
**THE NEXUS BETWEEN CULTURE
AND WOMEN'S HUMAN RIGHTS:
THE CASE OF 'ABSUMA' MARRIAGE
IN AFAR**

MA THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN HUMAN
RIGHTS

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

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By

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DECLARATION

I, Eleni Tekalegn, declare that this thesis is the result of my own work and all sources or materials used for this thesis have been appropriately acknowledged. This thesis is submitted in partial fulfillment of the requirements of Master of Arts in Human Rights to the College of Law and Governance, Addis Ababa University, through the Center for Human Rights. I confidently declare that this thesis has not been submitted to any other institution.

Eleni Tekalegn

Date

CERTIFICATION

This is to certify that this thesis entitled “The Nexus between Culture and Women’s Human Rights: the Case of Absuma Marriage in Afar” submitted in partial fulfillment of the requirements of the Master of Arts in Human Rights to the College of Law and Governance, Addis Ababa University, through the Center for Human Rights, written by Eleni Tekalegn, ID No. GSR/2655/04, is submitted with my approval as a university advisor.

Elshaday Kifle

Date

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Abstract

The essence of this thesis is to explore the nexus between culture and women's human rights in the context of absuma marriage in Afar. Culture is conceptualized in different ways both by anthropologists and human rights activists. Culture is not static; rather it is in a constant change and adaptations. It is among factors that coin society's structures and has a direct bearing on how members of a community treat women and girls. With this understanding, the Afar absuma marriage culture was explored from the emic (inside) perspective to understand the underlying reasons, justifications, ongoing social changes as the culture is perceived by Afar people. Based on the emic perspective findings, the etic (outsider) perspective explores absuma marriage using the women's human rights lens focusing on the right to marry and found a family in terms of element of consent and minimum age requirement of intending spouses. Different literatures were used to canvas the main issue that revolve around women, culture, women's human rights, anthropology and human rights discourses convergence and divergence. IHRI's, Regional HRs Instruments, General Recommendations and National and Regional laws were also consulted. To understand the emic and etic perspectives, FGDs and in-depth interviews were conducted with key informants in Semera (Zone 1), Awash-Fentale and Gewane Woredas from Zone 3 of Afar regional state. Among the emic findings were ongoing social changes in terms of age and consent, subtle and sometimes vulgar inner contestations in the form of committing suicide or attempted suicide, fleeing to Djibouti, accessing Bureau of Women, Children and Youth Affairs, Police and Sharia Courts to stop or dissolve a forced marriage were seen. Counter resistant positions were also reflected. In terms of the etic perspectives, it was found out that women and girls rights to give free consent and fulfilling minimum marriageable age requirements were violated. In a nutshell, the interaction of WHRs and culture in the absuma marriage context sometimes takes a positive correlation whereas at times when underlying reasons for some practices and justifications though seemed neutral has taken a negative toll on women's human rights promotion and protection.

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Acronyms

AAA	American Anthropologists Association
ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
APDA	Afar Pastoralist Development Association
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CERD	Convention on the Elimination of All forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disability
EGLDAM	Ye Ethiopia Goji Lemadawi Deregitoch Asewegaje Mahebere
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussions
FGM	Female Genital Mutilation
GA	General Assembly
GBV	Gender Based Violence
HoPR	House of Peoples' Representatives
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRIs	International Human Rights Instruments
IHRL	International Human Rights Law
ILC	International Law Commission
NGO	Non-Governmental Organizations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UPR	Universal Periodic Review
VAW	Violence Against Women
VDPA	Vienna Declaration and Program of Action
WHRs	Women's Human Rights

Chapter 1 Introduction

Background

Culture and Religion are among factors that significantly contribute to societal structure construction by determining the power dynamics. Both culture and religion are also recognized as human rights in various international and regional human rights instruments. The fusion and influence of these two notions shape the life of the society they reign in and also determine the manner in which members of a community would be perceived and treated. Among groups that are attributed with lesser power and assume a subordinate position are women and girls.¹ They lose their dignity and worth “*within* [their respective] families and [the violations] are *justified* by reference to culture, religion, or tradition.”² That is why Art. 5 of CEDAW also stipulates for “a change in the traditional role of men as well as the role of women in society and in the family” to achieve substantive gender equality. Thus, discussing women’s human rights would be futile without understanding “the institutions of family, religion, and culture or tradition in a new light”.³

The essence of this thesis revolves around anthropology and women’s human rights. The main point of focus is right to form and found a family of Afar women in the context of ‘Absuma’ marriage formation. Even though Absuma marriage is discussed in depth under chapter 3, in its simplest form, Absuma marriage is a cross-cousin marriage that is highly preferred by Afar people and it has both cultural and religious dimensions. The ongoing changes in the absuma marriage are given face in terms of age and consent. Hence, the absuma marriage culture is approached from anthropological perspective and specifically the emic and etic perspectives, which will be discussed in depth in chapter two. In short, emic perspective is how the Afar people perceive the right to marry and found a family of Afar women and girls in terms of consent and minimum age during absuma marriage formation. Emic perspective discusses the

¹ Valentine M. Moghadam and Manilee Bagheritari, *Cultures, Conventions, and the Human Rights of Women: Examining Intangible Cultural Heritage, and the Declaration on Cultural Diversity*, (SHS Paper in Women’s Studies/Gender Research No.1, Gender Equality and Development Section, Division of Human Rights, Social and Human Sciences Sector, UNESCO, France, March 2005), p.4, accessed October, 28, 2012, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Cultures_Conventions_HR_Women.pdf.

² Susan Moller Okin, “Feminism, Women’s Human Rights, and Cultural Differences”, *Hypatia* Vol.13, No.2, (1998, Reprinted on 2001), p.39.

³ Ibid.

absuma marriage culture as it is and as is being practiced and perceived by the Afar people. Etic is the outside perspective which for this thesis is the human rights discourse and absuma marriage culture and its ongoing social changes on consent and minimum age will be in light of the women's human rights understandings. However, much will be said about emic and etic perspectives in chapter two in detail.

Statement of the Problem

The Afar Regional state has its own regional constitution⁴ that guarantees gender equality pursuant to Art.25, Art.33 and Art 34 which clearly state that discrimination based on sex is unacceptable ground just like the FDRE Constitution. It also imposes an obligation to respect women's human rights on all organs of the regional state per Art 13 (1) of the Revised Afar Regional State Constitution as well as pursuant to Art 13 (1) of the FDRE Constitution. Arts 9(1) and 35 (4) of FDRE Constitution state that harmful cultural practices that contravene the constitution are said to be null and void and that such practices need to be abandoned if it is detrimental to the promotion and protection of women's human rights. This same position is also taken by the Revised Afar Regional State Constitution pursuant to Art 9(1) with cumulative reading of Art 34 (4). The cumulative readings of CRC, ACRWC, FDRE Constitution Art 9(4) and Art.34 (1) prohibit a child below 18 years not to be married or betrothed and that marriage should be based on the free consent of intending spouses.

Despite the constitutional provisions, the UPR recommendations which the Ethiopian government has acknowledged⁵ and the concluding observations given to Ethiopia by the CEDAW committee⁶ emphasize on regional states that have not yet raised the minimum marriageable age requirement for brides. Among such is Afar regional state.

⁴ Afar Regional State Council, *Revised Afar Regional State Constitution, Proclamation No. 14/2002*, Afar Negarit Gazeta, Semera.

⁵ Ethiopian Human Rights Commission, *Universal Periodic Review Recommendations for Ethiopia*, (IPA publishing, 2010). Recommendations that were acknowledged by the Ethiopian government were published to notify relevant stakeholder to be cognizant of this fact. Recommendation No. 21, 39 clearly deals with this issue of the non-revision of Family Laws by regional states. Hence since Afar regional state has not yet promulgated its draft family law.

⁶ CEDAW, *Concluding Comment to the Combined Fourth and Fifth Report of Ethiopia*, (CEDAW/C/ETH/4-5), 646th and 647th meetings, adopted on 30/01/2004, Session 30, CEDAW/C/SR.646 and 647, para. 243-244; and CEDAW, *Concluding Comment to the Combined Sixth and Seventh Periodic Report of Ethiopia*, (CEDAW/C/ETH/6-7), 984th and 985th meetings, adopted on 29/07/2011, Session 49, CEDAW/C/SR.984 and 985), para. 14 – 15.

This has resulted in betrothal and marriage of girls as early as 10 years old and forced absuma marriage of women.⁷ EGLDAM's baseline survey (1997)⁸ and its follow up survey (2008)⁹ also show early marriage as 'pan Ethiopian' which cannot be rejected from the outset that early marriage does not pose a threat to Afar girls.¹⁰ Because of the unwarranted effects of early and forced marriage on the girl child and on women respectively, there are indications that some of them committed suicide.¹¹ The APDA also identified "very repressive marriage tradition"¹² alongside FGM as major concerns of Afar women. This by itself indicates that absuma is not as rosy as it seems to be painted. To this effect, at the seminar organized by Ethiopian Human Rights Commission for Afar Regional State Council members and religious leaders, similar concerns were raised by women council members. It was alleged that girls who were forced to marry their absumas committed suicide by burning themselves alive. Among the areas mentioned with such instances was Gewane.¹³

These problems are the direct effects of non-revision of the 1960 Civil Code Family law section. It poses a challenge to clearly conceptualize and understand Afar women's place in their right to exercise and enjoy their rights associated with the right to marry and found a family. Afar marriage culture is presented as static tradition that makes it difficult to conceptualize and decide whose view of culture need to be protected and preserved.

Therefore, the human rights concerns, issues and violations that are taking place under the guise of exercising right to culture and regional state autonomy with specific reference to the conclusion of 'absuma' marriage is under explored despite the glaring evidences pointing finger on women's and girls' human rights violations.

⁷ Kelemework Tafere Reda, "Social Organization and Cultural Institutions of the Afar of Northern Ethiopia", *International Journal of Sociology and Anthropology*, Vol.3, no.11, (2011), p.424.

⁸ EGLDAM, "Old Beyond Imaginings: Ethiopia Harmful Traditional Practices", 2nd ed., (Addis Ababa, 2008), p.152.

⁹ EGLDAM, "Follow Up Survey on the Harmful Traditional Practices in Ethiopia", (Addis Ababa, 2008), p.82

¹⁰ Ibid.

¹¹ Ethiopian Human Rights Commission Human Rights Promotion Directorate, "The Roles of Afar Regional State Council Members on Promoting and Protecting Human Rights", (Seminar Organized in Semera, March 5 – 7, 2011.)

¹² APDA, "Situation Towards Drought Recovery and Development", (September 2005), accessed July 24, 2012, <http://www.afarfriends.org/apda050912.htm>.

¹³ Supra note 11.

Research Questions

The thesis has tried to answer the following issues:-

- What are the cultural justifications and the underlying reasons for concluding ‘absuma’?
- Is ‘absuma’ marriage a women’s rights violation in its entirety?
- Is the ‘absuma’ marriage undergoing social changes in relation to age and consent to conclude the ‘absuma’ marriage? If so, what is the link between those changes in ‘absuma’ and women’s human rights protection and promotion?
- What kinds of efforts are taken so far on the part of the regional state?
- In sum, is the correlation between culture and women’s human rights positive or negative in terms of the right to form and found a family in absuma marriage?

Research Objectives

General Objective

The overall objective of this thesis is to explore the interaction of culture and women’s human rights with specific reference to the practice of ‘absuma’ marriage.

Specific objectives

In this regard, the paper will try to deal with the following issues:-

- Identify what ‘absuma’ marriage entails specifically in terms of requirements of minimum age and consent;
- Examine women’s rights concerns involved in ‘absuma’ marriage;
- Identify the cultural justifications and the underlying reasons for ‘absuma’ marriage;
- Review the legal framework available at the international, regional, national and sub-national level;
- Investigate ongoing social changes in terms of age and consent to conclude absuma marriage and its counter-resistances and link them with women’s human rights protection and promotion;

-
- Identify the efforts of – legislative, administrative, judicial bodies and correlate their contribution with the duty of state responsibility;

Methodology

In order to achieve the objectives indicated, qualitative research methodology was employed since it is the appropriate method to study social problems and issues.

Sampling

The research employed purposive sampling method to get information from relevant entities. Representatives of regional government organs were contacted for in-depth interview and focus group discussions. Those who were close with women and girls whose rights were violated were contacted through snow ball sampling method and were targeted for in-depth interview. Women and girls as well as older and younger men from different ages, educational and other backgrounds were accommodated as much as possible.

Methods of data collection & Analysis

Primary data was gathered through focus group discussions and key informant interviews in order to explore the ‘absuma’ marriage practice in depth.

In-depth Interview:- was conducted to obtain an inner view of the cultural practice in relation to absuma marriage. Interview guideline¹⁴ was prepared to conduct interviews after identifying key informants among relevant state actors. The in-depth interviews conducted included seven in Semera (Zone 1), one in Awash, and three in Gewane (Zone 3). Most of the in-depth interviews were conducted face-to-face while some of them are conducted over the phone. All key informants have been asked of their consent. Efforts to contact direct victims were unsuccessful for various reasons including their passing or moving away. Nonetheless, other people who knew about the victims were contacted to obtain the required information. The informants were identified based on their position within the regional state structure and their closeness to the issue. The degree they appreciate, observe and deal with the situations on the ground is a better indicator regarding the degree to which this cultural practice is understood by the regional state.

¹⁴ See attached Annex I – IV for interview guideline, Consent and Confidentiality form, list of key informants, and list of questions.

FGDs:- were conducted and discussants selected to understand how absuma marriage culture is perceived by different discussants. The reflection given by the discussants shows the contestations and the counter-resistant positions.¹⁵ Women and men from different localities and age group were included in the FGDs. There were 4 FGDs organized: two FGDs in Awash city (Zone 3) and two FGDs were held at Gewane (Zone 3). The different state actors within this level of government were made part of the discussions as the case and the situation fits in. In Awash there were two FGDs organized whereby one group consists of mostly representative of state actors comprising of women, children and youth affairs both from the town and rural Awash, Woreda Court, Woreda Bureau of Justice, Woreda Police Women and Children's unit and Sharia Court*. In the second FGDs, women and men who are young, adult and elderly representing the society through women's and youth association structures as well as elders took part in the discussion. Six discussants were present in the first FGD while there were 7 discussants on the latter FGD.

In Gewane, there were two FGDs conducted in a manner different from Awash FGDs. One FGD in Gewane was comprised of 6 male discussants while the second group discussants were 5 female discussants from different age group. In the male discussants, there were religious leader, clan head and young men.

Secondary data was collected through review of legal and policy frameworks including FDRE constitution, Revised Afar regional state constitution, the draft Afar family law, Anti-FGM law of Afar and other relevant researches done by scholars to supplement the primary data.

Both primary and secondary data were collected directly by the researcher which helped her to experience what is actually taking place on the ground. However, translator was employed when the situation warranted it.

¹⁵ See attached Annex V-VIII for FGD guideline, Consent and Confidentiality form, composition and number of Discussants, and FGD questions.

*Though Sharia Court does not duly constitute state actor, the fact that the region is predominated by Muslims have given it a tacit place within the region's state structure.

Data was analyzed by identifying relevant denominators and analyzing the responses per each denominator. Among the issues identified are the underlying reasons for absuma, age and consent requirements, ongoing changes, inner contestations and resistant positions.

Ethical considerations

Religious and cultural variations were taken into account at all times including but not limited to where and when FGDs and in-depth interviews were conducted, and when using translator.

Participants were duly and adequately informed on the purpose of the research and maintaining confidentiality and anonymity of their identities.

Identity of victims or those who flee from their localities were not disclosed to other participants engaged in the data collection. The researcher took extra precautionary measures when conducting in-depth interview and FGDs not to disclose identities of victims or their families to avoid further victimization. The researcher wore cloths and necessary attires that are compatible with the religious and cultural practices of the region.

Significance of the study

When the issue of human rights is raised in Afar especially in conjunction with women, it is FGM /infibulations that rings bell. Researches and many interventions taken in the region focus on combating FGM/infibulations, working on women and girls education as well as maternal health rights. However, human rights concerns involved in ‘absuma’ marriage are underexplored. Thus, the researcher believes that this thesis will contribute in scrutinizing the relationship between cultural norms and traditions enshrined in absuma marriage in light of women’s rights with special significance to consent and minimum age. Nevertheless, the right to marry and found a family is not the single human rights issue that was discussed since all human rights are interdependent and indivisible.

The discussion on the underexplored ongoing changes in terms of marriageable age and consent in absuma marriage along with inner contestations and counter-resistant positions will further pave the door for different governmental and non-governmental actors to engage in strengthening efforts that contribute for the realization of women’s human rights in Afar. Furthermore, it would further help to identify violence committed against women and the girls

under the guise of adhering and exercising right to culture and instigate other stakeholders to take moral stance and to continue advocacy works.

On top of that, since the main objective here is to examine the relationship between culture and women's human rights, it will give a better insight for other researchers for further study in the area with a wider scope. It also contributes in identifying existing challenges in the protection of women's rights with respect to culture and provides possible recommendations and steps to be taken for sustainable changes.

Finally, the thesis would be important for the government so as to enforce the conventions that Ethiopia has ratified and assumed commitment internationally in light of the Federal Constitution Art.9 (1) & (4) and Art. 13 (1) and (2) which imposes direct obligation on the federal as well as Afar regional state to comply with recognized women's human rights at the international, regional and national as well as sub-national level. It would also be one step forward towards contributing to the 18 year old debate and reluctance to promulgate a family law that enshrines human rights values and norms that ascertain gender equality as part of the regional state obligation to respect and promote WHRs.

Scope of the study

Despite the nature of societal construction in Afar which exhibits the inexplicable interconnectedness of culture and religion, the researcher would like to limit herself to the notion of culture. Culture is a broad concept and encompasses various aspects. However, here it is limited to the notion and institution of marriage and further focus on "absuma" marriage. The religious dimension would be raised in a specific manner to clarify and elaborate on issues and initiatives as is fit relevant.

Much has been said about universalism and cultural relativism schools of thoughts. Thus, the purpose is not to dwell on this; rather it is to see how these concepts play out in the real life situation as opposed to mere scholarly debates. In lieu of this, the aspect the researcher would like to zoom in is to explore how ongoing social changes and resistant positions in conjunction with "absuma" marriage level the playing field for the protection and promotion of women's

human rights in light of human rights standards in relation to the element of consent and minimum age of consent.

The thesis probes into ongoing changes, inner contestations and counter-resistant positions of absuma marriage by focusing on to the minimum marriageable age and required consent to conclude marriage among the segments of the right to marry and found a family.

As to the scope of the rights, all aspects of right to marry and found a family will not be dealt since the main focus will be on the elements of consent and minimum age requirement to conclude “absuma” marriage. Betrothal would be seen as far as it is relevant for the discussion. Furthermore, even if in essence “absuma” marriage encompasses polygamy, the researcher would like to limit herself with the issue of consent and minimum age requirement. However, the issue of polygamy would be touched upon in a manner that is directly related with the issues mentioned herein above.

As to geographical scope, among the five administrative zones of Afar regional state, Semera city from Zone 1, Awash-Fentale woreda and Gewane woreda from Zone 3 are parts of the study. These areas are selected since Semera is the capital city of Afar regional state whereby the higher state organ levels are seating and to acquire the general vibe in relation to the practice in question. Awash-Fentale and Gewane are selected since they are on the main route and that these two places are situated among the trade corridors from Djibouti & Dire Dawa, which expose them to various interactions. The distribution of schools and other traces of urbanization make them the ideal places to see the trend. In addition to that the Afar people in these parts are more of settled which would make it easier to observe the interaction between culture and women’s human rights. Accessibility in terms of transportation is also another contributing factor for their selection.

Limitations

It was at times challenging to find out the degree of resistance and social change from the part of group discussants since they thought that disclosing resistant positions would make the Afar region and its government reluctant on the rights of women and the girl child. Most of women members of the regional state council were also not willing and comfortable to discuss for

various reasons. It was also difficult to trace women or girl children who were victims since either they have moved away or passed away. The way of life of the Afar people have also contributed for such limitations.

Regarding the sample size, it may be difficult to generalize that all the clans in Afar regional state conceptualize absuma marriage and related issue in the same way, however, the researcher is of the opinion that she will only be able to show the general trend in the aforementioned geographical localities.

Adjusting to the busy schedules of key informants was also another challenge that the researcher faced. Language barrier was also a limitation whereby the researcher tried to minimize the gap by employing translators.

Because of the wide geography of the Afar region and lack of infrastructures, it has limited the researcher to focus on areas which are accessible to public transport services. Thus, the researcher might not be able to capture the situation of ‘Absuma’ marriage in a rural Afar people who practice a pastoralist way of life. In addition, because of critical time, logistics and financial constraint, the researcher had to limit herself to Semera, Awash city (Awash Fentale Woreda) and Gewane Woreda. However, following the narratives and information obtained from informants, the researcher has tried to communicate informants from Awra Woreda; whereby the manifestations of the internal contestations on absuma marriage along with the resistant position were shown.

