

Addis Ababa University School of Law

Women's Rights under Oromo Customary Laws in Light of International Human Rights Instruments: The Case of Arsi



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**Women's Rights under Oromo Customary Laws in
Light of International Human Rights Instruments:
The Case of Arsi**

This thesis is submitted to Addis Ababa University, the School of Graduate Studies, School of Law, in Partial Fulfillment of the Requirements for the Degree of Masters in Laws (LLM) in

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Declaration

When other people’s work or research is used (either from printed material, internet or interview or other sources) this has been duly acknowledged and referenced in accordance with departmental requirements.

The thesis “Women’s Rights under Oromo Customary Laws in Light of International Human Rights Instruments: The Case of Arsi Oromo” is my own work.

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Acronyms

NGO	Non-governmental organization
UN	United Nations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Political Rights
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
AU	African Union
OAU	Organization for African Union
CRC	Convention on the Rights of the Child
UDHR	Universal Declaration of Human Rights
FGM/C	Female genital mutilation or cutting
FDRE	Federal Democratic Republic of Ethiopia
ACRWC	African Charter on the Rights and Welfare of the Child

Abstract

The objective of this study is to evaluate whether or not Arsi customary laws have recognized women's rights as enshrined under the major international human rights instruments such as UDHR, ICCPR, ICESCR and CEDAW. The study is based on data collected during a period of almost six years (2005-2011). Women's right to dignity, equality, economy and women's local institutions for the protection and promotion of their rights constitutes the theme of the study.

Women's under Arsi customary laws are entitled to dignified life and they assume central role in the life of their family. They are entitled to basic and fundamental human rights and freedoms in a different way than stipulated under the international human rights instruments. The principles enshrined under international human rights are individualistic in approach while those provided under Arsi customary laws are more of group rights while individual women's rights is also recognized. The study demonstrates that Arsi women have rights to property and institutions through which they protect themselves from violence and keep peace within the family and beyond. The study also inquires about the conflict between the two systems and incidentally the Shari'a laws which are currently adding a third dimension to justice system in the study area. So the application of international human rights norms without having due regards to the local customs and values on the one hand and the equally competing customary laws and Shari'a laws in the study area on the other hand is posing a challenge women's rights discourse.

Chapter One

Introduction

1.1. Background of the Study

The Oromo belong to the Cushitic language subfamily which extends over most of northeastern Africa.¹ Nearly all Oromo people variously estimated at thirty to forty million; speak closely related dialectic of their native language-*Afaan Oromo* or *Oromiffa* (Oromo language).² They all share a common history, world-view, cultural heritage and more or less depend on similar economy i.e., sedentary farming and pastoralism. In the historic annals of Africa, the Oromo hold a special position in that they are among the most expansive societies on record.³ They represent one of the largest Cushitic groups inhabiting the Horn of Africa being the single largest ethnic group in Ethiopia and one of the major ethnic groups in Africa. Oromo are found predominantly in Ethiopia, Oromia National Regional State, but are spread from as far as northern Ethiopia (southern Tigray region) to mainly northern Kenya and northern Somalia.⁴

Before the introduction of the two dominant world religions, all Oromo used to believe in one divinity called *Waaqayyoo* (*Waaqa* for short), roughly equated to the English term God.⁵

According to Oromo, *Waaqaa* is the ultimate source of everything, and its creative is called *ayyana* and the relation between *ayyanaa* and an Oromo individual is maintained through *qaalluu* (for male) and *qallittii* (for female). Hence, *qaalluu* institution is the center of Oromo religion where ritual ceremonies are to be carried out and *qaalluu/qallitti* is the most senior person from his/her clan, pure, clean and shall remain religious leader throughout his/her life.⁶

¹ Mamo Hebo, *Local Custom and Policies: Land Tenure, Land Dispute and Dispute Settlement among the Arsi of Southern Ethiopia*, Kyoto, Japan 2006 at 9.

² Asmarom Legesse, *Oromo Democracy: An Indigenous African Political System*, 2000 at 6; Mohammad Hassen, *The Oromo of Ethiopia: A History 1570-1860* at 10.

³ Asmarom Legesse, *Gadaa: Three Approaches to the African Society*, 1973 at 8-10.

⁴ Johan H. Hamer, *Dispute Settlement and Sanctity: An Ethiopian Example*, Bardon University, 1973 at 243.

⁵ Father Martial de Salviac, *An Ancient People in the State of Menelik: the Oromo*, Great African Nation, 1901 at 143, trans., Ayalew Kanno Nov. 2005.

⁶ Johan H. Hamer, *Dispute Settlement and Sanctity; an Ethiopian Example*, Bardon University, 1973 at 39.

However, the majority of the Oromo are now converted to either Islam or Christianity since the middle of the 19th Century particularly after their conquest by the Abyssinian state, which triggered, a massive conversion,⁷ directly or indirectly.

Presently the Arsi are predominantly followers of Islam, while a significant number of them follow their original religion, *Waqeffanna*, and also there are some conversions into Orthodox and very recently into protestant Christianity.

The Oromo are divided into two powerful confederacies, namely the Booranaa (elder) and the Baarentu (younger). The two confederacies branched and re-branched and constituted the present Oromo nation. The Oromo have lived independently forming their own government under the *Gadaa* system which is their pillar and democratic institution until they were conquered and forcefully included into the modern Ethiopian empire during and after the 1880s.⁸ Though Oromo is one and same at the grass root level, because of their vast geographical settlement, absence of centralized governments under the past Ethiopian governments and many more factors, the different Oromo groups have adopted slightly different customary laws, religions and ways of life. That is why I focused on the specific Arsi Oromo customary laws rather than the entire Oromo customary laws.

The Arsi Oromo (herein after referred to as Arsi) who primarily live in Arsi, West Arsi (which are named after them) and Bale, as well as in southwestern parts of east Shawa zones of Oromia national regional state forms parts of the Baarentu confederacies.⁹

The people of Arsi, like other groups of Oromo, were organized under the highly developed and egalitarian *Gadaa* system which has influenced every aspect of their lives. Due to *Gadaa*'s multifunctional and complex development, authorities/scholars refrain from defining it in a univocal way. But Asmarom Legese's definition of the term, though it may not completely take into account all *Gadaa* elements, but more elaborated than his previous definition of the term may be mentioned here:

⁷ Abbas Haji Gnamo, *Islam, the Orthodox Church and Oromo nationalism (Ethiopia) 2002* at 165.

⁸ Mohammed Hassan, *The Oromo of Ethiopia; A History 1570-1860, 1994* at 3.

⁹ *Id* at 2.

The *Gadaa System* is a system of generation segments or Gadaa classes that succeed each other every eight years in assuming political, military, judicial, legislative and ritual responsibilities. Each active Gadaa class-beyond the first three grades-has its own internal leadership (Adula) and its own assembly (ya'a), but the leaders of the class become the leaders of the nation when their class comes to power in the middle of the life cycle-a stage of life called "Gadaa" among the Borana or "luba" among the central Oromo. The class in power is headed by the Abba Gadaa in Borana, Abbaa Bokku elsewhere...¹⁰

Therefore, the terms of office for each *Gadaa* is only eight years in which the process of power transfer begins and ends with peaceful and formal ceremony. It is a completely democratic form of government, because no one will come to power without the will of the public nor be removed from office without proper recall by the public. Power is held by the people and their elected representatives. However, there are some scholars who argue that *Gadaa* system only embraces the male section of the society excluding the women and hence remains undemocratic. On the other hand, those who carefully and critically studied *Gadaa* have reached at the conclusion that even if *Gadaa* office is exclusively occupied by male section of the society, it is completely egalitarian form of government; touching the lives of every Oromo people including the female. This group also argues that the female section of the Oromo society has their own counter male exclusive institutions like *siinqee*, *qanafa* and *ayyaana ateetee*¹¹ through which they protect and promote their rights.

While the debate continues between the two camps, *Gadaa* system is weakened among majority of Oromo after they were incorporated into the present day Ethiopia; and reduced to mere ritual ceremonies in most parts of Oromia, except among the Boranaa, Gujii, Kayyayyu and few groups of Arsi and the Tuulamaa.¹²

Beside the conventional laws and rules developed through *Gadaa* system, Arsi Oromo are abided by *Wayyuu* (respect and sacredness), religion, customs, and led their political, social and economic activities within the domain of *dhugaa ganamaa* (natural law). Their *wayyuu* or *safuu*

¹⁰ Asmarom Legese, *Oromo Democracy: An Indigenous African Political System*, Asmara, 2000, at 103ff.

¹¹ Kuwee Kumsa, *the Siinqee Institution of Oromo Women*, *Journal of Oromo Study Association*, Vol. 4 No. 1 & 2 1999, at 123.

¹² Lambert Bartles, *Oromo Religion; Myths and Rites of the Western Oromo of Ethiopia: an Attempt to Understand*, Berlin, 1993, at 45

(sacredness or respect), prohibit them from engaging in deviant behaviors particularly of sexual assault or harassment. But *wayyuus*, customary rules and conventional laws cannot be found in a compiled or written form even while *Gadaa* system was fully functioning; rather they were (are) functioning effectively and handed down from generation to generation through the teachings of elderly people. In this regard Mohammed Hassen has to say the following:

“Though unwritten, Oromo laws were as such a functional elements or a means of practical action, as law in literate societies. The law was kept in the living constitution-the heart of elders.”¹³

Hence, whenever I mention Arsi customary laws in this work I am referring to those unwritten but pragmatically important laws which are vital in resolving real daily social, economic and political problems of the Arsi.

According to Arsi there are two terms that can express the concepts of laws. The first is *aadaa*, (custom, habit, traditions, and ways of life)¹⁴ and the second is *aloo* (rules and regulations). Though Mamo equates *aadaa* with *aaloo*, informants claim that *aloo* is less formal than *aadaa* to express the concept of law. But in this study the two words are used interchangeably. According to *aloo* Arsii three categories or classes of society are given special privileges, respect and importance. These are children, women and the *Gadamojjii* or retired *Gadaa* members.¹⁵ Some of the Arsi customary laws were enacted and revised by the popular will at certain interval; leaders are elected to office based on merit and skill instead of hereditary succession to power. The Arsi enact laws not only for human beings but also for the entire *uumama* (creatures). For example killing either wild or domestic animals without good ground is punishable. When it comes to the women’s rights, there are situations where women are more privileged than men and vice versa. For example, pregnant women are the only group of persons who are completely exempted from criminal execution; women have also superior position to men religiously.

However, despite the non preferential treatment of men and women by the customary laws, no Arsi woman (Oromo women in general) has ever been elected to the highest *Gadaa* offices. Women are not educated on equal footing with male section of the society but work more hours than men. So does this mean that Arsi customary laws are discriminatory against women? Or are

¹³ Mohammad, Supar note 8.

¹⁴ Mamo Hebo, *Land, Local Customs and State Policies, Shoukadoh Kyoto, 2006 at xi*

¹⁵ *Supra note 11*

Arsi women given an inferior position than men by customary laws? Despite the rich and highly developed and dynamic Arsi customary laws, in general and on women's rights in particular (which can contribute for constitutional and human rights developments from African perspectives) only few research are conducted on women's rights under Arsi customary laws.

In addition to the scarce written materials on Arsi customary laws, some Ethiopian scholars and foreign writers at different times have distorted the history of Oromo, their customs or cultures, religion and world views to which Arsi customary laws are a subset. As a result of such writings Oromo (Arsi) customary laws were relegated from the scene and perceived as if Arsi women are disadvantaged and discriminated under Arsi customary laws¹⁶. To illustrate the prejudices advanced against the Oromo people in general and its values, religion, social organizations and customs Mohammed claims that, until very recent times, "the Oromo history has been either neglected, totally ignored, or it has been deliberately distorted by Christian chronicles and by most foreign writers who have carried out a study about Ethiopian history."¹⁷

The distortion of Oromo history and their material and cultural values have been started long before the sixteenth century.

For example the famous Ethiopian monk of the sixteenth century Abba Bahrey wrote:

I (hereby) begin to undertake the studies [write] of the Galla in order that I may know the number of their tribes, their zeal to kill people, and the brutality of their demeanor. If there is anyone who would say to me: why has he written about the wicked ones like the history of the good? I would give him an answer, saying to him: search in the books, and you will see that the history of Mohammed and the history of the kings of the Muslims have been written, although they are our enemies in religion.¹⁸

Bahrey's account of Oromo history has been unquestionably accepted as authentic source about Oromo history for both Ethiopians and some foreign "scholars" for about four hundred years and based on Baharey's version of Oromo E. Ullendorf has the following to say about Oromo in general:

The Galla had nothing to contribute to the civilization of the Ethiopia, they ***possessed no material or intellectual culture and their social organization was***

¹⁶ Marit Tolo Østebø, Respected Women: A Study of Wayyuu and its Implications for Women's Sexual Rights among the Arsi of Oromo, cited in, Verrori, 2005.

¹⁷ *Id.*

¹⁸ Mohammed, *supra note 8*, cited in, Abba Bahrey at 2.

at a far lower stage of development than of the population among whom they settled.¹⁹

Once again depending on the works of Abba Baharey, William Cornwallis Harris labeled the Oromo as wild animals and uncivilized peoples stating them as "*barbarian hordes who brought darkness and ignorance in their train.*"²⁰ Even though not expected at this time the latest writer who condemned the Oromo as plunderers and destroyers of civilizations is Getachew Haile. He claims that:

The Oromo were plunderers and destroyers. Destruction of churches and mosques did not give any meaning to them as they were enemy property to be destroyed. Even though their way of life was based on cattle keeping, their mode of living resembles that of primitive people, whose existence was based on hunting and gathering. The only difference is that the Oromo lived in villages, whereas primitive people lived in the wilderness.²¹

The distortions and fabrications about Oromo by Abyssinians and some foreigners as stated herein above could be easily dismissed as expression of ignorance or tactical biases against Oromo. Contrary to the above myth, untruth, and distortions Asmarom Lageze and many more claim that the Oromo people are the most expansive people that human race has witnessed in history. He further asserts that Oromo were among few ancient societies who have developed their own democratic and egalitarian institution, *Gadaa* system, in which power is transferred every eight years peaceful and by popular and democratic election.²²

Despite the fact that the search for reasons of distorting the Oromo culture and values is beyond the scope of this study, the myth, untruth and fabricated facts about Oromo shows the challenge that Oromo people and their customary laws have faced and still facing to be recognized. As a result of these distortions and fabrications about Oromo and its customary laws and practice, the later remain unstudied and taken for grant that they are worthless neither to be studied nor for protection and promotion women's rights.

¹⁹ Mohammad Hassen, *Significance of Abba Bahrey in Oromo Studies*, *Journal of Oromo Study Association*, Vol. 14 No. 2, 2007 at 139.[emphasis added], cited in, Abba Bahrey.

²⁰ E. Ullendorff, *The Ethiopia: An Introduction to Country and People*. London, Oxford University press, 1960 at 76.

²¹ Mohammad, *Supra note 8 at 12*, cited in, Abba Bahrey at 140.

²² Id. at 140.

Hence, in this study I will try to critically examine the basic and fundamental *aloo* Arsi (Arsi customary laws) that deal with women's rights in comparison to women's rights as enshrined in the international human rights instruments. Furthermore, I will try to analyze how to reconcile Arsi customary laws with women's rights recognized under international human rights instruments, so that the two laws will reinforce each other in protecting, promoting and enforcing women's rights.

1.2. Statement of the Problem

At the international level, particularly since 1945, different international human rights instruments were enacted by the United Nation and other regional organizations which emphasis the equality of men and women. These instruments urge States Parties to take legislative, administrative and other necessary steps for the protection, promotion and enforcement of women's rights. The State Parties are also required to abolish all forms of discriminatory acts and behaviors such as gender based biases, stereotypes and xenophobes in all their forms. Among these instruments the United Nation Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights , Convention on the Elimination of All forms of Discrimination Against Women, and the Declaration for the Elimination of all forms of Discrimination against Women etc are the prominent ones. At national level Ethiopia is also a party to the above named human rights documents long recognizing the equality of men and women. In addition to being a member to the major international human rights documents, the 1995 Constitution of the FDRE, has reiterated the basic and fundamental human rights principles of women enshrined under the above mentioned documents. However, the rights recognized by these instruments are far from fully implemented by any country in the world and hence it is a common²³ phenomenon to hear and read news and reports about gender based violence against women and different forms of discriminations perpetrated by different actors in every corner of the globe²⁴.

In Ethiopia also, despite the ratification of the major international human rights documents and the inclusion of those rights and fundamental freedoms in the Federal and Regional Constitutions

²³ *Joni Seager, The Atlas of Women in the World*, 2003, by, Myriad Editions Limited, 3rd edition

²⁴ *Id.*

and other subsidiary laws the situation of women's human rights remains much unchanged.²⁵ Though there are several factors contributing for women's rights violations in Ethiopia and elsewhere culture, traditional practices or custom and religion are accused of the prime cause of the oppression and discrimination. It has been claimed that African customs, practices and/or usage are generally portrayed as discriminatory against women and women's position under customary laws is inferior to that of men. Particularly when it comes to the case of Oromo, as mentioned above some Ethiopian scholars joined by few foreign writers, in general, accused Oromo values, culture and institutions as "*Backward, primitive, unreasonable, worthless and dark.*"²⁶ It is probably this background that easily convinced Oxfam to write without hesitation but contrary to the truth that: "Oromo women are disadvantaged, discriminated and have no access to properties on equal footing with men particularly to vital resources such as land and subjected to harmful traditional practices due to customary laws."²⁷ After the forceful inclusion of the Oromo people and country into the present day Ethiopia, Emperor Menelik II banned Oromo customary laws and institutions (such as *siinqee* institution, *Gadaa* system, *Waqeffannaa*, and other social settings) under the pretext of "modernizing Ethiopia."²⁸ Menelik's mission of devaluing Oromo customary laws and values were fully accomplished when Emperor Haile Sellasie enacted the 1960 Ethiopian Civil Code²⁹ which officially repealed and replaced all customary laws and practices with the Civil Code.

Despite all the efforts to abolish Oromo customary laws, values and socio-political institutions by successive Ethiopian rulers, the Oromo people in general and the Arsi in particular remain loyal to their customary laws and practices. They are still abided by customary laws in preference to the newly introduced but alien state laws. The state laws in majority of the cases do not make their foundations in Oromo culture, custom, religion and practices. Instead, they are deep rooted in foreign values (particularly western) and beliefs which are alien to the Oromo

²⁵ Marit Tolo østebø, *Respected Women: A Study of Wayyuu and its Implication for Women's Sexual Rights among the Arsi Oromo of Ethiopia*, 2007 at 41 (Unpublished Master's thesis in International Health, University of Bergen, Norway).

²⁶ E. Ullendorf *supra* note 18

²⁷ Marit, *supra* note 23.

²⁸ Abbas, *supra* note 7

²⁹ *The Civil Code of the Empire of Ethiopia Proclamation No.165 of 1960 Negarit Gazeta Extraordinary Issue No.2 of 1960. 19th year No.2 Addis Ababa 5th May 1960.*

world views. Hence, Arsi remain resistant and skeptical of the state laws and international human rights norms without scrutiny. Most of the time cases or dispute settled in the formal courts (whether criminal or civil matter) are settled again by *jaarsa biyyaa* (elders) through traditional or customary rules. Therefore, Arsi customary laws (*aloo*) are powerfully influencing the socio-economic and political lives of the Arsi still today. Beside customary laws, Shari'a law is also influencing the judicial business in the study area. Since majority of Arsi follow Islamic religion (despite the absence of exact data that can show who follows which religion in the study area), Shari'a law is operating and powerfully influencing the lives of the majority of Arsi.

The other dimension is the state law which is highly influenced by western understanding of rights and philosophies. It is backed by government machineries and failure to comply with entails severe consequences. The State machineries follow the ideology of legal centralism and apply only state laws uniformly to all persons to the exclusion of customary and Shari'a laws. Now the problem is women are entitled to different rights under the three legal systems and as a result different solutions or remedies (at times contradictory) for violations of women's rights are handed over. For example, according to the Federal Democratic Republic of Ethiopian Revised Family Code³⁰ and Oromia Family Law³¹ bigamy is prohibited and it can be dissolved on the application of either of the spouses or public prosecutor. On the other hand the Shari'a law allows up to four wives provided that the stringent conditions are met. Similarly, the Oromo customary law in general and that of Arsi too do not prohibit bigamous marriage though strict preconditions are required. Thus polygamy is common among Arsi during few decades back while still bigamy is under practice.

Therefore, it is clear from the above example that the three legal systems set different rights and obligations on same issues. Such differences sometimes benefits and at other times work against women's basic and fundamental rights such as the right to succession, degree of consanguinity for calculation of incest and marriage etc. Since the formal or state laws fail to accommodate Arsi customary laws it is valid to argue that the Ethiopian legal system is developing toward

³⁰ The Revised Family Code Proclamation No.213/2000 Art. 33 (1). Federal Negarit Gazette Extra Ordinary Issue No.1/2000, 6th year, Addis Ababa 4th July 2000

³¹ Oromia Family Law, Megeleta Oromia Proclamation No.69/1995 and 83/1996 Art. 50(1), Megeleta Oromia Extra Ordinary Issue NO.69/1995 and 83/1996, Finfinnee, July 1996 Ethiopian Calendar (Available only in Afaan Oromo and Amharic).

legal centralism than legal pluralism. This is evidenced from the reading of Art.34 (5) which indicates that customary laws should only resolve dispute relating to personal matters, to the exclusion of property, contractual and criminal matters other. Art.9 (1) and 91(1) of the FDRE, Constitution similarly makes the Constitutional provisions the only yardstick for the recognition of customary laws. In a similar manner, despite the fact that regional states are authorized to enacted criminal laws for matters not covered by federal criminal code, the 2005 FDRE criminal code has left no possible room for enacting further criminal laws by regional states.

But sometimes, the society and government institutions being aware of the three legal options opt for the types of legal regime that they think will run to their advantage and make the predictability of the outcome of a dispute uncertain. This is because stakeholders can be opportunists in using the various systems to backup their claims either in favor or to deny women's rights.

In addition to making justice uncertain, the three systems usually compete and condemn each other claiming that the other is not women's rights friendly. They perceive each other as a potential danger to one another rather than complementing each other. None of the three or impartial third organs made an attempt to reconcile or at least forge harmonious relationships among the competing laws for comprehensive protection, respect and enforcement of women's rights. The state laws and Shari'a laws backed by their respective enforcing institutions (courts and other government institutions) are given effect while customary laws are backed by the public without any support from government institutions. In other words, although the Oromia Regional and federal Constitution officially recognize the possible accommodation of customary laws and their institutions, yet there is no concrete move towards this step. Hence Arsi customary laws are neglected, ignored, even condemned as backward and worthless for protection of women's rights even in areas where they better or equally important in comparison to the two systems for protection of women's rights. So, the existence of de facto legal pluralism which is not deliberately tailored to fit the real situation on the ground is causing uncertainty of rights, of course not because women's rights are ambiguous as far as local community is concerned, but because customary laws are likely to be challenged and canceled by resort to state laws or to state authorities.



Furthermore, the major international human rights documents and that of state laws are approaching human rights/women's rights highly from individualistic view point and at times remain odd with the local understanding of rights. For example according to *aloo* Arsi no member of a family claims an exclusive ownership over properties as far as the union is alive irrespective of the time when and by whom the property is acquired; on the other hand family laws (both federal and Oromia) provides that properties acquired before marriage remain private to the acquirer. Similarly, the UDHR, ICCPR, ICESCR and CEDAW encourage private ownership over property in marriage which is unthinkable under Arsi customary laws.

So given the co-existence of the above mentioned legal systems in the study area and their contradictory approach towards women's rights, it is difficult to achieve equality of women and men or to protect, promote and enforce women's rights by applying only state laws (derived from international human rights documents) uniformly to all persons at the expense the other legal system. Hence, this study first evaluate as to what rights are women entitled to under Arsi customary laws and then compare and contrast them with women's rights as enshrined under the major international human rights documents and that of Shari'a laws. In doing so the study focuses only on women's rights where there is a gap between the Arsi customary laws and international human rights principles as enshrined under the major documents while the issue of Shari'a laws will only be discussed if and only when necessary. Finally, the writer will suggest how the two systems complement and reinforce each other for the better protection, promotion and enforcement of women rights.

1.3. Objectives of the Study

The study has an overall objective of identifying Arsi women's rights under customary laws (*aloo* Arsi) in light of internationally accepted human rights norms through the major international human rights documents such as UN Charter, UDHR, ICCPR, ICESCR, CEDAW, the Declaration for the Elimination of All Forms of Discrimination against Women and other international human right instruments. The study also compares and contrasts women's rights as recognized by *aloo* Arsi and major international human rights instruments. In addition to the general objective the research has the following specific targets:

1. Examine whether Arsi customary laws are compatible with women's rights recognized under the notable international human rights instruments or not,
2. Assess the relationship between *aloo* Arsi vis-à-vis women's rights and analyze the impact of their coexistence on women's rights and finally,
3. Evaluate what *aloo* Arsi can contribute for international women's rights discourse and to the Ethiopian legal system.

1.4. **Research Questions**

The study aims primarily to answer the following basic questions:

- A. Are the major women's rights enshrined under different international human rights instruments also recognized by *aloo* Arsi or not?
- B. Do women enjoy equal rights with men under *aloo* Arsi?
- C. Do Arsi women enjoy better rights under international human rights documents or *aloo* Arsi?
- D. Can we forge harmonious relationship between Arsi customary laws and women's rights that are recognized under international human instruments so that they will reinforce each other or should we apply one of them at the expense of the other and achieve better protection of women's rights?

1.5. **Significance of the Study**

Oromo customary laws including that of Arsi has been ignored, outlawed, forgotten and distorted by the successive Ethiopian governments and scholars for long time. Hence the rich, dynamic and flexible Arsi customary laws, which would have contributed in building legal pluralism in Ethiopia and elsewhere, have been condemned valueless and contrary to human civilization. Past and present Ethiopian governments have continuously made reference to foreign laws while enacting Constitutions and other subsidiary laws and failed to incorporate the indigenous Oromo customary laws, usages and practices. Hence, the laws which have their sources in foreign cultures sometimes came in clear contradictions with the customary laws Arsi and Oromo in

general. Sometimes such laws are repugnant to the customs and cultures of the people and remain undefended by the public at large. Therefore, it is necessary to evaluate the true nature of Oromo customary laws and convince legislators both at national and international level to consider Arsi customary laws as important source of laws whenever a law is going to be enacted. It is also equally important to discourage those which are repugnant to the universally accepted women's rights. Furthermore, it is also important to persuade students of law and other Ethiopians and African scholars to codify African customary laws and forge democracy that truly reflect African values by blending African values with the internationally accepted human rights principles. The research tries to catalogue and refine Arsi customary laws that are vital for the protection and promotion of women's rights. Therefore, the following persons and institutions will be the prime beneficiary of this study:

1. It will be a good starting point for the future researchers on Oromo women's rights and related fields,
2. It is helpful in framing democratic and mass based constitution and family laws as well as preparing women and children's polices based on indigenous African customary laws rather than always transplanting foreign legal concepts,
3. It helps legislators in properly addressing the real situation on the ground by forging enough play ground among customary laws, international human rights norms and religious laws (Shar'a) (adopting legal pluralism) and
4. Political parties, governmental and non-governmental institutions will also learn a lesson that women's rights will be better protected promoted and enforced by harmonizing customary laws and religious laws with the internationally formulated human rights principles instead of approaching the problem of women rights violations only form Universalist and western concept of rights.

1.6. Literature Review

In the last 50 years an avalanche of studies on Oromo people in general has been witnessed. But before this also there were important studies and writings about the Oromo both by foreigners and Abyssinians. However, these writings were more of historical account than legal research or

studies, though almost all of them have made reference and cross reference to the Oromo legal structures particularly those laws embraced by the *Gadaa* institution. The other problem with regard to Oromo literature is that those writings were not encompassing entire Oromo nation, instead focus on some groups of the Oromo people. Asmarom Legese is one of those writers who have captured the true history of the Oromo, making the Borana branches of Oromo as a benchmark. When choosing Borana for his study by abandoning the Arsi group he said:

The information furnished by the Arsi on *Gadaa* system was lacking in substance. *Gadaa* officers were known, but it was not clear when or where the next transfer of power would take place. It becomes apparent after several weeks of grouping, that the Arsi could not yield the desired quality of data.³²

He further claims (to justify why the study of other groups of Oromo does not help to show the nature of traditional Oromo society) that all other Oromo groups other than the Borana have under gone some social changes instigated by external forces.³³ This is at least true of the Arsi Oromo and at most for the entire Oromo. The Arsi Oromo have come in close contact with the Shoans during the 19th century. In fact the contact was neither voluntary nor friendly. Their relationship is characterized by Menelik's continuous military raid against the Arsi and serious and series of war has been fought between the two and finally the former come victorious and as a result dictated the Arsi way of life, religion and behavior so as to conform to the will of the colonizer.³⁴ Hence Arsi's social, economic and political set up was changed by external force to a great extent. They were not only influenced by the conquering forces but also willingly accepted the Islamic religion in defiance of the Christianity which they consider was of the conquerors. But for this study it is that change that interested the writer to explore how the application of Arsi customary laws in relation to women's rights, vis-à-vis internationally accepted principles of women's rights.

As to the Arsi group of Oromo relatively few studies have focused on their customary laws in general and on women's rights in particular. However, the following studies have made great contribution in understanding the history of Arsi Oromo and some of their customary laws.

³² Asmarom, *supra* note 3 at 11.

³³ *Id* at 12.

³⁴ Abbas, *supra* note at 7.

Abbas Haji has studied the historical account of Arsi from 1880-1935.³⁵ Even though this study plays a vital role in understanding the history of Arsi it has little to do with the legal aspect and particularly of women's rights. His work has focused primarily on the origin, religion, movement, and how they were incorporated into the present day Ethiopia during Menelik and their subsequent history in general.

Kuwe Kumsa also has made important investigation into the *siinqee* institution of Arsi Oromo. In her writings she has dealt with the meaning of *siinqee* institution, its celebration and why and when and by whom *siinqee* is used among Arsi women.³⁶ Hence, her study is short of a comprehensive Arsi customary laws that deal with women's rights. Similarly, there are also a good number of LLB and MA theses on Arsi customary marriage, women's *wayyuus*, the continuity and change in the status of women etc. But none of these works had put the relationships among customary laws, Shari'a laws and international human rights principles as a core part of their study. Therefore, these studies and others carried on Arsi did not fully and comprehensively capture the salient features of the Arsi customary laws which are vital in the protection and promotion of women's rights.

Therefore, it is necessary and probably the right time to make a comprehensive study as to whether Arsi customary laws (*aloo* Arsi) recognize equality of women and men.

1.7. Research Methodology

In this research it may not be fair and rational to rely only on one or few methods of data collection. However, as the study aims to catalogue Arsi customary laws in relation to women's human rights issues and again compare and contrast them with women's rights as recognized under international and regional human rights instruments I largely depend on qualitative methods of data collection. Therefore the ethnographic study of Arsi is the key source of gathering customary laws and their relationship with Shari'a laws and internationally recognized women's rights.

Generally, the following methods are employed to carry out the research:

³⁵ *Id.*

³⁶ Kuwe, *supra* note 11.

1.7.1. Interviews

Customary laws in general are unwritten, uncodified and handed down from generations to generations through the teachings of elderly peoples, and hence Arsi customary laws are no more an exception. Thus, to make access to customary laws that are available in the hearts and minds of elderly people, the writer carried out extensive interviews with purposely selected 10 elderly men and women. They are selected purposely because they are *hayyus* (experts in Arsi customary laws). It is obvious that all Arsi have no equal knowledge about their customary laws and history. Among the elderly, only two of them are living in small town while others are from rural areas. Some of the elderly are community leaders (*Abbaa Gadaa*) while others are religious leaders. Fifteen lawyers (some of them born and raised in Arsi customs or working in Arsi) have been extensively interviewed either in group or individually. Head of women, Children and Youth Affairs working at different levels have been also interviewed.

To better understand and present the position of women from religious (Shari'a laws) perspectives, interviews have been conducted with heads of Islamic religion, *qadis* and scholars on Islamic laws. Leaders of NGOs working on women's and child rights in Arsi were also interviewed to know whether they are considering an indigenous institutions and customary laws as complementary or contradictory to international human rights instruments dealing with women's rights. Randomly selected five females and equal number of male students and three female and again the same number of male teachers were also interviewed to assess the current situations.

1.7.2. Questionnaires

Questionnaires is administered to 20 purposefully selected persons who are presumed to have good knowledge of Arsi customary laws, familiar with Shari'a laws and international human rights instruments.

1.7.3. Other Methods

In addition to interviews and questionnaires focused group discussion were also carried out. And last but not least I have used my personal knowledge I have accumulated during my career as a

high court judge in Assela, instructor at Oromia Public Service College in Batu and private legal practitioner and as a judge at Supreme Court of Oromia.

1.8. Scope of the Study

Since *Arsii* customary laws that directly or indirectly deals with women's rights and international human rights instruments that covers women's human rights are numerous in number and volume it may not be possible to cover by this research neither those customary laws nor the international human rights instruments.

