

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
CENTER FOR HUMAN RIGHTS

The Inheritance Rights of Women: The Case of ‘*Yaa’aa Yaaboo*’ Customary Court in Ambo
District, West *Shewa* Zone of *Oromia* National Regional State.

By: Kuma Beyene Fita

June 2017

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A Thesis Submitted in Partial Fulfillment for the Requirement of the Degree of Master of Arts for
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Declaration

I, Kuma Beyene, declare that to the best of my knowledge this thesis is my original work and that where other works have been quoted; it is clearly indicated and acknowledged. This thesis has never been submitted to this, or any other University for the award of a degree.

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Acknowledgment

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Acronyms

AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CJS	Customary Justice System
ECA	Economic Commission for Africa
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
LIP	Land Policy Initiative
UN	United Nation
UDHR	Universal Declaration of Human Rights

Glossary

<i>Abbaa Gadaa</i>	The leader
<i>Abbaa Humna</i>	the rich person
<i>Afaan</i>	language/mouth
<i>Araqee</i>	home-made liquor
<i>Araara</i>	reconciliation
<i>Ateetee</i>	women's cultural ceremony
<i>Ayyaana</i>	spirit
<i>Ayyana qabeessa</i>	lucky
<i>Baddaa</i>	highland
<i>Badda daree</i>	middle highland
Bokkuu	scepter made up of olive tree
<i>Barcumaa</i>	table
Caaccuu	ritual object used only by women as a symbol of female fertility
Caffee (gummi gaayyoo)	Oromo parliament
<i>Dalaaga</i>	Ceremony conducted on the day of appearance of the spirit
<i>Dhaddacha</i>	court (bench)
<i>Dhaala</i>	inheritance/ levirate marriage

<i>Daanyii</i>	Mediator of the court
<i>Dubarti</i>	woman
<i>Dhugaa</i>	truth
<i>Dhuga qabbeessa</i>	honest
<i>Ebbaa</i>	blessing
<i>Eeboo</i>	spear
<i>Faarsoo</i>	local beer
<i>Gachanaa</i>	Shield
<i>Gadaa</i>	Oromo indigenous socio-political organization
<i>Gadi-darbi</i>	the deviant
<i>Galma ayyaana</i>	spiritual hall
<i>Gammoojjii</i>	lowland
<i>Gooftaa daanfaa</i>	lord <i>daanfaa</i> (<i>the name male sprit</i>)
<i>Gosa</i>	sub moiety
<i>Gula</i>	<i>Gada</i> grade in which male person assume political power
<i>Gumaa</i>	revenge/ ritual of purification after homicide
<i>Haayyuu</i>	intellectuals of Oromo culture and norms
<i>Haayyu Ofkalan</i>	the elders those finished their <i>gadaa</i> grade (i.e.above 48 years)

<i>Hiyyeessa</i>	poor
<i>Jaarsa</i>	elder
<i>Jaarsa araara</i>	elders of reconciliation
<i>Jaarsummaa</i>	elder's council, setting of conflict resolution through elders.
<i>Jaarsa yaboo</i>	judges or mediators at <i>qaalluu</i> court
<i>Kakuu</i>	oath
<i>Karraa</i>	property
<i>Kebele</i>	the lowest administrative unit in Ethiopia
<i>Kosii</i>	a fertile land around residential home
<i>Labsii</i>	declaration of law
<i>Maatii</i>	extended family
<i>Qaaluu</i>	a person on which spirit (<i>ayyaana</i>) descends
<i>Qaawee</i>	gun
<i>Qalaaxee</i>	court summon
<i>Qeeyyee</i>	resident area
<i>Saamphaloo</i>	intellect of custom, laws and norms
<i>Shanaacha</i>	lineage leader or bench
<i>Seera (tumaa)</i>	law

<i>Semaniya wule</i>	contract of marriage
<i>Siiqqee</i>	ritual stick used by women
<i>Utubaa</i>	house
<i>Wakkeffanaa</i>	belief in sky God
<i>Warra-danfaa</i>	the family on which sprit descends
<i>Woreda</i>	district
<i>Obo or obbo</i>	Mr.
<i>Yaaboo</i>	<i>Qaaluu</i> court
<i>Yaaboo baal'aa</i>	open court room that everyone attend
<i>Yaa'ii haraa</i>	general assembly

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Abstract

This study assesses and evaluate women's property inheritance rights in yaa'aa yaaboo customary court (the qaaluu court), which is found in Oromia national regional state in west Shewa Zone in Ambo district, in Illaamu Mujjaa Kebele, in a tiny village called Wechan, in light of major human rights instruments. This court accepts and handles any criminal and civil cases unless cases are pending in formal courts. It holds regular court hearings once or twice every two weeks on average, depending on the number and type of cases. The functioning of this court (i.e. procedures it follows and judgments it renders) in course of handling cases related to women's property inheritances rights in lights of major international, regional and national normative frameworks is rarely treated in different literatures. Thus, the aim of this thesis is to fill this gap first by showing the linkage between local norms and values, and functioning of this court, and then make analysis on judgments it rendered by taking some case studies in light of some major international and regional human rights instruments ratified and adopted by Ethiopia. To realize the intended objectives, the study employed qualitative research approach. Important data for the study were collected from both primary and secondary sources. The primary data were collected using instruments such as key informants interview, observation, and case study. The data collected from both sources were organized and analyzed qualitatively. The findings of the study revealed that, women's property inheritance rights are violated by judgments of this court especially when property to be inherited are valuable assets like land, house and livestock's like oxen, horses and etc. As a result women and children of the study area are severely affected economically and socially.

Chapter One

1.1. Background of the Study

Women found themselves living in the world where men compel them to assume subordinate status.¹ Even though there have been many women as men on the earth; women are often submitted to such designation by men for a long period of time. For instances, in his *Le rapport d'uriel* (Uriel's report), Monsieur Benda state that,

*“ The body of man make sense in itself quite apart from that of woman, whereas the later seems wanting insignificance by itself.....man can think of himself without a woman, but she cannot think of herself without a man. ”*²

Accordingly, woman is defined and differentiated with reference to man, not he with reference to her; she is incidental, the inessential as opposed to essential, thus she is called ‘the sex’ by which is meant that she appears essentially to the male as sexual being, for she is sex, absolute sex, nothing less.³ Legislature, priests, philosophers, writers and scientists have also striven to show that the subordinate position of woman is willed in heaven and advantageous to earth.⁴

Thus the subordinate status of woman is undeniable facts around the globe in spite of differences in degrees. In short, the two sexes have never shared the world in equality. These inequalities between man and woman are well-observed when one looks at their status and roles in economic, political, cultural and social activities of many societies in most part of the world. The right to own, utilize and inherit property is among those many essential societal activities that women deprived of for many centuries until now days across the globe. Hussein (2014, 137)

¹ De Beauvoir, Simon.1949.The Second Sex, Translated by Constance Borde and Sheila Malovany-Cheivalier. New York,Vintage Books. P.26

² Benda, Mensieor. nd. Uriel's Report. In De Beauvoir, Simon.1949.The Second Sex, Translated by Constance Borde and Sheila Malovany-Cheivalier. New York,Vintage Books. P. 26

³ De Beauvoir, Simon, supra note 1, P. 26

⁴ Ibid

for instance described African women as, "the most marginalized groups in society regarding access to and control over land."⁵ He remarked that, African women's inalienable rights to possess and own property especially land is endangered by comprehensive socio-cultural and religious values and norms. He went on and further state that, there are many more negative and harmful socio-cultural norms, attitudes and practices which disallow women the right to own, administer property and control the land.⁶

Supporting the above statement, the Joint Land Policy Initiative/LIP/ of African Union and Economic Commission for Africa /ECA/ states that, African land and other property control, administration and inheritance rights are governed by various intricate and at times subjective customary law regimes.⁷ It is no secret that under many of these customary systems; women face discrimination when it comes to access to, control and inheritances of land and other important assets.⁸

The foregoing argument on the property rights in general and property inheritance rights in particular of rural women in Africa seems to also apply for women of rural Ethiopia. In rural Ethiopia, for instances, land appears to be one of the causes for social inequality and conflict among most households despite the fact that it was redistributed "equally" after the 1974 revolution. Until the recent past, according to Zenebeworke (2000, 29), many women of rural Ethiopia have had almost no property rights in practical terms due to discriminatory cultural

⁵ Hussein Ahmed. 2014. "Women Right to and Control over Rural Land in Ethiopia: Law and Practices." International Journal of Gender and Women Studies 2(2): P. 137

⁶ Ibid

⁷ Bertukan Tegegn.2015. "*Rural Women Land Rights in Africa: Comparative Analysis of Ethiopia with Some Selected African Countries.*" Unpublished MA thesis: Addis Ababa University: Center for Oriental and African Studies.

⁸. Ibid

values and belief systems.⁹ As the Ethiopian rural society is traditional and patriarchal in nature, men have been controllers of almost every facet of rural life in the country – social, economic, and political spheres.

The case of Oromo nation of Ethiopia is not exceptional in this regard. Within the Oromo nation too, there are different cultural norms, values and also institutions established along such societal norms and values that affect women property inheritance rights. In fact, in this regard, there are both complementary and contradictory findings across different sub-cultural settings of the Oromo society (Asfaw, 2012, Almaz; 2007, Mamo; 2006, Dejene; 2009, Jeylan, 2009).

Among the traditional customary justice institutions established along the Oromo customs and values of the study area, the *Yaa'aa Yaaboo* customary court (the *qaaluu* court) can be cited as one good example. This court had a wide acceptance among the local communities. They accept and entertain different claims presented by disputants including: - homicide cases, arson, assaults, abductions, rape, defamation, divorce, property inheritance rights and etc. This implies that, it accepts and handles both civil and criminal matters.

Ethiopia is signatory to many international and regional women's human rights instruments, and also the country has granted women's rights to property including their inheritance rights without any discrimination based on gender under its constitution and other laws of the land. Thus this study will endeavor to assess and evaluate the proceedings and judgments of *Yaa'aa Yaaboo* customary court in handling women's property inheritance rights in lights of international, regional and national legal norms in the study area, which is Ambo district, in *Wechan* village.

⁹ Zenebework Tadesse. 2000. "Revisiting Rural Development through a Gender Lens: Issues in Rural Developments", In Zenebework Tadesse (eds.), Issues in Rural Development: Proceeding of Inaugural workshop of the FSS18 September. Addis Ababa. P. 29

1.2. Statement of the Problem

Even if there are many women as men in the world, they never shared the world equally with men until now days. *“The role of numerous cultural, legal, political, and social factors developed by various institutions in society (i.e. families, communities, states, the legal system, and economic markets) in systematically impeding or barring women equality with men on affairs of economic, political and social issues”*¹⁰ can be cited as a good example to this effect. For instance, *“in both Africa and Asia, the most widely practiced form of customary inheritance is patrilineal, and accordingly women cannot inherit important family assets like lands, which has a lot to do with the livelihood of the majority of women in both continents.”*¹¹ Due to this and other discriminatory norms and values, women own only an estimated 1-2 percent of all titled land worldwide.¹² This inability to own and possess land and other important assets has resulted women and girls to make up 70 percent of the estimated 1.2 billion people living in absolute poverty, defined as living on less than \$1 a day.¹³ No doubt that one cause in the overrepresentation of women in poverty is the fact that land and other real property are generally considered to represent about 75 percent of a nation’s overall wealth.¹⁴

Thus secured rights to property for women especially to some valuable assets like lands and houses helps them to raise their status within their families and communities which is an important step to achieving gender equality, and also it leads women’s increased decision-making power, greater autonomy and economic independence. In reference to the importance of

¹⁰Rabenhorst and etl. 2011. Gender and Property Rights: Critical Issues in Urban Economic Developments. Washington: International Housing Coalitions and Urban Institute. P. 6 Available on: <http://www.urban.org/research/publication/gender-and-property-right> accessed on 26-12-2016

¹¹.Ibid

¹² FAO. 2002. “Women’s Rights to Land: Human Rights.”

¹³ Ibid

¹⁴Rabenhorst and etl, supra note, 10, P. 14

this aspects of gender inequality, numerous international, regional and national legal instruments and declarations have recognized women's equal access to property rights in general and their property inheritance rights in particular. The UN General Assembly's Universal Declaration of Human Rights, passed in 1948, CEDAW, the Platform of Action adopted at the Beijing World Conference on Women in 1995, and the Millennium Development Goals, established in 2000 and also the enactment of African charter on human and people's rights, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and FDRE constitution and other laws of land both at federal and regional level(revised family codes, rural land administration legislations and etc.) can be cited as part of these initiatives globally, regionally and at national level respectively. Nevertheless, as stated herein above, females continue to own only about 1-2 percent of land and other real property throughout the world.

“As part of the society, no matter how important for their livelihood, historically, Ethiopian women have also been the most disadvantageous social group as far as their access to land”¹⁵ and other important assets are concerned. There are a few researches done on women property rights in different parts of the country and, the target of most of these studies were on showing the existence of norms and values that hinder women's rights to property in different parts of Ethiopia. For instances, in his study featuring the practice in *Wolaita*, Hussein (2014) argued that women have no customary right to inherit land from family, and the control of land during marriage falls under the husband. The same research established that land ownership is generally considered as the exclusive domain of men¹⁶. Research by Kalkidan (2012) highlighted the same failings of property right regimes in relation to women, and submitted that land is regulated by

¹⁵Tamrat Haile. 2013. “Women's Right to Resource Access in Northern and Central Part of Ethiopia: A Historical Survey of the Land Tenure System from 13th to 20th Century.” African Journal of History and Culture 5(7).P.143

¹⁶Hussein Ahmed. 2014. “Women's Rights and Control over the Land in Ethiopia.” Global Journal of Current Research 2(4). P. 81-93

customary laws in the *Gumuz* region. These laws give no recognition to women's rights to own or inherit such property.¹⁷ Yilma (2002) also reports that among the *Konso* of south eastern Ethiopia women play a dominant role in food production. But they lack participation in management and decision-making on basic resources which themselves produced. The management and decision making rights of these resources are often undertaken by their husbands. Yilma reports that the main sources for the denial of women's rights to resources emerge from their marginal status in the society due to male-dominated inheritance system.¹⁸ Meron (2005) in her work, 'The Socioeconomic Role and Status of *Gumuz* Women' finds out that the status of *Gumuz* women in accessing to and ownership of the means of production and decision-making rights is low. She stated that *Gumuz* women do take active role in works related to agriculture, fishing, honey collection and marketing in addition to their reproductive role. In spite of this dominant role, women have no decision making power on the fruits of their work and basic resources.¹⁹

The literature on the experiences of Oromo women in relation to property ownership and inheritance rights is not particularly different. The study conducted by Almaz (2007) among the *Ada'a* Oromo in Eastern *Shewa* revealed existing gender disparities in property ownership rights.²⁰ Asfaw (2012) also finds out that women among *Tokke-Kutta'e*, adjacent district to Ambo, hold lesser position within the household since they have lesser decision making right over key household assets. He shows that in spite of their active participation in household

¹⁷ Kalkidan Bekele. 2012. "Cultural Practices that Affects the Status of Women in Benishangul Gumuz, Mandura Woreda." Unpublished MA Thesis: Addis Ababa University, Institute of Gender Studies.

¹⁸ Yilma Sunta. 2002. "The Role and Status of Women in the Food System of the Konso of Southwest Ethiopia." Unpublished MA Thesis: Addis Ababa University, Department of Social Anthropology.

¹⁹ Meron Zeleke. 2005. "The Socio-Economic Role and Status of Gumuz Women." Unpublished MA thesis: Addis Ababa University, Department of Social Anthropology.

²⁰ Almaz WoldeTensia. 2007. "Women Access to Land and Control over land in Current Land Administration System in Two Rural Kebeles in Ada'aa Woreda of Oromia Region." Unpublished MA Thesis: Addis Ababa University, Institute of Gender Studies.

chores and farming activities, women are found at the lower position in terms of mainly economic matters. The denial of women's right to resources emerges from 'male dominated inheritance system that prevents women's access to household assets'.²¹

Somewhat contrary to the above research report, scholars such as Jeylan (2004), Mamo (2006) and Dejene (2009) argue that women are not totally deprived of property rights and inheritance rights in Oromo society. Mamo (2006) for instances, explains women's land rights by categorizing them into different status/ category as each assumes different position/status and its related rights.²² The first is unmarried girl that could have the right to access and use family land before marriage. This right is relegated on marriage. The second is a married woman who joins her husband clan (*gosa*) and uses his land together with him, from the land of his *gosa*. Even in a polygamous household, each wife is allocated a farmland of her own on which a husband works. Third, a widow could inherit the land of her deceased husband. This could be possible in two ways. One option is that a widow could be being inherited by a deceased brother or anyone of the member of a *gosa* based on the preference of a widow. In this case, a widow has dominant rights over the decision making of her property. Another option is that a widow could inherit her husband's property including land and houses and continue to live together with her children.

Despite such gender disparity there is a limited research on women's property inheritance rights especially in reference to customary courts and women's property inheritance rights. Hence this study addresses customary norms and values prevailing in relation to women's

²¹ Asfaw Kasa. 2012. "Women's Household Status and Role among Torban Kutta'e Oromo of Tokke Kutta'e District, Western Shewa, Oromo Regional State." Unpublished MA thesis: Addis Ababa University, IES.

²² Mamo Hebo. 2006. Land and Local Custom and State Policies: Land Tenure, Land Disputes, and Dispute Settlement among the Arsi Oromo of Southern Ethiopia. Kyoto: Shouk Adoh Book Sellers.

property inheritance rights, and researches the least-studied property inheritance rights of women in customary courts in rural Ethiopia by taking the case of rural women in Ambo area.

Thus, this study tries to show the linkage between these norms and values, and the *Yaa'aa Yaaboo* (a traditional justice organ to which different claims including property rights brought to), and then critically evaluate functioning (procedures and judgments) of such courts in lights of women's rights to property inheritance as per provided in the FDRE constitution and other national, regional and international legal instruments. In short, assessing how these customary courts handle property inheritance related cases brought by women in light of women's human rights to property is the crucial issues that this paper tries to address.

1.3. Objectives of the Study

The general objective of the study is to understand how much property inheritance rights of women are protected or violated at customary courts in Ethiopia by drawing on the case of customary court from west *Shewa* zone, in Ambo area.

The specific objectives of the study are:

- Understanding different legal instruments and policy frameworks protecting women's property inheritance rights;
- To explore the different property related cases handled by customary courts;
- To explore different societal norms and values that had detrimental effect on property inheritance rights of women in the study area; and
- To show how such norms and principles shape and influenced women rights to inherit property in traditional justice system functions and verdicts and thereby affect women's rights to inherit property

1.4. Research Questions

The subsequent research questions have been raised and addressed in brief throughout the study.

- What are different existing legal instruments protecting property inheritance rights of women?
- What are different types of properties related cases handled by customary courts?
- What are the various norms and values in the study area that hinder women's rights to inherit property?
- How various property related cases brought by women to customary courts handled and how do the procedures and norms protect or violate rights of women?

1.5 Research Methodology

Researchers identify three different approaches to the social science research: qualitative, quantitative and comparative method based on their general goals and specific research strategies.²³ In order to attain the intended objectives of the study, the researcher of this study employed qualitative approach. Qualitative approach is selected because of its very helpful contribution to gather firsthand and rich ethnographic information, and to understand the social, economic, political and religious life of the society of the study. Thus interview, observation and case study qualitative types of data collection mechanisms were employed during field research.

1.5.1 Sources of Data

Data presented in the study has obtained from primary and secondary sources. Primary data was collected directly from women client to customary courts, women residents of the study

²³ Ragin, Charles.C.1994.Constructing Social Research: The Unity and Diversity of Method. Thousand Oaks, CA: Pine Forges Press. P. 33

area, *daanyyii's* and *samphaloos* (mediators at *qaalluu* courts), judges of the formal court, head and expert of women's affairs office, knowledgeable local elders and ordinary residents of the area who are familiar with the socio-cultural aspects of the society. Secondary data sources included both published and unpublished materials such as books, articles, working papers journals, pamphlets and thesis. The information gathered from these sources helped the researcher to build conceptual and theoretical frameworks of the study as well as review of related empirical literature to substantiate data with first hand information. Thorough assessment of international, regional and national legal instruments on women's property inheritance rights was also conducted.

1.5.2 Data collections tools

Information was gathered through in-depth interviewees made with key informants by using interview guides, field observations and relevant case studies.

Key informants interviews. Interview is the major method of data collection techniques in qualitative research. It is very helpful to elicit firsthand information from informants. According to Stringer (2007, 83) interview leads to more extensive process that enable participants to construct more sophisticated and detailed account of their situation, enabling them to see interactions and activities within which problematic events are played out.²⁴ Therefore, in course of conducting this research, interview was carried out with women clients of the customary court, ordinary women residents in the study areas, heads and mediators of customary courts, local elders, and judges from district court, head and experts of women and children affairs offices and coordinator of access to justice project office of Ambo University. The selection of these key informants was made based purposive sampling aiming to have relevant bodies involved on women's property inheritance in customary courts by using list of open and close-

²⁴ Stringer, Earnest T.2007.Action Research, Third Edition, New Delhi: SAGE Publication. P. 83

ended questions on issues to be covered. These guiding questions were prepared before going to the field (see appendix one). They were set with the intention of guiding the informants, rather than restricting them to answer what were just asked. Thus, through this method valuable information beyond the scope of the specific questionnaires were collected. So, the interview guides were prepared in a manner that it gives higher opportunity for the informants to provide what they have without limiting themselves to specific question. Accordingly, a total of 17 key informants' interviewee was made (i.e. seven males and ten females). Their age ranges from twenty six to sixty five years old. They are from different walk of life and educational background.

