when women's rights are enshrined in law, they may face multiple barriers to claiming and protecting their rights. For example, women may have little decision-making power in their homes, and they may be unable to contest violations of their rights within the family or within customary institutions, and may lack the economic independence and resources necessary to pursue legal action outside of their villages. Alternatively, a woman may be threatened or endangered for seeking to enforce her rights. Should she be able to arrive at a formal or informal justice sector to try to claim or defend her rights, she might

be met with discrimination and insensitivity to her situation from the officials or the elders. Therefore, access to legal services should be set up to assist these groups in bringing claims to court, state or non-state, in cases where the law is not followed.

8.3 INTEGRATION OF CUSTOMARY LAWS WITH THE FORMAL LEGAL SYSTEM

There should also be a continuous effort to integrate customary systems within the formal legal system. Indeed, there are some efforts at regional state level (for instance, the Somali regional state constitution article 56 and the Afar regional state constitution article 63 established an elders' council in their respective regions). Yet these are only few instances, and the respective roles have yet to be outlined in another law.

8.4 AWARENESS RAISING

To minimize tensions and conflict of jurisdiction between customary institutions and formal courts, there should be a continuous forum and interaction between elders and judges at the formal courts. Both need to be aware of the role and function of each other's institutions through seminars and trainings. The interaction between the non-state system and the formal system is crucial, and both need each other if one is to speak of a coherent system in the future. Currently, the State's reach is limited, and hence in many cases the two systems operate separately.

Human rights concerning women should also be promoted within the communities in general, and among customary leaders (the elders) in particular. This will improve the role and participation of women in customary justice systems.

8.5 ESTABLISHING A SUPERVISORY MECHANISM

The formal system should establish mechanisms for monitoring/supervising the practices of the non-state systems for their compliance with human rights regimes stipulated under the constitution, and other international instruments. Of course, the formal system should recognize and promote the values of the customary systems to the extent that constitutional norms and human rights principles are not violated. This requires the establishment of a designated institution or the authorization of already established institutions such as courts, with a clear mandate for the supervision of human rights protection.

Empowering the formal system with a supervisory role should not lead to subordination of, or a reduced vitality of the customary system. There is, indeed, a risk that too close supervision and even cooperation between the two systems might at times lead to tension. A more practical proposal is to work out the partnership between the formal system and the customary system depending on the strength and weight of the two systems across regional states.

As the case of social courts in Tigray, and the rape cases in Oromia illustrate, the State can also positively influence the role of customary laws and institutions. In the Tigray region, one of the serious limitations of customary systems –exclusion of women – is remedied by requiring the judges in social courts to include at least one woman as a judge. In many parts of Oromia, elders have been trained to refer rape cases to formal courts as customary institutions are blamed for not adequately dealing with such issues.

By employing these and other similar measures, the Government can address the challenges surrounding the application of customary laws, and reduce the tension between recognition of the customary system on the one hand and the application of the formal legal system on the other hand. In particular, these measures can properly address the human rights challenges that women are facing in the application of customary laws in Ethiopia.

NOTES

- 1 Z Bahiru, 'The history of modern Ethiopia 1855-1991' (2001), 2.
- 2 Information provided by the Government of Ethiopia on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination, 2008 (available at www2.ohchr.org/english/bodies/.../CERD.C.ETH.CO.15.Add.1.doc, accessed on 18 March 2012).
- 3 G Yntiso, F Azeze & A Fiseha 'Customary dispute resolution mechanisms in Ethiopia' (2011) 22. This book was published in 2011 by the Ethiopian Arbitration and Reconciliation Centre. The book consists of exhaustive studies of the customary dispute resolution mechanisms of 13 ethnic groups in Ethiopia.
- 4 N Singer **The Ethiopian Civil Code and the recognition of customary laws**, 1968, 2.
- 5 Ge'ez (---) is an ancient South Semitic language that originated in the northern region of Ethiopia and southern Eritrea. It later became the official language of the Kingdom of Aksum and Ethiopian imperial court. Today Ge'ez remains only as the main language used in the liturgy of the Ethiopian Orthodox Tewahedo Church
- 6 Yntiso, Azeze & Fiseha (n 3 above) 22.
- 7 B Ayele 'Ethopic an African Writing System: its history and principles' (1997) 47.
- 8 Yntiso, Azeze & Fiseha (n 3 above) 22.
- 9 The 1931 Constitution of Ethiopia was the first modern constitution for Ethiopia, intended to officially replace the Fetha Negest, which had been the supreme law since the Middle Ages. Emperor Haile Selassie proclaimed a revised constitution in November 1955 of the Empire of Ethiopia. This constitution was prompted, like its 1931 predecessor, by a concern with international opinion. Such opinion was particularly important at a time when some neighboring African states were rapidly advancing under European colonial tutelage and Ethiopia was pressing its claims internationally for the incorporation of Eritrea, where an elected parliament and more modern administration had existed since 1952. This constitution was suspended by the Derg in their Proclamation No. 1, which was broadcast 15 September 1974, three days after Emperor Haile Selassie was deposed.
- 10 Yntiso, Azeze & Fiseha (n 3 above) 23.