Organization of the Thesis

Since this thesis is about showing the absuma marriage reality by understanding it from anthropology and human rights discourses, chapter two mainly highlights main concepts that would be relevant to the issue at hand. It mainly focuses on anthropological concepts of culture, and on emic and etic perspectives of understanding culture. It also briefly discusses culture from a human rights perspective in the culture as a human rights sub-section to underline culture on its own accord is also a human right. Even though much has also being said about universalism and

cultural relativism, this thesis also lays out the main points that are relevant in conjunction with the issue at hand. Last but not least, this chapter also discusses WHR normative framework briefly by focusing on right to marry and found a family from selected core IHRI to avoid unnecessary redundancy since the WHR discourse will be the one that will basically be used to do the etic perspective which will constitute chapter four. Anthropologists' and feminists' perspectives on culture and WHR are also discussed briefly to highlight how this issue is approached in the global and regional (African) context. In sum, anthropologists' and feminists' views relating to the issue of the universality of human rights, the charge of being ethnocentric and the claim of adopting cultural relativist position in the context of women's human rights and culture are discussed.

Since chapter two mainly dealt with basic concepts and definitions, chapter three shows how absuma marriage is depicted in the Afar culture from anthropological perspective of using emic perspective as major way to uncover the culture as it is. In this chapter, how the Afar people conceptualize the institution of marriage particularly absuma marriage, the preconditions of absuma marriage and the underlying reasons as well as on going social changes, inner contestations and resistant positions to changes are entertained.

Chapter four discusses the etic perspective. Since this part mainly understands absuma marriage culture in terms of the human rights discourse, much of the discussion will be highly focused on what the women's human rights framework really constitutes in terms of the right to marry and found a family. Hence, the WHR framework will be the yardstick to measure. The underlying reasons of absuma mentioned in the emic account are on the spotlight vis-à-vis the Women's human rights framework. Special attention will also be given to the ongoing changes on 'minimum age' and 'consent' requirements and how they are conceptualized in the human rights framework is highlighted. Internal contestations and their counter resistant positions and their interaction with women's and girls' human rights promotion and protection are also looked into. The last section of the thesis is allocated for concluding remarks and general recommendations.

Chapter 2 Concepts and Perspectives on Culture and WHRS: Convergence and Divergence

Most often than not, culture is mentioned in the context of women as if women do not have culture and that culture is an obstacle for realizing women's human rights. It is important to look the correlation between women and culture from the vantage points of anthropologists and feminists. Balancing women's human rights and the right to culture of communities is sometimes like walking on a thread line.

Conceptualizing Culture

Culture can be conceptualized from its 'artistic' or its being 'the way of life' dimension. It can also be conceptualized as a "tradition – as roots, destiny, history, continuity and sharing on one hand; and as impulses, choice, the future, change and variation on the other".¹⁶ Conceptualizing culture only by romanticizing it as "rooted and old" should be criticized since it has also a contemporary dimension; culture should not be treated as "like one handles old china or old aunts with due attention to their fragility".¹⁷ Eriksen declares that it is inevitable to fall in the dilemma of "collective minority rights and individual rights".¹⁸ Moreover, he discusses on the issue of whether cultures can be conceptualized and maintained as 'isolated islands' so that each claim their own identities and places; and whether at the end such kind of approach would be able to embrace the 'global ethics of universalism' and bestow 'cultural tolerance and respect'.¹⁹

Definition

Culture is a "set of distinctive spiritual, material, intellectual and emotional features of society or a social group, in addition to art and literature, lifestyles, ways of living together, value systems,

¹⁶ Thomas Hylland Eriksen, "Between Universalism and Relativism: A Critique of UNESCO Concepts of Culture", (edited by Jane Cowan, Marie-Bénédicte Dembour and Richard Wilson), *Culture and Rights: Anthropological Perspectives*, pp.127–148, (Cambridge University Press, 2001), pp.131-132, accessed September 30, 2012, <http://folk.uio.no/geirthe/UNESCO.html>.

¹⁷ Id at pp. 132 – 133.

¹⁸ Id at p. 134.

¹⁹ Id at p. 140.

traditions and beliefs” which encompasses the institution of family and marriage.²⁰ This definition shows its different dimensions. Culture is also “a coherent self-contained system of values and symbols that a specific cultural group reproduces over time, which provides individuals with the required signposts and meanings for behavior and social relationships in their everyday life”.²¹ This definition shows the link between and impact on the individual and the community; and the repetitiveness and continuity of culture through time.

Culture is neither “fixed nor homogeneous”.²² In defining culture, Merry also points out that culture is not “bounded and static”.²³ Another definition approaches culture by focusing on its capability of imprinting its impact on human behavior. To this effect as cited by Hurights Osaka²⁴, An-Naim has defined culture as

“a primary force in the socialization of individuals and a major determinant of the consciousness and experience of the community. The impact of culture on human behavior is often underestimated precisely because it is so powerful and deeply embedded in our self-identity and consciousness”.

Another definition of culture could be from the standpoint of the individual. Culture can be defined as “skills, norms, and views that [individuals] learn and acquire”.²⁵ Despite the fact that it is ‘learnt and acquired’, individuals relate to their respective culture in a “multiple levels across individuals within groups as well as across groups within larger groups”.²⁶ This kind of definition gives insight on the degree to which some cultures seem to be adhered to on the surface but when scrutinized closely seem to show an amorphous surface. Hence internal

²⁰ Supra note 1 at p.5.

²¹ Newman Wadesango, Symphorosa Rembe and Owence Chabaya, “Violations of Women’s Rights by Harmful Traditional Practices”, *Anthropologists*, Vol.13, No.2, pp.121 – 129, (2011), p. 121.

²² Ethel Tungohan, “Is Global Sisterhood Elusive? A Critical Assessment of the Transnational Women’s Rights Movement”, *Atlantis* 34.2, (2010), p. 109.

²³ Sally Engle Merry, “Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)”, *PoLAR*: Vol. 26, No.1, pp.55 – 85, (May 2003), p. 58.

²⁴ Hurights Osaka, “Human Rights and Cultural Values: Literature Review”, (Asia-Pacific Human Rights Information Center), accessed December 22, 2012, <http://www.hurights.or.jp/archives/database/hr-cultural-values.html>.

²⁵ Jessica Almqvist, “Human Rights, Culture, and the Rule of Law”, *Human Rights Law in Perspective*, Vol. 6, (Hart publishing, Oxford and Portland, Oregon, 2005), pp.40-41.

²⁶ Ibid.

contestations and counter-resistance to the contestations can be the clear indications of such line of defining and understanding culture.

Adopting one simple definition to deal with varied dimensions of culture would result in more confusion and at the same time adopting ‘mystifying languages’ like “people’s culture” for each and every activity and practice of a society could also lead to further confusion. Hence, Eriksen prefers to connote culture with the phrase “local circumstances”.²⁷ Throughout the research, the term “culture” is used in relation to absuma marriage and the phrase “absuma marriage culture or practice” only relates to the practice, values, systems and underlying reasons in connection to absuma marriage type. Hence the use of the big term “culture” should not be construed as engulfing all aspects of the Afar people culture.

Emic and Etic Perspectives on Culture

According to anthropologists another relevant way of grasping culture can be from the emic (inside) and etic (outside) perspective. Before scrutinizing absuma marriage culture through these perspectives, it is imperative to describe these two perspectives. But beforehand, it is appropriate to glance at two important anthropological terminologies: ethnocentrism and cultural relativism.

According to Burnett, ethnocentrism dictates that “ones own culture is superior or somehow more correct than others”.²⁸ He further defines cultural relativism from the anthropologists’ view that it is “that all cultures are essentially equal and it is not for us to judge what others do”.²⁹ These terminologies need to be constantly reminded when discussing whether human rights can be universal especially considering the fact that there is cultural difference and that for anthropologists culture should be studied and appreciated using cultural relativism as a principle so as to avoid being ethnocentric.

Anthropologists study culture from two perspectives: *emic* and *etic*. According to Pike, who is dubbed as the father of the two perspectives, “the emic perspective focuses on the intrinsic

²⁷ Supra note 16 at p.142.

²⁸ Robert Burnett, “Ethnocentrism, cultural Relativism and the Amish”, *Junto Society*, (February, 2012), p.1, accessed December 01, 2012, http://www.fandm.edu/uploads/media_items/ethnocentrism-cultural-relativism-and-the-amish.original.pdf.

²⁹ Ibid.

cultural distinctions that are meaningful to the members of a given society in the same way that phonemic analysis focuses on the intrinsic phonological distinctions that are meaningful to speakers of a given language.”³⁰ Therefore as to the emic perspective, culture is ideally understood properly by those who practice it whereas the etic perspectives “relies upon the extrinsic concepts and categories that have meaning for scientific observers in the same way that phonetic analysis relies upon the extrinsic concepts and categories that are meaningful to linguistic analysts”.³¹

It is taken as *emic* being the actor’s view point whereas *etic* being the ‘scientist’s’ vantage point.³² Thus, the emic perspective is vital in laying down the foundation for the *etic* perspective. Understanding the etic perspective is also relevant since in a globalized world the cultural diffusion takes place in a greater scale which has an implication on the way people and their social relations are organized and understood. It shades light on cultural practices, internal contestations and to observe ongoing social changes unfolding and relate it with human rights discourse. Hence, this thesis will employ the emic (inside) view under chapter 3; and based on the emic findings further analyzes the absuma marriage culture in light of WHRs by focusing on the right to marry and found a family using age and consent as points of analysis in chapter 4.

Culture as a Human Right

In the human rights discourse, culture is a human right.³³ Articulated definition of culture has not been given by treaty monitoring bodies of various conventions including the Economic, Social

³⁰ James W. Lett (Ph.D), *Study Guide and Additional Resources for Cultural Anthropology and Linguistics*, (2010), accessed July, 20, 2012, <http://faculty.irsc.edu/faculty/jlett/Study%20Guide%20and%20Additional%20Resources%20for%20Cultural%20Anthropology%20&%20Linguistics.pdf>.

³¹ Ibid.

³² James Lett, *The Human Enterprise: A Critical Introduction to Anthropological Theory*, (West view press/Boulder and London, 1987), p. 62.

³³ There are different instruments that protect the different dimensions of the right to culture. Among such instruments are the ICESCR (1966), CEDAW (1989), CRC (1990), the Declaration on Cultural Diversity (2001) and the Convention for the Safeguarding of the Intangible Cultural Heritage (October, 2003). Right to culture is also recognized under regional human rights instruments among which are the ACHPR (1981), ACRWC (1990) and Protocol to the African Charter on the Rights of Women in Africa (2000).

and Cultural rights committee unlike their extensive definitions and discussions on economic and social rights.³⁴

Art 27 (1) of the UDHR reads that “[e]veryone has the right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”. The ICESCR pursuant to Art 15 (1(a)) & (2) respectively recognizes culture as a right of every individual “to take part in cultural life” and also obliges States to take measures “to achieve the full realization of this right [through] ... the conservation, development and diffusion of science and culture”.

Culture is a right on its own to which States have obligation to protect, respect and fulfill. State’s capacity to instigate “cultural dominance” through exercising its “public political culture”³⁵ need to be balanced by preventing States’ “static” conception of minority culture that further endangers the trampling of right to culture of minorities specially by using rights of women as an scapegoat³⁶.

Under the Convention for the Safeguarding of the Intangible Cultural Heritage “social practices, rituals and festive events” are protected.³⁷ Hence a crucial question would be then to identify the role and degree of involvement and decision making capacity of women in the formation, development and practice of culture.

Universalism vs. Relativism

Eriksen symbolizes the tension between human rights, culture and right to culture as wishing to “have ones cake and [at the same time] eat it too”.³⁸ This leads to the longstanding debate between universalism and cultural relativism that reflects the link between WHRs and culture.

Universalism

There are three main theories whereby the proponents of universalism use: natural law, rationalism, and positivism. These theories in one way or another assert that human rights are

³⁴ Supra note 25 at p.10.

³⁵ Id at p. 3.

³⁶ Supra note 22.

³⁷ Supra note 1 at pp.1 & 8.

³⁸ Supra note 16 at p.134.

“universal ideals” since either they are the creation of a divine power; or the rational thinking that all human beings are humans endowed with dignity and worth; or because of the global trend of ratification of IHRIs by nation states professing the universality of human rights.³⁹

According to Zechenter, the main criticism on universal human rights law is its alleged non-conformity “with the extreme diversity of cultural and religious practices found around the world”.⁴⁰ To this effect, despite extensive IHRIs that stipulate for gender equality, there are different practices invigorated by religions and diverse cultural practices.

During the drafting of the UDHR in 1947, a heated debate and different stances were taken by different States. With the right to marry and found a family, there were practical issues raised by the Saudi Arabian delegate that unfolded the universal vs. relativist tension.⁴¹ The delegate accused the drafting committee of usurping its power by creating hierarchy between ‘civilizations’, and using individualistic approach when drafting to the detriment of non-western nations that prefer a communal approach. The delegate further argued that “[non-western] ancient civilizations were past the experimental stage, and the institutions of which, for example, marriage, had proved their wisdom through the centuries.”⁴² However, the human rights defenders also stated that the concept of human rights recognizes the rights of individuals and human rights cannot be relegated as being against group rights. The defenders argued that the underlying reason to recognize group rights is so that ultimately individuals would be able to exercise their rights.⁴³ This argument was championed since using the individualist approach in such a manner would inevitably pave the way for the protection of women’s and children’s rights and alleviate their burdens within their respective localities. Ignatieff puts it eloquently in the following manner.

“The language of human rights is the only universally available moral vernacular that validates the claims of women and children against the oppression they experience in patriarchal and tribal societies; that enables dependent

³⁹ Elizabeth M. Zechenter, “In the Name of Culture: Cultural Relativism and the Abuse of the Individual”, *Journal of Anthropology Research*, Vol.53, No. 3, pp. 319 -347, (University of New Mexico, Autumn 1997), pp. 319 – 323.

⁴⁰ Id at p.323.

⁴¹ Michael Ignatieff, *The Attack on Human Rights*, (Princeton University Press, 2001), pp.102-103.

⁴² Ibid.

⁴³ Id at pp.108-109.

*person to perceive themselves as moral agents and to act against practices – arranged marriages, genital mutilation, domestic slavery, and so on – that are ratified by the weight and authority of their cultures”.*⁴⁴

Hence despite the positive connotation attached to culture, there are harmful practices that target women and the girl child because of the encultured inferior and subordinate status of women that further continues to shield “harmful traditional and cultural practices [that] maintain and legitimize and perpetuate gender based violence”.⁴⁵

Then comes the debate between individual right and cultural relativity which leads the discussion to public-private divide.⁴⁶ The clash between adhering to cultural heritage like arranged marriages and ‘female genital surgeries’ (the phrase used by Prof. Nagengast) and the power dynamics of those who hold the power within a given society need to be investigated especially when discussing the private-public dichotomy that directly affect the interaction between individual rights and cultural relativity. Thus, Prof. Nagengast questions whether cultural relativity can easily be used as a scapegoat from taking moral and human rights stance or not.⁴⁷ This leads to the pertinent question whether human rights are universal or not.

Among different arguments forwarded regarding universal-relative debate, Donnelly’s ‘relative universality’ is one of them. In his article entitled ‘The Relative Universality of Human Rights’, he asserted that universality of human rights is shown in “functional, international legal and overlapping consensus universality”⁴⁸. In this argument he focused on the “limits of the universality” since some States allege that the UDHR doesn’t represent them.⁴⁹ Considering the nature of such tensions and allegations, and responses of the defenders as well as after appreciating the norm setting legal standards at the international arena, Donnelly promotes relative universality as an ideal model to ensure the implementation of international human rights standards both at international and domestic frameworks. He measures universality of human

⁴⁴ Id at p. 109.

⁴⁵ Supra note 21.

⁴⁶ Carole Nagengast, *Women, Individual Rights and Cultural Relativity: Power and Difference in Human Rights Debates*, (Working Paper #266, December, 1998), p. 4.

⁴⁷ Id at p.7.

⁴⁸ Jack Donnelly, “The Relative Universality of Human Rights”, *Human Rights Quarterly*; 2007; Vol 29; p.281

⁴⁹ Ibid.

rights using the very definition of human rights as “equal rights for all human beings [that are inalienable which makes human rights to be universally held] rights by all human beings”.⁵⁰

Donnelly further makes distinction between conceptual and substantive universality⁵¹ by making a distinction between mere recognition of a right in a society to the depth and context of recognition of the right. Had different societies have their own practices that uphold human rights; it would have strengthened the argument towards universality of human rights in historical or anthropological context. But he asserts that most societies both Western and Non-Western didn't have the notion of human rights in the context of entitlements that are inalienable for all human beings. Islamic, Confucius, and African societies had not developed human rights concepts and ideas before the 20th C in the context of contemporary human rights discourse. In functional universality, although the origin of natural or human rights emerged in the West, it should be the function that should matter and make it universal. He states that “[Human Rights] thus have relevance wherever those [social, economic, and political] transformations have occurred, irrespective of the pre-existing culture of the place”⁵². Thus, functional universality helps to understand the intrinsic values embodied in human rights that will assist in refuting the claims of sovereignty of States and cultural differences.

The Universalist notion is criticized by Asian and Islamic governments, Third World Regimes, groups and individuals that understand human rights as Western phenomenon.⁵³ The gist of the matter is whether or not acclaiming human rights as international standards could be a “form of cultural imperialism”.⁵⁴ Brown argues, even if the incumbent government does not take these international human rights standards as universal, the actions of human rights activists and their agenda are indications of universality of human rights.⁵⁵ In the same token, Noor argues that the use of criticisms against universality is not to preserve “Asian values”; rather is a silencing

⁵⁰ Id at pp. 281 – 282.

⁵¹ Id at pp. 282 – 283.

⁵² Ibid.

⁵³ Supra note 39 at p. 323.

⁵⁴ Paul J. Magnarella, “Questioning the Universality of Human Rights”, *Human Rights and Human Welfare*, Vol.3, No.1, pp.15 – 25, (Center for Rights Development, Winter 2003), pp. 15 – 16.

⁵⁵ Id at p.16.

strategy used by dominant groups in certain social contexts to silence the voice of the marginalized.⁵⁶

Gearty brings the discussion to the doorsteps of Africa. The fact that IHRL originated from the different socio-political terrains of the West, should not be held against the West nor should not be concluded that the traditional African societies, like the Dinka people of Sudan, do not have “goals ... that places emphasis on such human values as dignity, integrity, honor, and respect for self and others...”.⁵⁷ In spite of such assertions however there is marginalization of women within the Dinka people which he sympathetically equated with the “space generated between theory and practice [of] human rights”.⁵⁸ In short, he concludes that the existence of gaps in realizing human rights aspirations emanating from both international human rights standards (“global north”) and notions of dignity inherent to the traditional African societies (“global south”) should not be taken as lack of universality. With this he shares the functional universality argument of Donnelly.

Cultural relativism

Cultural relativism is defined as “a tolerance and respect for difference, which refers to the idea that cultural context is critical to an understanding of people’s values, beliefs and practices”.⁵⁹ Merry, however, prefers to understand cultural relativism starting from the term “culture” which she conceptualizes as a flux. Hence she argues that employing cultural relativism would not sound as it is conceived in the human rights discourse as being static; which implies absolute tolerance that at times would be contrary to women’s health.⁶⁰

Despite such understanding, there are several criticisms against cultural relativism. Among such are making itself a universal principle while rejecting the universality of human rights;⁶¹ its denial of “ongoing historic and institutional process” and over ambitious assumption that a

⁵⁶ Id at pp.20 - 21.

⁵⁷ Conor Gearty, “Are Human Rights Truly Universal?”, pp.3-9, accessed October 25, 2012, http://www.conorgearty.co.uk/pdfs/Chapter_29_UniversalityFINAL.pdf,

⁵⁸ Id at p. 10.

⁵⁹ Alexandar Howson, Ph.D, Cultural Relativism, (EBSCO Research Starters, EBSCO Publishing Inc., 2009) accessed January 04, 2013, <http://www.ebscohost.com/uploads/thisTopic-dbTopic-1247.pdf>.

⁶⁰ Supra note 23 at pp. 62 – 64.

⁶¹ Supra note 39 at p. 332.

custom is “consented by majority of its adherents”;⁶² difficulty in balancing competing interests in inner struggles of contestants and counter-resistant groups;⁶³ blindly sticking to long lost functionality compromising chance of “adaptability” of culture in new environments;⁶⁴ misconception about “legitimacy and representativeness of culture as a tradition” despite charges of cultural imperialism and ethnocentrism;⁶⁵ fixation with group as opposed to individuals leading to the further alienation of marginalized groups and its direct implication in further subjugating women and girls;⁶⁶ and its susceptibility of being the weapon of incumbent governments or dominant groups in subjugating individuals without their “knowing and informed consent.”⁶⁷ In sum, Zechenter poses the following fundamental questions that would reflect the weak links of cultural relativism which in turn pave the way for universal human rights standards.

“whose interests are being served by the “traditional” customs and whose are infringed by them; why some customs are abandoned while others are maintained or resurrected and by whom; who benefits from change in cultural practices versus who gains from maintaining the status quo; and who is influencing the direction and the internal dynamics of cultural change and whether such cultural changes might lead to genuine

⁶² Id at pp. 332 – 334.