Thus, the study is limited only to:

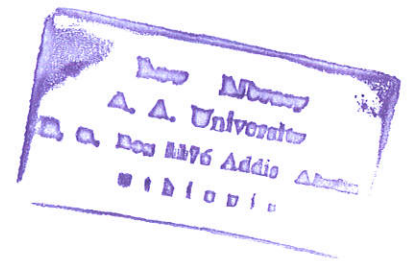
- A. Basic and fundamental women's rights as recognized by major international human rights instruments vis-à-vis Arsi customary laws which are relevant to study area and
- B. Geographically, Arsi, West Arsi and Southwestern Shewa zones of Oromia National Regional State.

1.9. Organization of the Study

The thesis is organized into four chapters. The study generally attempts to explore Arsi customary laws that deal with women's rights and evaluate whether they are in conformity with the internationally accepted principles of women's rights or not. So the study is approached in the following sequence.

Chapter one deals with the introductory remarks, statement of the problem, importance of the study, the scope of the study, research questions, methodology and methods of data collection and data interpretation. The second chapter covers the conceptual framework of the study, definition of key words and analyzes the status of women in general and discusses basic rights and fundamental freedoms of women. It also assess the how customary laws are approached by the international human rights instruments and human rights scholars and feminists. The third chapter tries to introduce briefly the history of Oromo in general and Arsi in particular and discusses, *inter alia*, their population settlement, religion, and social organization. Chapter four critically analyzes major women's civil and political rights under Arsi customary laws that are relevant to the study areas.

The last chapter deals with women's economic rights with special emphasis on land because land is the most important and major economic resources in the study area dictating every relationship between men and women. Another important issue to be tackled under this chapter is women's role in Arsi customary laws and their social and religious institutions through which they protect and promote their rights. Among these institutions the role *siinqee*, *ateetee*, *qanafaa* and *wayyuu* will be briefly discussed. In every chapter though it is not the theme of the study the role of Shari'a laws in influencing women's rights will be examined briefly. At the end, by way of conclusion and recommendations the study tries to forge harmonious relationship among customary laws, international human rights instruments and Shari'a laws that deal with women's rights. An attempt will be made to make the two systems complementary rather than contradictory and reinforce each other so that women's right will be better recognized, protected and enforced.



Chapter Two

Conceptual Framework

2.1. Custom and Customary Law

2.1.1. What is Custom?

Customary law develops from the term custom which is one of the basic sources of national, regional and international laws. Customary law also develops from usage, conventions and long practice of society. Therefore, before defining customary law it is necessary and important to define the term custom.

In spite of the importance of custom as a source of law there is no universally accepted definition of neither custom nor customary laws. But according to John Wuol Makec, the controversy over the definition of custom relates more to its scope than to its meaning i.e., whether to adopt restrictive or wider definition.¹

Black's Law dictionary defines custom as "A practice that by its common adoption and long, unvarying habit has come to have the force of law."²

The dictionary further classifies custom into:

- a. Conventional custom, a custom that operates only indirectly through the medium of agreements, so that it is accepted and adopted in individual instances as conventional law between the parties to those agreements.
- b. General custom, a custom that prevails throughout a country and constitutes one of the sources of law of the land. A custom that businesses recognize and follow.
- c. Legal custom, a custom that operates as a binding rule of law, independently of any agreement on the part of those subject to it- often shortened as custom.³

Osborn's concise dictionary on the other hand defines custom as:

¹ John Wuol Makec, *The Customary Law of the Dinka People of Sudan: In Comparison with aspects of Western & Islamic Laws*, 1988 at 23.

² Bryan A. Garner, ed., *Black's Law Dictionary*, 9th edition, West publishing Co. United States of America, 2009 at 390.

³ *Id.* at.442.

A rule of conduct obligatory to those within its scope, established by long usage. A valid custom has the force of law. Custom to the society is what law is to the state. A valid custom must be of immemorial antiquity, certain, reasonable, obligatory, not repugnant to statute law, though it may derogate from the common law.⁴

Mr. Salt and Sir Carleton Allen rather than directly defining custom listed the elements to be fulfilled for a custom to be recognized by the society at large and formal justice system. Hence unless custom fulfils the following elements it shall not be recognized by a court. Thus custom must:

- a. Be of immemorial antiquity. The onus of proving its antiquity is bestowed on the person who asserts the application of the custom. The proof become easier however if its origin cannot be remembered. The burden of rebutting it lies upon the party against whom the custom is to be applied.
- b. Have been enjoyed as of right.
- c. Be certain and precise
- d. Have been enjoyed continuously.
- e. Be reasonable.⁵

A problem one can identify with the definition of Mr. Salt and Sir Carleton Allen is, there are no objective criterion by which we can universally measure whether a certain custom is reasonable or not. From the above definitions one can find the following common elements i.e., custom has the force of law, certain, its author is unknown, used for long and unvaryingly and not repugnant to human conscience though may differ from statute laws. Sally Engle Merry says during the UN Human Right Commission meetings, CEDAW committee hearings and UN genera recommendations equate culture to custom, and tradition.⁶

Despite the absence of defining custom unanimously, no author or scholar denies the importance of custom as sources of either civil or common law. Even though customary law is the extension of custom we need to define customary law separately for the purpose of this study.

⁴ John, supra note 1 at 82 quoted from John Burke, *Osborn's Concise Law Dictionary*

⁵ *Id.* at 24.

⁶ Sally Engle Merry, *Human Rights Law and the Demonization of Culture (And Anthropology along the Way)*, 2003 at 62 the electronic version can be at: <http://www.anthrosource.net>.

2.2. Customary Law

Customary law like custom is also defined differently by different scholars. Once again Black's Law dictionary defines customary law as a:

*Law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws. Also termed consuetudinary law.*⁷

Black's Law Dictionary defines customary law in the following way:

In contrast with the statute, customary law may be said to exemplify implicit law. Let us, therefore, describe customary law in terms that will reveal to the maximum this quality of implicitness. A custom is not declared or enacted, but grows or develops through time. The date when it first came into full effect can usually be assigned only within broad limits. Though we may be able to describe in general the class of persons among whom the custom has come to prevail as a standard of conduct, it has no definite author; there is no person or defined human agency we can praise or blame for its being good or bad. There is no authoritative verbal declaration of the terms of the custom; it expresses itself not in a succession of words, but in course of conduct.⁸

From the above definition one can say that though implicit, customary law by its nature develops over a long period of time and has strong obligatory values over those who abided by it. So keeping the general definition of custom and customary laws in mind, I shall discuss Oromo customary laws in general and Aloo Arsi in particular. Arsi, the Oromo people in general I believe, has developed detailed and democratic legal system before and during the 16th century under the umbrella of Gadaa system. In the Gadaa system every eight years by a large assembly or *Gumii* every law and regulations will be discussed and the unnecessary ones will be repealed and replaced with new ones. The laws are the reflection of customs, cultures, beliefs, usages that are developed through long practices by the people. Since the decline of the *Gadaa* system among the Oromo society in general and in Arsi in particular the people lived according to their customary laws, *safu*, *wayyu* (respect and sacredness). Every Arsi irrespective of sex, age, and where he/she lives abides *Aloo Arsi*.

⁷ Bryan, *Supra* note 2 at 443.

⁸ *Id.*

However, for the purpose of this paper the term customary laws refers to customs that are unwritten but memorized by the people and having legal force throughout Arsi land. Hence I prefer to use the term customary laws in line with the definition given to it by Lon L Fuller above and furthermore the term custom, tradition and culture will be used interchangeably in this paper. In the following few paragraphs I will assess the position of customary law in contemporary legal settings and international human rights instruments.

2.2.1. Customary Law and International Human Rights Instruments

Customary law is unquestionably recognized as a source of laws particularly within the civil law legal system⁹ As mentioned above, it is also one of the major sources of international law. Contrary to these, when we closely examine the wordings of some of the international human rights instruments they consider customary laws, cultures and traditions as complimentary to the international human rights instruments; and sometimes blame custom and/culture as discriminatory and oppressive of women. The problem is further complicated when interpreting the international human rights instruments during application and hence custom and cultures are usually perceived discriminatory against women. The failure to appreciate the importance of custom, culture or tradition to protect and promote women's rights is evident from practice UN General Assembly made its position clear on custom or tradition under Art.5 (a) of the Convention on sex role and stereotyping by calling on state parties to take appropriate measures:

To 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.¹⁰

By the same token the 1993 Vienna Declaration, though not binding, under part I paragraph 18 reiterate the position taken by the women's convention regarding culture and/or custom in the following languages:

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be

⁹ *Id.*

¹⁰ Convention on the Elimination of All forms of Discrimination Against women, adopted 18 Dec.1979, G.A. Res.34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46(1980) entered into force 3 Sep.1981, reprinted in 19 I.L.M.33 (1989) [herein after CEDAW].

eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.¹¹

The same Declaration under part II (B (3(38))) says the world conference stresses the importance of “...elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.”¹²

While commenting on women’s convention Hellum writes “Women’s Convention is based on the assumption that underdevelopment and gender inequality are caused by traditional values and traditional social structures.”¹³ She further concludes that the “Convention individualizes legal rights, setting up the new individual rights against the older communal rights.”¹⁴ Some writers argue that this move is against cultural set up and family structure of African society. Hellum is one of such writers and she claims that in response to the CEDAW “The family-based and gender-specific customary laws of different ethnic groups in Africa are ‘gradually being replaced by statutory laws molded on an individualistic notion of equal status.’”¹⁵ The same is true for the Oromo in general and Arsi in particular.¹⁶

When I argue that the international bills for women’s rights presumes customs, traditions and cultures as a threats to women’s rights it must be clear that I am not concluding that customs, traditions and cultures are the only guardian of women’s rights; and denounce CEDAW as playing no role in the protection and promotion of women’s rights. What I am trying to convey here is that CEDAW, the different UN committees and commissions should not have considered cultures, traditions and customs as contradictory elements with the principles of women’s rights and fundamental freedoms because there are instances where customs and/or traditions plays a

¹¹ Vienna Declaration and Programme of Action, U.N. GAOR, World Conf.onn Hum.rts., 48th Sess., 22nd Plen.mtg. U. N. Doc. A/CONF.157/24 (1993), reprinted in 32 I.L.M.1661 (1993).

¹² Id.

¹³ Id.

¹⁴ Marit Tolo østebø, Respected Women: A Study of *Wayyyuu* and its Implication for Women’s Sexual Rights among the Arsi Oromo of Ethiopia, 2007 at 77 (Unpublished Master’s thesis in International Health, University of Bergen, Norway).

¹⁵ Id.

¹⁶ See Oromia Family Law, Magalata Oromia Proclamation No.69/1995 and 83/1996. Magalata Oromia Extraordinary Issue NO.69/1995 and 83/1996, Finfinnee, July 1996 Ethiopian Calendar (Available only in Afaan Oromo and Amharic).

vital role in protecting gender based violence and fighting discrimination against women so that the two will reinforce each other.

The Vienna Declaration and Program of Action try to compromise culture/custom with women's rights. On the one hand as mentioned above it urges participant government and member states to the CEDAW to eradicate customary and cultural practices that are detrimental to women's rights while on the other hand it emphasizes the importance of culture, historical background, religion and regional particularities during implementation of human rights and fundamental freedoms.

Under Part I paragraph 5 of the Declaration it is stated that:

...While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms with the same emphasis, equal manner and the same footing.¹⁷

Bearing in mind the binding nature of CEDAW and the non-binding features of the Vienna Declaration the latter has taken an important move to recognize local customs, cultures as well as religions that play significant role to protect and promote women's rights in particular and human rights in general though not in the same manner as that of the international human rights instruments stipulates. However, the recognition of culture, custom and religious backgrounds does not mean states can derogate the internationally recognized human rights principles and fundamental freedoms. It is not only the Vienna Declaration that gives due attention to customs and/or traditions, rather so many countries have included customary laws that better protect peace, stability and human rights and fundamental freedoms.

In Canada, customary Aboriginal law has a constitutional foundation and it has increasing influence on the Canadian legal system.¹⁸ Similarly in Scandinavian countries customary law continues to exist and has significant influence. In some African countries also customary law is used alongside civil or common laws.

¹⁷ Vienna Program of Action supra note 12 Part I paragraph 5.

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¹⁸ Wikimedia Free Encyclopedia supra note 8.

Correspondingly, in 1995 President of Kyrgyzstan Askar Akaev announced a decree to revitalize the *asqaqal* courts of village elders, having a jurisdiction over property, tort, and family law and eventually these courts were included under the Kyrgyz constitution.¹⁹ According to the same source, *asqaqal* courts also exist in countries of Central Asia. The Somalis, including the Ethiopian ones, also widely apply their customary law i.e., *Xeer* in their daily economic, social and political interactions.²⁰

The practice of the above mentioned countries exhibit that the recognition of customary laws by the modern or contemporary legal system and international human rights documents is vital in the sense that people have strong commitment towards their customs and abide by it than statutory laws. When ruled by customary or cultural practices since people feel that they abide their ancestors they defend and support such laws.

Coming to the situation of Ethiopia the 1994 Constitution of the Federal Democratic Republic of Ethiopia has given recognition to customary laws and practices provided that such customs or practices are not repugnant²¹ to the principles enshrined in the constitution. Art. 34(5) of the constitution allows adjudication of disputes which are related to personal and family matters in accordance with the customary laws based on the consent of the disputants and Art. 78(5) of same constitution empower the House of Peoples Representatives and State Councils “to establish or give official recognition to customary laws”. The same principle is reiterated under Art.43(4 and 5) of the Constitution of the Oromia National Regional State.²² However, despite the legislative recognition of customary laws, and the existence of Oromo customary laws that do not contradict with the basic principles of constitutions as well powerfully influencing the socio-political life of the people, there is nearly no attempt or willingness on the part of either national or regional legislators either to codify the customary laws or to establish customary courts.

2.3. The Concept of Women’s Rights

¹⁹ Id.

²⁰ Id.

²¹ Federal Negerit Gazeta, The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No.1/1995, Addis Ababa 21st August 1995, Art.9 cum 34 and 78.

²² Magalata Oromia, A Proclamation to Enforce the Oromia Regional State Revised Constitution of 2001, Proclamation No.46/2001, 2nd edition, Adama 27 October 2

2.3.1. Is women's right not a human right?

If women's rights are human rights then why we need to treat woman's rights separately?

It seems that since the idea of women's right is no more different from the general notion of human rights discourse, it makes common sense to discuss about women's rights; hence the claim that women have human rights seems quite ordinary. Women's human rights simply states that as human beings women have human rights. But Charlotte Bunch and Samantha Frost argue that, practically the recognition of women's rights as human rights has its own advantages to make women's rights more meaningful. Because the recognition of women's rights into human rights standards forces the recognition of the dismal failure of countries worldwide to accord women the human dignity and respect that they deserve—simply as human beings.²³

Legislatively, the different UN organs and other international and regional organizations have long recognized women's rights as a human rights and the equality of men and women. To mention few of them: the Charter of UN under Article 1 clarifying the purposes of the UN, says to maintain and improve international peace and security the UN shall "...promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."²⁴ The principle of equality of men and women is once again capitalized under the preamble of the Charter of UN. By the same token the UDHR, recalling the purposes of the Charter of UN guaranteed "the equality of men and women and addressed the issues of equality and equity."²⁵ This Declaration entitles all human beings, without any distinction whatsoever, the rights to security of a person, torture, freedom from being enslaved, freedom of movement, speech, right to choose one's own religion, right to assembly and peaceful demonstration etc.

The two international human rights Covenants adopted in 1966 and entered into force in 1976 both binding on the states parties have unequivocally recognized the equality of men and women

²³ Charlotte Bunch et al, *Women's Human Rights: An Introduction*, Published in Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge, Routledge, 2000.

²⁴ Charter of the United Nations, adopted 26 June 1945, entered into force 24 Oct. 1945, as amended by G.A.Res. 1991. (XVIII) 17 Dec. 1963, entered into force 12 June 1968 (638 UNTS 308); AND 2847 (XXVI) of 20 Dec. 1971, entered into force 24 Sept. 1973 (892 UNTS 119).

²⁵ Universal Declaration of Human Rights, UN General Assembly, 10 December, 1948, 217 A (III), U.N.GOAR, 3rd sess. (Resolution, part 1), at 71, U.N. Doc. A/810(1948), reprinted in 43 AM. J. INT'L L. Supp. 127 (1949) [hereinafter UDHR], available at: <http://www.unhcr.org/refworld/docid/3ae6b3712c.html> [accessed 21 April 2011].

and further put obligations on the state parties in greater detail and meaningful manner, to take all the necessary steps for the protection and promotion of women's rights.²⁶ In 1946 the United Nations Commission on the Status of Women, was established by the UN General Assembly to monitor and promote women's human rights. Hence this commission played an instrumental role in shading light on areas where women were discriminated based on gender and in the adoption of CEDAW in 1979 under the auspices of the United Nations General Assembly. CEDAW entered into force on September 3, 1981. This convention is the first binding international human rights instruments dedicated entirely to women's rights and thus termed as "International Bill of Rights for Women". Only six UN member states have not yet signed the CEDAW. These are: Iran, Nauru, Palau, Somalia, Sudan and Tonga. United States, Niue and the Vatican City have signed but not yet ratified it.²⁷ In addition the issue of women's rights is also addressed by the Convention on the Rights of the Child (CRC) which establishes another range of rights for girl children. There are also other important international and regional human rights instruments that play vital role in defining women's rights and provide guidelines for states in the effort to full realization of women's rights and fundamental freedoms.

The rights spelled out in the Charter of UN, UDHR, ICCPR, ICESCR, CEDAW (the first international binding treaty which is dedicated to women's rights and bans any forms of discrimination against women in its entirety), CRC and other similar international and regional human rights documents are not exclusive of women i.e., those rights mentioned under these documents are the rights of every women. And the same is true of other human right treaties, conventions and declarations. Majority of the world countries have also signed and ratified the hereinto mentioned human rights documents and other major human rights instruments. To give effects to the principles stated in these instruments majority of world countries have reiterated into their national legislations the basic principles enshrined in such documents.

However, contrary to all these moves and efforts the status of women's rights remains either unchanged or the status quo is maintained all over the world justifying the redefinition of

26 International Covenant on Civil and Political Rights, G.A.res.2200A (XXI), 21 U.N.GAOR Supp.(No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force Mar.23, 1976, text can be available at <http://www1.umn.edu/humanrts/instr/b3ccpr.htm>; International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976. Text at http://www.unhcr.ch/html/menu3/b/a_ceschr.htm

27 Wikipedia, supra note 8.

women's human rights and a need to re-emphasis women's human rights concepts. In line with this argument different international human right conferences and women's movements around the world have shown us how women were/are marginalized and discriminated because of their gender. Charlotte Bunch and Samantha Frost agree that "Current human rights definitions and practices fail to account for the ways in which already recognized human rights abuses often affect women differently because of their gender."²⁸

Therefore, though at the face value the concept of women's human rights may seem very obvious, making common sense and the claim that women have human rights seems quite ordinary; the recognition of women's rights as a human rights is critical in reminding governments and other organs for the full implementation of human rights of women that they deserve by the mere fact that they are human beings. Hence different international human rights conferences and prominent individuals reemphasized women's rights as human rights. To cite few examples: During the Fourth World Conference on Women held in Beijing in September 1995 it was declared under Art.5 of the Declaration that "Women's rights are human rights."²⁹ The UN division for Women while reviewing the four World Conferences emphasizes the importance of revitalizing women's rights as a human rights and the need to restructure the society and its institutions regarding the issue of gender for the full implementation of equality of men and women. It states:

The fundamental transformation that took place in Beijing was the recognition of the need to shift the focus from women to the concept of gender, recognizing that the entire structure of society, and all relations between men and women within it, had to be re-evaluated. Only by such a fundamental restructuring of society and its institutions could women be fully empowered to take their rightful place as equal partners with men in all aspects of life. This change represented a strong reaffirmation that women's rights were human rights and that gender equality was an issue of universal concern, benefiting all.³⁰



²⁸ Charlotte, supra note 24.

²⁹ Beijing Declaration, Art.5.

³⁰ The committee reviewing the four women's world conference

In a similar fashion Hilary Rodham Clinton addressing the fourth world conference on women making a remarkable speech about women's rights urged the conference to recognize that "...human rights are women's rights and women's rights are human rights once and for all."³¹

In response to different human rights legislations at all levels, different wave of feminist movements and international conferences on women the status of women has been improved to a great extent. According to Seager there are "Some remarkable improvements in the state of women since the adoption of the different international human rights instruments."³² She adds further that:

In recent years improvement in women and girls' literacy and education top the list of global success stories; women have won voting rights and the right to hold public office in all but a small handful of countries; most of the world's governments have signed international treaties committed to women's rights.³³

The limitedness and absence of uniform and successful protection and promotion of women's rights across the globe is also emphasized by the 1995 Beijing Declaration in the following way: "The status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between women and men have persisted and major obstacles remain, with serious consequences for the well-being of all people."³⁴

From the above quotations one can deduce that, though the international community is moving in the right direction towards the achievement of equality between women and men and in the fight against discrimination of women, the progress is unsatisfactory and even sometimes backward looking. The struggles made by different organs have not yielded the desired results and yet there is a need to travel long distance. Seager comments in this regard:

Overall, the 'success story' list is depressingly short. Many women around the world have experienced an absolute decline in the quality of their life over the

³¹ Hilary R. Clinton, *American Rhetoric: Top Hundred Speeches*, Remarks to the U.N. 4th World Conference on Women Plenary Session, delivered 5 September 1995, Beijing, China n, delivered 5 September 1995, Beijing, China.

³² Joni Seager, *The Atlas of Women in the World*, 3rd edition 2003 at 7.

³³ *Id* at 7.

³⁴ Beijing Declaration, *supra* note 30 Art. 5.

past decade. Improvements in one place are not necessarily transferable to other places: we remain in a world divided.³⁵

She adds that though several men and women are now living in dire poverty, “women remain the poorest of the poor.”³⁶ Millions of women around the world are daily subjected to large-scale enslavement, oppression including sex trafficking, FGM, and domestic violence.

The wide spread violation of women’s rights was also acknowledged by the Vienna World Conference on Human Rights held from 14- 25 June 1993. It was mentioned under the preamble of the declaration that the Conference was deeply concerned about the “Various forms of discrimination and violence, to which women continue to be exposed all over the world.”³⁷

Similarly, during the 1995 Beijing world conference on women it was recognized by the participating governments that the status of women was not advanced up to expectations and varies from place to place. Under Art.5 the participating governments recognized that:

....the status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between women and men have persisted and major obstacles remain, with serious consequences for the well-being of all people.³⁸

The failure to achieve equality between men and women is also evident from the writing of Marit which says: “So far no country has come close to achieving gender equality and even countries such as Norway and Luxembourg who have achieved relative equality, still experience violence against women as a significant problem.”³⁹ The persistence of inequality between men and women and the continues discrimination of women contrary to the above mentioned efforts will lead us to the question why the international community could not achieve equality of women and men and eradicate gender based violence against women.

As to the failure to achieve equality of women and men and failure to fully implement women’s human rights and fundamental freedoms, different authors, international conferences on human rights and human rights documents have come up with different reasons. Charlotte Bunch and

35 Seager, supra note 33.

36 Id.

37 Vienna Declaration of Action, supra note 30.

38 Id.

39 Marit, supra note 15

Samantha Frost claim that “Tradition, prejudices, social, economic, and political interests have combined to exclude women from prevailing definitions of ‘general’ human rights and to relegate women to secondary and/or ‘special interest’ status within human rights consideration.”⁴⁰

They (Charlotte Bunch and Samantha Frost) go on arguing that the artificial division of “public” and “private” spheres compounded the problem of women by limiting the jurisdiction of the government. According to them whatever is done in public is the subject of regulation by government machineries while those in private are out of the ambit of government scrutiny. Traditionally women have been relegated to the private sphere of home and family; while the typical citizen has been portrayed as male.⁴¹ Therefore, the gender nature of the private and public split lead to the human rights violations between private individuals have been made invisible and presumed to be beyond the scope of a government.

The participating governments to the Beijing Declaration in 1995 also agreed that economy is one factor that hinders the full realization of women’s rights. They have recognized that “the status of women is exacerbated by the increasing poverty that is affecting the lives of the majority of the world's people, in particular women and children, with origins in both the national and international domains.”⁴²

On the other hand as mentioned above CEDAW, the 1993 Vienna Declaration and the 1995 Beijing Declaration during the 4th World Conference on Women stressed among other things that culture, tradition and religion as impediment to achieve equality of men and women and consider them as exacerbating gender based violence against women. These instruments and different declarations portray customary law, religion and culture responsible for the persistence of discrimination against women.⁴³ Similarly General Recommendation No.23 has taken similar position and states:

In all nations, the most significant factors inhibiting women’s ability to participate in public life have been the cultural frame-works of values and religious beliefs, the lack of services and men’s failure to share the tasks associated with the

40 Charlotte, supra note 24.

41 Id.

42 Beijing Declaration, supra note 30.

43 Marit, supra note 15.

organization of the household and with the care and raising of children. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active household and with the care and raising of children. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.⁴⁴

After carefully analyzing these documents some writers argue that the discriminatory practices against women in Africa and elsewhere merged with “a more general critique of cultural practices that harm women, while cultural practices that protect women receive far less attention.”⁴⁵ Merry goes on and concludes:

Human rights lawyers talk about culture, they refer to it as traditional harmful practices, old customs, and sometimes, as ancient ways. They see themselves and their project as rooted in modernity and law and envision culture as the obstacle. ... This understanding of culture is embedded in the conventions and policy documents, the wider jurisprudence of human rights, and in the discussions that take place in human rights forum.⁴⁶

Though such attributes to culture is not totally wrong, culture or tradition or religion alone should not take all the responsibilities “to the exclusion of political, economic or structural factors.”⁴⁷ On the other hand the above position about culture, custom or religion is seriously challenged by those who have made close examination of African culture, tradition and religion. In African gender-egalitarian societies women and men are conceived as social complements rather than competing elements.⁴⁸ She tried to show the complimentary and dual gender relation among Arsi in the general Oromo world view, in which both sex are represented in the form of deity exemplified by *ayyana ateetee* and *ayyana abbaa*. She also mentioned other Arsi collective cultural institution which indicates “women’s religious superiority to men” and emphasizes

44 UN Committee on the Elimination of Discrimination against Women (CEDAW), CEDAW General Recommendation No.23: Political and Public Life, 1997, A/52/39, available at:<http://www.unhcr.org/refworld/docid/453882a622.html> [accessed 19 April 2011]

⁴⁵ Merry, in Marit, supra note 15 at 58.

⁴⁶ Id.

⁴⁷ Sally, supra note 6 at 62.

⁴⁸ Marit, supra note 15 at 76.

“gender equality and individual autonomy.”⁴⁹ Marit quotes Green’s position on this issue as follows:

...there are other similar institutions across Africa and the collective actions expressed through mobilizations is a highly effective political weapon and based on the existence of such networks and support-systems, African women have ‘traditionally’ exercised many of the rights that contemporary feminist have long been demanding.⁵⁰

According to these writers, the way women’s right or more precisely equality between men and women understood by major international human rights instruments including CEDAW is quite different from the African social set up. They argue that CEDAW emphasizes gender equality and individual autonomy with special focus on women’s rights ‘on the basis of equality with men’.⁵¹ This is based on the assumption that human rights are universal and the concept of universality is understood from the western point of view. The universality of human right is proclaimed under the UDHR and more emphasis is given to it during the 1993 Vienna conference on the assumption that the western culture or tradition is the bases for human rights development. It has been claimed that the concept of human rights is originated from the western traditions such as from the teachings of Greeks philosophers, the 1215 Magna Karta of England, the American Bill of Rights, the 1791 French Declaration and Rights of Man and Citizen etc. On the other hand, the concept of universalism is challenged particularly by Asian and African representatives on the base of non-inclusion of Asian and Africa values, traditions and customs into the international human right documents. Regarding women’s rights the Universalists claim that women’s rights as independent individuals should be the same regardless of time and place while according to Cultural Relativists, human rights should be applied and understood within cultural and local contexts. The purpose of rising the debate between universalism and relativism here is not go into the endless debate between the two camps rather it is only to show that human rights in general and women’s rights in particular could not be enforced uniformly throughout the world by ignoring local customs, traditions and religions which embrace clan or lineage democracy. Anne Hellum, strengthens the importance of considering local customs and traditions to improve women’s situation rather than largely

49 Id.

50 Id.

51 Id at 74.

depending on the imported concepts of equality of men and women in the following words. “There is considerable disagreement as to the efficacy of imported Western law in improving the position of women in law and society.”⁵²

2.3.2. Legal Pluralism and Human Rights in Ethiopia

The term “legal pluralism” has been used for many years in various ways without a widely accepted definition according to Manji. Manji claims that legal pluralism has been advanced only during the last 30 years and he defines it as “...a situation in which two or more legal systems coexist in the same social field.”⁵³ On the other hand Jacques Vanderlindern broadly defined legal pluralism as the “existence in a certain society of different legal mechanisms to be applicable to an identical situation” while Peter Sack defines legal pluralism as “a plurality of law [...] of an ideological commitment,” which is “never integrated in a systematic fashion [...] but a conglomerate of (more or less diverse) phenomena.”⁵⁴ Hence one can conclude that when different systems of law exist parallel to one another within a society we can call such system as legal pluralism. The concept of legal pluralism emerged from the study of indigenous law among African societies particularly of the colonized nations. Post colonial study about African culture and tradition depicted that African people have both their own indigenous as well as European laws. Perhaps the existence of legal pluralism is not only limited to “traditional” societies but also exists in the so-called “modern” societies too.⁵⁵

In Ethiopia the different ethnic groups have their own respective customary and traditional legal institutions beside the formal state law. The later is “strongly influenced by European state law.”⁵⁶ Most African state law became dual or plural as a result of European colonization while Ethiopia accepted or borrowed European and Indian laws by her own will. According to Donovan and Getachew Assefa “in many cases the language of the constitution of the 1994 FDRE Constitution is almost identical to the international human rights instruments to which Ethiopia is signatory.”⁵⁷ Notwithstanding the total adoption of the rights recognized under the

⁵² Anne Helling, *Human Rights and Gender Relations in Postcolonial Africa: Options and Limits for the Subject of Legal Pluralism* 1997, at 649.

⁵³ Ambreena S Manji, *Imagining women’s Legal World: Towards a Feminist Theory of Legal Pluralism in Africa* 1999, at 437.

⁵⁴ Masaji Chiba, *Other Phases of Legal Pluralism in the Contemporary World*, *Ratio Juris*. Vol. 11 No. 3 September 1998 (228-45)

⁵⁵ *Mamo Hebo, Land, Local Customs and State Policies, Shoukadoh Kyoto, 2006 at 111.*

⁵⁶ Donovan and Getachew, in *Marit*, supra note 15 at 508.

⁵⁷ *Id.*

international human rights documents, the 1994 Ethiopian Constitution guarantees the Ethiopian “Nation, Nationality and People” to develop their culture and allows adjudication of disputes relating to personal and family matters in accordance with customary and religious laws (Constitution FDRE 1994 Art.34 (5)).⁵⁸ One third of the constitutional provisions are dedicated to human rights and fundamental freedoms. Despite the guarantee of equality of sex and non-discrimination against women by other provisions of the constitution Art. 35 is totally dedicated to women’s rights and it reiterates those rights of women recognized by international human rights documents.

But the commitment of Ethiopian government to the international human rights standards on the one hand and to the preservation and development of multiple customary laws, almost more than sixty different ethnic groups, of which some are operating independently of the state laws creates significant tension.⁵⁹ In the case of Oromo they are becoming more and more plural than before as a result of the alteration of *Gadaa* based laws in response to the economic, social, political and ecological changes.⁶⁰ He cited three major causes for the Oromo to adopt plural legal system and other institutions in a similar fashion. These are the 16th century Oromo expansion, adoption of non-native religions by Oromo which triggered adoption of religious laws and also weakened the indigenous Oromo laws and lastly the Abyssinian invasion of Oromo in late 19th century that eventually imposed new laws on Oromo.⁶¹ In our case, Arsi, as a result of the above cited factors adopted *aloo* Arsi, as a follower of Islam (at least officially) Shari’a laws and formal state laws were imposed on them.

⁵⁸ Federal Negerit Gazeta, The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No.1/1995, Addis Ababa 21st August 1995, Art.9 cum 34 and 78.

⁵⁹ Donovan and Getachew, in Marit, supra note 15 at 508.

⁶⁰ Mamo, supra note 56.

⁶¹ Id.

Chapter Three

3.1. Brief Historical Aspect of Arsi

The word Arsi refers to the largest Barentumma¹ moiety branch of Oromo and it is a name given to two zones in which Arsi people reside. According to oral traditions the name Arsi is derived from a legendary father called Arsi/Arse who in turn begotten two sons (Siikkoo and Mando) who are the founding fathers of the present entire Arsi people.² Primarily both brothers used to live together around Madda Walabu in the present day Bale highlands while early in 16th century the Siikkoo³ moiety moved north ward crossing Wabe Sheballe River during the great Oromo expansion to settle in the present day Arsi, West Arsi and Southwestern Shoa zones of Oromia National Regional State. The Mando moiety on the other hand remained south of Wabe Shabelle constituting the present Bale administrative zones of Oromia National Regional State.