No	Name of the Informants	Age	Sex	Place of Interview	Date of Interview	Remarks
1.	Nagaasi Baayisaa	40	F	Wechan Village	May 12,2017	Client at Customary Court
2.	Nurree Ettanaa	53	F	Wechan Village	February,17,2017	Client at Customary Court
3.	Yaadashi Guta	60	F	Wechan Vilage	May 12,2017	Client at Customary Court
4	Zinaash Kassaye	35	F	Ambo Town	February,15,2017	Expert on Women Affiars
5	Gidoo Legese	40	F	Ambo Town	May 12,2017	Head of Office of women Affairs
6.	Fantanesh Araarsa	26	F	Ambo Town	February,15,2017	Local residents
7.	Zewdnesh Ulfaata	30	F	Ambo Town	May 12,2017	Client at Customary Court
8.	Bekelu Abbabu	35	F	Wechan Village	February,17,2017	Client at Customary Court
9.	Almaz Guta	39	F	Wechan Village	May 12,2017	Client at Customary Court
10	Eteetu Ajjaama	45	F	Wechan Village	May 12,2017	Local Resident
11	Nata'aa Xurii	58	M	Wechan Village	February,17,2017	Samphalo
12	Badhaadhi Ulfaata	65	M	Wechan Village	February,17,2017	President, and <i>daanyii</i>
13	Alemu Hirpha	55	M	Wechan Village	February,17,2017 and May 12,2017	Vice president, and <i>daanyii</i>
14	Asfaw Naagara	50	M	Ambo Town	February 15,2017	President and Judge at Ambo first instance court

Non-participant observation, on top of this, the researcher also attended the court proceedings made on February 17, 2007 and May 12, 2017 during the trip made from February 14-17, 2017 and from May 10-13, 2017 and observed its ways of handling different cases from the disputants. Useful information was also collected using observation check list that enriched research findings (see appendix two). The non-participant observation during the court hearings provided the researcher the opportunity to closely detect the practices and procedures applied at various phases of the dispute settlement process.

Case study is another method of data collection technique that aims to understand social phenomena within a single or small number of naturally occurring settings. In this research, case studies were conducted to analyze and assess the ways women's property inheritances related cases handled and resolved at *qaalluu* court of the study area. This method enabled the researcher to collect detailed qualitative data concerning the processes and judgment of the court. Analysis and documentation of these cases also helped me clarify the overall process cases handling mechanism at *qaalluu* court into the subject matter of the issue under discussion.

1.5.3 Sampling Methods

In course of conducting this research, purposive or judgmental sampling technique is adopted. Accordingly 17 key informants were selected. The female key informants were selected based on their exposure to the customary court, residence in the study area and their status in Ambo district office of women's and children's affairs, while the male key informants were selected based on their status and roles in customary court under study, their level of understanding and knowledge about Oromo culture in general and the *qaalluu* court in particular,

their status and roles in Ambo district court and office of access to justice project of Ambo University. Thus key informants were selected from different category of population and they were diverse in terms of their social status, educational background, ages and authority.

1.6. Significance of the Study

This study is an addition to the existing knowledge and used as reference for further studies of the related topics. Furthermore, this study contributes to the gap of the research on the topic. By presenting empirical data on everyday life and experiences of women at customary court, the study provides evidence based document to different academic and non-academic institutions and policy makers.

1.7. Ethical consideration

In courses of conducting this research, the researcher tried his best to avoid unnecessary biases and ensure the objective analysis and interpretation of the collected data. Due respect was also give to the rights, needs, values and desires of informants in the course of conducting this study. Informants were also provided with detailed explanation about the overall objective of the study ahead of time. Interview was administered on free will of interviewees. Respondents were informed that they can decline if they don't want to be interviewed. Moreover, informants were assured about the confidentiality of the information they gave.

1.8. Limitations of the Study

This study was conducted within three major limitations. The first and foremost limitation was cultural sensitivity of the topic. Key informants don't have willingness to give information about the values and norms that devalues their culture even if they recognize its defects. This has created limitations on quality and quantity of information gathered. Secondly, I am an employee,

so that I should have to shoulder my duties as legal attorney for my employer and at the same time I should conduct this research timely and properly; two major commitments at the same time. This has created a shortage of time especially during field research. It was really difficult time. The third was financial problem. The cost incurred in course doing this research was fully covered by the researcher. Due to these two major among many limitations the paper might misses some important points.

1.9. Organization of the Study

This paper contains five chapters. Chapter one provides an introduction and the background of the study. Chapter two discusses the reviews of relevant literatures and normative frameworks underpinning women property rights in general and women property inheritance rights in particular. Chapter three highlights about the study area and customary justice institutions. Chapter four offers the description of *yaa'aa yaaboo* court. Most importantly, it explores the types and nature of cases brought before this court, the court proceedings and procedures and the profile of the mediators. Chapter five devoted to analysis and assessments of women property inheritance rights in *yaa'aa yaaboo* customary courts in light of some selected major international, regional and national human rights instruments. The same chapter included analysis of relevant cases on the subject matter under study and concluding remarks.

Chapter Two

Literatures Reviews and Legal Frameworks

This chapter is divided into two main sub-sections. The first sub section presents the review of relevant literatures while the second sub section focuses on reviewing relevant legal instruments.

2.1 An Overview and Brief Notes on Basic Features of Customary Justice Systems in Ethiopia

2.1.1 Definition of Customary Justice System

There is no uniformly accepted definition of customary law, and different scholars define customary law in different ways. This is because custom varies from place to place, even from tribe to tribe within a country and as such there is no single accepted definition of it. A. N. Allot, a recognized scholar in the field of African Law, defines customary law as follows:

*'It is unwritten and the rules can be traced to the people and have been handed down to succeeding generations. The law consists of different bodies of rules that may be invoked in different contexts. These rules are based on conceptions of morality and depend for their effectiveness on the approval and consent of the people. The law has evolved in response to the pressures put upon the people by their environment. It reflects their way of life and their adjustment to life in the particular society and environment.'*²⁵

Max Gluckman, in his extensive work on the subject of ideas and procedures in African customary law defines customary law as: *"The unwritten African traditional law which consists of a variety of different types of principles, norms and rules some of them statewide and general*

²⁵ A. N. Allot. 1966. Legal Education in African Customary Law. In Ayelew Getachew. 2012. Customary Laws in Ethiopia: A Need for Better Recognition? A Women's Rights Perspective. Working Paper: Danish Institute for Human Rights. P.16

principles of morality and public policy that constitute an apparently enduring ideological framework for justice.”²⁶

According to *Murado* and *Gebreyesus* (2009, 9), customary law or justice system is defined as “*a rule of conduct which is accepted and governs a group of people. Custom is a norm of action, percept or rules of conduct, which is voluntarily accepted and practiced by group of people. It can be partial, specific with regard to a certain subject matter or locality, or a general custom applicable throughout the country.*”²⁷

According to *Muradu* and *Gebreyesus* (2009, 9),

“Custom is not the mere stipulations of rights and obligations in a particular community but it is also the mechanism of resolving disputes. There is a procedure to resolve disputes without assistance of the institutionalized justice system. It is often unwritten law and kept in the memory of the people, often elders. Therefore, when a case or dispute arises, the interested parties have to ask these people or informal institution(s) established by the people for this purpose, for a solution.”²⁸

For the purpose of this paper, this working and broad definition of customary law or customary justice system given by *Muradu* and *Gebreyesus* is adopted.

In addition to its lack of uniform definition, customary law and justice system is also given different names by different scholars. Some scholars have referred to customary law as folk law, people’s law, unofficial law, indigenous law or primitive law often implying its inferior positions as compared with the modern western state originated laws.²⁹

²⁶ Gluckman, Max. 1965. *Politics, Law and Ritual in Tribal Society*. Chicago: Aldine Publishing Camp. P. 25

²⁷ Murado Abdo and Gebreyesus Abegaz. 2009. *Customary law: Teaching Material*. P. 9

²⁸ Ibid

²⁹ Ayelew Getachew. 2012. *Customary Laws in Ethiopia: A Need for Better Recognition? A Women’s Rights Perspective*. Working Paper: Danish Institute for Human Rights. P.16

2.1.2 An Overview of Customary Justice System in Ethiopia

According to *Alula* and *Getachew* (2008, 1), the relationship between the state and customary law in Ethiopia can be divided into three phases:³⁰ (1) The imperial sacred tradition in the pre-modern era, the period that covers from 15th to early 20th century that characterized by imperial reliance on indigenized translated texts based on ‘imported’ biblical and Roman-Byzantine tradition with strongly sacred flavor: (2) The modern secular imported nation-building period under Emperor *Haile Sillasie* and *Derg*, the period that covers from 1930s to 1991. This period was also characterized by importations of foreign laws, and repealing customary laws with an intended objectives of ‘modernization’ and ‘nation building’, and the (3) phase implies the post-modern ethnic federalist period under EPRDF. This phase is a period of radical break from the centralist unitary past and was exceptional in the extent to which ethnicity was proposed as an organizing principle. Logically this premise implies a ‘greater’ recognition of customary values and justice institution.³¹

Ethiopia is a greatly diverse country with over 80 officially recognized cultural communities. All of these cultural communities have their respective customary justice systems, some of them operating quite independently from the formal state legal system.³² The *Gurage* of southern Ethiopia, for instances, have elaborated customary justices system such as *Gordana Sera* of the *Kestane (Sodo)*, and the *Debi Gogot* and *Yajoka Qicha* of the *Sebat Bet*.³³ The

³⁰ Alula Pankhurst and Getachew Asefa. 2008. Grass-root Justice in Ethiopia: Understanding Customary Justice System in Ethiopia. Addis Ababa: French Center of Ethiopian Studies. P.1-2

³¹ Ibid

³² Dereje Feyisa Dorii. 2016. Women’s Rights in Ethiopia: The Customary Justice Systems, Key Report under the Project Protection of Women’s Rights in the Justice system of Ethiopia: International Law and Policy Institute. P. 6

³³ Ibid

Gurages' marital relationship is governed by the rules of *Yanqit sera*.³⁴ According to *Yanqit Sera*, marital disputes must be handled through the elderly and trusted family members, and it is against the rules and considered shameful for the parties to take their case before formal courts or the police.³⁵ If the woman is disappointed by the verdict of the elders in the community or the clan, she has the right to appeal and take the case to the Supreme Court called *Yejoka Qicha*, which comprises leaders from each of the *Sebat Bet Gurage* tribes.³⁶ In addition to entertaining cases related to marriage and divorce, the *Yajoka Qicha* also entertains different kinds of cases relating with homicide, arson, and land use and etc.³⁷

Similarly the Afar customary justice system is also one of the strongest non-state legal institutions in Ethiopia. The term *Ma'ada*, or rules, is used by the Afar for their traditional customary law and provides details of substantive and procedural crimes and punishments.³⁸ For every part of the body, from damages on the toes to homicide, the type of implementation and the level of action and intention are covered.³⁹ Among the *Silte* of southern Ethiopia too, the customary justice system is known as *Ye Silte Sera. Ye Silte Baliqes Shengo* (elders' council) that operates at customary court from *Burda* (village) to the *Badde* (country) levels settle a variety of disputes in the area.⁴⁰

The Oromo people are also known by their uniquely democratic socio- political traditional system called *Gadaa*. *Gadaa* has three interrelated meanings: it is the grade during which a class

³⁴ Ayelew Getachew, supra note 29, P. 31

³⁵ Ibid p. 32

³⁶ Ibid

³⁷ Ibid p.37

³⁸ Alula Pankhurst and Getachew Asefa, supra note 30, P. 10

³⁹ Getachew Talachew and Shimalis Habtewolde. 2008. Customary Dispute Resolution in *Afar Society*. In Alula Pankrust and Getachew Aseffa (Edn), Grass-root justice in Ethiopia: The Contribution of Customary Dispute Resolution. Addis Ababa: P. 99-100

⁴⁰ Dereje Feyisa Dorii, supra note 32, P. 6

of people assumes politico-ritual leadership; a period of eight years during which elected officials take power from the previous ones; and the institution of Oromo society.⁴¹

*“Gadaa has guided the religious, social, political and economic life of Oromo for many years, and also their philosophy, art, history and methods for keeping time. The activities and life of each and every member of the society are guided by Gadaa. It is the law of the society, a system by which Oromo administer, defend their territory and rights maintain and guard their economy and through which all their aspirations are fulfilled.”*⁴²

Within the framework of *Gadaa* system; there are different customary justice institutions which include: - *Gadaa* court, the *Yaaboo* (*qaaluu* court), *Jaarsaa Biyyaa* (elder’s council), *Siiqee*⁴³ and etc. Among these customary institutions, for instances, *Siiqee* is exclusively women’s customary institution which has social and religious values. It is an institution that symbolizes Oromo *womanhood* in protecting their rights and respecting their equality. Kuwee (1997, 119) states that as an institution, *Siiqee* refers to the “...*weapon by which Oromo women fought for their rights. Gadaa law provided for them and society honored it. Thus, the Siiqee institution functioned hand in hand with the Gadaa system as one of its built-in mechanisms of checks and balances.*”⁴⁴ *Ateetee* or *Siinqee* seems interchangeably to refer both to religious marches as well as to political mobilizations conducted when women’s rights, has been

⁴¹ Asmerom Legesse.1973. *Gadaa: Three Approaches to the Study of African Society*. New York: free Press. P. 53

⁴² Ayelew Getachew, supra note 29, P. 39

⁴³ *Siiqee* is a Ritual Special Stick, which Women Who Gets Married according to *Gadaa* Laws will receive on her Wedding Day from Her Mother. Women Used to Use their *Siiqee* in Various, Religious, Social, Political and Economic Context to Protect their Social Rights and Maintain Religious and Moral Authority. It is Widely Practiced among *Arsi* Oromo Women.

⁴⁴ Kuwe Kumsa. 1997. “The *Sinqee* Institution of the Oromo Women.” *Journal of Oromo Studies* 4(1):P. 119

violated.⁴⁵ The *Gadaa court*, *Qaaluu court* and *Jaarsa biyyaa* are discussed in chapter three of this paper.

This all implies that, despite the project of legal centralization in Ethiopia that was set in motion by the imperial government in 1960s, using the codes of which most were transplanted from other countries,⁴⁶ the customary justices system are robust in Ethiopia, one that reflects the country's high level of cultural diversity. The political motives and justifications for this usurping of customary law was primarily the belief that providing a uniform and modern legal regime would be necessary for the socio-economic development of the country, and a precondition for effective nation-building.⁴⁷ However, half a century after the enactment of the modern codes and the establishment of a modern judicial system, neither was the much sought legal uniformity achieved nor were the modern codes able to successfully supplant customary laws and institutions of dispute settlement.⁴⁸ Fifty years after the enactment of the Penal Code and the Civil Code which aimed at providing a comprehensive body of law in the criminal and civil matters, respectively, customary laws and institutions are still active and vibrant.⁴⁹ For example in Afar and Somali regional states, even though they are not allowed any formal space of operation in criminal matters under the 1995 FDRE constitution, practically however they accept and handle any criminal matters including homicides.⁵⁰ In some cases, state court even 'outsources' intractable criminal cases such as homicides.⁵¹

⁴⁵ Ibid

⁴⁶ From 1957-1965, Ethiopia gave itself six modern legal codes in massive codification project that aimed at 'modernizing' the legal system. These codes were ,the Penal Code(1957),Civil code (1960), Commercial Code (1960),Maritime Code(1961),Criminal Procedure Code (1961),Civil Procedure Code (1965).Almost all of these Codes were drafted European comparative law specialist except the Civil Procedure Code which were drafted by the codification department of Ministry of Justice. These laws have predominantly western flavor, seem to bear a little relation to the traditional pattern of life prevailing in the country.

⁴⁷ *Alula Pankhurst and Getachew Asefa*, supra note 30, P. 23

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ *Dereje Feyisa Dorii*, supra note 32, P. 4

⁵¹ Ibid

In fact, importation of ‘modern’ legal codes from western countries was a fashion that majority African states followed after liberation. However “*Among vast majority of Africans key issues like land administration, successions, family and personal law, social practices amongst the population differ considerably from the should-be declared by legislation. In all most all African countries, only an infinitely small number of disputes are dealt by formal tribunal.*”⁵²

The vibrancy of customary justice system is not only because of the alien nature of modern legal codes, but it is also because, they also have their own internal strengths. For example, whereas a formal courts judgments create a winner/loser mentality among the disputing parties, resulting in an incentive to exhaust all appeal structures without ensuring peace and harmony between them and their respective communities ,CJS actually emphasize the post dispute harmony of society.⁵³ For example, in cases of domestic violence, retributive justice solutions such as incarceration may not be the preferred solution for a woman and her community, who would lose a productive member, and whose livelihood might be compromised.⁵⁴ Compensatory and reconciliatory justice dispensed by these traditional institutions has more appeal, and may also spare women from becoming ostracized within their community.⁵⁵

Another feature of most CJS is their strong link with belief system and public morality.⁵⁶ The opening of the peace processes, the elders’ insistence to uncover the truth, their resilience on the oath to uncover the truth particularly when there is lack of evidence, the peace rituals (curses and blessing),and the use of sacrificial animals indicate the role of the belief system in CJS. One

⁵² Koblagen, Domiik. 2008. State Law and Local Laws in Sub-Saharan Africa. In *Alula Pankrust and Getachew Aseffa* (Edn), *Grass-root Justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Addis Ababa: P. 77

⁵³ *Dereje Feyisa Dorii*, supra note 32, P. 7

⁵⁴ World Development Report in Gender Equality and Development. 2012. Available at <http://siteressource.worldbank.org/INTWDR2012/Resources/7778105-129969996583/778621013156222006/Complete-Report.pdf> accessed on 26/12/2016

⁵⁵ Ibid

⁵⁶ *Dereje Feyisa Dorii*, supra note 32, P. 8

of the key attribute for the prominence of the elders, among other things, is the commitment to and the fear of super natural powers. The link with the belief system particularly plays a role in the sanctioning process as the finding from *Ye shekotchilot* in Amhara region and *Berche* (the spirituality and dignity of human being) among the *Silte* of southern Ethiopia shows. For example, the dispute settlement process in the *Ye shekoch chilot* is connected to a shrine dedicated to a reverend sheikh who is believed to deliver impartial justice for all.⁵⁷ His name is invoked at various levels of dispute process such as oath making, to ensure both the plaintiff and accused would tell the truth and to sanction the final agreement.⁵⁸

The important role elders have in dispute settlement makes the CJS more legitimate in the eyes of local communities. Their primary function is to reconcile differences that have arisen between the parties through compromise and reconciliation even though adjudication is not ruled out. While reconciling the disputing parties, the elders also give decisions, and the decisions rendered by the elders are often legitimate and parties often discharge voluntarily. The fact that the elders carry heavy moral weight because of a years of accumulated wisdom, deep knowledge of community norms, impartiality and integrity ,are often chosen by the parties, leaves little room for non-compliance.⁵⁹

Lastly, another source of relevance of CJS is the proximity, simplicity, and the easy access to justice.⁶⁰ In many of the cases, parties to a dispute are not required to apply their case in written form, nor are they required to pay fee to the elders. As the CJS institution exists in nearly every locality, parties to a dispute are not required to travel long distances to have access to these

⁵⁷ Meron Zeleke. 2010. “*YeshekoCh Chilot*(The courts of Sheiks):Attritional Institution of Conflict Resolutions in Oromia Zone of Amhara Regional state.” African Journal on Conflict Resolution 10(1): P. 66

⁵⁸ Ibid

⁵⁹ Endalcatchew Bayeh and et al. 2015. “Traditional Conflict Resolution as a Better Option to Court Proceedings: An Attitude and Practice in Ambo Town.” International journal of Multidisciplinary and current research 3: P. 208

⁶⁰ Ayelew Getachew, supra note 29, P.30

institutions.⁶¹ This saves time, resources spent, and inconveniences the parties otherwise have to endure if they want to get access to the regular courts, which are only available at *kebele/woreda*/level and higher. It is also well-known that formal courts and the law enforcement institutions are expensive. In short, where the principles of justice reflected in state-law are regarded as distant, foreign, complex and costly, customary justice institutions are perceived as better a bled in responding to people’s grievances and administering justice.⁶² In generally customary justices systems form a key part of individuals’ and communities’ experience of justice and the rule of law, with over 80 percent of disputes resolved through informal justice mechanisms in some countries.⁶³

2.1.3 Customary Justice Systems and Property Inheritance Rights of Women

“Inheritance systems and practices comprise ways in which wealth is transferred from one generation to the next.”⁶⁴ “Unlike common perceptions of inheritance as occurring only on the death of a parent, taking the form of a bequest, the transfer of wealth from the older to the younger generation can occur at critical points over the life-cycle, including at the formation of a new household, usually at the time of marriage.”⁶⁵ “A marriage’s dissolution may also be regarded as a critical point in the lifetime, as divorced or separated status can significantly

⁶¹ Roop, Sterling. 2016. Women’s Rights in Ethiopia: Grass Root Perspective. International Law and Policy Institute.P.16

⁶²World Development Report in Gender Equality and Development ,2012,available at <http://siteressource.worldbank.org/INTWDR2012/Resources/7778105-129969996583/7786210-13156222006/Complete-Report.pfd> accessed on 26/12/2016

⁶³ Cooper, Elizabeth.2011. Women and Inheritances in Sub-Saharan Africa: Opportunities and Challenges for Policy and Practices Change. Working Paper No.182. Chronic Poverty Research Center. pp 2 available on <https://www.files.ethz.ch/isn/128343/WP182%20Cooper.pdf> accessed on26/12/2016

⁶⁴ Kumar, Neha and Quisumbing, Agnes. 2011. Inheritance Practices and Gender Differences in Poverty and Well-being in Rural Ethiopia: Chronic poverty Research Center, Working Paper No.186.P.9.avaialble on: http://www.chronicpoverty.org/uploads/publication_files/WP186%20Kumar-Quisumbing.pdfaccessed on26/12/2016

⁶⁵ Ibid, and Cooper, Elizabeth.2011. Women and Inheritances in Sub-Saharan Africa: Opportunities and Challenges for Policy and Practices Change. Working Paper no. 182, Chronic Poverty Research Center. P. 2

*affect inheritance rights and responsibilities, particularly for women.*⁶⁶ These critical points are the catalysts for transferring (or not) assets from one person or household to others.⁶⁷

Underlying these inheritance systems and practices are systems of property rights and the legal framework.⁶⁸ Due to some of such system and practices, some property heirs gain an economic security and other benefits, either in their accumulation of new assets or in the affirmation of their rights to assets they had previously accessed while other may lose their previously existing rights to assets as a result of inheritance decisions that exclude them.⁶⁹ For instances in many societies in Africa, the transfer of property rights between generations is regulated by customary law which largely excludes women from property ownership and inheritance. Some studies that covered the experiences of a large number of African countries revealed that despite some variations under their customary laws and practices, the overwhelming majority of women in Sub-Saharan Africa, regardless of marital status, cannot own or inherit land, housing or other property in their own right.⁷⁰ *“For instances, according to the patrilineal system of marriage that most Botswana follows, a married woman belong to her husband’s ethnic group. Most of the property owned or acquired by the couple in the course of the marriage belongs to the husband and will pass to the eldest son at his father’s death. A woman retains, in theory, the right to certain property, such as her plowing fields, which are*

⁶⁶Cooper, Elizabeth. 2010. in Kumar, Neha and Quisumbing, Agnes. 2011. Inheritance Practices and Gender Differences in Poverty and Well-being in Rural Ethiopia: Chronic poverty Research Center, Working Paper No.186.P. 9 available on: <https://www.files.ethz.ch/isn/128343/WP182%20Cooper.pdf> accessed on26/12/2016

⁶⁷ Kumar, Neha and Quisumbing, Agnes, supra note 64, P.9

⁶⁸Ibid

⁶⁹ Cooper, Elizabeth.2011.Women and Inheritances in Sub-Saharan Africa: Opportunities and Challenges for Policy and Practices Change. Working Paper no 182.Chronic Poverty Research Center. P.6 available on: <https://www.files.ethz.ch/isn/128343/WP182%20Cooper.pdf> accessed on26/12/2016

⁷⁰ Wanyeki(ed). 2003; Scholtz, Gomez, M, 2004; Ik Dahl, I.et al. 2005 in Meaza Ashenafi and Zenebework Taddasa. 2005. Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia. P. 9 available on: <http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/women-hiv-aids-property-anaccessed on4/3/2017>

*intended to pass to her daughter upon her death.”*⁷¹ Without secure property rights, women both widowed and girls are often left homeless and destitute after the death of their husband or father.⁷² Similarly, in countries like Zambia, the phenomenon of “property- grabbing” has recently developed.⁷³ *“Property-grabbing is a practice followed by many ethnic groups in the continent, where as soon as the male head of household dies, his relatives come to the home and take everything of value away from pots and pans to furniture and cars. This often occurs while the woman is performing a traditional mourning ritual, and therefore is not able to defend herself or her property. The woman is often left destitute as a result.”*⁷⁴ In short for the most part of Africa, customary laws that predominated during the pre-colonial period continue to define the scope and framework of the process of land allocation and management and inheritance practices in the post-colonial era.⁷⁵ As a result, widowed women and girl children across the continent are particularly vulnerable and prone to lose rights of access to properties they enjoyed during the lifetime of their husbands or fathers. Such alienation from property, including housing, land and other productive resources, has been linked to economic vulnerability, poverty traps, chronic poverty and the intergenerational transmission of poverty.⁷⁶ As an official UN figure at the UN Fourth Conference on Women in 1995 showed, “Women own ‘less than 1%’ of

⁷¹ Richardson, Abiy Morrow.2004. “Women’s inheritance rights in Africa: The need to integrate cultural understanding and legal reform.” Human Rights Brief 11(2):P. 20.Available on: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1356&context=hrbrief> accessed on 4/3/2017.

