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COLLEGE OF LAW AND GOVERNANCE STUDIES,

CONSTITUTIONAL AND PUBLIC LAW STREAM

**Gadaa Indigenous Governance System in Light of Modern Democratic
Constitutional Principles**

By: Getachew Gudina

Advisor: Dr. Aberra Degefa (Assi. Professor)

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Declaration Statement

Here with I, Getachew Gudina Dinagde, declare that this paper prepared for the partial fulfillment of the requirements for LL.M Degree in Constitutional and Public Law entitled “Gadaa Indigenous Governance system in Light of Modern Democratic constitutional principles” is prepared with my own effort. I have made it independently with the close advice and guidance of my advisor and it is original in nature and has not been presented for a degree in any university.

Getachew Gudina Dinagde

Signature.....

Date

Certification Statement

Here with, I state Getachew Gudina Dinagde has carried out this research work on the topic entitled “Gadaa Indigenous Governance system in Light of Modern Democratic constitutional principles” under my supervision and it is sufficient for submission for the partial fulfillment of the award of LL.M degree in Constitutional and Public Law.

Dr Aberra Degefa (Ass. Prof)

Signature

Date.....

Approved by Board of Examiners

Signature

Date

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Glossary

Aadaa	Culture
Aadaa Booranaa	Borana Culture
Aada-Malee	Out of Norm, some act which is against culture
Abbaa	Father, the head or leader of something, the owner
Abbaa-Gadaa	Father of Gadaa, Head of Gadaa
Abbaa- Gadaa- Fiixee	Prime- Gadaa Leader
Abbaa Guyyaa	Day manager
Abbaa Herregaa	Well manager
Abbaa Muudaa	Father of Anointment
Aduula	A councilor who leads the Borana for one Gadaa term
Afaan Oromoo	Oromo Language
Arga-Dhageettii	Seeing and hearing which will be passed to generation as oral history
Baallii Scepters,	a symbol of power holding
Baallii wal irra fudhuu	the exchange of scepters, the act of power transfer
Buqqisuu	deposing from power
Caffee	Assembly or Parliament
Dabballee	First stage of Gadaa Grade, age one-eight years
Dhugaa	Truth
Dhugaa Waaqaaf Lafaa	Truth in the name of earth and heaven
Doorii	5 th stage of Gadaa grade, age 32-40, the warrior's stage
Gadaa	One term office of Oromo traditional governance,
Gadamojjii	Total Retirement
Galma	Hall
Gamnee didiqqaa	Junior Gamnee, 2 nd stage of gadaa grade 8-16 years boys
Gamnee Gurguddaa	senior Gamnee 3 rd stage of gadaa grade 16-24 years boys
Gogessa	Gadaa sets among the Oromo, line of classes in the Gada system
Gubbisaa or moggasaa	Naming
Guddifachaa	Adoption
Gumii	Assembly, Multitude
Gumii Gayyoo	Assembly at a place known as Gayyoo

Hadhaa	Mother
Hadha-Jilaa	A women who own certain ceremony
Hawwaxxuu	The name of clan in Borana
Hayyuu	Elected leader or a councilor
Hayyuu Aduulaa	Aduulaa councilor
Hayyuu Garbaa	Garbaa Councilor
Hayyuu- Medhichaa	Medhichaa councilor
Hiriyyaa	Age mate
Ilmaan Jaarsaa	one who is not born in a class of Gadaa Cycle
Ilmaan Kormaa	Children which born in the gadaa cycle of a class
Jaarsa	Elder
Jaarsummaa	Elder's council
Jallaba	A person elected by kin groups to enforce decisions
Konnituu	Name of a clan in Borana
Kora	Meetings
Kora dheedaa	Meeting for grazing
Kora Eelaa	Meeting for well water
Kora Fardaa	Meetings for horses
Kora Jarrolee	Elders Meeting
Kuusa	4 th stage of Gadaa Grade, 24-32 years men in a Gadaa class
Luba	Party
Makkala	Abba Gada's assistants, messengers, who help the hayyu to implement their tasks
Maraa	Cycle
Maraa Gadaa	Gadaa Cycle (8x5=40years)
Nyachisaa	Feast
Qaalluu	Oromo Religious institution
Raaba	5 th stage of Gadaa grade
Safuu	High moral standard, High respect
Seera	Law
Seera Buusa-gonofa	Law of social help
Seera Fudhaa-heerumaa	Family Law

Seera Maraa-Bishanii	Law of grass and water
Singee	Oromo women's traditional institution
Uumaa	Creature
Uumaa Waaqaaf lafaa	Creature of heaven and earth
Walárgii	Seeing each other
Wayyuu /Safuu,	high respect
Woreda	District
Ya'a Jilaa	Journey to ceremony
Yuuba	Sami retired Abbaa Gadaa
Yuuba Ballaa	Multitude of Peoples

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Abstract

Constitution is the aspiration of people in which a given society's way of life is determined and the whole political system is formulated. Constitution is not the act of the government. In a democratic society, it is an act of people in which it constitutes the government itself. But the study of Ethiopian constitutional or legal history shows that laws of the country are imported from other countries, which are alien to the Ethiopian people. This research paper tries to analyze Gadaa indigenous governance system which has been formulated and practiced by Oromo people, by comparing with modern democratic constitutional principles, elements and values. The researcher generated data for this paper from Borana Gadaa Oromo's. The data was collected through observation and interviews from Borana during the celebration of the 71st ballii wal irra fudhuu (power transfer) of Borana Gadaa from February 28, 2017-March 07, 2017 in Borana zone Arero woreda. The research findings show that Gadaa Governance is an indigenous democratic Governance of Oromo people which accommodate basic modern democratic constitutional principles, elements and values. It was also found out that Gadaa incorporated neither in Ethiopian constitutional history at federal nor recently, in Oromia National Regional Government State Constitution, where Gadaa is exercised for centuries. Gadaa indigenous governance system is the reflection of values of Oromo society, which can serve the same purpose as modern democratic constitution. This study enhances Ethiopian constitutional research to analyze and have knowledge and practice about Gadaa indigenous governance system as it accommodates basic democratic constitutional elements, values and principles. It can also be a source for modern constitution of the country. Particularly in Oromia National Regional State, it can be used as an input to incorporate Gadaa governance system in the state constitution through amending of the recent constitution.

Key words: Ingenious Governance, *Gadaa* System, Democracy, Democratic Constitutional Principles.

Chapter One

Introduction

1.1 Background of the Study

The Oromo are one of the African indigenous societies with their own indigenous governance system known as *Gadaa* System. They are the largest ethnic group in Ethiopia whose population is estimated to be 34.5% of the total population of Ethiopia. They occupy a land that extends from northeastern Ethiopia to east central Kenya and from Sudan in the west and Ethiopian Somali National Regional State in the east¹. Oromo people speak Afaan Oromo language as their mother tongue.

Gadaa Governance system accommodates the basic principles, elements, and values of modern democratic constitutions. In connection with this, a constitution should reflect the history and culture of a people. But as most African constitutions have been transplanted from other countries during the colonial and post colonial period, they fail to accommodate and reflect indigenous cultural values of the society.²

Similar to most of the African constitutions, the past Ethiopian constitutions have failed to accommodate values and cultures of Ethiopian multi-cultural society including the Oromo *Gadaa* governance system. *Gadaa* is a system formulated by the Oromo society before 600 years and being operational in certain parts of Oromia.³ Yet, the governance system is neither incorporated in Ethiopian constitutional history nor at federal and recently in Oromia National Regional Government State Constitution. Moreover, the Ethiopian Constitutional scholars did not give attention to the *Gadaa* governance system in their studies.

This research analyzes *Gadaa* indigenous governance system's principles, elements and values in light of the modern democratic constitutional principles to indicate the importance of incorporating the system in to the Constitution of Oromia National Regional State. The researcher generated data from Borana Oromo *Gadaa* system. The data has been collected through observation and interviews during celebration of the 71st *ballii wal irra fudhuu* (power

¹ Central statistical Authority (CSA), 2007

² Fomad, C.M. (2008), Constitutional reforms in France and their implications for constitutionalism in Francophone Africa, African governance monitoring and advocacy projects.

³ Asmarom Legesse. (2006). *Oromo Democracy; An indigenous African political System*: Asmara, The Red sea press, Inc

transfer) of Borana *Gadaa* in Borena zone, Arero District. The fieldwork was conducted from February 28, 2017 upto March 07/2017.

Borana zone in which this study conducted is located in Oromia National Regional State at a distance of 530 Km from Addis Ababa. The community is predominantly pastoralist where *Gadaa* indigenous governance system has effectively been exercised until today. The area is found between 36⁰ 39'10'' and 38⁰ 41' 40' east longitudes and between 03⁰30'30'' and 06⁰33'30'' degree north latitude.⁴ The population of Borana zone is about 1.1 million.⁵ The common boundaries of Borana zone are, to the east with Somali National Regional State, to the west with Southern Nations, Nationalities and Peoples' Region, to the North east with Bale Zone of Oromia, to the North West with the Guji Zone, and to the South with Kenya.⁶

1.2 Statement of the Problem

Ethiopian constitutional history shows that the country's written constitutions have been adopted from foreign countries and imposed on the society and stayed without actually serving the citizen as democratic constitutions. In principle, a constitution should reflect the history, culture, and values of the people it is meant to serve. Constitution is a document in which the aspiration of the people is expressed. It is a consensus document which enables the citizens to choose their leaders, it establishes the government, and it identifies and limits the power of the government. The use and implementation of indigenous governance systems are very important in countries like Ethiopia where the population is characterized by diversity in ethnicity, language, religion, cultural values, socio economic activities and traditional governance system.⁷

In a federal form of government, state constitutions should reflect the values, cultures and traditional governance system of its people. But it should not necessarily be uniform to national or other sub-unit constitutions.⁸ Because the federal constitution is an incomplete framework document in that it does not prescribe all constitutional processes and arrangements. Rather it

⁴ Aberra Degefa Nagawo (2012). Justice that heals and restores: The potentials of Embracing Oromo Indigenous Justice system.

⁵ Interview with Dadi Jaldessa Oda, head of Borana zone administration office, February 2017, Yabello

⁶ Ibid

⁷ Beekan, C.V. (2007), constitutional protection of ethnic minorities at the regional level: African Focus , 20(1-2): 105-151

⁸ Dinan, J.(2007). Patterns of sub national Constitutionalism in Federal Countries: A paper presented at a workshop on sub-National Constitutions in Federal states at the VIIth world congress of the international association of constitutional law in Athens, Greece, June 11-15 2007; Available at Heinonline/<http://heinonline.org>

leaves “space” in the federal system’s constitutional architecture to be filled by the constitutions of sub- national units.⁹

In this connection, the *Gadaa* System accommodates basic principles of democratic constitution such as election of a leader through democratic process, limitations of the power of leaders, identification of the term of office of the leaders, identification of three branches of government institutions and their powers, and the processes of amendment of laws.¹⁰ Owing to the assimilation and nation building strategy in Ethiopia,¹¹ the system has not been utilized in country’s legal system. As we understand, the past history of the Ethiopian constitution, the failure to use *Gadaa* indigenous governance system including other nations, nationalities and people’s values in to the formal constitution of the country, resulted in a conflict between the society and crack down of the system as whole. The imitation of monarchy system by Oromo Gadaa leaders, such as Gibe states, also contributed to the weakening of the Gadaa system among the Oromo themselves.¹²

Recently, the Oromia National Regional State where Gada System is in practice, the regional constitution has not accommodated the *Gadaa* indigenous governance system as a formal or informal source. Practically the people in this research area (the Borana people) prefer their indigenous governance system rather than formal laws to engage social, political and economic issues.

Furthermore, the failure of Ethiopian legal studies to see the *Gadaa* system from the aspects of democratic constitutional governance system resulted in the ignorance of *Gadaa* as a Democratic Constitutional Governance of Oromo people which accommodates its basic principles, elements and values. If the legal system incorporates the tested and practiced indigenous governance system owned by the society itself; it will bring peace and consensus among the society, builds democracy, and enhances sustainable development.

⁹ Tarr, G.A. (2011), Explaining sub-national constitutional space, *Penn state Law Review*, 115:1133-1149 Available at <http://heinonline.org>

¹⁰ Asmarom Legesse,(2006), *Oromo Democracy; An indigenous African political System*: Asmara, The Red sea press,Inc.

¹¹ Beekan, C.V. (2007), *constitutional protection of ethnic minorities at the regional level*: African Focus , 20 (1-2): 105-151

¹² Mohammed Hassen. (1994). *The Oromo of Ethiopia: a history*: The Red sea press, Inc.

Therefore, the study tries to show that *Gadaa* embodies modern democratic constitutional principles, values and elements, explores its significance of incorporation in modern constitution of the country, and finally seeks to fill the existing research gaps and recommend for better accommodation.

1.3 Objective of the Study

The study is intended to examine the *Gadaa* ingenious governance system in light of modern democratic constitutional principles and values. It is intended to show that the system embodies modern democratic constitutional principles such as the principles of rule of Law, popular sovereignty, the principle of accountability (*Buqqisuu*), separation of state and religion, free, fair and periodic election, majority rule and minority rights, limitation of office to a single term, separation of power, and to show its significance of incorporation in the Oromia National Regional State Constitution. It also intends to show how the formal system of the country challenged *Gadaa* governance system and how Oromo people of study area could keep this indigenous governance system and use it without interruption until today.

1.4 Research Questions

This research addresses the following questions.

1. What is *Gadaa* indigenous governance system in terms of being democratic and how is it being practiced among the Oromo people in the study area?
2. What are the basic principles of modern democratic constitutions which are embedded in the *Gadaa* indigineous governance system?
3. What are the merits of utilizing *Gadaa* indigenous governance system?
4. What are the possible challenges and prosperities in applying *Gadaa* governance system along with the modern (formal) governance system?

1.5 Scope of the Study

The scope of the study is limited in terms of geographical area and its subject matter. Oromia Region is a large state in Ethiopia in terms of its land size and population. In view of these facts, choosing one appropriate study site was necessary.

Hence, within the available financial and time limits, Borana Oromo was selected. The reason for choosing this particular Zone was that, when compared with other parts of Oromia, Borana

Oromo indigenous governance system is less tainted. Although the *Gadaa* system embodies many aspects of human development, the study focuses on democratic constitutional principles, values and elements embedded in the system.

1.6 Significance of the Study

This study can contribute to the enrichment of constitutional research in the area of Ethiopian constitution and adds new knowledge about *Gadaa* indigenous governance system and its constitutional principles, elements and values. It will be helpful for Ethiopian constitutional law scholars in considering the significance of indigenous governance system. Particularly in Oromia National Regional State it can be used as an input to incorporate *Gadaa* governance system in the state constitution through the amendment of the current constitution. Since the system is deeply rooted in the community's everyday life and has been exercised for a long period of time, it can be accepted among the people with out need of much resource and time. Incorporation of the system in the state constitution on the other hand helps to bring public trust, sustainable peace and development.

1.7 Research Methodology

The researcher has used qualitative method in this study. Qualitative research helped the researcher to explore and understand the meanings that the participants ascribe to their experiences in relation to the *Gadaa* System. One important characteristic of qualitative research that makes it appropriate for this study is the fact that it seeks to understand a research problem from the perspectives of the research area. It helped the researcher to fill the need to get out into the field to discover what is really going on and the understanding that meaning is defined and redefined through interpretation.¹³The nature of this research does not need mathematical process of interpretation; rather it is carried out for the purpose of discovering concepts and relationships in raw data and then organizing this into a theoretical explanation.

The research is based on both primary and secondary data. The data gathering techniques include interviews, focus group discussions and observations. Fifteen informants were selected for the interview while three group discussions were conducted with the community members. Ten respondents were selected from both Oromia Cultural and Tourism Bureau and Oromia Justice

¹³ Strauss, A. and Corbin, J. (1998). Basics of Qualitative Research: Techniques and procedures for Developing Grounded theory; 2nd Edition SAGE publications, Inc,

Bureau. The researcher used snow ball method to get the appropriate knowledgeable informants for the interviews, focus group discussions. Observations were made during *Gadaa* power transfer in Borena zone *Arero woreda Bedhasa Kebele* during the 71st Borana *Gadaa Ballii walirraa fudhu* (power- transfer) ceremony, from February 28/2017- March 07/2017. The interviews and focus group discussions were made at the same place with *Abba Gadaas*, elders, women, and officers of the zone and Culture and Tourism Office of the District.