Arsi, in general have developed a strong social tie through what is called *Arsoma* (Arsihood). It plays a vital role in keeping their unity, fraternity, integrity, inter-dependence and brotherhood; particularly during difficult days in the history of Arsi people.⁴ It is the duty of every Arsi to provide assistance and/or defend a person who claims *Arsoma* hood throughout Arsi land and beyond. This is one unique feature that differ them from the other Oromo groups.

Before and after their movement Arsi were organized under *Gadaa* system and other democratic institutions dedicated of course to women such as *siinqee*, *ateetee* and *qanafaa*. They were independent from foreign dominance or rule up to the late 19th century. But during 1980's and early 1990's Abyssinians led by Emperor Menelik conducted successive colonial campaign against Arsi. A significant number of studies have shown that Menelik faced one of the stiffest

¹ Abbas Haji, Arsi Oromo Political and Military Resistance Against Shoan Colonial Conquest (1881-1886), *Journal of Oromo Studies*, Volume II, Number 1 & 2, Winter 1995 & Summer 1995 at 3; Kedir Bullo, *The Quest for, Revitalizing the Interface between State Laws and non-state Laws (Oromo Laws): A Survey of Gumaa in Arsi Oromo in Light of the Criminal Justice Administration of Ethiopia, 2008 at 33 (Unpublished Senior Thesis, School of Law, Addis Ababa University).*

² *Id.*

³ See Abbas Haji *supra* note 1 for the detail of Arsi descendants.

⁴ *Id.* at 15.

resistances from Arsi during his conquest of the southern part of Ethiopia.⁵ As a result both sides have suffered heavy material losses and human casualties. Commenting on Arsi's resistance against Menelik and the disastrousness of the war Asmarom wrote:

The Arsi Oromo were another people who resisted the Shoan conquest, and paid a heavy price for it. This defensive war was one of the bloodiest in the colonial era. An estimated six thousand victims were massacred in one battle; the mutilation of prisoners was conducted on a massive scale, and one of Menelik's generals cut off the right hands of 400 victims in one day.⁶

Abbas also argues that Arsi were more united than other groups of Oromo in resisting the Shoan or Menelik's conquest and they fought effectively making the war difficult, long and bloodiest involving Menelik and his prominent generals personally. Mamo also confirms this fact as follows: "Arsi Oromo posed one of the fiercest resistances the colonizing forces of Emperor Menelik ever encountered. It took the gun-bearing army of Emperor Menelik a solid six years to conquer spear-throwing Arsi pastoralists."⁷ Arsi's bravery is also witnessed by Menelik's soldier who warned *ras* Darge the impossibility of exterminating them. He reported

"If you come here [Arsi], you are lost. The Arsi are like the grasshoppers; you could cover the ground with their corpses; you cannot exterminate them. They will come back, they will find you harassed and without munitions, and they will tear you to pieces."⁸

The Emperor made frequent and several campaigns to break Arsi's resistance and Asmarom says Arsi's proximity to the expanding Christian Kingdom put them in a disadvantageous position as compared to the other groups of Oromo.⁹ Abbas accounted about the war between the Shoan and Arsi as follows:

...it represented one of the bitterest anti-colonial struggles in the Horn of Africa. The long years it took and the human and material losses it provoked largely

⁵ Asmarom Legesse, *Oromo Democracy: an Indigenous African Political System*, the Red Sea Press, Inc. Asmara, Eritrea, 2000 at 20; see Mamo Hebo, *Land, Local Custom and Policies: Land Tenure, Land Dispute and Dispute Settlement among the Arsi of Southern Ethiopia*, Kyoto, 2006 at 48.

⁶ Asmarom, supra note 5 at 20

⁷ Mamo, supra note 5 at 47-48.

⁸ Father Martial de Salviac, *An Ancient People in the State of Menelik: The Oromo (Said to be of Gallic Origin) Great African Nation*, Paris, 1901 at 352 translated by Ayalew Kanno, Michigan 2005.

⁹ Asmarom, supra note 5 at 22.

exceeded that of Adwa which was fought between Ethiopia and Italy. It even led to atrocities and mutilations which none of the contemporary European colonial powers practiced in the Horn of Africa.¹⁰

Among the many battles fought between Arsi and Menelik according to Abbas the battle of Azule which took place on September 6, 1886¹¹ was the worst. Menelik's war generals, almost after they came victorious and towards the conclusion of the war, carried out a retaliatory measure against the Arsi and carried out massive killings and mutilation of limbs and breasts. This battle is known as *Aannolee Harka Mura* and *Harma Mura* (Aannolee's mutilation of hands and breast).¹²The basic objective of *annolee harka mura and harma mura* is nothing but a retaliation for the resistance the Arsi posed to Menelik and a warning for the future. The atrocity committed against women by Menelik (*mutilation of the right breast of women*) was unprecedented in the history of Oromo people and other colonial war conducted in the horn of Africa by European.

Asmarom and Abbas claim that the prime motives behind the conquest were accumulation of wealth and building up of personal status by Menelik and his war generals.¹³ The former and his conquering members including soldiers by using public office accumulated wealth through: *gults* (fiefs) and *ristis* (land grants), in the form of ivory, gold and slavery and by expropriating land from the conquered peoples.¹⁴ In order to achieve his purpose Menelik expropriated land from Arsi and relocated it to his soldiers, priest, and followers as well as to administrators as a reward for what they delivered to him during the war.¹⁵ Mamo found that as a result of land alienation, the Arsi communal land holding system has been replaced by private land tenure system which was the northern Ethiopian style of land holding system. Hence the majority of Arsi became *Gabar* (serfs) after the conquest. The rationale behind confiscating land from the conquered was clear from the writing of Darkwah and Pankhurst. The former says: "For military as well as political reasons, it was unsafe for the conquering state to leave the conquered people in peaceful

¹⁰ Abbas, supra note 1.

¹¹ Abbas Haji, *The History of Arsi (1880-1935)* B.A. thesis, Addis Ababa University, 1982 at 36 (Unpublished BA Thesis, Institute of Ethiopian Studies).

¹² Id. at 44.

¹³ Asmarom, supra note 5 at 17.

¹⁴ Abbas, supra note 10 at 44.

¹⁵ Darkwah, cited in Abbas, supra note 10 at 44?

occupation of their lands.”¹⁶ Pankhurst also emphasizes the general land alienation process by Menelik after conquering the southern part of the present day Ethiopia in the following manner. “The new land tenure was dictated by the speed of conquest, the need to quarter soldiers in the area, the distance from the capital and difference in culture between the administrators and the people of the south.”¹⁷ According to the same source and my informants since Arsi’s land is highly fertile and suitable for modern farming, more than three quarters of the total land was confiscated and allocated to the conquerors’ family, relatives and settlers. Before the conquest, land was communal and no one (male or female) was individually entitled to land; land is held by *gosaa* (clan). But after the inclusion of Arsi into the Abyssinian Empire, the Arsi themselves started to think of acquiring land individually raising the issue of land holding right between men and women. As explained above the inclusion of Arsi into the Ethiopian empire has not only changed land holding system but it changed the entire economy, culture, social organization, administrative structures and religion. Arsi’s administrative system and other democratic institutions at least ignored, at most abolished and replaced by the autocratic and unlimited number of terms of office. After the conquest the Arsi experienced harsh and oppressive rule from Amhara and this in turn led the former to make successive rebellion against the Ethiopian empire at different times.¹⁸ Though there were a number of revolts against the Abyssinians, the most decisive one was the one led by General Waqo Gutu which started in 1963 and suppressed by brutal army force of Emperor Haile Sellasie in 1970.¹⁹ These points are discussed here because it is this historical land mark that caused massive religious conversion, replaced or at least weakened the democratic and indigenous political and social organizations of the conquered people inviting competition among the application of religious laws, customary laws and statutory laws in general and with respect to women’s right in particular. So this historical background of Arsi in general helps us in an attempt to understand women’s rights under Arsi customary laws *visa-á-vis* women’s rights as stipulated by major international human rights instruments.

3.1.1. The People

¹⁶ Pankhurst, cited in Abbas, *supra* note 10 at 44?

¹⁷ Mamo, *supra* note 5 at 48; see also Marit Tolo østebø, *Respected Women: A Study of Wayyuu and its Implication for Women’s Sexual Rights among the Arsi Oromo of Ethiopia*, 2007 at 41 (Unpublished Master’s thesis in International Health, University of Bergen, Norway).

¹⁸ Mamo, *supra* note 5 at 48.

¹⁹ Abbas, *supra* note 10 at 17; see also Kedir, *supra* note 1 at 33.

The Arsi is divided into two moieties namely Siikkoo and Mandoo which are further divided into complex cluster groups. The former is divided into five branches (Bullalaa, wuchala, Jawii, Illanii, and Wajii) while the later is divided into seven (Utaa, Wayyuu, Kojii, Qoomaa, Hawtaa and Harawwaa).²⁰ According to Mamo, Arsi follows “a patrilineal descent system and their “largest descent organization is gosa (clan)”.²¹ He estimates the population of Arsi to be between three to four million in the year 2000. Arsi also resides in Bale administrative zone which is out of the study area. Arsi, like all other Oromo groups, speak Afaan Oromo or *Oromiffaa* (Oromo language) which is the official language of the Oromia national regional state. Notwithstanding the absence of official figures as to how many of them follows which religion, it is commonly believed that majority of them follow Islam while *Waqeffanna* (Oromo belief system) is still practiced in pocket of areas and few of them also follows different sects of Christianity. In this regard Mamo who has made extensive study on Arsi’s custom, land use and dispute settlement mechanism has to say the following:

They [Arsi] are predominantly followers of Islam. A smaller section of the inhabitant follow Waqeffannaa, a belief in Waaqa (God in Oromo), which is the indigenous belief system of the Oromo, and Christianity (both Ethiopian Orthodox and Protestant Christianity).²²

According to the same author polygamy is the usually practice among Arsi and marriage is “exogamous at least at a gosa (clan) level”.²³ But currently, according to informants and office for women, children and youth at the three zones of the study area polygamous and bigamous marriage are gradually declining because of the influence of economic and formal education. On the opposite, though exogamous marriage is the norm among Arsi, because of Islamic influence recently endogamous (marriage to one uncle or nephew is allowed under Shari’a) marriage²⁴ is becoming a common practice particularly in areas where the influence of Islam is strong. Further though the study area is predominately inhabited by Arsi because of exposure to different

²⁰ Mamo, supra note 5 at 9.

²¹ Id. at 33

²² Mamo supra note 10 at 17.

²³ Herberland, cited in Kedir Bulo 2008 at 31.

²⁴ Mama Bedane, 1986 at 15.

religion and contact with other peoples there is insignificant cultural, religious and legal variations from locality to locality. For instance Islamic religion is getting deep rooted in the eastern part of the study area while the western part are strong protector of the original Arsi religion and customary laws as well as women's institutions.

3.1.2. Arsi Socio-Political Institutions

Arsi has developed various democratic institutions which are unique to them. These institutions helped them to make peaceful succession to power at every eight year interval and also constrained authorities from abusing and misusing their power. These institutions also helped in distributing power across the entire population. That is why there is no recorded history of coup d'état in any Oromo groups. Some of the institutions are exclusively dedicated to one sex while others entertain both sexes. Among Arsi's political, social and military institutions only *Gadaa* system, *siinqee*, *atetee* and *qanafaa* institutions will be dealt with.

Gadaa

Despite the fact that *Gadaa* is not a major theme of this paper since it shades some light on where women's rights lie in the Arsi socio-political system it will be briefly discussed. As mentioned in the introductory part of this study, *Gadaa* is a common denominator for all Oromo people. According to Mama "Jilaa is the law making organ composed of elected and delegated representatives from all Arsi clans"²⁵ and Odaa Robaa or Madda Walaabau serve as law making centers for the entire Arsi. But after the 16th century great Oromo expansion Arsi did not have had a single leading clan as a leader of their *Gadaa* system and Haberland commented on this issue as:

Unlike the other Oromo tribes the Arsi do not have a single tribal heads in the person of the leader of their *Gadaa* system. The territory they occupied was too extensive. They therefore, split up into a number of *Gadaa* areas each with its own rules differing from one place to another.²⁶

The absence of a centralized and unifying *Gadaa* leader among the Arsi was compounded when Arsi fall under the Shoan rule. In fact the Shoan conquest not alone affected Arsi's *Gadaa*

²⁵ The term *siinqee* is popularly used by Arsi while in the western part of Oromia it is pronounced and spelt as *Siiqqee*.

²⁶ Marit, see supra note 18.

institution but brought about radical change in the entire socio-political structure of Arsi. Abbas commented: "Since the subjugation of Arsi the democratic and republican form of the Gadaa institution lost its social and political significance and was replaced by an autocratic and exploitative administration".²⁷ He further argued that the democratic and republican form of *Gadaa* was replaced by a hierarchical and exploitative form of government. Similarly, D. Levine claims that in those tribes who continued to practice *Gadaa* after their conquest, the military and legislative aspect of *Gadaa* has been restricted only to observance of religious ceremonies.²⁸ Abbas also indicates that active *Gadaa* observance and practice went on up to 1930s when it was finally doomed to a failure by the expansion of Islam.²⁹

Mamo, who has recently made an extensive field work among the Arsi, on the other hand found that despite Gadaa's decline in political significance among Arsi its importance and influence is not totally withered away.³⁰ The information I gathered during my field work and my observation also confirm that the concept of *Gadaa* elements is still highly influential in socio-political activities of Arsi. Even if the politico-military aspect of *Gadaa* system is dominated by male section of the society it also embraces women's institution such as *siinqee*, *ateetee*, *qanafaa* which totally excludes men. Thus the importance and role played by these institutions in the protection and promotion of women's rights will be discussed in greater detail in the next two chapters.

²⁷ Kuwe Kumsa, *the Role of Siiqqee Institution of Oromo Women*, the *Journal of Oromo Studies*, Volume, 4, No.1 & 2 (July 1997),

²⁸ *Id.*

²⁹ *Gammachu Megerssa cited in supra note 32 at 119.*

³⁰ *Id.*

Chapter Four

Women's Civil and Political Rights under Arsi Customary Laws vis-à-vis International Human Rights Instruments

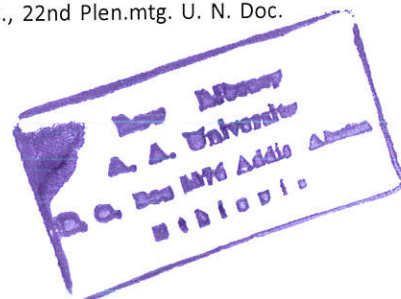
Introduction

This chapter outlines the basic and fundamental civil and political rights of women that are enshrined under the International Bill of Human Rights¹ vis-à-vis women's rights recognized under Arsi customary laws (*aloo Arsi*). Since customary laws usually deal with the daily and practical life/problem of a particular society they are not available in a written form. Hence, such laws usually come to the scene when applied to a particular problem or issue encountered. The same is true of *aloo Arsi* So, to comprehend as to what types of women's rights are recognized under *aloo Arsi*, some social, cultural, economic and ritual activities that will highly involve women will be discussed.

Bearing in mind the universality, indivisibility, interrelatedness and interdependence² of human rights and the necessity to give equal emphasis to all human rights, the study treats those rights classified under International Covenant on Civil and Political Rights separately under this chapter while those rights enshrined under the International Covenant on Economic, Social and Cultural Rights will be dealt with in chapter four. Once again, because the rights covered under the two International Covenants are wide in scope and written in very general terms, the study will not intend to exhaust all of them. Rather the research will focus only on those particular rights which are considered as fundamental and relevant to the study as applied in the area.

¹ Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and its two Optional Protocols as well as International Covenant on Economic, Social and Cultural Rights, here after UDHR, CCPR, and ICESCR respectively have been given the status of International Bill of Human Rights by some authors and some UN organs. See for example Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, Office of the High Commissioner for Human Rights, available at <http://www.unhchr.ch/him/menu6/2/fs2.htm> [accessed 5/15/2008]; See also UDHR- History of Human Rights: World Influence of the UDHR, available at <http://www.universalrights.net/main/world.htm> [accessed 5/15/2008].

² Vienna Declaration and Programme of Action, U.N. GAOR, World Conf.onn Hum.rts., 48th Sess., 22nd Plen.mtg. U. N. Doc. A/CONF.157/24 (1993), reprinted in 32 I.L.M.1661 (1993).



Therefore, under this chapter only the right to dignity, equality and non-discrimination, the right to life, bodily integrity and security of person will be covered.

4.1. *Dignity³ and Equality*

Art.1 of the UDHR which lays down the core value of the declaration recognizes that “all human beings are born free and equal in dignity and rights...”⁴ Similarly, both the ICESCR and the ICCPR, by making reference to the UDHR, using the same language state that, the recognition of “...the inherent human dignity.... is a foundation for freedom, justice and peace in the world.”⁵ In addition to the International Bill of Human Rights, other human rights instruments such as the Women’s Convention,⁶ the Child Convention,⁷ African Charter on Human and Peoples’ Rights,⁸ Declaration on the Elimination of All forms of Racial Discrimination⁹ and many other international and regional human rights documents also recognize the inherent rights of human beings to equal dignity. So, from the close reading of the above documents one can conclude that all human beings are born with equal dignity and denial of this will be the source of injustice and perpetrates discrimination among human beings. The language used in the above cited instruments regarding human dignity reveals that, sex or gender by no means can be used as a

³ The term “Dignity” is not defined by any of the International Bill of Human Rights. But Black’s Law Dictionary defined it as “The state of being noble; the state of being dignified”. See Bryan A. Garner, ed., Black’s Law Dictionary, ninth edition, West publishing Co. United States of America, 2009 at 522. UDHR, preambles and Art.1.

⁴ Universal Declaration of Human Rights, UN General Assembly, 10 December, 1948, 217 A (III), U.N.GOAR, 3rd sess. (Resolution, part 1), at 71, U.N. Doc. A/810(1948), reprinted in 43 AM. J. INT’L L .Supp. 127 (1949) [hereinafter UDHR], available at: <http://www.unhrc.org/refworld/docid/3ae6b3712c.html> [accessed 21 April 2011].

⁵ International Covenant on Civil and Political Rights, G.A.res.2200A (XXI), 21 U.N.GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force Mar.23, 1976, text can be available at <http://www1.umn.edu/humanrts/instree/b3ccpr.htm>; International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976. Text at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

⁶ Convention on the Elimination of All forms of Discrimination Against women, adopted 18 Dec.1979, G.A. Res.34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46(1980) entered into force 3 Sep.1981), reprinted in 19 I.L.M.33 (1989) [here after CEDAW].

⁷ See CRC

⁸ African Charter [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU DOC.CAB/LEG/67/3/rev.5, 21 I.L.M.48 (1982), entered into force Oct.21, 1986.

⁹ See UN General Assembly Resolution 1904 (XVIII) of November 20, 1963

ground of denying a right to a dignified life. So the right to equal dignity is guaranteed for every human being without any distinction in all countries and cultures.

By the same token, the international human rights documents mentioned herein above recognize that every human being irrespective of, *inter alia*, race, language, color, *sex*, religion, nationality, country of origin, political outlook, sexual orientation are born equal and shall enjoy those rights recognized by the Covenants and Declarations on equal footings. It is important to quote the UDHR on this point which declares 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.¹⁰

From the above citation it is clear that the principle of equality and non-discrimination are the corollary of each other. This is because, both reinforce each other, i.e. if equality of men and women is respected there will be no more discrimination and vice-versa. Hence the principle of equality and non-discrimination are one of the pillars of the UDHR. Furthermore, the two subsequent international human rights Covenants to the UDHR (are binding on state parties) reiterate the principles of equality of men and women condemning discrimination on the basis of *sex*.¹¹ The women's Convention beyond recognizing the equality of women and men define as to what equality of men and women constitutes. It lists acts or omissions that constitute discrimination instead of defining equality. According to CEDAW then, discrimination against women is:

any distinction, exclusion or restriction made on the basis of *sex* which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and

¹⁰ UDHR, supra note 4 at Art. 2, emphasis added.

¹¹ ICCPR, supra note 5 Art. 2 and 3; See ICESCR, supra note 5 Art.2 and 3.

women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹²

So, this Convention guarantees equality of men and women in all walks of life notwithstanding the status, age and the country of origin or residence. The Women's Convention and other core human rights instruments recognize the right to equality of dignity and equality of men and women and further condemned discrimination on the bases of sex.¹³ Hence in order to assess whether under *Arsi* customary laws or *Aloo Arsi* women have the rights to a dignified life and equal with men or not it is important and necessary to evaluate practices like son preference, equality between the spouses (upon marriage, during marriage and upon its dissolution) and the right to hold political and other offices on equal footing with men or without discrimination.

4.1. 1. Right to Marriage

Most women and men in the world spend most of their lives married. However, the nature of marriage varies widely from place to place, and between men and women. Worldwide, women marry younger than men.¹⁴

Under *Arsi* customary laws there are several forms of marriage which might have different effects. The following are commonly known forms of customary marriage among the *Arsi*:

- a. *Gabbara*: is a commonly accepted and respected form of marriage by which a number of cattle, according to Abbas "Ranging from 40-120, are given to the girl's family"¹⁵ and or unpaid labor, money, honey and garments may be paid as part of *Gabbara* by the bridegroom's family. The amount of *gabbara* usually depends on the wealth of the man or his family and according to Mamo and my informants; it is subject to negotiation and varies from locality to locality. However, the increasing participation of Oromo Diaspora in marrying girls from the study area has significantly raised amount of *gabbara* (particularly the amount of money¹⁶ due to high turn out to live abroad by girls).

¹² CEDAW, supra note 6 Art. 1.

¹³ UDHR, supra note 4 see especially Art.1 and 2; ICCPR, supra note 5 see Art.2, 3 and 6; ICESCR, supra note 5 Art.2 & 3.

¹⁴ Joni Seager, *The Atlas of Women in the World*, Myriad Editions Limited, third edition 2003 at 22

¹⁵ Abbas Haji, *The History of Arsi (1880-1935)* B.A. thesis, Addis Ababa University, 1982 at 14 (Unpublished BA Thesis, Institute of Ethiopian Studies); Mamo Hebo, *Land, Local Custom and Policies: Land Tenure, Land Dispute and Dispute Settlement among the Arsi of Southern Ethiopia*, Kyoto, Japan 2006

¹⁶ Sayid Jundi, Oromia Supreme Court Vice-President, LLM [interview 2011].

- b. *Walgara*: is an exchange of girls for marriage, and according to Mamo the ideal example of *walgara* happens “When a brother exchanges his sister for a wife.”¹⁷ But according to Abbas Haji and Gabre’amelak Guyyee¹⁸ in rare circumstances a father may also exchange his daughter for another girl to have additional wife. Parents sometime arrange or promise each other to exchange children even before delivery. According to my informants and respondents this form of marriage was designed by a person named Daatuu Xaqaqoo almost close to a century ago aiming to abolish the gabbara form of marriage.
- c. *Butii*: is marriage by kidnapping a girl.¹⁹
- d. *Hawata*: this is a situation where the intending spouses consent to marry without the permission or knowledge of both families or in most cases the girl’s family.²⁰
- e. *Dhaala*: it is a type of marriage where a widow will marry her former husband’s brother or a relative of her former husband.²¹ Shortly; it is a form of inheriting a deceased brother’s wife usually with her consent.
- f. *Menbetto*: it is the opposite of *dhala*, i.e., if a wife dies and she has unmarried sister the later will be given to her sister’s former husband as a “replacement” for the deceased one.

According to Gabre’amelak Guyyee, in addition to the above types of marriage, *adda-baanaa*²², *biidhaa*²³ and *matadibaa*²⁴ were also practiced. These types of marriage are no more in practice

¹⁷ Mamo Hebo, Land, Local Customs and State Policies, Shoukadoh Kyoto, 2006 at 83

¹⁸ Abbas, supra note 15

¹⁹ Obbo Gabre’amilaak Gosee, Interview, Hayyuu (Expert) on Aloo Arsii at Kofalee District Culture and Tourism office, November 10, 2010.

²⁰ Id.

²¹ Id.

²² It is a situation where a girl runs away from her family and married to a person of her choice. It is usually arranged by her close relative or a friend.

²³ Biidhaa is performed where a betrothed girl refuse to marry, the bridegroom will not return home bare hand. Instead he will resort to another girl and must find one.

²⁴ Matadiba took place when both families are not economically capable of preparing Chidha (marriage ceremony). So without any marriage ceremony, the bride will be given to the bridegroom her head being smeared with butter.

due to the impact of formal education and urbanization. Likewise my informants claim that the practice of *butiia*, *walgara*, *dhaala* and *menbettoo* are becoming uncommon and rarely practiced now. The reason for abandoning them is specific to each type of marriage. For example *butii*, is one of the serious criminal offence prescribed under the 2005 Criminal Code²⁵ of the FDRE on one hand and on the other religious and community leaders condemned *Butii* as a unacceptable behavior since it violate the consent necessary to inter in to marriage. The society also welcomed such move and now it rarely happens. On the other hand marriage by *walgara*, *dhaala*, and *menbettoo* are gradually out of practice by the society through disuse. Since marriage is totally not registered in rural areas it is impossible to get exact figure which shows the commonest type of marriage practiced in the study area. However, according to my informants²⁶ *gabbara* and *hawata* are now the dominant forms of marriage throughout Arsi. In the next section whether women and men have equal right in marriage or not will be assessed by making reference to the essential conditions of marriage such as marriageable age, consent and relationship (by blood or affinity).

4.1.1.1. Age

According to Arsi customary practice there is no minimum age limit set for both sexes as per my informants.²⁷ But generally speaking, a girl may not marry unless she hits ministration, be capable of milking strong udders and hair grows around her sexual organ and armpit. The same informants further state that these signs will not fully materialize before the age of 18-20 years. Similarly, the Zeway, Zeway Dugda, Shashamannee, Kofale and Xiyo district as well as Arsi and West Arsi zonal Office for Women, Children and Youth offices confirm that girls' early marriage is practiced infrequently in the study area. Therefore, though marriageable age for girls is not specifically set by number under Arsi customary laws unless those signs mentioned above are observed she cannot enter into marriage. Hence it is possible to conclude that early marriage is seldom practiced under among Arsi. But the problem of age is further complicated in the study

²⁵ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, 2004, Addis Ababa, Ethiopia, entered in to force 9th May, 2005, Art.587-590.

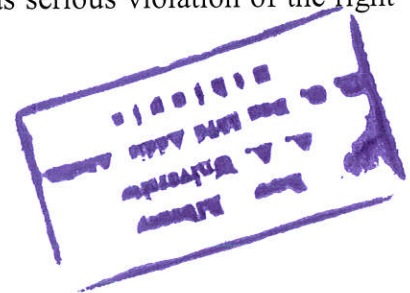
²⁶ Sara Makuriya, Registrar of Arsi High Court [Interview, Assala, November, 2010].

²⁷ Gosee Wayyeessoo one of the Hayyuu on Arsi Customary laws, Zuway Dugda PA, age 82, [interview, November, 2010].

area because of the Islamic dominance and Arsi people try to defend their deeds or positions by making reference to religion when their position is not backed either by customary laws or statutory legislations. Clearly speaking, they mix up Shari'a laws with customary laws either deliberately or because of the similarity between the two. Hence though it is not the central theme of this paper, it will not be wrong to have a brief look at how Shari'a laws are influencing marriageable age of girls in the study area. In a similar fashion the Shari'a laws does not set the exact minimum marriageable age by figure. Hence, there is no consensus on this issue among different countries and Islamic jurists.²⁸

The Noble Qur'an makes an indication from where to begin marriageable age as follows: "Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up."²⁹ Most Muslim scholars agree that the age of marriage mentioned above as the age of puberty, while others argue that since the age of puberty is not uniform throughout the world and for all woman the age of marriage varies from place to place depending on the age of puberty.³⁰ The controversy surrounding the age of marriage under the Qur'an is evidenced from the variation of minimum age limit set by different countries whose laws are highly influenced by Islamic laws.

For example, Iran made it 15 years for male and 13 years for female, in Afghanistan 18 years for male and 14 years for female, in Egypt and Pakistan 18 years for male and 16 for female, 16 years for both sexes in Jordan³¹ while Sudan and Yemen prescribe simply puberty age as age of marriage without specifying the minimum age limit. From the above example it is clear that the age limitation is lower for female than male and has been taken as serious violation of the right to equality between men and women.



²⁸ Legal Minimum Marriage Age; Past and Present: online source available at <http://www.muslim-marriage-guide.com/marriage-age.html> [accessed 4/28/11].

²⁹ Quoted in Id, Quran 4: 6 Abudullah Yusuaffi.

³⁰ Id.

³¹ Id.

When we come to the modern Ethiopian law (at least at federal level) or Arsi in particular, the minimum age limit for both sexes to conclude marriage is 18 years.³² However, in exceptional circumstances the Ministry of Justice (in federal matters) and Head of Justice Bureau of Oromia (in the case of Oromia region) may grant dispensation for serious cause of not more than two years if it is for the benefit of the intending spouses. Violations of this provision (concluding marriage with a minor) entail not only the possible dissolution of the marriage but also entail criminal liability under the 2005 Criminal³³ Code of the FDRE. The phrase "...apart from circumstances permitted by relevant Family Code..." used by the criminal code to exempt early marriage from being criminal act refers only to the two year dispensation that might be granted by the Minister of Justice or Heads of Regional Justice Bureau. This shows that marriage through Shari'a laws to a girl less than 18 years of age is punishable despite the fact that the Shari'a laws does not prohibit females from concluding marriage before 18 years. So the divergence over the minimum marriageable age between Arsi customary and state laws on the one hand and the Shari'a law on the other is becoming a point of contention in the study area and Oromia region in general. In contradiction with the criminal code and family laws some *qadis* of Shari'a courts confirm that, if a man and woman want to conclude marriage according to Shari'a laws what the courts should verify before the conclusion of the marriage is only whether the woman has hits menses or not.³⁴ From my informants only Sheik Isa Ahimad (*qadi* at Arsi Shari'a high court) indicates that the Shari'a court would not allow the conclusion of marriage if one or two of the intending spouses did not attain 18 years of age.³⁵ According to him the only situation where *Nikh* could be allowed for a minor is during betrothal. He tried to justify his position of declining the conclusion of marriage before 18 years of age on the ground that "any religious or customary laws that contradicts with the state laws should not be given effect to". Hence, there is no

³² The Revised Family Code, Federal Negarit Gazetta Extra Ordinary Issue No.1/2000, Proclamation No. 213/2000 Art. 7, 6th year 4th July, 2000 Addis Ababa; Oromia Family Law, Megeleta Oromia Proclamation No.69/1995 and 83/1996 Art. 18(1), Megeleta Oromia Extra Ordinary Issue No.69/1995 and 83/1996, Finfinnee, July 1996 Ethiopian Calendar (Available in Afaan Oromo and Amharic).

³³ The Criminal Code of FDRE, supra note 25 Art.648 states "Whosoever concludes marriage with a minor apart from circumstances permitted by relevant Family Code is punishable..."

³⁴ Sheik Akili and Sheik Kadir Hajji Gobana, both of them are Qadis at Oromia Supreme Court of Shara'a.

³⁵ Sheik Isa Ahimad, interview 2010. (Qadi at the Shari'a court of Arsi high court).

uniform application and understanding among the Shari'a courts and *Qadis* as to marriageable age in the study area.

4.1.1.2. Consent

Consent to marriage is a core condition for the union to sustain and to be meaningful. But whose consent matters most is an issue to be discussed under this title. According to the UDHR, ICCPR, ICESCR, CEDAW³⁶ marriage shall be concluded only by the mutual, free and full consent of the intending spouse. The language used under all these documents clearly signals to the family of the intending spouses not to interfere with the consent of the intending spouses. The African Charter on the Rights and Welfare of the Child goes a little further than the above documents and specifically call on state parties to take effective action through legislation in prohibiting betrothal³⁷ of girls and boys which happens usually without the consent of the intending spouses. The consent of the intending spouses here should be completely free from any direct or indirect influence and it should be respected to the fullest extent possible. The same principle is reiterated by the federal and regional family law of Ethiopia and Oromia National Regional State.³⁸

In the case of Arsi customary laws as to who should consent to a marriage depends on the types of marriage mentioned above. Depending on the types of marriage, it may be entered into depending on the consent of the family of the intending spouses alone or of the intending spouses or sometimes even the consent of the relatives and clan matters. Sometimes the consent of both families, the intending spouses and that of the clan is required or needed to conclude a valid marriage. So since the procedures and methods of marriage in all of the seven types of marriage are different it is better to consider all of them one by one. To start with *gabbara* or sometimes called *kadhata*³⁹ the family of the boy asks the family of the girl by the assistance of *ketcha* (go between) so that a girl will be given to their boy in marriage. In this circumstance the go between mediate families, concerned relatives and the influential members of the girl's clan. This form of

³⁶ UDHR, supra note 4 Art.16 (2); ICCPR, supra note 5 Art.23 (3); ICESCR, supra note 6 Art.10 (1); CEDAW, supra note 6 Art.16(1(b)).