⁷² Ibid P. 19

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Whitehead.2003.In Meaza Ashenafi and Zenebework Taddasa. 2005. Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia. P. 9 available on: <http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/women-hiv-aids-property-accessed-on4/3/2017>

⁷⁶ Carter and Barrett.2006. Bird and *etl* .2006.Bird and Shinyekw. 2004. Cooper. Elizabeth. 2010. in Kumar, Neha and Agnes Quisumbing. 2011. Inheritance Practices and Gender Differences in Poverty and Well-being in Rural Ethiopia: Chronic poverty Research Center, Working Paper No.186.P.6 available on: http://www.chronicpoverty.org/uploads/publication_files/WP186%20Kumar-Quisumbing.pdf accessed on 26/12/2016

the world's property. Little or no progress has been made beyond this incredibly low figure since then. UN estimates suggest that 1.5 billion people will be living without security of tenure or property rights by 2020. Around two-thirds or more of these will be women and girls."⁷⁷

This is mainly due to prevalence's of some of the discriminatory cultural norms and practices that affect women's and girls' across the world with varying degrees.

Coming to Ethiopian situation, different literature shows that women's rights to basic property are reported to be 'secondary' position to men. Zenebework (2000, 29) for instances investigates that the causes of women's subordination in Ethiopia is related with property rights, lack of use and decision making over immovable resources such as land. She further stresses that 'for rural women, the major indicator of their material deprivation can be traced to their lack of access to land, the most significant livelihood-sustaining asset.'⁷⁸ Hussein (2014,151) in his article 'Woman's Right to and Control over Rural Land in Ethiopia' also reports that rural women are mostly marginalized in possessing basic resources in general and immovable property such as land in particular. He states that the main challenge for women's right to land in Ethiopia is mostly associated with the 'derogatory customary attitudes and practices' that give little place for women's use and decision making rights over proprieties such as land.⁷⁹

The social status and position of women and their property ownership rights in diversified culture of Ethiopia, however, could only be fairly examined based on each cultural context of a society. Thus, the following discussion reviews works related to women's property right to immovable resources such as land in general and women inheritance right in particular in some

⁷⁷HumanRightsWatch.2003.Availabeon:www.hrw.org/reports/2003/kenya0303/kenya030303.htm#p323_65141accesed26/12/2016

⁷⁸Zenebework Tadesse, supra note 9, P. 29

⁷⁹ Hussein Ahmed, supra note 5, P. 151

society in Ethiopia. Tamrat (2013), in his article ‘Women’s right to resource access in Northern and Central Ethiopia’, diachronically presents how the deprivation of women’s access and control over land resources were made during the feudal regime (13th- 20th c) in northern and central part of Ethiopia. By showing the evolution of land tenure system during the period under focus, Tamrat argues that access to land had political and cultural, in addition to economic, implications. During this time, the acquisition and inheritance of land had been only through male line because the state mobilized men for military to expand its territory. New territory was also occupied and defended mostly by men. Thus, the claim to possession of land was based on belonging to a descent line of an original occupier of the land, the men. As a result, women were deprived of the right to access to land since they were not permitted to participate in military for territorial expansions and land acquisition. Consequently, this land tenure system resulted in gender biased socio-political structure that denied women the access to key resources such as land.⁸⁰

Askale (2005) examines women property rights and related property inheritance in *Amhara* Regional State of Ethiopia. In this region, on divorce, the customary law allows a woman to share all movable properties she owned during the marital life except immovable property, the land and the house. That is, women’s marital property rights extend to the acquisition of property during their marital life. In fact, such property does not include the land and house as traditionally such property was brought by men upon marriage. In general, the marriage contract (*Semanya Wule*) signed during marriage has a determinant role on women’s rights to marital property. *Semanya Wule* is an agreements/ written document signed by the couple and witnessed by elders from both sides; that negotiate the contribution of the two parties. Askale elucidates

⁸⁰ Tamrat Haile, supra note 15, P. 143-150

that this tradition began to change with land redistribution in 1996, which gave equal land rights to women with men. Thus, property contributions at marriage are now beginning to include land held by women. For a woman who was entitled to land use rights in 1996, the equal division of land applies automatically. She has an absolute right to get back her holding following divorce. Whereas for a woman married without contribution of land, her right to land on divorce, or death of the husband, depends on the type of agreement entered into during the marriage.⁸¹

Coming to the southern part of Ethiopia, there are some research that show the status and women's property rights (e.g. inheritance). Yilma (2002) reports that among the *Konso* of south eastern Ethiopia women play a dominant role in food production. But they lack participation in management and decision-making on basic resources which themselves produced. The management and decision making rights of these resources are often undertaken by their husbands. Yilma reports that the main sources for the denial of women's rights to resources emerge from their marginal status in the society due to male-dominated inheritance system. The deprivation of women's rights to resources is also reflected in the consumption of food, protein-rich foods are mainly consumed by men. This left women to become deficient in protein. In general, the strong position men hold limited women's access to and control over resources particularly land.⁸²

According to the customary law of the *Wolaita* of southern Ethiopia, land is generally considered as the sole property of men. Also, women have no customary right to inherit land from their family; and the control of land during marriage falls chiefly under the control of the husband. Besides, a woman cannot control the fruits of the land as she does not successfully

⁸¹ Askale Teklu.2005. Land Registration and Women's Land Rights in Amhara Region: Ethiopia in Securing Land Rights in Africa. Research Report 4, Nottingham: Russel Press. P.12 Available on: agris.fao.org/agris-search/search.do?recordID=GB2013203663 accessed on 23/3/2017

⁸² Yilma Sunta, supra note, 18

involve in household decision making. On divorce, a woman has to leave her husband's home and goes to her family and wait for another marriage without claiming her share from the matrimonial property. Thus, despite the current state's laws (constitutions, family laws and land laws) recognition of women's access to and control of property such as land in Ethiopia the customary laws and practice of the society against women are still persistent in *Wolaita* zone. This results in the non-enforcement of the state legal rights of women to possess and control land before marriage, during marriage and after divorce.⁸³

Meron (2005) in her work, 'The Socioeconomic Role and Status of *Gumuz* Women' finds out that the status of *Gumuz* women in accessing to and ownership of the means of production and decision-making rights is low. However, according to Meron, women do perform works that requires higher energy unlike men. In this regard, her finding challenges the view that women engage in works that consume lesser energy than their male counterparts. *Gumuz* women do take active role in works related to agriculture, fishing, honey collection and marketing in addition to their reproductive role. In spite of this dominant role, women have no decision making power on the fruits of their work and basic resources.⁸⁴ In support, Kalkidan's (2012) research shows that *Gumuz* women have limited access, control and ownership of property in general and immovable property such as land in particular regardless of their superior workload than men. In this society, land is regulated by customary laws which do not recognize the capacity of women to own or inherit land and property in their own name. Women have access to properties in the family as far as they are married, have children and live peacefully with their husbands. But they have limited rights in controlling and ownership of immovable property. Women in *Gumuz* society do not have the right to inherit properties in any case, whether from her family, or from the death of

⁸³ Hussein Ahmed, supra note 16, P. 81-93

⁸⁴ Meron Zeleke, supra note 19.

her husband or in case of divorce.⁸⁵ In support, Meron elucidates this situation as follows: “women in the [*Gumuz*] society neither have a right to claim ownership and inheritance right to land even on the death of their husbands nor does young girls in the society on the death of their fathers.”⁸⁶ Meron justifies that a girl denied land property ownership for two major reasons. First, since the type of residence is patrilocal among the *Gumuz* they attach this fact further with young girls leaving their birth village on marriage and that them being “an outsider”, and girls belonging to their father’s clan up to marriage is said to be the underlying factor for the denial of ownership right to young girls and women in the society. Second, the common belief that ‘women and young girls do not have knowledge and skill of managing and owning valuable resources’ like land.⁸⁷ Similar to the above findings in *Gumuz*, Yilma’s (2002) research among the *Konso* of southern Ethiopia, report that girls are denied the right to land ownership due to the fact that they leave their family and clan for another group as a result of exogamous marriage. The reason for the prohibition is that since she marries into another clan, a woman would alienate land of her parents to an alien clan. The view that women can inherit land from their husband is also somewhat theoretical as she cannot claim land on divorce. If the husband dies particularly before a woman gives birth to a child, she has no right to inherit her husband’s land. On the other hand, woman who gave birth has the right to control her husband’s property including land and houses until her male children get mature and assume the responsibility on behalf of their deceased father.⁸⁸

Partly similar to other ethnic groups in Ethiopia, some literature on Oromo women property rights show that the Oromo custom in general and the Oromo of Ambo areas in particular did not

⁸⁵ Kalkidan Bekele, *supra* note 17

⁸⁶ Meron Zeleke, *supra* note 19

⁸⁷ *Ibid*

⁸⁸ Yilma Sunta, *supra* note 18

allow women to access and control over immovable properties. That is, traditionally, women property rights (ownership and inheritance rights) to immovable properties such as land and houses have been invisible among the Oromo society. In this regard, as stated in previous chapter, there are both complementary and contradictory findings across different sub-cultural settings of the Oromo society. For example, the study conducted by Almaz (2007) reveals that traditions affect women's access to and control over land among the Oromo of *Ada'a* in eastern *Shewa*. She states that immovable property such as land acquisition by women are affected by marital status (unmarried, divorced, widowed and women in polygamous marriage) as per the custom of the community. For example, unmarried women have no right to acquire land from her parents. Their rights to inheritance are also disallowed by customary laws. Almaz also elucidates that the type of marriage women entered into determines their land rights besides marital status. Almaz also elaborates that *Ada'a* community's custom deny childless widows' access rights to deceased husbands' land.⁸⁹

Somewhat contrary to the above research report, scholars such as (Jeylan 2004; Mamo 2006; Dejene 2009) argue that women are not totally deprived of property rights and inheritance rights in Oromo society. Mamo (2006) explains women's land rights by categorizing them into different status/ category as each assumes different position/status and its related rights.⁹⁰ The first is unmarried girl that could have the right to access and use family land before marriage. This right is relegated on marriage. The second is a married woman who joins her husband clan (*gosa*) and uses his land together with him, from the land of his *gosa*. Even in a polygamous household, each wife is allocated a farmland of her own on which a husband works. Third, a widow could inherit the land of her deceased husband. This could be possible in two ways. One

⁸⁹ Almaz WoldeTensia ,supra note 20

⁹⁰ Mamo Hebo,supra note 22

option is that a widow could be being inherited by a deceased brother or anyone of the member of a *gosa* based on the preference of a widow. In this case, a widow has dominant rights over the decision making of her property. Another option is that a widow could inherit her husband's property including land and houses and continue to live together with her children.

Among the *Guji-Oromo*, *dhaala*, a widow inheritance by the husband's brother, liverate marriage, ensures the continuation of the marriage as well as the bonds with the affinal groups. Similarly, the *Guji* practice *sororate* marriage, where girls inherit their sisters' husbands at their sisters' death. The reason behind these practices is to protect the property and provide children with a social father and mother from among close kin.⁹¹

Although women around Ambo area have their own ritual and social based institution called *Ateetee* their decision making rights over fundamental resource is very less. In this regard, Asfaw (2012,7) finds out that women among *Tokke-Kutta'e*, adjacent district to Ambo, hold lesser position within the household since they have lesser decision making right over key household assets. He shows that in spite of their active participation in household chores and farming activities, women are found at the lower position in terms mainly economic matters. The denial of women's right to resources emerges from 'male dominated inheritance system that prevents women's access to household assets'. Women have less decision making rights over farmland. However, they may have the right to cultivate the home-garden land to grow vegetables whereas farmland is exclusively considered the property of men.⁹²

Regarding inheritance, findings show that among the *Kutta'e* tradition of Ambo and *Tokke Kutta'e* areas there is a rule of primogeniture whereby priorities of inheritance is given to the

⁹¹ Dejene Debsu.2009.Gender and Culture in Southern Ethiopia: An Ethnographic analysis of *Guji-Oromo* Women Customary Rights, African Study Monographs 30(1): P. 15-38

⁹² Asfaw Kasa, supra note 21

eldest son. Thus, the eldest son is given the opportunity to take fertile land where his parent's residence is situated. Moreover, the eldest son inherits all the materials including the cloths of the deceased father. There is a saying, which goes: *utubaa abbaa ilma angafatu dhaala* (the senior son succeeds father's pillar). This law excludes both junior brothers and sister from inheriting immovable properties such as house and fertile land, near the house. In fact junior brothers could get their share of parents land from relatively far areas from the house. Women, whether married or not senior or junior, could not have the rights to those properties⁹³

In sum, the above discussions show that in historical and contemporary Ethiopia, among the diverse culture of people, women have had little decision making rights over immovable resources such as land and other valuable assets like house. They have also little say on inheritance related matters although the degree of inheritance rights varies from society to society and depend on the status of women.

In generally the gender issue in asset inheritance is important not only because of equity considerations, but also because it has important implications for the transfer of wealth to the next generation. *“There is increasing evidence to show that assets controlled by women often result in increased investments in the next generation's health, nutrition and schooling.”*⁹⁴ Apart from positive impacts on the next generation, women's ability to inherit wealth also affects their own well-being. Agarwal (2001, 1997, in Cooper, 2010 and again in Quisumbing and Kumar 2011) argues that women's ownership of land and other property leads to improvements in

⁹³ Ibid

⁹⁴ Quisumbing and Malucho.2003;Smith et al. 2003. in Neha Kumar and Agnes Quisumbing 2011,pp 9 and Cooper. Elizabeth. 2010. in Kumar, Neha and Agnes Quisumbing. 2011. Inheritance Practices and Gender Differences in Poverty and Well-being in Rural Ethiopia: Chronic poverty Research Center, Working Paper No.186. P.2 [avaialbleon:http://www.chronicpoverty.org/uploads/publication_files/WP186%20KumarQuisumbing.pdf](http://www.chronicpoverty.org/uploads/publication_files/WP186%20KumarQuisumbing.pdf) accessed on 26/12/2016

women's welfare, productivity, equality and empowerment.⁹⁵ Property ownership by women has also been found to protect them against domestic violence.⁹⁶ Owning assets may give women additional bargaining power, not just in the household but also in their community and other public arenas, contributing to their social, economic and political empowerment. Thus, inheritance decisions which are made by women's parents or in-laws had a paramount role in determining women's current wealth as well as the well-being of the next generations.

2.2 Review of Relevant Legal Instruments on Women Property Inheritance Rights

2.2.1 International and Regional Legal Instruments on Inheritance Rights of Women

With the higher goal of maintaining international standards, the 1995 FDRE Constitution has domesticated all major international human rights to which Ethiopia is a party.⁹⁷ This domestication applies to the most important human right treaties which Ethiopia has ratified.⁹⁸ Among many, the most important international and regional human rights instruments that ratified by Ethiopia and those had a direct linkage with women's human rights in general and women's property inheritance rights in particular are: the Universal Declaration of Human Rights, the International Convention on Economic Social and Cultural Rights (ICESCR), the Convention on the Elimination of Forms of Discrimination Against Women (CEDAW), the African Women's Protocol, the most prominent that this paper focused on. In addition to

⁹⁵ Agarwal(2001,1997),in Cooper(2010),in Neha Kumar and Agnes Quisumbing 2011. P. 9 available on: http://www.chronicpoverty.org/uploads/publication_files/WP186%20Kumar-Quisumbing.pdf accessed on 26/12/2016

⁹⁶ Kumar, Neha and Agnes Quisumbing. 2011. Inheritance Practices and Gender Differences in Poverty and Well-being in Rural Ethiopia: Chronic poverty Research Center, Working Paper No.186. P.10. available on: http://www.chronicpoverty.org/uploads/publication_files/WP186%20Kumar-Quisumbing.pdf accessed on 26/12/2016

⁹⁷ See Article 9(4) and 13(2) of the 1995 FDRE Constitution

⁹⁸ Ethiopia has Ratified ICCPR(1993),ICESCR(1993),CEDAW(1981),CRC(1991),Convention on the Elimination of all Violence against Women(1981),African Charter on Human and Peoples' Rights(1998),Protocol to African Charter on Human and Peoples' Rights on Rights of Women in Africa(1993)

affirming equal rights of women to an adequate standard of living and the right to own property, all of these conventions and the interpretations of them encourage governments to urgently prohibit and change customs, laws and policies that directly or indirectly prevent women from owning and inheriting property including land and housing.

The Universal Declaration of Human Rights (UDHR), perhaps the most celebrated international instrument of human rights, in its Article 2 asserts that:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁹⁹

These rights to equality and non-discrimination have direct implications with regard to women’s access to property and inheritance. It explicitly calls for equal property inheritance rights for women without any forms of discriminations because of their sex. In addition to the provision under its article 2, the same declaration under its subsequent articles also echoes women equal rights on political, economic, cultural and social life.

General Comment No. 28 of the United Nations Human Rights Committee on Article 3 of the ICCPR (entitled ‘Equality of Rights between Men and Women’) explicitly requires that:

“...The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of

⁹⁹ See Article 2 Universal declaration of Human rights (UDHR).1948.

children. ... Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.”¹⁰⁰

Several other human rights instruments are also specifically recognize women’s rights to property and inheritance. For example, the Declaration on the Elimination of Discrimination against Women states in its Article 6 that:

*“...all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular: (a) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage ... ”*¹⁰¹

Under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the foremost international treaty on gender equality and is often described as an international bill of rights for women. As of 2005, the CEDAW had been ratified by 179 of the 185 UN member countries. With regard to inheritance rights, Article 16 of CEDAW provides that:

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”¹⁰²

¹⁰⁰ Para.26 General Recommendation 21. Adopted by the Committee in its 1884th Meeting (Sixty-Eighteen Session) on 29 March 2000. Available on: <http://www.equalrightstrust.org/content/un-hrc-general-comment-no-28-equality-rights-between-men-and-women-art-accessed-on-4/3/2017>

¹⁰¹ Article 6 of Declaration on Elimination of Discrimination against Women

¹⁰² See Article 16 of CEDAW

It stipulates that to end discrimination against women, women's rights to own, inherit, and administer property in their own names must be recognized. Moreover, the law requires 'the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

Under Article 5, the same Convention requires that State Parties

*"... modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"*¹⁰³

The United Nations Committee on the Elimination of Discrimination against Women, the body that monitors State Party compliance with CEDAW, has also issued General Recommendation No. 21 on Equality in Marriage and Family Relations, which states that:

*"There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished."*¹⁰⁴

This recommendation clearly recognized the existences of different laws and practices that impede women property inheritance rights across the globe and clearly require the state parties to take a bold step to change such trends. It is groundbreaking move by committee toward protection of women property inheritance rights.