Experts were contacted at Oromia Culture and Tourism Bureau for cultural aspects and Oromia Justice Bureau Law Drafting Department for legal contexts. Especially Oromia Justice Bureau Law Drafting Department was requested to get clarification on whether *Gadaa* governance system has been acknowledged in the formal law of the Regional State or not. Experts at both bureaus were contacted through concerned department heads. During data collection, video recordings, photographs and sound recordings were used. All the necessary ethical conducts were taken into consideration. Participant observation and interviews were undertaken on the basis of permission given from the concerned body. There was no communication barrier since their language, *Afaan Oromo*, is also the researcher's mother tongue. Secondary data is used by referring to books, journals, FDRE constitutions, Oromia National Regional State Constitution and other related literatures.

1.8 Limitations of the Study

This research faces certain shortcomings. First the scarcity of literature related to *Gadaa* governance system in light of modern constitutional principles challenged the researcher. Due to this short fall, the researcher used other related materials written on *Gadaa* governance system, especially Asmarom Legesse's work on Oromo democracy and materials written by other scholars. In addition to that, time and resources constraints possibly had impacts on the depth and quality of the research.

1.9 Organization of the Study

This research paper is organized in to five chapters. The first chapter addresses back ground of the study, statement of the problem, objective of the study, significance of the study, scope of the Study, research questions, and limitation of the study. The second chapter deals with the conceptual frameworks, definition and concepts of democracy, definition of Constitution and types of constitution. The third chapter discusses essential elements values and principles of

modern democratic constitution. The fourth chapter is about Borana indigenous governance structure, functional division of grades and classes. The fifth chapter deals with principles of Gadaa indigenous governance system in light of modern democratic constitution and discusses operational governance principles embedded in the system. The final chapter drawing contains conclusions and recommendations.

Chapter Two

Conceptual Framework and Review of Literature

2.1 Conceptual Frameworks

There are constitutional and democratic principles that are developed through time and more or less accepted by academic and political discourses. Democratic principles like free, fair and period election, participation in political process either directly or through representatives, and equality and non-discrimination, could be mentioned as corner stone of modern democratic systems. There are also constitutional norms and principles that are mentioned as reflecting modern democratic constitutional systems. This Chapter is devoted to discuss these normative principles of modern constitutional and democratic systems which will serve as a springboard to compare the principles and practices of the Gadaa indigenous governance system.

2.1.1 Definition of Democracy

The root meaning of democracy is taken from the fifth century BC Greek *demokratia*, briefly to mean rule by the people. The word is derived from the Greek words ‘demos’, meaning people, and ‘Kratos’ meaning power or rule. The direct translation of democracy, therefore, means ‘rule by the people’.¹⁴ Hence, sovereign power resides in the people and they are the ultimate sources of political authority. Democracy, from its very nature, sets principles about “who rules, by what procedures, over what matters, within what limits and with what degree of deliberation” with a view to allow competent government body make binding decisions.¹⁵ Democratic processes and the manner of participation may be different from society to society depending on the people’s culture and the degree of deliberation of democracy to be achieved.

¹⁴ Stiftung, K.A. (2011). Concepts and Principles of Democratic Governance and Accountability: A guide for peer educators; Published under the project: Action for Strengthening Good Governance and Accountability in Uganda. According to this scholar, Democracy can be defined as a form of government in which the people rule themselves directly and continuously, without the need for professional politicians or public officials; a society based on equal opportunity and individual merit, rather than hierarchy or privilege; a system of welfare and redistribution aimed at narrowing social inequalities; a system of decision-making based on the principle of majority rule; a system of rule that protects the rights and interests of minorities by placing checks upon the power of the majority; a means of filling public offices through a competitive struggle for the popular vote; a system of government that serves the interests of the people regardless of their participation in political office.

¹⁵ Goodin et al. (2007). A companion to contemporary Political philosophy 2nd Edition volume 1 black well publishing P521

“Democracy is identified by certain key principles, and by a set of institutions and practices through which these principles are realized.” One of the issues that democracy gives focus is the decision making rules and process as it may have an effect on the entire members of the society.¹⁶ Participation in democratic processes, which may be direct or indirect, presupposes recognition of all citizens as free and equal. ¹⁷ Participation, as one of the crucial factors for democracy, has come to be recognized as one of the fundamental rights in established democracies. These rights of participation include the right to elect or be elected, recall elected officials to secure their accountability, and take part in public issues to mention some. In doing so, “[d]emocracy possesses the ability to question itself and to correct its own mistakes without resort to naked force.”¹⁸

As holders of the ultimate political power, the people are entitled to control and influence governments as well as be treated equally in such processes.¹⁹ For certain religions, sovereignty rests in God and not in man, consequently, though, within this framework, democracy can exist. In contrast, secular philosophies place sovereignty in the people who are deemed to have the right to create and undo government.²⁰

“According to contemporary political thinkers the more a formal process is not sufficient to achieve substantive democracy, the more it arises other questions such as whether democracy is a modality through which authority is delegated by the multitude to the one or the few who are to exercise certain powers over them on the basis of that delegation of authority, or whether it is a series of interactive process in which check and balances constantly or periodically redress or equalize the scales of power between those who govern and those who are governed.”²¹

Either way, religious or secular views, governments have derivative or delegated power that they exercise over the people. This calls for some level of control on governments with a view to check whether they are utilizing power for the benefit of the people or not. The control of the people they should have on governments may take different forms extending from questioning to revolting against it in extreme situations.

¹⁶ Beetham, D. (1998). Democracy: Key Principles, Institutions and Problems, Inter parliamentary Union, Geneva, p.21-30

¹⁷ Kubiak, H. (1998). Democracy and the Individual Will, In Bassioni et al. eds. Democracy: its principles and achievements, Inter parliamentary Union, Geneva, p57-66

¹⁸ Ibid

¹⁹ Bassiouni et al. (1998). eds. Democracy: its principles and achievement. Inter- parliamentary Union, Geneva.

²⁰ Ibid

²¹ Goodin et al. (2007). eds. A companion to contemporary Political philosophy 2nd Edition, Black well.

2.1.2 Democratic Participation

Participation in the political process is one of the major components and expression of democracy. It includes the involvement of the people in democratic processes in different forms and levels. “Democratic participation can occur in two ways: First, people can participate directly through established structures of the adopted forms of democracy; and second, they can participate indirectly through civil associations.”²² Effective participation of the people in public affairs offers several advantages one of which is providing valuable inputs. It also provides a means of checking powers of elected officials against abuse of power and a means of securing accountability of governments. Broad-based participation at different levels allows people from various experience and diverse opinions come together and provide solutions to common problems.²³

One of the political processes which involve broad-based participation is constitution making process. As a fundamental law constituting a polity, a constitution should reflect the will of the people. This is expressed through a higher involvement of citizens in its making process which should involve significant political actors and the people. ‘The act of exclusion leads to civil and political alienation on the part of those excluded, and provides a breeding ground for political intolerance and repressive policies which impair the quality of democracy for all, even when they do not actually threaten its survival.’²⁴

The International Covenant on Civil and Political Rights (ICCPR) under article 25 states that:

*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections; this shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.*²⁵

²² Stiftung, K.A. (2011). Concepts and Principles of Democratic Governance and Accountability: a guide for peer educators

²³ Banks, A.M. (2008). Expanding Participation in Constitution Making: Challenges and Opportunities, 49 Wm. & Mary L. Rev. 1043 (2008)

²⁴ Beetham, D. (1998). Democracy: Key Principles, Institutions and Problems; Inter-Parliamentary Union, Geneva

²⁵ International Covenant on Civil and Political Rights: Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

This provision of the ICCPR stipulates that taking part in public affairs, electing and being elected and accessing public service are among the fundamental rights to participate in democratic processes. It should be emphasized that equality lies at the heart of democratic processes. In addition this provision, lays down principles for periodic, free and fair election, universal suffrage and secrecy of ballot in elections.

At this juncture, it is important to note that there may be reasonable restrictions that may be imposed in participating in democratic processes. Grounds such as age, mental state and legal status may be mentioned as examples.

2.1.3 Leadership Succession through Regular Elections

Elections ensure that key positions in government will be contested at periodic intervals and that the transfer of governmental authority is accomplished in a peaceful and orderly process. Taking part in free and fair elections is one of the fundamental rights recognized under international human rights instruments. The Universal Declaration of Human Rights (UDHR), under Article 21, states that citizens have the right express their wills in “periodic and genuine elections” based on the principle of universal and equal suffrage held by secret ballot. These rights are also recognized under Article 25 of the ICCPR, quoted above, in an elaborate manner.

The most fundamental concept of democracy is the consent of the governed that the citizen’s right to choose their leaders in free, fair and regular elections.²⁶ In the absence of free election, citizens will not be able to effectively participate in political processes open doors for regimes to be authoritarian. Periodic and free elections are one forms of keeping governments accountable as leaders worry about re-election in cases they does not meet the interests and wills of the people.

In parliamentary system of government, elections for the legislative also determine the party in control of the executive branch. A party or coalition with the majority of seats in system of

²⁶ Free fair and regular elections: Essential principles/ democracy web: comparative studies in freedom. (http://www.democracy.org/elections_essential_principles, December 22, 2017)

government or mixed presidential –parliamentary system, there are separate elections for the head of the executive branch and the legislative.²⁷

Even if it is generally agreed that elections should be periodic, free and fair, one cannot have a precise definition for it. As it has been discussed above, the ICCPR guarantees genuine and periodic election as a fundamental right. Periodic election may mean elections on a set schedule are known to the electorate, either on a specified day or range of dates within a particular time frame.”²⁸ Making the rules regulating elections is determined in advance and give opportunities to everyone equally could also be taken as part of making elections genuine.

2.1.4 The Right to Equality

The right to equality has been one of the top agenda of international human rights instruments and constitutional systems. It is one of the fundamental assumptions of a democratic society. ‘Equality rights in contemporary constitutional democracies are grounded in the widely held belief that all persons are inherently equal’²⁹ regardless of their ethnic, religious, linguistic, social or economic status. However, it is not easy to define equality as it could be conceived broadly or interpreted narrowly as it has been observed in some constitutional systems like that of the United States.

Equal citizenship thus entails a complex form of equality, rather than simple uniformity. The question of who is deemed equal with who is to be answered based on contexts or situations. In democratic societies, citizens should have equal rights with respect to participation in decision making process. Securing equal rights of citizenship, to enable people to influence the decisions that affect their lives, thus constitutes the foundation of democracy.³⁰ Equal entitlement to participate in public affairs has identified as one of the hall marks of democratic constitution. .

²⁷ Ibid

²⁸ Ibid

²⁹ Michel Rosenfeld, ‘Equality, Minority and Group Rights’ in Dorsen, Rosenfeld, Sajo, Baer & Mancini, comparative constitutionalism: cases and materials (3d ed. west publ. 2016), p.

³⁰ Stiftung, K.A. (2011). Concepts and Principles of Democratic Governance and Accountability: A guide for peer educators; Published under the project: Action for Strengthening Good Governance and Accountability in Uganda

2.2. Definition, Types and Functions of Constitutions

2.2.1 Definition of Constitution

Constitution may be defined in different ways based up on its function and formation. Different scholars define constitution in different ways. For instance, Woolsey said that a constitution is ‘the collection of principles according to which the power of government, the rights of the governed and the relations between the two are adjusted.’³¹ According to this definition, a constitution is a source of authority for the government and also embodies fundamental rights of the governed thereby regulating their relationship. The other scholar Jellinek, define that constitution is ‘a body of judicial rules which determine the supreme organs of state, prescribes their modes of creation, their mutual relations, their spheres of action and the fundamental place of each of them in relation to state.’³² In similar way Gilchrst also said that “Constitution of a state is body of rules, written or unwritten which determine the organization of government, the distribution of powers to the various organs of government and the general principles on which these powers are to be exercised.”³³ It could be discerned from these definitions that a constitution is a set rules and principles organizing the government, distribute power, define their relations, and recognize rights of the governed.

The first function of a constitution is that it generates a set of inviolable principles and rules governing the political process and more specific provisions which future law and government activity more generally must conform. This function of a constitution is termed as constitutionalism, which is vital to democracy.

Secondly, Constitution serves some kind of symbolic purpose. It incorporates the aspirations and wishes of the nation. It defines the directions and roadmaps where the nation is going. As such, it does not only set principles guiding how the government should behave. But in this context a constitution is a sort of manifesto, a confession of faith, a statement of ideals, and charter of the

³¹ Constitution: meaning, Types and importance of constitution. Available at <http://www.preservearticles.com/2014051433461/constituional-making-types-and-importace-of-constituion-.html> December 24, 2017

³² *Ibid*

³³ *Ibid*

land.³⁴ Common aspirations and goals are well articulated in constitutions as it has significant effect in strengthening the polity and serving as a cohesive.

The third and very practical function of constitutions is that they define patterns of authority and set up of government institutions. Thomas Paine, is the 18th Century radical said that a ‘people constituting a government and a government without a constitution is the property of the nation and not of those of who exercise the government... a constitution is a thing antecedent to the government and always distinct their form.’³⁵ A government is established and its structure defined by the constitution. According to Thomas Paine, constitution creates a government and a constitution appears before creation of government. A constitution precedes a government, as the later is a creation of the former, sets its structure and define powers among the different organs of government. The purpose for institutional set up and the division of powers among the branches of government is to create a system of checks and balances and less the possibility of tyrannical rule.³⁶

The fourth important function of constitution is to divide power between the federal government and state governments in a federal system of government. For instance, in US Constitution, the federal government is very strong with much power over the states but at the same time it is limited to the powers enumerated in the constitution.³⁷ Division of spheres of competence among the two levels of government by the constitution is one of the defining features of a federal system. This function of a constitution is, in fact, limited to those polities opted to adopt federal system.

Protection of fundamental rights and freedoms could be mentioned as the fifth function of a constitution. The constitution recognizes and guarantees fundamental rights and freedoms as inherent in human nature and cannot be taken away by governments. Constitutional history of developed democracies indicates that fundamental rights should be included in constitutions to

³⁴ Brandt et. al.(2011). Constitution-making and Reform: Options for the Process

³⁵Priba'n, J. (2007).Legal Symbolism on Law, Time and European identity: Cardiff Law school, Cardiff University, UK

³⁶ ChemerinskY, E.(2006). Constitutional law : principles and policies 3rd ed, NewYork, ASPEN

³⁷ Constitution: meaning, Types and importance of constitution. Available at <http://www.preservearticles.com/2014051433461/constituional-making-types-and-importace-of-constituion-.html>

make them beyond the reach of the government.³⁸ They are, hence, considered as limits to the powers of the government. Protection of minorities from the tyranny of the majority is also another function of constitutions. Term limits, regular elections, special representations of minorities, and access to justice could be mentioned as examples of guarantees that constitutions may provide for minorities.³⁹ There are recent challenges that question majoritarian forms of democracy excluding minorities permanently from governments especially in multi-ethnic societies and recommend for democratic processes leaning more to consensus. The functional definitions of constitution includes the formal written or unwritten as well as the collection of legal theories, norms and customs.

2.2.2 Functional Classification of Constitution: Normative and Nominal Constitution

A further classification of constitutions could be made on the basis of their purpose or function as normative constitution or nominal constitution. A normative constitution is based on norms or standards of a society and regulates the daily routines of governments and legal persons. . ‘It creates constitutional government by realizing respect for fundamental rights and liberty and its implementation.’⁴⁰ In other words, normative constitution could mean the prevalence of constitutionalism or the existence of limited government. It ensures the recognition and protection of fundamental rights and freedoms; the separation of powers; an independent judiciary; the review of the constitutionality of laws, the control of the amendment of the constitution; and institutions that support democracy.