³⁷ African Charter on the Rights and Welfare of the Child, OAU Doc.CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

³⁸ The Revised Family Code, supra note 32 Art. 6; Oromia Family Law, supra note 32 Art.25 (1).

³⁹ The literal meaning of *Kadhata* is begging. It is begging the family and clan of the girl so that a girl will be given in marriage to their boy

marriage involve huge exchange of resource both in cash and in kind and the one coming from the family of the bride will be distributed to the whole family and relatives of the bridegroom and hence those who have the right to share the *gabbara* should consent to the marriage. An interesting point to be mentioned here is the consent of the mother of the bridegroom. Though her consent is needed the negotiation does not fully involve her but for the sake of formality she will be consulted or better to say “told” after everything has been settled by the male section of the family⁴⁰. Last but very important is the consent of the girl or the bride. The *kadha* process does not involve the girl directly. This is evidenced from the fact that as the *ketcha* is an elderly and supposed to be a mediator between the two families, there is no chance for him to discuss the matter with the girl. But the girl will be informed either by her mother or she could learn from the surrounding circumstances. But the final verdict will be of the bridegroom. Unless she consents no marriage will be concluded despite the consent from both sides of the families, relatives, and influential clan members. But one can understand the pressure that the girl might receive from her family, relatives and clan if refusing to marry a certain man that is accepted by the entire community which by de facto represents her. Therefore, even if she might consent to such marriage one can genuinely doubt whether her consent is really full and free.

The next type of marriage to be considered is *walgara*, and as indicated in the definitional part, since it is an exchange of girls between or among boys who have a sister, it is not only the consent of the girls that matters as it involves several persons. Hence, parents, boys and girls as well as relatives should consent to the proposal so as to effect *walgara* marriage. According to Amin, on the other hand, the consent or interest of the girls is not taken into account and sometimes there is mismatch⁴¹ in age as well. But according to my informants, despite the intensive involvement of the parents on both sides in arranging the exchange of girls, no marriage will be concluded without the knowledge and consent⁴² of the intending spouses. Furthermore, there is no possibility for an age disparity between the girl and that of the boy since generally early marriage is not a common phenomenon under Arsi customary laws. It is true that

⁴⁰ Obbo Sayid Jundii, supra note 16.

⁴¹ Amin Adem, The Conformity of Customary Marriage of Arsi-Oromo to the present Law of Ethiopia, 2007 (unpublished LLB thesis, Law Library).

⁴² Jamal Kadir (Oromia Supreme Court, Inspection Division, interview 2011)

sometimes parents promise each other to exchange girls for marriage even before the children are born; but this does not mean that marriage will be concluded before marriageable age. According to Jamal and Gabre'amilek Guyyee, *walgara* marriage creates *soddaa dacha* double/triple affinity and hence the bond created in such situation is stronger than the other types of marriage; hence divorce is highly unlikely in *walgara* marriage than the other types. This position is also affirmed by Mamo Hebo who carried out extensive research on the Arsi customary laws vis-à-vis statutory legislation.⁴³

In the case of typical *butii* marriage there is no consent of the girl at all as it is a means of taking a girl by force. According to Amiin again, this type of marriage was not part of Arsi customary marriage in the past.⁴⁴ He claims that, it is adopted recently due to the escalating bride price or *gabbara* and others add that if the family of the girl or the girl herself decline to marry a certain man the later will resort to *butii* not to miss⁴⁵ the girl. Informants indicate that *butii* is not always without the consent and knowledge of the girl and even sometimes of her family. This is because in case the bride and the bridegroom agree to marry each other while their families and “concerned individuals” do not consent to the union the girl may consent to be abducted, not to be criticized by her family and relatives. The other situation is where every or some of the stakeholder in the marriage as mentioned above consent to the marriage while others did not or the absence of unanimous agreement by the entire family or because of insufficient resource to be paid as *gabbara* or for marriage ceremony, then false or disguised⁴⁶ *butii* (kidnapping) will be arranged. There is also a situation where the father of the girl consents that his daughter to be abducted if she fails to consent to the marriage proposed. Generally, in *butii* marriage universally there is no consent on the part of the girl while practically there are some exception by which *batta* is carried out with the consent of the intending spouses and their families.

The other forms of marriage to be discussed here are the *dhaala* and *menbetto* which are opposite to each other in some sense. Both of them come to picture when deaths happen to one of the

⁴³ Mamo, Supra note 15 at 84

⁴⁴ Amin, supra note 41.

⁴⁵ Id

⁴⁶ Jamal, supra note 41.

spouses. In the case of *dhaala* when the husband dies, his brother (usually elder or sometimes younger brother) will inherit his deceased brother's former wife, in most cases with her consent⁴⁷. According to Gabra'amelak Guyyee, this type of marriage was primarily crafted by Arsi to protect the interest of children and property of the deceased. He says if the widow will be married to an outsider the children of the deceased will be in a disadvantageous position. Similarly the property of the deceased will also be in the hands of an outsider and may be abused rather than serving his children. As far as the consent of the widow is concerned, though such type of marriage will not take place without her will it is hard to say that her consent is full and free from pressure. In the case of *menbetto* also the prime purpose is for the protection of the children of the deceased woman. It is believed and true that children of the deceased will be well taken care of by their aunt than by other unfamiliar woman. In this situation since the central issue is the protection of the rights of children of the deceased woman the consent of the man and woman is not the prime concern here, though it does not mean that their consent will be totally ignored.⁴⁸

Lastly marriage through *hawata* is only the business of the intending spouses. They negotiate on equal footing in every aspect. It depends on the complete, full and free consent of the intending spouses. It is a way through which the two flee together to unknown places and later *jarsa biyya* (the elderly) will be sent to the family of the girl for reconciliation and this process is called *fixata*.⁴⁹ This type of marriage does not generate much respect particularly for the girl in front of the public at large and of the family of the boy in particular.⁵⁰

On the issue of consent to marriage there is no substantial difference between the customary laws of Arsi and the Shari'a laws.⁵¹ Hence it is needless to discuss it in depth about Shari'a laws on this point. To summarize the issue as to whose consent most matters to conclude marriage under

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Amin, supra note 41.

⁵⁰ Id.

⁵¹ Muhammad Tuqî-ud-Dîn-Hilâlî, Trans... The Noble Qur'an: English Translation of the Meanings and Commentary, King Fahd Complex for the Printing of the Holy Qur'an, 1217 A.H.

Arsi customary laws, except the case of *hawata*, the rest types of marriage are arranged by the parents of the intending spouses though the final saying still remains with the intending spouses. Now if a certain person has attained marriageable age set by law and both the intending spouses consent to marry each other the last factor to be determined is whether these persons are allowed to marry each other or not because of relation either of blood or marriage.

4.1.1.3. Filiation

The other essential condition to be fulfilled for a valid marriage to be concluded is the relationship that exists between the intending spouses. The international and regional human rights documents⁵² as well as the Constitution of the FDRE remain silent about the degree of filiation that should not allow engaging or entering into marriage. However, determining the degree of filiation within which marriage may not be concluded is as important as the two essential conditions for marriage discussed above. That is why the Revised Family Code of the Federal Democratic Republic of Ethiopia prohibits marriage between persons related by consanguinity in the direct line, between ascendants and descendants and in the collateral line it is prohibited for a man to marry his sister or aunt and for a woman to marry her brother or uncle.⁵³ It is also prohibited for persons related by affinity in the direct line to marry each other, and in the collateral line a man may not marry the sister of his wife and a woman may not marry the brother of her husband.⁵⁴ The difference between Oromia Family Law and The Revised Family Code of the FDRE on the issue of filiations is that the former prohibits marriage between persons related by blood and affinity in the collateral lines up to 7th degree and 3th degree respectively⁵⁵ while the later prohibits up to 3th degree and 2nd degree only.

⁵² Among other sources see UDHR, ICCPR, ICESCR, CEDAW, CRC, ACRWP, ACRWC etc. I think the rationale behind shying away from putting this issue on the international arena is that it is difficult if not impossible to come up with universal degree of relationship to the entire international community.

⁵³ The Revised Family Code, supra note 32 Art.8.

⁵⁴ Oromia Family Law, supra note 32 Art.27 and 28.

⁵⁵ Id.

The practice in the study area is quite different from what has been stipulated by the two family laws. It is now a common practice for a man to marry his aunts' and uncles' daughters as per the Islamic Sûrah and Shari'a laws.⁵⁶

So keeping the position of statutory legislation and that of Shari'a law in mind the concept of filiation will be discussed in light of Arsi customary laws. Mamo has found that, Arsi is "A lineage-based society and marriage is exogamous at least at clan (*gosa*) level."⁵⁷ So marriage is only allowed across *gosa* (clan). A single *gosaa* is considered as relatives and marriage within the same *gosaa* is hence a taboo and punishable. However, my informants indicate that there is a slight difference between the father and mother's *gosaa* i.e. marriage to father's *gosaa*, both in direct and collateral line is totally prohibited while in mother's *gosaa* though the same is true for direct line it is allowed to marry after seventh degree relationship in the collateral line. In the case of filiation by marriage all persons related by affinity in the direct line cannot marry each other while in the collateral line both for a man and a woman marriage up to third degree is prohibited⁵⁸ except in case of *dhaala* and *menbetto*. Hence it is evident that the two legal systems present contradictory position on the issue of filiation. According to Arsi customary laws (as discussed above) anyone who marries from his/her *gosa* (clan) will be penalized for serious offence against the law of nature and the punishment is severe. Hence marrying one's uncles or aunts' daughter as allowed under the Shari'a laws is *cabana* (taboo) under Arsi customary laws and therefore, those who engage themselves in such affairs shall be cursed and forced to leave that locality to take refuge in other localities.⁵⁹ This is an outrageous act against the law of nature under Arsi customary laws. Similarly, the degree of relationship which is set by the Oromia Family Law upto seventh degree or third degree is unacceptable to Arsi customary laws. Because of the contradiction between the two legal systems there are no uniform and well defined criteria

⁵⁶ The Noble Qura'an provides: Marry not women whom your father married, except what has already passed; indeed it was shameful and most hateful, and an evil way and forbidden to you (for marriage) are: your mothers, your daughters, sisters, your fathers' sisters mothers' sisters, your brothers' daughters, your sisters' daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your step-daughters under your guardianship, born of your wives to whom you have gone in – the wives of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily,

⁵⁷ Mamo Hebo, Land, Local Custom and Polices: Land Tenure, Land Dispute and dispute Settlement among the Arsi of Southern Ethiopia. Kyoto, Japan 2006 at 10 and 83.

⁵⁸ Jamal, supra note 41.

⁵⁹ Id.

as to who may marry or may not marry whom in the study area. Thus a certain person who has been denied to marry a certain woman under the Oromo customary law may marry the same woman by resorting to the Shari'a laws and/or state laws. This in turn will make the spouses responsible for their misdeeds under the Arsi customary laws. Further such spouses will not have recognition within the community.

The other problem associated with the divergence of the two systems on the issue of filiation is its criminal aspect or incest under the Criminal Code of FDRE. Art. 654 stipulate that: "Performance of sexual act, intentionally, between persons whose marriage is forbidden by the relevant law on the ground of blood relationship, is punishable..."⁶⁰ while Art. 655 in a similar fashion criminalize "Acts corresponding to the sexual act or indecent acts between persons related by blood..."⁶¹In this regard it is important to discuss a criminal charge brought against a certain woman and man in Shashamanne district court. According to the charge *Obbo* Umar get married to *Adde* Fatima⁶² whom he knows is married to another person and actually the later is the daughter of Umar's aunt. So, both of them were charged under Art.652 of the Criminal Code of FDRE for adultery and 654 for incest by two counts.⁶³Umar and Fatima are Muslim by religion and they admitted that they are related by consanguinity though they deny any wrong doings; but they alternatively defended that "Under Shari'a laws marriage to ones aunt's daughter is allowed and it is not a criminal act". The court finally acquitted them on the ground that no sufficient evidence that proves the commission of the crimes. The reality behind this case according to Fatima and Umar⁶⁴ is that Fatima's former husband, who made a complaint against Umar and Fatima about the criminal charge, used to live in USA, for the last nine consecutive years without visiting her on a single occasion. She was angry at former husband claiming that he promised to take her to America on several occasions and though he has the capacity and chances to do so he remain reluctant to take her there. Another important development is that

⁶⁰ The Criminal Code of FDRE, supra note 25 Art. 654-655.

⁶¹ Id

⁶² Umar and Fatima [true name withheld] not to disclose their true identity.

⁶³ Oromia National Regional State, East Arsi Zone Shashamanne district Court, Criminal Case File No. 13365,

⁶⁴ Umar and Fatima, interview held with both after they were acquitted, Shashamanne, February 2009.

after the legal battle is over Umar and Fatima officially married according to Shari'a laws. Thereafter the public prosecutor (any interested person also can complain against such marriages according to the Oromia and federal family laws) though authorized to request the invalidation of such marriage remain silent. So what we can learn from this is that in case a marriage concluded without the fulfillment of one or more of the essential conditions set by one of the laws, as far as there is no conflict between or among the spouses, their relatives, clans and even the law enforcing machineries of the government, that marriage exist. But if a dispute arises between such spouses and public prosecutors and or the families of one of the spouses such marriages may be challenged and invalidated and consequently the spouses will be criminally liable. Umar and Fatima escaped punishment under Arsi customary laws since they prefer to reside in Shashamanne town and they cannot officially visit their *gosaas* under Arsi culture because it is violation of *seera waaqaa* (the laws of God/natural laws) and disturbance of *wayyuu* that will be discussed under women's organization toward the end of this chapter.

Therefore, despite the recognition of three types of marriage by federal and Oromia family laws as well as the two constitutions of the same; those who enter into marriage through one of the systems may be penalized under the other system because of the different degree of filiation set by the two systems. Hence, because of the selfish nature of human beings, people are resorting to one system at one time and acting according to the other system at different times when they think that one system is beneficial over the other or it run to their advantage. The contradiction between the two legal systems and manipulation of the systems by the people is causing uncertainty to women's rights since the two system provide different rights and obligation on the same issue. Such disparity also makes justice unpredictable. People also use it as mechanism of trapping each other. Now it is important to discuss how betrothal and bigamy is treated under the two legal systems under consideration in addition to the essential conditions of marriage.

4.1.1.1.4. Bigamy and Betrothal

These are possibly the two areas where women's rights are believed to have been violated. The international bill of human rights does mention neither bigamy nor betrothal. But from the language used by these instruments with regard to the right to found a family or marriage it

seems that monogamous marriage is a preferred form of marriage.⁶⁵ However, the African Charter on the Rights and Welfare of the Child clearly forbids betrothal of girls and boys. Art. 21(2) of the Charter stipulates: “Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and to make registration of all marriages in an official registry compulsory.”⁶⁶ In line with the African Charter on the Rights and Welfare of the Child the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa puts an obligation on the state parties to take legislative measure to encourage monogamy as a model or preferred⁶⁷ form of marriage. Art.6 states that “State parties shall enact appropriate national legislative measures to guarantee that monogamy is encouraged as the preferred form of marriage...” So despite the silence of the international bill of human rights about betrothal and bigamy subsequent human rights instruments clarified that both practices harm women’s right and should be abolished.

When we look at the position of Ethiopia, the Constitutions of the FDRE and that of Oromia National Regional State are silent about bigamous marriage and betrothal while the Criminal Code in principle penalizes bigamy⁶⁸ alone. Bigamy is also not punishable if the marriage adheres to religious or customary practices recognized by the law.⁶⁹ The Federal Revised Family Code calls for the dissolution of bigamous marriage upon the application of bigamous spouses or public prosecutor⁷⁰ but it does not say anything about the issue of betrothal. The Oromia Family Law which was enacted for the first time at Oromia National Regional State remains silent⁷¹ on the issue of bigamy. Sayid Jundi, one of the facilitators on discussion held on the issue of whether bigamy should be allowed or disallowed during the drafting stage explained to me that it was agreed by the legislators tacitly retained bigamy.⁷² But later on international and national

⁶⁵ UDHR, supra note 1 Art.16; ICCPR, supra note 1 Art.23.

⁶⁶ ACRWC, supra note 38.

⁶⁷ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Adopted by the second ordinary session of the Assembly of the Union, Maputo, 11 July, 2003. Text can be available at http://www.achpr.org/english/_info/women_en.html (accessed 1/17/2011).

⁶⁸ The Criminal Code of FDRE, supra note 25 Art. 659

⁶⁹ Id Art. 651

⁷⁰ Revised Family Code, supra note 32 Art.33 (1).

⁷¹ Oromia Family Law, supra note 32

⁷² Sayid, supra note 16.

human rights activists, national and international human rights NGOs as well as individual women and men vowed against the recognition of bigamy by Oromia Regional State and finally succeeded in amending the Family Law⁷³ and now similar position with the Federal Revised Family Code is adopted. A problem related to bigamous marriage is that the criminal laws exempt bigamous spouses from punishment if and only if the bigamous marriage is “Committed in conformity with religious or traditional practices recognized by law”. As indicated in the introductory part of this study Arsi is a polygamous society and hence the customary laws or Aloo Arsi allows such forms of marriage. But Arsi customary laws (Oromo customary laws in a broader sense) are not officially or formally recognized by either federal or regional laws as stipulated by Art.34 (5) and 78(5) of the Constitution of the FDRE.⁷⁴ Therefore, since Arsi customary laws under which polygamous marriage is not outlawed on the one hand and the absence of formal recognition of Arsi customary law by the legislator there is a possibility of prosecuting those who entered into bigamous marriage in Arsi. In practice however, an Arsi man does not settle for one wife. As Mamo indicated, polygamy is a common practice⁷⁵ among Arsi people though it is gradually decreasing because of, *inter alias*, economy problem, the influence of urbanization and formal education. Among my informants *Obbo Ayaatoo Nuuree*⁷⁶ has the largest number of wives I have come across. He has been married to twelve wives in total, now living with eleven wives one died in 2010. He gave birth to 92 children from all his wives but 20 of them died and 72 are alive. He cannot remember every child by name and some of them by face. The eldest son of *Obbo Ayaatoo* gets married to his two wives on the same day. So *Ayaatoo*’s wives took every responsibility and head their respective family while *Ayatoo* only monitors things from distance.

Coming back to the issue of betrothal, it is prohibited to betroth children by African Charter on the Rights and welfare of the Child as well as the Federal Revised Family Code FDRE.⁷⁷ In contradiction with the African Charter on the Rights and Welfare of the Child and the Protocol to

⁷³ Oromia Family Law, supra note 32 Art. 50.

⁷⁴ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995 Art. 34(5) and 78(5), Addis Ababa, entered into force 21st August 1995.

⁷⁵ Mamo, supra note 60 at 10.

⁷⁶ *Ayatoo*, Interview 2011, he is living in Wes Arsi zone, Kofale District and Ganda Cawwaakokat.

⁷⁷ Some argues that since the issue of betrothal has been dealt with by the repealed family code of the 1960, the silence of the Revised Family Code imply that it preferred to abolish such practice while some argue that anything which is not specifically prohibited is allowed.

the African Charter on the Rights of Human and Peoples' Rights on the Rights of Women in Africa, the Oromia Family law expressly recognizes betrothal.⁷⁸ Practically however, since the African human rights documents prohibited only betrothal of children and the Oromia Family Law also set 18 years as a minimum age to conclude contract of betrothal the contradiction remain apparent than real. But what matters is the practice. It is possible to say almost all marriage in Arsi could not be concluded without being betrothed to each other irrespective of age.⁷⁹ This is because the major types of marriage in the study area discussed above (*gabbara, walgara and hawata*,) would not take place unless the intending spouses or their parents on the behalf of their children conclude betrothal. According to Jamal Kadir, if two families or individuals, of course from different *gosaa* (clan), become good friends in order to keep their relationship continuous, they betroth their children to each other even while fetus in the womb. The importance attached to betrothal by Arsi (I believe Oromo in general) emanate from the fact that the couples and their parents will have time to investigate the strength and/or weakness of each other that will help to reach the conclusion whether the intending spouses will marry each other or not. Again since no one will dream of a betrothed girl it guards her from other male who would have been potential abusers. So according to informants, betrothal is practically a precondition for marriage except in the case of typical *butii* (if it is a disguised form it may involves betrothal), *dhaala* and *menbettoo* which are rare in practice.

So according to Arsi customary laws or *aloo* Arsi, women usually enter into marriage earlier than men though early marriage is insignificant problem in the study area. With regard to consent to marriage, despite the involvement of parents in selecting partner for their girl/boy the girl/boy has the final say as to whom to marry and/or not to marry. And lastly, Arsi customary laws prohibit marriage of close relatives as opposed to the Shari'a laws, national or regional family laws.

4.1.2. Equality of Women and Men in Marriage and upon Divorce

⁷⁸ Oromia Family Law, supra note 32 Art. 9-18.

⁷⁹ Obbo Jamal, supra note 44; Obbo Sayid, supra note 16 among many informants.

The concept of equality of husband and wife is very wide and it can encompass wide ranges of women's rights discourse. Hence under this topic only the issue of administration of their matrimonial estate and their personal relationship will be discussed. Generally speaking women and men under Arsi customary laws have their own sphere of influence with regard to administration of properties which clearly indicates the gendered nature of the society.⁸⁰The essential role of men and women are demarcated and the transgression of one into the role of another may entail liabilities. According to my informants men are responsible for everything carried outside of home while women are Queens over any property and activities in and around home.⁸¹ According to *Obbo* Sayid Jundi, men can sale any kind of property that belongs to the matrimony without the consent of the wife and hence women have no equal say over the administration of property. But other informants like *Obbo* Guyyee and A/e Sara indicate that whatever authority women have lost is compensated with the authority they have over the property brought to home. They mention that harvested crops, animal products like milk, butter and any of the proceeds of sale of any property brought to home is under de facto control and administration of women. Therefore, despite the apparent domination of men in the administration of the matrimonial estate of husband and wife in reality both have their own respective exclusive authority and almost they have balanced power.

When we look at the position of women and men upon divorce this is a unique area that needs further explanation. According to all my informants marriage in Arsi is forever and there is no concept of divorce in the customary laws. Baxter also agrees that marriage in Arsi is forever and he wrote "...Arsi marriage is indissoluble once the final sacrificial ceremony called *rakoo qaluu* has been performed."⁸²

Now let us look briefly at the *rakoo* institution that ties a man and women throughout their life in marriage. According to both male and female informants *rokoo* is a sacrificial ceremony that will be performed to signify that a man and a woman united in marriage once and for all. *Rakoo qaluu* in Arsi is parallel to *nika hidhuu* in Islam and signature to marriage concluded in front of

⁸⁰ Obbo Gabre'amilak, supra note 61; Obbo Gosee, supra note 27.

⁸¹ Id.

⁸² Baxter, cited in Daninel Deressa, Continuity and Changes in the Status of Women: The Case of Arsi Oromo Living Adjacent to Upper Wabe Valley (Dodola), [unpublished M.A. thesis Addis Ababa University, Social Anthropology], May 2002

the officer of the civil status. It marks the final process in marriage and marriage without *rakoo* amounts to Islamic marriage without *nika*. But *rakoo* has much greater implication than either signature or *nika*. This is because a marriage concluded in accordance with Sharia' laws (*nika*) or in front of an officer of civil status divorce is allowed under each of them while marriage entered by *rakoo* is indissoluble. What is *rakoo* then? Informants could not exactly tell what *rakoo* does mean; rather they explain its role, process and significance in marriage. Likewise, scholars like Baxter did not define what *rakoo* meant. But my informants stress that “*Rakoo jechuun haati warraa tokko abbaa warraa isheetiif muramte ykn murtofte jechuudha.*”⁸³ It means *rako* amounts to declaring that a marriage is concluded between a man and a woman. Regarding the origin of *rakoo* my informants explain a legend that during distant past since there was no *rako* institution it was found difficult to decide or know the father of a certain child and which in turn made difficult to determine as to which *gosaa* a certain person belongs. Then it was decided by the public to legislate laws that govern filiations of children and a group of *hayyuu* (experts on the Arsi custom) was appointed and they came up with the idea of *rakoo qaluu*. So *seera rakoo* (the law of *rakoo*) prescribes that all children born in wedlock shall be presumed to be of the husband and no evidence is admissible to prove otherwise.

What is the process of *rakoo qaluu*? On the wedding night the bridegroom will slaughter a sheep and immerse the tip of his *haroressa*⁸⁴ (stick given to him on the wedding ceremony) made up of a tree known as *waddeessa* into the blood and touches bride's *kallacha* (forehead) with the blood and blesses her as follows:

<i>Rakoo rakkadhu,</i>	Face challenges/difficult in wedlock if any
<i>Hin deemnii taa'i,</i>	Don't divorce, remain here
<i>Hin taa'iin da'i,</i>	Do not be ideal, give birth
<i>Beettuu ta'i</i>	Be wise

⁸³ Sara Makuria, Arsi High court Registrar head. [Interview 2010, Asella]; Gosee Wayyeessoo Hayyuu on Arsi Customary laws [interview 2010, Batu].

⁸⁴ Some informants disagree about the use of Haroressa for touching the forehead of the bride with blood. Instead they indicate that the bridegroom uses his finger tips

The blessing indicates three pillars in Arsi marriage. The first one is the desire to have ever lasting marriage while the second is the importance of having unlimited number of children and lastly the importance of truth and wisdom in marriage between the spouses are emphasized. The touching of the bride with blood mean hereinafter the woman has joined by blood the *gosa* to which she is married and the slaughtered sheep will not be eaten by neither *gosa* since it is *haramu* (immoral to eat the flesh of a kin); instead it will be given to the destitute. So as per *seera rakoo* if a woman married to another person after the death of *jaarsa rakoo* (husband by *rakoo*) or she deserted *jaarsa rakoo* and married to another person while she is still in *rakoo* any children born from the second marriage belongs to the *jaarsa rakoo* (the first husband) and such child assume the name of the first husband as their father. *Rakoo* is not only a mechanism to avoid divorce rather it generate huge psychological advantage for the woman in front of the *gosa* to which she is married to. Women married in accordance with *rakoo* ceremony proudly exclaim that “*Rakoo qabaa rakkoo qaba*” which means “I get married in a respectful manner and no one will embarrass or question my full sense of membership in the *gosaa* I am married to.” The saying also signifies that if she or her husband disserted the union any one of them can return back to resume the marriage as far as *rakoo* is there. Informants underline that if a woman married with *rakoo* leaves her husband and married to someone else; the former husband can claim back his *rakoo* wife including her children born out of the wedlock. This show that family institution among Arsi is highly protected and respected by the society at large and marriage is not a simple business that one can rush into or easily walk out of it. Informants assert that when *seera rakoo* was enacted it did not leave a room for divorce.

However, later on it was discovered that all unions are not ever lasting. Family disputes which reached beyond a point of no return have led to inter clan and/or intra clan conflict or disputes and also threatened the life and wellbeing of the spouses. At this point informants say Arsi once again sat down and designed a strategy by which such spouses will be separated or end up their union. Here emerged the concept of *rakoo dhiquu* (washing *rakoo* away). The processes of *rakoo dhiqu* involve ritual ceremonies as that of *rakoo qaluu*. *Rakoo dhiqu* ceremony will be prepared by the natal father of the woman or by her natal brother in case of death of the former. All dignitaries from both *gosa* will attend the ceremony and foods and drink will be prepared and after food and dirk is served either the father or her brother requests the husband to wash away

rakoo from his daughter or sister as the case may be. Since an agreement has been reached before the preparation of the ceremony the husband will not refuse at this point and he will wash away *rakoo* from her. To wash *rakoo* away according to Daniel is to:

Wipe her brows with bough of his cloth and extirpates a strand of hair from her head which is known as *qajjisa buqqifachuu*. He also grabs *hanfala* (sash/which he exchanged with cows on the night of the marriage) which symbolizes the death of husband.⁸⁵

According to him *qajjisa buqqisuu* and grabbing of *hanfala* express the end of martial relationship while both are alive. A woman performs similar acts during the mourning of the death of her husband. Thus when a husband dies his wife/wives cut/s her/their *gufufa* (mop of hair) and loosens her/their *hanfala* (sash) and disposes both on the graveyard and instead fastens her/their belt/s with rope to express her/their deep sorrow. Similarly, once *rakoo* is washed away it amounts to divorce and now she is free to go anywhere or to marry any one of her choice. The *Abbaa Bokkuu* (father of scripture) and *hookkuu* (vice president of *Abbaa Bokkuu*) will be given one *bullukkoo*⁸⁶ each for the facilitating *rakoo dhiquu* in peaceful manner. Similarly, if *rakoo dhiquu* is attributed to the wrong committed by the woman her husband is entitled to a bullock and a heifer from the natal father/brother of the woman or if she is leaving her husband to marry someone else the person plotting to marry her is responsible to deliver the bullock and heifer.⁸⁷

The issue of partitioning property upon *rakoo dhiquu* depends on responsibility for dissolution of the marriage. According to *Obbo Gabre'amilak Guyyee* if the woman is responsible for the dissolution of the marriage she is not entitled to partition any property including *raada siinqee* (heifer given to the woman upon her marriage by her mother-in law). But if the husband is responsible for the discontinuation of the marriage *rakoo dhiquu* will not take place. Rather the woman will share all the matrimonial property both movable and immovable and live among the *gosa* to whom she is married to. The reason why she resides after separation among her former husband's *gosa* is that she has already joined this *gosaa* from the moment of *rakoo qaluu*. Because the touching of her forehead with blood indicates that from this moment on she is

⁸⁵ Daniel, supra note 88 at 46.

⁸⁶ Id.

⁸⁷ *Obbo Gabre'amilak*, supra note 61.

presumed to be a member of her husband's *gosaa*. In such circumstances she is entitled to take the *raada siinqee* and all the produce of such *raadaa* in the same manner as that of *mahr*. Here after informants confirm, the woman is free to marry any one of her choice without any restrictions. Therefore, under Arsi customary law despite the fact that divorce is unwelcomed transaction this does not mean that the door is totally shutdown to divorce. So in exceptional circumstances where *rakoo qaluu* is countered by *rakoo dhiquu* if the woman is not responsible for the dissolution of the marriage she is fully entitled to share the matrimonial property (depending on the gravity of her husband's fault though there is exceptional situation where she is entitled to the entire matrimony).

4.2. The Right to Life, Bodily Integrity and Security of Women

“Everyone has the right to life, liberty and security of person.”⁸⁸ The right to life and security of persons or woman in this case is constructed from two different but intrinsically interrelated concepts. Therefore to distinguish and understand one of them it is necessary and proper to treat the other. Hence under this section the right to life and the right to bodily integrity which is part and parcel of security of persons will be dealt with.

4.2.1. The Right to Life

The right to life has been emphasized by different UN resolutions and different human rights committees. But, why is emphasis given to the right to life? This is because it is considered as the supreme, fundamental and core human right.⁸⁹ According to the same source the right to life is “basic to all human rights and without it all other rights are without meaning.”⁹⁰ Though human rights are declared indivisible, interrelated and interdependent by the 1993 Vienna Declaration, it is undeniable fact that some rights such as the right to life are fundamental because if someone is denied the right to life automatically he/she will lose the other rights. Keeping aside the controversy surrounding whether the right to life begins before birth or at birth

⁸⁸ UDHR, supra note 4 Art. 3.

⁸⁹ Human Rights in New Zealand Today: The Right to Life, Liberty and Security of Person, the text can be available at: <http://www.hrc.co.nz/report/chapters/chapter07/life01.html>.

⁹⁰ Id.

and the scope of the duty of states to protect the right to life I will discuss the positions of the international human rights documents and Arsi Customary laws on the to life.

The right to life has been long recognized by different religious laws, national legislations such as the Magna Carta (Great Charter), the American Declaration of Independence, the French Declaration of the Rights of Man and Citizen, Gada system of Oromo⁹¹ etc. These legislations, religious books as well as religious teachings all condemn the illegal taking away of human life and violations of body integrity of human beings including that of women and they call for the safety and security of humanity. Later on the international community led by UN influenced by the above legislation and teachings underlined the importance of protecting human life from arbitrary killings and denounced cruel and inhuman treatments of human beings. As majority of UN backed human rights instruments call for the protection of the right to life and security of persons UDHR and ICCPR⁹² specifically recognize the right to life, bodily integrity and security of human beings including women. However, despite such recognition the right to life is not an absolute right. The above mentioned UN documents do not prohibit death penalty which is a threat to the right to life. To support this argument it is important to quote Art. 6(2) of the ICCPR which states:

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.⁹³

This citation indicates that though the international community is against arbitrary or extra-judicial killings of human beings it is understandable that yet death penalty is not prohibited in its entirety. So if it is proved that a certain person has committed “most serious crimes” and found guilty and pronounced to death penalty by the final judgment, such person may be

⁹¹ Among others sources see G.R.C. Davis, Magna Carta, Revised Edition, British Library, 1989 available at <http://www.fordham.edu/halssall/source/maganacarta.html> [assessed 5/2/2011]; The Declaration of Independence: The Want, Will, and Hopes of the People, available at <http://www.ushistory.org/declaration/document/> [accessed 5/2/2011]; Declaration of the Rights of Man and of the Citizen, approved 26 August 1789, from Wikipedia, the free encyclopedia available at http://www.en.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man_and_of_the_Citizen [accessed 5/2/2011].