- 11 P Alula & A Getachew 'Grass-roots justice in Ethiopia: the contribution of dispute resolution mechanism (2008).
- 12 As above.
- 13 Yntiso, Azeze & Fiseha (n 3 above) 24.
- 14 The nine regional states are Harari, Benshangul Gumuz, Oromiya, Gambela, Somali, SNNP (Southern Nations, Nationalities and Peoples), Amhara, Afar and Tigray. Multiethnic cities and towns namely the capital Addis Ababa and Dire Dawa fall within the federal jurisdiction.
- 15 F Petros 'Underlying distinction between ADR, Shimglina and Arbitration: A critical analysis' Mizan Law Review, 3 (2009) 106.
- 16 M Abdo & G Abegaz Teaching material on customary law (2009) 22.
- 17 M Ashenafi, Participation of women in politics and public decision making in Ethiopia (2007) 108.
- 18 One of the nine regional states in Ethiopia.
- 19 Article 35 of the FDRE Constitution.
- 20 See Y Awlachev 'Dispute resolution in Sebat Bet Gurage', 2011, G Yntiso, F Azeze & A Fiseha 'Customary Dispute Resolution Mechanisms in Ethiopia' 2011, see also M Ashenafi 'Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia' 2005.

LEGAL PLURALISM AND CUSTOMARY LAWS

- 21 Abdo & Abegaz (n 16 above) 202.
- 22 S Roberts, Against legal pluralism some reflections on the contemporary

enlargement of the legal domain Journal of Legal Pluralism and unofficial law 42 (1998) 96.

- 23 SA Jackson Legal pluralism and the nation state: romantic medievalism or pragmatic modernity?, 30 Fordham international law journal (2006) 158.
- 24 J Griffiths What is legal pluralism (1986) 24.
- 25 As above.
- 26 Jackson (n 23 above).
- 27 This theory goes beyond and assert that law must be administered by a single, integrated set of state institutions, and other normative orderings, such as the religious and traditional norms, ought to be and in fact are hierarchically subordinate to the law and institutions of the state.
- 28 B Dupret, Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-specification, European journal of legal studies 1 (2007)1.
- 29 One fact of some significance needs mentioning as a basis for understanding the factors which shaped Ehrlich's approach to the study of the law. His birthplace and native land was the Duchy of Bukowina (now part of the U.S.S.R. and of northern Rumania), then a part of the Austro-Hungarian Empire. This duchy was inhabited by no less than nine different ethnic and religious groups; namely, the Armenians, the Germans, the Jews, the Roumanians, the Russians, the Ruthenians, the Slovaks, the Hungarians, and Gypsies." Ehrlich became aware that the laws of these peoples in no

way necessarily corresponded with the laws of other peoples or with the provisions of the Code of the Empire which supposedly was sovereign. As an acute observer of the phenomenon, Ehrlich was convinced that this example of "living law," side by side with statutory law, was an excellent laboratory. The factual setting also undoubtedly led him to emphasize more strongly than prior legal scholars the role of societal norms. See NO Littlefield, Ehrlich's Fundamental principles of the sociology of law Maine law review.

30 H Kelesen general theory of law (2009) 224.

31 Living implies that it is alive and in use, in the sense that it is not merely historical or otherwise not in use. See, SS Muller The Global and the Local: Reflection on Human Rights and Local/Living Law in L Lindholt 'Human Rights in Development' (2003) 25.