⁶³ Ibid. The criticism revolves around the struggle between internal contestants and the counter-resistant on existing imbalance within a particular group. The dominant group usurps the unbalanced power to continue its domination over the subordinates. Zechenter cites examples whereby the male members of a community who use their power to engage in demising practices that contravene their interests while sticking to practices that continue to undermine female members to keep the status quo of the power that titles towards them.

⁶⁴ Id at pp.334-335. Even though some argue that some practices are practiced for longer periods because of their functionality that kept the society intact, she counter-argues that it is not true all the time and cites the long standing tradition of Sati in India which was condoned for its harmful effects; however the Indian tradition has not collapsed when Sati was challenged. She further argues that adhering to practices that purports violence against women and whose useful essence has been outlasted blindly would ultimately diminish the chance of survival of the culture itself since one of the characteristics of culture is its “adaptability” in the face of new environments.

⁶⁵ Id at p. 336.

⁶⁶ Id at pp.336 – 338. This criticism of excessive emphasis on group as opposed to individuals neglects intra-cultural diversity specially in ‘stratified societies’, to which most anthropologists seem to be oblivious, jeopardizes the human rights of marginalized groups like women or minority groups whose rights will be swamped with the undue attention given to group rights as dictated by the dominant group. Women and girls will be subjected to various forms of violence including FGM and other practices to ensure the chastity of girls to be married to the best suitor so as to move up the family’s status in the stratified social ladder. This ultimately puts immense pressure on girls and women rendering them to be passive.

⁶⁷ Id at p. 338. She states that most African and Asian regimes advocate for cultural relativism so as to shield themselves from international scrutiny in relation to the status of human rights within their domestic arenas. Hence, whether it is the incumbent government, dominant group in a society or fundamentalists, she argues that they invoke cultural relativism to serve their own interest at the expense of the marginalized ones; and not for the sake of advancement and maintaining of their cherished culture.

equality and improvement of life to currently marginalized subgroups or individuals or to a further disenfranchisement of the voiceless”⁶⁸

Women’s Human Rights: Normative Framework

Besides the debate between universalism and cultural relativism, some scholars are of the opinion that the figurative collusion between WHRs and “the rise of religious fundamentalism” in the political arena has strengthened the misconception that women’s human rights issues are the propagation of “Western or white culture and ideas”.⁶⁹

Contemporary understanding of human rights has convened with the establishment of the UN Charter which states “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.⁷⁰ Even though it does not contain range of rights, it is among the pioneer instruments that discuss the principle of non-discrimination based on sex. Different IHRIs starting from the UDHR, ICCPR, ICESCR, the Universal Declaration of Women’s Rights (1967) etc clearly prohibit discrimination based on sex. Art.2 of UDHR⁷¹ also lists various prohibited grounds of discrimination including discrimination based on sex.

CEDAW was adopted in 1979 in the midst of a heightened movement. According to CEDAW Art.1, “*discrimination against women shall mean 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*”. Hence it is the pioneer instrument in giving face to the term discrimination with respect to women’s rights. It is the international women’s rights bill.

Beginning from its preamble, CEDAW emphasizes the interdependence and interrelatedness of WHRs, the challenges of gender inequality propagated by culture and religion⁷², and ill effects of

⁶⁸ Id at p. 334.

⁶⁹ Supra note 2 at p. 37.

⁷⁰ UN General Assembly, Charter of the United Nations, (UN, October 1945), Art 1(3), accessed June 20, 2012, <http://www.unhcr.org/refworld/docid/3ae6v3930.html>.

⁷¹ UN General Assembly, *Resolution 217 A (III), Universal Declaration of Human Rights*, (December 10, 1948). Art 2 states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status” [emphasis added].

⁷² Supra note 23 at p. 60.

neglecting women's reproductive roles, and the link between women's rights and development unlike other human rights instruments. It also discusses the unfavorable effects of gender stereotyping that hampers women's participation in all streams.⁷³ It accords special emphasis to the girl child and the need for non-stereotyping of education, and on rights of rural women.⁷⁴

Unlike similar IHRIs, pursuant to Art.5, CEDAW is the first to clearly surmount the blurred relationship between women and culture. It stresses that women should be regarded with equal right to autonomy and accessing the justice machinery on their own accord in relation to family issues as well as administration of property. Both State sponsored laws and customs within society should come in line with this assertion to ensure women's rights to equality before the law. In Recommendation No.21, the CEDAW Committee has concluded that even though the national constitutions seems to uphold the principles and human rights enshrined in the Convention, the "custom, tradition and failure to enforce these laws in reality contravene the Convention".⁷⁵ CEDAW is one of the UN instruments that a great deal of reservations, understandings and declarations is entered into.⁷⁶

The public/private divide and its strong impact on the rights of women and the girl child should be noted since women are curtailed from the protection of the law and its monitoring mechanisms. The private domain encompasses issues affiliated with marriage and related family life including the status of women in their respective families as daughters, wives and mothers.

The right to marry and found a family is one of the human rights of which States assume obligations including the duty to extend protection by taking legislative as well as other measures together with "the duty to promote, to modify customs and practices that constitute

⁷³ UNIFEM, *CEDAW and Human Rights Based Approach to Programming: A UNIFEM Guide*, (May 2007), pp. 1-9, accessed May 16, 2012, http://www.unifem.org/attachments/products/CEDAW_HRBA_guide_pt1_eng.pdf.

⁷⁴ UN General Assembly, *Resolution 34/180 Convention on the Elimination of all forms of Discrimination Against Women*, (1979), Preamble, and Arts.10(c) & 14.

⁷⁵ CEDAW *General Recommendation No. 21, Equality in Marriage and Family Relations*, (13th Session, 1994), para. 15.

⁷⁶ Aneta Jersakova, *One Voice, One Vision – Women United Against Operation. Why Do Specific Rights for Women Remain So Controversial?*, p.11.

discrimination against women and are obstacle to the full enjoyment of women's human rights".⁷⁷

The fact that CEDAW is women centered, as opposed to focusing on gender equality; its weakness in terms of forcing commitment on part of member states through its follow up mechanisms are among the criticisms.⁷⁸ Feminists criticize it for neglecting issue of VAW, and another criticism relates with its haphazard categorization of all women as homogeneous groups who are all victims and all men as perpetrators.⁷⁹

The VDPA (1993) also stress the universality, interdependence and indivisibility of human rights.⁸⁰ The UN International Women's Decade followed by the UN World Conferences on Women in Mexico City, Copenhagen, Nairobi, and the Beijing platform for action have contributed in pushing gender equality concerns in the international political agenda and highlighted the issue of cultural practices detrimental to the rights of women and girl child.⁸¹ The added value of Beijing Platform for Action is putting forward the State obligation that needs to be assumed when it comes to choosing between women's human rights and cultural practices.⁸²

Right to Marry and Found a Family: Historical Significance

In UDHR, Art 16 has stipulated that the consent of intending spouses as an explicit requirement. However, the same cannot be said regarding minimum age since it only states "[m]en and women of full age, without any limitation due to race, nationality or religion."

Going back the history lane, as Schwelb indicates forced marriage was equated with slavery and 14 years old was the minimum marriageable age. However, African delegates argued that consent of community have to be among the essential conditions and concluded that insisting otherwise would be an 'attack' on social cohesion and structure of Africans. Schwelb states that

⁷⁷ Kidist Alemu, "Enforcement of CEDAW in Ethiopia, in light of State Obligations", Lund University, Faculty of Law, 2002, pp.17-18.

⁷⁸ Karen Engle, "International Human Rights and Feminism: When Discourses Meet", *Michigan Journal of International Law*, Vol. 13, No.517, pp. 517 – 610 (Spring, 1992), pp. 570 – 571.

⁷⁹ Supra note 22 at pp. 105 & 107.

⁸⁰ Id at p. 106. United Nations, The Vienna Declaration and Program of Action, World Conference on Human Rights, June 1993. In addition to that, in the Vienna conference, the public-private divide was duly noted whereby the private sphere also was said to be an area where human rights violation of women can take place.

⁸¹ Nalini Visanathan (eds) *et al*, *The Women, Gender and Development Reader*, 6th ed., (2006), at p.3.

⁸² Supra note 2 at p.38

the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1965) pursuant to Art. 1(c)) stated that “any institution or practice whereby (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardians, family or any other person or group...” was considered as a mode of slavery. This indicates that this matter was associated with slavery even back then considering the limitation of liberty of women. In the debate relating to this Supplementary Convention leading to the 1962 Convention, it was raised that lack of stipulation of minimum age would hamper who is entitled to give consent for a marriage and then the minimum age of consent was proposed to be fourteen years old. They justified polygamy on the basis of opportunity for men to have “an heir and eliminated problem of illegitimate children”. One African delegate also commented that “the UN must beware of legislating in the abstract, for no country could subscribe to a system which would lead to the complete breakdown of its social structure”.⁸³ From this historical view one understands that the minimum age was declared to be fourteen and that consent was not only of the rights of women/girls but rather that of the community.

But following this, however Art. 23 of ICCPR recognized the institution of family as “the natural and fundamental group unit of society [that] is entitled to protection by society and the state”. Marriage should be entered with the “free and full consent of the intending spouses” and that the intending spouses should attain the “marriageable age”. Reading Art.23 of ICCPR with Art.2 of same instrument entails discrimination on enjoyment of the right to marry and found a family cannot be made based on sex, race etc. A paradigm shift has come about after CEDAW per Art 5 clearly discussed the role of culture and religion on the protection of WHRs. Art.16 of CEDAW⁸⁴ also specifically dealt with the same right to marry and found a family. This provision

⁸³ Egon Schwelb, “Marriage and Human Rights”, *The American Journal of Comparative Law*, Vol.12, No. 3, pp.337 – 383, (Summer, 1963), pp. 341-345 & 381.

⁸⁴“right to enter into marriage; ... freely to choose a spouse and to enter into marriage only with their free and full consent; same rights and responsibilities during marriage and its dissolution; ... same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; the same personal rights as husband and wife including the right to choose a family name, a profession and an occupation; the same rights for both spouses in respect of ownership, acquisition, management, enjoyment and disposition of property, whether free of charge or for a valuable consideration”.

encompasses extensive issues ranging from elements of free consent, equality of rights entering, during and at the dissolution of marriage and so forth.

In addition to this, Ethiopia has also ratified the relevant core conventions that recognize the right to marry and found a family. Such instruments are ICCPR per Art 23, ICESCR per Art.10, CEDAW Art 16, CERD per Art 5(c (iv)), CRPD per Art 23, Art 24 of CRC, Art 18 of ACHPR, Art 18 of ACRWC. Furthermore, UN GA Resolution No. 843(IX), Dec 1954 on Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962/64) is also another relevant document for discussing WHR framework. Last but not least, though they are not binding conventions, General Comment No. 19 and 21 of HRC, CEDAW General Recommendation 21, CRC General Comment No. 13 are among the relevant documents along with DEVAW that thoroughly discusses gender based violence and harmful traditional practices which will be further used to in chapter four to analyze absuma marriage from the etic perspective.

Hence, the WHR framework basically deals with all aspects of women's and girls' human rights and talks about non-discrimination as well as specifically discusses on right to marry and found a family of women from various socio-cultural situations like racially discriminated women, disabled women and so on. However, because of the emphasis given to culture and religion WHR is always faced with challenges. Hence it would be important to highlight some of the anthropological as well as feminists viewpoints regarding the interaction of WHR and culture. Since the detailed elements of the WHRs framework regarding the right to marry and found a family, age of consent, and consent as essential conditions of marriage will be discussed in depth together with their added value in ensuring dignified lives for women and girls in the private sphere of life.

Anthropologists Perspective on Culture and WHRs

According to Fluehr-Lobban, professor of Anthropology, cultural relativism is a fundamental concept embodied in the heart of Anthropology that reminds anthropologists to refrain from passing “value judgments” since “each culture has its own values and practices”. On one hand, she asserts that this has detracted anthropologists from passing value judgments. On the other hand, she argues that it is not alien for anthropologists to “speak out against reprehensible

practices as Nazi genocide or South African apartheid”; rather cultural relativism has been invoked to keep silent about “female circumcision, culturally based homicide” and so on.⁸⁵

Masking behind cultural relativism in the case of VAW has been lifted following the mended interaction of anthropology and human rights after the 1947 AAA response.⁸⁶ Many anthropologists are taking moral stance, and in-depth understanding of various cultures is being used to create a social dialogue to protect human rights of marginalized groups. This shift has been observed in the 1994 Convention of the AAA.⁸⁷

Messer⁸⁸ highlighted that the debate over cultural relativism has shifted from “questions of cultural relativism over cultural values [to] the clear violation of human decency and dignity on the part of non-Western political leadership under the banner of cultural relativism”. She further stated that the flourishing of human rights has also “changed the human rights problematique and, anthropologists’ response”. This assertion is supported by Fluehr-Lobban; but she also raises a major dilemma of when to apply cultural relativism or to take moral stance. According to Fluehr-Lobban it is very challenging to determine whether an action or omission can constitute a mere cultural norm or a human rights violation especially when the issue revolves around discriminatory practices against women.⁸⁹ In the same way, Messer also shares her concern about “potential conflict between cultural rights and women’s human rights or cultural relativism and feminism”.⁹⁰ For this, according to Messer, the first thing to do is to “identify the actual behaviors ... consequences ... that result under such conditions of discrimination” followed by understanding the underlying reasons.⁹¹ She asserts that such way of understanding would lead to “measurement in both local cultural and scientific terms of whether a basic right is being fulfilled” or not.⁹² Regarding cultural relativism and universalism, she states “[t]he challenge is

⁸⁵ Carolyn Fluehr-Lobban, “Cultural Relativism and Universal Rights”, *Chronicle of Higher Education*, (1995), p.33.

⁸⁶ Ibid; Ellen Messer, “Anthropology and Human Rights”, *Annu. Rev. Anthropol.*, Vol. 22, pp.221-249, (1993),p.240.

⁸⁷ Supra note 85.

⁸⁸ Ellen Messer, “Anthropology and Human Rights”, *Annu. Rev. Anthropol.*, Vol. 22, pp.221-249, (1993), p.240.

⁸⁹ Supra note 85 at pp. 33-35.

⁹⁰ Supra note 88 at p. 233.

⁹¹ Ibid.

⁹² Ibid.

to identify commonalities and structure interpretations so that essential human rights are universally respected”.⁹³

In like manner, it is wise to explore the perspective of the women to understand whether they are willing “to maintain their culture, even if this interferes with the survival of some individuals” as what functional cultural relativists subscribe to. She poses the question whether “the history and functional indispensability of the customs” disfavoring women need to be looked into together with who will benefit most out of it if the practice is to continue.⁹⁴ She declares that most of the time ethno-historical studies show that such practices do not have strong historical nor cultural significance; rather are merely used to address other shortcomings in a society like weak financial status.⁹⁵ As to her, the reason behind why some rights flourish in a certain group while others degree of realization dwindles is because of “tradition, ethic of communalism, ethnicity, basic needs ... or [existence of] international agencies, forums, and human rights frameworks and instruments”.⁹⁶

“Cross-cultural dialogue” was suggested as one way of ensuring inner contestants gain voice through human rights advocacy. It also paves the way for outsiders to give constructive comments without being considered cynical who impose their culture.⁹⁷

According to Merry⁹⁸, CEDAW along with its recommendations, DEVAW, and other IHRIs connote culture as an impediment to WHRs since it is conceptualized as “traditions [and] customs”. With this, she criticizes the assumption within the human rights discourse that blindly condemns culture as the culprit as opposed to making “modernization” an ally of human rights.

To sum up, anthropologists can take a moral stance and unveil norms and practices in line with human rights especially on matters concerning women’s human rights.⁹⁹ A foreseeable and formidable challenge raised by Anthropologists in terms of women’s human rights is the

⁹³ Id at p. 227.

⁹⁴ Id at p.234.

⁹⁵ Ibid.

⁹⁶ Id at p. 235.

⁹⁷ Kristin Louise Savell, “Wrestling with Contradictions: Human Rights and Traditional Practices Affecting women”, *McGrill Law Journal*, vol.41, pp.781- 817, pp. 816-817.

⁹⁸ *Supra* note 23 at pp. 60 – 62.

⁹⁹ *Supra* note 86 at p. 35.

substantive reservations entered on CEDAW since such States cannot be obliged in such instances. Another issue is whether the issue of “cultural dominance” can be exercised by a national or federal government when the government legislates contrary to the practice in the intra-state context regarding women’s human rights. The generalization that culture is a hindrance to WHRs is an assumption that is challenged by anthropologists since they conceptualize culture as dynamic, unlike the HRs discourse.

Feminist Perspective on Culture and WHRs

Feminism is defined by Okin as “the belief that women...should be recognized as having human dignity equally with men and the opportunity to live lives as fulfilling and freely chosen as men can”.¹⁰⁰ For Chukwuma feminism “is inextricably bound to the culture and peculiar backgrounds and experiences of women” and defines feminism as “a reaction of women with guts and steam”.¹⁰¹ With this she asserts that African women have their own path to pursue their rights.

One criticism on instruments developed except CEDAW was their being “double-edged instruments” because of gender insensitivity and being unsympathetic towards the plight of women, and measures women based on men.¹⁰² Feminists argue that even though discrimination based on sex was prohibited well-before the adoption of CEDAW, the term ‘human’ was based on “male model” and the non-discrimination clauses were stipulated with the intention of the “public rather than private”¹⁰³ spheres of life. Hence, “male centricism” and the referring to “brotherhood” in Art 1 of UDHR inadvertently signified the bias and lack of conceptualizing human rights from the “lived experiences” and life discourse of women.¹⁰⁴

The issue then is to probe into how culture practically fits in the context of WHRs. Okin has disclosed that “discrimination on the grounds of sex is frequently justified as being in accordance with many of the cultures – including religious aspects of these cultures – practical in the world

¹⁰⁰ Karen Knop, Ralf Michaels and Annelise Riles, “From Multiculturalism to Technique – Feminism Culture and the Conflict of Laws Style”, *Stanford Law Review*, Vol. 64, Issue 3, pp. 1-83, (March, 2012), p.10.

¹⁰¹ Helen Chukwuma, *Women’s Quest for Rights: African Feminist Theory in Fiction*, (Forum on Public Policy, 2007), pp.1-2.

¹⁰² Supra note 2 at pp. 33 & 34.

¹⁰³ Supra note 2 at pp.32 -34; Supra note 1 at p.3.

¹⁰⁴ A Feminist Critique of the Philosophy of Human Rights, pp.4-6, accessed on October 10, 2012, <http://www.scribd.com/doc/104509266/feminist-critique-of-the-philosophy-of-human-rights>.

today”.¹⁰⁵ She forwards the argument that giving priority to the “preservation of minority cultures” as rights of minorities should not be the main yardstick since more often than not traditional cultural practices embody gender inequality.¹⁰⁶ Another criticism put forward by feminists is on the Convention for the Safeguarding of the Intangible Cultural Heritage. The criticism relates with considering the fact that many instruments associated with cultural rights *per se* do not cross-refer to women specific human rights instruments nor do they have a section devoted for gender equality.¹⁰⁷

The gaps in implementation and reservations have made women’s human rights a mockery.¹⁰⁸ On the “substantive” reservations on CEDAW, Kidist elaborated that “States have entered reservations because they go against their religious and customary laws”.¹⁰⁹ Okin then questions the benefits of ratifying IHRI if the principles of gender equality engraved in these instruments are easily unraveled by adhering to customary practices.¹¹⁰

This discussion leads to the different ways of dealing with “culture versus feminism”. The first approach is that of Okin’s as cited by Karen *et al* termed as “ethical moment” between the two notions and in which equality becomes the tramp card over culture.¹¹¹ To the contrary, Bennoune takes the position of “compromise... [whereby] culture may be tolerated, but only to a certain degree”.¹¹² The latter position prefers to deal with the two notions on a “contextual” note.¹¹³ Another position preferred by Engle also seems to share the latter’s position since she envisions a “culturally sensitive universalism”.¹¹⁴

Issues surrounding culture and feminism have further induced the relativist critique of feminism. It focuses on defining what culture is and argues that “liberalism or democracy” on their own are

¹⁰⁵ Supra note 1 at p.33.

¹⁰⁶ Supra note 100. She cites the dilemma the French Immigration Policy had which on one hand had the intention of extending protection to minority rights whereas on another hand this practice encompass polygamy which was said to be illegal and contrary to the rights of women in France.

¹⁰⁷ Supra note 1 at pp.1 & 8.

¹⁰⁸ Supra note 2 at p.33

¹⁰⁹ Supra note 77 at p. 12.

¹¹⁰ Supra note 2 at p.38.

¹¹¹ Supra note 100.

¹¹² Id at p. 11.

¹¹³ Ibid.

¹¹⁴ Id at p. 12.

cultures rendering the debate to be on “culture versus culture”.¹¹⁵ The end result then would be that our women have ‘agencies’ which makes them to use their own free will to choose whereas those women in another culture are voiceless since they have no agency.¹¹⁶ Such argument is not supported by relativists since they argue that the ultimate goal is to result in principle of choice versus principle of equality.¹¹⁷ Hence, as long as women have the choice to make decisions in relation to practicing culture, then the principle of choice and the principle of equality become head to head.