One author defines the concept of constitutionalism as “encompass[ing] the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule but also that such a government should be able to operate efficiently and in a way that it can be effectively compelled to operate within its constitutional limitations.”⁴¹ Accordingly, governments should limited properly with a view to protect rights and freedoms and be compelled to effectively discharge its duties within its bounds. Two identifying factors

³⁸ Christiano,T. (2008). *The Constitution of Equality: Democratic Authority and its Limits*; Oxford, Oxford University Press

³⁹ Ibid

⁴⁰ Tushnet,M.(2008). *Some Skepticism About Normative Constitutional Advice*, 49 *William & Mary Law Riverview* available at 1473 <http://scholarship.law.wm.edu/wmlr/vol49/iss4/14>

⁴¹ Fombad, C.M. (2011). *Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects*; *Buffalo Law Review*, p.

may be depicted from the above definition: 'one is the fact that limitations are imposed on government when it is based on certain core values; the second is the ability of citizens to legally compel government to operate within these limitations.'⁴²

Nominal constitution, on the other hand, is a constitution which organizes merely a collection of rules or a good written constitution but doesn't restrain and implement the exercise of a political power in a given polity. Constitutions which are nominal by their nature leave the government unchecked and limitless. Such constitutions do not achieve the purposes of modern constitutions discussed above. The constitutional choices made in such constitutions are merely designed to benefit the one who is in power. 'It results in ills such as political instability, dictatorship, repression, human rights violations, corruption and mismanagement of state property, and results poverty.'⁴³

2.3 Indigenous Governance

This section of the Chapter focuses on reviewing literatures relating to indigenous governance with particular emphasis on the *Gadaa* system. Indigenous governance is a system of governance that is not transplanted or adopted from other countries but formulated and practiced by the people who are native to the specific land or region. Different scholars define the concept of indigenous governance system in different ways. For instance, Ladner define it as:

*"[A] way in which a people live best together or the way a people has structured their society in relationship to the natural world. In other words, it is an expression of how they see themselves fitting in that world as a part of the circle of life, not as superior beings who claim dominion over other species and other humans. Indigenous political systems were and are complex structures of governance and they were designed to fit with the realities of a people's territory and to provide opportunities to make interpret and enforce laws in a manner that was consensual...."*⁴⁴

Indigenous constitutional orders are composed of unwritten customs and practices. This does not mean that such governance systems are devoid of some sort of constitutional sources or documents. Regardless of differences, 'all indigenous constitutional orders consist of arrays of constitutional documents or sources.' As the phrase in itself speaks, indigenous governance

⁴² Fombad, C.M. (2011). Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects; Buffalo Law Review

⁴³ *Ibid*

⁴⁴ Ladner, K.L. (2003). Governing with in an Ecological Cotext: Creating an AlteNative Undersanding of Blackfoot Governance, Studies in Political Ecology, 70: 1, 125

systems belong to the people themselves. ‘Such constitutional orders were not subject to the authority of another nation or another government, but they were subject to the people of the nation and the manner in which they decided to live within and relate to their territory.’⁴⁵

With this definition in mind which serves as a framework with which we see indigenous governance systems, it would be necessary to devote some paragraphs to highlight the *Gadaa* system along with its basic features and principles.

2.4 Review of Literature

The *Gadaa* system is one of few indigenous governance systems which endured centuries old pressures from different regimes in Ethiopia. It is an indigenous governance system practiced by the Oromos. Regardless of its long-standing influences and wide acceptance among the people, it was not included in the modern constitutional systems of the country. This is not unique to Ethiopia as most modern constitutional systems do so. ‘The difficulties of non accommodation of *Gadaa* in a modern constitution of the country are laid on the barriers in Ethiopian and African studies.’⁴⁶ Asmarom Legesse states that:

“Western scholars who wrote about African political system have no much interest for *African political democracy believing that the word democracy is used to describe that the concept is their own exclusive patrimony and African should not claim it as being in any way associated with their cultural heritage.*”⁴⁷

In the above quotation, we can see that there exists among the westerners that looking one’s history and culture as superior and ignoring others as inferior or looking as a meaningless is common.

Asmarom states the bias of Edward Ullendorff against the Oromo political and democratic system as “*The Oromo had nothing to contribute to the civilization of Ethiopia, they possessed no material or intellectual culture, and their social organization was at a far lower stage of development than that of the population among whom they settled*”.⁴⁸ Such kind of erroneous

⁴⁵ Samuel Tilahun Tessema. (2017). Understanding the Concept of ‘Indigenous Peoples’ in Africa, Center for Human Rights, University of Pretoria. available at <http://www.achpr.org/mechanisms/indigenous-populations/> January 15, 2018

⁴⁶ Asmarom Legesse (2006:2). Oromo Democracy: An indigenous African Political system

⁴⁷ *Ibid*

⁴⁸ *Ibid*

conclusion about Oromo in general and *Gadaa* governance in particular indicates that the premises are based on false assumptions or it is the result of research disregard of the subject matter.

In a similar way, Ethiopian constitutional scholars have made their study oriented towards their history, cultures, languages, and literatures of the Semitic-speaking populations of northern Ethiopia. The assumption was that ‘others had no political institutions, laws of governance, system of their own prior to their incorporation into the expansive Christian Empire.’⁴⁹ The Ethiopian nation building project suppressed the cultures, languages, values and indigenous governance systems of other nation, nationalities and peoples of Ethiopia.⁵⁰ The Oromo *Gadaa* governance system was marginalized as a result of the assimilation policy and nation state building project which aimed to create homogenous Ethiopian state.

In certain parts of Oromia, the assimilation has not been successful. For instance, among the Borana, *Gadaa* system has been practiced with no interruption for the last six centuries. ‘The Oromo *Gadaa* Governance system is an indigenous African political system, created by Oromo society which incorporates a formal body of laws governing their own institutions.’⁵¹

Asmarom believes that *Gadaa* governance system embodies its own principles and establishes three traditional government institutions by identifying their powers and duties; defines the term of office of the rulers and the manner by which the office is to be held. He further raised some principles of Oromo democracy, but his study is limited to anthropological aspects, in which it lacks the assessment of what modern democratic constitutional principles embodies and how *Gadaa* governance system fits within these principles and values.

Marco Bassi in the same way studied the *Gadaa* system of Borana Oromo as comparative anthropology and he looks at the subject from the point of view of the dynamics that characterized Borana decision making, brought to light through rigorous ethnographic investigation.

⁴⁹ Tsehai Wada wourji (2012). Coexistence between the formal and informal justice systems in Ethiopia: challenges and prospects, *African Journal of legal studies*, 5:269-293

⁵⁰ *Ibid*

⁵¹ Asmarom Legesse (2006:195). Oromo Democracy: An indigenous African Political system

The study made by Aberra Degefa is also limited to one aspect of Borana Oromo indigenous justice system which focuses on disputes settlement.⁵² The study focused on the restorative potentials embedded in Borana Oromo indigenous justice system which makes it favorable to those involved in criminal dispute and for the understanding of how criminal disputes are resolved under Borana Oromo indigenous justice system.

The study by Chala on Indigenous Federation of Borana Oromo explores of the issue of *Gadaa* system as a federal system of governance in Borana.⁵³ His study shows that the *Gadaa* system allows the Borana to have decentralized political institutions, which provides better governance to the people. Assafa Jalata (2012) by studying on *Gadaa* (Oromo democracy) studies of the system are limited to sociological analysis of *Gadaa* system and do not elaborate the constitutional analysis.⁵⁴

As it has been discussed in introductory part, *Gadaa* System embodied many aspects of human development. This research is different from others studies by focusing on the aspect of modern democratic constitutional essential principles, elements and values such as the Principles of Rule of Law, Popular Sovereignty, the Principle of Accountability, Separation of State and Religion, Free, Fair and Periodic Election, Majority Rule and Minority Rights, Limitation of Office to a Single Term, Separation of Powers embedded in the *Gadaa* system. In doing so the paper analyzes modern democratic constitutional principles, values and elements generally accepted in light of those embedded in the *Gadaa* governance system.

⁵² Aberra Degefa (2015). Justice that heals and restores : The potential of embracing Borana Oromo Indigenous justice system alongside the Ethiopian criminal justice system; AAU PhD dissertation in social work and social development

⁵³Chala D.G. (2017). Indigenous Federation: The case of Borana Oromo, Ethiopia. The international indigenous policy Journal, 8(1) Retrieved from: <http://ir.lib.uwo.ca/iip/vol.8/iss1/2>

⁵⁴Asafa jalata(2012). *Gadaa* (Oromo Democracy): An example of classical African civilization; <http://trace.tennessee.edu/utk-socopubs/80>

Chapter Three

Essential Characteristics and Principles of Constitutional Democracy

The preceding Chapter gives a birds-eye-view of some basic democratic principles that are identified by literatures and constitutional experiences across the globe. At this juncture, it is essential to explore the basic tenets of democratic constitution. This Chapter briefly addresses essential characteristics of modern democratic constitutional principles. These principles, in the opinion of the author, serve as a springboard to make comparative analysis between modern democratic constitutional principles on the one hand, and the *Gadaa* indigenous governance system on the other.

3.1 Popular Sovereignty

In democratic constitutional governance, the people are the ultimate source of the authority of the government which drives its authority to govern from their consent. The authority of the government is created and sustained by the consent of its people, through their elected representatives, who are the sources of all political power. The FDRE constitution under article 8 states that;

“All sovereign power resides in the Nation Nationalities and peoples of Ethiopia; this constitution is an expression of their sovereignty; and their sovereignty shall be expressed through their representatives elected in accordance with this constitution and through their direct participation.”

Under this constitution, popular sovereignty declared by two ways of participations in the hands of Nations, Nationalities and peoples of Ethiopia; through direct participation or through indirect participation by their elected representative.

In some countries like England, parliamentary sovereignty is acknowledged in their constitution which authorizes the parliament the power to make or unmake any law whatever: and further, that no person or body is recognized by the law having a right to override or set aside the

legislation of the parliament.⁵⁵ It has its own positive and negative sides. On the positive side, any act of parliament, which makes a new law, or repeals or modifies an existing law, will be obeyed by the court. From its negative side, there is no person or body that can, under such constitutional system, make rules which override or derogate from an act of a parliament or which will be enforced by the courts in contravention of an act of a parliament.⁵⁶

3.2 Constitutional Supremacy

In jurisdictions where there is written constitution, their constitution is a supreme law of the land. Constitutional provisions shall prevail over any act of all authorities of executive, legislative and judiciary as well as persons throughout the given country. Constitutions empower the governments to exercise authority over the people. This does not mean that government can make use their authority in a way they want. “Powers are bestowed upon the institutions and organs of government not for the personal aggrandizement of those who wield them from time to time but for the welfare and advancement of the society as a whole.”⁵⁷

The FDRE constitution under article 9 declares that “constitution is a supreme law of the land, any law, customary practice or a decision of an organ of state or a public official which contravenes this constitution shall be of no effect.”⁵⁸ Accordingly, all laws, decisions and practices are subjected to comply with the Constitution. Constitutions, as higher laws, should be obeyed at all times. The supremacy of a constitution is marked on the sovereignty of the people in the fact that it is the act of the people and must be respected by the government and the citizen.

3.3 Protection of Fundamental Human Rights

Human rights are universal legal guarantees that protect the fundamental freedoms and human dignity of every individual. These rights affirm that every human being is entitled to equal treatment and opportunities, regardless of gender, economic status, ethnicity, etc. They are universal, equal and interdependent. Human rights are universal in essence that every human

⁵⁵ Dicey, A.V. 2011. Introduction to the study of law of the constitution, Indiana, Liberty Fund inc.

⁵⁶ Ibid

⁵⁷ Reporters, S. (2010). The supremacy of the constitution, good governance and the doctrine of necessity: A critical Appraisal; <http://saharareporters.com/2010/02/25/supremacy>

⁵⁸ Article 9 of the FDRE Constitution.

being is endowed with by nature. They are mutually interdependent. Currently, the international community has come to recognize not only individual rights but also group rights.⁵⁹

Human rights predate governments and hence, governments cannot give or take away from citizens whenever they want. Governments recognize fundamental rights, give protection and fulfill responsibilities for the full realization of rights and freedoms. The observance and full exercise of such rights are the foundation of freedom, justice and peace.⁶⁰

Democracy has as its foundation in the respect for the human person and the rule of law. Democracy offers the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. In the context of multi-ethnic societies, democracy affirms that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality of the law.⁶¹ Human rights and fundamental freedoms are enumerated in the Universal Declaration of Human Rights and in various international and regional treaties as well as FDRE constitution.

3. 4 Majority Rule and Minority Rights

In democratic systems, governments are run by the majority rule. The majority exercise government authority through established institutions. The powers of government are limited by law and a written or unwritten constitution must be obeyed by those in power. As it has been discussed under the definition of democracy in the introductory part of this paper, democracy is a government by people, or a form of government in which the supreme power is vested in the people and exercised by the people through direct participation or by their representatives. Democracy is governed by majority rule that is when something is voted on, the side with the most votes wins.⁶²

⁵⁹ Stiftung,K.A. (2011). Concepts and Principles of Democratic Governance and Accountability: A guide for peer educators

⁶⁰ibid

⁶¹ Bassiouni,C. (1998).Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realization; Inter-Parliamentary Union, Geneva

⁶²Majority Rule/ Minority Rights: Essential principles. /Democracy Web. From essential principles history (<http://democracy.web.org/node/36>)

In majority rule decisions, more people are in favor than less people. The principle is that minorities could not prevent the majority from deciding an issue or elections. If not a minority holding economic, social, and political power would use its power to dominate the majority of the citizens, thus instituting the antithesis of democracy: minority rule.⁶³ The International Conventions on Civil and Political Right (ICCPR) under article 27 states that:

*“In those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.*⁶⁴

This provision guarantees rights of persons belonging to ethnic, religious or linguistic minorities to enjoy their distinctness. However, the term ‘minority’ is not defined under the ICCPR. As a result, the question of who are minorities arises in the exercise of the rights they are entitled to. Francesco Capotorti, a Special Rapporteur for the Sub Commission on the Prevention of Discrimination and Protection of Minorities, in a special study on minorities in 1977 developed the most cited definition which reads as follows,⁶⁵

*“A minority is A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members- being nationals of the state-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed to words preserving their culture, traditions, religion or language.”*⁶⁶

According to this definition, a group could be named as minority if the group is lesser in number, non-dominant, possess either of the characteristics as distinct, and desire to preserve their identity. If minorities are in a dominant position even if they are lesser in number to the rest of the population, the members are not protected under international law.

In majority rule, the system must guarantee that the majority will not abuse its power to violate the basic and inalienable rights of the minority and must avoid perpetual rule and dictatorship. ‘Tyranny of the majority’ should be constrained with proper institutional arrangements

⁶² Ibid

⁶⁴The international conventions on civil and political right (ICCPR) article 27

⁶⁵Posner, R.A. (2003). Law pragmatism, and democracy; Cambridge and Massachusetts, Harvard university press

⁶⁶ Ibid

safeguards to protect minority rights. Such safeguards have been recognized as one of the principles of democratic constitution.

3.5 Separation of Power

Separation of powers is another principle of modern constitutional democracy. The long history of the doctrine of the separation of powers reflects the developing aspirations of men over the centuries for a system of government in which the exercise of governmental power is subject to control.⁶⁷ As the famous quote of Lord Acton rightly puts “power tends to corrupt, and absolute power corrupts absolutely....”⁶⁸ This quote rightly emphasizes the importance of separation of powers in modern democratic constitution.

In its modern context, the principle of separation of power was influenced by the works and ideas of Montesquieu who articulated that the legislative, executive and judicial functions should be separate, held by different institutions and led by different personnel.⁶⁹ This means, each branch of government has primary responsibility for certain functions such as legislative, executive and judicial functions.⁷⁰ All the three organs of government have powers inherent in their nature. This was not found sufficient for James Madison, one of the founders of US Constitution. He added the importance of check and balance between the three branches of government. The extent to which separation of powers is taken differs from jurisdiction to jurisdiction. In the context of the US Constitution, for instance, even if the Constitution does not expressly mention anywhere, separation of powers and check and balance is duly acknowledged, structurally, and given emphasis to its presidential system of government. This is not the case in parliamentary forms of government where it is common to observe some fusion of powers among the executive and legislative organs. In 19th C in England and France, pure doctrine of separation of powers was attacked by new ideas of parliamentary government; by re-examination

⁶⁷ Vile, M. C. (1998). *Constitutionalism and Separation of Power*: Second edition; Liberty Fund Inc, p7-23

⁶⁸ See Encyclopedia available at <https://www.britannica.com/biography/John-Emerich-Edward-Dalberg-Acton-1st-Baron-Acton>

⁶⁹ Montesquieu addressed these and other ideas in his famous book entitled ‘The Spirit of the Laws’. See **Charles-Louis de Secondat, baron de Montesquieu** (1750), “The Spirit of the Laws”, Batoche Books, Canada, (Translated by Thomas Nugent) available at <https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/montesquieu/spiritoflaws.pdf>

⁷⁰ Vile, M. C. (1998). *Constitutionalism and Separation of Power*: Second edition; Liberty Fund Inc, p7-23

and reformation of the doctrine.⁷¹ It resulted for separation of organs and functions with a different set of concepts and that had to be fitted into the framework of constitutional theory.⁷²

3.5.1 The Executive Power

According to the principle of separation of powers, the executive is mandated with implementing laws enacted by the legislature. The executive enforces the law, it also makes and implements government policy; generates laws for legislatures for approval or amendment.⁷³ Hence, the principal responsibility of the executive branch is to execute laws, a power considered as inherent in the executive organ.