32 Russian born French sociologist and jurist, Gurvitch is an important figure in the development of sociology of law.

33 Dupret (n 28 above)3-4.

34 V Jacques **Return to Legal Pluralism: Twenty Years Later**. 28: 149-157 (1989) 10.

35 As above.

36 As above.

37 As above.

38 As above.

39 V. B. Beckmann, who is afraid of legal pluralism (2002) 38.

40 As above 28-33.

41 As above.

42 Basically, the above definitions, both from the legal and sociological point of view, pose a challenge to Austin's classical definition of law as the command of the sovereign. Focusing on its form, this way of understanding law totally neglect the functional aspect of law, where attention is paid more to the rule upholding and rule generating activities taking place in another fora than the legislature and the judiciary. This positivist definition of law fails to develop a tool that readily accommodates the diversity of norms that are all the time emerging on the ground. See A Hellum & J Stewart Women's Human Rights and Legal Pluralism in Africa: Mixed norms and identities in infertility management in Zimbabwe (1999) 67.

43 C Cunneen & M Schwartz, Customary law, human rights and international law: some conceptual issues (2005).

44 Stating the difficulty of defining customary law, some writers even go to the extent of concluding that 'customary law [the phrase] is ambiguous, imprecise and overburdened and should therefore be avoided.' See, SS Muller The Global and the Local: Reflection on Human Rights and Local/Living Law in L Lindholt 'Human Rights in Development' (2003) 31.

45 Abdo & Abegaz (n 16 above) 9.

46 However, all these definitions of the term customary law face their own challenges. For instance, defining customary law as a prevailing law in pre-colonial societies

presupposes the pre-colonial normative system as all customarily. Besides, it also neglects the fact that customary law evolves and what is considered customer during the pre-colonial societies might not be considered as such in the post-colonial era, it also disregards the dynamic nature of societies and as there could be newly emerging customary laws. See SS Muller The Global and the Local: Reflection on Human Rights and Local/Living Law in L Lindholt 'Human Rights in Development' (2003) 29-30

47 A.N.Allot, legal education in African customary law (1966).

48 FM Zaloumis, Approaches to gender equality under customary law available at http://www.vanuatu.usp.ac.fj/sol_adobe_documents/usp%20only/customary%20law/zaloumis.pdf (accessed on October 2012).

49 As above.

50 Study Paper 9, Maori custom and values in New Zealand Law 2001.

51 South African Recognition of customary marriage Act 120 of 1998

52 M Ndulo African Customary Law, Customs, and Women's Rights Indiana journal of global studies 18 (2011) 88. See also K Cuskelly Customs and constitutions: State recognitions of customary laws around the world (2010) 3.

53 Abdo & Abegaz (n 16 above) 10.

54 B L. Benson Reciprocal Exchange as the Basis for Recognition of Law: Examples

from American History Journal of Libertarian studies (1991) 10.

CUSTOMARY LAWS AND WOMEN'S RIGHTS: THE LEGAL FRAMEWORK

55 As above.

56 The preamble of the Charter, par 2.

57 S Goonesekere A right based approach to realizing gender equality (2010) available at <http://www.un.org/womenwatch/daw/news/index.html> (accessed on 01 December 2012).

58 Final report on the 1970 Intergovernmental Conference on Institutional, Administrative and Financial Aspects of Cultural Policies Available at ocpa.irmo.hr/resources/docs/Report_Venice_CulPol-en.pdf (accessed on 15 November 2012).

59 LB Fordham Customary Law in a New South Africa: A Proposal International Law Journal (1991) 23.

60 Article 17 of the African Charter.

61 CEDAW Committee General Comment 23, para 5.

62 As above.

63 The CEDAW preamble, para 3.

64 The Universal Declaration of Human Rights (UDHR) Art.16; The UN International Covenant on Civil and Political Rights (ICCPR) art. 23; the International Covenant on Economic, Social and Cultural Rights (ICESCR), art.10; UN Convention of the Elimination of Discrimination Against Women (CEDAW) Art. 16; the Convention

on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages General Assembly resolution 1763 A (XVII) adopted on 7 November 1962, and entered into force on 9 December 1964, Art.1; and the UN Convention on the Rights of Persons with Disabilities ,art.16(1). Also see generally Human Rights Committee General Comment 28: Equality of Rights Between Men and Women (2000) ; Committee on the Elimination of Discrimination Against Women General Recommendation number 21: Equality in Marriage and Family Relations.