⁹² UDHR, supra note 4 Art.3; ICCPR, supra note 5 Art.6.

⁹³ UDHR, supra note 4 Art.3; ICCPR, supra note 5 Art.6.

executed. However, the wordings of Art.6 (2) of ICCPR shows that abolition of death penalty is preferred than promoting it. As a result the UN General Assembly has come up with the second optional protocol to the ICCPR aiming to abolish death penalty.⁹⁴ This protocol obliges state parties “To take all the necessary measures to abolish the death penalty within its jurisdictions” and it stipulates further that “No one within the jurisdiction of a State Party to the present Protocol shall be executed.”⁹⁵ Once again this protocol leaves a room for the state parties to carry out death penalty for the most serious crimes committed during war time and of military in nature if such reservation is made either during ratification or accession.⁹⁶ From the preamble to the second optional protocol to the ICCPR, it is understandable that the international community is heading towards abolishing death penalty on the ground that it is cruel, inhuman and barbaric form of punishment that degrades human dignity and a threat to the enjoyment of human rights in general. But, despite the fact that the move towards abolishing death penalty by the international community also includes women, the issue of pregnant women is separately treated by ICCPR i.e. execution of a pregnant woman is prohibited. Art. 6(5) of the Covenant stipulate that “Sentence of death shall not be carried out on pregnant women”. So state parties to the ICCPR, whether they are a party to the second optional protocol to the ICCPR or not are precluded from executing a pregnant woman notwithstanding the seriousness of the crime.

When we come to the Ethiopian case though it is a party to the ICCPR, it is not yet a party to the second optional protocol to the ICCPR. Hence the 1995 Constitution of the FDRE, the 2006 Revised Constitution of Oromia Regional State as well as the 2005 Criminal Code of the FDRE provides death penalty for serious criminal offences.⁹⁷ Regarding the case of pregnant women the Criminal Code of FDRE, reiterates the principle set under the ICCPR that suspends the execution of a pregnant woman. Art. 119 of the Criminal Code states as follows that “Death sentence shall not be carried out on full or partially irresponsible or seriously ill person or on a pregnant woman, while they continue to be in that state.”⁹⁸ So both the ICCPR and the Criminal

⁹⁴ Id; ICCPR, Art.6 (2).

⁹⁵ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty Adopted and proclaimed by United Nation General Assembly resolution 44/128 of 15 December 1989

⁹⁶ Id.

⁹⁷ Id. Art.2 (1).

⁹⁸ Constitution of FDRE, Art.15;The Revised Constitution of Oromia Regional State, Proclamation No.108/2006, Ar.15, 3rd edition October 27, 2001 Adama; Penal Code of FDRE, supra note 25 see Art.117, 539, etc

Code of the FDRE, only delay the execution of a pregnant woman to post delivery and there is a possibility for such woman to be executed after delivery because the phrase “...while they continue to be in that state...” indicates that after the state of pregnancy has gone execution is possible. However, unlike the ICCPR, the Criminal Code of FDRE provides for the commutation of death sentence to rigorous imprisonment for life provided that the baby is born alive and the mother has to nurse the child.⁹⁹

Then what is the position of Arsi customary laws on death penalty? Rather than directly discussing women’s right to life under Arsi customary laws it will be proper to understand the underlying principles of the Oromo (Arsi) Criminal Justice system first. Generally, Arsi’s criminal laws is rich and highly developed than any other branches of laws. Crime has both individual and collective character in Arsi and responsibility is shared among family, kin, *gosaa* at small scale and on Arsi Oromo at large while in exceptional circumstances it might extend to the entire Oromo nation when the victim is non-Oromo and the amount of *gumaa* to be paid is beyond the capacity of a *gosaa* or Arsi people at large.¹⁰⁰ Another unique feature of the Arsi customary laws is that it treats crime as tort or instead of sending criminal to jail and/or killing as a punishment it provides compensation for the victim or her family in the case of death. In addition to compensating the victim and or his family or relatives, both sides will be reconciled and there will be no more hostility between the two *gosaa* through the highly developed ceremony known as *gumaa*.¹⁰¹ But this does not mean death penalty is out ruled from Arsi customary laws. Rather death penalty is prescribed for exceptionally cruel crimes such as intentional and deliberate killing of someone as a revenge after reconciliation has taken place through *Guma*, intentional killing of a pregnant woman, and theft of *ganya*.¹⁰² According to informants, except in the above mentioned cases, all other crimes are to be settled through *Guma* ceremony aiming to achieve social justice and restorative justice. *Guma* is primarily concerned with compensating the victim and or her/his family than imprisoning or sentencing the wrong dower to death.

⁹⁹ Criminal Code of FDRE, supra note 25 Art.119 [emphasis added].

¹⁰⁰ Gabre’amilak, supra note 14.

¹⁰¹ Obbo Gosee, supra note 27; Obbo Gabre’amilak, supra note 61.

¹⁰² Among other sources for the processes of *Gumaa* see Kedir Bulloo, *The Quest for Revitalizing the Interfaces between State Laws and Non-State Laws (Oromo Laws): A Survey of Gumaa in Arsi Oromo in Lights of the Criminal Justice Administration of Ethiopia*, (unpublished LLB thesis, AAU, Law Library May 2008);

Keeping the general notion of the criminal justice system of Arsi in mind when we look at crime and women under Arsi customary laws the general notion is that since women are considered as sources of peace and love and they are soft and liminal, they do not commit serious crimes premeditatedly in a brutal manner. Hence it is believed that one of the basic roles of Arsi women, as will be discussed in greater detail under the title “*siinqee institution*”, is to keep peace at the grass root level of society (at home) to the highest level of mediating human beings with *Waaqa*¹⁰³ (Oromo name for God). Therefore, from the very outset women are presumed to be peace makers instead of being trouble making. According to my informants women are the liminal group of society along with children and the *gadamojjii* (retired *Gada* members) and do not commit crime of serious nature. But if women intentionally commit crime of the most serious types they are liable to punishment prescribed for the specific crime committed. According to my informants a pregnant woman shall not be executed for whatsoever crime she has committed. And the exemption of a pregnant woman from death penalty is not temporal and or conditional¹⁰⁴ as in the case of the ICCPR or the Criminal Code of the FDRE. According to Arsi customary law if a woman is pregnant at the time of the commission of the crime or when the verdict is handed down it is absolutely prohibited to execute her notwithstanding the baby is not born alive or she shall not nurse the baby. My informants unanimously insist on three major grounds for exempting a pregnant woman from execution. They claim that:

- a. The unborn baby is innocent and should not be punished for crime that it neither knew nor dreamt of,
- b. Killing the mother and her baby cannot be proportional with killing a single person, and
- c. A woman do not intentionally and premeditatedly commits crimes of serious nature.

So in case pregnant women commit serious crimes that carry death penalty, they will pay *Guma* instead of imprisonment or facing death penalty.¹⁰⁵ According to Arsi customary laws when a person commits crime *jaarsa biyyaa* from a neutral third party sit down and settle the issue. If

¹⁰³ Gabre’amilak, supra note 61; Gosee, supra note 27.

¹⁰⁴ *Id.*

¹⁰⁵ Jamal supra note 44; Gosee, supra note 64.

the suspect admits the allegation, he/she will be ordered to pay *Guma* usually in kind and in cash. The intention of the wrong doer, the means used and the motives behind the commission of the crime as well as the degree of their relationship will be used in assessing the amount of *gumaa* to be paid. According to informants three types of homicide is recognized under Arsi customary laws. These are *Beekaa Ajjeesuu* (intentional and premeditated homicide), *Ajjeechaa Danuu* (by negligence) and *Ajjeechaa Safuu* (accidental killing).¹⁰⁶ The main purpose of classifying homicide is to determine the amount of *gumaa* to be paid and hence the three types of homicide carry different amounts of *gumaa*. If the wrong doer is capable of paying the amount of *gumaa* fixed to be paid to the victim or to her family such perpetrator will be forced to pay alone, but if she/he cannot afford to pay the compensation alone, his/her *gosa* will pay it through a mechanism called *hirphaa*.¹⁰⁷ When it is decided that a woman should pay *gumaa* to a victim or her family and *hirphaa* is needed it is the duty of the *gosa* to which she is married instead of her natal *gosaa*.¹⁰⁸

Therefore, under Arsi customary laws women's are equally entitled to the right to life with men from conception to death. Interestingly, the customary laws provide death penalty for very few criminal acts and women's right to life is better protected than men both when they are victims and or wrong doers. Next the right to bodily integrity and security of women which are inherently related to the right to life will be discussed.

4.2.2. The Right to Bodily Integrity and Security of Women

The right to bodily integrity and security of woman might be broadly interpreted to include the national security in which states are duty bound to protect peoples within their jurisdiction from foreign threats or dangers; while individually also states are responsible to protect peoples within their jurisdiction from abuse by other citizens/individuals.¹⁰⁹ Hence under this topic only women's rights to bodily integrity and freedom from harm (physical security) at individual level will be dealt with especial focus on domestic violence, rape and Female Genital Mutilation

¹⁰⁶ *Id.*

¹⁰⁷ *Hirpha* is a relief mechanism through which Aris (Oromo) help each other by pulling property together usually in kind and rarely in cash. The term *Buusaa-Gonofaa* is used instead among the Borana or southern Ethiopia.

¹⁰⁸ Gosee, *supra* note 27; Jamal, *supra* note

¹⁰⁹ Gabre'amilak, *supra* note 61.

(FGM). The reason to focus on these issues is dictated by their relevance to the study area and the danger they are posing to women. Mrs. Seager has to say the following on domestic violence:

For millions of women, the home is the most dangerous place they could be. Far from being a place of safety, the family is often a curdle of violence. Women suffer cruelties in their homes every day, from all family members. Domestic violence is a means of keeping women “in their place,” literally confined to relationship, household, or family structures defined by patriarchal authority.¹¹⁰

She emphasizes that women all over the world are subjected to physical and psychological abuse which causes high trauma. All male section of the family members including her most loved ones participates in abusing women. The prime objective of abuse does not emanate from hatreds, rather from the wish to control and keep women in their status quo. When we come to the situation of Arsi woman and Arsi customary laws on this point it is unanimously agreed both by male and female informants that it is a common phenomenon that husbands beat their wife/wives. It is also reported that girls and boys are lightly beaten by their fathers, mothers and also elder brothers and sisters for disciplinary purposes. But outrageous types of beating are uncommon as informants have indicated. When asked, women and men from the study area consider wife beating as normal and they do not take it as a problem unless it “*Goes beyond limitation*”. They indicate that upon the marriage ceremony the father of the bride advises the bridegroom as follows: *ija, gurra fi ilkaan siif hin kennine, kaan dhaannadhu*. (Which literally mean, you are not entitled to inflict any harm on her eyes, ears and teeth, but you can beat/chastise her). Husbands are allowed to chastise their wives flesh but not bone. All my female informants confirm that they have experienced beating at least either by their father, mother, brothers/sisters or husbands.¹¹¹ If a husband causes bodily harm to his wife/wives that will be considered violation of Arsi customary laws and he is duty bound to pay *gumaa* to the natal father of the woman. According to informants husbands are not only prohibited from harming their wives but also from insulting his wife’s *gosa*. If a husband ridiculed his wife or her *gosa* by insult *siinqee* (when and how *siinqee* is mobilized will be discussed later) will be mobilized and he will be punished for his misdeeds or if a husband is repeatedly and routinely nagging his wife

¹¹⁰ Seager, *supra* note 14 at 26.

¹¹¹ *Id.* at 26.

and/or beats her his gosa will gather and advises him to stop his wrong doings and if he refuses they will tie his hands and legs and beat him as punishment. Gabre'amilak Guyyee, well versed with Arsi customary laws, on the other hand disagrees with what the other informants present above. He insisted that under Arsi customary laws let alone beating wife, it is illegal and punishable to *naasisuu* (shout at a woman and irritate her). He completely disagrees with the legality of wife beating and he indicates that wife beating or chastise is a recent development introduced during the Minilek's incursion of Arsi. He claims that cruel treatments or beating of wife and child is the legacy Arsi inherited from its colonizers. Whatever the source and justification might be presented, the reality is wife beating and child reprimanding is widely practiced still today and there is yet a lot to be done to abolish any kind of corporal punishment or chastisement that jeopardizes women and children's rights.

Female genital mutilation or sometimes called female genital cutting (FGM/C) is probably one of the oldest form of surgery human being has experienced and different sources estimate the number of women and girls who have under gone it and at risk of being cut every year. Donna Clifton and Charlotte Feldman-Jacobs estimate that 100 to 140 million women have under gone FGM/C worldwide while 3 million women and girls are at risk of being cut every year only from the African continent.¹¹² UNICEF on its part estimates that 70 million women and girls living today have under gone FGM/C in Africa and Yemen alone; it indicates that the practice is spreading to Europe, Australia, USA and Canada as a consequence of immigration¹¹³ from FGM societies. Rhonda estimates that about 135 million women and girls have under gone this surgery and further 2 million are at risk of being cut worldwide every year.¹¹⁴ Though different sources indicate different numbers all of them warn that FGM/C is widely practiced by different cultures, religions and nations. According to UNICEF, FGM/C refers to "Practices which involve cutting away part or all of a girl's external genitalia."¹¹⁵ Rhonda Heitman¹¹⁶ describes FGM/C using the same language as that of UNICEF.

¹¹² Female teachers indicate that they did not experience beating by their husbands except one.

¹¹³ UNICEF, Child protection from violence, exploitation and abuse- Female genital mutilation, available at http://www.unicef.org/protection/index_genitalmutilation.html [accessed 5/4/2011].

¹¹⁴ Rhonda Heitman, United Nations: A Case Study of International Socialization, April 10, 2000. The text can be available at <http://wolvesdreams.tripod.com/FGM.html> [accessed 5/4/2011].

¹¹⁵ UNICEF, supra note 113.

UNICEF, WHO and UNFPA have identified four¹¹⁷ types of FGM/C while Rhonda Heitman has mentioned only three types. Those identified by UNICEF are:

Type I

The clitoris is held between the thumb and index finger, pulled out and amputated with one stroke of a sharp object.

Type II

Commonly the clitoris is amputated and the labia minor are partially or totally removed often with the same stroke.

Type III

The amount of tissue removed is extensive. The most extreme form involves the complete removal of the clitoris and labia minor, together with the inner surface of the labia majora. A small opening is left at the back to allow for the flow of urine and menstrual blood. It is commonly called infibulations.

Type IV

It encompasses variety of procedures. It is unclassified but only ceremonial diverse range of practice, such as pricking the clitoris with needle, burning or scarring the genitals.¹¹⁸

According to the same source FGM/C is usually performed on children and adolescent particularly between the age of four and fourteen while UNICEF indicates that in Ethiopia more than half of the FGM/C is performed on infants of less than one year.¹¹⁹ Medical reports prove that FGM/C can cause serious short term and long term health problem which are in most cases irreversible. According to Rhonda and UNICEF the following are identified as major side effects of FGM/C:

¹¹⁶ Rhonda, supra note 114.

¹¹⁷ Joint Statement, WHO, UNICEF/UNFPA, 1997; Arch Sex Behv, Ritual Female Genital Surgery among Ethiopian Jews 1997; 26:211-5. Available at <http://www.circumstitions.com/FGM-defined.html> [accessed 5/4/2011].

¹¹⁸ UNICEF, supra note 113.

¹¹⁹ Id.



Death, serious infection, HIV, abscesses formation, cysts, hemorrhagic shock, excessive growth of scar tissue, painful sexual intercourse, small benign tumors, hemorrhages, shock, kidney stones, sterility, sexual dysfunction, depression, various urinary tract infections various gynecological and obstetric problems, psychological trauma from exhaustion and screaming etc.¹²⁰

No organization or scholar has yet come up with any scientific benefit that can be derived from FGM/C. However, practitioners and FGM/C societies claim that it reduces women's promiscuity to reduce the chance of sex outside marriage, marks the transition into womanhood, for cleanliness, as religious requirements, makes women's face more beautiful¹²¹ etc. But all these justifications are not supported by science and religions books such as the Noble Qur'an and the Holy Bible.¹²²

It is clear that FGM/C highly jeopardizes the bodily integrity and personal security of women and girls. UNICEF clearly warns that FGM/C violates the fundamental and core rights of children who are subjected it. To borrow its languages FGM/C:

...is discriminatory and violates the rights to equal opportunity, health, and freedom from violence, injury, abuse, torture and cruel or inhuman and degrading treatment, protection from harmful traditional practices, and to make decisions concerning reproduction.¹²³

So it is very clear that FGM/C violates those rights recognized under Art.6 of the ICCPR, Art.3 of the UDHR, as well as Art. 2 and 5 of the CEDAW, the ACHPR and Art.21 of ACRWC as well as the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and human rights documents that recognize equality of men and women, women's right to life, liberty and security of persons. Among the above documents the ACRWC is more specific on harmful traditional practices and I decide to quote:

¹²⁰ Rhonda, supra note 114; UNICEF, supra note 113

¹²¹ UNICEF, supra note 114

¹²² Rhonda, supra note 114.

¹²³ UNICEF, supra note 114

State parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices discriminatory to the child on the ground of sex or other status.¹²⁴

At a national level the 2005 Criminal Code of the FDRE, criminalizes any kind of harmful traditional practices in general and more specifically female circumcision or infibulations.¹²⁵ The Criminal Code uses female circumcision and infibulations instead of FGM/C. The reason to choose these words instead of FGM/C may be attributed to the powerfulness and psychologically disturbing nature of the word “mutilation or cutting” and it may be difficult for the society to accept the practice as barbarous as it is presented by the international community and feminists. The criminal code penalizes whosoever circumcises a woman with simple imprisonment for not less than three months or fine not less than five hundred Birr¹²⁶ while anyone who infibulates the genital of a woman will be punishable with rigorous imprisonment from three years to five years depending on the surrounding circumstances. But if the infibulations caused injury to body or health the punishment will be raised from five years to ten years. Some legal practitioners¹²⁷ and women’s rights activities criticize the FDRE Criminal Code on the ground that the punishment set for female circumcision¹²⁸ is very low and its deterrent effect is questionable. Generally speaking the international human rights documents and different UN organs as well as national laws call for the criminalization and elimination of FGM/C in all its forms.

¹²⁴ ACRWC, supra note 38 Art.21 (1).

¹²⁵ The Criminal Code of FDRE, supra note 25 Art.565 and 566.

¹²⁶ Simple imprisonment unless specified will extend from ten days to three years, while fine for physical person extends from ten to ten thousand Birr while in the case legal person it extends from hundred to five hundred thousand Birr and Birr is the Ethiopian legal currency and according to current exchange rate equal to \$ 0.0605, for further understanding see Criminal Code of FDRE, Art.90-107.

¹²⁷ Mohammad Nure, former Oromia Supreme Court judge and head of human resource and now a private attorney [interview, 2011].

¹²⁸ Hundee an indigenous NGO founded in 1995 and operating in the study area.

But what is the position of Arsi customary laws on FGM/C and the practice among Arsi? All my informants particularly *Hayyoota* (experts of customary laws) mention that nowhere in the Oromo customary law *kitannaa*¹²⁹ (Oromo name for male and female circumcision) is mentioned. During a community conference organized by *Hunde* (local NOG) in May 2007 on harmful traditional practices with special emphasize on FGM/C attended by more than five thousand participants from all districts of West Arsi, community leaders and elders all unanimously agree that *kitaannaa* has no base in Arsi customary laws or *aloo* Arsi. According to the participants on the other hand *kitannaa* is commonly practiced among male and female. Though no one is sure from where it came to Arsi land and the time of its introductions, elders claim that *kitaannaa* is introduced with the introduction of alien religion and rule over Arsi.¹³⁰ Despite the fact that FGM/C was not part of Arsi customary laws in the past no participants denies the practice of FGM/C on children and woman among Arsi. It is believed that *kitaannaa* is becoming part and parcel of *Seera Fuudhaa fi Heerumaa* (law of marriage) and every woman or girl should undergo it before marriage. It has been recognized as one of the prerequisites for marriage under customary laws.

There are also some who try to defend or justify the practice of FGM/C from religious (Islamic) point of view. When we closely look at the Noble Qur'an there is no mention of any form of FGM/C.¹³¹ Similarly, Rhonda claims that since FGM/C predates Islamic religion; and the absence of FGM/C among most Muslim indicates that Islamic religion cannot be a ground of justification. But two controversial conversation made by Prophet Mohammed are used as a justification by those who try to link FGM/C with Shari'a laws. One of the ambiguous conversations was made between Prophet Mohammed and Um Habibah (Um'Alyyah) in Sunnah (word and actions of Prophet Mohammed).¹³² This woman was performing the worst form of FGM/C (infibulations) on slaves and she asked Mohammed that she would continue the practice "unless it is forbidden and you order me to stop doing it" and his reply was presented in two versions. The first one is "Yes it is allowed. Come closer so I can teach you: do not over do it, because it brings more radiance to the face and it is more pleasant for the husband" while in the

¹²⁹ The term *Kitannaa* is commonly used among Arsi while in western part of Oromia *Dhaqna qabaa* is used instead.

¹³⁰ Conference organized by local NGO (HUNDE) in May 2007, Kofalee district, West Arsi.

¹³¹ Muhammad Tuqî-ud-Dîn-Hilâlî, *supra* note 51

¹³² Sunnah quoted in Rhonda, *supra* note 121.

other version while speaking to Ansar's wives about *Sunna* circumcision he says "Cutting slightly without exaggeration, because it is more pleasant for your husbands."¹³³ Rhonda concludes that since Mohammed did not make circumcision mandatory and so the modification or alternation of women's clitoris and its function is also not written anywhere in the Qur'an; while it is written in Qur'an that women shall be given pleasure by their husbands during sexual intercourse and the cutting of clitoris is against his order to make women pleasant and hence Mohammed's conversation shall not over ride his writings and Qur'an.

Similarly, three Oromia Supreme Court Shari'a *qadis*¹³⁴ argue that the above mentioned Mohammed's conversation shows in the first place that the cutting of clitoris shall be only nominal and not the worst form such as infibulations and secondly it is permissive rather than mandatory.¹³⁵ They believe that whatever is provided as permissive either under Qur'an or Mohammed's teachings or his writings is optional and cannot be considered as religious obligations but if performed it has additional blessing. So they dismiss religious justification for FGM/C.

However, according to Hirut¹³⁶ Arsi, whether Islam or *Waaqefataa* presents one or more of the following as justifications for sticking to FGM/C.

- a. To be excised is taken as a symbol of womanhood, wife and mother,
- b. Clitoris, if not cut, can grow as long as penis and may hinder child birth and sexual intercourse,
- c. for hygienic purposes
- d. to protect virginity

¹³³ Id.

¹³⁴ Group discussion with three Oromia Supreme Court Qadis, Finifne, 2011.

¹³⁵ Id.

¹³⁶ Hirut Terefe, Gender and Female Genital Mutilation in Ethiopia. The Case of Arsi Oromo 2003 at 193-194

My informants also support Hirut's position but they do not agree with the last justification which she presents FGM/C protect virginity. Hirut and my informants agree that unless a girl is cut she could not be married because she is considered as impure and unclean which implies that she could not engage in sexual affairs before she undergoes the surgery. And further it is stressed by my informants that once a girl is cut or circumcised she will be highly vulnerable to rape or even abducted under certain circumstances which proves that cutting a girl is preparing her for marriage and as a consequence consumption of sex follows. Thus in Arsi once FGM/C is performed on a girl she will soon get married or approached for sex and loses her virginity; hence the cuttings do not protect virginity, rather the uncut girls remain virgin than those who are cut.

Some informants also confirm that uncircumcised woman or girl will not get married because even if she wished to marry without cut no one will need her as far as she is uncircumcised. If she remains uncut, she will be insulted by the following words; *muxxichaan hafte* (she is still with clitoris, one of the most outrageous insults in Arsi) or *eegeen jirti!* (She has a tail) *Rabtittiidha!* (unskilled/not conversant) or *najjisa* mostly associated with Islamic influence and it means unclean or unhygienic. So no one will approach uncut woman for sexual relation in Arsi under any circumstances. It is not only the uncut woman who will be insulted but also someone born of such woman and those who have had sexual relationship with such woman are considered as unclean or polluted.

The age when *kitaannaa* shall be performed is not uniform or fixed by Arsi customary laws. But contrary to UNICEF's position that "*more than half of FGM/C performed in Ethiopia is on infants of less than one year*", it is performed in Arsi few weeks, months or at most one year before marriage. The parents of the girl to be circumcised organizes (*cidha*) a ritual ceremony and her future spouse (fiancé), her male and female friends from the village will be gathered on the occasion. *kitaannaa* will not take place in the absence of her fiancé except for *haftuu* or *intala rakaste* (one who is aged but could not find spouse). Fiancé's presence is required for two main purposes:

1. To make sure that she is virgin and she belongs to him hereafter, and

2. He will present her gifts called *wayyaa kitaannaa* (a cloth with which she will be hold during *kitaannaa*) and *hoolaa* (a sheep) to be slaughtered for the participants.¹³⁷ The crowd sing songs during the night that precedes the circumcision encouraging the girl to be brave and courageous or not to ridicule her friends and *gosa* by shouting aloud. On the night the girl to be cut and her close friends will be served with *heexoo* so that she will be physically weakened and could not resist the cutting, while her friends drink it only to encourage her and to prove that they are with her during difficult days. Then *ogeettii* (skilled/expert woman) arrives early in the morning and the girl will be taken to special room prepared for this very purpose and the cutting will take place. *Ogeettii* will be assisted by strong and muscled woman to circumcise. Informants believe that no anesthesia is used while cutting. According to them FGM/C is performed using blade. *Ogeettii's* responsibility is not limited only to cut but also she should verify whether the girl is virgin or not. If the girl is not virgin the fiancé has the right to renounce his intention of marrying her. This is because virginity is highly valued by Arsi community. The girl's family demand high amount of *gabarra* if their girl is virgin; otherwise they might be entitled to meager or no *gabbara* at all. After the "operation" is over the operator *ogeettii* is entitled to one leg of the sheep slaughtered by fiancé and a certain amount of Birr ranging from ten to thirty for her good services and expertise. *Cidha* or the celebration of *kitannaa* will continue after the operation is over. The girl's friends who were encouraging and dancing during the processes of *kitaannaa* will now bring her gifts and *daraaraa* or *micciirraa*¹³⁸ (highly prestigious cultural food) and her mother-in law will also present gifts (clothes) in honor of her undergoing *kitaannaa*. She will remain in the special room from two to three weeks or until she recovers fully and during this period she will be frequently visited by relatives, neighbors and friends in appreciation¹³⁹ of her being cut.

From now onwards until marriage, she will be under strict follow up by her families and or the intending spouse because there is high possibility that she might be abducted by somebody else,

¹³⁷ Tashomee Gadaa, Private lawyer, Shashamannee [interview 2011].

¹³⁸ Tashomee Gadaa, Private lawyer, Shashamannee [interview 2011].

¹³⁹ *Id.*

raped or run away from home in case she is not willing to marry the intended spouse.¹⁴⁰ Though there is no concrete medical report that shows which types of *kitaannaa* is practiced by Arsi, heads of Kofale, Zuway, Xiyo and Shashamane District Office for Women, Children and Sport Affairs claim that the cutting is very light one and from their discussion it seems that type I and or II is the common form of cutting in Arsi while they confirm that type III is not available in the study area.

When asked what FGM/C can do for them including male informants they respond “*aadaadha jechuu malee waan buuse hin agarre.*”¹⁴¹ Which means “we have been told that it is our culture, more than that we did not see its concrete importance.” All my female informants have undergone either one or the other type of FGM/C. But those informants from town area and practically teacher informants indicate that none of their children have been cut. The head of Kofale District Office for Women, Children and Sport Affairs said two of her daughters one already married and the other learning at tertiary level are not cut. She further believes that since there is high mobilization against FGM/C from local and international NGOs as well as by the government and very importantly due to willingness by the community to abandon its practice is highly reduced or diminished except in remote rural areas. All informants I spoke to on this point are sure enough that the rate of FGM/C practice is highly reduced since the past five years, though not abolished altogether. But the general feeling observable from the informants is that there is still suspicion on their face about whether his/her uncut girl will find husband and or not to be insulted for not being uncut. According to judges and public prosecutors involved in interview and those who participated through questioners surprisingly answered that none of them have come across any complaint or charge against FGM/C¹⁴² despite its criminalization since 2005. Despite the fact that every one speaks against FGM/C some informants believe that still people in rural areas and few from township are practicing it under high secret and without observing the ceremonies discussed above. Those who remain stick to FGM/C do not follow the time, place and procedures formerly used by their foremother and fathers. For example some informants

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Head of Kofale and Batu District Office for Women, Children and Youth Affairs [interview 2010].

hint that parents circumcise their children by taking them to other localities, particularly during summer or mid semester breaks. So, despite the fact that FGM/C is not supported by Arsi customary laws, it has been long practiced by Arsi to the extent that uncut woman or girls regarded as male; and this practice is recognized as a prerequisite for marriage, currently as a result of series and serious of campaign against it by NGOs and government and most importantly the willingness on the part of the community to abandon it, FGM/C is highly diminishing though it is difficult to get rid of it within such a short period of time. Since *kitannaa* in Arsi signifies a transition stage form childhood to adulthood and marks readiness for sexual intercourse as the possibility of being raped necessitate the response of Arsi customary laws to crime of rape.

Rape is one of the wide spread crimes perpetrated against women and girls worldwide during war and peace though the situation in the later is serious and damages women's rights to equality, dignity and physical integrity and freedom from bodily harm. Seager affirms the fact that women everywhere live under the threat of rape majority of them at their own homes and by men they know.¹⁴³ She further and successfully argues that raping someone is not having sex but a mechanism of asserting male power and dominance over women. Internationally, an intentional widespread or systematically raping the civilian population is considered as crime against humanity and suffice for ICC proceedings. Art.7 of treaty of ICC, *inter alia*, lists "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as a crime against humanity and to be under the jurisdiction of the ICC. Under the Ethiopian legal system, the 1995 Constitution of the FDRE,¹⁴⁴ the 2001 Revised Constitution of Oromia National Regional State the right to security of person and the right to be protected against bodily harm is guaranteed. Furthermore, the 2005 Criminal Code of the FDRE expressly criminalizes rape depending upon the gravity and the age of the victim particularly if the rape causes grave mental or physical injury or death it is punishable

¹⁴³ Seager, supra note 14 at 58.

¹⁴⁴ Constitution of the FDRE, supra note 98 Art.14 and 16.

with life imprisonment.¹⁴⁵ So in the next section the concept of rape under Arsi customary laws and the remedies for the rape victim will be discussed.

As briefly highlighted under FGM/C virginity is highly valuable in the Arsi and other Oromo groups as well and as affirmed by my informants virginity was a requirement in marriage during distance past and even today if a girl has no virgin upon marriage she will not enjoy respect and honor among the community. According to one of my informant virginity is a symbol of honesty, dignity and respect among the Arsi and hence girls and their parents try to protect virginity of girls to the maximum they can. Virginity is also used a criteria to demand high amounts of *gabbara* as indicated under chapter three. Therefore, virginity is respected and protected not only by the girl and her family alone but also by the entire *gosaa* member. The Arsi settlement pattern is also important in deterring the defenselessness of girls against rape or sexual harassment. It is because as indicated above the settlement pattern follows the patrilocality and a non *gosaa* member is not allowed to settle among another *gosaa* i.e. Only members of a single *gosaa* settle next to each other and one *gosaa* is considered as blood relatives and cannot marry or have sexual relation within that *gosaa*. This gives girls a good protection from those who can potentially rapist. The other defensive mechanism against rape is that girls will not undergo FGM/C until they are prepared to marry and before cutting sexual intercourse cannot be performed. Though FGM/C is one of the harmful traditional practices that shall be abolished incidentally the superstitious belief that uncut girls are impure protected girls from being raped. Once again since girls (unmarried) and virgin are one of the *wayyuus* in Arsi society, and raping a girls/virgin will raise *iyya siinqee* as discussed above. My informants state that rape is a serious crime and *gumaa* will be claimed form the culprit. Both men and women who participated in an interview agree that raping married women is not a common phenomenon and if it happened the wrong doer will be forced to compensate the woman and her husband. An important point to be mentioned in relation to rape is the mean or method of proving the allegation. According to my informants if a woman complained of being raped the *jaarsa biyyaa* first ask the suspect and if denies the allegation he will be convicted guilt based only on the allegation of the woman because under Arsi customary law women are believed to be soft and peace loving and do not

¹⁴⁵ The Revised Constitution of Oromia National Regional State supra note 98 Art.16 and 18.

lie. In general rape is highly criminalized and sanctioned in Arsi and due to the easy proof required; men do not be tempted to engage themselves with horrifying punishment including disqualification from gadaa office.