¹⁰³ See Article 5 of CEDAW

¹⁰⁴ Para.35.Gen.Rec.21,Adopted by CEDAW Committee at its Thirteenth session(1994), available on: <http://www.refworld.org/docid/48abd52c0.html> accessedon4/3/2017

Regional human rights instruments are also protect the rights of women to non-discrimination on the basis of sex and recognize women's rights to equality before the law. Significantly, they do so by calling upon governments to fulfill their international obligations. Article 2 of the African Charter on Human and Peoples' Rights states that:

*“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.”*¹⁰⁵

The African Charter makes clear that discrimination should be eliminated and integrates international legal standards, for example in Article 18 (3): *“The State shall ensure the elimination of any forms discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”*¹⁰⁶

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is a vital step towards raising the status of women. For instances, the Protocol provides, in Article 16 on the right to adequate housing, that:

*“Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, state parties shall grant to women, whatever their marital status, access to adequate housing.”*¹⁰⁷

Article 16 further states that women should not suffer discrimination due to their marital status. In addition, the Protocol specifically recognizes women's right to inheritance and in Article 21 stipulates that: *“A widow/widower shall have the right to inherit each other's property. In the*

¹⁰⁵ See Article 2 African Charter on Humans and People's Rights,

¹⁰⁶ See Article 18(3) of Ibid

¹⁰⁷ See Article 16 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women.

event of death, the surviving spouse has the right, whatever the matrimonial regime, to continue living in the matrimonial house.”¹⁰⁸

Under Article 21, women and girls are also ensured the right to inherit their parents’ properties in equal shares with boys. These articles on inheritance are groundbreaking in that they clearly articulate a free-standing right of women to inherit, outside of the procedural scope of equality and non-discrimination.

The Beijing Declaration and Platform for Action,¹⁰⁹ which was the result of the Fourth World Conference on Women in Beijing, China in 1995, also reiterates these concerns and calls upon Governments to: “*Undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other properties, credit, inheritance, natural resources, and appropriate new technology...*”¹¹⁰

At the regional level, the Solemn Declaration on Gender Equality in Africa, which was adopted by Heads of States of the African Union (AU) in July 2004, also reaffirms the commitment of African governments to implementation of legislation to guarantee women’s land, property and inheritance rights.

2.2.2 The National Legal Instruments on Inheritance Rights of Women

2.2.2.1 The 1995 FDRE Constitution

The 1995 FDRE constitution recognized the practices of the customary institutions and customary rules of the nations, nationalities and peoples of Ethiopia as a part of the Ethiopian formal legal system even though not all. The wording of article 39(2) of the FDRE constitution which gives “every nations, nationalities and peoples of Ethiopia ...the right....to express, to

¹⁰⁸ See Article 21 of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women.

¹⁰⁹ Beijing Declaration and Platform for Action, A/CONF.177/20 (1995) and A/CONF.177/20.Add. (1995). Available on: <http://hrlibrary.umn.edu/instree/bejingmnu.htm> accessed on 4/3/2017.

¹¹⁰ Ibid, para. 63(b)

develop and to promote its culture and to preserve its history” can be cited as a good example. Thus the constitution has recognized the right to develop, promote and preserve ones customary laws and institutions unconditionally. But the constitution gives these rights with the fruits of its limitations within it. Article 9(1) of the FDRE constitution limits this right by saying “.....any laws, customary practice, which contravenes this constitution, shall be of no effect.” Thus, the wording of this article implies that customary laws and the practices of customary justice institution are recognized as long as they are not repugnant with values and principles enshrined in the constitution. Therefore it is possible to say that the customary justice institution on which this study has focused on had a constitutional recognition.

Furthermore, article 34(5) of the same constitution clearly stipulate that customary and religious courts had a legal power to accept and handle cases related to personal and family matters as long as their adjudications are in line the provisions within the constitution. Hence the theme of this paper is on women’s property inheritance rights, it falls under personal and family matters, so that the customary justice organ on which this study has focused on can accept and handle cases of this nature from women. In fact there are many writers who advocates against this constitutional provision by claiming that, it opens the way for discriminatory practices to persist and thereby affect women’s rights in many aspects including their property inheritance rights.¹¹¹

In addition to giving recognitions to customary courts to handle cases related to personal and family matters, the same constitution guaranteed or upholds equality of men and women in every aspects of life, and also set it as one main principal objective to be promoted and protected under its various provisions.

¹¹¹ Meaza Ashenafi and Zenebework Taddasa.2005.Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia.P. 18-20. Available on: <http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/women-hiv-aids-property-an> ccessed on4/3/2017

As per article 25 of both the 1995 FDRE constitution, any forms discriminations based on gender is prohibited. It says as follows:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.”¹¹²

Accordingly without any forms of discriminations on any grounds, both men and women have equal rights and protection before law and thus any organ (governmental or customary institution) had a duty to treat both sexes equally. The Constitution specifically guaranteed women equality with men under article 35 of its provision by further calling for affirmative action to remedy past discriminations and to enable women to participate and compete equally with men, in all fields, both publicly and privately.¹¹³

The provisions under article 35 of constitution not only guarantee the equal rights of women to property but also put duties on state, both the federal and the regional governments, to repeals discriminatory norms of customary laws that affect women’s negatively and affirms the rights of women to acquire, administer, control, use and transfer property including land. Importantly for women’s inheritance rights, the state is assigned the duty to guarantee the right of all women. These can be observed from the wording of article, 35(7) of the 1995 FDRE constitution which clearly stipulates that:

Women shall have the right to acquire, administer, control, enjoys and disposes of property. They shall, in particular, have equal rights with men regarding the use,

¹¹²See Article 25 of the 1995 FDRE Constitution

¹¹³See Article 35(1) and (3) of the 1995 FDRE Constitution

*transfer, administration and control of land. They shall enjoy the same rights with men with respect to inheritance.*¹¹⁴

For proper implementations of these rights, this constitution under its article 35(4) proclaimed that: *The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.*¹¹⁵

Thus under 1995 FDRE constitution women's property rights in general and their right to inheritance are guaranteed, and so that they had equal property right with men in course of using, administrating, transferring or accepting any property including land and the house through any forms. They had equal rights to inherit any property in equal foot with men before marriage, during and at the divorce as clearly stipulated under article 34(1-3) of the 1995 FDRE constitution. Thus, women's have equal property inheritance rights at the death her family or at the time divorcee.

This constitution did not only guarantee women property inheritance rights and impose a duty on government to protect their rights, but also provides mechanisms by which women's themselves protect this right, if it put at jeopardy. This can done by bring their claims to either the court of law or customary justice organs to protect their rights. Article 37(1) of the same constitution also state as follows:

*“Everyone has the right to bring a justifiable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.”*¹¹⁶

¹¹⁴See Article 35(7) of the 1995 FDRE Constitution

¹¹⁵ See Article 35(4) of the 1995 FDRE Constitution

¹¹⁶ See Article 35(4) of 1995 FDRE Constitution.

The deep reading of article 37(1) along with article 34(5) and 78(5) of FDRE Constitution gives us an impression that, in addition to formal state courts, women can protect their property rights by bringing their claims to the customary justice organs.

In addition constitutional guarantees, Ethiopia's national enterprise in relation to women, issues of discrimination, inequality and rights over both immovable and immovable properties has also been treated on different levels under various proclamations (for instances, the federal rural land administration and land use proclamation No. 456/2005, the revised family code proclamation No.213/2000), under policies and strategic documents that provided direction to more focused actions and legislative undertakings. The National Policy on Women (1993) called for the gradual elimination of prejudices and customary practices that are based on male supremacy. It emphasized women's right to own property and to benefit from their labor. The National Culture Policy (1997) dictated the abolishment of deep-rooted causes of poverty, indolence, misconduct and prejudice against women and chauvinism; most importantly, it recognized the possible negative role culture plays in the relationships, daily lives and psychological states of people, which must be combated. Similarly, the Growth and Transformation Plan II (2015) established equality between men and women as one of its central pillars and considered gender as a cross-cutting subject in realizing women's participation in, and benefit from, social, economic and political life. On the other hand, the Ethiopian Women's Development and Change Package (2005) highlighted the deep rooted nature of women's problems in many parts of the country; it concluded that ensuring women's equality requires avoiding gender dominance and male chauvinism in all fields. The intervention strategies must focus on enhancing women's active and committed struggle, participation and own awareness, and the institution of a competent political leadership that ensures land ownership rights of

women, equally with men. The National Plan of Action for Gender Equality 2006-2010 (2006) started with similar premises on issues of gender inequality entrenched in social, economic, cultural and political structures. Specific elements of intervention proposed, included the enactment of protective legislations and enhancing rural women's equal access to, and control over, productive resources and services such as land, oxen and the extension of credit.

2.2.2.2. The 2001 Revised Constitution of Oromia National Regional State

Similar to the 1995 FDRE constitution, the 2001 revised constitution of *Oromia* National Regional State Constitution under its article, 39(2) also provides that, “the Oromo people have the right to maintain and get respected their national identity, to preserve and promote their history and heritage” Furthermore, article 34(5) of the 2001 revised constitution clearly stipulate that customary and religious courts had a legal power to accept and handle cases related to personal and family matters as long as their adjudications are in consistent with provisions within the constitution. This constitution specifically guaranteed women equality with men under article 35 of its provision by further calling for affirmative action to remedy past discriminations and to enable women to participate and compete equally with men, in all fields, both publicly and privately. For women's inheritance rights, the state is also assigned a duty to guarantee the right of all women. This can be observed from the wording of article, 35(9) of the 2001 revised constitution of *Oromia* National Regional State which clearly stipulates that:

“Women shall have the right to acquire, administer, control, enjoys and disposes of property. They shall, in particular, have equal rights with men regarding the use,

transfer, administration and control of land. They shall enjoy the same rights with men with respect to inheritance."¹¹⁷

The reading of article 62 of the 2001 revised *Oromia* National Regional State Constitution also gives us an impression that, in addition to formal state courts, women can protect their property rights by bringing their claims to the customary justice organs.

2.2.2.3 The Oromia National Regional State Revised Family Code (83/2004) and Land Use and Administrations Proclamation (130/2007)

In addition to getting proper constitutional recognition, women's property rights in general and women's property inheritance rights in particular are also given recognition and protection in the *Oromia* national regional state revised family Proclamation No 83/2004 and the *Oromia* national regional state land use and administration proclamation No-130-2007. For instance regarding the administration of property, the *Oromia* national regional state revised family law stipulates that both the spouses conjointly administer the common property as per its article 82. Moreover, the requirement of the agreement of both spouses for the performance of certain acts such as the sale of or any other agreement with third on common immovable property or movable property whose value is exceeding 500 birr has been supplemented with a sanction in the revised family law of *Oromia* national regional state. To this effect article 84 provides that if one of the spouses entered into such obligations without the agreement of the other spouse, the court may revoke the act at the request of the latter.¹¹⁸ This clearly implies that women had equal rights with men in administration and management of common property. In addition to that the

¹¹⁷ See Article 35(9) of the 2001 Revised Constitution of Oromia National Regional State.

¹¹⁸ See Article 82 and 84 Revised Family Law of *Oromia* National Regional State Proclamation No. 83/2004

wording and the general spirit of other articles of the same proclamation implies that women had equal property inheritance rights with men.

Under Proclamation.No.130/2007 which Proclaimed to amend the proclamation No. 56/2002, 70/2003, 103/2005, women rural land rights are also guaranteed. Article 5(1) of this proclamation state that, ‘any resident of the region, aged eighteen years and above, whose livelihood depends on agriculture and/ or wants to live on, have the right to get rural land free of charge.’ More specifically, article 5(2) of this proclamation clearly state that, “women have equal rights with men to possess, use and administer the rural land”. In case of divorce too, as clearly stipulated under article 6(13) “both husband and wife shall have the right to share their land holding that was registered by their name equally, save exception to the number of their children they raise.” This clearly implies that women’s property rights are guaranteed under this proclamation, even if much of these laws are not known or properly understood by women.¹¹⁹

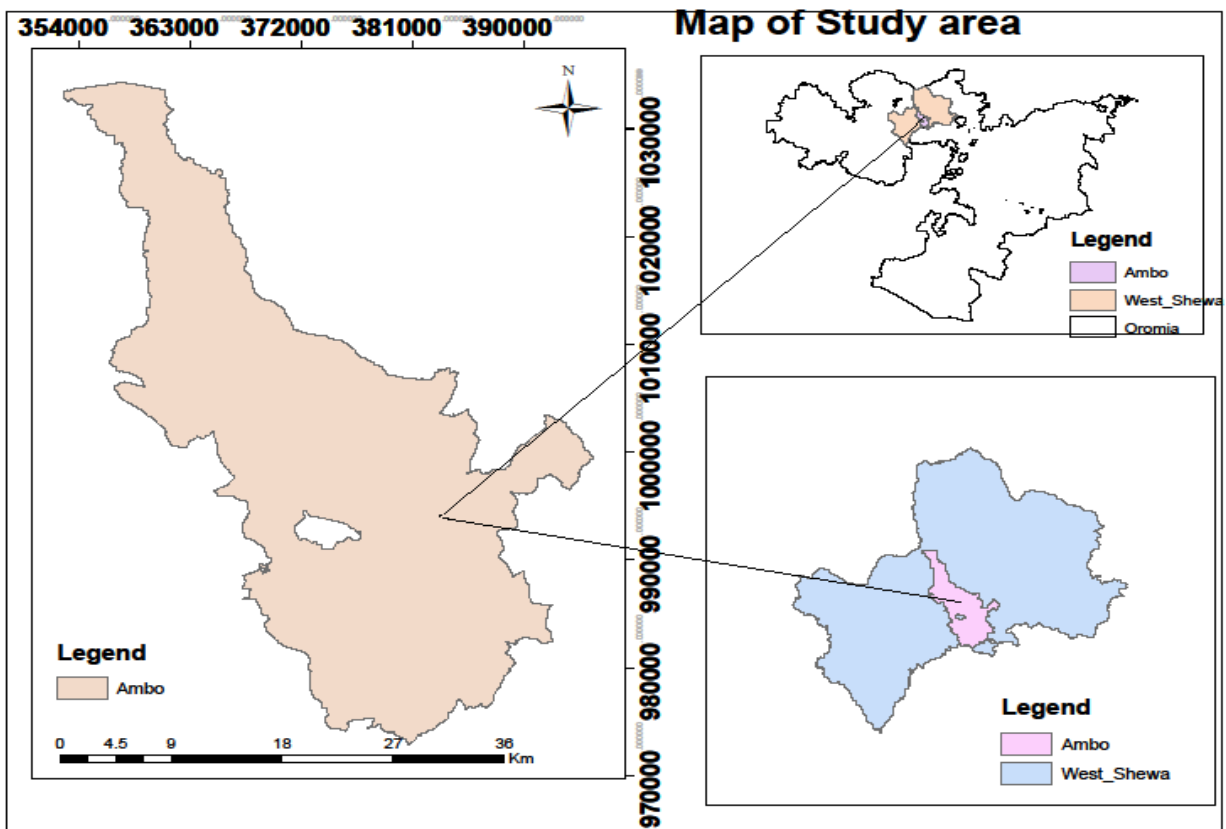
¹¹⁹ See Article 5 and 6 of *Oromia* National Regional State Rural Land Use and Administration Proclamation No. 130/2002

Chapter Three

Brief Description of the Study Area and the Customary Institutions of Dispute Settlement in the Study Area

3.1 Brief Description of the Study Area

3.1.1 Location and Demography



Picture 1: Map of the Location of Ambo District in West *Shewa* Zone of *Oromia* National Regional State.

This study is carried out in west *Shewa Zone*, particularly *Ambo woreda*. *Ambo woreda* is one of the twenty-three *woredas* of west *Shewa Zone* which is located between the astronomical grades of 8° 47' N- 9° 21' N and 37° 03' 2" E.¹²⁰ *Ambo* is the capital city of west *shewa zone* which is about 114km away from Addis Ababa. *Ambo woreda* has a total of 33 *kebeles* with 32 of rural and one urban *kebele*.¹²¹

The estimated average altitude of the *woreda* is from 1380 to 3030 above sea level. *Ambo woreda* is bounded in north by *Jeldu*, and *Gindabarat*, in south by *Toke-kutaye* and *Wanci*, in west by *Toke-kutaye* and *Mida Qanyii*, and in east by *Daandii* and *Ilfata*.¹²² Part of mountains found in the district include: *Goromitii*, *Hillo*, *Kulit* and *Miesse* where as the perennial rivers of the district are *Hulluqa*, *Abbay*, *Dabis*, *Qaale* and *Taltale*.¹²³

According to Ethiopian Central Statics Authority Population and Housing Census (2007), the total population of the district accounts 109271 of which 54564 are male while the remaining 54707 are female residents,¹²⁴ and of these total population 45 percents them are children less 15 years, 5 percent are elders, while the rest 50 percent are the productive class of the society.¹²⁵ *Ambo woreda* has a mean annual temperature ranging between 15°C-29°C and the average is 22°C. The mean annual rain fall of the district is 800 to 1000 mm.¹²⁶

¹²⁰Pamphlets Prepared by Ambo *Woreda* Bureau of Culture and Tourism, 2016

¹²¹ Pamphlets Prepared by Ambo *Woreda* Bureau of Rural Land Administration, 2016.

¹²² Pamphlets Prepared by Ambo *Woreda* Bureau of Culture and Tourism, 2016.

¹²³ Ibid

¹²⁴ Ethiopian Central Statics Authority Population and Housing Census, 2007.

¹²⁵ Pamphlets Prepared by Ambo *Woreda* Bureau of Rural Land Administration, 2016.

¹²⁶ Pamphlets Prepared by Ambo *Woreda* Bureau of Culture and Tourism, 2016.

3.1.2 Major Livelihoods Strategies

The district covers different climatic zones which account *Badda* (high land), *Badda-darre* (middle land) and *Gammojji* (lowland) 35.3, 50 and 14.7 percents of the total 83599.69 hectares respectively.¹²⁷ From the total area of *woreda* 62166.69 hectares are used for agricultural purposes, 8370 hectares are used for grazing, 1379.1 hectares are for forestry, 1 hectare for industry and the rest 11682.9 for other different purposes (for example for houses and etc.).¹²⁸ Coming to the types of the soil of the district, 34.37 percent is black (loam), 36.25 percent is clay soil and 29.38 percent is yellow. These indicate that the agro-climatic zone of the district is favorable for agricultural activities. This is one of the reasons for the overwhelming majority of the population (i.e., 99 per cent) of the total population of the *woreda* to engage in agriculture.¹²⁹ 99 per cent of the populations of Ambo *woreda* are living in rural while only 1 percent of them are urban dwellers.

According to the data obtained from Ambo *woreda* finance and economic development bureau (2016), Ambo has a dominant crop types such as cereal crops and pulse crops. The cereal crops of the area include barely, wheat, *teff*, maize, sorghum and pulse crops which are bean and field pea. *Teff* and wheat are occupied the largest cultivated land area and do accounts of the district land under crops and used as the most staple crops of the district. *Teff* is also the leading crop and followed by pulse. There are also livestock types such as, cattle, donkey, sheep, goats and chickens. The dominant economic activities are agriculture, craft man, mining factory, trade and most of the populations were engaged in agricultural activities. But this sector is characterized by lack of access to modern technology, lack of market, low productivity,

¹²⁷ Pamphlets Prepared by Ambo *Woreda* Bureau of Rural Land Administration, 2016.

¹²⁸ Ibid

¹²⁹ Ibid

dependency on rainfall and lack of irrigation practice, etc. As a result the sector is remained subsistence in its nature.¹³⁰ Mixed farming is also common practice prevailing in the district. As a result the livelihood of the rural people is dependent on both crop farming and livestock rearing.

3.2 An Overview of Customary Justice Systems in the Study Area

Some of the most effective customary justice institutions in Ambo area include; the *Jarsumma* (elders council), the *Gadaa* court with the *Aba Bokus* and *Aba Gadas* (functioning within the *Gadaa* system), and the two hierarchical but largely interlinked structures of dispute settlement - the *yaa'aa-yabboo* (*yabbo*-assembly) and the *Galma-Ayyaanaa* (spiritual hall).

3.2.1 Jaarsummaa (Elders Council)

Jaarsummaa is a traditional justice institution led by community elders. This is the most predominant method of conflict resolution across all Oromo clans for centuries including among the Oromo's of Ambo areas.¹³¹ These elders are supposed to resolve any kind of disputes that they may come across in their community. They either resolve it on the spot or fix a date, usually weekends or holidays, to mediate the disputants.¹³² The elders accomplish such roles through their institution called *Jaarsa Biyyaa* 'elders of the country' in Ambo area, also called *jaarsa araaraa* 'elders of reconciliation' in different parts of *Oromia* national regional state.¹³³

¹³⁰ Ibid

¹³¹ Alula Pankhurst and Getachew Asefa, supra note 30, P. 32

¹³² Areba Abdella and Birhanu Amenew. 2008. Customary Dispute Resolution in *Oromia* Region: The Case of *Jaarsa Biyyaa*. In Alula Pankrust and Getachew Aseffa (Edn), *Grass-root justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Addis Ababa: French Center of Ethiopian Studies. P. 173

¹³³ Alemu Disasa.2014. "Gender Power Relationship in Discourse of *Jaarsummaa*: A Traditional Dispute Mediation among *Arsi* Oromo of Ethiopia." *International Journal of Medical Science and Clinical Inventions* 1 (10): P. 603-604

The term *jaarsa* has dual connotations: a gerontocratic authority of mediation gained with an old age and the reconciliatory skills of a person.¹³⁴ The word *jaarsa* in the second construal symbolizes wisdom ascribed to mediators. The method the elders use is called *Jaarsummaa* 'dispute mediation by community elders'. “*Knowledge of cultural norms, honesty, patience, neutrality, experience, and skill of persuasion, genealogical seniority, and economic status (sometimes) are often considered as criteria to select the elders for mediation.*”¹³⁵

These elders are often selected on ad hoc basis, but among some Oromo clans such as Oromo's of my study area, there are individual who are chosen by different sub-clans and lineages to permanently give *Jaarsummaa* service¹³⁶. These elders are called *haayyuu gosa* (lineage leaders).¹³⁷ These elders are given blessings on different occasions and they officially take oath to genuinely serve their community before they start their work. In the case of spousal dispute mediation, both parties select their own elders.¹³⁸ Usually a minimum of five elders can conduct a mediation session according to account of the local elders. The number of elders can go up to twenty in the case of mediation of serious cases, such as inter-clan conflicts and murder cases.¹³⁹

¹³⁴ Meron Zeleke. 2015. Faith at a Cross Road: Religious Syncretism and Dispute Settlement in Northern Ethiopia. Wiesbaden: Harrasowitz Verlag

¹³⁵ Endalcachew Bayeh and et al, supra note 59, P. 3

¹³⁶ Interview with *Obbo Belay Kumala*, on February 15 ,2017, in Ambo town

¹³⁷ Ibid

¹³⁸ Areba Abdella and Birhanu Amenew.2008. Customary Dispute Resolution in *Oromia* Region: The Case of *Jaarsa Biyyaa*. In Alula Pankrust and Getachew Aseffa (Edn), Grass-root justice in Ethiopia: The Contribution of Customary Dispute Resolution. Addis Ababa: United Printers Plc. P. 173

¹³⁹ Interview with *Obbo Belay Kumala*, on February 15 ,2017, in Ambo town

3.2.2 The Gadaa Court

According to Asmerom Legesse (1973: 93-96), in *Borana Oromo* among whom *Gada* is still fully operational, *gumi gaayo(caffee)* that is the assembly of the representatives of the entire society is a law making body¹⁴⁰. This body has the highest degree of political authority.¹⁴¹ The west *Shewas yaa'ii haraa*, similar to *gumi gaayo* is held at *Boku Xulee* and *Ciittu*.¹⁴²The *yaa'ii haraa* that is the law making body also devotes some of its time to the settlement of disputes. It hears and resolves conflicts of any sort when it is sufficiently important to be discussed at the level of assembly.¹⁴³

However, as *yaa'ii haraa*, which is held only once every eight years, it can't deal with a day-today conflicts happening in society. Rather, *Gada* system has had its own administration of justice and court system. Abera (1998: 52) shows that in *Gada* court three *gulas* (*Gada* grade in which male person assume political power) have served as permanent judges.¹⁴⁴ In addition, each party in dispute selects three mediators to sit for hearing their case with the permanent judges.¹⁴⁵ Nevertheless, the nominee of each party should secure the approval of the opposite party to be selected. This is mainly done with the intentions of avoiding the potential conflict of interest and tension.