Nowadays, there are feminists who conceptualize culture as transformative based on the “anthropological insight that all culture is invented tradition”. This makes culture “not to be the enemy of women’s rights” since it can be reinvented.¹¹⁸

The way various feminist groups have coined WHRs has contributed in making the women’s rights movement contentious. Jersakova argues that women’s rights struggle is shadowed by differences in “theoretical”, “practical” and “institutional” ways women’s issues were framed and are still being framed.¹¹⁹

In the theoretical aspect, whose notion of “womanhood” and suspicion of cultural imperialism shadow how the women’s agenda is construed in human rights discourse despite the different discrimination women from different corners of the world face. Women are not homogeneous because of “sexed positions [that] intersect with cultural, ethnic and religious affiliations and contexts”.¹²⁰ Hence the “difference” argument should not be used as an excuse to pour cold water to the WHRs movement; rather go beyond “this divide”.¹²¹

“Practical obstacle” relates to the ascribed traditional roles and religious norms that prevent WHRs realization at a local level. It concerns family law adoption by local authorities that contradict IHRIs and adjudication of cases using such laws that further undervalue women’s dignity and worth. This delineates WHRs and ascribes it as “controversial and foreign

¹¹⁵ Id at pp. 12-13.

¹¹⁶ Id at pp. 12-14.

¹¹⁷ Id at pp. 13-14.

¹¹⁸ Id at p. 18.

¹¹⁹ Supra note 76 at pp.4-9.

¹²⁰ Id at p. 4.

¹²¹ Id at p. 5.

concept”.¹²² However, this does not altogether render culture as contrary to the notion of WHRs altogether since it “is constantly evolving, which means it is always open to change and adaptations”.¹²³ To have changes favourable to WHRs, the strategies to be developed at the local level need to be cognizant of the culture and religion to lay down a comfortable ground for advocacy issues that strike a balance between culture and WHRs, which is “more appealing to claim [women’s] rights in a way that is not threatening to their own beliefs and values.”¹²⁴

As to the “institutional” aspect, the mere fact of incorporation of WHRs in various instruments and institutional frameworks does not tantamount to their outright implementation. Hence, it is imperative to curb the categorization of “concrete rights for women [from being termed as] controversial” that would further end up in making mere “cosmetic” reforms which will not result in profound changes.¹²⁵

Within the vertical relationship in the human rights discourse, “[it] was generally recognized that there existed a sphere of privacy, protected by rights from outside intrusion, but not necessarily governed internally in accordance with the rights of its members”.¹²⁶ Though all provisions of the Declaration give recognition and protection to the rights of women and men in general, the word ‘women’ was “specifically” mentioned in Art.16.¹²⁷ The fact that “family is [rendered to be] the natural and fundamental group unit of society [which] is entitled to protection by society and the State” with the cumulative reading of Art 25(2) of the same Declaration which reads as “[m]otherhood and childhood are entitled to special care and assistance” is said to give “a strong element of protectionism in the provisions, particularly when they tie motherhood and childhood together as requiring similar, paternalistic oversight”. This might yield unwarranted results of oppressing women because of the consequences of the public and private divide.¹²⁸

This divide has contributed to curtail WHRs under the umbrella of privacy which has further endorsed existing discriminatory practices. Comparing slavery that was clearly a human rights

¹²² Id at p.6.

¹²³ Id at p.9.

¹²⁴ Ibid.

¹²⁵ Id at p.12.

¹²⁶ Supra note 2 at p.34.

¹²⁷ Amanda Whiting and Carolyn Evans (eds), *Mixed Blessings: Laws, Religions, and Women’s Rights in the Asia-Pacific Region, Studies in Religion, Secular Beliefs and Human Rights*, Vol. 1, (Martinus Nijhoff Publishers, Leiden, Boston, 2006).

¹²⁸ Ibid.

violation, with the actions of “parents giving their daughter in marriage in exchange for money, ... and a husband [marrying his wife] without her adult consent...” is cited by feminist groups as an appropriate example to demonstrate the harm in categorizing issues that significantly affect women as private matters. It is evident that the latter was not considered as a human rights abuse and slavery.¹²⁹ Women’s rights will be at the mercy of individual families and societies. To elaborate this, Okin starts from the philosophical foundations of the right to privacy and quotes Locke’s argument on privacy in which he claimed that “a father’s decision about whom his daughter should marry” to be one of the right to privacy manifestations in the private domain from which the state is prohibited from intruding.¹³⁰

Okin further states that because of this notion of privacy such acts of abuse by either the parent or the spouse was considered as a “normal, culturally appropriate behavior in parents and husband” and shielded GBV from the public arena.¹³¹

It can be deduced that cultural and religious justifications are usually raised in areas of private matter that have worth in the life of women like “sexuality, marriage, reproduction, inheritance, and power over children”.¹³² The poignant nature of private/public divide when transposed to role of the state in WHR, “[i]t depoliticizes women’s experiences, rendering [women] invisible” both in the public and private domains.¹³³

African Feminism

Associate Professor Tamale shows African perspective on the issue of culture and WHRs. She states that “the potential culture holds [to emancipate] women in Africa is often buried in the avalanche of literature many feminist scholars devoted to the ‘barbaric’ cultural practices such as FGM”.¹³⁴ The struggle of the grassroots’ efforts of Africans is not recognized whereas the works of non-Africans is championed which “often produces a negative backlash” to the women’s

¹²⁹ Supra note 2 at p.35.

¹³⁰ Id at p.34.

¹³¹ Id at pp.33-36.

¹³² Id at p.36.

¹³³ Supra note 104 at p. 7.

¹³⁴ Sylvia Tamale, *The Right to Culture and the Culture of Rights: A Critical Perspective on Women’s Sexual Rights in Africa*, (Urgent Action Fund – Africa, 2007), p.152

rights struggles in Africa.¹³⁵ She strongly disagrees with the way “culture” and “rights” are rendered to be related in African context. First world feminist have portrayed African culture as “barbaric” and African women as silent “victims of culture.”¹³⁶ Tamale strongly urges that culture and gender cannot be in “war” forever; at least in the African context whereby culture has a significant role in constructing gender. Her argument is that African culture had it not been portrayed as the weapon of the savage and the barbaric, would play a “liberating role for women”.¹³⁷ She further indicated that the public-private divide has a significant role in the African women’s issues which are utterly described as ‘private’ and are made to automatically fall in the realm of culture in which the state laws don’t apply.

Tamale further discusses that even if ACHPR Art 18(2) states that “the state shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community”, the nature of family need to be scrutinized since in reality there is patriarchy and assisting it to continue by the state would make the state complicit to acts of enculturation of gender inequality under the guise of extending protection to the institution of family.¹³⁸

Many assert that “rights”, “culture” and “women” do not exist on the same plane in the African context. Thus, she poses a probing question whether or not the above assertion can hold water in terms of right to culture. If the three notions are said not to exist in the same plane, then the viable solution would be for “African women [to] first strip themselves of culture before enjoying their rights [whereby] such a position is untenable and runs contrary to the logic of cultural rights. She further insists that “African feminism cannot afford the luxury of donning either the Universalist or the Relativist garb. Culture is a neglected pathway to women’s justice.”¹³⁹

Tamale invokes strong arguments made by Abdullahi An-Nahrim and Jeffrey Hammond on the premise that culture has the potential to protect WHRs. They suggest that “internal cultural transformation” as the most [viable approach to entrench] human rights in African societies.”¹⁴⁰

¹³⁵ Ibid.

¹³⁶ Id at p. 153.

¹³⁷ Id at p. 155.

¹³⁸ Id at p. 156 – 157.

¹³⁹ Id at p. 152.

¹⁴⁰ Ibid.

If “cultural transformation” that upholds human rights is aspired, then predominantly the State and non-state actors need to envision a strategy that synergizes “culture and rights to achieve social transformation”.¹⁴¹ She advocates that Africans should not continue to echo what first world feminists say about the nexus between culture, African women and human rights; rather should devise a strategy and reconstruct their place in their respective societies in line with human rights discourse.

In somewhat contradiction to Tamale, Chukwuma, an Associate Professor of English, identifies the negative correlation between culture and African women in the literary works of African female writers. She refutes an assertion made by a renowned male writer named Chinweizu’s who insinuates African women have an invisible power to which he refers as “mother power, bride power and wife power” that dominates men under the surface. However the literary works revealed that the women’s power equate with “a child’s ownership of a goat [which only] is skin-deep”.¹⁴² Hence, although women seem to be bestowed with these ‘three powers’ because of their apparent closeness to the decision maker, substantial decision is the domain of the man. Underlying African feminist theories inculcated to cultivate women’s solidarity and redeem womanhood in the assessed literary works focus on rejecting dowry and its representation and consequence on women’s autonomy; the burden of infertility on young African brides; rejecting levirate marriage till death; inheritance concerns; new beginning through economic emancipation, education and supporting environment; and protecting women’s bodily integrity either by committing suicide or murder.¹⁴³

¹⁴¹ Id at pp. 157 – 158.

¹⁴² Supra note 101, pp.203.

¹⁴³ Id at pp. 2-11.

Chapter 3 Emic Perspective of Absuma Marriage

Afar Regional State

Geography

The Afar people have their own national regional state¹⁴⁴ situated between the trade corridors to and from Djibouti/Aseb and Addis Ababa as well as Harrar.¹⁴⁵ It is divided into five zones and Semera is the capital city.

Legal Framework

Art 9 of the region's constitution clearly states that the Afar state constitution is supreme law but not above the Federal Constitution and further states that "customary practices or decisions of any organ of state or public official that contravenes it shall have no effect".¹⁴⁶

The State Council has tried to draft a family law though it has remained a draft.¹⁴⁷ The region is still using the family law section of the 1960 civil code,¹⁴⁸ which is highly criticized for being discriminatory to women.¹⁴⁹

Despite the existence of criminal provisions in the Federal Revised Criminal Law of 2005 (which is applicable in all parts of Ethiopia) that specifically deal with female genital cutting and infibulation, the regional state has adopted Proclamation No. 47/2009 entitled "Proclamation to

¹⁴⁴ Supra note 4 at Art.47 (1) and Article 4.

¹⁴⁵ Yasin Mohammed Yasin, *Regional Dynamics of Inter-ethnic Conflicts in the Horn of Africa: An Analysis of the Afar – Somali Conflict in Ethiopia and Djibouti*, University of Hamburg, 2010, p.43. As per Art 2 of the Revised Afar Constitution the regional state is boundary to "Eritrea in North Eastern, Republic of Djibouti in the East; and Tigray, Oromiya, Amhara and Somali Regional states in the North Western, South, South Western and in the South Eastern respectively.

¹⁴⁶ Supra note 4. Arts 8 – 12: Sovereignty of the people, supremacy of the constitution, human and democratic rights, secularism, and transparency and accountability.

¹⁴⁷ Key Informant #9, Legal Advisors' Office of Afar Regional State Council, face to face interview conducted on December 03, 2012.

¹⁴⁸ Key Informant #4, Afar Regional State Supreme Court, Telephone Interview conducted on December 05, 2012; Key Informant #5, Afar Regional State Bureau of Justice, face to face interview conducted on December 01, 2012; Key Informant #6, Afar Regional State Police Commission conducted on December 02, 2012.

¹⁴⁹ Supra note 77 at pp. 33 -37. The 1960 CC family law section was discriminatory starting from marriageable age as Art 581 stipulates for different minimum age standards for both sexes: 15 years for the wife to be and 18 years for the husband; inferior status of women during marriage in property administration, selecting residence, decision making and so on. It is worth to mention that many researches were done and presented to the HoPR which later necessitated in abrogating this section as contrary to the FDRE Constitution.

Remove the Practice of Female Genital Mutilation” that prohibits such practices and recommends measures to be taken to complement the Criminal Law considering the seriousness and the deep rootedness of the practice in the region.¹⁵⁰

Social Construction

Social construction in Afar exhibits the inexplicable interconnectedness of culture and religion. The Afar people are Sunni Muslims who are predominantly pastoralists.¹⁵¹ They are engaged in “animal husbandry”. This entails greater collaboration both intra-clan and inter-clan since their “livestock is [their] capital”.¹⁵² Kelemwork describes the social organization of Afar people as similar to Somali people who are also pastoralists whereby the yoke of the society is based on “patrilineal descent system... [which necessitates] belonging to a particular clan”. Resource sharing and lending assistance is part of their social organization in their intra-clan relationships which necessitates Afar people to belong to a clan.¹⁵³ The clan system and the Afar people way of life dictates in majority of cases their settlement patterns.¹⁵⁴ However, each clan has its own sub-clans headed by clan heads who are “entrusted with the responsibility of regulating the behaviors of clan members”.¹⁵⁵

Situation of Women and Girls

In Afar societies, though women have a say in a day-to-day household chores like “building the ‘nomadic’ hut, collecting wood and water, milking, preparing food, and weaving mats”,¹⁵⁶ final decisions are rendered by the head of the family who is male. Thus, at a household level, it is men who are heads and decision-makers in relation to property administration and matters relating to children.¹⁵⁷ Women and girls do not have equal stance in cases of inheritance and in

¹⁵⁰ Afar Regional State, *Proclamation No.47/2009 the Afar Regional State Proclamation to Remove the Practices of Female Genital Mutilation*, Semera, Afar Region Dinkara Gazzeta.

¹⁵¹ Supra note 7 at p.423.

¹⁵² Supra note 145 at p. 51.

¹⁵³ Supra note 7.

¹⁵⁴ Ibid

¹⁵⁵ Ibid.

¹⁵⁶ “Countries and their Cultures”, accessed July, 24, 2012, <http://www.everyculture.com/Africa-Middle-East/Afar.html>.

¹⁵⁷ Supra note 7 at p.428.

accessing traditional judicial systems which according to Kelemwork's expression makes Afar women to be "submissive and timid".¹⁵⁸

As to how the Afar customary law protects Afar women and girls, one key informant said that

"since the culture really protects and respects women, they would not encounter violence from random members of community for fear of serious punishment. In the traditional customary law, the testimony of the girl who was sexually violated is enough to render justice in the customary judicial system unless the accused comes up with a serious defense to rebut her testimony. Even entering a house where a woman is alone is punishable".¹⁵⁹

But what adversely affect Afar women are traditional practices which are taken to be the cultural practices and customs of Afar people of which FGM, forced marriage, 'yalacha gabicha' (wider age gaps between spouses), household burden on women are parts.¹⁶⁰

According to the baseline and the follow up survey conducted by EGLDAM, early marriage in Afar region has decreased by 9.7% from 36.6% during the baseline survey (1997) to 26.9% on the follow up survey (2008). Its 9.7% decline was the lowest when compared to Tigray 18.9% and Amhara 17%.¹⁶¹

Giving birth before being married is a serious issue. In one instance both the pregnant unmarried woman and the fetus was killed in a gruesome way to keep the family's honor.¹⁶² If a married woman who has given birth is in conflict with her husband, it is the husband who is made to leave their abode. The problem is if she is married but has no child, then the man can ask for his

¹⁵⁸ Id at p. 426.

¹⁵⁹ Key Informant # 5, Afar Regional State Bureau of Justice, face to face interview conducted on December 01, 2012.

¹⁶⁰ Ibid.

¹⁶¹ Supra note 9.

¹⁶² Supra note 159.

share among their property in case of divorce.¹⁶³ The Afar “*Ada*” allows divorced women to get married. But whoever wants to marry her other than her absumas have to pay the required payment for her potential absumas who could have married her.¹⁶⁴

Types of Marriage

Afar people “practice exogamous marriage and polygamy is exercised in accordance with Islamic laws” with various types of marriages like “inter-clan marriage, cross-cousin marriage (Absuma), and leviratic arrangement (widow inheritance)”¹⁶⁵ which they refer as “*hiksu*”¹⁶⁶. Absuma is the preferred one since it is assumed that “in times of marital conflict serious harm [will not be] inflicted on one’s own blood and flesh”.¹⁶⁷ Except Zone 2, absuma marriage has a foundation in Afar region.¹⁶⁸

Despite the fact that parallel cousin marriage is allowed in Islam, it is not practiced in Afar since upon the death of either the father or the mother, the brother of the father and the sister of the mother would take the place of the deceased parent’s role of raising the children.¹⁶⁹ This shows the dominant nature of the Afar culture over the religion since parallel cousin marriage is forbidden for cultural reason. From this, one can foretell that despite the role Islam plays in the life of Afar people, the Afar culture “*Ada*” plays a great role in shaping the social organization as well as the way women and girls are depicted in the Afar society. To this effect, one discussant has pointed out that absuma marriage is mostly culture oriented that religion based.¹⁷⁰

In absuma, betrothal takes place starting from early childhood; however, unlike their counterparts, girls are expected to conclude marriage starting from attaining their 10th year of

¹⁶³ FGD #3, Gewane town, conducted on December 03/2012.

¹⁶⁴ Ibid.

¹⁶⁵ Supra note 7.

¹⁶⁶ FGD #2, Awash town, conducted on November 30, 2012.

¹⁶⁷ Supra note 7.

¹⁶⁸ Supra note 147; FGD #1, Awash town, conducted on November 30, 2012.

¹⁶⁹ Supra note 7.

¹⁷⁰ Supra note 166.

birth¹⁷¹ or in most cases in their mid-teens after “transfer of bride wealth (*alekum*) amounting to 1000 Birr or more” and women are also forced to conclude absuma marriage.¹⁷²

Emic Perspective on Afar absuma marriage

The following are information gathered from the data collection. For ease of reference, the issues are categorized in the following manner.

Definition

As to what constitutes of absuma marriage, all the focus group discussants as well as the key informants have given similar definition. Absuma marriage has a significant base in the Afar culture “*Ada*”.¹⁷³ According to one key informant “a father’s sister’s daughter will be the absuma of the father’s son”.¹⁷⁴ For a male, the daughter of his aunt from his father’s side will be his absuma.¹⁷⁵ Absuma marriage has both economic as well as social significance.¹⁷⁶ Absuma is still highly practiced in all its forms in the rural parts of Afar regional state.¹⁷⁷

Absuma marriage cannot be regarded as an institution that has no pivotal role in the way of life of Afar people.¹⁷⁸ It is the advantages of having absuma marriage that many of the group discussants as well as the key informants have mentioned as the underlying reasons for having the practice and for wishing to continue practicing it. Of course it is also worth noting that there are aspects of the underlying reasons that some of the discussants as well as the key informants have mentioned as a setback or shortcoming of the absuma marriage culture.

Underlying reasons

Among the underlying reasons for the survival of absuma practice, the main reason is its ability to glue married people from deserting one another in both good and bad times since they are

¹⁷¹ Joshua Project, *Afar of Ethiopia*, accessed July 23, 2012; <http://www.joshuaproject.net/people-profile.php?peo3=11486&rog3=ET>; and Supra note 7.

¹⁷² Supra note 7.

¹⁷³ Supra note 147.

¹⁷⁴ Supra note 159.

¹⁷⁵ Supra note 163.

¹⁷⁶ Supra note 166.

¹⁷⁷ Ibid.

¹⁷⁸ Supra note 159.

children of a brother and sister.¹⁷⁹ It is also easy to mitigate and mediate when conflicts arise inter-clan and intra-clan, since they are interrelated by absuma marriage.¹⁸⁰ Another advantage is its easiness to give solution and avoidance of infliction of serious harm on women during household conflict.¹⁸¹

Of the advantages mentioned, it ensures the continuity of generation of a clan and increases the members of the clan in number and strength;¹⁸² and supports clan member financially upon conclusion of marriage between families.¹⁸³ This in a way serves as a way of distributing wealth and social services in intra-clan relationships.

In the clan system, a clan can be named, like “Clan X and Y”, through times after strong families who have continued in absuma marriage to show that the families have intermingled. This is given higher value in the Afar Society.¹⁸⁴ Hence, when the consent of intending spouses to the marriage cements their blood relation, it is strongly believed that it would strengthen their union, the intra-clan relationship and eventually the Afar people’s way of life.¹⁸⁵

Absuma marriage is said to give equal chance of forming a family for all by obliging men and women to marry, people with disability, and with lack of good looks so that their line of generation continues. Many discussants pointed out that “this is good for women from being called ‘spinster’”.¹⁸⁶ Informants and focus group discussants have noted that “disability is an unfortunate incident but the culture is inclusive of persons with disability so they produce offspring”.¹⁸⁷ And if in case the first daughter is ugly and the second daughter is beautiful, a man cannot marry the second one before the first daughter is married.¹⁸⁸

¹⁷⁹ Supra note 163; FGD #4 Gewane Woreda, Gewane town, conducted on December 03, 2012.

¹⁸⁰ Key Informant #12, Gewane Woreda Bureau of Education, face to face interview conducted on December 03, 2012.

¹⁸¹ Supra note 159.

¹⁸² FGD #4, Gewane town, conducted on December 03, 2012.

¹⁸³ Supra note 166.

¹⁸⁴ Supra note 159. The clan name would be given by the heads of the two families who continue to be married to their absuma for a longer time. There are such kind of clans and the clan is named by the heads of the two family heads.