The absence of wide spread practices of rape in Arsi can be evidenced from the rape charges brought to two districts court this year. In Digalu-Xiijjoo district court out of the total 1049 criminal charges filed in the year 2010/2011 rape charge accounts only 1 case.¹⁴⁶ Likewise in Arsi Nageellee district court out of the total 677 criminal cases filed in the year 2010/2011 rape charges accounts only 4 files.¹⁴⁷ But we shall be careful not to over generalize depending only on these figures because rape crime is usually under-reported due to social and psychological stigma attached to the victim than to the perpetrator.

¹⁴⁶ Gizachoo Dibaba, Kofale District Court President, Qamariya Ahimad, Head of Kofale Justice Office, Obbo Abu Kadir, East Arsi high court judge [group discussion 2010], Obbo Abraham Kibu, district judge and Obbo Usmaan Abdalla, Arsi high court judge [separate interview with both 2010].

¹⁴⁷ Gizachoo Dibaba, President of Kofale District Court in 2010 and President of Arsi Negellee District Court since 2011

Chapter Five

Women's Economic Rights and Role in Arsi Society

Introduction

This chapter has two main parts. The first part deals with whether or not women are equally entitled with men to the fundamental economic rights as enshrined under the ICESCR. To start with economic rights, again, the scope of economic rights is very wide and cannot be fully addressed by this study and hence the study will focus only on women's rights to acquire, use and transfer movable and immovable properties with special emphasis on land. The issue of land is chosen here deliberately since land is the single most important resource in the study area and the position of customary laws with regard to women's right to land and that of international and national laws is quite different. According to Oromia Bureau of Finance and Economic Development 86.73 % of the total population in the study area lives in rural areas depending totally on agriculture.¹ This indicates that land is a key factor in the economy of this area. Therefore, women's right to economy in the study area largely depends on land which is one of the scarce resources. Due to high population growth, the need to have more land than ever, land dispute is becoming very common both in regular courts and at customary dispute resolutions mechanisms (hereinafter CDR). Women's right to land in the study area largely depends on their status (married, widow, polygamous marriage or the types of law applied in the specific case).

The second part of the chapter deals with the role of women (under Arsi customary laws) in economic, religion and social life of the society. Arsi women play vital role both in private and public life. There are different institutions such as *siinqee*, or *ateetee*, *qanafaa* and *rakoo* under which they are organized and move collectively to protect their rights and of their community. The importance of these institutions for the

¹ Oromia Bureau of Finance and Economic Development, Data and Information Dissemination Core Processes, Finfinne, February 2011.

protection and promotion of women's right in relation to economic, social and cultural rights will be briefly assessed.

5.1. Economic Rights

It is clear that economic rights includes numerous rights such as: the right to adequate food, clothing, shelter, unpolluted water, basic education, right to work and fair remuneration in return, and the right to adequate standard of living.² Economic right is chosen here with the awareness and belief that all human rights are interrelated, interdependent and should be implemented with equal emphasis but economic rights is regarded as core right by UN agencies such as UNICEF and World Bank for the welfare and survival of human beings, and of highest priority.³ Clair stresses the importance of economic rights in the following words: "economic development has been traditionally considered as the dominant force in improving human rights."⁴

However, international community and available researches in the field of human rights, in most cases, have focused on civil and political rights and hence economic and social rights have received far less attention in academic studies⁵ despite the fact that economic rights have been recognized on the same footing with that of civil and political rights by international human rights instruments such as the UDHR which states: "Everyone has the right to own property alone as well as in association with others."⁶ Now it is clear that human rights documents entitle, women and men on comparable footing to own, use

² International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, [hereinafter ICECSCR] text can be available at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm; Clair Apodaca et al., Measuring women's Economic and Social Rights Achievement, in *Women's Rights: A Human Rights Quarterly Reader* (Bert B. Lockwood eds., 2006) at 488

³ Clair, *Id.*

⁴ *Id.* at 492.

⁵ Clair, *supra* note 1 at 485.

⁶ Universal Declaration of Human Rights, UN General Assembly, 10 December, 1948, 217 A (III), U.N. GOAR, 3rd sess. (Resolution, part 1), at 71, U.N. Doc. A/810(1948), reprinted in 43 AM. J. INT'L L .Supp. 127 (1949) [hereinafter UDHR], available at: <http://www.unhrc.org/refworld/docid/3ae6b3712c.html> [accessed 21 April 2011].

and dispose properties either individually or in group. ICESCR, in a more detailed and elaborated manner entitles everyone the right to: food, shelter, medical assistance, clothing, education work, and adequate standard of living, without any discrimination whatsoever.⁷ Art. 2(2) of the same Covenant obliges state parties to guarantee equal enjoyment of economic rights to all human beings without any distinction, *inter alia*, *sex*.⁸ According to Clair Apodaca, the ICESCR, more than other international human rights documents pays special attention to the equal enjoyment of economic rights by men and women. To borrow his words:

The ICESCR is unique in its repeated acknowledgment of and attempt to alleviate the injustice and inequality suffered by women. In what many would call a superfluous or redundant gesture, the drafters of the ICESCR, unanimously voted to include Article 3, which requires states to ensure that women enjoy their economic and social rights at levels comparable to men.⁹

So the drafters of the ICESCR, deliberately inserted the concept of women's rights to economy on equal footing with men despite the fact that equality of men and women is generally recognized by ICESCR and elsewhere by other major human rights documents. Similarly, at national level the 1995 Constitution of the FDRE guarantees to everyone "the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the country."¹⁰ Further, Art.89 (7) of the Constitution of the FDRE further puts an obligation on the government "to ensure the participation of women in equality with men in all economic and social development endeavors."¹¹ Here, women's participation is considered vital because it enables them to air their voices on

⁷ ICESCR, *supra* note 1.

⁸ *Id.* Art. 2(2) states: The States Parties to the present Covenant undertake to guarantee that the rights enumerated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Emphasis added).

⁹ Clair, *supra* note 1 at 490.

¹⁰ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995 Art. 41(1), Addis Ababa, entered into force 21st August 1995. [Hereinafter Constitution of FDRE]. As per Art. 7 of the same Constitution the masculine gender used in this constitution also apply to feminine gender.

¹¹ *Id.* Art. 89(7)

development plans and activities that might affect their rights or the development of the country in general either negatively or positively. The Constitution of Oromia National Regional State also sets the same principles for residents of the region or those who want to live in the region under Art.41. Thus both Constitutions have recognized women's equal right to economy.

However, despite the recognition of women's equal rights to economy at global, national and regional level many literatures indicate that the situation of woman worldwide is much unchanged or even in some cases or in some parts of the world worsened. For example, Nuket indicates that economic development does not necessarily and always beneficial to women as:

Development projects commonly regard the male as head of household, and therefore all services, training, and credits are in his name. More devastating for female farmers, title to land is routinely given to the male, denying women the right to cultivate their own or communal lands, or to obtain seed, or to sell their produce.¹²

He further argues that women's situation declined as a result of planning problems. He asserts that "Overall, women's situation declined because development planners failed to recognize women's role in production, they are identified as housewives and mothers, were denied access to credit, technology, and land."¹³ Seager in support of Nuket emphasis that majority of women worldwide do not own or inherit or control property, land and wealth because of the discriminatory inheritance and property laws that are still in force.¹⁴ She further indicates that:

Property discrimination in agrarian economies is particularly striking- women typically work the fields, prepare, grow and harvest the food, but cannot own the land. Land and property provided leverage for other economic advantages.¹⁵

¹² Clair, *supra* note 1 at 493.

¹³ Nuket Kardam, quoted in Clair *id.*

¹⁴ Joni Seager, *The Atlas of Women in the World*, Myriad Editions Limited, third edition 2003 at 84.

¹⁵ *Id.*

She emphasizes the importance of land and properties that are attached to land to women. This is because such properties are key resources for a community that largely depends on agricultural economy. So from the above writings and discussions it is possible to conclude that despite the emerging recognition of economic rights for women on equal bases with men the realization is far from expectations worldwide. Now let us turn to what rights women do have on land in the study area.

5.1.1. Women's Right to Land in Arsi

5.1.1.1. Human-Land Relation in Arsi

As indicated above land is becoming a key factor in the economy of developed or developing countries and every nation attach high value to land. It is a critical aspect for all human well-beings. The Encyclopedia of Earth stresses the use and importance of land in Africa as follows:

Land in Africa is used for many activities: agriculture and forestry; urban expansion and infrastructural development including transportation; mining and oil extraction; tourism and recreation; and also as a sink for domestic and industrial waste. It is critical in the cradle-to-grave cycle of both living and non-living things, providing habitats and other ecological goods and services, sustaining investment and human livelihoods, and absorbing solid and liquid waste, pollutants and pesticides.¹⁶

In fact the above mentioned facts are not only unique to African land as land everywhere renders similar utilities in the rest of the world as well, though with varying degrees. The importance and role of land in economy is further emphasized by different leaders and writers. For example Nelson Mandela the first democratically elected black African president to South Africa during his inaugural ceremony in 1994 stressed the attachment African people have with land but women's problem in enjoying full rights over land as follows:

¹⁶ Cutler Cleveland, United Nations Environment Programme, Land resources in Africa, In: Encyclopedia of Earth, Washington, D.C.: Environmental Information Coalition, National Council for Science and the Environment. [First published in the Encyclopedia of Earth June 19, 2008, accessed December 6, 2010, available at http://www.eoearth.org/article/Land_resources_in_Africa.

Each of us is intimately attached to the soil of this beautiful country. Each time one of us touched the soil of this land, we feel a sense of personal renewal. These words sound hollow to millions of African women who are forced to live off a land that they till but do not own.¹⁷

In the case of Arsi also, Hinseenee, one of the famous leaders of Arsi also during and after the conclusion of the war between Menelik and Arsi towards the end of 19th century in resisting the transfer of land to the occupying force stressed that: “The question of land is the question of ‘Bone’ which could not be transferred to others.”¹⁸

Hinseenee’s position exactly matches with an Oromo maxim which goes *lafti lafeedha*¹⁹ which means “land is bone.” In fact Arsi uses two terms to refer to land/earth i.e., *lafa* and or *dachee (dachii)*. The term *lafee* here refers not only to the literal bone but it signifies deep connection between land/earth and human beings i.e., Oromo land is part and parcel of Oromo society and history that cannot be transferred to outsiders. According to Mamo again *lafee* refers to good personality and trustworthiness²⁰ of human being. He quotes another Arsi saying which goes: “*Namni lafa hin qabnee fi namni lafee hin qabne hanga tokko*”, translated as “A person who does not own land is like a person without bones in his/her body.”²¹ This indicates that a person who does not have a piece of land cannot walk upright properly or hobbles as a deformed person whose bone is crushed. According to Arsi *Waaqaa* (God) and *lafa* (earth/land) united together and rule the universe. For Arsi *lafa* or land/earth has religious and spiritual importance beyond its material or economic purpose. *Lafa* has been given feminine gender while *Waaqaa* is labeled with male gender. It is also a common believe among the Oromo in general that human being exist between God and earth. As a result earth is

¹⁷ Tania Ngima, et al., Land Web, in Women & Development in Africa: How Gender Works (Michael Kevane, 2004).

¹⁸ Hinsenee Hullufee, quoted in Abbas Haji, The History of Arsi (1880-1935) Addis Ababa University, 1982 at 14 (Unpublished BA Thesis, Institute of Ethiopian Studies)

¹⁹ According to Oromo mythology human beings are made up of five basic components and if one is missed there could not be human beings. These are Dhiiga (blood), Lafee (bone), Foon (flesh), dhama lafee (bone marrow), and lubbuu (life).

²⁰ Mamo Hebo, Land, local Custom and Policies: Land Tenure, Land Dispute and Dispute Settlement among the Arsi of Southern Ethiopia, Kyoto, Japan 2006 at 36

²¹ Id. at 35.

much respected among Arsi and they take an oath in the name of *waqaa* and *lafa*. According to Gabre'amilak, in *guma* ceremony when *shanachaa* (bench) delivers the verdict it may order the wrong doer to pay fifty cows to the victim or to his/her family. But the bench will not end its job then and there. It requests the victim or his family to mitigate the punishment. *Shanachaa* begs the victim by appealing to God and earth/land. *Waaqaaf jedhii kudhan dhiisi, lafaaf jedhee shan dhiis, namaaf jedhee hangana dhiisi*. This means "Relinquish ten for the sake of God, five for the sake of earth and this or that amount for the sake of humanity..." Then any person who is approached in the name of earth/land won't resist the mitigation sought. Arsi comply with what is asked in the name of earth because they believe that if someone does injustice to somebody else or to the land itself it is believed as *lafti nama dhiibatti* (earth/land will retaliate against wrong doers).²² They also believe that whatever they do is witnessed by God and earth. Such belief deters falsehood and wrongdoings. It is a common saying among Arsi that *Yoo namni sihin argine Waaqni si arga, lafti si dhageetti*. This can be roughly translated as "whatever you do beyond the reach of human beings will be seen by God and heard by earth."²³ This shows that Oromo believe in the omnipotence and transcendence of God as well as the presence of earth everywhere and the capability to witness every deed of human beings. The value attached to land and the relationship between earth and Arsi Oromo is signified by the following maxims

1. *Gaafti sa'a baajii lafa ilaalti, lafti lafeedha garaa nama nyaatti*

The horn of cattle that curve downward or sideways tilts towards earth, Earth is like one's bone and losing it is misfortune/disappointing

2. *Kan irratti kufanis lafa, kan qabatanii ka'anis lafa*, We fall on land and we get up holding land.

²² Obbo Gabre'amilak Guyyee, interview November 2010 and Aliyyee (Experts) on Arsi Customary Laws currently working as experts in Kofale District Culture and Tourism Office.

²³ Id.

3. *Lafaa fi dhala namaati nama danda'a.*

It is the earth and good personality that tolerates human beings.

I should comment only on the second and third maxim. The direct meaning of the second maxim is: though falling is not good fortune, if it happens it will be on the earth but nowhere else and you will get up by holding the land itself. This shows that earth accompanies human beings both in good and bad times. The hidden message is very important here. It is to mean if you are in trouble in other businesses you could go back and till land and it will help as a starting point for anyone who is not successful in other areas of life. The third maxim depicts the difficulty of dealing with human behavior and the fact that human needs are unlimited. *Lafti nama danda'a* means there is no other thing that can serve human beings like earth/land. Arsi believe that no other resource is long lasting and as generous as land/earth is. They say we build our houses on it, plough it, walk on it, and keep our cattle/herds on, buried under it and generally there is nothing we could do without touching land. They also prefer to sit on the ground than sitting on chairs stressing that the former is more comfortable than the later particularly during ceremonial activities. The high importance and relationship between Arsi and earth/land is also shared by the other groups of Oromo elsewhere.²⁴

²⁴ Among other sources see Mamo, supra note 20 at 40.

There are also other such countless poems and songs throughout Oromia praising earth for its resourcefulness, equal treatment of human beings irrespective of wealth, sex, nationality, language etc. For Mamo, the songs and poems have the purpose of “either to praise the land, or to appreciate its contribution to their survival or to swear and take oath in its name.”²⁵ From the poems and songs it is clear that all human beings are equally entitled to use land without discrimination and consideration. Otherwise land is equated with a mother who is always generous to her children and treats them fairly and equally without making any sort of preferences among them. Hence such connection between earth and human being is very important to understand women’s rights to land in the study area.

5.1.1.2. A Brief Overview of Arsi Land Tenure System

Under this section the land tenure system will be discussed from historical perspective so as to understand what rights individuals and groups have on land in the past and present in the study area. This will be done in reference to the situation before and after Menelik’s conquest of Arsi. It is important to treat the situation before and after this period separately because there is massive shift in the land holding system with the change of administration.

So to start with the pre-colonial period, available literatures and elders indicates that when Arsi first settled in the study areas they were predominantly pastoralists and land was primarily used for grazing purposes²⁶ and land was held not by individuals but by *gosaa* or *balbala* (clan and lineage respectively) while individuals have complete free access to land. Since there was no farm or plantation, there was no reason to acquire or hold land privately. According to Mamo, even if land is hold by *gosaa* or *balbalaa* it does not necessarily mean that outsiders are totally precluded from accessing such lands. This is a common phenomenon throughout Oromo land and still in Borana where land is still held communally, any one from anywhere including non-Boranas have free access to grazing land or *eelaa* (ground water) if he/she is needy²⁷ and

²⁵ Id.

²⁶ Obbo Gosee Wayeessoo, one of the Hayyuu on Arsi Customary laws, Zuway Dugda PA, age 82, [interview, November, 2010].

²⁷ Ab Borbor Bulee, one of the renowned hayyuus on Borana history and laws who is named as ‘The living encyclopedia of the Oromo people’ by Asmarom Legese, [interview 2011, Adama]. (In Boranan Abba is used instead of Obbo which signifies fatherhood).

peaceful. Therefore, during those days every Oromo (male and female of course) without any discrimination had equal access and ownership rights on land while outsiders could also access Arsi land on permission provided that they are facing water and grazing shortages due to natural or human made disasters/calamities.²⁸ My local informants claim and Mamo also confirms that under Arsi customary laws, land will only be transferred to the male section of the *gosaa* through succession while female are not entitled to inherit land from her natal *gosaa* due to marriage norms, residence pattern of the society and the concept of ownership of land under Arsi customary laws.²⁹ During the communal land holding system and pastoralist ways of life, land inheritance was not as such an issue because both men and women have equal access to use it for grazing and to build his/her houses on it.

However, the communal land holding system and pastoralist way of life gradually started to change with the introduction of farming and population growth. According to Mamo change in the land holding and tenure system started to take place right before the Abyssinians invasion in late 19th century. The change was attributed to both internal and external factors according to Mamo. Internally, the high population growth and the replacement of the predominantly pastoralist way of life by mixed economy (crop production and animal husbandry) necessitated private land holding system and competition to own land individually as well as collectively and *gosaa's* land started to be hold by many *balbalaas* (lineages), and next by *warra* (extended families)³⁰ as well as in some cases by individual *Motiis* which signifies the emergence of the private land holding system and change of tenure.

The external factor is attributed to the conquest of Arsi and its land by the Abyssinians towards the end of 19th century. The internally started changes were further aggravated by the external factor and the land holding and tenure system were completely shifted after the conquest.

²⁸ Mamo, supra note 20 at 47.

²⁹ Id. at 47.

³⁰ Abbas, supra note 25 at 44; Mamo, supra note 20 at 49.

According to Abbas and as discussed under chapter three Menelik expropriated Arsi land and relocated to the new settlers. Abbas goes on and states that:

The aftermath of the conquest was characterized by land alienation from the indigenous people and its reallocation to new administrators.... Therefore, the communal land ownership of Arsi was supplanted by private land tenure system.³¹

This move not only indicates the complete shift from the communal or family land holding to private land holding but also depicts the transfer of land ownership from the indigenous Arsi people to the occupying force. Markakis adds to what has been said by Abbas saying:

A massive land expropriation followed the conquest, when the Abyssinian took two-third of the conquered land or the state, leaving one-third for the subject population. The land claimed by the state was distributed to Menelik's officers and soldiers, Abyssinian nobles and high clerks, the royal family and its servants [...]. The result was massive dispassion of most Oromo peasants and other ethnic groups inhabiting the southern half of the plateau.³²

According to Abbas in areas where Abyssinians faced fiercest resistance from Arsi they dispossessed $\frac{3}{4}$ of the land of the local people while in areas where least resistance posed only $\frac{2}{3}$ of the land was transferred to Menelik's officers.³³ So despite the conflicting figures as to how many land was alienated what remain common to Arsi in general is, in the aftermath of the conquest Arsi became *gabbar* (tribute paying peasant) to the colonizers on their own land and all resources associated with land which were formerly under the ambit of communal holding system became the private property of the occupying forces establishing complete landlord-tenant relationship between the winners and the vanquished. So under the Imperial regime both Arsi men and women have no different rights on land as it was the property of the landlord.

As soon as Derg took power, driven by the 'Land to Tillers' motto of the day, it acknowledged the importance of the relation between land as well as human dignity and rights, the grabbing of several thousand *gashas* of land from the masses by few landlords and their families and the age-

³¹Abbas, supra note 25 at 46

³² Markakis, in Mamo, Id.

³³ Abbas, supra note 25 at 47.

old feudal oppression, injustice, poverty etc on one hand and for the development of the country on the other hand all rural lands was proclaimed to be public property and landlord-tenant relationship was altogether abolished.³⁴ More relevant to our case as per Art.4 (1) of proclamation No.31/1975 it was stressed that “Without differentiation of the sexes, any person who is willing to personally cultivate land shall be allotted rural land sufficient for his maintenance and that of his family.” This proclamation was land marking in the history of land administration in the Ethiopia and in the study area as well since it entitled men and women to use land on equal footings. Further the proclamation allowed women upon the death of their husbands to use the land they jointly owned while he was alive.³⁵ Though the proclamation clearly prohibited transfer of land through succession, granting women to use her deceased husband’s land amounts to de facto inheritance because “using” and acquiring land thorough “succession” have practically the same effect under this proclamation.

However, the overall assessment of *Derg’s* land reform policy has been perceived as both positive and negative by different scholars. According to Mamo then the reform has positively contributed in achieving “social equity” and created greater “political awareness” among the mass while the heavy interference by the government through villagization program, resettlement and collectivization, the requirement of active participation in the revolutionary struggle and endless call for contribution through *gibira* (tax or tribute), *cabaa*(quota) made the ‘land to tiller’ slogan and *Derg* unpopular among Arsi in general.³⁶ Mamo believed that the

³⁴Public Ownership of Rural Lands Proclamation No.31/1975, 34th year –No 26, Addis Ababa 29th April, 1975.

Id. Art.5 of the proclamation states:

No person may by sale, exchange, succession, mortgage, antichresis, and lease or otherwise transfer his holding to another; provided that upon the death of the holder the wife or husband or minor children of the deceased or where these are not present, any child of the deceased who has attained majority shall have the right to use the land.

³⁵Id. Art.5 of the proclamation states:

No person may by sale, exchange, succession, mortgage, antichresis, and lease or otherwise transfer his holding to another; provided that upon the death of the holder the wife or husband or minor children of the deceased or where these are not present, any child of the deceased who has attained majority shall have the right to use the land.

³⁶ Mamo, *supra* note 20 at 57-58.



primary cause for the failure of the land reform policy was due to Derg's "Over promise but under delivery by poorly implementing the reform policy."³⁷

Under the current government when the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) come to power in 1992 by overthrowing the military socialist dictator the general land policy remained much unchanged. Similar to the Derg's position land is declared public property by the Constitution of the FDRE, in 1995. Art. 40(3) states:

The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject of sale or to other means of exchange.³⁸

So this position is exactly the same as Derg's land reform policy which excludes land from subject of sale and private ownership where all types of lands remain state property. Dassalegn took a position that the current land policy and land laws put the Ethiopian peasants or land-users in the state of tenancy.³⁹ Whether land should be a private property or should continue as it is provided under the current Constitution of the FDRE, fierce debate is going between different political parties. One of the main differences between the ruling party and opposition political parties during the 2005 and 2010 national election rally was whether land should be privately owned or remain government property. The disagreement and debate over this issue is still hot and I guess it will continue in the future because both arguments have strong proponents and opponents. Derived from the Constitution of FDRE, the Federal Rural Land Administration Proclamation No. 89/1997 (as amended by Proclamation No.456/2005) sets policy direction with regard to rural land. The proclamation reiterates the slogan of the 1995 Constitution of FDRE, and that of 1975 Derg's that "Land shall remain public property and shall not be subject to sale or other mode of transfer of ownership"⁴⁰ is maintained. Following the footsteps of the federal

³⁷Id. at 59.

³⁸ Constitution of FDRE, supra note 10 Art. 40(3).

³⁹ Dassalegn, in Mamo, supra note 20 at 59.

⁴⁰ Federal Rural Lands Administration Proclamation No.89/1997, Federal Negarit Gazeta 3rd year No. 54, Addis Ababa, 7th July, 1997; Federal Democratic of Ethiopia Rural Land Administration and Land Use Proclamation No.456/2005, Federal Negarit Gazeta 3^{11d} year No. 44, Addis Ababa, 15th July, 2005.

constitution and the above mentioned proclamation, the Oromia National Regional State also makes land the property of the state and prohibits sale or other means of exchange of land.⁴¹ Following the regional constitution, Oromia has issued The Oromia Rural Land Administration and Use Proclamation No.56/2002 as amended by Proclamation No. 70/2003, 103/2005 and 130/2007⁴² in August 2002 for the first time. Hence this proclamation reiterates the principles enshrined in the Federal and Regional Constitutions as well as the federal proclamation. The following are core principles laid down in the 2002 proclamation:

- A. All lands belongs to the public and cannot be subject of sale or other means of exchange,
- B. Land redistribution is applicable only to irrigation land
- C. Any land dispute shall be settled by District court
- D. Women are guaranteed equal rights on rural land use and administration⁴³

5.2. Women's Rights to Land under the Current Government

The 1995 Constitution of the FDRE is very clear on women's right to land than Derg's land policy because in addition to the recognition of equality of men and women everywhere in the Constitution, women's equal rights to acquire, transfer and enjoy rural land on equal footing with men in all aspects is expressly provided. Article 35 of the Constitution which is totally dedicated to women's rights is cited as:

Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer,

⁴¹ A Proclamation to Enforce the Oromia Regional State Revised Constitution of 2001, Proclamation No.46/2001 second ed., Adama, October 27, 2001. Arr.40(3) states:

The right to ownership of rural and urban lands as well as all natural resources is exclusively vested in the State and the people of the Region. Land belongs to the people of the Region and shall not be subject to sale or any other mode of transfer of ownership.

⁴² See Proclamation to amend the Proclamation No.56/2002, 70/2003, 103/2005 of Oromia Rural Land Administration and Use, Proclamation No.130/2007, Megeleta Oromia, 15th year—No.12-138/1999, Finifinnee, 29th July, 2007.

⁴³ Id.

administration and control of land. They shall enjoy equal treatment in the inheritance of property.⁴⁴

The Constitution guarantees women's equal rights with men in acquiring, using, transferring and administering land irrespective of their marital status. Particularly women's right to succeed land on equal ground with men is respected. Other than the Constitution, proclamation No.89/1997 enacted on July 7th 1997 restating that rural lands shall be administered by regional governments and hence mandates regional governments to enact laws on land administration. It stresses that the laws to be enacted by the regional governments shall conform to the federal lands utilization policies and with regard to women's rights such laws shall:

1. Assign free land holding rights without differentiation of sexes,
2. Allow women to use hired labor on their holdings or to, otherwise, make agreements thereto, and
3. During assigning land holding rights and distribution the rules to be followed and methods to be used shall be transparent and fair to women. So the laws to be issued by any regional state shall fulfill the above mentioned minimum standards with regard to women's rights to rural land.

When we look at the position of the Constitution of Oromia National Regional State like the Constitution of the FDRE, it guarantees women's right to use, administer, transfer and inherit land on equal footing with men.⁴⁵ The regional government also enacted several regional proclamations⁴⁶ on rural land administration and use rights at different times. But since all of them took almost similar stand on women's rights to land, only the living proclamation (Proclamation No.130/2007) will be discussed here unless otherwise necessary.

This proclamation makes several references with respect to women's rights to acquire, use and transfer land on equal footing with men. More specifically, under Art.5 (1 and 2) of the

⁴⁴ The Constitution of FDRE, supra note 10 Art.35(7).

⁴⁵ Constitution of the Oromia National Regional State, supra note 41. Art.34(9).

⁴⁶ See Megeleta Oromia Proclamations No.56/2002, 70/2003, 103/2005 and 130/2007.

proclamation women's rights to possess, use and administer rural land on equal ground with men is stressed. Again upon divorce women are granted the right to share the "land holding that was registered by their name equally with their husbands"⁴⁷ taking into account the number of children they raise. This provision invited serious disagreement among legal practitioners and judges. One group argues that a land shall be partitioned upon divorce between husband and wife only if it is acquired jointly by husband and wife or only land which is registered by the name of both spouses. This line of argument stresses that, lands acquired by one of the spouses before marriage or through donation, or succession after marriage shall remain the personal property of such spouse and shall not be partitioned upon divorce. The other group on the other hand claims that irrespective of when and who acquired the land if both spouses have been using it during the life of their marriage it shall be partitioned equally between them. This disagreement over the interpretation went deep into Supreme Court of Oromia and now the former argument is becoming majority decision on several cases. The basic argument used by the majority decision is that in the history of land holding and tenure system in most cases land has been in the hands of male title to land is issued in the name of male and unusually it is the man of his family or *gosaa* in most cases who is responsible to provide land to the new couples and unless both are considered as joint possessors only very few women will partition land upon divorce.⁴⁸

Women are also entitled to inherit land in accordance with Art.9 (1) because women are entitled to inherit their parents under the general law of inheritance. Furthermore, woman has the right to be issued certificate of land holding bearing her name and that of her husband on the land they commonly own and the right to use such land on equal basis with her husband, while she has the right to have certificate of holding on the land she privately owns.⁴⁹ The proclamation also stipulates that by the mere fact that woman has changed her residence the rights she has secured⁵⁰ on a certain land shall not be affected. In general both at federal and Oromia regional

⁴⁷ Oromia National Regional State Proclamation No.130/2007 supra note 41 Art.6 (13) [emphasis added]. The Afaan Oromo version which is the binding one of course says "...yeroo walhiikan qabiyyee lafaa maqaa isaaniitiin galmaa'ee waliin qaban..." which indicates that the land to be divided shall be of their common holding irrespective of whether it was registered by one or two of them.

⁴⁸ Oromia Supreme Court, Cassation Division, Civil Case File No.11062.

⁴⁹ Id. Art. 15(10)

⁵⁰ Id

levels legislatively, women are entitled to acquire, use, partition equally with her husband upon divorce and to transfer her rights within the framework of the existing legal system. And one can safely argue that women's rights to land is widely and in a detailed manner treated by Constitutions and other subsidiary laws under the current government than the past governments. However, what matters is whether these constitutionally granted rights will be directly and as easily as tailored will be enjoyed by women in the study area where cultural set ups, marriage types and religious laws highly influences the way of life and land holding system is the most important question to be answered.

5.3. Women's Rights to Land under Arsi Customary Laws

Under Arsi customary laws women's access to land depends on several factors such as status, (married, unmarried, widow etc), settlement of *gosaa*, types of marriage etc. in the same manner Mamo states that women's access or right to land is determined by their marital status as: unmarried (girls who still live with their parents), married, widows, divorcees.⁵¹

5.3.1. Girls' Rights to Land

Since girls are usually dependants on their parents, the parents are responsible for their well-being, education and food. According to my informants this responsibility continues until the girls get married. As far as land right is concerned my informants indicate that there is no reason for girls to obtain or hold land privately since they depend on their parents. The girls also do not claim to own land privately while they are with their natal parents because they know that they will marry another *gosaa* to which they become permanent members. Contrary to my informants' position on this point Mamo indicates that "girls while dependant on their parents may be given land on temporary basis but they do not claim ownership on it during marriage."⁵² All my female informants (the married and unmarried) responded that girls do not have land privately as far as they are with their parents. They add that upon marriage all sorts of properties might be given to the girl in the form of *geegawoo* except land. This is because; land can be acquired only by the male member of the *gosaa*. Therefore, before marriage girls who are living

⁵¹ Mamo, supra note 20 at 82.

⁵² Id. at 85-86

with their parents can collectively use and enjoy their parents' land but they cannot own it privately at least on permanent basis. At this point it is impossible to argue that women are discriminated in owning land because it is not only girls that do not own land privately before marriage but also boys are not entitled to own land individually before marriage.

5.3.2. Married Women's Rights to Land

In marriage land is usually held by the name of the husband. According to Kofale Land and Environmental Conservation Office 87% of the title deed to rural land has been issued in the name of husband while the name of wife/wives is only mentioned as a family member.⁵³ The title deed format to rural land is prepared by this office and it does not provide joint certificate on their land. But as indicated in chapter three and introductory remarks Arsi is a polygamous society and every marriage follows the patri-locality and land holding follows *gosaa* territoriality. So the land to be used by husband and wife in almost all cases comes from the husband's *gosaa*. But in most cases every women in the polygamous marriage is allotted a separate plot of farmland by their husband. In such marriage, it is not only land but also cattle and other movable properties are individually owned by women. However, grazing land is usually used in common by all wives. This is because of shortage of grazing land to allot for every wife on individual bases. For instance *Obbo* Nuuree Ayaatoo's 12 wives have their own separate land and Kraal, in some cases very far apart. According to Mamo the individualized allotment for co-wives helps to reduce potential friction and encourages positive competition among wives.⁵⁴

My informants add that such arrangement is important and necessary to reduce potential inheritance dispute among the children of the husband; children born from a wife will not claim to succeed the property of the other wife. Such arrangement is taken as wise approach among the local people. The size of the farmland to be allotted to the co-wives depends on the number of their children and seniority of the wives. My informants say that it is *haadha warraa hangafaa* (the eldest wife) who determines the amount of plot of land and the number of cattle allotted to

⁵³ Kofale Land and Environmental Conservation Office, department of public relation, November 2010.

⁵⁴ Mamo, supra note 20 at 86.

the junior wives. Furthermore, the husband himself may not get more wives without her consent. The junior wives shall pay much respect to her and obey her decisions.