Together with the three judges, the six selected elders constitute the full bench of the court and would sit for a hearing.¹⁴⁶ This court is known as *dhaddacha* or *shanacha*. It has been held in

¹⁴⁰ Asmerom Legesse, supra note 41, P. 93-96

¹⁴¹ Ibid

¹⁴² Interview with obo *Nata'aa Xurii*, on February 17 ,2017, in *Wechan* Village,

¹⁴³ Ibid

¹⁴⁴ Abera Jambare.1998. Legal History of Ethiopia 1434-1974: Some Aspects of Substantive and Procedural Law.Rotterdam: Erasmus University.P. 52

¹⁴⁵ Ibid

¹⁴⁶Dejene Gemechu.2002.Some Aspects of Conflict and Conflict Resolution among *Weliso Oromo* of Eastern *Mecha*: With Particular Emphasis on *Guma*. MA thesis: Addis Ababa University, School of Social Anthropology:P. 58

an open field under a tree as in the case of law making. It has permitted full interaction of the parties. They could even request the postponement of the proceeding when need be. The formal procedure of requesting for adjournment of the hearing is by saying *qabe* (I behold). The disputants usually employ this method in seeking further information and piece of advice on the matter under investigation. Abera (1998) further discusses that after hearing arguments and counter arguments of the disputants, judgments are rendered. Such judgments are supposed to be given by consensus in consulting *Gada* law and local customs. Of course, according to Abera, there has been a chance to give verdict on a dispute case by majority vote. The decision of such court is not final, as any party that refuses to accept the decision had a right to appeal against the verdict. The court of appeal constituted judges who were not members of the court of first instance. The number of judges in higher court also exceeded the number of judges in the lower court at least by two.

3.2.3. An Overview of Yaa'aa Yaabboo (the Qaalluu court).

Every *qaalluu* center in *Oromia* national regional state of Ethiopia is the center for litigation and conflict resolution. It is not uncommon to see a large number of people gathered at *qaalluu* ritual centers to have their cases heard.¹⁴⁷ Regardless of differences in their prominence and size of followers, all *qaalluus* have their own courts that render the services of settling disputes and maintaining social orders.¹⁴⁸ Such a court is believed to be held at a sacred place, supervised by the spirit possessed by the *qaalluu*.¹⁴⁹ This court is supervised and runs by *qaalluu* head who is sanctified by the spirit. Similar to *jaarsummaa* and *gadaa* court, the *qaalluu* court proceedings

¹⁴⁷ Ibid. P. 76

¹⁴⁸ Allice, Mortan.L. 1975. "Mystical Advocates: Explanation and Sprit Sanctioned adjudication in *Shoa Galla ayanaa* Cult." In the Proceeding of First United State Conference of Ethiopian Studies. Michigan: Michigan State University. P. 78

¹⁴⁹ Ibid

are held in open field under a tree at *qaalluu* ritual center.¹⁵⁰ But major *qaalluus* have also halls constructed for this purpose.¹⁵¹ The major *qaalluu* have permanent judges of their courts known as *jaarsa yaboo* or *jaarsa bokkuu*.¹⁵² *Yaboo* refers to the *qaalluu* court. In every *Qaalluu* center, a ritual known as *kudharfan* (fourteenth) is performed once every two weeks. On these occasions, many followers gather at the *galmaa-qaalluu* (*Qaalluu's* spritual hall) to take part in the rituals and to settle disputes. It is a major place for worshipping *Waaqaa* and settling disputes.

The *qaaluu* court that this study focused on is found in west *shewa* zone of *Oromia* National Regional State, in Ambo district, in *Illamu Mujjaa kebele*, specifically in *Wechen*, a village located 15 km south east of Ambo town. This study is specifically focused on the *warra-danfaa, yaa'aa-yaabboo* (*yabbo*-assembly). This is first due to the wider reputation that this court had among the local communities and its wider catchment area serving disputants from neighboring districts. Furthermore the presence of women, the main subject of this research, at this customary justice institution is also another factor taken into consideration in selecting *yaa'aa-yaabboo*. The effectiveness of this court and the diverse nature of dispute cases brought before it are also some points taken to consideration while making the institutional focus. Unlike most customary courts held on *ad hoc* bases, *yaa'aa-yaabboo* has a regular court hearing. It holds regular court hearings once or twice on every two weeks on average, depending on the number and type of cases. This *qaaluu* court had a hall established for this purpose which is called *Yaboo*. The major *Qaaluu* of *Warra-danfa* is *Obbo kumala Feyisa*. He is also called *Aba boku* of the *qeyyee* (the head of the ritual center). In addition to the major *qaaluu*, the most prominent mediators in the *Yaaboo* of *warra-danfaa*, are called *Daanyii's* and *Samphalos'*

¹⁵⁰ Ibid

¹⁵¹ Ibid

¹⁵² Ibid



Picture 1: Local people attending the court proceeding

Generally, the main aims of these customary justice institutions have been reconciliation of the disputant parties and restoration of peace and order. In this process the person or party who suffered the consequences of the offense has been compensated and the offender fined.

Chapter Four

Descriptions of ‘Yaa’aa Yaabbo’(The Qaaluu Court)

4.1. Setting and Time

The court house (*yaaboo*) of *warra-daanfa* is established approximately 50 meters away from *Galma-Ayyaana* or *qaaluu* (*qaaluu*'s spiritual hall), where different ritual ceremonies took place. This court house is built on the place where the first major *qaaluu* named *Elemo Dule*¹⁵³ accepted and handled the first case brought before him, hundred years back.¹⁵⁴ That is the main reason for selecting this site for establishment of court (*yaaboo*), according to my informants from *qaaluu* court.¹⁵⁵

The regular court hearing is conducted once on every two week on Friday from 10:00 am to 6:00 pm.¹⁵⁶ This day is locally known as *kudha-arfan*. But this doesn't mean that the court never accept cases brought before it other than this day. The major *qaaluu* may accept when the case is of extra-ordinary nature that requires judgments on spot.¹⁵⁷ For example, when a case is related to homicide that require urgent intervention of major *qaaluu*, after accepting he either look at the case by himself or order the case to be seen by local elders or make appointments. This implies that, even if the regular court hearing is conducted bi-monthly on every Friday, there are exceptional situations when the *yaaboo* court accept and handle the cases brought to it on other days.

¹⁵³ Elemo Dule is the Fifth Generation Back from the Current Major *Qaaluu oboo Kumala Feyisa*. He was the First Major *Qaaluu* of *Warra-Daanfa*.

¹⁵⁴ Interview with Alemu Hirpha, the *Daanyii* and the Vice President of all *Daanyii*'s, on May 12, 2017, in Wechan Village.

¹⁵⁵ Interview with Alemu Hirpha, the *Daanyii*, on May 12, 2017, in Wechan Village.

¹⁵⁶ Ibid

¹⁵⁷ Ibid

The rationale behind selecting Friday as a regular court hearing day, according to informants from *qaalluu* court, is associated with the appearance of the sprit called *Gooftaa Daanfaa*¹⁵⁸ (lord *daanfaa*) on every Thursday bi-monthly.¹⁵⁹ Thus culturally the day after the appearance of the sprit (*Goofta Daanfa*), which is Friday, is considered as *Guyyaa Ayyaana Qabeessa* (lucky day) and it is also believed that on this day God is ready to hear the word of *Hiyyeessa* (the poor) and *Dhuga Qabbessa* (the honest).¹⁶⁰ As a result, He gives timely response for those who have truth. Plus to that many people from different corners of the districts or zones, who came to attend the ‘*dalagaa*’ ritual ceremony conducted on Thursday, may have a cases to be seen the next day.¹⁶¹ This might be another reason for selecting Friday as regular court hearing day of the study area.



Picture 2: Exterior and Interior part of the *yaaboo* (*qaalluu* court) of *warra-daanfa*

¹⁵⁸ *Gooftaa Daanfaa* is the Name Male Sprit (Ayyaana). In Addition to *Gooftaa Daanfa*, There is also Female Sprit Named *Giiftii Maram* in study area.

¹⁵⁹ Interview with *Nata'aa Xurii*, the *Samphaloo*, on May 12, 2017, in *Wechan* Village.

¹⁶⁰ Interview with *Nata'aa Xurii*, the *Samphaloo*, on May 12, 2017, in *Wechan* Village.

¹⁶¹ *Ibid*

4.2 Types and Nature of the Cases of *Oaalluu* Court

Before directly going on to discussing about the types and nature of cases handled by *yaaboo*, a *qaalluu* court found in *Wechan* village of Ambo area, the one on which this study is focused on, it is very important to recapture the types and nature of cases that customary justice systems can handle as per the 1995 FDRE constitution. In many regions of Ethiopia, the customary norms and institutions are more strong, relevant, and accessible than imposed and top-down legal norms.¹⁶² They are mostly, though not exclusively, vibrant in rural areas where the formal legal system is unable to penetrate because of a lack of resources, infrastructure and legal personnel as well as a lack of legitimacy, for the modern law is seen as alien, imposed, and ignorant of the cultural realities on the ground.¹⁶³ Hence, in the face of such a shortage of facilities and legitimacy, the customary justice institutions play a very vital role in the administration of justice.¹⁶⁴ Moreover, experiences in different regions of Ethiopia show that people, even after passing through the procedures and penalties in the formal criminal and civil court, tend to use the customary justice institutions for reconciliation and in order to control acts of revenge.¹⁶⁵ It appears to be in recognition of this fact that article 34(5) of the FDRE constitution states that group or individual can use their customary laws and institutions as far as their usage is consistent with human rights provision of the constitution. It says that “*this constitution doesn’t preclude the adjudication of disputes relating the personal and family laws in accordance with customary and religious laws, with the consent of the parties to the*

¹⁶² Endalew Lijalem. nd. Ethiopian Customary Dispute Resolution Mechanisms: Forms of Restorative Justice? P.137. Available on: <http://www.accord.org.za/ajcr-issues/%EF%BF%BCethiopian-customary-dispute-resolution-mechanisms/> accessed on 23/3/2017

¹⁶³ Ibid

¹⁶⁴ ibid

¹⁶⁵ Meron Zeleke, supra note 57, P. 65

dispute.”¹⁶⁶ Plus to that, article 78(5) of same constitution mentions that “*pursuant to sub-article 34 the house of people representative and state councils can establish or give official recognition to religious and customary courts*”.¹⁶⁷ These articles therefore imply that at least in those are mentioned, the customary justice system could exist separately from, and parallel with the state-sponsored legal judicial system.¹⁶⁸ Regarding other civil matters than the family and personal, the constitution doesn’t specifically prohibit the operation of customary justice systems. Although this could potentially provide the space for the involvement of customary justice institutions in other legal domains, the fact that they are mentioned in contexts of family and personal law without reference to other legal areas creates a pervasive impression that their jurisdiction is or should be restricted to family and personal law.¹⁶⁹

With regard to criminal matters, however, ‘the 1995 FDRE Constitution does not rectify the past mistakes and fails to extend the legal recognition to applying customary courts in criminal matters, despite the fact that they are still being used on the ground to resolve criminal matters: from petty offences to serious crimes, such as homicide as well as inter-ethnic and inter-religion conflicts, especially in rural Ethiopia.’¹⁷⁰ Hence, the use of customary justice systems to criminal matters still remains *de facto*.¹⁷¹ Understanding this fact, *Alula* and *Getachew* state that:

“In many regional states particularly, though not exhaustively, in border regions, customary justice institutions are involved in criminal cases. Moreover, the formal justice system often relies on CJS to solve less serious cases, to bring criminal to the courts to ensure verdicts are upheld and to achieve reconciliation after cases are

¹⁶⁶ See Article 34(5) of the 1995 FDRE Constitution

¹⁶⁷ See Article 78(5) of 1995 FDRE Constitution

¹⁶⁸ Alula Pankhurst and Getachew Asefa, *supra* note 30, P. 7

¹⁶⁹ *Ibid* P.7-8

¹⁷⁰ *Ibid* P. 8

¹⁷¹ Endalew Lijalem, *supra* note 162

concluded. Therefore, the customary institutions and legal process would need to gain legal recognition of their role in the criminal area to collaborate effectively with the state judicial system. ¹⁷²

Nonetheless, certain interpretative arguments may arise in these regard. Some legal scholars argue that the absence of express recognition of the application of customary laws and institutions to criminal matters in the Constitution¹⁷³ does not necessarily mean that they are totally excluded from application.¹⁷⁴ They further claim that the Constitution would have provided express provision to exclude the application of customary laws to criminal matters had the legislature intended it as such¹⁷⁵; and they call for a broader and holistic interpretation of the Constitution, as total exclusion of applying customary laws to criminal matters would defeat the overall objectives of the Constitution to ensure lasting peace and to maintain community safety.¹⁷⁶

On the other hand, the *a contrario* interpretation of Art. 34 (5) of the Constitution may be understood as implying an explicit prohibition of the application of customary dispute resolution mechanisms in criminal matters. However, the first line of argument, which favors the broader and holistic interpretation, is important as it helps to give formal legal status to applying customary laws and institutions in criminal matters.¹⁷⁷

Even though there is no formal or clearly provided constitutional recognition for customary justice institutions to accept and handle criminal and civil matters other than family and personal cases, most CJS in Ethiopia accepts and handle any civil and criminal matters. The case of

¹⁷² Alula Pankhurst and Getachew Asefa ,supra note 30, P. 8

¹⁷³ The term “the constitution refers to the 1995 FDRE constitution

¹⁷⁴ Endalew Lijalem ,supra note 162

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ Ibid

yaa'aa yaaboo of *warra-danfaa*, is not exceptional in this regard. There is no limitation as to the types and nature of cases brought before *yaa'aa yaabbbo*, except, those cases being handled by the formal courts, and homicide case on which the suspected person has not surrendered to government. According to *obbo Nat'aa Xurii*, the mediator at *yaaboo* of *warra-danfa* and *Samphalo* of *Boku Xule*¹⁷⁸:

*“This court cannot accept and entertain those cases being handled by the formal (state) courts until the final judgment is given, or until the court transfer the case to this customary court. The same is true with regard to homicide case until the suspected person is surrender to government”*¹⁷⁹

Accordingly, this court accepts and entertains any criminal or civil cases includes: - property inheritances rights, abductions, rape, divorce, homicides, theft, conflict on land borders, grasslands, double marriage, intoxication, loan, injury and etc.¹⁸⁰

For instances, during the field research on February 17, 2017 and May 12, 2017, the researcher observed while the following cases were brought before this court.

¹⁷⁸*Samphaloo* is a 'Name' and 'The Post' given to the Person that had Deep Knowledge of Customs, Norms and Values of the Oromo of West *Shewa*. He is the Intellegentia of Customary Laws which is called '*Tumaa*'. The Post of *Samphaloo* is Iinherited from the family like the Post *Qaaluu*.

¹⁷⁹ Interview with *Obbo Nata'aa Xurii*, the *Samphaloo* and *Abba Gadaa* of *Boku Xule*, on February 17,2017, in *Wechan* Village.

¹⁸⁰ *Ibid*

No	Types of Cases	Name of the Disputants	Contents of the Cases
1.	Homicide	<i>Uffata Lelisa, Likasa Lelisa, Likesa Duudha, Insa Bayansaa, Caalchisa Baarsiisa vs the family that up bring Dheresa Likasa</i>	These plaintiffs are claiming that, the <i>gumaa</i> taken by the family that upbringing <i>Dherresa Likasa</i> is not correct and it is the his natural family and clan who deserve <i>guma</i> .
2.	Body injury	<i>Bonja Baarsisaa vs Abdisa Badhadha</i>	<i>Bonja Baarsiisa</i> has sustained injury over his head after beated up by <i>Abdisa</i> , and brought his case to the court to claim compensation for his head injury.
3	Defamation	<i>Terefa Edosa vs Hailu Fufa</i>	<i>Terefa</i> has presented his claim by stated that <i>Obo Hailu</i> has defamed him by telling to the people that he saw <i>Obo Terefa</i> while walking naked during night.
4	Double Marriage	<i>Ms Getu Tulu vs Gutaata Hundesaa</i>	
5	Divorce/sharing of property	<i>Ms Alemi Waqshum vs Tolosa Sarbessaa</i>	Came to the court for Partitioning of property.
6	Trespass	<i>Tolosa Atoomsa vs Kumala Kebede</i>	<i>Obo Tolosa</i> claimed that <i>Obo Kumala</i> has trespassed and took water from the wale which belongs to him and found inside of his fence
7.	Looting of Oxen (<i>Lukaa Lukee</i>)	<i>Obo Dasse Hunde vs Bekele Guddata</i>	<i>Obo Dasee</i> has suspected <i>Obo Bekele</i> , on his three oxen lost at night five days ago, So that he brought his case to the court by suspecting <i>Obo Bekele</i> .
8	Fraud	<i>Ms Yaadashi Gutaa vs Obo Fikru Feyisaa</i>	<i>Ms Yaadashi</i> claims that <i>Obo Fikru</i> fraudly took her land; hence she can't read and write.

In general, Ethiopia exhibits plural legal systems, both multi-layered state laws and customary laws; though no formal recognition is given to the use of customary justice systems in criminal matters and civil matters other than family and personal affairs under Ethiopian laws. Hence, necessary legal reform needs to be undertaken so as to give sufficient legal recognition and formal status to the application of customary institutions in criminal and civil matters other than family and personal cases. This may include the amendment of the Constitution to incorporate a clear constitutional clause which recognizes the application of customary justice systems in criminal and civil matters. The inclusion of a clear constitutional clause is a necessary and important measure to avoid interpretative arguments concerning the status and mandate of the customary justice systems. In other way round, it is very important to bear in mind that, there are an opposition toward the amendment of the constitution and other laws for recognition of customary laws and institutions ‘as they are’, due to the discriminatory nature of most, if not all, customary laws and institution toward the human rights of women. So the way forward is careful reconsideration to allow greater recognition to customary laws and institutions while ensuring the women’s human right abuses they pose are avoided.

4.3 Profile of the Mediators in Customary Justice System Leadership

At the *Warra- Danfaas qaaluu* court, there are five major senior *daanyii*’s who have served as mediators for over three decades. In addition to these five major mediators, there are also other *daanyii*’s in the *qaaluu* court of *Warra- Danfaa*.¹⁸¹ According to obbo *Badhadhi Ulfaata*, the president of all *daanyii*’s at this ritual center, the total number of *daanyii*’s in this *yaaboo*

¹⁸¹Interview with Obbo *Badhadhi Ulfaata*, the President of all *Daanyii*’s, on February 17.2017, in *Wechan* Village.

(*qaaluu* court) may exceed fifty, but the major mediators are five.¹⁸² There is power division among members of *daanyii*s which include chairperson, secretary, cashier and members.

These *daanyii*'s (mediators) are appointed by the *Aba Bokuu* of the *qeyyee* (the major *qaaluu*) depending on personal integrity they had in their society, their knowledge of norms, *tumas*¹⁸³ (laws) and their loyalty to the *Ayyaanaa* (the spirit).¹⁸⁴ The post of *daanyii* can also be inherited from the family. They are appointed for indefinite period of time, however, if they lost their personal integrity or breached the loyalty bestowed upon them by major *qaaluu* and the spirit, they may be removed from the post of *daanyii* (mediator) by major *qaaluu*. Taking bribe from one of the disputant party with an intention to favor him/her by judgment is one ground among many for removal of mediator from the post of *daanyii*.¹⁸⁵

Before starting one's career as a *daanyii*, the prospect *daanyii* had a duty to make an oath (*kakuu*); to guarantee that he will undertake his duties properly. In course of making *kakuu* he says that, "I am committed to serve my community and this *Ayyaanaa* (the spirit), depending only on truth and the customs, norms and '*tuma*'s' (laws) of Oromo people".¹⁸⁶ He went on and further state that "If I go against these customs, norms and *tumaa*'s, let bad things happen to my *maati* (extended families) and *karraa*(properties) and..... etc." After the *kakuu* ceremony and blessing of the major *qaaluu*, the prospect mediator, officially start his career as '*daanyii*'.¹⁸⁷

¹⁸² Ibid

¹⁸³ *Tuma*'s are the Laws Enacted by *Abba gadaa*'s at *Yaa'ii Haara* and used to Guide the Behavior and Activities of the Oromo people.