¹⁸⁵ Key Informant #1, Women and Children Affairs Standing Committee, face to face interview conducted on December 03, 2012.

¹⁸⁶ Supra note 163; Supra note 182.

¹⁸⁷ Supra note 159; Key Informant #10, face to face interview conducted on December 03, 2012.

¹⁸⁸ Supra note 163.

Absuma has advantage for men too. If a man is not financially strong, people might not want to give their daughters to him. However, if he has absuma, he will have a chance to marry his absuma. Another point is if the man has never married for lack of absumas, then the moment a girl is born who is going to be his absuma, he will have the chance to marry her irrespective of how old he has gotten to be by the time she is ready to be married. Sometimes, men marry wives who could easily be their daughters or granddaughters since what matters is the fact that she is his absuma.¹⁸⁹

For men, marrying their absuma does not preclude them from marrying other women. So polygamy is allowed for men. Men can marry a woman who is his absuma as a second or third wife. If he has financial potential, he can pay either in kind or in cash for a woman who is not his absuma and marry her too. It is mandatory to pay to marry a woman who is another person's absuma. In FGD held in Gewane, one male discussant pointed out that the Afar customary law states that "a price per cattle is 300 birr, i.e. if she is a virgin; the man has to give a minimum of 6 cattle in kind or pay 1800 birr. 6 cattle is the minimum and the maximum is 12 cattle. Nowadays the price per cattle is around 450 birr".

Women are indirectly protected from sexual violence like rape and abduction since the women belong only to their absuma so anyone cannot come and take what is not his. In lieu of this, one informant said that "the social value whereby one should not touch another's absuma has sheltered women from such harms and unwanted advances unlike what is done to women in other parts of Ethiopia".¹⁹⁰

Disadvantages

In addition to its advantages, the following are mentioned as disadvantages by informants and discussants. One key informant stated that "Afar women and girls from the moment they are born are assumed to be born to be wives for their respective absumas".¹⁹¹ Girls were the chattels of their absumas and are not allowed to marry none other than among her absumas; while men are allowed to marry a woman or a girl who is not their absuma. They even go to the extent of

¹⁸⁹ Ibid.

¹⁹⁰ Key Informant #6, face to face interview conducted on December 02, 2012.

¹⁹¹ Supra note 159; Key Informant #3, face to face interview conducted on December 02, 2012.

marrying from another ethnic group though it was rare back in the old days.¹⁹² As a result, some men may have absuma while others do not have absuma; which leaves the latter men without a wife. On the contrary a man who has many absuma might marry his absuma and might end up with polygamous marriages like marrying four women as long as he has absuma.¹⁹³

Another negative aspect is forcing girls to marry a man who is very old to a man who cannot attend to her needs.¹⁹⁴ A person with disability is also forced upon her and the same goes for the man too. In sum, informants said “forcing absuma marriage on girls puts limits on them and disempowers them”.¹⁹⁵ The other effect of absuma marriage for girls is dropping out of school and unable to be engaged in any matter or work she desires.¹⁹⁶

On the same note, once the men know of their absuma even if the woman/the girl wants another person and another person also asks for her hand in marriage, it was taken as a sign of contempt. Then the potential absuma will bring the case to the attention of the elders and conflicts might erupt going to the extent of murdering one another. This happens since he assumes that his “manhood” is dared when his sole right as a man on that woman is contested.¹⁹⁷

Consent

The consent of women and girls has become immaterial¹⁹⁸ and that her absuma is also determined for her at the time of her birth.¹⁹⁹ Absuma mainly is a family affair whereby the consent sought is that of her absuma (irrespective of his age) and her parents. In earlier times if she does not want to get married to this absuma and if her decision is supported by her family too, then it would yield greater repercussions.²⁰⁰

¹⁹² Supra note 159

¹⁹³ Ibid

¹⁹⁴ Key Informant #3, face to face interview conducted on December 02, 2012; Key Informant #7, face to face interview conducted on December 02, 2012.

¹⁹⁵ Key Informant #10, face to face interview conducted on December 03, 2012; Key Informant #3, face to face interview conducted on December 02, 2012.

¹⁹⁶ Key Informant #10, face to face interview conducted on December 03, 2012.

¹⁹⁷ Supra note 159; Supra note 166; Key Informant #2, face to face interview conducted on December 02, 2012.

¹⁹⁸ Supra note 190.

¹⁹⁹ Supra note 185.

²⁰⁰ Supra note 159. Among the repercussions is the request of the return of married women if the family is not willing to give their daughter in marriage and this will lead to a serious conflict among absuma families.

According to absuma marriage customary law, even if the girl expressly rejects the marriage proposal, her father's consent is sufficient to conclude an absuma marriage.²⁰¹ There are women who live in neighbouring Zones specifically in Awra and Uwa woredas who are forced in such a way.²⁰² Not only that, had she married the guy who is not her absuma, she would be forcefully given to her absuma.²⁰³ An elderly woman said "earlier in the days girls were taken from the field where they were shepherding the herd without being informed of what the family has decided on their future".²⁰⁴

Another aspect of vitiated consent is in case of a deceased absuma husband, a widow is forced to marry the brother of the deceased absuma husband since it is assumed that she is considered as a 'chattel of her husband's family side'. This practice is said not to be supported by the Sharia; rather by the Afar marriage culture.²⁰⁵

Around two decades ago, women and girls used to be abducted and they will sustain injury during the abduction and the abductors might even flog her.²⁰⁶ Not only that, but if the girl contested the marriage, then she would be flogged. Hence afraid of the dreaded flogging, they would out rightly agree to the absuma marriage arrangement.

Minimum Age Requirement

Minimum age of consent is still a controversial issue in Afar since there are different ways of determining marriageable age. Some argue that issue of early marriage is not an inherent problem in Afar; rather it has come about diffusion of culture from neighbouring regional states to the Afar highland areas.²⁰⁷ In the highlands, girls are forced to marry around the age of 13 or 14 but when you come down to the lowland areas of Afar, girls marry when they are said to be mature enough like 15 and in most cases when they reach 18 years old.²⁰⁸

²⁰¹ Supra note 186.

²⁰² Supra note 159.

²⁰³ FGD #1, Awash town, conducted on November 30, 2012

²⁰⁴ Supra note 166.

²⁰⁵ Supra note 203.

²⁰⁶ Supra note 166.

²⁰⁷ Supra note 159. Neighbouring national regional states are Tigray, Amhara and Oromia.

²⁰⁸ Supra note 163.

In Semera and its surroundings, currently 15 years and above is the current marriageable age.²⁰⁹ Some marry at the age of 13 and 14 too.²¹⁰ In Awash woreda area, girls get married around the age of 15 and 16 but nowadays as a result of various sensitization programs girls marry when they attain 18 years of age or up to their 20th birthday.²¹¹ In Gewane, a girl is said to be mature to conclude marriage once she has seen her first menstruation.²¹² One discussant said that “counting ages is not the only way to determine a girl has reached marriageable age. This is our culture so we won’t use any other way even if there are small changes here and there because of urbanization. So we still determine maturity by mensuration. It is still practiced.”²¹³ This assertion was seconded by the female discussants from Gewane by saying that “girls marry starting from age of 14 and more specifically from the time they started their first menstrual cycle.”²¹⁴

The acceptable marriageable age for boys is after attaining puberty, which is between ages of 15 -17 or above. There is no upper age limit for a man. A man is forced to marry his absuma if his absuma has reached the marriageable age. But if a boy insists that he does not want to get married at this particular time so that he won’t drop out school, then he will not be forced unlike girls.²¹⁵

Early marriage of girls is practiced specially in rural remote areas. Girls are also forced to conclude a marriage with a very old man since there is no upper age limit for men.²¹⁶ Women and girls are said to be reserved for their absuma and married to an 85 year old man at the age of 12 and 13.²¹⁷

²⁰⁹ Supra note 190; Key Informant #3, face to face interview conducted on December 02, 2012.

²¹⁰ Supra note 147.

²¹¹ Supra note 183.

²¹² Supra note 190; Supra note 163.

²¹³ Supra note 163.

²¹⁴ Supra note 182.

²¹⁵ Supra note 163.

²¹⁶ Supra note 183.

²¹⁷ Supra note 194.

In the absence of revised family law, girls marry by dropping out of school at the age of 15 years old which is designated as the marriageable age for girls fearing that those who are above 15 years would not obey the marriage proposed to them.²¹⁸

Ongoing Changes

As culture is in constant flux, key informants and group discussants attest to ongoing changes in absuma marriage practice. Hence this sub-section will only deal with the emic account of the ongoing changes as is expressed by those who practice it.

One informant asserted that right to give free consent and to marry other than an absuma is growingly practiced despite strong parental pressure²¹⁹ and girls are also voicing their concern on wider age gap between absuma married couples.²²⁰ One discussant also stated that she knows of three girls, one was 9th grader, who married on their own free will despite challenges from their parents.²²¹

With growing urbanization in Gewane Woreda both boys and girls are going to school. Recent big stride that male discussants in Gewane proudly mentioned is the trend of allowing school going girls to marry educated or school going absuma husband. They said that this encourages girls to continue education since the educated absuma husband lives in cities and towns; and this trend is also appreciated by men.²²²

Girls in urban areas are aware of their rights so they contest an absuma marriage even if the absuma is educated; rather mostly it is those in rural areas, and who are shy that are coerced.²²³ They contest by approaching institutions like ordinary court, police,²²⁴ Sharia court²²⁵ or

²¹⁸ Supra note 185.

²¹⁹ Key Informant #3, face to face interview conducted on December 02, 2012.

²²⁰ Supra note 203.

²²¹ Ibid.

²²² Supra note 163. One group discussant stated the following example. Since absuma marriage is concluded within the clans, for girls who are going to school, the clan will select a man who is also going to school to marry her. So for example if she has reached grade 10, she will be married to a guy who is at grade 10 or at a diploma level of education among her absumas; and if she has attained more than that, then among her absuma the one who has attained at her level will marry her.

²²³ Supra note 196; Supra note 203.

²²⁴ Key Informant #7, face to face interview conducted on December 02, 2012. In Semera and its surroundings police go into the community and to specific clans to keep the forced absuma marriage from being concluded or to annual a marriage concluded by force. In one case the police mediated between a girl, her absuma and the

Women, Children and Youth Affairs Bureau to assist them from being coerced into absuma marriage or flee.²²⁶ A discussant disclosed that she knew of girls who were daring enough to reject absuma marriage arranged by their parents and fled to Awash.²²⁷

Man used to marry other than his absuma by paying compensation to her potential absumas.²²⁸ In principle women and girls were not allowed but if an opportunity presents the consent of her potential absumas was sought to avoid a sentiment of rivalry.²²⁹ A discussant clan head said “Afar parents are being forced to receive money in exchange for their daughters by allowing them to marry a person other than their absuma due to the growing stubbornness of girls”.²³⁰ An elderly woman discussant said “nowadays girls have better opportunity to marry on their free will and whomever they want including from another ethnic group. This was unimaginable for us”.²³¹

One discussant representing the Sharia court stated that “forced marriage is against the teaching of Islam”²³² A key informant also pointed out the existence of great departure between the religion and the practice in this regard.²³³ From Gewane town, one informant mentioned that women access Sharia court when they are forced to marry. He said that “*Islamic teaching and interpretation of ‘Quadis’ stresses that ‘nikah’ cannot be concluded by force. Hence after obtaining a decision to dissolve the marriage for lack of consent, the police intervene to execute*

clan when the girl left for Addis Ababa with the help of a man who was already in love with her but who is from another ethnic group. In the normal course of things, the girl would have been flogged but the clan leaders had resorted to report her flight to the police who searched for the man who is from another ethnic group. This was highly regarded by the police since the clan leaders and her family did not resort to take the law onto their own hands which makes this a significant change considering the strict adherence to absuma marriage culture.

²²⁵ Supra note 190. The practice of absuma marriage is on the decline together with its harmful effects like the wider age gap between spouses. The Sharia is being used nowadays to the advantage of women in ascertaining their free consent to say ‘no’ is respected. Police also started to intervene and assist girls who are forced to get married before finishing high school. In one case the police mediated on a forced marriage imposed on a girl who resisted the marriage for she wanted to finish high school and she got married after finishing high school without being disrupted for 2 years.

²²⁶ Supra note 182.

²²⁷ Supra note 203.

²²⁸ Supra note 163.

²²⁹ Supra note 203.

²³⁰ Supra note 163.

²³¹ Supra note 203.

²³² Ibid.

²³³ Supra note 159.

the judgment rendered by Sharia court”.²³⁴ Informants in Semera and Awash, and FGDs in Awash stated in like manner.²³⁵

Through group discussions it was highlighted that the resistance of daughters have persuaded parents to grant their wishes. A discussant representing the judiciary from Awash said that “because of extensive trainings being provided by us, other governmental and NGOs change has come in Awash urban area. But change has not come by punishing parents; rather by educating the youth and girls to access courts and law enforcement organs to intervene when they are coerced.”²³⁶ Her Hon. further recalled her experience in the following manner.

*“Two girls from Amibara (Zone 3) who attend school in Awash were being coerced into absuma marriage in summer break. They came to Awash asking for my help. After discussing with a Judge from Amibara, he intervened and succeeded in stopping the marriages. The girls have continued their studies. Usually girls do not want their parents to be punished; rather they only want to choose their spouses freely.”*²³⁷

Among other experiences, three girls from Awash, Gewane and Dufti wanted to marry men from SNNPR, residing in Afar. Despite their parents’ resistance, the girls married the men.²³⁸ A discussant from Awash FGD narrated a case on October 2012 where a father stubbornly insisted on forcing absuma marriage with an old man on his daughter alleging that the religion supports such marriage. The father remained in police custody for a day and was released after reprimanded.²³⁹

Among the reasons for such ongoing changes are continuous training and sensitization for over a decade to various community groups by engaging religious leaders and mini-media programs in schools.²⁴⁰ Changes, especially in Gewane main route, came through awareness raising activities undertaken by governmental, religious leaders and NGOs like AMREF and FARM Africa.²⁴¹

²³⁴ Supra note 196.

²³⁵ Supra note 203.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Supra note 203; Supra note 219

²⁴¹ Supra note 196.

Much is left to be done especially in rural and remote parts of Afar. Religious leaders educate the public to do away with negative aspects of absuma including forced marriages of girls.²⁴²

In sum as one key informant stated "continued cultural interaction, urbanization, growing mobility of people and growing realization of ill consequences of forced and early absuma marriages are the contributing factors for changes seen so far."²⁴³

Inner Contestations

Kelemwork has also discussed that the Afar youth in recent years have shown a shift in mentality of preferring individualistic way of life because of various influences leading to loose "mechanism of social control, and [g]enerational conflicts and disagreements".²⁴⁴ Women and girls have also expressed their discontent with norms and practices related to absuma in different ways. As the saying goes 'desperate things call for desperate measures', one key informant said "as a result of lack of options girls and women when faced with forced and early marriage committed suicide by throwing themselves in Awash river, shooting themselves, pouring gasoline and burning themselves alive. Others fled to Djibout, cities, small towns or kebelas".²⁴⁵ An informant who is a members of Afar State Council stated that "in 2010/11 G.C., there were four women who burned themselves alive."²⁴⁶

Among Zone 3, Gewane Woreda is one of the woredas with such problems. One informant stated that "there are two girls who committed suicide; and another girl who was a third runner up in a beauty contest, committed suicide in 2011/12 G.C., even though there are controversies surrounding her reason for committing suicide".²⁴⁷ A police from Gewane woreda also said "two or three girls around Gewane area have committed suicide around 2010/11 G.C. But I was shattered in shock to learn that the third runner up beauty contestant committed suicide by drinking poison".²⁴⁸ Discussants from Gewane stated "a 9th grader drunk a poison and died while contesting forced absuma marriage; another girl shot herself using her father's rifle after she was

²⁴² Supra note 163.

²⁴³ Supra note 159.

²⁴⁴ Supra note 7 at p.427.

²⁴⁵ Supra note 147.

²⁴⁶ Key Informant #2, face to face interview conducted on December 02, 2012.

²⁴⁷ Supra note 159.

²⁴⁸ Supra note 196.

forcefully married to her absuma who lived in rural area whereby the family ignored her continues plea to divorce him”.²⁴⁹ The latter survived after being hospitalized in Addis Ababa for 6 months and then was allowed to divorce him.²⁵⁰ However, according to a high ranking police official of Afar region committing suicide has shown a sign of decreasing in the last 3 years.²⁵¹

According to many discussants another form of contestation is fleeing to other places and this is still a current phenomenon.²⁵²

Despite many women going through forced marriages suffer in silence, commit suicide or flee²⁵³ recently the form of inner contestations has shifted to accessing law enforcement organs²⁵⁴ or to Women, Children and Youth Affairs bureaus²⁵⁵ to shield them from solemnizing a forced marriage. In Awash Woreda, girls who are forced to conclude marriage go to law enforcement organs.²⁵⁶

Taking the matter to the Sharia court is the other way of showing inner contestation especially in Gewane woreda. Girls take the matter to Sharia court after they are forced to marry without their consent. After divorce is granted, the man claims to be compensated for expenses he incurred for the wedding and the woman is free to marry another person upon paying the compensation. This was said as a contributing factor for the decrease in number of women and girls who are committing suicide and fleeing.²⁵⁷

Another extreme sign of contestation was murdering a forced absuma spouse. This was reported in Asyaita (Zone 1) whereby a 16 years old girl murdered her absuma spouse. She is still in prison without obtaining a decision according to inside sources. Her case was difficult for law

²⁴⁹ Supra note 182.

²⁵⁰ Ibid.

²⁵¹ Supra note 190. According to an informant from Bureau of Justice and One member of Afar regional state council, Committing suicide also happened in neighbouring Awra woreda from Zone 4 and Semeru woreda from Zone 5

²⁵² Supra note 163.

²⁵³ Supra note 159, Supra note 163; Supra note 182.

²⁵⁴ Supra note 224

²⁵⁵ Supra note 203; Supra note 147.

²⁵⁶ Ibid.

²⁵⁷ Supra note 163.

enforcement bodies to decide in either way and there is still a serious controversy and dilemma surrounding it.²⁵⁸

Resistance

Parts of the society still cherish absuma as a peculiar culture of Afar people and assert that “prostitution and adultery are not problems in Afar since there is absuma marriage system in place”.²⁵⁹ There is a relatively lesser degree of resistance in urban areas to eliminate the negative aspects of absuma as opposed to people in rural and remote parts.²⁶⁰ Family counter-resists when girls resist absuma marriage.

Among manifestation of counter-resistance is beating girls and women who reject absuma marriage.²⁶¹ Some of the measures to subjugate the girls and women are so drastic that lives were lost.²⁶² A recent case in point is a homicide in Awra woreda. In a futile attempt by her brother and other male relatives to persuade a girl in accepting a proposal, they took the persuasion one step further involving water-boarding her in a river in which she lost her life.²⁶³ In Zone 3, a girl living in the rural parts was also being forced to marry her absuma who is living in Indido woreda and they abducted her to force her to conclude the marriage.²⁶⁴ Another gruesome counter-resistance happened on three girls who resisted their absuma marriage. A key informant said “in Awra woreda, three girls were raped to make them submit to the absuma marriage they rejected. This is since once a girl loses her virginity, then she will not find someone who will marry her”.²⁶⁵

Latest resistance developed is related with the compromise reached which entails allowing school going girls to educated absumas. Typical example is the counter resistance for allowing to marry school going girls with educated absumas. The following statement that was uttered by

²⁵⁸ Supra note 224. Some argue that she needs to be prosecuted for what she has done; whereas others argue that she should not be prosecuted or even if prosecuted she should be acquitted. Some alleged that she is still in police custody for fear of retaliation from the husband’s family and the clan.

²⁵⁹ Supra note 147.

²⁶⁰ Supra note 196.

²⁶¹ Supra note 224.

²⁶² Supra note 159.

²⁶³ Supra note 191.

²⁶⁴ Ibid; Supra note 196.

²⁶⁵ Supra note 219.

one discussant clearly reflects the resistants' understanding of the ongoing changes in relation to consent within the absuma marriage. He said

*“We have **already amended the culture for them.** What more would they want if they are allowed to marry an educated absuma. They cannot reject all among the 300 or 400 members of a clan. They might decline one absuma **but they cannot and should not reject all of their absumas.**”²⁶⁶*

Moreover, resistant groups say that women are bringing luxurious demands that contradict the long standing tradition.²⁶⁷ Female discussants in Gewane FGD stated that education should not be posed as an obstacle to get married since the culture does not hinder women from continuing education.²⁶⁸ They also mention that women's and girls' access to Sharia court can signify the protection of women's and girls' human rights in Afar.²⁶⁹ Moreover, the female discussants accused girls fleeing to other places “as fleeing to engage in illicit and immoral behaviours that are unacceptable by the culture”.²⁷⁰ A victim's uncle narrated what he has gone through to protect his niece from marrying at the age of 14 years. He said “I was criticized by family members and colleagues. They kept saying that I am holding her from marrying after I married my absuma wife who is among their family. I reached to a point I could not withstand the pressure I felt in every aspect of my life for a year. I had to give in and she was married at the age of 15”.²⁷¹

In sum, consequences of counter resistant position are at times so dangerous that they might end up in loss of lives, sustain bodily injury, abduction (though very rare in Afar), sexual violence, threatening, dropping out of school and suffering associated with consequences of early marriage if the marriage is solemnized despite the contestation on the part of girls.²⁷²

²⁶⁶ Supra note 163.