My informants elaborate that in marriage no one is presumed to be holding a land for private or individual purpose, rather all family members enjoy it together. Hence, the mere facts that land is registered or hold by the husband does not necessarily lead us to the conclusion that woman are denied of access to land in Arsi.

5.3.3. Women's Right to Land upon Divorce

As indicated in chapter three, marriage in Arsi is highly respected and full of rituals. It is intended for indissoluble life. So divorce is not allowed or at least divorce is not set as a solution to settle the difference between husband and wife. *Rakoo* ceremony is the indication of such union. But since we are living in a practical world exceptions are always inevitable and thus divorce is allowed in such circumstances. Informants argue that since divorce is rare among Arsi and it is not expressly governed by customary laws, the position of a divorced woman to land is uncertain. But the elders confirm that women's right to land upon divorce depends on responsibility for the dissolution of marriage (*rakoo dhiquu*). It is presumed in Arsi that women are sociable and affectionate and hence less likely to cause trouble that leads to divorce. However, if she is found to be the prime cause for the dissolution (*rakoo dhiquu*) she is not entitled to any portion of the land including *raada siinqee* (heifer acquired by *siinqee*). But if the responsibility is that of the husband *rakoo dhiquu* shall not be effected but she will get the right to partition all kinds of property including land though she may not leave the *gosaa* and the territory.⁵⁵ The reason behind remaining with the *gosaa* of her former husband is that she has already switched her natal *gosaa* to the *gosaa* of her ex-husband. Therefore, women's rights to land upon divorce depend on whether they are responsible for the dissolution of the union or not.

5.3.4. Widow's right to Land

According to Arsi customary law when a husband dies the widow will have two options. The first and the commonest one is she will be inherited through the marriage type known as *dhaala*

⁵⁵ Gabre'amilak, supra note 22.

(marriage by inheritance) ideally by the elder brother of the deceased husband. The inheritance normally presupposes the consent of the widow and strictly speaking there is no obligation to her as to who will inherit her. But inheritance is not random. There is an order to be followed to decide who should inherit her. The order to be followed is first *obolleessa angafaa/obolleessa* (elder brother/brother of the deceased), if there is no such person or she is not willing to marry him the next will be from *warraa/aanaa* (extended family), *balbala* (kin) and lastly from *gosaa* (clan). So as to who will inherit a widow is not totally out of her control though the elder brother is the prime candidate. According to Kedir Hajji Gaobana,⁵⁶ very recently a husband died from Kokkossa district and the elder brother of the deceased was ready to inherit the widow and when asked by the *gosaa* member she opted for the youngest brother of the deceased and she was welcomed both by the *gosaa* and the youngest brother of the deceased. However, she cannot be inherited by somebody outside the *gosaa* and if she wishes to do so she is expected to leave the land. According to Mohammed in 2009 a certain widow [*name withheld*] from Kofalee district got married to a man outside of the above mentioned options irrespective of persistent resistance from the *gosaa* members of her deceased husband and later they burned their house and expelled both from the land of their *gosaa*.⁵⁷ It is not only the widow who is duty bound to be inherited by the brother/relatives of her former husband but also the brother/relatives of the deceased are also dutiful to inherit her. The prime purpose of this type of marriage is to bring up the children of the deceased as well as to prevent non-*gosaa* members from marrying the widow. Some call it protective marriage because such arrangement originally designed to protect the children and property of the deceased from outsider.⁵⁸ This is because if an outsider marries her he will have access to the property of the deceased including land; that will affect *gosaa* land holding system and settlement pattern. But according to Mamo such access or control is not direct or complete over the property of the widow and his deceased brother's property. He will use the land with her while the substantial part will be used for the well being of the children of the deceased. But according to Mohammed and Gabre'amilak the heir has no right to inherit the land which the widow has inherited from her former husband but if he got a child from her the child will have

⁵⁶ Shiek Kadir Hajji Goobana, Qadi at Oromia State Supreme Shari'a Court [interview 2011].

⁵⁷ Mohammed Aliye, Oromia Supreme Court judge, [interview 2011, Adama].

⁵⁸ *Id.*

more access and use over such land and such children will have succession rights over such land. Therefore, for all practical purposes the widow has more power than the heir over the land and other properties she inherited from her deceased husband.⁵⁹

The second option left to the widow is to remain unmarried and hold the land she inherited from her husband. This situation happens usually if the widow has grown up children particularly male children. This option mostly materialized when a woman loses her husband in her old ages.

5.3.5. Women's Right to Inherit her Parents' Land

Women's right to inherit land from their natal parents has something to do with Arsi's marriage philosophy, settlement pattern and land laws. As stated under chapter one, Oromo women in general do not born to *Gadaa* class but married to *Gadaa* class which indicates that women switch their *gosaa* upon marriage and will have nominal tie with the *gosaa* they were born from. And marriage is presumed long lasting, there is no room to think for a girl once married to come back and inherit her parents' land. Mamo argues that in Arsi, "Exogamy, patrilocal residence rules and gosa territoriality hinder women from inheriting land from the gosa of their origin."⁶⁰ This is because marriage is across *gosaa* boundaries or sometimes across several *gosaa* boundaries and if women are allowed to inherit land from their original *gosaa* they are going to use or settle on that land with their husbands and descendants which belongs to other *gosaa* affecting the meaning of *gosaa* and the entire land holding system.

Informants are divided over whether women shall inherit her natal parents' land or not. Elderly men categorically argue that since women belongs to the *gosaa* to which they are married to and use the land of the *gosaa* to which she is married, there is no reason for them to come back and claim inheritance. They also add that women are given *gegawoo* upon their marriage as their share from their parents' property. According to them *gegawoo* includes all properties except land. Mohammed believes that land and cattle are the two major and most important resources of Arsi people and girls are given huge amount of *horii adeemaa* (movable properties particularly of cattle). *Gegawoo* is not the only mechanism through which girls are given

⁵⁹Mamo, supra note 20 at 87.

⁶⁰Id. at 89

properties from their natal parents. She will be given cattle and other *horii adeemaa* whenever she is needy. According to informants all types of property will be included in *gegawoo* except land because land is the property of *gosaa* and hence her parents have no rights to transfer it to her. According to Mohammed Aye what is given in the form of *gegawoo* is what a girl should have been entitled to during succession. In other words, *gegawoo* can be a substitute for succession to land in Arsi. That is why women say *yoon dhaala dhabe dhaamsa hin dhabu* which means “Even if I am not entitled to entire succession, I will not be denied some token.” Hence, women are entitled to inherit *horii adeemaa* from their original parents and use right over land also in exceptional circumstances. This is a situation where parents testate to their girls who are married or unmarried to use *duudda lafaa* (back of land) but not *lafee lafaa* (bone of the land) i.e. only to use the land (possessory rights) for a short period of time such as until she will be married or until she will be economically better off or may attach any kind of condition to it but she is not entitled to own the land for life or forever since it belongs to *gosaa*.⁶¹

Therefore, women’s land inheritance or succession to their original parents has been strongly opposed by my informants including elderly women on the ground that it will invite the mixture of different *gosaa* member. But this alters every aspect of their life. For example, it may result in criminal activities, endogamous marriage system, more than any things there will be endless land inheritance dispute across *gosaas*.

Therefore, in principle under Arsi customary laws, women are precluded from inheriting land from their natal parents due to the nature of marriage, settlement pattern of the society as well as collective ownership of land by *gosaa*. On the contrary, Arsi customary law allows women to inherit land from their husband which is impossible under the statutory laws. In Arsi since women have switched their *gosaa* to that of her husband, if their husband dies her in-laws will not inherit the property or the deceased husband including land. They also inherit land from the parents of their husband through their husband i.e. when the husband’s parents die, he is entitled to inherit their land and will use that land with his wife since there is no concept of individual land holding system within a family. According to elders there is no single property that belongs

⁶¹ Mohammed, supra note 57.

to a single person within a family except *goromsa siinqee* (heifer by *siinqee*) which is exclusively owned by the woman.

Mamo warns the attempt to create “the dichotomy of “men’s-women’s land will results in one household-two land holders-two land” will create a problem than it solves. This is because in a polygamous society if the concept of private property is highly encouraged a single person is going to gather lands that corresponds to the number of his wives. Thus he indicates that an attempt to introduce the men’s-women’s land holding dichotomy (individualistic concept of land holding) might subvert the existing and functioning system.⁶²

5.4. Current Practices

As indicated in chapter three population growths is very high in the study area and land is almost the sole important economic resource in the area. Everyone is becoming very cognizant of the scarcity of land and in the future, land dispute will increase not only between men and women over succession to land and partition after divorce but also among the society in general.

To evaluate the level of land dispute related to succession and partition after divorce it suffices to look at the situation in two districts (Arsi Nageellee and Digalu-Xijjoo). In Arsi Nageellee district court out of 213 active civil cases land dispute accounts for 104 in total, of which 56 about land partition claim after divorce, 24 cases involve women’s demand to succeed land from their original parents. In Digalu-Xijjoo district court out of 242 active land cases; partition after divorce and women’s demand to succeed, together account for 159 files.⁶³ These figures indicate that land dispute accounts almost 50% percent of the total civil cases which is worrying when compared with the stable land holding system in the area during the last decades. In the same way the rate of divorce is increasing at alarming rate which will be followed by demand for land partition by women. The issue of land succession by women is also becoming a common phenomenon resulting in wives’ and husbands’ private land while they are living together in marriage. But this is contrary to marriage philosophy of the Arsi people.

⁶² Mamo, supra note 20 at 90.

⁶³ Id.

According to the respective presidents of the two courts women prefer to effect divorce and settle the consequences of divorce at the regular court because it pronounces that husband and wife are equally entitled to partition their communal property including land while at CDR even divorce cannot be pronounced unless there is serious grounds and division of property highly depends on responsibility as well as patrilocal settlement of *gosaa*. Both presidents stress that when women demand to partition land after divorce through regular courts every member of *warraa* (extended family) intervenes in the litigation claiming that he/she is entitled to the land on different grounds. Particularly mother and father-in-laws may claim that, the land originally belongs to them and they gave it to their son not to his wife. Her former co-wives also intervene and sometimes the husband brings in the litigation women with whom he has only an irregular union claiming that they are his wives so as to reduce the share of the divorcee. Even after it is decided that she is entitled to share the land the execution is very difficult. Because it is not only members of *warraa* who oppose divorcees land partition but the entire *gosaa* and execution is usually carried out through PA officials who are again at least members of the husband's *gosaa*. Once again though the execution is carried out it is difficult for her to live on the land or access it because she needs to cross *gosaa* territory in order to plough the land. The presidents of the two district courts mentioned above believe that women, after partitioning land from their husband cannot live or use it personally unless they have someone strong and influential in the area of where the land is situated. Hence what they do is they let it for hire. But elders indicate that since land division through court usually ends in *gosaa* conflict over land the judgment of the regular court will be revised by CDR where they not only divided land but also reconcile the divorced husband and wife as well as their *gosaas*. Those women who want to succeed land from their natal parents are also facing almost similar problem.

In general, since divorce can be easily obtained through regular courts the rate of divorce is increasing at an alarming rate. Consequently, women are claiming partition of land from their husband and this will in turn trigger men not to cause dispute with their wife/wives because they anticipate that if divorce will happen she/they are going to partition the land. In the case of land succession and partition during divorce statutory laws are introduced totally on the basis of western concept of property ownership on individual or private bases which is against the total

social structure of Arsi people where every act of human beings, land and individual human being is expressed through *gosaa*.

5.5. Women's Right to other Properties

The conclusion that portrays women under Sub-Saharan desert as totally dominated by men, the entire properties is under control of men and women's denial of access to land contradicts with my findings. Because a close look at and examination of women's right to property and their role in the community depict that there are certain situations where women have complete control over some properties and at times they have joint administrative role with men. To be specific let us assess what women can do with properties other than land. Arsi classify property into two major categories. These are *Horii adeemaa* (both which moves and movable by human) and *dhaabbata* (immovable). From *horii adeemaa* again cattle is the key resources while *qabeenna dhaabataa* in fact refers to land. Though land and cattle occupy the central economy of Arsi people in the past, at present cereal crops and in southern and western parts of Arsi *enset* (false banana) is becoming important means of livelihood.⁶⁴ So what roles do women have on these properties? To understand this we need to look at the basic role of husband and wife in the household or their labor division. Mamo found that Arsi women are predominantly occupied with domestic activities while the extra-domestic work is primarily the responsibility of men.⁶⁵ But this does not necessarily mean that the role of women are limited to domestic work and child bearing only; because women are considered as the spice of every life of the community.⁶⁶ Therefore, it is natural for men to be indentified or make strong attachment with crop production and other non-domestic responsibilities such as looking after cattle. But this does not imply that men alone use or dominate or control ownership over such properties. Though men assume prime responsibility for crop production and other extra-domestic activities once crops are harvested and brought home it is under the dominance or control of women though such dominance and control are not by monopoly. Hence women's authority over property varies with situation and time. This is confirmed by Marit in her master's thesis:

⁶⁴ Mamo, *supra* note 20 at 90.

⁶⁵ *Id.*

⁶⁶ Gabre'amilak, *supra* note 22.

...women seem not only to have control over all the grain which is put in store, but she also has some influence and control over livestock [...] A woman is in full control of her own property, and although a husband and his wife may agree to sell her livestock, he can never force her.⁶⁷

Asmarom Legesse also finds similar power and authority within Borana women and states “The removal of food supplies or livestock from the homestead might cause unnecessary hardship in the family: the consent of the female household is, therefore, essential.”⁶⁸

Kuwe Kumsa also assert that the exclusion of women form the politico-military structure of *Gadaa* system does not help us to arrive on the conclusion that Oromo women are excluded from the power structure of Oromo society. According to her, “Women wielded power and control in the domestic scene where they had de facto control over the most important resources.”⁶⁹ Therefore, whenever property is alienated by a husband without the consent of a wife usually such acts end up in dispute. According to one of my woman informant women in polygamous marriage have more power and control over property than a woman in monogamous marriage in Arsi.

Information and facts gathered from different district offices indicate that women have certain autonomy to freely disposes crops for the wellbeing of the household while she shall consult her husband to do the same with cattle; and men by no means involve in selling crops for the purpose of buying other household goods while he can dispose cattle with the consent and knowledge of wife/wives. Generally, all properties belong to the entire family members and none has an exclusive authority to dispose or to change communal properties into private or alienate it. But this does not rule out *goromsa siinqee* and its produce which is the only private property owned by women as discussed above. Men on the other hand, have no single private property which they can dispose without the consent of female household. Upon divorce, if she is responsible for the

⁶⁷ Marit Tolo østebø, *Respected Women: A Study of Wayyuu and its Implication for Women’s Sexual Rights among the Arsi Oromo of Ethiopia*, 2007 at 59 (Unpublished Master’s thesis in International Health, University of Bergen, Norway).

⁶⁸ Asmarom Legesse, *Gadaa: Three Approaches to the study of African Society*, 1973 at 21. London: Collier-Macmillan Limited

⁶⁹ Kume Kumsa, *The Siinqee Institution of Oromo women*, *The Journal of Oromo Studies*, Volume 4, No. 1 & 2, (July 1997) at 117

dissolution of the union she is not entitled to any property including *raada siinqee* and its produce, while if she is innocent she will be defended by her husband's *gosaa* and entitled to such properties to the extent of totally acquiring them as a compensation provided that she has suffered grave injustice at the hand of her husband. Hence, men's strong attachment to cattle and crop production shall not be taken as they have full control on such properties. To further understand the central role women occupy in Arsi society and how they protect and promote their rights it will be proper to discuss women's social organizations under customary laws such as *siinqee*, *ateetee*, *qanafaa* and *rakoo* institutions.

5.6. Women's Role and their Social Organization

Women in Arsi are the center/foundation of the family/society. My male informants equate women with *ibidda* (fire) to signify the impossibility of living a meaningful life without them. Marit confirms the central role women play in Arsi society as follows: "Wife is like a fire and there will be no food and light in the house without fire and similarly without her (wife) everything is dark." For both my male and female informants woman (wife) is a mother of the house, she is the most important member of the family. One of my male informants stresses that as we surround fire and bask it during coldness women are also surrounded by the family particularly children for their food. They also play important role in peace process. They mediate dispute from home to *gosaa* level. Women's role in peace making is not limited to earthly activities but also they mediate human beings and *Waaqaa* (God). Religiously women are believed to be closer to God and spiritually superior to men and hence whatever they curse will be cursed and whatever they bless will be blessed.

In Arsi there are several mechanisms or women institutions that protect women from violence or abuse and through which women manifest their roles and exercise their rights. Therefore, it is more proper to treat women's social and political institution to understand what roles women play in the society and how they protect and respect their rights. In Arsi there is a very important concept named *Wayyuu* which protect women from any kind of mistreatment and abuse

5.6.1. Siinqee

A number of scholars have dealt with the meaning and importance of *Siinqee* in an attempt to understand the position of Oromo women in the political, social and economic structure of Oromo people. Hence it is possible to argue that the institution of *Siinqee* has received a good number of attentions and well documented aspect of Oromo history next to *Gadaa*. Thus, I will present only brief definitions of *siinqee* and pay great attention to its role and importance in the protection and promotion of women's rights in Arsi.

Different authors defined *siinqee* in different ways and with different emphasis. Some of them emphasized over its religious role while others simply defined from its social structure and yet others gave much attention to its role in safeguarding women's rights. To start with its dictionary meaning Tilhumn Gamata defined it simply as "*Decorated stick*"⁷⁰ without explaining why it is decorated and as to what it implies. Kuwe on her part shying away from defining *siinqee* in a straight fashion discussed its historical origin and significance for woman and Oromo people in general. However, from her work it is possible to deduce that *siinqee* is a symbol of marital status, a weapon which protect women's rights against violence, and used while blessing and cursing the righteous and wrong doers respectively. She also indicates that women mobilize their *siinqee* when Oromo as a nation or a clan faces disaster such as drought, flood or extension of rain beyond the normal season.⁷¹ On the other hand Marit described *siinqee* as:

Women's weapon, which symbolizes the respect and the power that a married women has; *siinqee* is given to a woman in order to protect her rights. If a woman has a *siinqee* she has to be respected. Nobody should fight her. The *siinqee* stick is important and related to the rules and regulations of marriage. There are forms of marriage that are based on *siinqee* and there are marriages that are not based on *siinqee*.⁷²

She further states that *siinqee* beyond its material and symbolic importance it is women's socio-political institution playing vital politics and religious role. A girl who is married by *siinqee* and without *siinqee* has no equal respect and rights among the family of her husband. That is why Arsi exclaim "*siinqeen gurgurree*" which means "she married in a highly respectful manner" to show

⁷⁰ Tilahun Gamta, Oromo-English Dictionary, June 1989.

⁷¹ Kuwe, supra note 69.

⁷² Marit, supra note 67 at 60.

the legitimacy of her marriage and the dignified life that she is going to enjoy in marriage. Daniel Deressa who studied “The Continuity and Changes in the Status of Arsi Women” describes *siinqee* as “...weapon to fight against violation of women’s rights which is regarded as a loss of wayyuu (sacred). So in case their wayyuu (sacredness) is violated, women grab her *siinqee* and turn out of her house screaming.”⁷³

My informants also when asked to define *siinqee* start with the following explanation. *Siinqeen waraana dubartiiti* which means, “*siinqee* is women’s weapon.” It is a weapon by which they fight for their rights. The word “*waraana*” (*weapon*) used here shall not be interpreted to mean they engage in combat using *siinqee* in order to protect their rights. Women in Arsi shall neither carry deadly weapons nor join a war and shade blood. According to my informants a *siinqee* is a straight stick prepared by a mother for her daughter from a tree called *harooressa* while the girl is ready for marriage. Informants disagree as to what shape the ideal *siinqee* should have. Informants from Asella⁷⁴ confirm that *siinqee* proper is the straight stick with some decoration on its tip. But informants from Kofalee strongly oppose this proposition. According to them the ideal and original *siinqee* is a straight stick but like a fork at its tip symbolizing what a nuclear family should consist off. Particularly Gabre’amilak Guyyee now 68 years of age and well versed with Arsi customary laws emphasizes that the fork at the tip of *siinqee* represent wife at the right hand side, husband at the center and children at the left side in a family. If a girl is given *siinqee* which has no fork shape it will be considered as bad luck and she may face fertility problem. Despite the disagreement over its shape during my field work I have seen both types of *siinqee* in the hands of women. However, it seems more convincing that the one with fork shape is the ideal or perfect *siinqee* having regard to Oromo interest in having a much children as possible and the decoration

⁷³ Daniel Deressa, Continuity and Changes in the Status of Women: The Case of Arsi Oromo Living Adjacent to Upper Wabe Valley (Dodola) M.A. thesis, Addis Ababa University, 2002 at 36-37 (unpublished M.A. thesis Department of Social Anthropology).

⁷⁴ Assela is the capital city of Arsi zone and informants claim explain that the word Assela was derived from Hasallaa which is one of the Arsi gosaa.

to be handed over it. This is strengthened by the fact that *siinqee* posted by Marit on her paper at Kokossa district has a fork shape.⁷⁵

Siinqee is given to a bride upon her marriage by her natal mother while *horooroo* is handed over to the bridegroom by his father on the same date. Both sticks signify promotion to married life. According to Marit, marriage by *butii* (abduction) is without *siinqee* while *kadhata*⁷⁶ and *aseennaa* are with *siinqee*.⁷⁷ However, my informants insist that though a girl married by *butii* (abduction) has no chance of receiving *siinqee* from her mother on the date of marriage she will receive it after both families are reconciled. My informants believe that the only marriage type if at all there is any to be concluded without *siinqee* is *gursumeettii*⁷⁸ and this is also confirmed by Marit. So once a woman acquires *siinqee* she will join adulthood status and remain respected with her *siinqee*; only death can separate *siinqee* from her. Women carry their *siinqee* with them during all ceremonies except in funeral and mourn. According to my women informants a woman with *siinqee* is honorable and everyone is duty bound to give way for her and she will be given priority in every service. Upon the death of a woman her *siinqee* will be broken into two and put on her grave to symbolize the end of the rights of the woman.

How *siinqee* does protect women's rights? Women are organized under *siinqee* institution though it is not the formal organization we know having memorandum of association and/or article of association. It is necessary to organize under *siinqee* because women are considered *alagaa* (not kin) and accordingly excluded from *Gadaa* grades. Daniel has captured this in the following words: "women have the right to get organized and form the *siinqee* sisterhood of solidarity since *siinqee* is a common and unifying factor for all women."⁷⁹ Under the umbrella of *siinqee* institution they assemble and pray for fertility, good fortune and religious purposes will be carried out. In Arsi there are some persons, God, earth, and other things considered as *wayyuu* (sacred)

⁷⁵ Marit, supra note 69

⁷⁶ Marriage by *kadhata* (begging) is another name for marriage by *gabara*, or *kadhata* (is the process to be followed in *gabara*).

⁷⁷ Marit supra note 69.

⁷⁸ According Tilahun Gamta's dictionary, *gursumeettii* is "a remarried divorcee or widow i.e. a wife living with her second, third, etc husband." But according to Baxter *gursumeettii* is "a woman who has run away from, being driven out by her husband and gone to live with another man.

⁷⁹ Daniel, supra note 77 at 37.

and should be avoided from being ridiculed or even not to be touched.⁸⁰ Marit lists persons and other things which are *wayyus* under Arsi customary laws and mistreating or acting against them will amount to violating natural laws and entails *siinqee* mobilizations. From what Marit lists as *wayyuu* the following are important for our discussion:

A female in-law is *wayyuu (soddaatii wayyuu)*

A woman who gave birth to you is *wayyuu* including co-wives of your mothers
(*Haati deete wayyuu*)

Married woman is *wayyuu (haati manaa wayyuu)*

Virgin girl is *wayyuu (dubri wayyuu)*

Pregnant woman is *wayyuu (dubartiin ulfaa wayyuu)*

Qanaffa, a sign that a woman will wear on her forehead during the 4-5 first months after she has delivered (post-partum period) is *wayyuu (dubartiin qanaffaa wayyuu)*

Siinqee a stick a woman will receive on her wedding day is *wayyuu (siinqeen wayyuu)*

Gaadii, a piece of leather which is used to tie the back legs of the cow while milking is a *wayyuu (Gaadiin wayyuu)* and

Golti, the bedroom/ the bed of husband and wife is *wayyuu* and a protected area for a woman. If a woman enters her *gola* nobody can touch her (*Golti wayyuu*).⁸¹

My informants add other long list of situations under which a woman become *wayyuu* and items belonging to woman remain *wayyuu*. What is important here is if one or more of these women or right is violated (for example if a son in-law insult or acts in disrespectful manner, or husband insult/beats his wife particularly while she is in *qanafa*) *siinqee* will be mobilized.

Siinqee mobilization according to my informants goes in the following manner:

⁸⁰ According to Gabre'amilak Guyee there are seven fundamental Wayyus: Waaqa (God), Lafa (earth/Land), Abbaa (Father), Haadha (Mother), soddaa (Father -in -law), Soddaati (mother -in -law), Dubartii Qanaffaa (woman in Qanaffaa (women in maternity life)).

⁸¹ Marit, supra note 69 at 50.

A woman who feels aggrieved by a certain man will grab her *siinqee*, jump out of her house and burst hold her *siinqee* high and scream which is called *iyya siinqee* (*siinqee* scream/shout). She screams by saying:

Intala ayaa dhageetee? (2) Mother's daughter did you hear? (2)

Oduun si geetee? Did news come to you?

Ilmati nadhaane, oduun sigeett? My son beat me; did the new come to you?

Then all women who heard the *iyya siinqee* (scream) grab their *siinqee* and join her saying:

Eeyyee dhagahe! Oduun nagahe! Yes I heard! I heard the news! But before they take any action against the alleged wrong doer, they closely investigate her claim and if they are convinced that the suspect has violated *seera waaqaa* (the law of nature) and disturbed *wayyuu* (sacred) or generally if they think that the crime is serious they decide to abandon their children, home, and all male related matters and set out for *godaansa siinqee* (*siinqee* trek) and settle under a tree called *qilxuu* which is perceived as female in gender may be because it bears huge fruit. Sitting under this tree the *hayyuu* women (experts/wise on the *siinqee* laws) narrate the philosophy behind *siinqee* and the remedies it has secured for so and so women as well as the importance of *siinqee* for future protection of women's rights. They will never come back home until the culprit faces justice, peace is restored, *wayyuu* is set on truck. Then when male section of the society discovers that women are set for *godaansa siinqee* it is said that *ibiddi biyyaa dhaame* (fire has gone from the whole community). This indicates that the whole village is dark and the society collapse without women. Then men gather immediately and send *jaarsa* or *manguddoo* (respected elder) to the women on rebellion for reconciliation. When he reach there he will not greet them as in the normal course of things with the word *nagaa* (are you in peace) because it is obvious that there will be no peace when the law of nature is violated and *wayyuu* is threatened. He rather says "*Diltee dilna!* If the women are not satisfied with the credibility of the elder they can refuse the offered peace talk and the communication for acceptances and rejection is as follows. If they trust his honesty and reputation they would reply *ofkalaa!* (Go ahead with what you intend to say, you have my blessing). But if they doubt his credibility and reputation to reconcile they respond "*Didnee jirraa!*" (We have refused). If the later happened the elder will return back to the men in

the village to communicate same and again another elder who is more reputable or credible than the first will be sent. Finally, when the peace talk is accepted the most elderly, most revered and most respected women according to Gammachu whose:

Faces are filled with furrows, and whose breast is wrinkled and crumpled get up one by one pulling down their *katee* exposing their wrinkled and crumpled breasts as a sign of supreme moral authority, dignity and wisdom.⁸²

Such elderly women without raising an individual case present their *himata* for *waaqaa* and *lafaa* (for heaven and for earth), for *aadaa fi seera* (for custom and for law), for *ifaa* and *dukkana* (for light and for darkness) etc. The woman who is personally aggrieved does not do the *himata* by her own and this signifies the violation is not only against individual rather it is the violation of *seera waaqaa* and disturbance of *wayyuu* which is the concern of the entire community. During the *himata* process the elder is not allowed to present any kind of defense or reply rather he listens emphatically and attentively from the beginning to the end. Gabre'amilak asserts that the *himata* or complaint need not be verified by additional evidence nor disproved by counter defense because women are presumed to be peace loving, soft and whatever statements she delivers is trusted as truth. Kuwe concurs with this argument and wrote "Women fall under the category of liminal group and if a woman complains, additional witnesses are not required in order to punish the offender."⁸³ In addition as a sign of reconciliation or *araaraa* the women let the elder know their verdict and it will be communicated to the men or the community through the elder and the community accept the verdict. The entire community male and female irrespective of age will come to *qilxuuu* to witness the process of reconciliation and to take part in the festive that follow the reconciliation. The punishment for the culprit includes the following:

- A. Pay fine for the *siinqee* sisterhood (usually nominal)
- B. Forced to slaughter a sacrificial animal to be chosen by the *siinqee* sisterhood. They usually opt for the animal that is most cared and highly valued by the guilt man to deter

⁸² Gamachu Megersa cited in Kuwe, supra note 72 at 131.

⁸³ Kuwe, supra note 72 at 128.

him from violating *seera waaqaa* and disturbing *wayyuu*. The slaughtered animal will be cooked and served to the attendants by the culprit as a sign of reconciliation. This part is intended to humiliate him before the whole community by performing taboos. During the feast women sing and dance insulting the wrong doer saying: “*Gurbaa waaq raatesse, nu karaamesse!*” (The boy whom *waaqaa* made extremely foolish made us rejoice). The women will call him a “boy” not a man to signify his foolishness since shame mobilization is one mechanism of punishment.

- C. Disqualification from *Gadaa* Offices. “A man who has a record of *siinqee* violation is considered *namaa gadii* (inferior/subhuman) and is not elected to *Gadaa* offices.”⁸⁴
- D. So a man who violates *seera waaqaa* and disturbed *wayyuu* will lose his civil and political rights such as the right to elect and to be elected to the highly respected *gadaa* offices. He will be disqualified from *Gadaa* offices since *gadaa* officials are elected based on merit. It is important to note that violation of all kinds of women’s right shall not end up in *siinqee* mobilization and punishment. There are other forms or simple and soft punishment for minor misdeeds or for petty offences. *Siinqee* will only be mobilized when the most serious crimes are committed. Hence women do not easily mobilize their *siinqee* because once it is mobilized the consequence is severe.

Siinqee is also used during religious ceremonies and reconciling human beings with *waaqaa*. Arsi believe that extreme drought, flood, or any other kind of abnormal weather conditions that causes gigantic damage to human beings, to property and environment will happen as a punishment for violating the grand norms set by *waaqaa*. So it is believed that women have the power to reconcile *waaqaa* with human beings using their *siinqee*. When such catastrophes happen to Arsi the women, this time without screaming, gather with their *siinqee* and go to *malka* (river)⁸⁵ and pray to *waaqaa* to alleviate the problem and according to female informants the problem will be soon resolved.

⁸⁴ Id at 132.

⁸⁵ This ritual is not to be performed on any kind of river. There are some special places that are reserved for this purpose and it is again *wayyuu* by itself.

Siinqee may as well be used for blessing and cursing by Arsi women through what they call *abaarsa siinqee* (*siinqee* curse). Kuwe asserts that the more liminal group of the society the more religiously powerful they will be and they have strong power to curse.⁸⁶ She further indicates women, children and elderly have *strong* power to curse and bless since they are soft and non dominant in the politico-military structure of *gadaa*. My informants also fully concur with Kuwe and emphasize that “whatever the women bless is blessed and whatever they curse is cursed”.⁸⁷ Women can curse or bless by raising their *siinqee* either individually or collectively while it is believed that the latter is more productive. Among other blessing it is important to mention two of them here. The first one is that of *eebba maseena/dhabdu* (blessing the sterile). Women who cannot give birth are less respected and honored than those who gave birth to children by the society and it is every woman’s wish to have a child and if a woman fails to produce a child, women bless her with *siinqee* and it is highly believed that she will give birth if women bless her with *siinqee*. The other area where *siinqee* become a key instrument in blessing is during the inauguration of the *gadaa* officials. The newly elected *gadaa* officials according to my informants will never assume power including the *Abbaa Gadaa* before *siinqee hulluuquu* (slipping through a curvedly (□) held *siinqee*) and without receiving *eebba siinqee* (*siinqee* blessing). According to informants any *gadaa* officials who assume the office without going through *siinqee hulluuquu* and *eebba siinqee* will *hin ofkalu* (cannot be successful) and *hin muudamne* (is not appointed or ordain). Sayid Jundi one of my informants (vice-presidents of Oromia Supreme Court) has told me that upon his appointment to this post after he has taken an oath to hold this office he was told to slip through a curvedly held *siinqees* by two women and he said “I did it but confused and asked the women after the ceremony” and they replied now you are officially appointed and blessed with *siinqee*. The importance and necessity of this ceremony during *gadaa* power transfer is also emphasized by Daniel.⁸⁸ Therefore, the power Arsi women exercise during the anointment of *gadaa* official amounts to the role played by the British Queen during the inauguration of prime ministers. There is also another worth mentioning women’s institution which can protect women’s rights is *qanafaa* and will be discussed in the next few paragraphs.