¹⁸⁴ Interview with *Alemu Hirpha*, the Vice-President of *Daanyii*'s on February 17.2017, in *Wechan* Village.

¹⁸⁵ Interview with *Obbo Badhadhi Ulfaata*, the *Daanyii* and the President of all *Daanyii*'s, on February 17.2017, in *Wechan* Village.

¹⁸⁶ Interview with *obbo Alemu Hirpaa*, the vice-president of all *Daanyii*'s, on February 17.2017, in *Wechan* Village.

¹⁸⁷ Ibid



Picture 3: Oath making Ceremony of new *daanyii*s

The *daanyii*'s can entertain any cases referred to them by the major *qaaluu*, except some serious criminal matters like homicide and cases that involve compensations to be paid. In a later case, if the matter at hand consists of the issue of damages or injuries to human bodies or properties for which the compensation is to be paid by the accused, the judgment to pay compensation is passed by *daanyii*'s, but the amount to be paid is the jurisdiction of *Samphaloo*.¹⁸⁸ The justification here is that, it is the '*Samphaloo*' who knows better, the laws (*tumas*) that governs the amount of compensations to be paid for damages or injuries sustained by the victim. The very important point that need consideration here is that, there are already laws (*tumas*) that were passed by *Abaa Gadaa*'s and *Hayyu*'s regarding the amount of compensations to be paid for different injuries or damages (full or partial) sustained by human beings or to properties. In course of assessing (calculating) the amount of compensation to be paid, the '*Samphaloo*' consider different factors like the body part that sustain damage, the

¹⁸⁸ Interview with obbo *Alemu Hirpha* and obbo *Nata'aa Xurii*, the *Sampalo*, on February 17.2017, in *Wechan Village*,

degree of damage, the age of the victim, the means of livelihood, the possible impacts of the damage on the future well-being of victim and etc. Other than cases of these natures, the *daanyii*'s can accept and handle all cases referred to them by *Abba Boku* of the *qeyye*. The number of *daanyii* residing over a single case can be three, five or seven depending of the gravity and nature case. But, it must be not less three *daanyii*'s on any case.

In addition to *daanyii*'s, *samphaloo* is the other mediator in *qaaluu* court of *warra- danfaa*. He is the *intellegencia* of customs and norms, as well as the legislature and guardian of *tumaas*, of the Oromo people of West *Shewa*. He had a deep knowledge of the customs, values and norms that guided the Oromo of West *Shewa* for centuries. The post of *Samphaloo* is inherited. 'Unlike the jurisdiction of *daanyii*'s, there are no limitations as to the types and nature of cases that *samphaloo* can handle.'¹⁸⁹ This is to mean that he can entertain and handle any case as long as it referred to him by the major *qaaluu*, along with the *haayyu*'s.¹⁹⁰ There are also situations when major *qaalluu* acts personally as a *yaaboo daanyii* either with others or alone.

With regard to mediatory and leadership role of women in this customary court, there is a no single women on the post of *daanyii* as well as *samphaloo*. These posts are the exclusive domain of men. When asked by the researcher about the justifications for excluding women from the leadership position on this customary court in the study area, *Obbo Nata'aa Xurii* state that "the *tumaa* (law) didn't allow the women to hold on the leadership position in the customary justice system. That is all."¹⁹¹ The underlying reason for exclusion of women from traditional justice processes in the study site relates to existing gender based divisions of labor in the society whereby most activities performed in the public sphere such as mediating conflicts are often

¹⁸⁹ Interview with *obbo Nata'aa Xurii, the Sampalo*, on February 17.2017, in *Wechan* Village.

¹⁹⁰ *Haayyus*' are a Local Elders Who had Completed their *Gadaas*' (i.e over 48 years) and (or) Those Who had a Deep Knowledge of Local Norms, Values and *Tumas*.

¹⁹¹ *Ibid*

allocated to men, while household and indoor chores are by and large conferred in women.¹⁹² The predominant patriarchal system and related cultural barriers also prohibit women from taking leadership roles in customary institutions.

The gender disparity and exclusion of women in relation to such roles has important implications on the degree and nature of violations of women's rights, as their absence entails that women's perspectives will not to be taken into consideration in routine institutional operations.

4.4 Ignition of the Case at the Qaalluu Court

Cases are brought to this *qaalluu* court first, if the injured parties are unable to testify the truth of the case before the *woreda* court, if it relates to ritual cases such as ritual appeasement or lifting of curses or serious matters, which may also be referred to him by the state legal system or if the *jaarsummaa* system bears no fruit.¹⁹³ This *qaalluu* court never dismisses a case on the ground that the evidence is not conclusive enough. The defendant possibly proves his innocence through oath in the absence of any witness.¹⁹⁴ The failure or refusal to take oath to prove one's own innocence is an indication that the person is guilty.¹⁹⁵

Secondly, "a plaintiff who knows that his opponent believes in the spirit and would not by pass it takes his case to a *qaalluu* court. In doing so, the person can make use of the golden opportunity to secure an effective and efficient outcome. Individuals often make strategic move from other options to the *qaalluu* court based on the context of the relationships between the defendant and the *qaalluu* in person and his spirit. Consequently, even, plaintiffs who do not

¹⁹² Meron Zeleke, 2016, Beyond Exclusion Theses: Women and Customary Courts in Ethiopia, International Law and Policy Institute, P. 5

¹⁹³ Alula Pankhurst and Getachew Asefa, supra note 30 P. 34

¹⁹⁴ Interview with *obbo Nata'aa Xurii, the sampalo*, on February 17, 2017, in Wechan Village,

¹⁹⁵ Ibid

trust the *qaalluu* and his spirit appreciate the *qaalluu* court as an alternative way of dealing with cases.¹⁹⁶

Thirdly, the other way round, regardless of whether or not the offender is willing to respond to the *qaaluu court* or/ and *qaalluu*, a plaintiff faithful to the *qaalluu* and his spirit would not by pass this court. Such a believer in the spirit goes to the *qaalluu* court with two options: either to get his case resolved or to be permitted to try any other alternative, including the invoking of the spirit.¹⁹⁷

The very important points that matter a lot here is that, it is not the types of cases that determine for one to bring his claim to this *qaaluu* court, rather it is the context in which both or either of two disputants found themselves. According to the word of Dejene (2002, 78), what matters is the context rather than the type of case. The relationship between dispute and its resolution is determined by the context.

4.5 The *Qaaluu* Court Processes and Proceedings of handling cases

4.5.1 The Blessing and Opening Ceremony

The *qaaluu* court processes and proceedings are always starting with blessing (*Ebbaa*). After the local communities and people with different claims to be heard are gathered in ‘*yaa’aa yaabbo*’ which is literarily to mean ‘a court room’, established for this purpose, the opening blessing (*Ebbaa*) ceremony is conducted by two local elders (*haayyuu ofkalanii*)¹⁹⁸ in which the blessing by one elder is responded to by the other elder that might be called ‘argumentative blessing’.¹⁹⁹ Then the official opening ceremony is conducted by blessing of the major *qaaluu*²⁰⁰

¹⁹⁶.Dejene Gemechu, supra note 146, P. 77

¹⁹⁷ Ibid P.78

¹⁹⁸ ‘*Haayyu ofkaalan*’ Means Those Elders Who Have Completed their *Gadaas*’ grades(i.e above 48 years)

¹⁹⁹ Alula Pankhurst and Getachew Asefa, supra note 30, P. 52

and the representative of the seven clans²⁰¹ living in and around Ambo area according to their clan seniority respectively.

After closure of the blessing ceremony, a session of hearing various cases will be launched, and then after, anyone who has a claim can start to present his/her claim to the major *qaaluu*, either by himself/herself, or through the person appointed for this purpose. The *qaalluu* court proceeding has no filing system; rather it is the parties in dispute, mostly, the plaintiff that reminds the *qaalluu* or the *daanyii*'s that he/she has a case to be called on. The standard way of forwarding such a request is to get up and say '*galata yaa goftaa koo!*' O! Thanks my lord! As the case is called on for hearing, a concerned person comes forward and kisses the earth in front of the *qaalluu* at some distance (about five meters) to show great respect to the spirit of the *qaalluu* and the *qaalluu* himself. Such claims can be presented either in written form or orally, in any language that the plaintiff can speak or write. For instances, during field research conducted on February 17, 2017 and May 12, 2017, the researcher observed when different claims were presented in written form or orally in Afan Oromo and Amharic languages. Contrary to the government's political discourse, which privileges ethnicity as the major principle of social organization, the vitality of local institutions of dispute settlement such as *yabboo of warra-danfa* has been evident from the fact that they cut across ethnic and religious boundaries, with clients hailing from different parts of the country.

After hearing the cases presented to him, the major *qaaluu* either handle the cases by himself or refer them to the *daanyii*'s or to the *Samphalo*. The cases that he mostly retains for himself

²⁰⁰ Major *Qaaluu* is the Principal *Qaaluu*. His Name is *Kumala Feyisa*. He is the Head in the Court Process and Proceedings and also Spiritual activities undertaken in this Ritual Center.

²⁰¹ There are More than 19 Oromo Clans living in and Around Ambo area. The Most Prominent Clans in *Illamu Muja Kebele* in which *Wechan* Village Found in Particular and *West Shewa Zone* in General are Seven. They are *Ammayaa, Weliso, Galaan, Baacho, Daada, Abbayee and Illaamu*

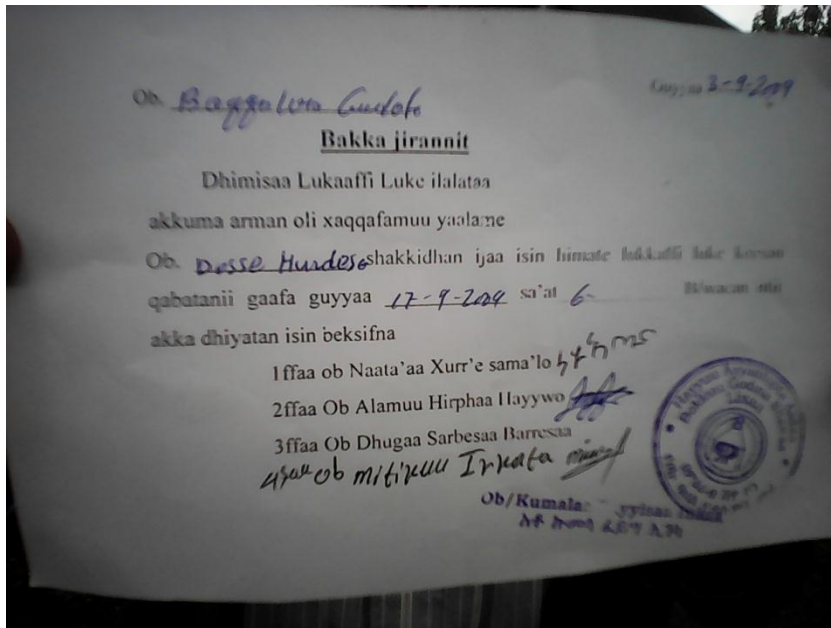
include: homicides, rape and abduction.²⁰² These are serious cases that had wider implications on peace and stability of the society, unless wisely and properly approached and that is mostly the reason behind retaining such cases.²⁰³ He may also refer the cases back to the local elders (*jaarsa biyyaa*) from where the plaintiff and defendant are from; if he strongly believes that the justice is better served had it been entertained by local elders or if the case requires local know-how or assessments. In such cases, upon proving their interests, both of them are told to name the names of such local elders, and upon agreements as to those elders, the case will be referred back to these local elders with an order to bring back the agreements or the judgments thereof. As stated herein above, the natures and gravity of the case presented before him are the parameters for *Abaa Bokuu* of the *qeeyye* (major *qaaluu*) in course of referring the cases either to the *daanyii*'s or *samphalo*.

4.5.2 The Court Proceedings of Yaaboo

The court proceedings of 'yaaboo' lead by major *qaaluu* on the top, is started by issuing 'Qalaaxe' literary mean 'summon' to the accused, if he/she has not appeared. Such summon can be in a written form or oral. The contents of this summon contains - the case over which the defendant is accused of, by whom he/she is accused, the date of the next appointment and so forth.

²⁰² Interview with *Obbo Alemu Hirpha*, May, 12, 2017, In *Wechan* Village

²⁰³ *Ibid*



Picture 4: the summon of the court written in *Afan Oromo*

The court summon can be sent to the accused through the plaintiff, person ordered by the court or by anyone who knows the accused.²⁰⁴ It can be sent more than one time until proved by the court that the accused has intentionally abandoned the sent summon.²⁰⁵ A person who is served summon is supposed to respond, no matter who the messenger is.²⁰⁶ Any contempt for such a summon equals to a contempt for the spirit in the name of which the person is summoned.²⁰⁷ Once approved by the court that (if the case is being handled by the *daanyii's* or *samphalo*), the defendant has intentionally neglected the issued summon, the matter will be communicated to *Abaa bokuu* of the *qeyyee*, and then he bless the plaintiff and guaranteed him/her the right to bring his/her case before formal courts if he/she wishes to do that.²⁰⁸

²⁰⁴ Gonfa Ebsa.2014. “Customary Conflict Resolution among Haro Limmu Oromo of North-West Wallaga: The Case of Qaaluu Institution.”Unpublished MA Thesis: Addis Ababa University, Department of Social Anthropology.P.85

²⁰⁵ Ibid

²⁰⁶ Ibid

²⁰⁷ Dejene Gemechu, supra note 146, P. 77

²⁰⁸ Interview with *Obbo Alemu Hirpha*, the Vice-President of *Daanyii's* on February 17,2017, in *Wechan Village*,

But with regard to the accused person, who intentionally abandoned the summon issued by the court, then onwards he/she will not be allowed to bring his cases before this court, because he/she has intentionally neglected the all knowing spirit(the *ayyaana*) and also breached *tumas*, the laws by which the people are governed by. In the words of *Obbo Alemu Hirpha*, the vice-president of all *daanyii's* at *Boku Wechan*, '*Dhugaa kennu ijaa diddef,dhugaa mana murti kanaati hin agartu*. This is to mean that "hence he is not willing to give the truth in this courts, he will not be guaranteed the same."²⁰⁹

However, if the accused appeared on the appointment date, the court starts its session by informing the plaintiff to narrate his/her claim. After the claim of the plaintiff is eloquently heard, the accused is requested to respond. These claims and counter claims are heard under required formality, each talking when allowed or asked to. In practice, of course, disputants often break this rule and interrupt each other, but mediators are tolerant of it. In the meantime, disputants are supposed to show respect for the mediators, speak only politely, be tolerant, and above all tell the truth. It is believed that the '*ayyaana*' easily identifies the truth and falsity of the information, and the worthiness and unworthiness of the claims. The reliability of the information stems from the belief in all knowing spirit.

If the defendant denies the claim presented against him/her, and a plaintiff is unable to produce evidence to attest his/her claims in this court proceedings, the plaintiff may request the defendant to swear (*kakuu*) in the name of the spirit. It may be expected that not just the defendant or suspected criminal but his close relatives including his father, mother, elder brother and wife also take the oath.²¹⁰ This is an effective and ready-made alternative people often resort

²⁰⁹ Ibid

²¹⁰ Alula Pankhurst and Getachew Asefa, supra note 30. P. 55

to. If plaintiff had witnesses his right to bring his witnesses is also protected. According to *obbo Nataa'a Xurii*, the *samphaloo* who mostly lead this oath (*kaakuu*) ceremony, the 'kaakuu' ceremony is take place by holding or sometimes by biting the sacred and respected tools among the Oromo community like *Ebbo* (Spears), *Caaccu* (ritual object used only by women as a symbol of female fertility), *Qawwee* (the gun) and etc. The one who makes *kaaku* says: "*hin maquu,hin maqsuu,dabaa hin hojjedhu, yoon sobaan dubbadhee hamman mana kootiti ha gaalu,dhala hin agartin,yoon argadhe hinguddatin,yoo guddate jilbaa hin darbin,haatii manaa koo ilmaa hin duubbane haa deessu,Afaanin haa deessu*" and etc which literarily means that;

*"I will guarantee you that I will not give a false testimony, if what I am talking is not true: let bad things happened to my family, let me not get a child, let the child born to me not grow, let my born child not pass my knee, let my wife born the boy that cannot speak, let she gave birth through her mouth and etc."*²¹¹

As stated somewhere herein above there is a great connection between this customary court (*Yaabbo*) and the belief system (*Ayyaanna*).So that the name of *Ayyaanna* which is called *Goofa Daanfa* is invoked at various levels of dispute process such as oath making, to ensure both the plaintiff and accused and also witnesses, would tell the truth and to sanction the final agreement.

After the oath took place and hearing witnesses' testimonies is conducted with cross-examinations by the accused and the mediators, and also final arguments from the disputant parties are heard, the court render a final judgment. Unless the nature of the cases so require or

²¹¹ Interview with *obbo Nata'a Xurii*,the *Sampalo*, on February 17,2017,in *Wechan* Village,

the accused is failed to appear on an appointment date, most cases presented before this *qaaluu* court will gate a final judgments in less than a month.

If one is dissatisfied by the verdict of *daanyii's* or *samphaloo* of this court, he/she can present his/her appeal to the major *qaaluu*. Upon receiving complaint, the major *qaaluu* order the *daanyii's* or *samphalo* who resides over the cases to come and explain the contents of their judgments and the justifications behind their verdict. If he found something wrong either with procedures or final judgments, he orders the *daanyii's* or *samphalo* to review of the judgments on spot. But if nothing is wrong with the former verdict of the *daanyii's* or *samphalo*, he communicates the matter to the appellant and induces him/her to abide by the judgment.²¹²

If one is again dissatisfied with the reviewed judgment, his/her right to make another appeal is also guaranteed. In such instances appeal is made to the sprit (*Ayyaana*) in the spiritual hall (*galma ayyaana*). The verdict by the Sprit (*Ayyaana*) is the final and conclusive. But sometimes there are also situations when the case made open to the people gathered at court room called *yaaboo baal'aa* to make final judgments.²¹³ Here it is the people who make a final judgment, not the major *qaaluu* or *daanyii* or *samphalo*.

²¹² Interview with *Obbo Alemu Hirpha*, on February 17,2017,in *Wechan* Village,

²¹³ *Ibid*



Picture 5: The proceedings of ‘*Yaa’aa Yaaboo*’ Customary Court.

4.6. Enforcing Mechanisms

The decisions of the court of *qaalluu* are believed to be enforced by the spirit. Contempt for the court's decisions offends the spirit that is powerful to harm the offender, his family, his cattle, his crop and his descendants up to seven generations.²¹⁴ The fear of spirit that stems from the ideology of punishment by the spirit, of course, makes individuals to confess their guilty and obey the decisions.²¹⁵ These mystical sanctions apparently explain the enforcing mechanisms of the *qaalluu*. According to Dejene (2002, 82), there are also cultural, economic and political factors that come into play for the enforcements of the decisions of the *qaalluu* court.²¹⁶ The *qaalluu* system is highly value oriented.²¹⁷ The mediators or/ and the major *qaalluu* appeal to values, traditions and Oromo indigenous laws. The mediators assist the parties in dispute to arrive at joint decision

²¹⁴ Alula Pankhurst and Getachew Asefa, supra note 30, P. 34

²¹⁵ Gonfa Ebsa, supra note 204, P. 113

²¹⁶ Dejene Gemechu, supra note 146, P. 82

²¹⁷ Ibid

and to share the pain of losing. They usually mediate and rarely adjudicate. If adjudicate they still appeal to Oromo *seera* (law) made by *gulas* every eight years.²¹⁸ As in the *jaarsummaa* system, the *qaalluu* court equally focuses on the relationships between disputants as it does on the dispute itself. Restoring of peace and harmony rather than punishing the offender is the objective of the court.²¹⁹ In addition, users of this court feel that the *qaalluu* court is native and its verdict is more of educational as opposed to government court, which they think is foreign to their culture and takes punitive actions. A defiant opponent in a dispute is more likely to be brought before this court than to non-spiritual CJS.²²⁰

Moreover, the major *qaalluu* of Ambo area was and still is wealthy man who could easily mobilize their resources to extend their influences.²²¹ He could win the supports of the poor peasants in the area owing to his wealth.²²² He helps the needy.²²³ Consequently, people want to please the *qaalluu* whom they consider as their patron.²²⁴ One way of doing this is to take their cases to the *qaalluu* court and to abide by his decisions.²²⁵ The *qaalluu* court is also effective in both time wise and economically. Cases are settled relatively within a short period of time. They know that justice is delayed at the formal court. Courts and elders decisions among the Oromo of Ambo district have been enforceable through sacred sanctions. For instances, through cursing.²²⁶ They enforced decisions by resorted to cursing, which is sacred sanction. In the mean time, they

²¹⁸ Ibid

²¹⁹ Gonfa Ebsa, supra note 204, P. 113

²²⁰ Alula Pankhurst and Getachew Asefa, supra note 30, P. 34

²²¹ Dejene Gemechu, supra note 146, P. 82

²²² Ibid

²²³ Ibid

²²⁴ Ibid

²²⁵ Ibid

²²⁶ Alula Pankhurst and Getachew Asefa . 2008. Grass-root justice in Ethiopia: Understanding Customary Justice System in Ethiopia. Addis Ababa: French Center of Ethiopian Studies. pp 54

make use of ostracization, exclusion, threat to ban him from lineage support and threat to curse as enforcing mechanisms.²²⁷

4.7 Norms and Values Governing Traditional Justice System in the Study Area

Norms are one of the basic elements of culture, which are humanly created rules for behavior. The construction of norms often emanates from the ultimate need for orderly, stable and predictable interactions within communities. Norms are internalized through socialization, as folkways, taboos, rituals etc., whereby dominant ideologies, beliefs and values are passed on to generations.