²⁶⁷ Ibid.

²⁶⁸ Supra note 182.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Key Informant #13, face to face interview, conducted on October 08, 2012, Awash Town.

²⁷² Supra note 264.

Role of Regional State Actors

One informant stated that the harms associated with absuma marriage have been agenda in Afar regional state council.²⁷³ However, some state actors argued that acts of suicide are not increasing but still there are one or two incidences per year. Though suicide is not reported in 2011/12G.C, some girls still flee to other kebeles to avoid unwanted absuma marriage. The informant further argued that the mobile nature of Afar pastoralists might also contribute for one incident to be felt in different woredas.²⁷⁴

An informant from Afar Justice Bureau stated that though violent incidences and trends are not increasing, a harm inflicted on one woman is taken seriously. Finding tangible evidence and witnesses is a major challenge since such violence is perpetrated by family members.²⁷⁵ Lack of shelter for victims force police to put victims in police station until the matter is resolved amicably within the clan system.²⁷⁶

In conclusion, absuma is still practiced and there are also ongoing changes, internal contestations and resistant positions within it. Kelemwork concludes that although the material culture of Afar people seem to stay intact despite pressures otherwise, “the norms, values and institutions which make-up the non-material culture are fast disappearing”.²⁷⁷

²⁷³ Supra note 147.

²⁷⁴ Supra note 159.

²⁷⁵ Ibid.

²⁷⁶ Supra note 224. The police do not have shelter to keep girls and women who are in imminent danger as a result of this, hence police puts them under police custody till things settle down. The girls come mostly from remote kebeles with the help of family members and neighbours. For example they might come from Dubfi remote kebeles. Since the society has a strong regard to the clan leaders and religious leaders, the Semera police has developed a close alliance with them either to mediate on cases to prevent the solemnization of absuma marriage or to sensitize the society about women’s and girl’s rights.

²⁷⁷ Supra note 7 at p. 428.

Chapter 4 Etic perspective: Absuma marriage Vs. Human Rights Framework

Ethiopia is a home of nations, nationalities and peoples' who have their own cultural practices and identities. As indicated from the very beginning, absuma marriage is a cultural practice of the Afar people.

It is also worth to note that the identity of Afar women and girls is the intersection of them being members of a group that have shared value, as a woman, a girl child, or as a person with disability and a Muslim. These identities interplay in constructing the degree of realization of human rights in peculiar local contexts. However, the central issues of the discussion are on two main components of the right to marry and found a family, which are: consent and minimum age requirement. The absuma marriage would be analyzed starting from the underlying reasons inferred from the findings of the emic account up to the ongoing social changes and their interaction and implication with women's and girls' human rights protection and promotion.

Right to Marry and Found a Family

The Ethiopian legal framework makes ratified IHRIs to be part and parcel of the law of the land pursuant to Art 9 (4) of the FDRE Constitution. In addition to that Art.13(2) of the same states that “fundamental rights and freedoms...shall be interpreted in a manner conforming to the principles of the UDHR, International Covenants on Human Rights and international instruments adopted by Ethiopia”. Moreover, the Afar regional state constitution enshrines the right to marry and found a family pursuant to Art.33 which is also recognized in Art.34 of FDRE Constitution. Art 35 (4) of FDRE Constitution and Art.34 (4) of Revised Afar Regional State Constitution, which are exact copies of one another, read that “*laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.*” The draft family law of Afar pursuant to Arts 1, 7 and 8 stipulate the essential conditions of marriage to be the consent of intending spouses and minimum age of intending spouses to be 18 years old.

Ethiopia has ratified the relevant core conventions that recognize the right to marry and found a family in ICCPR per Art 23, ICESCR per Art 10, CEDAW²⁷⁸ per Art 16, CERD per Art 5 (c (iv)), CRPD per Art 23, ACHPR per Art.18 and so on as is discussed before. Right to marry is also recognized in the UDHR pursuant to Art.16. Though children do not have right to marry and found a family *per se*, they are indirectly protected from it through CRC per Art.24 that stipulates for the protection of children from practices that endanger their health and through Art 18(2) of ACRWC from being married or betrothed while they are below 18 years old.

Then here onwards the task would be to compare the emic perspective on absuma marriage in light of how the right to marry and found a family is conceptualized in the human rights regime.

Underlying Reasons

With absuma marriage practice, it seems the contentious issues of women's human rights and right to culture come into tension. Despite different scattered changes within absuma marriage practice like recognizing girls' education, the flares of the debate are seen under its justifications. Transposing Messer's argument of the need to look into the core 'function' of a cultural practice before arguing about its 'functional dispensability or not'²⁷⁹, the underlying reasons for absuma will be explored in relation to its core functions without merely giving into the 'historical significance'.

One of the underlying reasons why absuma is preferred is to continue the clan system that in return contributes to preserve the Afar people's way of life. Though groups have this right, the emic perspective has highlighted the place of women within Afar way of life that entails greater household burden without having the power to pass substantial decision. Thus, though extending protection to absuma marriage on the surface seems to be in line with the right to preserve one's own way of life, it would further enculture the discrimination women face and render the rights of women be the sacrificial lambs since changes associated with women's status are perceived as a threat to the integrity of Afar people's way of life. Therefore continuing the cultural practice

²⁷⁸CEDAW, Declarations, Reservations, Objections & Notifications of Withdrawal of Reservations relating to CEDAW, Meeting of State Parties to the CEDAW, 13th Meeting, New York, August 2004, (June, 17, 2004), p.25. Ethiopia only entered reservation on Art.29 (1) of CEDAW.

²⁷⁹ Supra note 88 at p. 234.

with no significant change would tantamount to bowing and legitimizing existing discriminatory practices against women and girls.

Supporters of the practice also vouch that the practice protects women from sexual violence.²⁸⁰ Scrutinizing this assertion reveals that women are not protected for their own sake; rather is to preserve peace of the clans and protect men's "honor". Had the clan system gave due recognition to the rights of women and girls and continues to promote their wellbeing for their own sake then the cultural practice can be asserted as safeguarding the rights of women and girls. The silver lining of such underlying reason and the practice is with proper advocacy work that ascertains women and girls to be protected for their own sake as human beings endowed to live in dignity and worth; then, as Tamale would argue, the absuma marriage can indeed be the "neglected pathway" to women's and girls' human rights. In the latter sense, the interaction of culture and the women's rights would be a positive correlation.

In addition to that, forced absuma marriages and early marriages are done for economic gains and for contributing for the survival of the clan in the long run. Though from the outset it seems to be done for innocent reasons which will benefit both men and women equally; the pressure is exerted on women and girls that drive them either to commit suicide or to flee. This will have a detrimental effect on their rights to life, bodily integrity, right to be protected from inhumane practices that hampers their rights to health, education, choice of spouse and their status within the Afar society altogether that strengthen the patriarchal system. In sum, this clearly violates the dignity and worth of women and girls.

Consent vs. Forced Marriage

In various cultures, the mere fact that a women has come off age does not automatically ensures that she can freely choose whom and when to marry.²⁸¹ Then the question is; *should all arranged marriages be condoned or not?* There are different societies that practice arranged marriages.

²⁸⁰ This is since during emic discussion, it was pointed out that an Afar man cannot take a woman who is not his own (his absuma).

²⁸¹ Supra note 8.

Those who adhere to this practice argue that it seals the bonds of marriage if mature family members are actively engaged in formation of marriage since it is the foundation of family.²⁸²

All arranged marriages cannot be equated to forced marriage; however the vice versa seems to hold true. According to Klore, the thin line between forced and arranged marriage is the lack or otherwise of consent of intending spouses. Gender inequality and patriarchy exacerbates the situation for women as opposed to men. According to Klore, “[i]n a forced marriage, a woman can be matched, or sold or traded to her new husband for [a] value. [It] sometimes takes place between a child or young girl and an adult man.”²⁸³

In like manner, emic perspective shows that absuma marriage is a union of families rather than intending spouses which then creates a practical problem of whose consent to require. So long as both freely consented to the arranged absuma marriage, an issue will not arise. On the outset, absuma seems to indiscriminately oblige both women and men. However as informants stated men can get out of this duty by paying to marry a wife other than their absuma; whereas there were no rooms for departure for women. Moreover, though it is portrayed as the consent of the parents is the one that is decisive, what was seen from the emic perspective is that the consent of parents of the girl and that of her absuma husband are vital.

Despite what was stated in UDHR as to free consent sustainable under the law, the UN GA in its Resolution 843 (IX) of December 17, 1954 avowed the existence of cultural practices that contravene gender equality principles enshrined in the UN Charter and in the UDHR. Similarly, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962/64) pursuant to Art. 1(1) declares that “No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law”.²⁸⁴ Additionally, ICESCR Art.10 (1) also stipulates that “marriage should be entered into with the free consent of intending spouses”.

²⁸² Amanda Kloer, *Arranged Marriage vs. Forced Marriage*, (September, 2009), accessed July, 23, 2012, <http://news.change.org/stories/arranged-marriage-vs-forced-marriage>.

²⁸³ Ibid.

²⁸⁴ UN General Assembly, *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (1962/64)

Pursuant to General Comment No.19²⁸⁵ despite variations in conceptualizing marriage in member states the right envisages the consent to be given at the time of marriage should be the consent of the intending spouses as opposed to the parents or their clan. In Recommendation No.21 the CEDAW Committee²⁸⁶ states that allowing women to express their consent on their own accord would entail accepting their full autonomy as a person. The committee acknowledges that forced marriage is imposed on women “on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages”. Thus, the committee states that “a woman's right to choose when, if, and whom she will marry must be protected and enforced at law”.

According to the HRC General Comment No. 28²⁸⁷, age, lack of capacity to give their consent, and social attitudes that might force women victims of rape to marry for fear of marginalization are among potential scenarios consent could be vitiated. The committee has further discussed about traditional practices that disregard women’s consent by preferring to use mediators to obtain consent on behalf of the woman is another aspect of decapitating women from expressing their consent. In sum, persuading women to give their consent or making such a decision on their behalf would amount to treating them like a child. The lesson that would be learned by coming generation would be the subordinate and inferior status of women. This will in turn negatively affect the way woman and girls are portrayed in the Afar regional state which will be for mere nominal representation. However, there are ongoing changes in terms of parents listening to their daughters and accepting their choice which will be discussed shortly.

Of course imposing payment to marry on a spouse he freely chooses will also undermine the element of consent for a man. It also discriminates among men based on their financial capacity. In addition to that, paying money to exercise one’s right to freely choose one’s spouse is contrary to what is enshrined in human rights instruments.

²⁸⁵ HRC, *General Comment No. 19 on Article 23 (Protection of the family, the right to marriage and equality of the spouses)*, 39th Session, (July, 27, 1990), para. 2 & 4.

²⁸⁶ *Supra* note 75 at para. 3.

²⁸⁷ Human Rights Committee, *General Comment No. 28: Equality of Rights between Men and Women* (Art.3):.03/39/2000, para. 23 and 24.

Though in principle children are not legally emancipated to give their consent, when children are forced to concluded an arranged marriage, the impact on the child is not merely a matter of ages only; rather serious detrimental effects on both girls and boys would follow which they state as

*“profound physical, intellectual, psychological and emotional impacts, cutting off educational opportunity and [hindering] of personal growth [are among the ill effects especially] for girls, it will almost certainly mean premature pregnancy and childbearing, and is likely to lead to a lifetime of domestic and sexual subservience over which they have no control”.*²⁸⁸

General Comment No. 13 (2011)²⁸⁹ of the Child Rights Committee also categorizes forced marriage as a harmful practice, and a sexual abuse and exploitation of children that endangers their right to health.

In the case of girls and women who do not wish to get married, the absuma marriage culture substitutes the father’s consent. Parents as guardians and tutors decide and give consent regarding their minor children when performing juridical acts. However, giving consent for marriage is not one of such responsibilities. It is the personal consent and commitment of intending spouses that is stipulated in international, and regional human rights instruments, and both the federal and the Revised Afar regional state constitutions are dictating. This is also envisioned in the draft Afar regional state family law per Arts 1 and 7. Moreover, requesting consent of a father on behalf of adult women relegates women to an inferior position and this further encultures and legitimizes the inferior and subordinate status of women. This fact then might lead to signifying that Afar women do not have an agency to voice their quest for their human rights.

Moreover, though at face value it seems that only women’s right to express their consent freely is vitiated, beneath the surface there are fundamental issues that need to be uncovered. Among this is that women and girls do not have personal autonomy on their own to do whatever they wish to do without the interference from the clan, their family or their absumas. Specially in

²⁸⁸ UNICEF, “Early Marriage: Child Spouses”, *Innocenti Digest* No. 7, (Innocenti Research Centre, March 2001, Florence, Italy), p.2.

²⁸⁹ CRC Committee, *General Comment No.13 on the Right of the Child to Freedom from all Forms of Violence* (CRC/C/GC/13), 2011, para 25 and 29 (e)

earlier times, one reason is ascribing women as “my absuma” which has a sense of owning and possessing the women which contravenes WHRs.²⁹⁰

Legitimizing the ascribed inferior status of women would also downgrade their contribution and decision-making power as mothers and wives. Last but not least since the absuma marriage culture does not attach significance to the consent of girls and since their absumas are not precluded to marry them irrespective of age and their current marital status, girls and women will be forced to lead a polygamous marriage which is a difficult life of servitude, struggle with reproductive health issues and pressure for young brides specifically. This in turn forces them to drop out of school to take care of the gendered reproductive and social roles ascribed to them through generations of enculturation.

In a nutshell, forced absuma marriage disregards the interests of women and the girl child and their rights recognized in the FDRE Constitution as well as the Afar regional state constitution. This practice will also be a potential reason for the still draft family law as well as might also pose a serious challenge if and when the draft law is promulgated.

Minimum Age Requirement vs. Early Marriage

The right to marry and found a family is recognized and protected equally for men and women who have attained a marriageable age pursuant to Art 16 of UDHR and Art.23 of ICCPR. In the General Comment No.19²⁹¹ which mainly focuses on this right, the HRC took into account what entails the notion of family might vary among member states of the United Nations as well as intrastate. However, despite such variations the protection of this right for those who have attained marriageable age was to be protected by the State. This entails that whoever is expected to give consent needs to have attained the marriageable age.

Though CRC does not guarantee the right to marry and found a family for children, it protects children from such kinds of acts through its provisions dealing with one of the fundamental principles of the child – the right to be heard of children (Art 12(1)), right to be protected from

²⁹⁰ A woman’s identity is also defined by the man. For example in the case of death of a husband, the widow would be inherited by his brother (the practice of hisksu/widow inheritance) as a result of leviratic marriage arrangement. This makes women to be the ‘properties of their husbands’ even during marriage and widowhood.

²⁹¹ Supra note 285.

all forms of abuse, and the right to be protected from harmful traditional practices that hampers the right to health of children (Art.24 (3)).²⁹²

Moreover, the ACRWC²⁹³, which is ratified by Ethiopia, defines child in an unequivocal manner pursuant to Art 2 which defines a child as “a human being below the age of 18 years”. It also states that children cannot be betrothed nor get married pursuant to Art 21 (2) which reads as follows

“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 make registration of all marriages in an official registry compulsory.” (ACRWC Art.22 (2))

Likewise, CEDAW Art 16 (2) also states that “the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.” Hence member states should adopt legal measures on the minimum age required to conclude lawful marriage as well as to set up relevant institutions like the official registry to oversee and ensure that the minimum age requirement is fully complied by all interested parties. On top of that there should be a registry that registers the birth of children to easily check whether the minimum age of marriage has been observed or not.

In the meantime, the practice of legislating different minimum age requirements for boys and girls was criticized by the ICCPR Committee. To this effect France (in 2006) was condemned for setting 15 years for girls and 18 years for boys and was advised to increase the minimum threshold of marriageable age for girls.²⁹⁴ Similar comment has been given to Ethiopia.²⁹⁵

Though these are among the major normative frameworks and the general comments forwarded by treaty monitoring bodies that protect girls from early marriage, the reality seems to depart

²⁹² UNICEF, *Early Marriage: A Harmful Traditional Practice – A Statistical Exploration*, (2005), p.1.

²⁹³ It has enshrined the rights recognized in CRC too. In addition to that it acknowledges African communal way of life and imposes duties expected of children. To this effect, this African instrument whom Africans are the recognizers and the drafters of the instruments enshrining these rights contextualized it to African realities and way of life.

²⁹⁴ *Women’s Rights in Muslim Communities: A Resource Guide for Human Rights Educators*, (June, 2009), p.48.

²⁹⁵ Supra note 6.

from it. With the intention of “relieving financial burdens” as well as to secure the future of their daughters “financially and socially” many girls are made to conclude marriage.²⁹⁶ Polygamy, bride price and child marriages are gender based violence on their own that “reduce women [and girls] to sub-human status belonging to men”.²⁹⁷

According to UNICEF, child marriage disproportionately affects girls in terms of “numbers and intensity.”²⁹⁸ Their rights to “free and full consent” and meeting the minimum marriageable age will be violated. They have the duty to handle the household chores, give care to their children as well as the elderly and the sick which dwindles their aspiration for a life of their own choosing. Married girls have greater tendency of enduring and accepting domestic violence and this tendency is heightened if there is wider age gap between the girl and her spouse.²⁹⁹ Ultimately early marriage violates the rights of the girl child by “compromising the development of girls and often resulting in early pregnancy and social isolation, with little education” forcing girls to stay in the vicious cycle of poverty.³⁰⁰

Emic perspective indicates there is lack of specific law that legislates the minimum age to conclude marriage in Afar regional state. There are different ways of determining marriageable age like first menstruation which could vary among different girls but is around, at most, around 13 – 15. However, the cumulative readings of ACRWC, CRC with the FDRE Constitution Art 9(4) and that of Art 9 (1) of the Revised Afar regional state constitution show that human beings under the age of 18 are children and children cannot be betrothed nor married before they attain 18 years old. Although it is still a draft, the Afar Regional State Family law proposes a similar age requirement like the federal and revised family laws of other regional states, which is 18 years. Allowing for intending spouses to be married at the age of 16 is a rare exception in which the decision to conclude marriage would go through the Bureau of Justice of the region.³⁰¹

²⁹⁶ Supra note 292.

²⁹⁷ Supra note 21.

²⁹⁸ Supra note 292 at pp.1-2.

²⁹⁹ Id at p. 2.

³⁰⁰ Id at p. 1.

³⁰¹ Afar Regional State Council, *Draft Afar Regional State Family Law*, Art 8(2). Even though the consent of intending spouses is sought, in exigent circumstances a marriageable age might go utmost be 16 years upon the request of intending spouses or one of them or upon request of parents or guardians. But still the consent of intending spouses is still a strict essential condition for a valid marriage.

In the majority of cases, as the emic account shows, the traditional way of ascertaining a girl has reached marriageable age is her first menstrual cycle, which, is one of signs of puberty but which awaits full bodily development. Hence, sexual intercourse before attaining physical development as well as psychological development has severe consequence of “prolonged or obstructed labour because of underdeveloped pelvis [which may] lead to loss of life or maternal complications like obstetric fistula”.³⁰² This is as a result of “a traumatic event for a young girl who is still a virgin, with a body not yet old enough to enable safe sexual intercourse.”³⁰³ As has been pointed out earlier since the girl child has not finished her physical as well as psychological development, she will be put to a horrendous life that contravenes her right to life, right to bodily integrity, protection from abuse and exploitation, reproductive health concerns and so forth.

There is no clear cut measure taken by the Afar regional state in terms of determining the minimum marriageable age specifically concerning the girl child. To this effect the responses given by the law enforcement agents and the judiciary including informants from the Afar regional state council indicates that though the regional state has drafted the minimum marriageable age for both sexes is 18 years, the fact that it is still a draft has created a fictitious legal vacuum which has allowed different state and non-state actors to assume that the marriageable age is to be determined according to the 1960 Civil Code family law section. However, the application of the civil code can be challenged on the basis of the FDRE constitution which, even though does not fix the marriageable age, respects equality of the sexes before and after joining the institution of marriage. On the basis of this provision of the supreme law courts may decline from using the civil code to govern the family relations in Afar.

In the same token, since the FDRE Constitution pursuant to Art 9(4) states that ratified IHRIs are part and parcel of the law of the land and whereby the supremacy of the FDRE Constitution is expressly ascertained by both the FDRE Constitution and that of the Afar Regional State Constitution itself, it can easily be construed that the marriageable age is 18 years for both boys and girls as a result of ACRWC Art 18 (2) which clearly prohibits betrothal and marriage below 18 years old. In addition, reverting back to the family law section of civil code in principle

³⁰² Supra note 21 at pp.124 – 125.