Even if the principal responsibility of this organ is to execute laws, modern day executive also have rule making power delegated by the legislature. This trend has become more common in many jurisdictions. Such delegation is necessitated by practical difficulties of law makers overburdened by law making; technical expertise of the executive and convenience may be mentioned.

Executive powers are vested in different organs in different constitutional jurisdictions. In UK, for example, the prime minister is the chief executive. He/she is the leader of the majority party in the commons with two fundamental powers, namely to appoint and dismiss other ministers and to dissolve parliament. The other important power of the prime minister is mainly based on convention which gives the holder of the office unique political influence senior ministers under the chair of the prime minister form the cabinet which is responsible for overall government policy.⁷⁴ The USA Constitution, on the other hand, under Article II states that “the executive power shall be vested in a president of the united states of America.”⁷⁵ There are also systems of government which are the hybrid presidential and parliamentary systems where executive power is shared between a prime minister and a president.

⁷¹ Vile, M. C. (1998). Constitutionalism and Separation of Power: Second edition; Liberty Fund Inc, p7-23

⁷² *Ibid*

⁷³ Alder, J. (2002). General principles of Constitutional law and Administrative law: 4th edition, New York, Palgrave Macmillan,

⁷⁴ *Ibid*

⁷⁵ Chemerinsky, E. (2006). Constitutional law principles and policies, Third Edition; New York, Aspen publisher

3.5.2 The Legislative Power

The law making power is most commonly vested in the legislature. The legislative organs in different countries have different names. For example in UK and Ethiopia it is called parliament, in USA Congress and etc. This organ is composed of representatives of the people directly elected through free, fair and periodic election with complementary freedom of association and expression. The law maker exercises power on behalf of its electorate. The main function of legislatures in modern democratic constitutional government is the power of establishing, abrogating, changing or amending of laws.⁷⁶ It has also other functions depending on the forms of government adopted. In parliamentary forms of government, the parliament is vested with the power of oversight whether the law it as enacted are properly implemented by the executive. Such responsibilities are usually discharged through standing committees established under the parliament. Approval of major decisions made by the executive such as approving appointments, annual budgets, declaring state of emergency or state of war are also part of the major responsibilities of the legislatures.

3.5.3 The Judicial Power

The judiciary is the third branch of a government which interprets and applies laws. The right to access to justice is one of the essential elements of democratic constitutional governance system.⁷⁷ Hence, its structural and institutional organization should be arranged with these rights of citizens in mind. It provides a mechanism for the solution of disputes. The judiciary neither makes nor enforces laws. Its task is to interpret laws and solve disagreements among disputants. This may be questioned in the context of common law legal systems where the doctrine of precedence prevails, as sometimes called ‘judge-made laws’.

In addition to this inherent power, the judiciary reviews administrative decisions or rules and legislation in some jurisdictions. Courts having the power of judicial review power may annul legislation or executive rules and decisions if it finds them incompatible with the constitution. In such jurisdictions, ‘[j]udges constitute critical forces for interpretation and implementation of a

⁷⁶ De Lolme, J. L. (2007). The constitution of the England; An account of the English Government printed in the United States of America Liberty Fund, Inc. P55

⁷⁷ Justice, M. and BEEVI, F. (1998). The Judiciary in Democratic Governance: Some Insights from the Indian Experience; Inter-Parliamentary Union, Geneva

constitution.⁷⁸ The judiciary plays a great for the protection of fundamental rights and freedoms of the citizens.

3.5.4 Checks and Balances

As it has been described above, separation of powers manifested through separation of institutions, functions and personnel should be complemented by properly designed mechanism of checks and balances. As a result, one organ of a government should have some power of checking the others. Different agencies or branches of government should have adequate power to check the power of the other branches.

Checks and balances may take different forms across jurisdictions. For instance, in the US, courts have the power to check constitutionality of laws and executive decisions. This power of courts was fouded by the famous decision of the US Supreme Court *Marbury v. Madison*.⁷⁹ Judicial review is just the subjection of the legislatures or executive acts to the rule of law.⁸⁰ This form of judicial review, named as decentralized model, have been criticized by scholars arguing that allowing an unelected judge to quash a legislation enacted by law makers having direct mandate from the people contradicts democratic principles.

In other jurisdiction like Germany, the task of constitutional review is undertaken by a centralized Constitutional Court. This arrangement seems to balance legal and political aspects of constitutions. There are, however, ongoing debates on which institutional choice is preferable.

Other forms of checks include approval appointments of executive by the legislature, approval of annual budget, presidential veto of bills, approval of judges by parliaments, etc could be mentioned. The choices may depend on the forms of government adopted and some other factors like context.

⁷⁸ Alder, J. (2002). General principles of Constitutional law and Administrative law: 4th edition, New York Palgrave Macmillan

⁷⁹ **Marbury v. Madison, 5 U.S. 137 (1803) available at <https://supreme.justia.com/cases/federal/us/5/137/case.html>**

⁸⁰ Waldron, J. (2006). The core of the case against judicial Review; Yale law journal, Heinonline (<http://heinonline.org>) wed sep. 2402: 1904, 2014.

3.6 Rule of Law

The principle of rule of law is another important aspect of modern democratic constitutionalism. Roughly defined, it refers to the principle that all citizens including leaders of the country are subject to the law of the country. ‘There must be a law and procedure which protects the citizen from the tyrannical act of the leaders as well as all citizens of the country should be protected equally by law without any discrimination.’⁸¹ Citizens represent delegates to the law maker and laws are enacted indirectly by the people themselves. ‘When laws are established by the people who then have to obey them, both law and democracy are served.’⁸² It is for this reason that leaders should ensure that when writing new constitutions for their countries, the citizens must be widely consulted for their views and the debate prior to the promulgation of the constitution should be as open and transparent as possible.⁸³

Rule of law refers to the situation where government officials and citizens are bound and abide by law. It has been recognized by many scholars that rule of law has both substantive and procedural aspects. Substantive rule of law focuses on the content of laws as mere act according to a law.

⁸¹Dyzenhaus, D. (1999). *Recrafting the Rule of Law: The Limits of Legal Order*; Oxford and Portland, Hart Publishing

⁸² Ibid.

⁸³ Stiftung, K.A. (2011). *Concepts and Principles of Democratic Governance and Accountability: A guide for peer educators*

Chapter Four

Borana *Gadaa* Indigenous Governance System

4.1 Overview of *Gadaa* Indigenous Governance

Gadaa is an indigenous governance system which is operational among the Oromo people. It may be defined in different interrelated meanings. It is the grade during which a class of people assumes political and ritual leaderships, a period of eight years during which elected officials take power from the previous ones, and the indigenous governance institutions of Oromo society.⁸⁴ *Gadaa* indigenous governance system organizes and guides the Oromo people around political, economic, social, cultural, legal and religious institutions.⁸⁵ The system divides the Oromo people into a series of grades, or stages through which they should pass a succession of generational classes known as *Luba*.⁸⁶

The intergovernmental committee for the safeguarding the intangible cultural heritage explained the *Gadaa* system as follows.

The Oromo are known for their remarkable indigenous democratic socio-political system known as the Gada which they have kept working for the last five centuries. As a governance System, Gada guides the life course of individuals and regulates political, economic, social and religious activities of the community. It also serves as a mechanism of socialization, education, religious expression, peace maintenance and social cohesion and promotes the principles of equality and freedom. Under the Gada System, Oromo society is organized into five Gada generation classes or sets which rotates every eight years to assume political, economic and ritual responsibilities. The recruitment to the membership of the five Gada classes is based not on age but rather on genealogical generation 'descent'. The entire class progresses through eleven series grades. The system rotates every eight years to allow each class assume power in the middle of the life course (the sixth grade) called Gada(Luba). The class in power is headed by a political leader known as Abba-Gada literally "father of the period". The transition is marked by a formal power transfer ceremony. Gada is a complex system that incorporates pivotal institutions such as moggaasa (naturalization), guddifacha (adoption), araara (conflict resolution), gumaa (reparation), rakoo (marriage law) waaqeffannaa (Oromo religion) and Siinqee (institution to safeguard women right). Within the System, there is a thanks giving ceremony known as Irrecha nationally

⁸⁴ Assefa jalata. (2012). *Gadaa (Oromo Democracy): an example of classical African civilization*. Sociology Publications and other works, trace,Tennessee.edu/utk-socopubs/80

⁸⁵ *Ibid*

⁸⁶ Bassi, M. (2005). *Decisions in the shade: Political and juridical process among the Oromo Borana*, Asmara, The Red Sea Press Inc.

*celebrated at Lake Arsadi. The Gada System has developed through the cumulative experiences gained from practices and lessons of many generations of Oromo Nation.*⁸⁷

Although when and how *Gadaa* system was started is specifically unknown and needs farther research, different scholars argue that the system was exercised for long period of time and interrupted for about ten *Gadaa* terms, and was renewed during the *Gadaa* term's of *Abbaa Gadaa* Gadayoo Galgaloo who was on power in Borana during the period of 1457-1464 which is continued orderly until recently without interruption.⁸⁸ What exactly Borana elders and different scholars agreed on by citing the name of *Abbaa Gadaas* and their term of office is that it is not interrupted beginning from the term of office of *Abbaa Gadaa* Gadayoo Galgaloo and until recently, (71st *Gadaa* term of *Abbaa Gadaa* Kuraa Jarsoo).⁸⁹

4.2 Borana Indigenous Governance structure

The Borana governance system divides power systematically and equitably at central and local level. It is distributed among each generations, moieties, sub-moieties, clans and sub-clans an orderly succession of political office. Borana is divided in to two moieties known as Sabbo and Gona. These moieties again divided into different clans. Sabbo is divided in to three major clans; and Gona is divided into 15 clans. Since Gona is the large moiety, it is divided into two sub-moieties known as Fullelle and Haroressa. The Fullelle sub-moiety has seven clans; and Haroressa sub moiety on the other hand is divided into eight clans.⁹⁰ These clans again divided into different sub clans, *Olla*, minimal lineages (*babala*), lineages (*mana*), and extended families.⁹¹

There are three elected *Gadaa* councils (*Gadaa Sadan*) at the central level in the Borana governance system. These are *Hayyuu Aduulaa* (Aduula Council), *Hayyuu Medhichaa*

⁸⁷ Convention for the Safeguard of the intangible cultural heritage: Nomination Files No. 01164 For Inscription In 2016 on the Representative List of The Intangible Cultural Heritage of Humanity; UNESCO,

⁸⁸ Jaatanii Diida Haroo (2015). Jaarraa* Haaromsa Aadaa fi Seenaa Boranaa: Kitaaba sadeessoo (Vol-3A)

⁸⁹ Borana Zone Culture and Tourism office; see also Jaatanii Diida Haroo (2015), Jaarraa* Haaromsa Aadaa fi Seenaa Boranaa: Kitaaba sadeessoo (V-3A)

⁹⁰ Bassi, M. (2005). Decisions in the shade: Political and juridical process among the Oromo Borana, Asmara, Red sea press inc.

⁹¹ Aberra Degefa Nagawo (2015). Justice that heals and restores: The potential of embracing Borana Oromo indigenous justice system. A dissertation submitted to the school of social work, Addis Ababa university, for the partial fulfillment of the requirements for doctoral philosophy degree in social work and social developm

(Medhicha Council) and *Hayyuu Garbaa* (Garbaa Council). *Hayyuu Aduulaa* (Aduulaa Council) has six councilors (*Aduulota Jahan*) and it is the top leader of the councils.⁹² They are elected from *Gadaa* in a class of a particular *gogessa* in which the *Abbaa-Gadaa Fiixxee* (prime Abbaa Gadaa) is elected from. The *Medhicha* Council is also elected from the same *Gadaa* class in office and constitutes six members. The third council *Hayyuu Garbaa* consists of 18 councilors and drawn from Luba of any *gogeessa*. Each clan represents with one garba council. The *Hayyuu Garbaa's* class may already passed through its *Gadaa* period, but personally who have not yet held office of any *Gadaa* term from any *gogeessa*. They play advisory roles in the *Gadaa* system and at the same time they are delegates of their respective clans.⁹³

The other important point in Borana *Gadaa* governance system is the equitable distributions of *Gadaa* officials through moieties and clans for every *Gadaa* terms.⁹⁴ The two moieties share each three of the six *Hayyuu Aduulaas* (top *Gadaa* officials). Sabbo Moiety shares three officials among its three clans in which each clan holds one office of the *Hayyuu Aduula*. Since Gona is the large moiety which has 15 clans, it is impossible for each clan to hold office for a particular *Gadaa* period. The Borana arrange the division of power among the Gona at two sub-moieties, between Fullelle and Haroressa. Each sub-moiety holds at least one office of the *Hayyuu Aduula* every *Gadaa* period. The remaining one of *Hayyuu Aduula* goes to either of the two moieties orderly every *Gadaa* period.⁹⁵

Alongside with power sharing between moieties, sub- moieties and clan levels, Borana indigenous governance system has designed administrative self-government for the *Gona Balla* (large Gona which has 15 clans). The two sub-moieties Fullelle and Haroressa are allowed to have self-governing *Gadaa* Councils which are authorized to organize and address their clan issues. The Fullelle sub-moiety has organized separate *Gadaa* Council known as Konnituu; and the Haroressa Sub-moiety has organized Hawwaxxu sub-*Gadaa* Council. These two sub *Gadaa*

⁹²Asmarom Legesse (1973). *Gadaa: Three approaches to the study of African society*, New York, The free press Macmillan.

⁹³ *Ibid*

⁹⁴Chala D.G. (2017). *Indigenous Federation: The case of Borana Oromo, Ethiopia*. *The international indigenous policy Journal*, 8(1)

⁹⁵ *Ibid*

councils are limited to entertain their respective clan issues. All *Gadaa* Councils are guided with the framework of *Aadaa-seera Borana* (Borana Culture and Law).⁹⁶

Structurally, the Borana have indigenous residential (territorial) and non-territorial structures which differ from the formal State structure. These indigenous residential units include a number of clans that are structured for utilization of natural resource managements.⁹⁷ Accordingly territorial designation starts from bottom-up with *warra* (house hold), the next smallest family-based administrative unit is *olla* (village) which may comprise about ten households. At the *olla* level, *Abba olla* will be responsible for the management of resource utilization. Ollas are grouped into larger residential units known as *Ardaa*. It is the general term used to refer to the next territorial level composed of a number of two or more *ollas*. Issues of grazing, water and land for cultivation within the locality are managed by the *Ardaa*. *Reera* is the indigenous territorial designation next to *Ardaa* and the territorial unit that comes after *Reera* is *Madda*.⁹⁸

4.3 Functional Division of Grades and Classes in the Borana *Gadaa* System

The system organized in to two settings. These are age- sets (*hiriyaa*) and *Gadaa* -grades (generational sets). In case of age- sets, all newly born male children would inter an age- set at birth with other boys of the some age. *Gada* effectively enforces a gender-based division of labor in Oromo society and excludes women from passing through age-sets and generation-sets. Gender based division of labor is not arbitrarily formulated. During formulation of the *Gadaa* system the people had their own reason for gender based division of labor. Dereje Hinew articulated the logical exclusion of women from generation and age sets as;

“There are some tasks which demand tough military and hunting activities in which a female being is thought to be challenged by the difficulty of the tasks. This is also ascribed to female’s nature for life-giving quality along with the then prevalent socio-economic, geo-political, environmental, ecological, etc variables. Hence, gender oriented labor division seems to be logical, scientific and reasonable factor associated with the

⁹⁶Bassi,M. (2005). *Decisions in the Shade; Political and Juridical Process Among the Oromo Borana*, Asmara, Red sea press inc.