65 Article 16 of CEDAW.

66 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in November 2005.

67 KSA EBKU A New Hope for African Women: Overview of Africa's Protocol on Women's Rights, *Nordic Journal of African Studies* 13 (2004): 264–274.

68 As above.

69 As above.

70 Jacques (n 34 above) 35.

71 G. Assefa 'Federalism and legal pluralism in Ethiopia: Preliminary observations on the impacts on the protection of human rights, in *Federalism and Legal Pluralism in Ethiopia* (2011) 186.

72 Assefa (n 71 above) 187.

73 M Ashenafi 'Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia' (2005) 14.

74 The FDRE constitution Art.25 states that 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.'

75 Art. 34(1) of the FDRE Constitution.

76 Art9(4) of the FDRE Constitution.

THE TENSION BETWEEN THE FORMAL STATE SYSTEM AND THE NON-STATE SYSTEM IN ETHIOPIA

77 Arts 34 and 78 of the FDRE Constitution.

78 Abdo & Abegaz (n 16 above)15.

79 Yntiso, Azeze & Fiseha (n 3 above)472.

80 Assefa (n 71 above) 188.

81 The following are just a few examples of such studies: Ayehu Legesse Teferra, *Customary Contention: The Power and Authority of Partially Despised Waata Oromo in Dispute Settlement* (M.A. Thesis, Addis Ababa University, 2005) (discussing how the traditional institutions of the Waata (Arsi) subgroup of Oromo settle disputes involving murder and other serious bodily injury to a person raping an unmarried girl, amputating one's legs or hands, tooth breaking, arson, etc, through the traditional institution that consists of one man conciliator (the Waata) at first instance to a body of two to three

elders —jaarsaqe'eewarraa (household or village elders) at the wider level and the jaarsagosaa (elders of the sub-lineage) with conciliators numbering 3 to 5. At the community level, the jaarsabiyyaa (community elders), elders numbering up to 10 would be members of the 'court.' In serious cases such as murder, a ritual known as fixagumaa (culmination of the process) would take place; Paulos Alemayehu, Potentials and Challenges of Indigenous Institutions for Good Governance: The Case of Gada among the Gedeo (M.A. Thesis, Addis Ababa University, 2005) (discussing the customary judicial institution of the Gedoe people of the SNNP State. The author describes how the traditional chiefs—the Hayittichaats its lower tier and the Abba Gadaat the apex—dispense justice on all kinds of cases in the civil and criminal areas); Shack William, On Gurage Judicial Structure and African Political Theory, in 5 JOU (1963) See also, Walelign Tadesse Robele, Continuity and Change in Ye-Gordena Sera System of Kistane-Gurage Traditional Governance (M.A. Thesis, Addis Ababa University, 2005. See also, Jemal Derie Kalif, The Customary Resolution of Homicide Cases in Ethiopian Somalis and its Impact on the Regional Justice Administration (LL.B Thesis, Addis Ababa University, 1999).

82 Yntiso, Azeze & Fiseha (n 3 above)472.

83 Assefa (n 71 above) 190.

84 Assefa (n 71 above).

85 M Abdo 'Legal pluralism, Sharia courts and

constitutional issues in Ethiopia' 5 Mizan Law Review (2011).

86 Abdo (n 86 above) 81 and Assefa (n 71 above) 191.

87 Assefa (n 71 above) 192.

88 Yntiso, Azeze & Fiseha (n 3 above)471.

89 Amare Ashenafi, a judge in Amara Regional State High Court, Dessie, Ethiopia.

90 Yntiso, Azeze & Fiseha (n 3 above)471.

91 As above.

92 As above.

93 World Development Report in Gender Equality and Development 2012, available at <http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936222006/Complete-Report.pdf> (Accessed on 08 October 2012).

94 As above.

95 As above.

CUSTOMARY LAWS AND WOMEN'S RIGHTS AMONG THE GURAGE AND THE OROMO IN ETHIOPIA: CASE STUDIES

96 The two city administrations are Butajira and Welkite.

97 Yewendweson 37

98 It is claimed that Yajoka Qicha is established 300 years before and consists of rules and procedures governing various aspects of social, economic and political life among the Sebat Bet Gurage. For instance, its administrative laws are called Yeket Sera, while its family laws are called Yanqit Sera.