³⁰³ *Forum on Marriage, Early Marriage: Whose Right to Choose?*, (Patersons Printers, UK, May 2000), p. 17.

contravenes the human rights of women and girls guaranteed in both constitutions that guaranteed equality of men and women in marriage. Furthermore, both constitutions enshrine that all persons to be equally treated in the eyes of the law without discrimination based on “sex, race and other status”. Hence the regional state should not confine itself to the 1960 c.c. and should promulgate the Revised Family law of Afar region that was awaited for 18 years after the FDRE Constitution guaranteed equal rights of women in marriage.

Last but not least, another issue that needs to be raised in conjunction with age is the wider age gap between married girls and their absuma spouses since this wider age gap can result into burdening the girls to shoulder the criticism and the scrutiny of the clan members in addition to the general harms and ill effects associated with early marriage and forced marriages. However, the wider age gap as a matter of law does not have significance since it is usually the minimum age and the element of free consent that are essential criteria for validity of marriage. Rights of girls to sexual and reproductive health and protection from domestic violence are serious concerns that need to be addressed.

Consequences of Early and Forced Marriages

According to Frances Randy “the sale of daughters in marriage, including giving them in forced marriage as child brides”³⁰⁴ really undermines their human rights and gender equality. In addition to losing the right to make decision on one’s free will, as studies show such kinds of women or girls are likely to “experience domestic violence, rape, abuse, neglect, and forced domestic servitude.”³⁰⁵ Moreover, both early marriage and forced marriages are matters ascribed as violence against women.³⁰⁶

Though such practices are adhered for various social and religious reasons, the effects of such practices on the protection and promotion of the other rights of the girl child also needs to be looked into. In this regard, it is important to link the consequences of early marriage to Afar girls. Among what was stated in the internal contestations is that girls would prefer to continue their education; rather than get married. Hence one of the consequences is that girls’ right to

³⁰⁴ Frances Randy, *Culture, Religion, and CEDAW’s Article 5(A)*, Israel, p. 70.

³⁰⁵ Amanda Kloer Supra note 282.

³⁰⁶ UN General Assembly, *Declaration on the Elimination of Violence against Women*, Resolution 48/104, (December, 20, 1993).

education which will later guarantee them the economic freedom to guarantee their empowerment is shadowed. Though the counter-resistant positions in turn have raised that getting married should not be their reason to drop out of school. Allowing school going girls to marry a man who has been educated, though this seems to be the lesser evil when compared to other choices, it still cannot reasonably be expected that all newlyweds can go to school and that their 'educated' spouses would be supportive of that.

Another ill consequence of early marriage is the one mentioned by a key informant saying that it harms women psychologically as well as affects their health especially during child birth and sexual intercourse since their reproductive organs have not yet properly developed. It is worth to know that one of the rights of women and girls is to be able to exercise their right to reproductive health. To this effect, one of the key informants has stated that women usually suffer from complications in Afar region as a result of the infibulation; this also includes girls who get married early before attaining the required physical and psychological developments.³⁰⁷ A key informant stated that among three girls whom he knew were pressurized to get married at the age of 15, one of them was forced to get married which he later found out that she has passed away during child birth around September 2012.³⁰⁸ Hence, the right to health and right to bodily integrity as well as the right to be protected from violence against women and children including from harmful traditional practices are violated among other rights.

Ongoing Changes and WHRs issues

Absuma is still in practice even if there are ongoing changes. These changes are not comprehensive, policy based and sustainable since there are no clear laws relating to the right to marry and found a family and the necessary transformations have not taken place within the culture and various state and non-state institutions. The shelving of the draft family law of the region is a glaring evidence to that.

Observed ongoing changes in consent are not entirely true for all Afar women and girls. Though the draft Afar regional state family law that presupposes only adults to give their personal consents sustainable under the law to conclude a marriage, the practice is in clear contradiction.

³⁰⁷ Supra note 185.

³⁰⁸ Supra note 271.

As was enunciated in emic perspective, there are positive changes that correlate with the WHRs. This is reflected in the continuous internal struggle and compromise between girls and their parents. A typical example is the compromise reached in Gewane whereby school going girls are allowed to marry a school going absuma. On one hand, girls have been able to assert their rights to a certain degree, which needs to be appreciated, whereas it is clear that girls cannot also reject all of their absumas. In the same example, what about women and girls who did not get the chance to go to school? What about their rights to free consent and to marry a person they choose? Discrepancies, tacit discriminations and lack of uniformity encroach upon the human rights of women and girls. Notwithstanding the positive gains of individual girls and women who fought fiercely for their consent to be counted, the momentum of the pro-women's rights gains so far will be shuttered unless the change is sustainable, systematic and non-discriminatory based on urban/rural geographic location, literate/illiterate, and so forth.

One crucial question is whether or not the attained changes so far have empowered women and girls. Though this thesis does not directly deal with intricate issues of empowerment and measuring the impact of different awareness raising activities, the general trend observed so far indicates that women and girls in the urban areas and those going to school are exposed to a different set of ideas than the general public. Not only that, the way Sharia court and police are working jointly in Gewane also indicates that women and girls, apart from being able to give their consent are able to access the available justice machinery. This is also an indirect benefit of through which ongoing changes to women and girls. This in a way will further enables girls and women to continue exercising their right to education and also right to work in the field they choose in the future.

On the part of state actors, ongoing change with respect to the right to give consent has also reiterated the lions share state actors should take and the role civil societies (NGOs) can play in promoting women's and girls' rights. In the same token, it also reiterates the role of state actors in respecting and fulfilling women's human rights. One important aspect could be the need to investigate and also give adequate redress when women's and girls' human rights are violated. Hence, what the Semera Police is facing as regards to lack of shelters for victims who are fleeing from their respective communities need to be given emphasis since if such supporting structures and systems are not appropriately laid out, it could result in backlashing the gains so

far if and when the inner contestations grow stronger and more and more girls and women started to approach the law enforcement and the judicial system that is not adequately equipped to carry out its obligation towards them.

Another point that needs due attention is, though cordial atmosphere need to be created for the proliferation of the positive changes between parents, children, potential absuma husbands and the clan; mediating between the involved stakeholders, as was mentioned by Awash state actors focus group discussants, cannot be the sole way. Hence, balance should be maintained when choosing mediation or litigation as a mechanism to continue for the realization of women's and girls' human rights.

In a similar vein, the inner struggle of girls to fight the question of marriage until they have reached 18 years of age is also another area that needs to be further investigated. For their inner contestations to have a sustainable contribution in WHRs protection in Afar, the Afar family law when it is promulgated need to have a clear provision as to the minimum marriageable age.

It seems that there is still reluctance within and by the Afar customary law to give solution to women and girls forced to an absuma marriage despite what was said regarding the religious interpretations of consent. This indicates that the Afar customary law has not still grasped the essences enshrined in the Afar constitution, its draft family law and most importantly what is enshrined in the FDRE Constitution regarding the equality of men and women, the protection accorded to women and children and more specifically on the need of free consent on the part of intending spouses. Hence, the customary law and its adjudicatory system need a long way to go; and the interaction of culture in this specific scenario seems to contradict with WHR and rights of the girl child.

Role of Afar Women in Right to Culture: inner contestation vs. counter resistant

Absuma marriage culture, like any cultural practice is inevitably undergoing changes as a result of the different variables that play in the human lifespan starting from personal behavior up to the public political culture. During which a series of frictions within a society manifest in manifold ways. The frictions either contribute positively or negatively to the protection of

women's and girls' human rights. They also show the degree to which women and girls take part in formulating, developing and amending their culture within the ambit of right to culture.

As various scholars pointed out, women though in a given particular society can be categorized as homogeneous, adequate care should be taken to understand the 'sexed position of women' in each society which is affected by different factors. The women engaged in the discussions as well as those participated in in-depth interview comprised of women who are young, elderly, educated, relatively from rural parts and from towns. Among these women, majority of them support absuma marriage as long as it is consensual. Some of them have also stated that the minimum age starts with the girl's menstruation cycle and stated that it is kind of legitimate reason whereas others strongly argued that girls should attain 18 years before getting married. This indicates that though all of the women and youth engaged in the data collection are from Afar, they have different conceptions and perceptions of the inner contestations and the modes of manifesting such inner contestations. Among some of them, few discussants from Gewane woreda question the motive of girls fleeing to Djibouti and generalize saying that such girls have indecent ulterior motives that contravene Afar culture.

Such controversies are indicative of the degree of involvement of Afar women and girls in the exercise of their right to culture. From what it seen in emic perspectives girls and women live by the whim of the cultural practices that seem to vouch for the interest and honor of men only. However, the recent changes and the direct or indirect reference to the Constitution also signifies that the 'rights talk' is also paving for women and girls to engage tacitly in forming or amending the culture of marriage in Afar through their inner contestations that are manifested in different forms. Hence the talk of human rights and adherence to the federal and the Revised Afar State constitutions indicate that the legal culture as well as the role of women in the cultural development is making progress though slow and stagnant it may be.

State Obligation

Promoting and protecting human rights are the primary duties of States in the international human rights plane. In lieu of this Cook stated that according to the ILC state responsibility arises at the international arena when there is either attribution to the state, or lack of due

diligence on the part of a state in the protection of rights.³⁰⁹ Thus measures to be taken with respect to this right on the part of states need to be seen from this context.

Art 23 of ICCPR stressed the measures that need to be taken by member States “to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution” and also extends protection to children. General Comment No. 28 of the Human Rights Committee of ICCPR³¹⁰ has stated that States have the duty to protect the enjoyment of the right to enter into marriage only with free and full consent.

CEDAW Committee in General Recommendation No.19 also affirms that States would be responsible to the violation of women’s rights conducted by actors other than the State if the State has fallen short of its due diligence in terms of preventing as well as redressing violence against women and the girl child.³¹¹ In General Comment No. 13 too, State obligation was formulated both in terms of commission and omissions that “include failure to adopt or revise legislation” as constituting “institutional and system violations of child rights”.³¹²

With regard to the notion of WHRs promotion, in relation to the minimum age for marriage, the Awash Woreda respondents have indicated that they sensitize the public stating that the minimum marriageable age is 18. Not only that, it was stated that Women, Children and Youth Bureaus carry out sensitization programs targeting the population in collaboration with the religious leaders. Thus, from the findings of the group discussions and from the in-depth interviews it can be inferred that the different branches of government including the Bureau of Justice are engaging in promoting women’s and girls’ human rights.

The peril of reverting back to the 1960 Civil code family law section leads to two fallacies in terms of state obligations: rendering international and regional normative frameworks, which protect children under the age of 18 from being forced to marry, a mere rhetoric that has no relevance at the grassroots level even though Art.13(2) of the FDRE Constitution states that “the fundamental rights and freedoms specified in [chapter three] shall be interpreted in a manner

³⁰⁹ Rebecca Cook, “State Responsibility for Violations of Women’s Human Rights”, *Harvard Human Rights Journal* 127, Vol. 7, 1994, p.127.

³¹⁰ Supra note 287.

³¹¹ CEDAW, *General Recommendation No. 19 on Violence Against Women*, 11th Session, (1992), para. 8 and 9.

³¹² Supra note 289 at para. 32.

conforming to the principles of the UDHR, International Covenants on Human Rights and international instruments adopted by Ethiopia”; and the second one is making Art.9(1) & (4) and Art.13 (1) of both constitutions to be without tangible significance since in both constitutions it is clearly stated that all state organs have the ‘duty to respect and enforce’ human rights within their jurisdiction. One way of the duty to respect is to pass appropriate laws and place a workable system to enforce the legislated laws.

It was also mentioned that in case where parents try to force their children under the age of 18 years old, the law enforcement and the judiciary are following the approach of conducting mediation and educating the parents; rather than resorting to apply the Revised FDRE Criminal Law which pursuant to Art.648 that clearly punishes those who are involved in concluding an early marriage. The same provision states that those who force girls below 13 years old would be imprisoned up to 7 years while it states that those who force girls between the ages of 13 – 18 years old would be punished with 3 years of imprisonment. One challenge that is shown here is that though the Revised Criminal Law has outlawed the practice of early marriage, the non-revision of family laws in respective regional states would be a formidable challenge, which can also be faced by Afar law enforcement and judiciary. However, if ACRWC and CRC are given effect in the domestic legal plane, then the challenged will be halved even though the ideal sustainable solution would be the promulgation of the Draft family law and its enforcement.

Nevertheless it was also indicated that there is urban-rural discrepancies and the regional government and its stakeholders have to devise a mechanism to reach out the majority of the population that are mobile and live in the remote rural areas of Afar. Moreover, such promotion is useless unless it helps to make the draft family law of Afar a reality. A legal frame work eases many advocacy initiatives and empowers girls and women to exercise their right. 18 years after the enactment of the FDRE constitution the family law is still unrevised. This, according to the ILC, can be construed lack of due diligence which renders the reality a human rights violation on the part of Afar regional state. It gives the impression that, aside other factors, the regional state can be said to lack commitment to uphold the inherent dignity and worth of women and girls since it has not taken steps like revising laws that abrogate practices that contravene WHRs. The regional state seems to have taken the safe side and that it is compromising and gambling on women’s and girls’ human rights vis-a-vis the entrenched patriarchal cultural practice.

These and what the law enforcement and judiciary stated about the fact that the region still resort to use the 1960 C.C indicates that there is a strong need for clear and non-controversial law to determine marriageable age. When looking at this from a State obligation point of view, the Regional State despite its various issues that are obstacle to it, it has a constitutionally imposed duty to come up with an enforceable legislation. Unlike Gambella and Benishangul-Gumuz family laws that specifically prohibit wife inheritance and bride exchange respectively which are harmful practices in their respective regions, the draft family law has failed to govern and prohibit the negative aspects of absuma and hiksi customary marriages. This is since one way of neglecting the duty of State responsibility could be not legislating appropriate laws that have the potential of respecting, protecting, awarding appropriately redress and setting up of institutions to facilitate women's and girls' human rights especially in the private sphere which was traditionally left to the discretionary power of their communities, families and partners or spouses.

Women's Human Rights at Stake

As has been pointed out, absuma marriage has its own pros and cons in relation to human rights discourse. Since human rights are interdependent and interrelated, it is difficult to list all but below here are indicative list of rights that will be in jeopardy if early marriage and forced marriage aspects of absuma marriage are to continue.

Right to privacy and autonomy:- It disregards that women and girls have the right to privacy as well as to be respected as a person with human dignity.

Right to give free and sustainable consent:- CEDAW, the federal and the Revised Afar National Regional State Constitutions and the draft family law state that it should be the consent of intending spouses that is an essential condition. However, caution has to be taken since women's consent would be vitiated by exiting cultural practices that purports patriarchy. Thus as has been laid out in the underlying reasons, the transformation that needs to be looked for should focus in making the cultural practice more favourable to the invisible challenges women face in terms of giving their consent sustainable under the law. Moreover, the right to enter into marriage and to dissolve a marriage should not be made to depend on payment of compensation to other absumas or the consent of absumas should not be part of the essential condition of absuma marriage.

Rights of the child:- The rights of the child is not merely to have a right to life but it is to have the right to life, survival and development which includes that girls should be protected from practices that forced them to commit suicide, that affects their physical and psychological makeup and timely development. They should be free from fear of forced and early marriage. In addition to that, children with disability should also be protected from early marriage and sexual exploitation since Art.2 (1) clearly states that there should not be discrimination between children based on their “**sex, disability**, or other status”.

Right to health and Reproductive health rights:- “Early marriage and [forced marriages] are gender-related violence”.³¹³ With these two practices women lose their right to their sexual and reproductive health rights like the right to freely choose one’s partner, spacing of children, sustain physical and psychological harm as well as increased maternal mortality and morbidity. One practice that is mentioned in Gewane that needs to be appreciated is the voluntary testing for HIV/AIDS during the conclusion of marriage which will protect women and girls that live in a polygamous relationship, at least when entering a marriage.

Right to education and right to work:- Unless women and girls are educated and trained in different vocational trainings which will allow them to utilize and access different opportunities through economic and psychological emancipations which further allows them to engage in the type of work that would allow them to lead a dignified life without working for meager incomes, the subordination of Afar women and girls would not change. The realization of these rights would give them voice and agency to fight forced and early marriage practices that continued under the guise of culture. It also breaks the wronged inferior and submissive nature of Afar women and girls to patriarchy.

*Rights of Persons living with Disability:-*One of the advantages of absuma marriage is its inclusiveness of the people with disability as the emic perspective clearly shows. This inclusiveness is one quality of the culture to the rights of persons with disabilities, which is also one of the principles enshrined in the CRPD pursuant Art 23. However, the culture’s underlying assumption of persons with disabilities seems a bit thwarted since it conceptualizes disability as an “unfortunate incident” and the absuma marriage is concluded out of charity model of

³¹³ Supra note 303.

disability. The undertone of such assumption is that persons with disability do not need to have the right to give free consent since it is by luck that they are able to have such an opportunity. Women and the girl child with disability are considered as a charity case; rather than individuals endowed with human rights that are inalienable, indivisible and interrelated. Absuma is pro right to marry and found a family of persons with disability. Beneath the surface however, unless the culture reconstruct its' conception of disability which is not a burden but a different form of ability, and acknowledges the right to conclude marriage for persons with disability both in terms of age and the right to give consent or not to a marriage proposal, the underlying assumption of forced absuma marriage as a lottery for persons with disability is a direct contradiction to human rights.

However, through time if absuma marriage practice continues with its inclusiveness by also incorporating the human rights of persons with disability and acknowledging their capabilities, then the relationship between absuma marriage culture and human rights would take a positive correlation. Serious care and human rights promotion should be undertaken to maintain the inclusiveness principle as well as free consent element without undermining the inherent dignity of persons with disability and that of their respective absumas. Caution should also be taken with how the rights of women and girls with disability are conceptualized to avoid backlash and use ongoing changes in line with human rights. On the same point, attention should also be given to persons who are absumas to a person living with disability, since the right to free consent of both intending spouses should be considered both ways.

In conclusion, the cultural practice that has patriarchal nature of societal construction and the challenges of poverty has made things more difficult for African women. This holds water for Afar girls and women since as a result of forced and early absuma marriages they are dropping out of school which makes them dependent on the man as a provider for them and their children as well as put them in a vicious cycle of poverty since they won't be empowered enough to share the fruits of economic developments and so on. This in turn defeats their *right to property, adequate standard of living, right to participate in the political as well as social spheres, access to justice* and so forth.

Conclusion and Recommendation

Conclusion

Absuma marriage practice is not entirely a women's and girls' human rights violation. This is only true when intending spouse consent is the prerequisite and when both of them are above 18 years old as IHRIs, regional and national legal frameworks stipulate.

Culture, though Tamale says is “the neglected pathway to women's justice” it is worth to note that culture is in flux and that there are inner contestations and resistant positions that might make the ‘ideal and suitable pathway’ she envisions to be a bumpy road and backlash on the women's human rights movement at a grassroots level. Nonetheless, using human rights framework to advance women's role in development, formulation and evolving of culture if carefully laid out in compliance to women's human rights standard can stop the backlash through invoking cultural rights of women too.

Cultural practices need to be looked into from the “underlying reasons” and assumptions since they directly reflect the status of marginalized groups and further clarify basis, nature, scope and depth of discriminations. It is also imperative to look into the consequences of cultural practices since even if the underlying reasons seem to be neutral because of the different forces aligning and shaping the gender construction, the enculturation of inferior or subordinating nature of practices will be unveiled.

Though the human rights framework is not devoid of criticisms, its standards at the end if they are beneficial to women's health, wellbeing and bodily integrity, the cultural difference divide should not be invoked. The functional universality of the human rights and more particularly the women's human rights framework has played and is also playing a role in the life of Afar women's and girls' lives since it is welding the cultural transformation from within through the inner contestations. In like manner, “the evolution of culture is shaped by agency”³¹⁴ hence empowering women and girls need to be given due attention which calls for the promotion of WHRs in Afar. In sum, though culture and rights can have a positive correlation as well as a negative one; to choose the best way to transform culture that results in social transformation that

³¹⁴ Supra note 134 at p. 164.

resonates with human rights and gender equality need to be carefully ploughed and cultivated to avoid backlashing on the agenda of equality. Moreover, ongoing changes should also be accommodating of the various intersectional identities of Afar women and girls like being literate/illiterate, urban/rural, and living with disability or not so that the movement truly empowers women and girls.

From the narratives of the informants it is clear that absuma is undergoing changes. From the outset absuma marriage seems to have only a cultural dimension. However, the religious aspect of the absuma marriage plays a role in enculturating both the positive as well as the negative aspects of absuma marriage depending how its relation with the culture is perceived by all involved stakeholders.