⁹⁷ Aberra Degefa Nagawo, (2013). *The Impact on Offenders of Rivalry Between the Formal Criminal Justice System and the Indigenous Justice System: Experiences among Borana Oromo in Relation to the Crime of Homicide*; The Danish Institute For Human Rights Denmark’s National Human Rights Institution

⁹⁸ *Ibid*

nature of the task, the ability of the performer, profession and other internal and external conditions in that setting.”⁹⁹

The rationale for the division of the people in to different grades in *Gadaa* system is aimed at classifying social, economic and political responsibilities according to human mental maturity and physical fitness. The less matured a person is the little a responsibility given to him, and the more matured an individual is, the bigger the responsibility assigned to him.

The next part of this paper discusses functional division of grades and classes in the Borana *Gadaa* indigenous governance system. It explores how the system organized the Oromo people and prepare for leadership and related social, political and economic responsibilities according to human mental and physical maturity.

4.3.1 Early Stages of Gadaa Grades

Since Borana people are divided among five *Gogessas* (clusters) for administrative purpose, each *gogessa* prepare his leaders beginning from the childhood by calculating its arranged *Gadaa* terms. The male children born to men in the *raaba doori* grade (five generation classes above) automatically enter into *dabballee* grade (0-8 years Boy) which is the first *Gadaa* cycle.¹⁰⁰ *Dabballee (ilman kormaa)* are male children of a party who will take the power of the leadership after a *maraa-Gadaa* (one *Gadaa* cycle means after forty years).

A party who will take over the power after 40 years is known to the public, because the time is systematically arranged and any party cannot extend its term office nor stay more than one term (eight years). Each five *gogessa* prepare at the birth of the child and made special care of them for its future candidates by calculating its *Gadaa* cycle. Male children born out of this age range are not *dabballe* but they are called *ilman jarsaa* or *Hiriyyaa* (age mate). *Dabballe* has no any political or social responsibility.

⁹⁹ Dereje Hineu (2012). History of Oromo Social Organization: *Gadaa* Grades Based Roles and Responsibilities: Wallagga University, College of Social Science, Available at www.starjournal.org

¹⁰⁰ Asmarom Legesse (1973). *Gadaa: Three approaches to the study of African society*. New York, The free press, Macmillan.

Boys in *dabbalee* stage are passing through graduation ceremony into the *gammee* Diddiqqa (junior *Gammee*) grade in which they stay for the next eight years (8-16 years).¹⁰¹ The main task of junior *gammee* (*Gammee didiqqaa*) is the responsibility of looking after the small livestock and horses of the family. He is allowed to go and visit some distance places from his mother's households. In junior *gammee* a boy has no ritual or political obligation.¹⁰² Since the rationale for the classification of age set in the *Gadaa* system is the competence of social responsibility, at this age the junior *gammees* are not competent in the fact that they are physically and mentally not well matured. Next to junior *Gammee* boys enter into senior *gammee* (*Gammee Gurguddoo*) stage of age 16-24 years. At this grade senior *gammees* are permitted to go herding livestock in areas far from their home village. "After being experienced and matured than they left their parental village; the boys come back to their village."¹⁰³

After they return back from *foora*, they meet with their other age mates (*hiriyyaa kuch*) and celebrate the ceremony by going to each age-mates (*hiriyyaa kuch*) home eating food and drinking milk. The age-mates of other boys celebrate the ceremony with them and the people start giving attention to their activities and try to identify the fittest among them.¹⁰⁴ The ceremony is continue and repeated annually through five years of senior *gammee* (*Gammee gurguddoo*) grade.¹⁰⁵ They identify each other of their class's *gammee*; and the families of the boys sacrifice cattle and feed them. It is important stage because the future leaders of Borana are identified here at this stage. *Gammes* are expected to show their strength in social activities and exercise in *aadaa Borana* (Borana culture).¹⁰⁶

¹⁰¹ Bassi, M. (2005). Decisions in the shade: Political and juridical process among the Oromo Borana, Asmara, The Red sea press inc.

¹⁰² Asmarom Legesse (1973). *Gadaa: Three approaches to the study to African society*. New York, The free press, Macmillan

¹⁰³ *Ibid*

¹⁰⁴ Interview with Bonayyaa Diidoo 34, He is the officer of Culture and truism office of borana zone. He has knowledge of Borana *Gadaa* system as an expert and born in Borana and has been living there.

¹⁰⁵ Asmarom Legesse (1973). *Gadaa: Three approaches of the study to African society*. New York, The free press, Macmillan

¹⁰⁶ Interview with Abbaa Areeroo Huqqaa Liban 96, Borana zone Areeroo woreda Ya'aa Guyyoo Gobbaa. He counts his age with *Gadaa* stages I.e. one *Gadaa* stage 8 years and now he is 12 *Gadaa* stages. He has a well knowledge about Borana *Gadaa* system by his arga dhagetti

4.3.2 Preparatory stage

After completion of junior Gammee, boys enter into *kuusa* grade which is between the ages of 24-32 years in which the election of the *Aduula* council is undertaken. At the beginning of this stage the person who will be *Abbaa Gadaa* for the future *Gadaa* class is proclaimed through the ceremony called (*lallabaa*) near market places, around wells, and near settlements.¹⁰⁷ According to Bonnyaya Dido, this announcement is made:

*by the father of the son agitating that his son can be Abba Gadaa. Boys which will be elected are evaluated seriously by the Gadaa class whether they strengthen the culture of the people (aadaa jabessa), how much they respect the people and even the history of their father is evaluated and considered to be Aduulaa (councilors).*¹⁰⁸

For *Aduulaa* council six boys are elected. Four of them are from *arboora* and the junior boy became *Abbaa Gadaa Fixee* (head of the councilor or prime *abbaa Gadaa*).¹⁰⁹ Two members are elected from *Gadaa konotoma* (Awatuu and Konnituu self administration *Gadaa* Councils).¹¹⁰ The *Aduulaa* council is the elected representative body of all Borana people.¹¹¹ Boys who completed the stage of *kusaa* grade enter into *raabaa dorii* grade (32-40 years) which is a stage of marriage for men who are in this *Gadaa* cycle. All men of the *Gadaa* class with same age should marry and celebrate their marriage.¹¹²

Men in a *raabaa* grade are major warriors in which they have the responsibility to protect the Borana people from neighboring attack.¹¹³ During this time the members of the *Aduulas* (councilors) may be die in the war, or may die by natural cause, or may have been *Buqqisuu* (removed from office) because of disciplinary measure.¹¹⁴ The substitutes for the deceased or removed *aduulas* undertake through election from the same class who are in the *raabaa grade*. The recent *Abbaa Gadaa* of Boranaa, Kuraa Jarsoo who take over the power in February

¹⁰⁷ Asmarom Legesse (1973). *Gadaa: Three approaches of the study of African society*. New York, The free press, Macmillan

¹³² Interview with Bonnyaya Dido, Yabello, February, 2017

¹⁰⁹ Interview with Moluu Galgaloo 60, Areeroo woreda, Gayyo kebele

¹¹⁰ Asmarom Legesse (1973). *Gadaa: Three approaches to the study of African society*. New York, The free press Macmillan

¹¹¹ Bassi, M. (2005:62-63). *Decisions in the shade: Political and juridical process among the Oromo Borana*

¹¹² Ibid

¹¹³ Asmarom Legesse (1973). *Gadaa: Three approaches to the study of African society*. New York, The free press, Macmillan

¹¹⁴ Bonnyaya Diidoo, He said that any officer who fail to meet his ritual political responsibility is up rooted (*boqqisuu*) by the elders of the Borana clans and by the leaders of the moieties

2017 is a substitute of the deceased councilor. He withdrew from his university education to serve his people.¹¹⁵

The *Hayyuu Medhicha* (deputy councilors) is also elected at this stage.¹¹⁶ They are presented by *Luba* in a class and after discussion on appointed deputy councilors and the *aduula* council approves the decision of clan elders. The number of *Hayyuu Medhicha* is also equal to the number of *Aduulla* councilors.

4.3.3 Gadaa, (6thGadaa grade) - the Stage of Power Takeover (*BalliiFuudhuu*)

As it defined in the introductory part of this chapter, the term *Gadaa* may refer to any period of eight years in which a class is authorized to stay in a power or it is a grade in which every class passes through. Since all preparations and arrangements of the leaders are undertaken in the past grades of *kuusa* and *raabaa* stages, the ceremony of *balli-wal-irra-fuudhuu* (the exchange of scepters) is celebrated by entire Borana known as *ya'a Jilaa*. I have observed *ya'a-Jilaa* of the recent 71st *Gadaa* power takeover (*balli-fuudhuu*) ceremony in Borana zone (Areeroo district Badhasoo kebele) which was celebrated at the end of February 2017. What I observed is that people are settled in two different places about three kilometers far from each other for the *Gadaa Arbooraa*. One camp is for Guyyoo Gobbaa's celebration ceremony of transferring power for the outgoing class. The other camp is celebration ceremony (*ya'aa*) of Kuraa Jarsoo who will take over the power and leads the Borana people for the next eight years.

Ya'aa Kuraa Jarsoo was celebrated by many people who came not only from Borana, but also from different parts of Oromia Region, including different foreign and local Media and government officials. I could not get the chance to see *Ballii waliirraa fudhuu* (the exchange of scepters) which is a symbol of ritual – political authority. *Balli* is a thing unknown to other ordinary people and kept carefully secret by the *Abbaa Gadaa* who takes power. The takeover procedure is undertaken during night time in which other person can not attend. It is a symbol of public trust and the reason to done during the night time is to give weight as to be carefully protected, respected and entrusted by the *Abbaa Gadaa* who will take over the power.

¹¹⁵ Interview with Abba Boruu Dirree Guyyoo, 67, Yabello, kebele 02

¹¹⁶ Asmarom Legesse (1973). *Gadaa :Three approaches to the study of African society*

At the same time, the two *Gadaa Kontummaa* known as Hawatu (*Hawwaxxuu*) and *konnituu* celebrate in two different camps in the same procedure. *Gadaa kontummas* are decentralized self governance limited to some clans. Two members of the main *Aduula* councilors are representative of Hawatu (*hawwaxxuu*) and *konnitu*. As it has been discussed above, the Aduulaa council who's its members is six in number, (two from *kontumas*) and four from the *arboora* itself, with Hayyuu medhichaa and Hayyuu Garbaa are responsible for the Borana people at whole for the next eight years.

A person who leads the councils is known as *Abbaa Gadaa fiixee* (prime Gadaa leader) which is elected from *hayyuu Aduulaa*. The three elected council i.e *Hayyuu Aduullaa*, *Hayyuu Medhichaa* and *Hayyuu Garbaa* are equitably distributed among the Borana clans as much as possible.¹¹⁷

4.3.4 Semi Retired and Total Retired Grades

The *yubaa* grade covers more than three stages of *Gadaa* grades. Men who handover a power after eight years in office with the celebration ceremony called *ballii wallirraa fudhu* enter into *yuubaa* grade.¹¹⁸ It is the period of the boys of ritual responsibility at the end of the *Gadaa* grade.¹¹⁹ They are the fathers of gammes or kuusaa according to their age settings. They are assumed as semi retired *Abbaa Gadaas*, because of their responsibility to serve as advisors in *Gumii Gayyoo* (General assembly) and serve as judges in the *Gadaa* system.¹²⁰ They also play a great role in advising during Kora gosa (clan meetings at clan or sub clan level). *Yubaa* are respected in Borana and their judgments have hierarchy of their age grades.¹²¹ Since *yuubaas* pass through different stages of *Gadaa* grades with different political, economic and social responsibilities, they are experienced and matured enough to resolve matters as per the *adaa-seera Borana* (Borana custom and law).

¹¹⁷ Chala, D.G. (2017), Indigenous federation: The case of Borana Oromo, Ethiopia. International indigenous policy journal, 8(1).

¹¹⁸ Interview with Tuur Duuba 41, Borana zone Areeroo woreda Tillo kebele

¹¹⁹ Bassi, M. (2005). Decisions in the shade: Political and juridical process among the Oromo Borana

¹²⁰ Interview with Abulayi Odaa, 68, Dirree woreda, Meggaa kebele

¹²¹ *Ibid*

The *Gadaamojjii* grade is the final stage of *Gadaa* system in which the transition in to the stage is celebrated by the ceremony known as *qumbii walirraa fudhuu* (incense exchange).¹²² The men in the last stage of *yubaa* grade entered into the *Gadaamojjii* grade and they are the fathers of *hayyus* (*Abbaa Gadaas* in power).

Their age may be 72-80 in some places and 80-88 years in other areas.¹²³ Asmarom Legesse tried to compare the *Gadaamojjii* grade with Christians of ‘Monks’ but to me they are very different in many conditions. As we have discussed, *Gadaa* grades are systematical arrangements of age and generational setting of *Gadaa* system starting from *Dabballe* to *Gadaamojjii* stage with different ritual political responsibilities. However, the grades in Christians ‘monks’ are unknown at what age or stage one can be entered into such a grade. Because of his completion of *Gadaa* cycle a person who passes through the *Gadaamojjii* grade entered into *jarsa* grade. *Jarsa* means old man and in this stage he is cared as a child and is excluded from any ritual activities in the *Ya’aa Gadaa*.¹²⁴

¹²² Asmarom Legesse (1973). *Gadaa* :Three approaches to the study of African society

¹²³ Bassi, M.(2005). *Decisions in the shade: Political and juridical process among the Oromo Borana*

¹²⁴ *Ibid*

Chapter Five

Principles of Gadaa Indigenous Governance System in Light of Modern Democratic constitution: Operational Governance Principles Embedded in the System

5.1 Supreme Laws under *Gadaa* Governance System

As most customary Laws are unwritten, laws under *Gadaa* governance system are not written and arranged in a series of documents. They are found in practice in the day to day life of the people. As Marco Bassi point out that a society's norms are not necessarily codified in an explicit, logical form, but they can also be expressed in a systematic or metaphorical way. 'Societies who have not codified rules have also laws in a sense that they have rules that breaking of such rules are punishable'.¹²⁵ Among the Borana Oromo there are certain norms and principles in which the people react towards political, economic and social relations. These principles are practically operational but not written or codified in a series of documents.

Since the exact time of the formulation of these principles is unknown, it is assumed that they were formulated just during the creation of the *Gadaa* system and used as guidance in the same way as the highest laws. Some principles which are considered as highest law and superior to other laws under the system are: Separation of state and religion, citizen's participation, equality, accountability, regular election, check and balances, separation of power among traditional institutions, rule of law, limitation of office to a single term, and functional division of classes and generation. These are operational principles used in the system as a constitution. Although there is no written rule of procedure for the amendment of such laws in the *Gadaa* system, these principles are not amended easily as subordinate laws. Other laws which will be discussed below are amended easily by the *Gumi* (general assembly) if necessary every eight years through deliberation.