It has also detailed rules and procedures regarding criminal cases.

- 99 B Zewdie **Systems of Local Governance among the Gurage: The Yajoka Qicha and the Gordana Sera**, in B Zewdie & S Pausewang, 'The challenge of democracy from below' (2002) 17.
- 100 G Hailemariam 'The Gurage and their culture' (1991).
- 101 F Gadamu 'Traditional Social Setting of the Kistane (Soddo) in Central Ethiopia' (1986).
- 102 Yewendweson, in G Yntiso, F Azeze & A Fiseha 'Customary dispute resolution mechanisms in Ethiopia' (2011).
- 103 TS Hussen 'War in the Home" Marriage and Mediation among the Gurage in Ethiopia, LL.M thesis University of Western Cape, South Africa (2012)
- 104 My informants, Alemu, 47 and Belay, 51, (both males) reside in Addis Ababa. Both grew up in the Gurage Zone. They have left the Zone in their childhood. Alemu came to Addis when he was 21 years of age searching for a better job. While Belay, who currently is a public servant in Addis, came to Addis when he was 18. Both visit their families in Gurage Zone very often and have the proper knowledge of the customary laws in the respective place.
- 105 Hussen (n 104 above) 61.
- 106 Hailemariam (n 101 above) 159.
- 107 As above..
- 108 Hussen (n 104 above) 59.
- 109 Hussen (n 104 above) 63.
- 110 As above.
- 111 Hailemariam (n 102 above) 158.
- 112 Hussen (n 104 above) 68.
- 113 As above.
- 114 Hussen (n 104 above) 71.
- 115 Yewendweson (n 103 above) see also Hussen (n 104 above) 72.
- 116 Hussen (n 104 above) 71.
- 117 Zewdie (n 100 above) 19-20.
- 118 As above.
- 119 As above.
- 120 The god of their traditional religion.
- 121 Yewendweson (n 103 above).
- 122 Hussen (n 104 above) 58.
- 123 Hailemariam (n 101 above) 158.
- 124 Zewdie (n 100 above) 20.
- 125 Hailemariam (n 101 above):158.
- 126 Zewdie (n 100 above) 23-24.
- 127 JW Hussien, 'A cultural representation of women in Oromo society' 25 African study monographs (2004) 103.; K.A. Appiah & H.L. Gates *Africana: The Encyclopedia of the African and African American Experience* (1999); A Legesse, 'Gadaa Three Approaches to the Study of African Society' (1973).
- 128 Central Statistics Agency Ethiopia, 2008
- 129 Hussien (n 128 above) 104..
- 130 Hussien (n 128 above) 104.
- 131 As above.
- 132 As above.
- 133 See D Beletech, 'Oromtitti; The forgotten women in Ethiopian History' (2003); G Eshete, *African Society and Egalitarian Values; Oromo folklore literature and cultural studies in contemporary context.*