Oromo people have their own customs, values, and norms which they use for regulating social behaviors, sustaining, or nurturing social orders and peaceful co-existence. Most of these cultural norms, customs, and laws have their base in the *Gada* System, a traditional age-set socio political institution of Oromo people and in their traditional religion, *Waaqeffanna* ‘belief in sky God.’²²⁸ In their traditional institution, *Gada* System, the Oromo men make or amend laws through the process called *seera tumaa* or *tumata* ‘law making’. These laws regulate the activities of the society in every aspect and they are orally communicated to the society through a process called *labsii* ‘declaration’ which takes place at a *Gumii Gayyoo* “assembly of multitudes” every eight years when a new *Abba Gada* ‘a traditional Oromo leader’ takes office (Legesse, 2000).²²⁹

The same holds true with regard to the Oromo of Ambo areas. Laws that govern the behaviors and activities of the people of this area are enacted by *Abba Gadaa*’s and *haayyu*’s at *Boku Xule* and *Ciittu*. Then these laws are made public to the local people by the same procedure called *labsii*. After *labsii* (declaration of laws), such laws began to govern each and every of

²²⁷ Ibid pp 63

²²⁸ Alemu Disasa, supra note 133, P. 603

²²⁹ Ibid

activities of the local people and their customary institutions including *qaaluu* court. According to *Obbo Alemu Hirpha*, the procedures and judgments rendered in this court are depends on these *tumas* and the truth arrived on by the mediators after cross-examining the claims and counter-claims of the disputants. It is by these laws that the major *qaaluu* himself is guided by during the course of handling the cases. To make sure the proper implementations of laws or *tuma's*, *Samphalo* is always there to look after. He is one who used as a reference by the *daanyii's* and even *Abba Bokuu* of the *qeyye* when they came across any difficulties in course of interpreting the laws.²³⁰

4.7.1 Norms and Values Governing Inheritance Rights in the study area

It is difficult to have clear cut list of norms and values related to women property inheritance rights in *Oromia* national regional state in general and the study area in particular due to the fact that most of these norms and values are scattered and found in religion, culture, custom, and tradition of the societies. In the context of *Oromia* national regional state in general and my study area in particular, these norms and values are scattered in the Oromo *Gada* system as well as in the Oromo *qaaluu* institution.²³¹ They come into operation in resolving property related disputes brought by women or girls in the events of succession, donation, and divorce. According to the narrations of some of these norms which are manifested when customary justice institutions accepts and handle property related cases brought by women, women's are not allowed to inherit certain lists of properties. The full lists of properties those women and girls can't inherit as per theses local norms and values, and also as per the judgments of customary court of the study are discussed in chapter five.

²³⁰ Interview with *Obbo Alemu Hirpha*, in *Wechan* village

²³¹ Birhanu Moosisa, the Challenges in Gender Equality under Oromo Traditional Justice System: the Missed Norms and Diminished Values. Unpublished Article. P.12

With regard to the validity of these norms and values, there are two major contesting arguments among local communities of the study area. There are a group of local communities who claim that hence culture as a norm in general incorporates societal values which every member of the community usually celebrates and respects and also hence they are the manifestation of identities of the society they must be preserved.²³² With regard to norms and values related to women's property rights in general and women property inheritance rights in particular, they claim that the Oromo *Gadaa* system had pro-women's rights norms, values and also institutions like *Siiiqee* and *Ateete* that promote and protect women's rights in general and women's property inheritance rights in particular. For them the problem is the evil hands of individuals who change these progressive norms and values and also institutions established along with such norms to repressive type of norms and thereby distorting the values therein not the norms or values themselves. Thus the way out according to this argument is promoting the pro-women's rights norms and values on one hand and takes corrective measures on evil hands that distort these norms and values on the other hands.

On the contrary, others argue that, there are cultural norms and values that advocate gender inequality and thereby affect women property inheritance rights in the study area, and thus these norms and values should have to avoided. All types of property claims should be equally divided irrespective of the cultural value they have. That is to mean the unfair division of properties through deep-rooted cultural values must be avoided.²³³

Other segments of the local communities on the other hand also claim that not only the societal norms and values that discriminates women property rights but also women themselves sometimes contributed much for the violation of their equality rights in general and property

²³² Ibid

²³³ Ibid

inheritance rights in particular. For instances according to Ms Giddo Leggese, the head of Ambo district office of women's affairs, *“when the government body urges them to bring their photo to affix on the Green Book in rural areas, they are not volunteers. When their photo is absent from Green Book they are also keep silent. They mostly do not want to participate on the discussion of land issues in rural areas. If there name and photo is not affixed on this Green Card they will not guaranteed land inheritance rights on event of succession or divorce.”*²³⁴

²³⁴ Interview with Giddoo Leggese, May 12,2017,in Ambo Town

Chapter Five

Women Property Inheritance Rights in Qaaluu Court of Ambo Area

5.1 Types of Property Related Cases Handled by the Qaaluu Court of the Ambo Area

The type of property related disputes brought to the *qaaluu* court are diverse in nature. They range from: - disputes over grazing land or land borders, dispute over farm land, looting of animals, theft, to disputes on property inheritance rights among siblings, or among widow and her in-laws.²³⁵ The following eight cases are collected during the time of the fieldwork.

No.	Type of Property Related Cases Brought to <i>Qaaluu</i> Court	Personal Profile	Place of Residence
1	Dispute over grazing land	<i>Ebbise Furgasa vs Lachisa Likasa</i>	<i>Illaamu Mujjaa, Kebele</i>
2	Dispute over land border	<i>Hirko Soboksa vs Mul'ata Dhabbasa</i>	<i>Doobii Kebele</i>
3	Theft	<i>Jifar Caala vs Gutama Batushaa</i>	Ambo town
4	Dispute over land and house inheritance among siblings	<i>Zewdnesh Ulfaata vs her brothers</i>	<i>Doobii Kebele</i>
5	Dispute over property sharing after divorce of marriage between spouses	<i>Almaz Guta vs Obo Kafana</i>	<i>Waddessa Kebele</i>
6	Property seizing by in –laws	<i>Bekelu Abbabu vs Jote Nagaara</i>	<i>Golfofaa Kebele</i>
7	Arson(<i>Manaa gubuu</i>)	<i>Bokona Risaa vs vs Milkesa Nugusie</i>	<i>Dikii Kebele</i>
8	Breach of trust on loan (<i>amaanta hir'isuu</i>)	<i>Obo Tolosa Wayyessa vs vs obo Gemeda Haacaluu</i>	<i>Illaamuu jaalina Kebele</i>

²³⁵ Interview with *Nata'aa Xurii, the Samphalo* and *Abaa Gadaa of Boku Xulee*, on February 17, 2017, In *Wechan Village*

If case brought before this court involves disputes on property inheritances rights, the proceedings of the court is as follows: first it makes sure the appearance of all prospect successors and wife or wives (if the marriage is polygamous), of deceased.²³⁶ Then it orders those appeared before the court to make an oath (*kakuu*) to ascertain that no other prospect successors or wife(wives) are left out.²³⁷ Traditionally, it is the duty of all those appeared before the court to make an oath to assure the court that, there is no other prospect successor(s) left out. Then after, the court take detail lists of all properties both movables and immovable's left behind by the deceased, from the disputants.²³⁸ The lists of these properties include livestock's like oxen, cows, horses, mules, sheep, goats, hens, houses both in countryside and towns or cities (if any), land both arable and grazing, home used properties, money in the bank account and the debt that deceased ought to pay, if any and etc. After the court confirm that all properties of the deceased are properly counted through an oath, an appointment of local elders who had proximity in residence and had prior knowhow about the properties of the deceased will take place to run the partition of the properties among the successors.²³⁹ The appointments of these local elders are made upon the recommendations and an agreement of the prospect successor's themselves. Then the appointed elders make a partition of the properties according to local custom, laws and values.²⁴⁰ After partitions of the properties is conducted, the appointed local elders should have to bring back a details of how partition is made and the agreements of the successors in partitioning of the property back to the court.²⁴¹ According to *Obo Nata'aa Xurii*, If

²³⁶ Ibid

²³⁷ Ibid

²³⁸ Ibid

²³⁹ Ibid

²⁴⁰ Ibid

²⁴¹ Ibid

any one of the successors breach this agreement, there is penalty that he/she owed to the government and local elders as per agreed on before the commencement of the proceeding.

5.2 Assessing the Lived Experiences of Women's Related Property inheritance in the

Ambo Area

In course of making partitioning of the properties, there are some properties which are exclusively allotted to the men successors in the study area. These are the *Ebbos* (spears), *Barcumaa* (the table on which the deceased used to sit on), *Gaachana* (shield), *Utubaa* (house of the deceased), *Qawwe* (the gun), the pistol, the horse, the *kosii* (land around residential home) and etc.²⁴² these properties are exclusively given to men successors especially to the elder son of the deceased.

Let us see the following table that clearly shows the types of property allotted to men and women on event of divorce and succession in the study area.

²⁴² Interview with *Obo Alemu Hirpha, Obo Nata'aa Xurii* and *Badhadhi Ulfata*, February 17, 2017, in *Wechan Village* and *Supra* note no. 231

No	Property Allotted to Male in the Events of Succession or Divorce	Property Allotted to Female in the Events of Succession/ Divorce	Remark
1	Spear/ <i>Tor</i> /	Mule	
2	Bed	' <i>Atete</i> House'	<i>Atete</i> means women's cultural ceremony reserved solely to women
3	Horse with its entire ornaments	' <i>Atete</i> Cattle'	cattle reserved for ' <i>Atete</i> '
4	' <i>Koricha</i> '	' <i>Atete</i> Butter' whatever the quantity	
5	Pistol	Ornaments whatever the quality and quantity and market value	
6	Gun	Cloths whatever market value it has	
7	Land		especially surrounding the residential house which still persisting
8	<i>Wukabi Bet</i>		where the <i>Qaalus</i> ' spiritual ceremony usually takes place
9	Those property acquired through succession		This informal norm is in pursuance to formal one
10	Cattle which were trusted through trusteeship to either spouse		This informal norm is in pursuance to formal one
11	<i>Wancha</i>		
12	Shield (<i>gaachanaa</i>)		
13	Stool or table (<i>Barchuma</i>)		
14	<i>Mesob</i>		

Accordingly, the women in the study area don't inherit those property allotted to men by custom. Let alone in traditional justice system, they mostly never claim these properties, even in the formal court system as *Obo Asfaw Nagaraa*, judge and the president of Ambo first instance court stated.²⁴³ Claiming these properties is considered as breach of norms.²⁴⁴ “Violating these norms and inheriting these properties by women on the event of succession or divorce is known as ‘*Gadi-darbi*’ (deviant) in *Afan Oromo* or ‘*Afangachi*’ in Amharic in the study area.”²⁴⁵ There are also typical local sayings and quotes which advocate women disinherences of the above stated properties. Among these, ‘*Dubartin utuba hin dhaaltu*’ meaning ‘*a woman can't inherit the house*’ can be cited as good example.²⁴⁶ There is also saying which state that ‘*utubaa abbaa ilma angafatu dhaala*’ (the senior son succeeds father's pillar).²⁴⁷

40 years old Ms *Nagaasi Bayisa*, from *Waddessa Kebele* of Ambo district describes this as follows:

“According Oromo custom of Ambo area, we cannot inherit Utuba (the house), the horse with all its ornaments, Lands especially the land around the home that our deceased father or husband used to live on, Spear, the shield, the gun, the pistol, Barcumaa (the table that our deceased father or husband used to sit on) and the likes. There is only one ground for us to inherit these properties. That is when our father has not left son who can inherit these properties. Otherwise, it is culturally forbidden for us to claim these

²⁴³ Interview with *Obo Asfaw Nagaraa*, the President and Judge at Ambo First Instance Court, February 15, 2017, in Ambo town.

²⁴⁴ Ibid

²⁴⁵ Interview with *Obo Nata'a Xurii*, February 17, 2017, *Wechan* Village

²⁴⁶ Interview with *Obo Alemu Hirpha*, on May 12, 2017, in *Wechan* village

²⁴⁷ Ibid

properties. Breaching societal norms and inheriting these properties might lead us to ostracization.”²⁴⁸

Similarly Ms. *Eteetuu Ajjama*, a local resident of the study area, state that “*due to some norms and values that prevent women from inheriting some valuable assets, we are not allowed to inherit such property equally along with our brothers or husband on events succession or divorce before this court.*”²⁴⁹

Thus the typical inheritance practice in the study area is as follows: if a person had land and houses, and many sons and daughters, the land and houses along with the above listed properties, would have been divided equally among all the sons.²⁵⁰ In fact, the lion shares of these properties are given to the elder son of the family. If the person had no sons, then the land and houses would have been divided equally among all daughters.²⁵¹

The following four real cases are collected from women and girls of the study area during field research. They give us a glimpse as to how property inheritance rights brought by women and girls are entertained by *qaaluu* court of the study area and also how local norms and values inform the decisions of women and girls and also the procedures and judgments of the court.

Case 1: Property Seizing by Son(s)

In case of widowhood, the first son of the family inherits these properties, while the mother remains a holder of the land and the house without full control or decision-making power over the usage of the properties.²⁵² The mother loses control over the land as soon as

²⁴⁸ Interview with Ms *Nagaasi Baaysa*, May 12, 2017, in *Wechan* village.

²⁴⁹ Interview with *Eteetu Ajjama*, May 12, 2017, in *Wechan* village.

²⁵⁰ Interview with *Obo Alemu Hirpha*, *obo Badhadhi Ulfaata*, on February 17, 2017, in *Wechan* Village.

²⁵¹ *Ibid*

²⁵² *ibid*

the son is old enough to take the responsibility of the property.²⁵³ 53 years old woman from *Wulluxo Awash Kebele* narrate her personal experience as follows:

“My husband has died 20 years ago. We had three children; one son and two daughters. The son was 16 while his sisters were 14 and 12 years old when their father was died. After the death of my husband, his father along with other two elders came to my marital home and asked me my future plan as to whether to marry another man or live along with my children in my marital home. I told them that my future plan is to live with my children, then they told me to transfer the title deed of land over which our marital home was built on and the other tiny plot of land to my son who were only 16 years old by then, hence the title deed of other farm lands we used to plough with my husband was in name his father (i.e. in the name of the father my husband). I did what they told me by fear of eviction. Until my son got married I managed all properties including the land. But upon reaching maturity age, my son got married and took all plough land except the one on which my marital home was built one. Now days, I have no land to plough on myself. I am leading my life with what my children are provided me.”²⁵⁴

Case 2: Property Seizing by In-laws

In some instances, a widow may be forced to marry the brother of her deceased husband. Alternatively, she can be forced to abandon the marital home, other properties as well as any land she may have shared with her husband. If she is not willing to accept the marriage proposal, she will be evicted from her marital home and all other property empty handed. Then after, without any options she is compelled to migrate to nearby town or cities in an attempt to find an

²⁵³ Interview with Key Informant, on February 15, 2017, in *Wechan* village.

²⁵⁴ Interview with Key Informant, on May 12, 2017, in *Wechan* Village

income, a home and a new life, often with children. There, she often end up squatting in shabby housing, paying exorbitant rents for slum dwellings, or living on the streets, subjected to harassment and violence. In short with nowhere else to go, she is often left destitute and homeless. Cultural perceptions that are prevalent in the study area which state that, a widow shall not return to her own family, for she is no longer considered a member of it, is also other pushing factor for her migration to nearby towns or cities. She rarely gets the better employment opportunities and economic advances that she seeks. Rural women in general and rural women of my study area in particular, often with little to no education, have no alternative but to find work in the informal sector, selling food items, doing domestic labor or other similar work, which makes them vulnerable to exploitation, abuse and often sexual and other forms of physical violence. She is often forced into prostitution for a meager income to support their children, which greatly increases their chances of becoming infected with HIV/AIDS. In such away a widowed woman's fate is thus placed at the mercy of the will and whim of her in-laws. A case of 37 years old woman from *illamu Jaalina 'Kebele'*²⁵⁵ in Ambo district can be cited as a good example.

“In this case a woman was requested by one of the brothers of the deceased to marry him upon the death of her husband. But she refused to do that. As a result she was evicted empty-handed from all properties that she used to commonly own with her deceased husband, including land, house and livestock's. Then she went to 'Mexi', a nearby town and started leading a new life with her three children whom the elder is 8 years, the middle 6 and the younger is only 2 years old. Before leaving to 'Mexi', she stated that she brought her cases to the jaarsaa biyyaa's (elders council) and yaaboo (the qaaluu court), but she

²⁵⁵ 'Kebele' is the lowest Administrative Unit in Ethiopia.

*was unable to get back the properties she lost by force, hence their verdicts were in favor of her in-laws. Then after selling food stuffs in open market which is locally known 'gultit' and working as daily laborer when situations go worse for her three children was became the means of livelihood to survive her life and three children. With nowhere to go, she began to lead an embarrassing life with her three little children there in 'Mexi' town. On such occasion that her case was made announced to Ambo district office of women and children affairs. Upon receiving this information from local communities, the Ambo district office of women's and children affairs, with cooperation of different stake holders from kebele to woreda, brought her case to Ambo district court. On decision rendered on September, 2016, the court decided in her favor and ordered all properties including land to be returned to her. With this decision she was final made to return back to her marital home and properties.*²⁵⁶

The very important point to be considered here is that she was evicted from the lands despite the fact that she had a title deed over it along with her deceased husband.

The situation is even more tenuous if a widowed woman has no child at all. In such cases she is mostly evicted empty-handed. According to Ms *Fantanesh Ararsaa*, having a child especially boy upon the death of the husband is the only guarantee that widowed woman had to stay on and hold her marital property especially land and other valuable assets.²⁵⁷ The same holds true when the marriage is polygamous. In the case of polygamous marriage, upon the husband's death polygamy may result in a number of women losing lands and other important

²⁵⁶ Interview with *Zinash Kassayee*, an Expert on Women Affairs, in Ambo District Office of Women and Children Affairs, February 15,2017,in Ambo Town.

²⁵⁷ Interview with *Fantanesh Ararsa*, February 15,2017,in Ambo Town

assets, or each inheriting a tiny plot of land, too small to yield enough food for family subsistence let alone for economic gain.²⁵⁸

Case 3: Property Seizing by Siblings

As an interviews conducted with female key informants and head of Ambo district office women affairs clearly shows, violations of property inheritance rights of girl are also a common phenomenon in the study area whereby their male siblings forcefully evicts them and grab all properties of their family upon the death of one of their family, particularly their father. A case of 30 years old girl from *Doobii Kebele* is good example.

“This girl is living with her sick mother in Doobii kebele. She had two younger brothers and both of them had married 5 years ago. Their father was died years before. This girl had a college diploma. Before quitting her job, she was used to serve as government employee in agricultural bureau of Ambo district. With an intention of taking all properties of their family, especially land and house, her two brothers redundantly told her to leave their family home; hence she is a girl that couldn’t manage and control their parent’s property as per the local custom. But she refused to leave and abandon her sick mom. As a result, they badly beat her three months ago. She intended to bring her case to the formal court but people around told her to bring her case to the qaaluuu court, due to the fact that, they beat her at night when there was no witnesses that attest against them. She brought her case to the qaaluu court. The daanyii’s at the qaaluu court told her to solve their disagreements through local elders to be appointed. The court further decided that women did not hold the house and the land of her family hence her brother exists

²⁵⁸ Ibid

*according to the local customs and norms and so that they told her to leave their parents home to her brothers. Aggrieved by the decision of this court, she brought her case to the formal court and her case is being processed in Ambo first instance court.*²⁵⁹

Thus according to the traditional property inheritance practices in the study area, woman's right to access and use land in particular and other properties in general has customarily been defined solely by her relation to men. While married, a woman enjoys the use of land belonging to her husband; while single, she has access to that of her father. As Robehorst (2011) clearly stated, *“such systems relegated women to the status of unpaid labor on family farms or in family businesses while they are married, and to extreme poverty and even homelessness in cases of widowhood, desertion, singlehood, or divorce.”*²⁶⁰

Case 4: Fraud, Divorce/Sharing Property

It is not only upon the death of their husband that the property rights of the women are put at jeopardy, but after divorces also women's are not allowed to share their common property equally with their husbands.

“A 47 years old woman had married 30 years ago in Waddesa Kebele. During conclusion of marriage, some properties including land were counted in Semaniya wule (marriage contract), and then after a titled deed over this land was issued by competent governmental authority in name of both spouses. Two years ago her husband has married another woman without divorcing the former marriage. As a result, the marriage of these two spouses got divorced. A year before the event of divorce and conclusion of second marriage, the title deed over land which they commonly held was transferred to his father under the guise that

²⁵⁹ Interview with *Giddo Leggese*, on May 12, 2017, in Ambo Town.

²⁶⁰ Rabenhorst and etl, supra note 10, P. 6

tax to be paid to the government will reduce if paid under one person. Accordingly the title deed over commonly held land was transferred to his father with the consent of her. After divorce, this woman brought her case to qaaluu court, and the court by taking for granted that the land is belongs to the male as per the local custom, make a decision that that total exclude her from ownership of land. Not only the land that she was made disinherited by decision of this court, but also the cattle's that they commonly owned with her husband. Without knowing where else to go right know, she is leaving with her nine children without any land to plough. Some of her elder children's are leading their life in nearby towns by working as daily laborer, while younger's quitted their education and leading life with their mother.”²⁶¹

In spite of all these constraints to their rights to inheritances, however, women constitute a large number of disputants in bringing their claims related property inheritance rights to this court than the other segments of the society as per the comments of *obbo Nataa Xuri, Obbo Alemu Hirpha and Obbo Badhadhi Ulfaata*, the mediators in this traditional justice organ.²⁶² The reasons as per their observations are as follows: women did not have economic capacities (hence most properties of family are controlled and administrated by men) and also they lack legal knowledge to bring their claims to the formal courts in most cases. More over there is strong belief among the women in the study area that, a true judgment without incurring extra costs will be rendered by this court over formal courts due to the oath system and their belief in their all knowing sprit *Ayyaanaa*. Plus to that there is strong belief among the women in the study area that, formal courts are corrupted when compared with the traditional ones, and also testimonies

²⁶¹ Interview with Key informant, on May 12, 2017, in *Wechan Village*.

²⁶² Interviews with *Obo Nata'aa Xurii*, *Obo Badhadhe Ulfata* and *Obo Alemu Hirpha*, on February 17, 2017, in *Wechan Village*

given at formal court are not as genuine as that the court of *qaaluu*. Judges are sometimes perceived as biased, unfair, and responsive to bribery and coercion by *Abba Humnas* (the rich persons). The short time span in which the cases will be entertained and judgment is passed in this *qaaluu* court than in formal courts is also another reason for women to bring their claims to this court. The strict legal procedures followed by formal courts and the existences of some legal jargons to which women in the study area are alien to, is also another impeding factor for women to bring their cases to the formal courts as per the observations of these *daanyii*'s.