⁸⁶ Kuwe, supra note 72 at 128.

⁸⁷ Gosee Wayyeessoo, Hayyuu on Arsi customary laws and *siinqee* [interview in 2010 Batu].

⁸⁸ Daniel, supra note 77 at 36.

5.6.2. *Qanafa*

This is a sign worn by woman on her forehead during post-partum period for the first 4-5 months. As discussed above *qanafaa* is one of the grand *wayyuu*s and a woman wearing it is also *wayyuu*.⁸⁹ A woman who gave birth to a baby girl would wear *qanafa* for four months while those who gave birth to baby boy would wear for five month.⁹⁰ During this period women are exempted from domestic as well as other social roles because this period amounts to maternity leave in modern labor law. A woman in *qanafaa* is *wayyuu* and hence beating her or grabbing *qanafaa* would cause *siinqee* mobilization and consequently he would be punished. Therefore, despite the fact that the duration of wearing *qanafa* is short as compared to *siinqee* during this time it confers important rights for women during its effective time.

The difference in the period of wearing *qanafa* for a girl and boy would raise the question of whether there is son preference in Arsi or not. There is no question about biasness against women by Arsi and of course by Oromo as a whole. This is observable from Arsi's maxims and other sayings. For example, if a woman delivers a baby the traditional birth assistant ululates⁹¹ five times for baby boy and four times if it is a baby girl.⁹² Daniel also confirms that men are definitely preferred over women in Arsi custom.⁹³ Another way of expressing the importance of men over women is through an aphorism to break a silence of a gathering or a family *maaf calli jettu akka warri intalti itti dhalattee?* It means "why are you silent as a family who got birth to a baby girl." When asked my male and female informants then assert that male is preferred because he will remain at home and help his natal family and *gosaa* while women are considered as *alagaa* (outsider) since it is inevitable for a girl to marry and join another *gosaa*. One of my informants who is between 80-90 years of age argues that during distance past Oromo has been fighting with many enemies and during those days due to the hardship of war it was only the

⁸⁹ Marit, supra note 69 at 50; Id. at 33.

⁹⁰ Id.

⁹¹ Arsi's ululate is: eleel, eleel, eleel rather than the usually known illii, illii, illii. According to elderly eleel is an Oromo way of ululating while illii, is unknown to them.

⁹² Sara Makuriyaa, Registrar of Arsi High Court [interview 2010].

⁹³ Daniel, supra note 77 at 34.

duty of male to go to the battle field and it was logical to and correct to have as much men as possible than to have women during those time. All my informants agree that though men are preferred over women once a baby girl is born no discrimination would be made while feeding, medication, or any kind of treatment. They confirm that if the eldest child is a girl it is believed that family will materially and spiritually prosper and it is presumed that it is blessing. My informants from Kofale district indicate that before two years it was decided that the amount of *gumaa* to be paid for male and female shall be equal. Therefore, despite the fact that there is strong wish to have baby boy than girl, once born they will not be treated differently.

5.6.3. *Ateetee*

According to Tilahun Gamta's dictionary *ateetee* is "deity or divinity which women worship in the belief that it makes them fecund, happy, wealthy and prosperous etc."⁹⁴ According to my informants from Kofale and Batu, *ateetee* is important for fighting petty violation of women's rights especially by their husbands. According to them *ateetee* is mostly used to pray for fecundity. Unlike *siinqee* and *qanafaa*; *ateetee* is not designated by any physical object but is only an idea under which all married woman are organized. Arsi women perform *ateetee* in *huraa* or *malkaa* holding wet or green grass. My informants believe that Arsi women perform religious and other ritual activities in and around *huraa/malkaa* because women are wet as *malkaa* and or *huraa*. Informants add that usually male go to mountains for ritual and religious activities while women prefer *malkaa* and the later are personified with feminine gender.

From the discussions made under this chapter it is evident that in Arsi customary laws the concept of private property among the family members is a strange concept and the injection of such by international human rights documents and government statutory laws is inviting tremendous dispute and conflict in Arsi. According to Arsi customary laws women have different rights to property at different times in their life and they have access to land in a different way than anticipated under the international human rights instruments and state laws. Another major point to be emphasized is women's social and religious organizations such as

⁹⁴ Tilahun, supra note 74 at 48.

siinqee, *qanafaa* and *ateetee* which generates huge respect for women and remain important mechanisms through which women protect and promote their rights. Close examination of these institutions has given us about the enormous religious authority conferred upon women and their autonomy.

Conclusion and Recommendations

Conclusion

I think this short ethnography is important to understand the Arsi people and its values as well as their world views. It further reflected on few points about the distorted versions of Oromo history in general and the misconception about Arsi and its customary laws in relation to women's rights.

The study also showed that international human rights documents including the Women's Convention and human rights scholars and many feminists portrayed women living in bigamous or polygamous society as oppressed, unequal with men and denied to key economic resources particularly of immovable properties such as land. The above mentioned documents and scholars accused African customs and cultures in general as discriminatory against women. The Arsi customary laws and values also did not escape such criticisms and accusations. Among such accusers Oxfam and Vettori have come to the forefront and claim that Oromo women in general have been disadvantaged, oppressed and victimized and subordinated and face harmful traditional practices because of Oromo customary laws. International human rights instruments including the Women's Convention or Women's bill of rights as it is sometimes called also denounce as a threat to women's rights and calls for its abolishment.

In addition to such misconceptions about custom in general and that of Oromo in particular the study has found that women's rights at international level have been tailored in the strict Universalist approach with the assumption that those women's rights stipulated under the international human rights instruments can be uniformly applied irrespective of time and space. Shortly the rights set under these documents focus on women's' individual rights and autonomy alone.

It is also understood that past and present Ethiopian governments, highly influenced by the continental legal system or western concept of women's rights, imported the western notion of women's rights without scrutiny. Hence, the Constitutions and family laws of Federal and Oromia region reiterate the fundamental notions of women's rights as stipulated under the major

human rights instruments without having due regard to Arsi customary laws and institutions that would have made good contributions.

However, contrary to the above criticism and denunciation of customary laws in general the study shows that women under Arsi customary laws are relatively enjoying the basic and fundamental human rights though in a different fashion than what has been set under the international human rights documents. But this does not mean that under Arsi customary laws women and men are equally entitled to and enjoy human rights on equal footings. In this study it is also indicated that in addition to international and national laws the Shari'a law is posing another dimension to the study and protection of women's rights. The application of international human rights documents, Arsi customary laws and the Shari'a laws side by side is posing another problem to the protection and promotion of women's rights.

This research has proved that though it is undeniable fact that every Arsi wishes to have a son than a girl, there is no preferential treatment between the sexes such as under feeding, neglect, abandon or denying girls access to medical treatment which is one of the serious problems in Asian countries such as India and China. Girls are presumed to be source of blessing and income in Arsi. Under Arsi customary laws pregnant women and children are exempted from death penalty under any circumstance while under international human rights documents and Ethiopian Criminal Code the execution of pregnant women will be postponed and resumed after delivery. Generally women under Arsi customary laws are presumed to be symbol of peace and *wayyuu* (sacred). Due to their liminality and peace loving and softness, whatever they complain to *shannacha* (bench) is believed to be true and the presumption highly protects women from sexual harassments and other assaults. Virginity is highly protected because virgin girls are *wayyuu*, it generates huge *gabbaraa* and respect and privileges for the girl after marriage which in turn result less probability of rape. Rape is one of the serious criminal acts and uncommon in Arsi, since women and girls are *wayyuu*, and the settlement pattern of the people (patrilocal settlement where other *gosaa* member will not settle among other *gosaas*) does not make women vulnerable to it.

In Arsi women are respected and entitled to protection from different criminal acts. The involvement of parents in mate selection on both sides made the union stronger and in

dissolvable and marriage is not only the business of the spouses, but of the entire *gosaa*. Once married, despite the fact that family is symbolized by the husband, women also have real control and authority over important key resources. As far as resources is concerned no room and necessity for individual family member to hold it in private and everyone has equal access and rights over it. Land, the key resource in the study area is made available to the newly married couples by the family of the bridegroom and it remains their common property. Upon the death of one, the surviving spouse is fully entitled to inherit such land.

In the history of Arsi people, land has never been subjected to sale and even there is no issue as to whether a land belongs to a husband or a wife. All family members including girls use their parental land irrespective of who acquired and when. The same is true of other immovable and movable properties.

Partition of property upon divorce is not common in Arsi because Arsi customary laws did not anticipate divorce and it seldom happened. Therefore, women have different rights or entitlements to economic resources before marriage, in marriage, upon divorce and widowed.

In Arsi customary laws, women have different institutions through which they exercise, protect and promote their rights. These institutions are used by women during peace and when their rights are violated. The research found that *siinqee* is the most important institution for the protection and promotion of women's rights and its peacemaking role in society in general. *siinqee* is highly respected by the society for its blessing and curse. It has the following basic purpose:

- A. Symbol of peace. When a war broke between *gosaas* women march carrying their *siinqee* and stood between the warring *gosaa* and the war will stop then and there. Women under Arsi customary laws do not join war or shade blood. *Siinqee* is used to stop or pacify conflict or disagreement between individuals or large scale war such as between *gosaas*.
- B. To bless sterile women so that she will bear children.
- C. To fight violation of women's rights. If a woman's right is seriously threatened every married women mobilize their *siinqee* to punish the culprit. The punishment includes disqualification from *Gadaa* office.

D. Anoint *Gadaa* official by curvledly holding *siinqees* and no *Gadaa* official assume office without slipping through *siinqee*.

Beside, *qanafa* and *ateetee* also play important role in the protection and promotion of women's right.

However, despite the fact that women under Arsi customary laws enjoy the basic and fundamental human rights it does not mean that Arsi customary law is complete and self sufficient in the protection and promotion of women's rights. For instance, women reprimand is not outlawed. FGM/C which threatens the life and physical integrity and security of girls (despite the contention that it has no support from the customary laws) has been practiced for long period of time and still not totally irradiated. The prohibition of divorce when the husband is responsible for the dissolution of marriage and women's non entitlement to partition property upon divorce in case of her fault is another challenge to the rights of women. Last but not least is the exclusion of women from the politico-military structure of *Gadaa* system.

Gadaa as discussed elsewhere is the highest and supreme authority in the Oromo society and it is not allowed for women to assume this office. Some scholars argue that the exclusion of women from politico-military institution is compensated by *siinqee* institution and there is a check and balance between men and women when these institutions function effectively and efficiently. But for me though I agree that *siinqee* institution is very important for the protection and promotion of women's rights, since the two institutions are incomparable because *Abbaa Gadaa* rule over the entire Oromo People while women disqualified from holding such position and it mean that she cannot rule over the entire community.

Therefore, this study has shown that the international human rights documents and national legislations overpromised in the recognition, protection and promotion of women's rights but under delivered. They failed to achieve what they promised since they have no mass support and base in the custom and religion of the addressees. Customary laws on the other hand being dynamic and flexible adjusted itself to the changing situation and resolve every problem that were unforeseen by the international human rights instruments and national legislations. So

unless local customs and institutions are accommodated into the international human rights instruments and national legislations the women's rights discourse will remain only rhetoric.

Recommendations

With the hope and ambition that further research will be carried out on the entire Arsi customary laws and specifically on those pertinent to women's rights based on my findings I recommend the following as a way forward.

I. At International Level

1. The UN human rights organs, human rights NGOs, individual human rights activities and scholars should pay due attention to local customary laws and practices, religious values of the society.
2. To genuinely implement women's rights at the grass root level the international community must not forget what has been declared by the 1993 Vienna Program of Action in which states are required to take into consideration the importance of national and regional particularities, historical backgrounds, cultural and religious philosophy of the concerned society while implementing human rights. What must be born in mind here is that I am not suggesting that religion, culture or customs should be a defense to deny women's basic and fundamental rights and freedoms. Rather what I am proposing is international human rights instruments and scholars shall approach Arsi customary laws in less ethnocentric manner.
3. The international community shall recognize the right to difference and appreciate customary laws and practices that play vital role for the protection and promotion of women's rights instead of opting for strict universal application of women's rights throughout the globe without time, space and cultural differences by adhering to legal centralism at the expense of legal pluralism.

II. National Level

1. Legislatures both at federal and regional states shall stop trying to copy and paste women's rights from the international human rights instruments and western notion of women's rights without scrutinizing. They have to consider local customs, religions and institutions as sources of women's rights before jumping into importing rights which

have no meaning and purpose in the local community. This is because unless local values, customs and religious philosophies are included in the laws, that law by any means cannot serve the interest of the addressee and remain undefended.

2. The Constitution of the FDRE recognizes the right to nations, nationalities and peoples of Ethiopia to develop and promote their cultures and allows resolution of personal disputes through customary laws. Similarly the Constitution indicates the possibilities of official recognition to customary courts either by the House of Peoples Representatives or by State Councils. But under cultural objectives of the country the Constitution set itself as a role model and cultures and customs and customary courts which are not in accordance with the constitutional principles will not be recognized. Since Ethiopia follows federal structures and the human rights principles recognized by the Constitution of the FDRE, is copied either from international human rights documents or other western notions of human rights there will be no room to recognize Arsi customary laws and customary courts by reference to the Constitution. Therefore, part of Art. 9(1) and 91 (1) of the Constitution that make “provisions of the Constitutions” as a yardstick for a culture or tradition to be supported and developed shall be amended. Or
3. The government shall come up with detailed laws or rules under which customary laws and courts shall be recognized and operate as promised under Art.34 (5) of the constitution sooner than later.
4. Ethiopia should ratify the “Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa” because the protocol entitles a widow to have equitable share in the inheritance of the property of her husband which is in line with Arsi customary laws.
5. In a similar fashion it is important to amend the 2005 Criminal Code of the FDRE, Art. 119 and 120 so that pregnant women shall not be executed irrespective of whether the child will be born alive and nursed by the mother or not.
6. The Oromia National Regional State shall establish customary courts and allow the application of customary laws that are compatible with the basic idea of women’s rights

because the application of customary laws by *hayyuus* is more productive and constructive than the state machineries or formal courts.

7. Legislatures and policy makers who try to address women's problem shall consult customary laws and *hayyuus* of the local customs and women's institutions before coming up with final conclusions.
8. Comprehensive research shall be carried out on Arsi customary laws or *aloo* Arsi and those which contribute for the better protection and promotion of women's rights shall be incorporated into the national or regional laws.
9. Human rights NGOs shall also pay attention to customary laws and institutions and blend them with the international human rights norms instead of simply dictating alien laws and concepts.
10. Last but not least, independent women's organizations are needed to deepen the concept of gender equality and women's rights in general.

Women's rights enshrined under different international human rights instruments approaching women's rights from individualistic view point shall not be taken as the only yardstick to measure Arsi customary laws

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Arsi Women: With Siingee
and Qanfaa: 2008
Attending Community
Mobilization against FGM
organized by Hunde.



Benishangul - Gumuz National Regional state

Amhara National Regional state

Amhara National Regional state

OROMIYA NATIONAL REGIONAL STATE

Somali National Regional state

Dirre Dawa Admin. Council.

Afar National Regional state

West Harerge

East Harerge

Sudan

Kelem Wellegit

West Wellegit

Ilubabor

Jimma

East Wellegit

North Shewa

West Shewa

South West Shewa

East Shewa

West Arsi

Arsi

Bale

Guji

Borana

Kenya

Kenya

Somali National Regional state

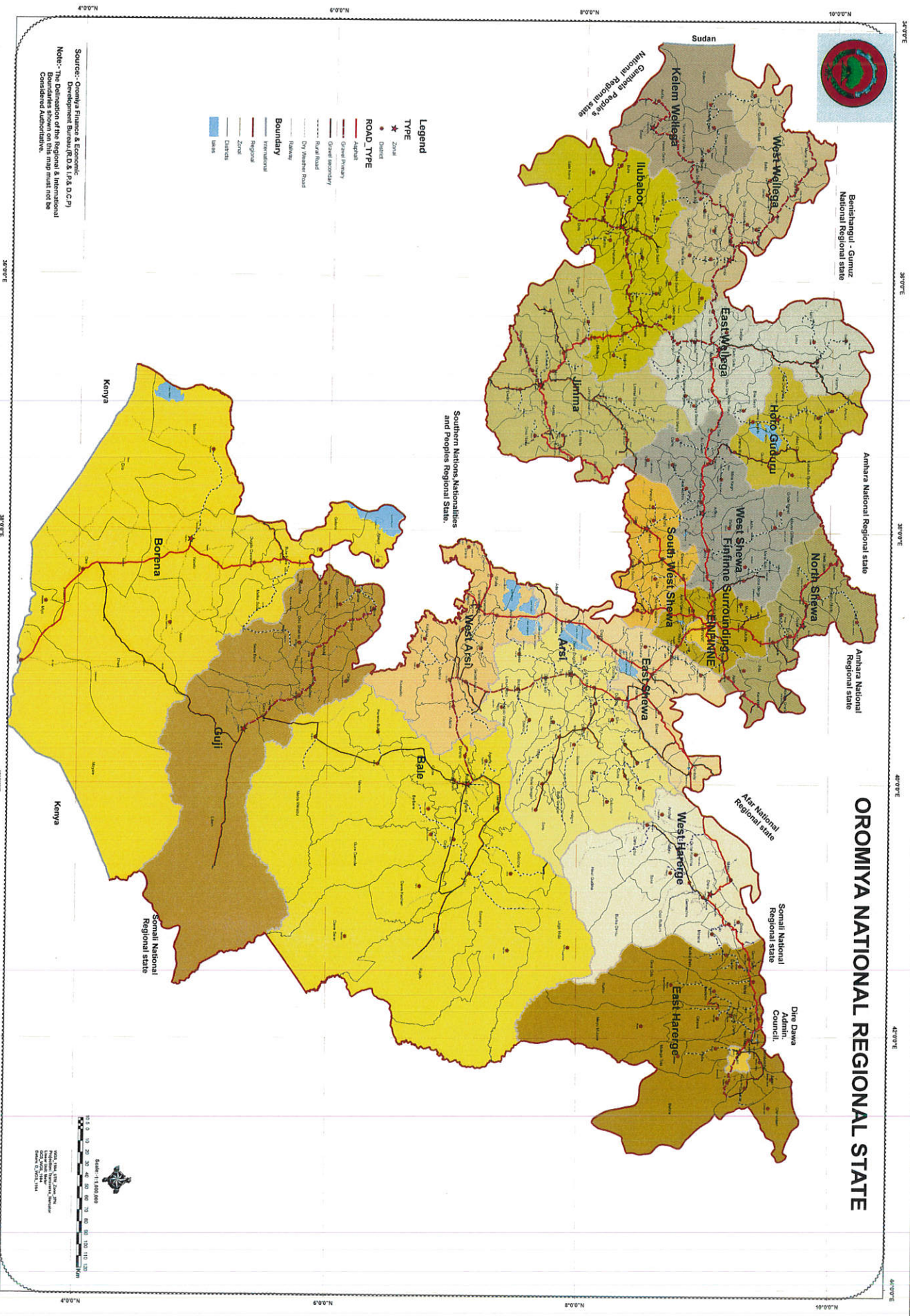
Southern Nations, Nationalities and Peoples Regional State.

Legend

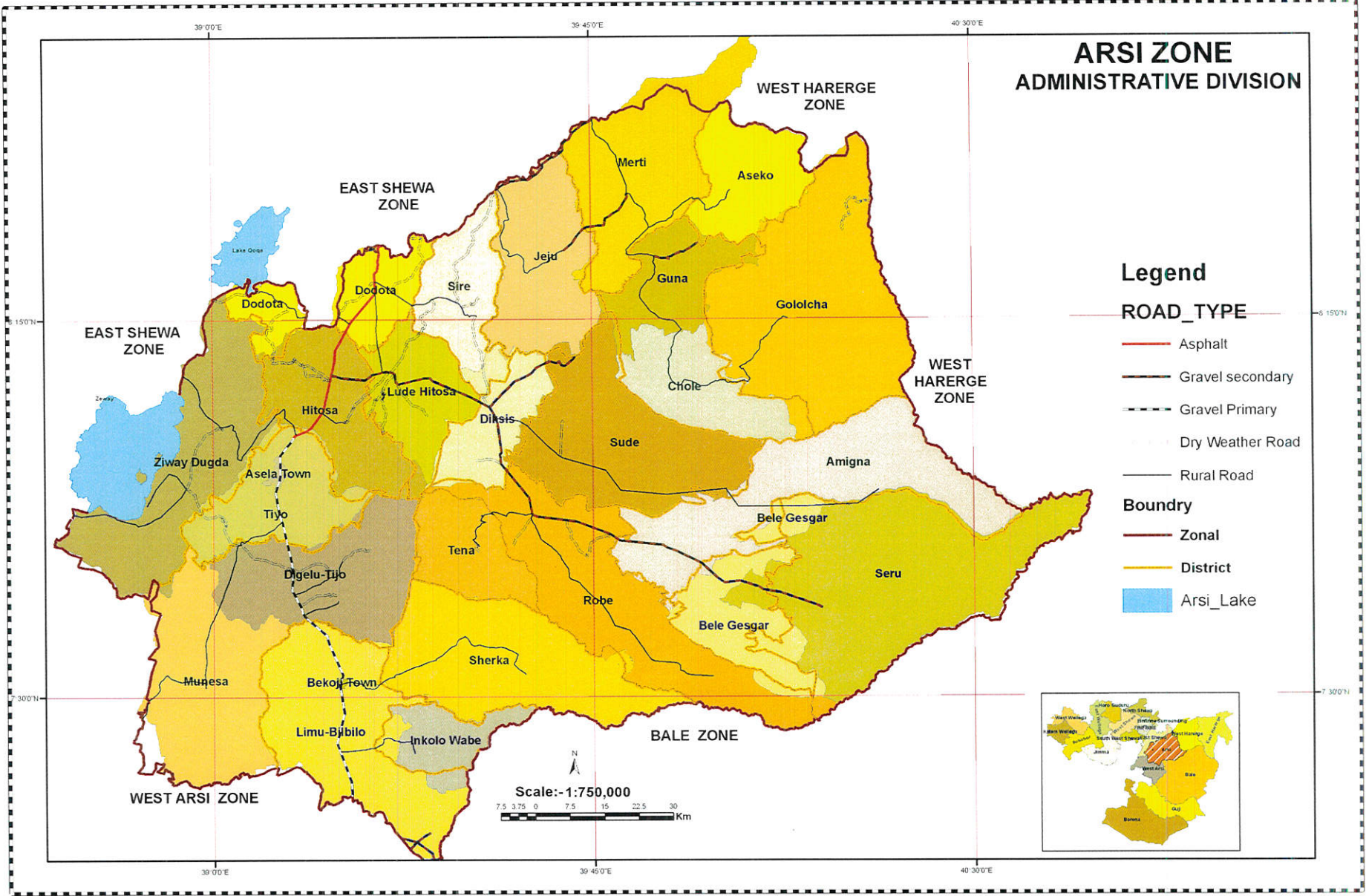
- TYPE
- ★ State
- District
- ROAD TYPE
- Asphalt
- Gravel Primary
- Gravel Secondary
- Rural Road
- Dry Season Road
- Railway
- International
- Regional
- Zone
- Districts
- Lakes

Source: Geoplia Finanza & Economic Development Bureau (E.D.I.P.A.D.C.P.)

Note: The Delimitation of the Regional & International Boundaries shown on this map must not be Considered Authoritative.



ARSI ZONE ADMINISTRATIVE DIVISION



Legend

ROAD_TYPE

- Asphalt
- Gravel secondary
- - - Gravel Primary
- · · Dry Weather Road
- Rural Road

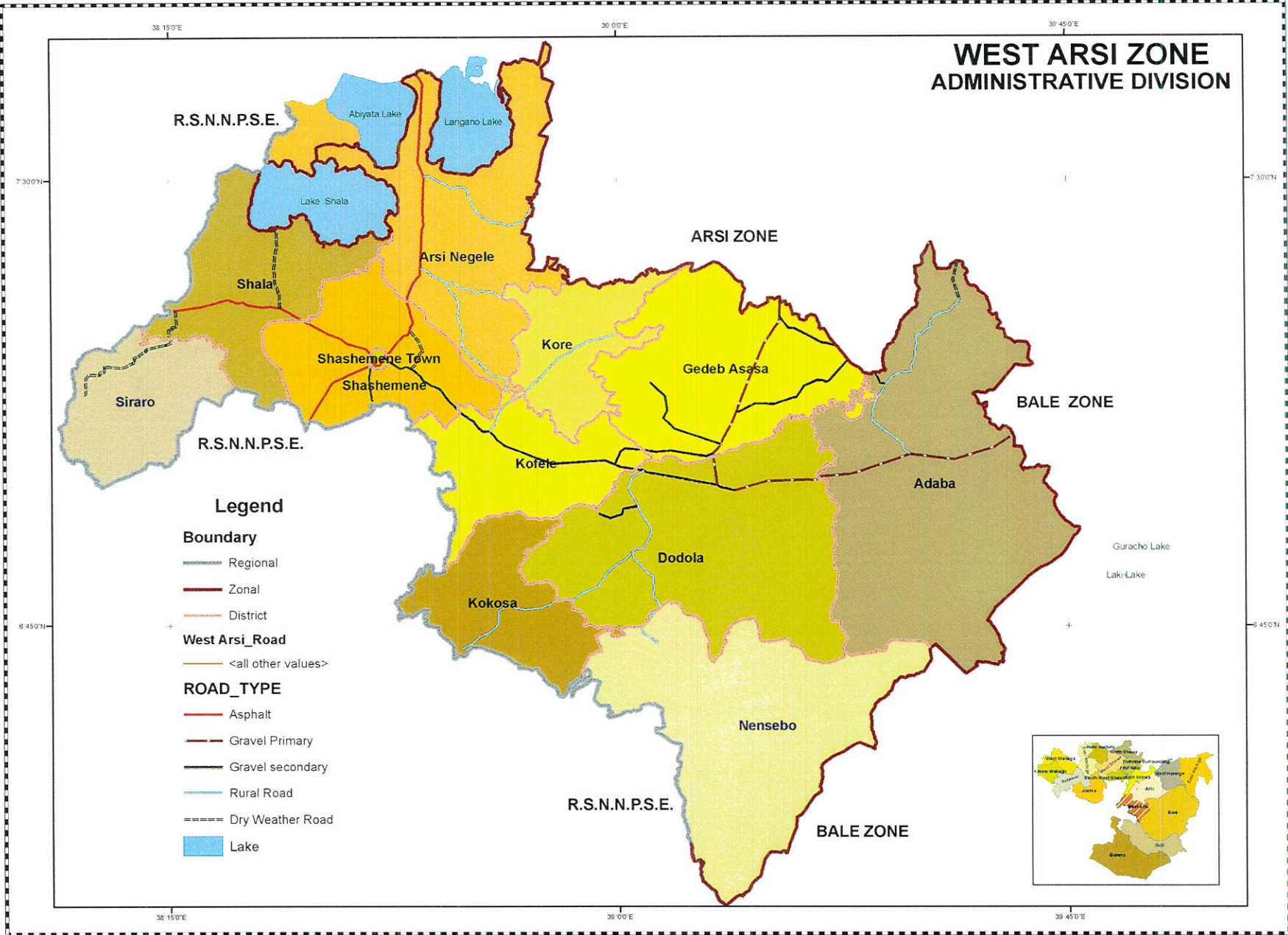
Boundry

- Zonal
- District
- Arsi_Lake

Scale:- 1:750,000
 7.5 3.75 0 7.5 15 22.5 30
 Km



WEST ARSI ZONE ADMINISTRATIVE DIVISION



Questionnaires

Title of the Thesis

Women's Rights under Oromo Customary Laws in light of International Human Rights Instruments:

The Case of Arsi Oromo

Purpose of the Research

The researcher is a post graduate student in AAU, Faculty of Law (*Human Rights Stream*) and currently conducting a research to write LLM thesis dissertation in partial fulfillment of the requirement for the LLM degrees.

The core purpose of the research is to evaluate whether women's rights recognized under different international human rights instruments are also recognized under Arsi customary laws (Aloo Arsi) or not. In addition to comparative analysis the researcher would like to examine whether the co-existence of customary laws, religious laws (Shari' a laws) and statutory laws in Arsi better protect and promote women's rights or is a hindrance for the protection, promotion and enforcement of women's rights and at the end the researcher would like to assess if we can forge harmonious relationship among the three legal systems for protection and enforcement of women's rights.

Guidelines

- ✓ You may or may not write your name
- ✓ Please mark with a tick in the circle that constitutes your choice for each question
- ✓ Your are kindly requested to respond to the questions after you have properly understood them
- ✓ Please remember that the quality of the research highly depends on your responses/contributions.

Part I. Personal data

Name _____ Age _____ Profession _____

Address: Tel. or e-mail, _____

Qulification/s _____

Have you ever worked on (carried out research, as an activist etc) Arsi Customary laws? Or are you familiar with Arsi Customary laws?

Yes _____ No _____

If your answer to the above question is “yes” please mention your works or how you come to be and for how long you are familiar with Arsi customary laws.

Part II

1. What is/are the sources of Arsi customary law?

2. Women have equal rights with men according to Arsi customary laws at marriage, during marriage and upon divorce. Yes No

If your answer is “Yes” to the above question please mention how and on what grounds do women have equal rights with men.

If your answer to the above question is “No” please mention the areas where women do not enjoy equal rights with men

3. Does Guma or blood money to be paid for a victim woman and a man the same? Yes NO

If your answer to the above question is “Yes” please elaborate it further

Deebii: kan dhiiraa iddoo tokko tokkotti hanga loon 30 Vs loon 7. Labseen lamaanii garaagara. Yoo isheen nama gosa isheetiin waan beekamtuuf gosatuu irraa kaffala. Maqaa abbaa warraa isheetiin yaamanti. Abbaa miidhaan irra gaheti ilaalama. Even in Amric no women president.

If your answer to the above question is “No” what is the rationale behind and evaluate it in terms of the principle of equality of men and women

4. What about the responsibility of a woman when she is the wrong doer? Is her responsibility the same as that of a man?

5. List out types of marriage practiced by Arsi Oromo.

6. Is marriage contracted only by the free and full consent of the intending spouses according to Aloo Arsi ? Yes ? No

If your answer to the above question is “No” please mention those persons who influence the consent of the intending spouses and its rationality in light of the right to marriage

7. According to Gada and Aloo Arsi, women cannot assume Gada office and also Gada is exclusively for male section of the society. But Women have also their own exclusive institutions such as *Siinqee* through which they can protect and enforce their rights. Does this mean Oromo women have equal rights with men to participate in politics and decision making?

Yes No

If your answer to the above question is “Yes” clearly indicate, how women can be considered equal with men, provided that they do not assume the highest political power in the *Gada* system. Is the *Siinqee* institution equivalent with the *Gada* institution?

If your answer to the above question is “No”, then what should be done to improve Oromo women’s participation in politics and leadership roles?

8. Arsi Women’s human rights are better protected, respected and enforced under:

Customary laws Shari’a laws international human rights instruments dealing with women’s rights

Please give reasons for your response

9. According to Arsi customary laws (Aaloo) women have equal rights to inherit their parents including immovable properties such as land and buildings.

Yes No

If your answer to the above question is “Yes” please state the situation of testate and intestate succession and its practicability.

If your answer to the above question is “No”, doesn’t it violate women’s equal right to own property with men?

10. According to Arsi customary laws a wife and a husband have equal rights over their common property during the life of the marriage and upon divorce

Yes No

If your answer to the above question is “Yes” please explain those rights in detail

If your answer to the above question is “No” mention where women’s rights are jeopardized

11. Arsi customary laws, Shari’ a laws and international human rights instruments are

Complementary Contradictory in protecting, respecting and enforcement of women’s rights

12. Please justify your position

13. What rights do women have over land according to Arsi customary laws:

a. Before marriage

b. During the life of the marriage

c. Upon divorce

d. What rights does a widow has over a land?

14. Arsi Oromo, as the other groups of Oromo people, is a polygamous society; hence do the wives have equal rights to own property per se and with their husband?

In the above situations how do they (wives) partition properties per se if one of the wives gets divorced? And what will be the share of the husband in such situations?

15. How can we reconcile the Arsi customary laws that deal with women's rights, Shari'a laws and international human rights norms recognized by international human right instruments?

16. What is the role of a woman in Arsi society?

- a.

- b.

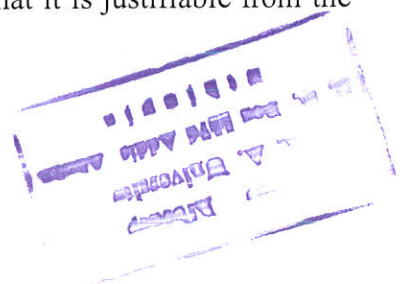
- c.

- d.

- e.

17. Is the husband allowed to beat or at least chastise his wife? Yes No

If your answer to the above question is "Yes" do you think that it is justifiable from the view point of the right to bodily integrity and human dignity?



*I WOULD LIKE TO THANK YOU IN ADVANCE FOR YOUR TIME AND SINCERE
RESPONSE TO THE QUESTIONS.*