- (Unpublished PH. D. dissertation, 2007) & A Legesse, 'Gadaa Three Approaches to the Study of African Society.' (1973).
- 134 A Legesse, 'The Oromo Democracy' 2000.
- 135 Legesse (n 134 above) 35.
- 136 As above.
- 137 A. Jalata 'Gadaa (Oromo Democracy): An Example of Classical African Civilization' 5 *The Journal of Pan African Studies*, (2012) 31.
- 138 BK Holcomb, 'Akka Gadaatti: The Unfolding of Oromo Nationalism-Keynote Remarks' *Proceedings of the 1991 Conference on Oromia*, University of Toronto, (1991) 4.
- 139 L Bayisa 'The Democratic Political System of the Galla [Oromo] of Ethiopia and the Possibility of its Use in Nation-Building' (M.A. Thesis, George Washington University, 1971).& L Bayisa 'The Political Culture of **Gada**: Building Blocks of Oromo Power' paper Presented at the Oromo Studies Association Conference, University of Toronto, Canada, 1993..
- 140 Legesse (n 134 above) 2.
- 141 As above.
- 142 Legesse (n 134 above) 81.
- 143 Legesse (n 135 above) 10.
- 144 As above.
- 145 Oromia and the Oromo people, available at www.gadaa.com/culture.html(Accessed on 05 November 2012).
- 146 As above.
- 147 Bokku is a wooden or metal scepter, a sign of authority kept by the Abbaa Bokku, the president.
- 148 Abdo & Abegaz (n 16 above) 201.
- 149 Bayisa (n 140 above) 11.
- 150 Legesse (n 134 above) 97.
- 151 Hussien (n 128 above) 107.
- 152 Hussien (n 128 above) 106.
- 153 The geographical closeness of Bale and Arsi Oromo creates a relatively similar customary practices in terms of applications of the Gadaa system .
- 154 MT Østeb 'Wayyuu – Women's Respect and Rights among the Arsi-Oromo' in S Ege, H Aspen, B Teferra & S Bekele *Proceedings of the 16th International Conference of Ethiopian Studies*(2009)1049.
- 155 The term wayyuu is applied by scholars such as Dahl and Mamo (Dahl 1996: Mamo Hebo 2006), and is also defined and illustrated in detail in the newly published dictionary of Borana culture (Leus& Salvadori 2006). Hinnant, who studied the Gadaa system among the Gujji Oromo, uses a term, which is slightly different; woyyu (Hinnant 1977).
- 156 See K Kumsa 'The Siiqqee institution of Oromo women' 4 *The Journal of Oromo studies* (1997) 115-52; N Gidada 'History of the Sayyoo Oromoo of Southwestern Wallaga, Ethiopia from about 1730 to 1886 (1984); and Østeb (n 155 above) 1050.
- 157 The qanaffa is a sign that a woman wears on her forehead during the 4-5 first month after she has given birth.
- 158 The Hanfala is a belt made of leather from cattle which the married woman wears around her waist.

- 159 Singee is a stick (ulee) a woman will receive on her wedding day.
- 160 Østeb (n 155 above) 1051.
- 161 Østeb (n 155 above) 1050.
- 162 Gamachu, an elderly man originally from Arsi Asela, who live in Addis.
- 163 Gidada (n 157 above) 25.
- 164 As above.
- 165 T Mauye in G Yntiso, F Azeze & A Fiseha 'Cstomary dispute resolution mechanisms in Ethiopia' (2011) 283.
- 166 There are two important wooden sticks in Oromo culture: Bokkuuand Siinqee. The former is a scepter possessed and used by Abba Gada whereas the later is possessed by all married women.
- 167 T Mamuye 283
- 168 Kumsa (157 above) 129-130.
- 169 As above.
- 170 As above.
- 171 As above.
- 172 As above.
- 173 Østeb (n 155 above)1056.
- 174 As above.
- 175 As above.
- 176 As above.
- 177 As above.
- 178 Mamuye (n 166 above) 284.
- 179 Mamuye (n 166 above) 285.
- 180 Mamuye (n 166 above) 287.
- 181 Østeb (n 155 above)1057.
- 182 Mamuye (n 166 above) 283.
- 183 Kumsa (157 above)130.
- 184 Østeb (n 155 above)158.
- 185 DN Debesu 'Gender and culture in Southern in Ethiopia: an ethnographic analysis of Guji Oromo women's customary rights' 30 African Study Monographs, (2009) 16-17, March (2009), 16-17.
- 186 Debesu (n 186 above) 21-22.
- 187 As above.
- 188 Hinnant 806.
- 189 Legesse (n 134 above) 19-20.
- 190 Debesu (n 186 above) 21.
- 191 Debesu (n 186 above) 22.
- FACTORS REINFORCING GENDER EQUALITY IN THE CUSTOMARY LAWS AND PRACTICES
- 192 K Njogu & E Orchardson-Mazuri 'Gender inequality and women's rights in the great lakes: can culture contribute to women's empowerment? Available at <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Culture-Womens-Empowerment.pdf> (accessed on 02 December 2012).
- 193 This attribute to elders is very common across the various customary practices and it resulted from the community's attitude towards them. As Ephraim Isaac states elders are considered as selfless, generous and discerning moral individuals who are at peace with themselves. Impartiality and high moral standards are also common attributes of men elders. The men elders are also considered as persons with fear and respect of God, respect rulers and people whatever their status, have limitless

patience and ability to listen, speak politely, are honest and tolerant, do not harbour hate, are knowledgeable, are not judgmental and do not take sides and are wise that have faith. See E Isaac 'Elders councils: A way to peace in the Horn of Africa' (2008).

194 CEDAW Committee General Comment 23 para 10.

195 Para 154