5.2 Separation of State and Religion under the *Gadaa* Governance System

In the *Gadaa* system laws are the result of human deliberation and not a gift of God. These laws are enacted, amended or repealed by the authorized body known as *Gumii* or *Chaffe* (national assembly). Aberra Degefa stated that, 'the categories of Borana *aada-seera* are known as *Seera*

¹²⁵ *Ibid*

Yaayyaa shanani (the five Yaayya laws)¹²⁶. The first one is Seera Namaa (law of human beings). Under these categories family laws, laws related to mutual assistance (*buusa gonofa*), laws regulating payment of gumaa in case of murder, Laws of guddifachaa or moggaasuu are included. The second category of laws is seera hori (cattle, sheep, goats, camels). The third category of laws is known as Seera golaa for horses (*fardaa*), mules (*gaangee*), donkeys (*hare*). Among the Borana, they are considered as the vehicles of gada authorities. The fourth category has got to do with stars and counting of time and is referred to as seera Yaayyaa Babboo Gaalessa. Seera alloo fi aloola is the fifth one which has got to do with the environment, plants (*biqiltoota*), trees (*mukkeen*), forest (*bosona*) and wild animals (*bineeyyi bosonaa*).¹²⁷ They are subordinate to the highest laws and principles, and can be amended or repealed by the Gumii Gayyoo (National assembly) in every eight years. Natural laws are supernatural, immutable and beyond discussion.”¹²⁸

The other important point in Borana is the identification between custom and law (*Aadaa-Seera*). Marco Bassi points out that,

*“Aadaa can be variously translated according to the context of the discussion. It can refer to a type of behavior deemed appropriate- based on customary usage, on tradition, or habit or on etiquette, it can refer to ritual procedures, it can refer to whole bodies of traditional knowledge such as divination or the calendar. A more generic translation for the word is cultural heritage or tradition, in that aadaa can be used to designate any norm or idea that is the common patrimony of the group. This is the most obvious in the frequent of the expression aadaa Boranaa to indicate any cultural element that characterizes the Borana in contra position to other ethnic group. All that falls within the category of thus becomes a factor of distinction and ethnic identity.”*¹²⁹

Asmarom Legesse in his Oromo Democracy also indicated that “the Oromo legislative tradition is an uncommon phenomenon in Africa and in most traditional societies, laws and customs are

¹²⁶ Aberra Degefa Nagawo, (2013). The Impact on Offenders of Rivalry Between the Formal Criminal Justice System and the Indigenous Justice System: Experiences among Borana Oromo in Relation to the Crime of Homicide; The Danish Institute for Human Rights Denmark’s National Human Rights Institution

¹²⁷ *Ibid*

¹²⁸ Interview with Abbaa Booruu Dirree Guyyoo

¹²⁹ Bassi, M. (2005). Decisions in the shade: Political and juridical process among the Oromo Borana

not distinguished. But in Oromo society the making and unmaking of laws are deliberative tradition.”¹³⁰ Aberra stated that *Seera* (law) is narrower in its scope and has a more binding character than *aada* (custom). *Seera* (laws) are specific authoritative rules which can serve as a basis for passing judgments in cases of disputes. Even if the laws are unwritten, Borana elders /hayyus can determine whether or not there is law applicable to a certain case. Besides, as Borana laws are made by Gumii Gaayyo at one point in time in the past, their existence can be determined by the elders.¹³¹ We can conclude that the *Gadaa* System separated religion from state and realized the principle of secularism which is one of the fundamental principles in modern democratic constitutional governance system. In the same way custom and law have their distinction in the system.

5.3 The Principles of Rule of Law in the *Gadaa* System

The rule of law may be defined or explained in different ways but the common understanding is that all people including leaders are subject to the law of the country. The leaders practice must be according to rules and regulation. It means that no individual, whether leaders or private citizen, stands above the law. It is thus a core democratic principle, embodying ideas like constitutionalism, which is the practice of the rule of law and limited government.¹³²

The rule of law protects fundamental political, social, and economic rights and defends the citizen from the threats of tyranny and lawlessness. Democratic governments exercise authority by way of the law and are themselves subject to the law’s constraints. “There are no leaders whose position is so exalted that they stand above the law.”¹³³ Aberra Degefa stated that, “it is their holistic worldview and, their respect for truth and laws which make the Borana a law-abiding society not fear of punishment. Among the Borana, what makes both the ruling and the ruled obey and enforce the laws is the free will and commitment of everyone.”¹³⁴

¹³⁰See Asmarom Legesse,(2006), Oromo Democracy

¹³¹Aberra Degefa Nagawo, (2013). The Impact on Offenders of Rivalry Between the Formal Criminal Justice System and the Indigenous Justice System: Experiences among Borana Oromo in Relation to the Crime of Homicide; The Danish Institute for Human Rights Denmark’s National Human Rights Institution

¹³²Waldrom, J.(2008). The concept and rule of law: New York University Law School; Public law and Legal theory research paper series ,working paper No 08-50

¹³³ *Ibid*

¹³⁴ Aberra Degafa Nagawo,(2013). The Impact on Offenders of Rivalry Between the Formal Criminal Justice System and The Indigenous Justice System

Laws are strict in Borana that any person has the obligation to obey it. During my field research, when I interviewed Abbaa Booruu Dirree Guyyoo, he told me that, governance in Borana is beginning from two person based on the rule of law. He said in his words:

“Namni lama ta’ee adeemu tokko keessaa itti gaafatamaadha, namni sadii ta’ee adeemuu wal hin dhabu. Sadan keessaa lama yoo wal-dhabe, tokkichi walitti araarsuu qaba. Literal meaning; if two persons are walking together, one among them is a leader, three persons walking together cannot quarrel each other, one among three has the obligation to reconcile them.”

Additionally he said when three persons are walking together and two of them quarrel each other in any matter, the third person cannot sided to either side. If he sided to either one, he committed a crime and his punishment will be more serious than those who quarrel each other. According to Abbaa Booruu Dirree Guyyoo, walking on the street has its own rule that the pedestrians have to be gone in line rather than walking parallel. The front person is a leader of them and if they are asked by another person the front walker person responses by representing the followers. The front person may be the oldest among them or a person who has a responsibility and known in the society, because, his main obligation is reconciling both parties and bringing peace among them.¹³⁵ That is the main principle of securing Borana peace and harmony (*Nagaa Boranaa*) by which all citizens are subject to their laws.

The other expression of the rule of law is that the leaders’ role (whether executive, legislative or judiciary) has to be in the limit of rule and regulation. If there is a violation of rules and regulation by leaders there has to be accountability of laws which protects the citizen and public interest from such a tyrannical act. In the *Gadaa* system, leaders are subjected to laws. Before they take over the power they exercise the people’s values and cultures, for a long period of time how to lead the people, how to resolve public matter within the range of their mandate. If they violate people’s value, culture, rules and regulation their punishment will be serious and even capital punishment may be imposed upon them based on the seriousness of the crime they committed.¹³⁶

¹³⁵Interview with Abbaa Boruu Dirree Guyyoo

¹³⁶Interview with Galmaa Inchinni, 50 Borana Zone Taltallee Woreda Marmaroo Kebele

5.4 Principle of Popular Sovereignty in the Gadaa Governance

In *Gadaa* system, people are the ultimate source of the government and the leaders are elected representative of the people. In the system popular sovereignty is ensured in a sense that they participate in the decision of the leaders directly or through their representatives. The leaders' power and duties are limited by laws which are enacted by the legislatures.

Gadaa system (Oromo constitution) is designed and formulated by Oromo people itself and also subordinate laws are enacted, amended or repealed through direct democracy and representative democracy. The people have the right to uproot (*Buqqisuu*) their leaders when they fail to exercise their responsibility according to the given rules and regulations. 'Leaders cannot impose their decisions on their wishes on the group rather by virtue of their office, acquired through specialized training, these leaders are called up on to clarify what is the custom or law on the subject under discussion.'¹³⁷

5.5 Democratic Participation under Gadaa Governance System

People's participation is one of the core elements of a democracy as there is no democracy in decision making with the exclusion of the citizen. Democratic participation can be expressed in different ways. In the Borana *Gadaa* governance system, the people participate in the law making processes in *Gumii Gaayyoo* (national assembly), clan assemblies and meetings for pastoral coordination through direct participation or by their representatives. "Personal participation may be varying according to the type of meetings and whether the presence of a particular individual is needed", the assembly formally sends out its messengers, *Makkala*.¹³⁸ In a large Gumi-Gayyoo or clan assembly it may be difficult to manage every matter and individual opinion in the largest ascriptive assemblies. So it is designed by the temporarily breaking up into the component descent groups. In this way, all the problems that donot require the combined discussion of the entire group are initially dealt with.¹³⁹ All adult male members of the community have the right to participate in the meetings and the decisions are made through participatory discussions.

¹³⁷See Asmaram Legesse,(2006): Oromo Democracy: an indignous African Political system, Asmara, The Red Sea press inc.

¹³⁸ Bassi, M. (2005). Decisions in the shade: Political and juridical process among the Oromo Borana

¹³⁹ *Ibid*

One of the main significant elements of participation in democratic governance is the right to participate in the leadership of the government through election. In *Gadaa* system, for the purpose of governance, the people are divided among five *gogessa* and each *gogessa* is authorized to lead the country for 8 years only. One party has a chance after one *Gadaa* cycle (40 years), which means the member of that party who born out of the arranged age range cannot be *Hayyuu Aduulaa or Hayyuu Medhichaa*. Since there are different structures in the system at different levels, a person who has personal capacity to serve the society and cannot participate in *Hayyuu Aduulaa or Hayyuu Medhichaa* has a right to be *Huyyuu Garbaa, Makkalaa, Jallabaa* and other sub clan level administrative structures which is possible for any party at any Matured age range.¹⁴⁰ All social, political and economic activities of the people from top *Gumii Gayyoo* to the bottom lineage level are decided through the democratic participation and there is no imposed democracy in the system.

5.6 The principle of Accountability (*Buqqisuu*)

One of the major principles in *Gadaa* system is accountability of elected leaders to the people they represent. *Hayyuus* (*Gadaa* Officials) should appear before the highest legislative organ called *Gumii* (Assembly) and the people judge how well the leaders have discharged their duties and responsibilities.¹⁴¹ In the system, there is no leader who is above the law.

As we have discussed above, the leaders' powers and mandates are already identified by the highest law. Then, they are expected to exercise their duty according to the given rules. If *hayyuus* leadership is inadequate, the *Gumii* will remove them from office or penalize them.¹⁴² There are different forms of penalties imposed up on *Gadaa* officials who abuse their power based on the seriousness of their crime. They may be required to cattle which may be used to support the poor in the community, or can be used for sacrifice during certain public ceremonies. The prime *Abbaa Gadaa* is also inspected by *Gumii* and if he violates his authority, his punishment may go up to death penalty. Therefore, the *Hayyuus* including *Abbaa Gadaa* exercise their power carefully because they are well trained and have exercised the culture and rules from their early childhood. If they violate this principle, the penalty imposed upon them

¹⁴⁰ Jaatanii Diida Haroo (2015). Jaarraa* Haaromsa Aadaa fi Seenaa Boranaa: Kitaaba sadeessoo (V-3B) p404

¹⁴¹ See Asmaram Legesse,(2006). Oromo Democracy

¹⁴² *Ibid*

will affect their future descendants in that they cannot hold *Gadaa* office because of their parent's history.¹⁴³

There is also a process of *Buqqisuu* (literally uprooting), from their power before the end of their term of office. All elective representatives who assume a position of political authority are responsible to *Yuuba Ballaa* (the people) and the *Gumii* (national assembly) which have the power to oversee their duties.¹⁴⁴ The *Yuuba-Ballaa* (the people) and the *Gumii* (national assembly) exercise their overseeing power before the term of office begins because there are many years gap between their election as leaders of their *lubaa* (party) and their assumption of power as leaders of all people. In addition, the overseeing process is undertaken during the leader's term office.¹⁴⁵

As Asmarom point out, *Buqqisuu* (uprooting) was undertaken at different times in Borana by *Gumii* on *Gadaa* officials. He mentioned for instance, the case of Jilo Boru, of the *Mattarii-Gadullaa*, who was a *medhicha* councilor in *Gadaa* Aagaa Jiloo (1936-44). The *Gumii* (national assembly) removed him from office because of his failure to care for the poor. The other case Asmarom cited is the uprooting of *Abbaa Gadaa Wale Wachu* (*Walee Waaccuu*) whose term office was from 1722 to 1730. This leader violated the leadership of war that he ordered the *Raabaa* (Warrior) for unwinnable war and the *Raabaa* leader and his councilors were all killed.

5.7 Free, Fair and Periodic Election in the Gadaa Governance System

As we have seen in chapter three, fair, free and periodic election is an internationally recognized human right. The Universal Declaration of Human Rights, under article 21, states that the will of the people should be the bases of the authority of the government and the will of the people should be expressed in periodic and genuine elections which shall be universal and equal suffrage.

The Oromo *Gadaa* indigenous democratic governance system organizes the Oromo people into clusters known as *Gagessaa* in Borana which have five *Lubaa* (parties). Each *lubaa*, in its

¹⁴³Interview with Galma Incinnii, 50, Borana zone, Taltallee woreda, Marmarroo Kebele

¹⁴⁴Asmaram Legesse,(2006). Oromo Democracy: an indignous African Political system, Asmara, The Red Sea press inc.

¹⁴⁵ Ibid

generation settings, leads its cluster for eight years.¹⁴⁶ In a given *lubaa* (party), a boy born *dabballee* (1st *Gadaa* stage) is elected democratically by the party when he enters into *Kuusaa* (4th *Gadaa* stage). These elected representatives after the passage of social or political responsibility and after they become experienced, over take the political power to lead the people at *Gadaa* stage (6th *Gadaa* grade).

In *Gadaa* system, periodic election and measurement of time for elected leaders is the main significant factor. The term office of the elected leaders is limited to eight years. The place, day and time for beginning and ending of the term of office is known to the public and celebrated by formal ceremony known as *balli wall irraa fudhuu* (power transfer) in Borana.¹⁴⁷

It is impossible for leaders to extend their term of office more than the fixed 8 years. In Borana history, there was one case when the power transfer ceremony was delayed, during Italian invasion in 1935 because there was a political disorder and the person who was *Abbaa Gadaa* and the one who would take over the power killed in the Italian war.

As one of my informants, Bonayyaa Diidoo, said

*The time was extended for three years and the Boranaa people discussed upon and decided the next Gadaa term to limit to five years instead of eight years to save the sustain the formally established Gadaa terms. If it was for eight years, it would disturb the future incoming classes which were arranged according to their age and generational settings.*¹⁴⁸

We can understand from this fact that the fixed periodic election is permanent and the generational arrangement itself dictates the society to follow the date and time of power transfer in the *Gadaa* system.

5.8 Minority Rights under *Gadaa* Indigenous Governance System

Minority right in a majority rule is a significant element of a modern democracy. Majority rule, only by itself, cannot express democracy without the realization of minority rights. As we have

¹⁴⁶ *Ibid*

¹⁴⁷ Asmaram Legesse, (2006). Oromo Democracy: An indignant African Political system, Asmara, The Red Sea press inc.

¹⁴⁸ Interview with Bonayyaa Diidoo

seen in Francesco Capotorti's definition, 'minority is a group numerically inferior to the rest of the population of a state, in a non-dominant position.'¹⁴⁹

In the Gadaa governance system, a group numerically inferior and lives among Oromo people have two alternatives: a) living peacefully with its own identity without adopting Oromo culture and governance system. b) Adopting Oromo culture and living on equal foots with Oromo people.¹⁵⁰ In this regard, there are two kinds of adoption known as *Moggasaa* and *Guddifachaa* in the *Gadaa* system. *Moggasaa* is a process of adoption into a clan level. The adopted individual or group could be most likely a non-Oromo. In this case, the adoption is undertaken by the *Abba-Gadaa* on behave of his clan.¹⁵¹

In this regard, Mohammed Hassen stated that:

Before adoption, animal(s) were slaughtered and a knife was dipped in the blood of the victim and planted in the assembly, composed of the elders of the gossa and the representative of other gossas. Then the Abbaa Gadaa said a prayer blessing the new members and the adopted individual, or groups touched the knife planted in the assembly, repeating in the chorus what the Abbaa Gadaa had to say, "I hate what you hate, I like what you like, I fight whom you fight, I go where you go, I chase whom you chase, etc."¹⁵²

The oath made between two parties is considered as a law and has a binding effect. All rights and privileges of the Oromo people also belong to the adopted person and no discrimination is made between them. The other kind of adoption is known as *guddifachaa* in which the process is undertaken between biological parents of a child and a foster parent. Here, the adopted child has a right and privileges of a biological child of the adopting parents. This process is, of course, incorporated in the formal civil law of Ethiopia. As Bonayyaa Diido said, "*a person who was*

¹⁴⁹ Majority Rule/ Minority Rights: Essential principles. /Democracy Web. From essential principles history (<http://democracy.web.org/node/36>)

¹⁴⁹ Interview with Bonayyaa Diidoo

¹⁴⁹ Mohammed Hassen, (1994). *The Oromo of Ethiopia: a history, 1570- 1860*; Cambridge, Cambridge University press.

¹⁴⁹*ibid*

¹⁵⁰ Interview with Bonayyaa Diidoo

¹⁵¹ Mohammed Hassen, (1994). *The Oromo of Ethiopia: a history, 1570- 1860*; Cambridge, Cambridge University press.