Contrary to the comments and justifications of the mediators of this *qaaluu* court, Ms *Nagaasi Baayisaa* stated that,

*“Nowadays women are not bringing their claims related to property inheritance rights to this court due to two main reasons. The first and the foremost reason is that, the judgments in this court are based on local norms that treat women and men differently, especially on some valuable assets like land and house, secondly, the mediators in this customary court don't properly dig out the facts around the case before rendering the judgments (Akka mana murti mottumati hin qulqulessan, murtee isaani gadii-qabaadhan murteesu!!). Due to these, many women, especially those who had educational background and economic capacity prefer formal court over this traditional court when the issue involves property inheritance rights.”*²⁶³

Ms *Naagasi* narrates her personal experiences as follows:

‘My former husband Hirphasa Tolosa married another woman before our marriage is dissolved. As result I brought my case to the formal court for dissolution of marriage and

²⁶³ Interview with Ms *Nagaasi Baaysaa*, on May 12,2017 ,in Wechan Village

partition of our common property. The court has dissolved our marriage and order the partition of our common property equally. Had I brought my case to this court (qaaluu court), I will not get the share that I secured through the formal court.'

Similarly, Ms. *Almaz Guta*, a client at this customary court stated that, *If it is impossible to get these property in kind due to local norms and values, their value should be made estimated and given to us. If this customary court didn't make such adjustment, we are forced to protect our rights by bringing our cases related to property inheritance rights to the formal court. This is what many women's in this area are doing now.*²⁶⁴

The awareness creations and free legal services provided by different stakeholders, particularly, the Ambo district office of women and child affairs and Ambo University's Access to Justice Project had contributed a lot for such shift as Ms *Nagaasi* stated. Ms *Giddo Legese*, the head of Ambo district office of women and children affairs stated that,

*"My office has conducted many awareness creation activities for women in the district by collaborating with different governmental and non-governmental organs on different times. As results of this awareness creation activities many women are coming to our office if they came across any violations of their rights by their siblings, husbands or in-laws. Depending on the gravity or nature of the violations committed upon them, we either refer the case to police or to the office of access to justice project."*²⁶⁵

Similarly *Obo Birhanu Mosisa*, the coordinator of access to justice project office of Ambo University said that, his office has been providing both awareness creation activities and free legal aids for those who are in need of their support. For instances in past three years, the

²⁶⁴ Interview with *Almaz Guta* May 12,2017,Wechan Village

²⁶⁵ Interview with *Giddo Legese*,May 12,2017,Ambo Town

project has provided awareness creation to women, elders, *daanyii's* and *Abba Gadaa's* on different thematic area including on women rights.²⁶⁶ According to obo *Birhanu*, the focal groups of the projects' free legal aid are women, children and persons with disabilities. For instances, he stated that from December,2014 to May 2015, his office has provided free legal service to 23 women and 12 men on issues related to succession by its office in the Ambo district court only.²⁶⁷ He also stated that, the project had other offices that provide similar services in *Toke-kutaye*, *Cheliya*, *Dire Inchini* district courts and west *Shewa* zone prison administration center.

Due to wide ranges of activities undertaken by different stake holders, *Obo Asfaw Nagaara*, the president and the judge at Ambo first instance court also state that, a number of cases related to land and inheritances rights that mostly brought by women are increasing from time to time.²⁶⁸ As a result, the court has established 'inheritance and land bench.' Now days, this bench is entertaining a minimum of 20 cases on daily basis.²⁶⁹ *Obo Dawit Mulugeta*, the judge on land and inheritance bench in Ambo district court also state that, the number of inheritance related cases brought by women is increasing in alarming rates. By supporting the claim of Ms *Nagaasii*, judge *Dawit* state that, if justice has properly served and women inheritance rights are protected in traditional justices system, the bench shall not be over loaded by these cases in such a way.²⁷⁰ According judge *Dawit*, extensive trainings on women's inheritance rights should have to be provided to the mediators of customary court to minimize these loads.

²⁶⁶ Interview with *Birhanu Mosisa*, May 13,2017,Ambo Town

²⁶⁷ Interview with *Birhanu Mosisa*, May 13,2017,Ambo town

²⁶⁸ Interview with *Obo Asfaw Nagaara*, on February, 15,2017,in Ambo Town

²⁶⁹ .Ibid

²⁷⁰ Interview with *Obo Dawit Mulugeta*, on February, 15,2017,in Ambo town

In generally, traditional practices that disinherited women are still very powerful in the study area, despite the legal and policy development for securing women's property rights both at regional and federal level and also in spite of many activities by different stake holders in the study area. Moreover, If women pass these entire barriers and bring their cases to the formal courts, to challenge the way in which the elders and mediators divided her husband's or families property; this action would be seen as a declaration of war against her brothers or the husband's family, resulting in a traumatic severance of the widow's and her children's family ties. Sometimes there are situations when girls or widowed women may be guaranteed the right to inherit land and house by fear of laws imposed by the government, but they are systematically made convinced by local elders to relinquish these properties to their male counterpart.²⁷¹

The justification given by the *hayyus* (the intellegencia),for exclusions of women's from inheriting such properties in the study area is that, the women will marry to the other men and go to the other places and so that the girl child would transfer the ownership of the family wealth to another clan.²⁷² Plus to this it is also believed that sons are traditionally more responsible for care for their parents in their old age in study area.²⁷³

5.3. An Assessments of Women's Property Inheritance Rights in Qaaluu Court of Ambo Area in Light of Some National and International Legal Frameworks

Under this section the writer will assess, analyze, compare and contrast the *qaaluu* court proceedings and judgments in course of entertaining women property inheritances rights in the study area in light of some selected national, regional and international human rights documents.

²⁷¹ Interview with *Obo Alemu Hirpha, Obo Nata'aa Xurii and Badhadhi Ulfata*, on February 17,2017, in *Wechan Village*,

²⁷² Interview with *Obbo Naata'aa Xurii , the Samphalo*, on February 17,2017 in *Wechan Village*.

²⁷³ *Ibid*

This task of assessment, analysis and comparison is limited only to provisions of laws that are helpful to reach the main objectives of the thesis.

According to article 25 of both, the 1995 FDRE and the 2001 revised *Oromia* national regional state constitutions, as per article 2 of UDHR and African Charter on human and people's rights and other provisions under subsequent covenants and declarations of UN, there shall not be any forms of discriminations based gender. Women's have equal rights with men in all aspects of life including in owning, controlling and inheriting any property both movable and immovable as per clearly stipulated in FDRE and *Oromia* national regional state constitutions²⁷⁴, other domestic laws²⁷⁵, international²⁷⁶ and regional laws²⁷⁷. The provisions under these instruments and laws are not only guarantee women equal property rights but also impose a duty on the state to take measure to modify or change any customary laws and practices that impede women's property rights in general and women's property inheritance rights in particular.²⁷⁸ In addition to these, there are also different policy measures to assure women property inheritance rights both at national and international levels.

The *qaalu* court of Wechan village, which accepts and handle women's property related claims including their property inheritance rights, however, did not protect these constitutionally guaranteed property inheritance rights. This court make clear discriminations in course of making partitions of property among the male and female especially when property to be partitioned are land and house. This holds true for both girls

²⁷⁴ See Article 35 of Both the 1995 FDRE Constitution and the 2001 Revised Constitution of *Oromia* National Regional State

²⁷⁵ See Article 82 of *Oromia* National Regional State Revised Family Laws(pro.83/2004 and article 5(2) and 6(13) of *Oromia* National Regional State Land Use and Administration Proc.No,130/2007

²⁷⁶ See Para.26 General Recommendation 21,Adopted by the Committee in its 1884th Meeting (sixty-eighteen session)on 29 March 2000,

²⁷⁷ See Article 16 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women

²⁷⁸ See Article 35(4) of Both the FDRE and *Oromia* National Regional State Constitutions, Article 5 of CEDAW and Article 16 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women

and divorced women. Here it is not the age of the women that put their property inheritance rights at stake in the study areas' by the judgments of the *qaaluu* court; rather it is their gender: that is being born as woman and or a girl.

Both girls and divorced women's are not allowed to inherit the following properties by the verdict of this court. These are the *Utuba* (the house of the deceased), the *kosii* (lands around the resident of the deceased), the *Ebos* (spear), the *qaawee* (gun), the pistol, the horse andetc). Property like lands that are out of the residence of the deceased are also not shared in equal foot with the male counterparts by the verdict of this court, in spite of the fact that the above stated constitutions and other national and international legal frame works guarantee women to inherit any property equally with their male counterparts. Mostly it is a tiny plot of land or a usufruct right of it which is given to women by fear of laws enacted by government. It is not only the above listed properties that women are denied by verdict of this court but also other assets include livestock, an asset that serves as a form of physical savings, Oxen, which are useful in farming, are usually perceived as the property of men and therefore mostly given to men. Thus, women's and girls' of the study area are not only affected by amount of the property they made to inherit but also by the values of asset they made disinherited. This is because, the area or fertility of land, the status of house or the value of other property inherited had significant impacts on a number of consumption and food security outcomes, whereas whether or not a woman received any inheritance had an insignificant impact. In study area for instances, land is an important factor in determining long-term well-being among women. From an economic perspective, it is the foundation upon which all production and wealth are built.

It is not only by its verdict that this court violates women's inheritance rights, but also in its proceedings in course of making the partitioning of the property. Women's are told explicitly by the mediators themselves to relinquish some of property like lands and house to their brothers or in laws in course of mediating either through persuading them or by citing the local norms which prohibit them from inheriting these properties.

Thus it is possible to state that, entrenched discrimination in the *qaaluu* court is a silent yet pervasive barrier to women property inheritance rights, often rendering bigoted decisions against their rights merely on the basis of their gender. As a result of such discriminations on women's property inheritance rights in the study area, women's economic activities tend to be limited to the informal sector, characterized by small income-generation activities for the family's well-being like making and selling a local beer known as '*faarsoo*' and an alcohol called '*araqe*.' Plus to that many girls and divorced women are forced to leave their family or marital home and forced to lead a meager life in nearby towns and cities.

These women's property disinheritance practices not only affected the divorced women's livelihood, but also the well-being of their children's too, in the study area.²⁷⁹ Those children who started education before the marriage dissolved had mostly quitted their education after the divorce of marriage of their family; hence their widowed mothers are not capable feeding them and providing necessary materials for education at the same time. Many children of widowed women of the study area are also affected by malnutrition.²⁸⁰

²⁷⁹ Interview with *Zinash Kassayee*, an Expert on Women Affairs, in Ambo District Office of Women and Children Affairs, February 15, 2017, in Ambo Town.

²⁸⁰ Ibid

To sum up it is not enough to guarantee that women can inherit property; they must have rights to inherit equally with men. According to Robehorst(2011),

“This is because the denial of women’s inheritance rights is comprised of the cumulative denial of a number of independent entitlements of women: their rights to housing and land; to self-determination; to live in security, peace and dignity; not to be forcibly evicted, and other related human rights which are especially vital to women. After all, women’s relationship to the home and the land is unique, and violations of that relationship have consequences for women which are similarly unique, and which require separate and special attention beyond the basis of mere ‘equality with men.’”²⁸¹

Human rights watch in its 2003 report also state that, *“when a woman’s property rights are violated, the consequence is not just that she loses assets. The repercussions reverberate throughout women’s lives, often resulting in poverty, inhuman living conditions, and vulnerability to violence and disease for women and their dependents.”²⁸²*

Indeed, data availed by the Central Statistical Agency’s 2011 Demographic and Health Survey (2012) clearly revealed that although Ethiopia’s laws give equal property rights to women, in reality, tradition and women’s low social and economic status limit their ownership of assets. The possible reason might be that there are few, if any efforts, on the part of governments and lawmakers to disseminate easily understandable information on these the laws, let alone on its contents and uses.

²⁸¹ Rabenhorst and etl, supra note 10, P. 19

²⁸² HumanRightWatch.2003.Page30.Avaialableon:www.hrw.org/reports/2003/kenya0303/kenya0303-03.htm#p323_65141accessed on 26/12/2016

At the country level, too, several studies commissioned by the state and other stake-holding institutions working on the subject, too, investigated the predicaments women encounter both generally and in the specific context of rights of access to valuable resources such as land and how the workings of culture and traditional justice institutions continued to stifle policy and legislative developments. For instance, Ethiopia's report considered by the UN Committee on the Elimination of Discrimination against Women (2002; 2009)²⁸³ acknowledged the good works in Ethiopia in terms of policy, legislative and institutional commitments, but concluded that a vast majority of Ethiopian rural women remained far from being well-off. The Report highlighted the imperative need to identify the type, nature and magnitude of customs and practices harmful to the integrity of women across sectors. The report had a particular focus on religions and religious institutions, and suggested that such anomaly could be overcome by making it possible for women to resort to their preferred norms and institutions in cases of disputes and claims. Similarly, Ethiopia's Millennium Development Goals Report (2010)²⁸⁴ underscored the growing understanding that there is a disconnect between the existence of legal prerogatives and entitlements in favor of women's rights and the latter being enforced, implemented and claimed. Addressing gender equality and empowering women, remained challenging because of the deep-rooted nature of the problem which depends not only on the actions of the government, but also on changing attitudes and cultural values in society. In short it is possible to say that no matter how well that law is formulated, it is mostly ineffectual for women property inheritance rights in general and of the women in study area in particular. Therefore, there are a lot work to be done

²⁸³ Consideration of Reports Submitted by States Parties under Article 18 of the CEDAW, Combined Fourth and Fifth Periodic Reports (2002); Ethiopia: Consideration of Reports Submitted by States Parties under Article 18 of the CEDAW, Combined Sixth and Seventh Periodic Report of States Parties (2009)

²⁸⁴ Ethiopia: MDGs Report - Trends and Prospects for Meeting MDGs by 2015 (2010)

by *Oromia* national regional state government in particular and the federal government to secure women property inheritance rights in the study area.

Conclusion

Women constitute half of the total population of Ethiopia in general and of Ambo district in particular. Despite their larger demographic size, they are mostly excluded from economic, social and political activities. To bring them back to these aspects of life many activities have been undertaken both at national and state levels. Recognizing, women property rights in general and their inheritance rights in particular, under the 1995 constitution and other subsequent laws and policies of the land can be taken as part of this initiatives. The same holds true to measures taken by most the regional states governments. The *Oromia* national regional state on its parts took a bold step to guarantee and protect women property inheritances rights under its revised constitution and regional proclamations which include the regional revised family law and the rural land use and administration proclamation.

In spite of these attempts both at national and regional levels however women's property inheritance rights are still tenuous both at country and *Oromia* national regional state levels. The same holds true to the study area. The prevalence of some entrenched customs, norms and practices of societies are the principal impeding factors for women's property inheritances rights. These customary norms and practices are still pervasive in most parts of country including in the study area. For instances, according to the narrations of these norms and practices, women are not allowed to inherit some lists of properties especially valuable assets like lands, houses and livestock's which are considered as a form of physical saving in study area in particular and in the most rural parts of Ethiopia in general.

The paramount role that the customary justice institutions play in implementing these exclusionary norms and values in course of handling the cases related to women property

inheritances rights brought before them women and girls are immense. The case of *yaa'aa yaaboo* court, one of the vibrant customary justice institutions found in Ambo district, in *Wechan* village is not an exception in this regard.

On other hand this court customary court plays paramount roles in maintaining peace and stability by settling different disputes that range from petty offences to homicides. It achieves this golden purpose through reconciliatory roles it plays in handling and entertaining the cases brought before it. In addition to such reconciliatory roles, this court is preferred over formal court by local communities including women due to its accessibility, absence of strict legal procedures and jargons in its proceedings, the short time span in which the case brought before it entertained and etc.

Thus, there are two competing interests. In most aspects of life, this customary court plays vital roles in keeping social harmony and stability in the study area that the formal courts can't, however when the issues at hands involves women property inheritance rights, its functioning is along the some discriminatory norms that exclude women from property inheritances rights, especially in course of making the partitioning of some property like lands, house, some cattle's like oxen, and other properties which customarily considered as the properties allotted to men. This implies that there are a lot works to be done to make judgments of this court pro- women property inheritance rights. How and what to be done to make the judgments of this court pro-women's property inheritance rights is the gap left to the other researcher to work on.

As a result of these exclusionary verdicts, most women and girls who are incapable of bringing their cases to the formal court are losing some valuable assets like lands and houses to their male counter parts, and forced to lead a miserable life in their marital home or in nearby

towns upon divorce or death of their father. The decisions of the court that exclude women from inheriting their parents or marital property has not only affect women's, but also a child's who mostly preferred to live with their mother upon divorce. Thus, the future of women and their children is mostly put at stake by the judgments of this court when the case presented before it involves women's property inheritance rights.

To minimize or curb the effects of local norms, values and decisions of the court that disinherit women and which its effect reverberates throughout women life and the next generation through the children, some activities are being undertaken in the study area by different stakeholders by giving awareness and free legal aids to women to strengthen their bargaining power when their right to property is put at jeopardy, and awareness creation activities to the *daanyyii's* and *samphalo's* (the mediators of the court) to set aside some discriminatory norms in course of making their decisions. As a result of these activities there are some changes in securing the property inheritance rights of women. But due to perverseness of some of these norms, the load of the cases brought by women for legal support, the financial and human power constraints of these stakeholders, the expected positive results are very much limited.

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Appendix One: Interview Guidelines

Informants' background and research site identification

Name----- Education backgrounds-----

Sex----- Kebele-----

Age----- Place of interview-----

Marital status----- Role in community-----

Occupation----- Date and time of interview-----

Religion-----

1. Interview Guiding Questions for Rural Women and Women Clients of Customary

Justice Institutions

- What are the major properties related cases women and young girls face in your area?
- What are the major challenges in relation to women's property inheritance rights in general, and their rights to inherit land in particular, in this area?
- Are there a societal norms, values and principles that advocate gender inequality in your area? What are these prevalent norms, values and principles? What are the justifications given by local communities for pervasiveness of these norms and values in this area?
- How do disputes related to property claims are entertained in your areas?
- Is there any traditional justice institution(s) that accept and handles such disputes in your area? If any, who are this traditional justice institution(s)? What are their jurisdictions? Or is there a limit to the types of cases brought before them?

- Which sections of the communities mostly use these customary courts in your area? Why?
- Do women bring their claims to these customary courts? If yes, to which customary court that woman mostly brought their cases, particularly their claim to inherit property including land? Why?
- What are the factors accounting for that?
- What type of property related disputes have you faced in your life? When did you have those disputes and with whom?
- Where did you take your cases to?
- How did you get to know about customary courts?
- How many times did you bring your claim to such court?
- What are the types of cases that you brought to this court?
- How did you prefer to have your case settled in these customary courts than the formal courts?
- Were you satisfied with the out come and the procedure, if yes how, if not what were the major reservation you had?
- Do you think that the proceedings of the customary courts give equal opportunities for women to forward their claims and counter-claims impartially?
- Would you go to customary courts if you face the same problem in the future?
- Do you think that your right to inherit property, especially your rights to inherit land is protected in the customary courts? If not, what ought to be done? Who do what?

- Do you think that, this court threat women’s claims of property rights especially women’s rights to inherit land without any forms of discriminations because of their sexes?
- As per your understanding, what are the roles of societal norms and values in informing the function of these customary courts in your area?
- Are there women head of customary courts in your area? If not why?

**2. Interview Guiding Questions for Government Officials at Women’s and Children’s
Affair Offices, District Court and Access to Justice Project Office**

- What are the major properties related cases women and young girls face in your area?
- What are the major challenges in relation women’s property inheritance rights in general, and their rights to inherit land in particular, in this area?
- Are there a societal norms, values and principles that advocate gender inequality in your area? What are these prevalent norms, values and principles in this area?
- What are the justifications given by local communities for pervasiveness of these norms and values in this area?
- How do disputes related to property inheritances rights are entertained in your areas?
- Is there any traditional justice institution(s) that accept and handles such disputes in your area? If any, who are these traditional justice institution(s)?
- What are their jurisdictions? Or is there a limit to the types of cases brought before them?

- Which sections of the communities mostly use these customary courts in your area? Why?
- Do women bring their claims to these customary courts? If yes, to which customary court that woman mostly brought their cases, particularly their claim to land? Why?
- What factors account for that?
- Since you are a part of government institutions, have you ever accept any form of complains on the functions and rulings of these courts from women? If any, what are those complain(s)?
- How did you responded to that complains?
- Do you think that women's right to inherit property is protected in these customary courts? If not, what ought to be done? Who do what?

3. Interview Guide Questions to Local Elders and Heads of Customary Courts

- How do you solve property rights related disputes in your area?
- Is there any traditional justice institution(s) that accept and handles property related claims in your area? If any, who are this traditional justice institution(s)? What are their jurisdictions? Or is there a limit to the types of cases brought before them?
- What are the principles that guide this customary court(s) in course of entertaining the cases brought before them including women's property inheritance rights in your area?
- Which sections of the communities mostly use these courts in your area? Why?

- Do women bring their claims to these customary courts? If yes,
- What are the major properties related disputes brought to customary courts in general? And what are the major properties related cases brought often by women?
- To which customary courts that woman mostly brought their cases, particularly their claim of property inheritances rights? Why?
- What are the properties women ought to take with them up on divorce? Which are properties that are exclusively assigned for men?
- How do you adjudicate cases related to land upon divorce or in cases of inheritance in which male and female disputants are involved?
- Are the guiding principles of customary courts treat women and men similarly when women's right to property is on the table? If yes how and if not why?
- What are the parameters to be the head customary courts?
- Is there appellate court to reverse the decisions of customary courts?
- Do you think that women's right to inherit property, especially their right to inherit land is protected in these customary courts? If not, what ought to be done?
Who do what?

Appendix Two: Checklists of Observation.

Essential Matters for Court Activities	Yes	No
Filing system		✓
Court summon	✓	
Codified law		✓
Court room	✓	
Women and girls bringing their claims before the court	✓	
Court procedure and proceedings	✓	