¹⁵²*ibid*

from Konso ethnic background who was adopted into the Borana Culture was elected in the Gadaa Council at one time”.

From this fact, we can understand that any ethnic group who lives with Oromo people has the right and privilege which belongs to the Oromo people without any discrimination. Thus, protection of minority rights in Oromo society is an old history in which there is no any discrimination based on ethnic, professional status or other facts.

5.9 The Rights of Women in the *Gadaa* Governance System

The rights of women are fundamental human rights which are recognized in different international instruments, such as Universal Declaration of Human Right, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women " and Optional Protocol thereto, and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 1 of the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity, while article 2 provides that “everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction with regard to race, color, sex, religion, political or other opinion, national or social origin, property, birth or other status”¹⁵³. The International Covenant on Civil and Political Rights of 1966 provides that “every human being has the inherent right to life and that no one shall be arbitrarily deprived of his or her life” (article 6), and also recognizes the right of men and women of marriageable age to marry and to found a family and that ‘no marriage shall be entered into without the free and full consent of the intending spouses (article 23).’¹⁵⁴

In the *Gadaa* governance System, men and women have a functional interdependence. One of the institutions in the *Gadaa* system is known as *Sinqee* institution. Under *sinqee* institution married women who left their own families and communities to live with their husbands’ families and communities, protected themselves and each other from abuse. The *Sinqee*

¹⁵³ Universal Declaration of Human Rights; Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

¹⁵⁴ International Covenant on Economic, Social and Cultural Rights; Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

institution allowed women to control essential political, social and economic assets.¹⁵⁵ The *Sinqee* is a special stick which married women will receive on her wedding day and it is given as a symbol as she had been married and should be respected.¹⁵⁶ *Sinqee* is also called *Waddessa* in western region of Oromo, that its function is similar to Borana and Asrii/Bale Region of the Oromo people.

Sinqee has many purposes that married women carried during different ceremonies and used as a symbol of religious and political activities which expresses their respect and acceptance both in front of the society and their God. The Oromo women who organized under *Sinqee* institution protect themselves from criminal violence together by carrying their *sinqee* stick and show their respect.¹⁵⁷ For instance ‘they use *sinqee* during religious ceremonies to pray to God and when the women face violence by their spouses or other men and in times of political instability and war as a means of cultural defense to protest the violence or conflict.’¹⁵⁸

In Oromo philosophy giving special respect for God or for something that should not be touched is, known as *Wayyuu* (*safuu* in western Oromo Region). *Wayyuu* and *Safuu* of Afan Oromo word has the same meaning and can be used interchangeably. The meaning of *Wayyuu* or *safuu* is not simply expressed by the word respect. Aberra defined that “*Safuu* is a moral category determining the expected respect and distance. It regulates the mutual relationship between elements of the social and cosmic orders. Social taboos and deplorable habits are determined by *Safuu*.”¹⁵⁹ In the principle of *Wayyuu* or *Safuu*, it is believed that something that should be given special respect is *Wayyuu* as a result God has given respect to such respected things.¹⁶⁰

God is *Wayyuu*, Women are *wayyuu*, elders are *wayyuu*, unmarried girls are *wayyuu*, heaven is *wayyuu* and etc. Based on this philosophy, Borana Oromo has a special respect for women. There

¹⁵⁵ Asafa Jalata and Schaffer, H. the Oromo, Gadaa/ Sinqee Democracy and the liberation of Ethiopian Colonial subject

¹⁵⁶ Interview with Achuu Konsichaa, 19, Borana Zone Areeroo, woreda Mataa Gafarsa kebele. During my field research she was celebrating the 71st power transfer ceremony at yaáa jilaa by carrying her *sinqee*. She said that *sinqee* in her hand indicates that she is married woman.

¹⁵⁷ Tolo, M. (2009). *Wayyuu- Women’s Respect and Rights among the Arsi-Oromo*. Proceedings of the 16th International Conference of Ethiopian Studies, Eds.Ege et al. Trondheim

¹⁵⁸ *Ibid*

¹⁵⁹ Aberra Degefa Nagawo, (2013). The Impact on Offenders of Rivalry Between the Formal Criminal Justice System and the Indigenous Justice System: Experiences among Borana Oromo in Relation to the Crime of Homicide; The Danish Institute for Human Rights Denmark’s National Human Rights Institution

¹⁶⁰ Ayalew Getachew Assefa (2012). Customary law in Ethiopia: A need for better recognition; available at [Http://www.humanrights.dk/files/media/billeder/udgivelser/ayalew_report_ok.pdf](http://www.humanrights.dk/files/media/billeder/udgivelser/ayalew_report_ok.pdf)

is no ceremony undertaken without women. For instance during *Jilaas* (celebration ceremonies) women build *Galmaas* (halls) and a person who is the owner of the ceremony is called *Abbaa Jilaa* and his wife is *Hadh Jilaa*.¹⁶¹ The wives of *Gadaa* Officials are respected as equal to their husbands.¹⁶² The wife of *Abbaa Gadaa Fiixee* (prime *Abbaa Gadaa*'s wife) is considered as first lady of the president or prime minister of the formal government in modern system. A married woman is considered as a part of her husband's clan and if her husband violates her right, his clan has the responsibility to settle the case. In case if the husband divorces his wife, his clan has the responsibility to help and solve her economic or social problem.¹⁶³

In the dispute settlement, the case of women is given priority of any case. For instance if woman comes to elders while they are on a meeting of settling another case, they interrupt the ongoing case and given her a person among them who will ask why she came here. She is expected to speak truth because she made oath by *Dhugaa Waaqaaf Lafaa* (by the name of heaven and earth). No need of other witness that her testimony is admissible and valuable. Accordingly elders call the suspected person and asked him whether he committed the crime and gives the final decision without delay. It is not much difficult to settle disputes there, since speaking untruth is seen as *Aada-malee* (out of norm) in a society and its consequence may be harm the social life of that person.¹⁶⁴

According to *Qabballee* the formal law cannot protect their right as the *Borana* Customary law concerning sexual crimes committed against women. In case of sexual crimes committed against women, the formal law enforcing bodies ask the victim whether she has witnesses but such kind of crime is not committed in public because of the nature of the crime and it is very difficult to bring witnesses.

As we discussed in chapter four, *Gadaa* system divides labor based on gender during the formation of the system with rational logical, scientific and reasonable factors associated with the nature of the task, the ability of the performer, profession and other internal and external conditions. Based on this fact women are excluded from generational and age settings in the field

¹⁶¹ Interview with Achuu Konsichaa, Areero

¹⁶² Interview with *Qabballee Bonayyaa*, *Borana* Zone, *Yabello* Town, kebele 02. She is the family member of *Gadaa* officials. She said that *Diimaa Areeroo Godana* who was a member of *Gadaa* council in the past is her uncle and she has good well knowledge about the *Gada* system.

¹⁶³ Interview with *Bonayyaa Diidoo*

¹⁶⁴ Interview with *Qabballee Bonayyaa*

of leadership, at this time which may be one weak side of the *Gadaa* system. On connection to this fact including civilized world participation of women in the leadership is a recent history and being developing human rights. Since *Gadaa* System is dynamic and simply amended and fits with modern circumstance, it is not difficult to think that women will come to the line of leadership in the system.

5.10 Limitation of Office to a Single Term

In modern democracies allowing an individual leader to be elected again to the same office is a common practice. But in the *Gadaa* governance system this practice is strictly prohibited. *Gadaa* classes (*lubaa*) succeeded each other through time scheduled in eight years. Each class (*luba*) prepares his candidates before the time of power transfer ceremony is taken place.¹⁶⁵ This time arrangement is strictly protected by the people for a party who transfer power and who will take over power.

We can understand that a leader who is in power has carefully kept the time of transferring his power to the next leader, and the passage or holding power for extra time other than scheduled is culturally seen as a shame towards the class as well as the leaders in office. According to Tuchia the consequence is very bad, that it may bring conflicts among the society and results the penalty by the general assembly on the class who hold the power over the scheduled time. Once the *Gadaa* leaders have completed their term office, they must leave the military and governmental function to the incoming group. *Gadaa* officials who completed their term office will participate in general assembly as an advisor and act as judges to resolve disputes which will rise in the society until the age of their total retirement.

5.11 Separation of power under *Gadaa* Governance System

The *Gadaa* system organized indigenous principal institutions which are identified and separated their power in the system. These indigenous principal institutions are the generational organization (*Gadaa* council), the national assembly (*Gumii*), Kora-Jarrolee and the *Qalluu* institution.¹⁶⁶ Shared power is basic feature of the *Gadaa* system in which power is shared among different political groups that stand in a coordinate relationship with each other. Power is

¹⁶⁵ Asmarom Legesse,(2006). Oromo Democracy:An Indigenous African political sytem, Asmara, The Red Sea press Inc.

¹⁶⁶ *Ibid*

distributed among these institutions horizontally on the same footing, not above or below each other.¹⁶⁷ The *Gumii* (general assembly) is authorized as a legislative body; the *Hayyus* and *Abbaa Gadaas* are executive bodies and, the *kora-jarrole* (elder's council) is judicial bodies. The ritual leadership is known as Qalluu institution.

In the functional differentiation there are hierarchical arrangements of institution based on their generational and age settings. For example the *Raabaa Dorii* (Warriors) is under *Gadaa* leaders that they cannot wage wars with their own motion. Similarly other institutions of *Gadaa*, the national assembly has the highest authority over the affairs of *Gadaa* classes, age sets and clans. The *Aduulaas* (*Gadaa* officials) have also the highest authority over clan officials and other administrative structures at different levels.

5.12 Gumii (National Assembly), the Legislative Power

Gumii (national assembly) is the highest political organ.¹⁶⁸ *Gumii* means, mass of people,¹⁶⁹ or assembly of the multitude.¹⁷⁰ The place where the general assembly held is called *Gayyoo* in Boranaa, therefore it is known as *Gumii Gayyoo* (General assembly at Gayyoo). The *Gumii Gayyoo* is the composition of five *Gadaa* councils (*Raabaa Dorii*, *Gadaa*, *Yuba one*, *Yuba two* and *Yuba three*), the *Gadaa* leaders, age-sets and clan representatives.¹⁷¹ It is a supreme political body with a supreme governmental power. Its power is making of new laws, repealing and amending of existing laws; it has also the power to evaluate the reports and performances of *Gadaa* leaders in office.¹⁷²

The *Gumii Gayyoo* is organized every eight years after four years of the power takeover of *Abbaa Gadaas* in office.¹⁷³ This time arrangement is purposefully ordered as it cannot be overlap with the time of power take over (*Ballii Wall irraa fudhuu*). Because laws and the performance of *Gadaa* leaders have to be evaluated and if there is any problem, the *Gumii* will take corrective

¹⁶⁷ *Ibid*

¹⁶⁸ Helland, H. (1996). The political viability of Borana Pastoralism: A discussion of some features of the political system of the Borana Pastoralists of south Ethiopia. In Baxter et al. eds. Being and becoming Oromo; Historical and Anthropological Enquiries; Uppsala, Nordiska Afrikainstitutet

¹⁶⁹ Bassi, M. (2005). Decisions in the shade: Political and juridical processes among the Oromo Borana, Asmara, The Red sea Press Inc.

¹⁷⁰ Asmaram Legesse (1973). Gada: three Approaches to the study of African society

¹⁷¹ Asmaram Legesse, (2006), Oromo Democracy

¹⁷² Aberra Degefa Nagawo (2015). justice that heals and restores

¹⁷³ Aberra Degefa Nagawo, (2013). The Impact on Offenders of Rivalry Between the Formal Criminal Justice System and the Indigenous Justice System

measures.¹⁷⁴ Before the meeting of *Gumii- Gayyoo* (general assembly) there are other meetings at different clan level, they try to resolve and exhaust matters rather than bringing directly to the general assembly.¹⁷⁵ All members of Borana clans are allowed to attend the assembly and are entitled to speak and be heard.¹⁷⁶ It is a kind of deliberative democracy that all people are capable of and, fortunately, all that they are really interested in getting better control over their environment, enlarging their horizons and enriching and improving their lives.¹⁷⁷ In such kind of democracy the decision and knowledge required is collective by the cooperative efforts of diverse rather than concentration in the handful of experts- and validated by the community's judgment of its utility.¹⁷⁸ Therefore, the Borana Oromo in *Gumii Gaayyoo* based on deliberative democracy affirms the need to justify decisions made by direct participation or by their representatives.

5.13 The Executive Power (Elective Leaders)

In the Borana *Gadaa* system the executive power is in the hands of *hayyuu Aduulaa* (Aduulaa council) and their assistants (*hayyuu Medhicha* and *hayyuu Garbaa*). These are elected representative of the people in Borana and their mandate is leading the Borana at whole for their term office (eight years), exercising and protecting *aadaa Borana* (Borana Culture).¹⁷⁹

The three elected councils organize *Kora Gadaa sadanii* (tripartite meetings) including *Hawwatuu* and *Konnitu* (the two sub-moieties of Gona *Gadaa* council) if necessary for common decisions. *Abbaa Gadaa* in office leads the Warriors (*raabaa dorii*), where there is a war. The *Abbaa Duulaa* (the chief war) is elected by the appointment of *Abbaa Gadaa* from the *Gadaa* class or from the *raabaa doorii* grade during war. The *Abbaa Duulaa* (war chief) is not elected before or where there is no war and there is no chief war that stays in power for a long period of time just like a term office of *Gadaa* leaders. As it is discussed in the previous chapter, Warriors who protect the Borana from enemy is a person who is in *Raabaa Gadaa* grade. If the age arranged for this stage is completed one cannot be warrior. This principle is to protect the governance system from putting in the hands of military power. As we know in the formal

¹⁷⁴ Interview with Abbaa Boruu Dirree Guyyoo

¹⁷⁵ See Aberra Degefa Nagawo, (2015)

¹⁷⁶ *Ibid*

¹⁷⁷ Posner, R.A. (2003). *Law Pragmatism, and Democracy*; Cambridge and Massachusetts, Harvard university press

¹⁷⁸ *Ibid*

¹⁷⁹ See Asmaram Legesse, (2006), *Oromo Democracy*

government, war generals stay with their power for unlimited period of time and it may results for dictatorial governments. This is one of the unique characters of democracy in *Gadaa* governance system.

The *raabaa- Gadaa* assemblies (*Gadaa* is the class in power and *raabaa* is next class who will take over the power and at this stage they are military) make a decision to engage in a war.¹⁸⁰ The *hirriyyaa* (age-mates) are the actual fighting forces known as Barbara (age-sets of 45-53). It is subsidiary institution (in Borana) that supplements the social, maturational, and military function of *Gadaa*. The generational organization (*Gadaa*) and age-sets (*hirriyyaa*) institutions are co-exist with different function and highly interdependent.¹⁸¹

Since the Borana people are pastoralists the elected leaders at clan or grass-root level are expected to facilitate and organized the social, political or economic life of their society. It is undertaken through *kora gosaa* (clan assembly).These include organizing and coordinating meeting for discussing, how to coordinate grazing and watering, access to wells and other water sources and specific grazing areas.¹⁸²

Meeting for pastoral coordination for the use of wells (*Kora Eela*) is the signification role of the leaders in Borana. There are coordinators of well (*eela*) utilization known as *abbaa-eelaa* (the well father), the *Abbaa Herregaa* (well manager), and *Abbaa Guyyaa* (day manager). The well manager coordinates the turns of access to the well and the day manager has the responsibility of coordinating for his respective day use.¹⁸³ The other important task of the leaders is coordination of meetings for grazing (*Kora dheedaa*). Since water and land (grass land) are common property in Borana the period of grazing area has to be settled and decided by meeting through discussion.

5.14 Justice System in the *Gadaa* Governance System

The conflict resolution mechanism and organizational structure in an indigenous governance system is different from place to place. The Borana people organized their own indigenous institution for dispute resolution. The most known, dispute resolution process among the Oromo

¹⁸⁰ Ibid

¹⁸¹ Ibid

¹⁸² See Bassi, M. (2005), Decisions in the Shade

¹⁸³ Ibid

people is known as *Jaarsummaa* (elders' institution). The institution which settles dispute in Borana is known as *kora jarrolee* (council of elders).¹⁸⁴

*A person who will act as a judge is a yuubaa (Retired Gadaa leaders). Since Yuubas are also acting as advisor in Gumii-Gayyoo and they are well experienced of aadaa- seeraa (customary law), they manage the disputes raised among the people and settle through reconciliation or negotiation.*¹⁸⁵

There are special cases which couldn't be brought before judicial institution because of their secrete nature. For example, Bonayyaa Diido said in his words sayid “*Dubrii yoo guraachoofte hiriyyatu ilaala; dhirsafi niitiin yoowal-dhaban gasatu ilaala (if unmarried girls became pregnant, it is seen by age-mates and if conflict arises between spouses, it is settled by clan.)*”¹⁸⁶

Institutional leadership of the Gadaa indigenious governance system is summarized in the following table.

Name of the institution	Method of becoming a leader	Common name of a leader	Term office
Clan representative	Elected from grass root level of each clan	Jallaba	Eight years
Garba council	Elected from any clan	Hayyuu Garbaa	Eight years
Medhicha (deputy councils)	Elected from Gadaa in a class	Hayyuu medhichaa	Eight years
Aduulaa council (main Gadaa leaders)	Four members are elected from Arbora Council two members are from kontummaas (hawwatuu and konnituu)	Hayyuu aduulaa (abbaa Gadaa fixee(prime abbaa Gadaa is elected from this group)	Eight years
Qalluu	Hereditary	Abbaa muudaa	Unlimited
National assembly (gumii gaayyoo)	Direct participation or through clan representation	Abbaa bookkuu or yuubaa (Retired abbaa Gadaas)	Once at eight years.

Source: Bassii, M. (2005) and Asmaram Legessee (2006)

¹⁸⁴ See Aberra Degefa (2015). Justice that heals and restores

¹⁸⁵ Interview with Tuur Duubaa, 41 Borana zone Areroo Woreda, Fillee kebele

¹⁸⁶ Interview with Bonayyaa Diidoo

Conclusions

Modern democratic constitutions are evaluated with some accepted values and principles embedded in the system and their practical implementation in a society. Democracy as a value means that people will do anything to protect it as it is a part of their culture and a way of their life. Democratic values can be achieved in two ways. First, it can be achieved through a formal process of learning or schooling which entails a structured school curriculum where members of a given society is required to learn. The second way is through an informal process of transfer of values of democracy to make it a way of life among a given people whereby democratic values are passed down from one generation to another. This way of learning democratic values can sometimes be achieved through a non-deliberate process during the early stages of one's socialization in which democracy becomes a day-to-day practice of a given society.¹⁸⁷

Although democratic rules are different from one another, there are some common accepted essential principles of a modern democratic constitution. In modern democratic constitution, values and principles of democracy are found in a written constitution or in other written documents. Yet, having written values and principles in a constitution or other instrument alone does not amount constitutional democracy or constitutionalism. It is evaluated by practical functions of such values and principles in a given country.

The *Gadaa* indigeneous governance system guides the Oromo people and regulates political, economic, social and religious activities of the community. It also serves as a mechanism of socialization, education, religious expression, peace maintenance and social cohesion. It promotes the principles of equality and freedom. Under the *Gada* System, Oromo society is organized into five *Gadaa* generation classes or sets which rotate every eight years to assume political, economic and ritual responsibilities. In the system, laws are not arranged in a written form but they are on practice with functioning equal fits with modern democratic constitution which embeds democratic principles and values internalized in the people for a long period of time. Among the Borana Oromo, democratic values and principles which express the principles of constitutionalism are found in a day to day practice of the people rather than in a written form.

¹⁸⁷Stiftung, K.A. (2011). Concepts and Principles of Democratic Governance and Accountability: A guide for peer educators

The main practical and functional democratic principles and values of the *Gadaa* governance system, among others, are separation of state and religion, citizen's participation, equality, accountability, regularity, free and fair election, check and balances, separation of power among organs of government, rule of law, limitation of office to a single term, and protection of human rights. These principles are supreme laws and they serve as a modern constitution and are not easily amended every eight years as other ordinary laws.

In the *Gadaa* governance system laws are enacted, amended or repealed by the authorized body known as *Gumii* or *Chaffe* (national assembly). These laws are subordinate to those principles and values used as constitution and can be amended or repealed by *Gumii Gayyo* every eight years. Actors of laws are elected leadership while natural laws are supernatural, immutable and beyond discussion. In the Borana *Gadaa* governance system, the people participate in the law making processes in *Gumii Gaayyoo* (national assembly) through direct participation or by their representative. All decisions are made in meetings through participatory discussions and the leaders are elected by the people directly. In the system the principle of equality is internalized and all peoples are protected equally by law without discrimination.

Elected leaders under *Gadaa* governance system are accountable to laws and there is no one above the law. Whether Gada officials have successfully accomplished their duties and responsibilities *or not is judged* by *Gumii* (Assembly) and the people. There is no unchecked power in the system. If these officials abuse their power or cannot exercise their responsibility properly, the *Gumii* will remove them from their office or penalize them.

There is also a system of traditional principal institution which divides powers among different organs. These organs are the national assembly (*Gumii*), the generational organization (*Gadaa council*), the *Qalluu* institution, and elder's council. Here, *Gumii Gayyo* is a supreme political body with a supreme governmental power. It has the legislative power as well as the power to evaluate the reports and performances of *Gadaa* leaders in office. *Gadaa* council is the main executive political body which is elected to lead the people for eight years; and the elder's council is a traditional institution of the composition of *Yubaas* (semi retired *Abbaa Gadaas*) and elders whose responsibilities are to settle disputes among the people and to act as judicial organ. A party in office is only limited to a single term of eight years. There is no chance for any party or individual to hold power longer than the fixed single term and it is impossible to extend the

date and time of power transfer in the system. The election system is free, fair and periodic that all people have the right to elect their leader. The power rotates among five *lubas* (parties) sticking to its arranged order in eight years. Here, the time and date for the election is fixed by their own unique calendar.

These principles are used for the Gadaa system, equivalent to modern democratic constitution, for the institutions and individuals to regulate political, economic, social and religious activities in the community. Laws in the system are classified in to different categories according to their nature and are arranged hierarically. The laws are not rigid by nature that they are dynamic where they can be amended or repealed to respond to changes in the society by the rules and procedures with the national assembly through eight years.

Recommendations

Although *Gadaa* system is registered at UNESCO as a world intangible heritage in 2016, there is no any law at federal or at Oromia National Regional State which incorporates the *Gadaa* governance democratic values and principles which can be used in equal fits with the modern democratic constitutional values and principles. The Regional State Constitution should not be uniform with the federal or other sub-unit constitution. The federal constitution is an incomplete framework document in that it does not prescribe all constitutional processes and arrangements. Rather, it leaves space in the federal system's constitutional architecture to be filled by the constitutions of its sub-national units.

State constitution has to take into account the uniqueness of the environment and peculiarities of the society in which it is to function. To ensure constitutionalism, it is very important to incorporate and acknowledge the *Gadaa* system in the constitution of the the Regional State to benefit from the people's well tested original and functional values and principles in Gada system. Incorporation of people's culture and value in a constitution is also the expression of democracy. Since constitution is the aspiration of the people, they perceive it as the owner of such a constitution. It brings peace and sustainable development and also helps to build democratic society. So the points should be considered as recommendations.

- Since the Borana people prefer to use the *Gadaa* indigenous governance system rather than the formal system, and since it is functional in that society even today, the Oromia

National Regional State Constitution should accommodate and acknowledge for the local governance.

- Since the Gadaa values and principles are unwritten and are mainly transferred through oral means termed as *arga-dhagetti*, it should be written in a well structured manner and be accessible. This can be done by Oromia Culture and Tourism Bureau or by the newly established Oromo Cultural Center. This helps researchers and others to have a further knowledge and use it as a source of data for their research. It can also be a reference for other parts of Oromia where Gadaa principles and values are exercised.
- To protect *Gadaa* values and principles, there should be laws which acknowledge this indigenous governance system. At the same time, there should be a seat reserved for *Gadaa* councils in the *caffee Oromia*.

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Appendices

Interviewed Groups

A. List of informants From Borana Zone

Name	Gender	Age	Place of interview	Date of interview	Remarks
1. Bonayya Dido	M	34	Borana Zone Yaballo Town	27 Feb. 2017	Borana Zone Culture & Tourism officer
2. Abba Boru Dirre Guyyo	M	67	Borana Zone Yaaballo Town	27 Feb. 2017	Elder
3. Wariyo Abdo	M	70	Borana Zone Taltalle woreda Marmaroo kebele	28 Feb. 2017	Elder
4. Galma Inchinni	M	50	Borana Zone Taltalle woreda Marmaroo kebele	28 Feb. 2017	Elder
5. Qamme Dido	M	48	Borana Zone Areroo woreda	28 Feb. 2017	Hayyuu Garbaa Arboraa (prime- councilor of Garba)
6. Tur Duba	M	41	Borana Zone Areroo woreda Tillo kebele	28 Feb. 2017	Member of Borana socciy
7. Alak Dida	M	50	Borana Zone Areroo woreda Tillo kebele	28 Feb. 2017	Member of Borana socciy
8. Kuba Waqo	M	28	Borana Zone Areroo woreda Gayyoo Kebele	Mar.1 2017	Member of Borana socciy
9. Molu Galgalo	M	60	Borana Zone Areroo woreda Gayyoo Kebele	Mar.1 2017	Elder
10. Abdulayi Oda	M	68	Borana Zone Dirre Woreda Megga Kebele	Mar.1 2017	Elder
11. Xuru Duba	M	51	Borana Zone Dirre Woreda Megga Kebele	Mar.2 2017	Elder
12. Abba Arero Quqqa Liban	M	96 (12 gadaa Stages)	Borana Zone Areroo woreda	Mar.2 2017	Elder
13. Diqqa Agartu	M	49	Borana Zone Areroo woreda	Mar.2 2017	Head of Areeroo Woreda Culture and Tourism office

14. Achu Konsicha	F	19	Borana Zone Areeroo Woreda Mataa Gafarsaa Kebele	Mar.2 2017	Member of Borana society
15. Qabballe Bonayyaa	F	40	Yaabelloo Town kebele 02	Mar.3 2017	Yaabelloo Town Women's affairs officer

B. List of questionnaire respondantes

No	Name	Age	Education Back ground	organization	Position
1	Tadesse Nigusse	36	LLM	Oromia Justice Bureau	Public prosecutor
2	Tesfaye Mammo	54	LLB	Oromia Justice Bureau	Public Prosecutor
3	Unnamed		LLB	Oromia Justice Bureau	Public Prosecutor
4	Unnamed		LLB	Oromia Justice Bureau	Public Prosecutor
5	Unnamed	46	LLB	Oromia Justice Bureau	Public Prosecutor
6	Unnamed		LLM	Oromia Justice Bureau	Public Prosecutor
7	Unnamed		LLM	Oromia Justice Bureau	Public Prosecutor
8	Unnamed		LLB	Oromia Justice	Public prosecutor
9	Sinayehu Tola		MA	Oromia Cultural & Tuorism Bureau	Researcher of Culture
10			MA	Oromia Cultural & Tuorism Bureau	Researcher of Culture

Consent Form and Interview Guide

Consent Form.

Title of the Study: *Gadaa* Indigenous Governance System in Light of Modern Democratic Constitutional Principles.

Researcher's name and contact address: My name is Getachew Gudina. I am a postgraduate student doing my LLM thesis at Addis Ababa University, collage of law and governance study,

in constitutional and public stream. Email: getagudine207@gmail.com Telephone No. 09117030763

Purpose of the study: The study aims at *Gadaa* indigenous governance system exercised in Borana Oromo to evaluate in light of modern democratic governance system. You are being asked to participate in this research study by way of giving the required information. The data and information would assist the researcher to write a thesis.

Confidentiality and consent:

Participation in this research project is completely voluntary. You have the right to say no. You may change your mind at any time and withdraw. You may choose not to answer specific questions or to stop participating at any time. Every effort will be made to ensure confidentiality of any identifying information that is obtained in connection with this study. Your answers are completely confidential. Your name will not be written on this format if you don't want.

Interview Questions

1. What is *Gadaa* indigenous governance system?
2. When it was started?
3. For how many terms recently going on Borana?
4. Is there interruption of *Gadaa* in Borana history?
5. How election is going on?
6. How power is shared among the leaders?
7. What are levels of governance from up to bottom?
8. How much is the term office of the leaders?
9. How much terms (for what terms) one can be elected for leader in *Gadaa* governance system?
10. Is there a chance to uproot from power before the term of office for the *Abbaa Gadaas*?
11. Is there accountability in the system?
12. How and who checked the power of the leaders in power?
13. How much it is participatory?
14. How individual rights are protected?
15. What is a role of women in *Gadaa* governance system?

16. How their right is protected?
17. How and when laws are enacted?
18. What kind of laws are there in *Borana Gadaa System*?
19. Who enact laws?
20. How it is amended?
21. How people uses and protects natural resources such as forest, water and grass, land possession, animals and wild life?

Questionnaires

For short answers you write “X” sing in the black space. You are entitled not to mention your name.

Full name.....age.....Organization.....

position

Educationbackground1st Degree and above.....Collage diploma

.....High school.....

1. Is it known when Gadaa governance system was started (emerged)?

Yes it is knownno it is unknown..... If it is known when is started or how much long?

2. Is there a part of Oromia where *Gadaa* governance system has been exercising without interrupting? Yes.....No.....If you say yes you can mention its districts or places

3. What is the reason you may mention the other parts of Oromia Could not exercise without interruption?

4. Is it possible to exercise gadaa governance system with parallel to the formal governance system? It possible?It is impossibleIf you have any reason.....

5. Some scholars said that *Gadaa* governance system cannot protect the rights of the women. Do you agree? I agree I don't agree

If you have any reason

6. Is *Gadaa* governance system protects the rights of other non-Oromo's who live in Oromia land? Yesno

How

7. Is there any task done to acknowledge the Gadaa governance system in Oromia National Regional State Constitution or other laws?

Yesno..... if you say yes do you mention the law in which it is proclaimed? Or if you say no you can mention the reason.

8. Has the system significance if it will be exercised in the future. Yesno.....

If you say yes you can mention its significance.

9. If you have any additional idea.

Thank you for your answer!!

Gaaffii

Maqaa guutuu-----

Mana hojii-----

Umurii-----gaée hojii-----

Sadarkaa barumsaa

Digrii jaqabaa ykn isaa ol-----dippilomaa kollejii-----sadarkaa 2ff-----

1. Sirni bulchisa Gadaa Yeroo inni jalqabe ni bekamaa?

Nibekamaa-----nibekamu-----Yoo nibekama taée bara kami ykn hangam taá ? -----

2. Sirni bulchinsa Gadaa utuu addan hincitin yeroo ammaa Oromiyaa kessatt bakka hojii

irra olaa jiru jiraa? Hinjiru-----jiraa-----jira yojettan Godinalee ykn aanoolee isaa ibsaa

3. Godinaleen adda biroon Maalif itt fufuu dadhaban jettuu?

4. Sirni Bulchinsi Gadaa sirna bulchinsa motomma wajjin walcina hojii irra olchuun nidanda'maa? Nidanda'ama-----hindanda'mu-----sababa yoo qabattan

5. Barressitonni tokko-tokko Sirn Bulchinsa Gadaa Mirga dubartii hinkabajchisu jedhu. Kan irratt waligaltuu? Walii ni gala-----walii hingalu-----sababa Yoo qabattan-----

6. Sirni Bulchinsa Gadaa Mirga lammii adda biraa ummata Oromoo kessa jiratan ni eegaa?

Hin eegu-----ni eega-----akkamitti?-----

7. Sirni bulchinsa Gadaa Heera ykn seerota Motummaan Nannoo Oromiyaan baasu kessatt beekumtii akka argatuf karaa mana hojii kessanii hojiin hojjetame jiraa? Jira----hinjiru----
-----jira yoo jettan seera inni irratt baée ykn hinjiru yoo jettan sababa yoo jirate ha
ibsamu.....
8. Sirni kun yoo itt fufee hojii irra oole faayidaa qabaa? Qaba-----hiqabu-----
- faayidaa qaba yoo jettan faayidaa isaa nuf ibsaa
9. Yaada adda biro yoo qabattan

Deebii na kennitanfii Horaa Bulaa!!!