The central issue in absuma marriage is the issue of early and forced marriage that revolves around exercising and enjoying ones cultural rights vis-à-vis the rights of individuals and especially girls and women rights which can be expressed as a “clear situation of conflict of values between cultural autonomy, certain rights of [groups or communities] and individual rights”.³¹⁵ Thus, the issue is who’s right to culture needs to be advocated. At this juncture, the use of legalistic approach is preferred by those who are in favor of equality of girls and women with boys and men in terms of determining marriageable age and also expressing free consent. However, some anthropologists cautiously argue that using such legalistic approach or responses “leaves out the wider social and cultural context within which these marriages take place”.³¹⁶

On the surface, the emic account gives the impression that Afar culture is still intact. The fusion of Islam and Afar custom has given rise to different social organizations among which is absuma marriage. The Afar people’s way of life highly depends on the social organization particularly the clan system, which in turn relates to absuma marriage. The dynamic nature of culture has also revealed the internal contestations and the counter-resistant positions. These inner contestations are also supported by the interventions made by different structures both within and

³¹⁵ UNICEF & Romani CRISS, *Are the Rights of the Child Negotiable? The Case of Early Marriages within Roma Communities in Romania*, (Bucharest, 2010), p. 17, accessed July, 23, 2012, http://www.unicef.org/romania/Early_marriages_Romani_CRISS.pdf.

³¹⁶ Institute of Social and Cultural Anthropology of University of Oxford, *Child Marriage in the Context of Shia Iran*, accessed July, 23, 2012, <http://www.isca.ox.ac.uk/research/medical-and-ecological-anthropology/fertility-and-reproduction/child-marriage/>.

outside Afar. These changes however have their own dimensions: internal contestations by girls and women who are more of pro-education, urbanized, and cognizant of their rights upon entering marriage; and external contestations by the international, regional and national human rights framework and institutions which even go to the extent of highlighting the issues and give recommendations to give room for improvements.

Etic perspective stresses that though people have the right to exercise their culture and religion, the rights of those who contest that specific culture should not be relegated. In comparison to the human rights understanding of marriage, absuma contradicts with the rights of girls to education, health, bodily integrity, privacy, protection from harmful practices and violence against women including their right to marry and found a family. Whenever girls below the age of 18 years are forced to get married, it becomes violence against the child that is detrimental to the enjoyment of all the right of the child since all human rights are universal, interdependent and indivisible. Moreover, the absuma marriage is also against the element of consent in the right to marry and found a family since it is the consent of intending spouses that is recognized as a right in this context. However, in the absuma marriage the consent of the girls or women is not considered which results in making such kind of marriage a forced marriage.

On a positive note, the absuma marriage when seen from the human rights vantage point has a non-discriminatory element regarding persons with disability which is basic in human rights realm. However the construction of disability as a charity case needs to be reconstructed in line with the principles enshrined in CRPD, to which Ethiopia is a party.

The role of the regional state in terms of promoting and respecting women's and girls' rights need to be taken in serious consideration especially in cultivating positive initiatives taken by both state and non-state actors. The reluctance to use existing ratified international and regional human rights instruments like CRC & ACRWC to determine marriageable age needs to be taken as an avenue which will also be in line with Art 9 (1) and (4) of the FDRE Constitution and Art 9 of the Revised Afar Regional State Constitution. This line of argument would render the 1960 Civil Code of Ethiopia which renders the minimum marriageable age for girls to be 15 years old as discriminatory and ultimately null and void.

In a nutshell, this research shows that culture is not static which its social changes affect human beings and put their prints on human rights promotion and protection and vice versa. This leads to the conclusion that the nexus between culture and WHRs would ultimately depend on how culture is conceptualized within that society. If it is conceptualized as a flux, then it would give room for internal contestations to have a chance in voicing their say as to what constitutes culture or harmful practice which in a way determines the nexus between culture and WHRs either as a positive or negative.

Recommendation

Overall, the clan system and what its underlying reasons purports regarding women and girls stands is “male centered” which need to be transformed without using a mere “add and stir” approach; rather needs to incorporate human rights based approach and mainstream women’s and girls’ rights as well as that of rights of persons with disability to attain the mentality shift that resonates with human rights.

Counter-resistant positions and their influence should closely be monitored and researched further to continue on the success and changes gained so far together with the angle of involvement of the Sharia courts and role of religious leaders.

The regional state particularly the judiciary should show its commitment to the application of international and regional human rights instruments in the regional state legal frameworks. Strong commitment needs to be exhibited by the legislative organ of Afar regional state since every aspect of interaction of culture and human rights reflects the level of commitment of the legislative organ. Hence State actors should take the lion’s share in paving the way through legislating appropriate laws, upholding the constitution and its fundamental principles including principle of human rights and secularism to ensure that cultural practices that are based on gender inequality are dismantled; and devising strategies to promote women’s and girl’s human rights at the grassroots level that has the power to transform the assumption towards women and girls through using existing strong cultural and religious initiatives and avenues.

Strong advocacy work targeting both state and non-state actors including women and girls should be continued.

Cautiously linking teaching of Islam with human rights regarding protection of girls and women and their right to equality should be emphasized to attain a sustainable change. But with this regarding early and forced marriages, the scientific (medical) arguments should not be the only way to be argued to avoid the resurfacing of counter resistant positions as being seen regarding medicalization of FGM.

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Annex I – Interview Guidelines

Herein below are detailed information on the interview to be conducted to collect data for the purpose of research under the title “The Nexus between Culture and Women’s Human Rights: The Case of ‘Absuma’ Marriage in Afar”. In order to conduct the interviews, key informants have been identified. The major key informants are: Elders & clan leaders (Awash, Gewane); Afar region bureau of Justice (Semera); Women Affairs (Semera, Awash, Gewane); Women’s Associations leaders (Semera, Awash, Gewane); Women Members of Afar Regional State Council; and Women survivors of forced ‘absuma’ marriage and early marriage (found through snowball sampling method).

To interview the key informants, the researcher will travel to the mentioned places. The researcher will also be wearing just like the cultural dressing style of the Afar people in order to increase the comfortability of the interviewed people so as they will be willing to give more detailed information and their perspectives relevant to the research.

Interviews will be conducted in their corresponding offices for women’s affair, women parliamentarians and women’s associations. On the other hand, the other interviews of the key informants who are survivors of the forced ‘absuma’ marriage and early marriage will be conducted in a safe place based on their choice in order to keep the safety and privacy of the informants. This will also help them to share more relevant information and speak out what they have inside freely which in turn would assist the research in holding more accurate and necessary information. It would also give the researcher to observe their emotional situation.

The questions constituting the interview include both open-ended and closed-ended questions with follow up questions as necessary. The total questions to be asked to the interviews are less than six questions excluding follow up questions that may arise during the process of conducting the interview.

STEPS DURING THE INTERVIEW

- ✓ The researcher welcomes the key informant and will introduce herself and her assistants (such as camera man, translators) to the key informant.
- ✓ The researcher will then explain the main purpose of the study.
- ✓ The key informants will be assured that what they say will be kept in confidence and will only be used for the research purpose.
- ✓ After reading to the informants what the content of the consent form contains, they will be requested to fill it out and verbally express their consent.
- ✓ The key informants will also be asked of their permission if they are willing for the interview to be recorded on tape and their pictures taken after explaining it to them the purpose, which will only be used to verify and also recall what has been discussed for the benefit of the research.
- ✓ The key informants will be informed that they are not obligated to answer any question which the researcher is going to ask without their willingness.
- ✓ The key informants will then be asked to respond to all questions as fully and honestly as possible but to the extent they feel comfortable in doing so. Special care will be taken care of

not to expose informants who are victims with secondary and tertiary victimization by using survivor friendly technique and environment.

- ✓ The interview begins by the researcher after ensuring that the informant has signed and given her/his consent on the consent form and after verbally expressing their consent (if they are willing to be recorded).
- ✓ The researcher will start the interview by asking questions to the key informant. Tasks such as taking interview notes, recording on tapes and taking pictures will be done simultaneously while conducting the interview after explaining the reason and obtaining the consent of the key informants.
- ✓ The researcher would also ask the informants whether they would be willing to be contacted after the end of this interview session for purposes of clarification.
- ✓ The researcher will thank the key informant for providing relevant information for the research.

Annex II – Interview Consent Form

This in-depth key informant interview is part of the research conducted on ‘absuma’ marriage. The research is conducted to assess the nexus between culture and women’s human rights by taking the case of ‘absuma’ marriage in the Afar society. As key informant you are expected to share your experience which will help in collecting relevant information for the research to be conducted.

With your consent, the interview will commence. The data will be kept confidential and will be used for research purpose only by the researcher.

CONSENT

I, _____, agree to take part in this research as a key informant for the interview to be conducted on the above study as stated in the confidentiality statement.

I understand and am willing for the information I give to be recorded and the recordings will only be used for this research purpose.

I understand and am willing for my picture to be taken.

I understand and am willing to be contacted after this interview is conducted for the purpose of clarification by the researcher.

I understand that my identity will remain anonymous and I will not be identified individually in any way.

Annex III – Key Informant Interview Questions

INTERVIEW #	
INTERVIEW PLACE	
INTERVIEWER	
RESPONDENT	AGE
	NAME (if applicable)
	SEX
	LOCALITY/WOREDA etc
	EDUCATION
	PROFESSION/OCCUPATION
	SEX
	MARITAL STATUS
	TRANSLATOR (if applicable)
	DATE
TIME	START
	END
QUESTIONS TO	Religious Leaders from Semera (Head of the Islamic Affairs of Afar regional state)
	1. What does ‘absuma’ marriage entail?
	1.1. What is the minimum age requirement for both sexes?
	1.2. What are the other preconditions to conclude the marriage?
	1.3. What are the steps (process) involved in the marriage conclusion?
	1.4. Who gets to decide on the marriage? Do girls and women have equal voices heard/opportunities in the respect of their choices?
	2. What are the cultural justifications and the underlying reasons for concluding ‘absuma’? (<i>emic perspective</i>)
	3. Is the ‘absuma’ marriage undergoing social changes?
	3.1. Describe the way ‘absuma’ marriage was concluded currently and a while back like 20 or 30 yrs ago?
	3.2. What are the influential agents of the social changes?
	3.3. What are the different sources of such social changes? (Is it internal within the society or from outside the society?)
	3.4. What are the impacts of those social changes on ‘absuma’ marriage?
	4. Is there a difference between what Islamic religion professes about marriage and the existing way and practice of concluding ‘absuma’ marriage?
	5. What are the implications of the practice of ‘absuma’ marriage on the protection and promotion of women’s human rights?
QUESTIONS TO	Zone and Woreda Administration & Law Enforcement Bodies (Semera, Gewane, Awash)
	1. What does ‘absuma’ marriage entails? (<i>emic perspective</i>)
	1.1. What is the minimum age requirement for both sexes?
	1.2. What are the other preconditions to conclude the marriage?
	1.3. What are the steps (process) involved in the marriage conclusion?
	2. What are the cultural justifications and the underlying reasons for

QUESTIONS TO

concluding 'absuma'? (<i>emic perspective</i>)
3. Is the 'absuma' marriage undergoing social changes?
3.1. What are the agents of the social changes?
3.2. What are the different sources of such social changes? (Is it internal change influenced from within the society or from outside the society?)
3.3. What are the impacts of those social changes on 'absuma' marriage?
4. Do you think that 'absuma' marriage involves women's human right violations?
4.1. If so, what kinds of women's human rights violations are committed?
4.2. What measures (such as legislative, administrative, judicial etc and advocacy & lobbying etc from the regional state's part and various women's groups in Afar regional state) are taken so far in order to protect such violations in the conclusion of 'absuma' marriage?
4.3. If there were/are any measures taken so far, how do you see the impacts of those measures in protecting women's human rights violations?
5. What is the relationship between the practice of 'absuma' marriage and the protection and promotion of women's human rights in Afar regional state?
Women's Affairs (Semera, Gewane and Awash)
1. What is the main purpose of the Women's Affairs office in relation to protecting women's human rights?
2. Are there any cases reported to this office or came to the attention of the office in relation to 'absuma' marriage?
2.1. If there are any, what kinds of issues do those cases involve? Do they involve women's human rights violations? If so, what were the main issues?
2.2. What did the office do with such cases? Any supports provided?
2.3. What is the current status of such cases?
3. Do women ask for help in violations of their rights?
4. Do you think that 'absuma' marriage involves women's human right violations?
4.1. If so, what kinds of women's human rights violations are committed?
4.2. What measures are taken so far by Women's Affairs in order to protect such violations in the conclusion of 'absuma' marriage? (What role did Women's Affairs office played/is playing in the protection of women's human rights violation in relation to 'absuma' marriage?)
4.3. What kind of partnerships and relationships does the women, children and Youth affairs bureau have with other state and non-state actors in conjunction with the issue at hand?
5. What do you think is the relationship between culture and women's human rights with this understanding of the 'absuma' marriage?
Women's Association (Semera, Gewane, Awash)
1. What are the main purposes/roles of women's associations in the Afar society?
1.1. what are the main purposes and degree of involvement of such associations with regard to 'absuma' marriage?
1.2. What kinds of women are members of these associations?
1.3. What are the feelings/perceptions of women and girls about 'absuma' marriage?
1.3.1. If they have negative/positive perceptions, what are the reasons

QUESTIONS TO

	behind such perceptions?
	1.3.2. If negative, what measures did such women & girls took in order to protect themselves from 'absuma' marriage?
	1.3.4. Which type of women support or denounce 'absuma' marriage?
	1.3.3. What are the roles played by the associations in giving support to such women and girls?
	2. What are the supports provided from the government or regional state to women's association and in the protection and promotion of their human rights?
QUESTIONS TO	Women Parliamentarians
	1. What is 'absuma' marriage?
	2. How do women parliamentarians perceive it?
	3. Are there any decisions or issues that came so far to the parliament in relation to 'absuma' marriage?
	4. What do you think is the stand of the parliament with respect to 'absuma' marriage?
	5. Do you think 'absuma' marriage involves women's human rights violations?
	5.1. If so, what are the measures taken so far by the parliament in protecting women's humans rights and 'absuma' or forced marriages?
	5.2. What were/are the roles of women's parliamentarians in such issues?
	5.3. What is the legal status of women's rights to marry and found a family in the Afar family law domain? Had the parliament discussed and deliberated on this issue previously?
QUESTIONS TO	Women Survivors of forced absuma marriage and early marriage (emic & internal contestations)
	1. What does 'absuma' marriage entails?
	1.1. What is the minimum age requirement for both sexes?
	1.2. What are the other preconditions to conclude the marriage?
	1.3. What are the steps (process) involved in the marriage conclusion?
	2. What are the cultural justifications and the underlying reasons for concluding 'absuma'? (emic perspective)
	3. What is women's perspective on 'Absuma' marriage?
	3.1. Which type of women support or denounce 'absuma' marriage?
	3.2. If you are not a survivor but a relative or a friend of such person, what was your degree of involvement? What made you to be involved in this matter?
	4. Is 'absuma' marriage a women's rights violation in its entirety?
	4.1. What kind of women's human rights issues and violations were you exposed?
	4.2. What kind of harms did you sustain because of the practice of absuma marriage?
	4.3. Have you asked for help? What kind of responses did you get? From whom? What measures were taken after that? By whom?
	4.4. How was the issue resolved? What was the end result?
	5. Is 'absuma' marriage undergoing social changes?

5.1. If so, what are the social changes?
5.2. If the marriage is concluded afterwards or not, what made you to change your mind about the marriage? Was it on your own accord?
5.2. What are the impacts of such social changes on 'absuma' marriage and in the protection and promotion of women's human rights?
5.3. What is the link between those social changes in 'absuma' marriage conclusion form and women's human rights protection and promotion?

Annex IV – Key Informant Details

INTERVIEW DESIGNATED NO.	REPRESENTATION	MODE OF INTERVIEW	PLACE OF INTERVIEW	DATE OF INTERVIEW
Key Informant #1	Members of Afar Regional State Council	Face to Face	Semera	December 03, 2012
Key Informant #2		Face to Face	Semera	December 02, 2012
Key Informant #3		Face to Face	Semera	December 02, 2012
Key Informant #4	Afar Regional State Supreme Court	Telephone	Semera	December 05, 2012
Key Informant #5	Afar Regional State Bureau of Justice Head	Face to Face	Semera	December 01, 2012
Key Informant #6	Afar Regional State Police Commission	Face to Face	Semera	December 02, 2012
Key Informant #7	Afar Regional State Police Commission, Women and Children Division	Face to Face	Semera	December 02, 2012
Key Informant #9	Afar Regional State, Legal Advisors Office	Face to Face	Semera	December 03, 2012
Key Informant #10	Gewane Woreda Police	Face to Face	Gewane	December 03, 2012
Key Informant #11	Women, Children and Youth affairs of Gewane Woreda	Telephone	Gewane	December 06, 2012
Key Informant #12	Gewane Woreda Education Bureau	Face to Face	Gewane	December 03, 2012
Key Informant #13	Family of a victim Girl forced to marry at the age of 15	Face to Face	Awash	October 08, 2012

Annex V – Focus Group Discussion Guidelines

This guideline is to be used during the conduct of Focus Group Discussions (FGDs) for the purpose of a research study under the title “The Nexus between Culture and Women’s Human Rights: The Case of ‘Absuma’ Marriage in Afar”. To conduct FGDs, major participants have been identified which includes women from different age groups and localities in the cities of Semera, Awash and Gewane. The researcher will travel to the specified places in order to conduct the FGDs which are important in collecting relevant data to the research. The researcher will also be wearing just like the cultural dressing style of the Afar people to make the participants more comfortable and be open to the discussions being conducted.

The major places where the FGDs will be conducted are hotels so as to create a more conducive and comfortable environment for the participants to share their experiences and put their ideas forward in the discussions. Participants are expected express their feelings and ideas in connection with the research title which focuses on ‘absuma’ marriage conclusion in their respective societies. The questions to be dealt with during the FGDs are composed of open-ended and closed-ended questions together with follow up questions that may be raised during the discussion times.

STEPS FOR CONDUCTING FGDs

- ✓ The researcher welcomes the participants and will introduce herself, the facilitators and other assistants to the participants of the FGDs.
- ✓ The researcher will explain the purpose of the study.
- ✓ The researcher will inform the participants concerning the confidentiality of the discussions that they will be kept secret and will only be used for the purpose of the study only; and also ask them to keep each other’s identities, participation and remarks private.
- ✓ The research will also inform the participants that they are not obligated to take part in the FGDs if they do not feel comfortable by any means.
- ✓ The participants will be asked to participate in the FGDs openly and honestly by giving comments and forwarding their views.
- ✓ The participants of the FGDs will also be asked if they are willing and is comfortable with them to take pictures and confirm them that those pictures will only be used for the purpose of the research.
- ✓ The researcher will inform the participants that they are welcome if they want to talk to the researcher privately.
- ✓ The FGD questions, guidelines, and consent forms will be distributed to each focus groups and the researcher will read it loudly so that all participants comprehend what is being done.
- ✓ The researcher and the facilitators will then start the FGDs and facilitate the discussions while at the same time taking notes, recording the discussions on tape and taking pictures of the participants in groups.
- ✓ At the end of the FGDs, the researcher will make closing remarks and thank the participants for their support and participation in the research.

Annex VI- Focus Group Discussion Consent Form

This focus group discussion is part of the research conducted on 'absuma' marriage. The research is conducted to assess the nexus between culture and women's human rights by taking the case of 'absuma' marriage in the Afar society. Each participant of the focus group discussion is expected to share your experience which will help in collecting relevant information for the research to be conducted.

With your consent, I will be recording your information provided in the focus group discussion. The data will be kept confidential and will be used for research purpose only by the researcher.

CONSENT

I, _____, agree to take part in the above study and focus group discussions as stated in the confidentiality statement.

I understand and am willing for the information I give to be recorded and the recordings will only be used for this research purpose.

I understand and am willing for my picture to be taken.

I understand and am willing to be contacted after this focus group is conducted for the purpose of clarification by the researcher.

I understand that my identity will remain anonymous and I will not be identified individually in any way.

Annex VII – Focus Group Discussion Questions

xFGD #	
FGD PLACE	
FGD DISCUSSANT #	
FACILITATOR	
PARTICIPANTS COMPOSITION	
LOCALITIES/VILLAGES	
NAMES (if applicable)	
AGE (RANGE)	
SEX FEMALE #	
MALE #	
MARITAL STATUS MARRIED #	
SINGLE #	
TRANSLATOR (if applicable)	
DATE	
TIME START	
END	
QUESTIONS TO PARTICIPANTS	<i>Emic Perspective of ‘Absuma’ Marriage Practice</i>
	1. What is ‘absuma’ marriage for Afar women and girls? (What does it symbolize and connote?)
	2. What are the cultural justification and underlying reasons for concluding ‘absuma’ marriage?
	3. What is the perception on ‘absuma’ marriage: from women, Girls, Elders, Clan leaders, teachers, close family members?
	3. What impositions are put by families on girls and women in effecting ‘absuma’ marriage?
	4. Are women’s rights violations in relation to ‘absuma’ marriage?
	4.1. If so, what are those women’s rights violated?
	4.2. What steps are taken by women to protect their human rights?
	4.3. What supports have been provided with regard to this from different government bodies or associations?
	5. What are the rights of women and girls in relation to ‘absuma’ marriage as opposed to men and boys?
	6. What are the consequences if women and girls oppose to an ‘absuma’ marriage?
	Social Change (Proponents of Changes / Resistance to Changes)
	1. Are there any social changes taking place in the ‘absuma’ marriage?
	1.1 What are the changes? Who or what influences such changes?
	1.2. What are the impacts of such social changes on the ‘absuma’ marriage as a cultural practice?
	and in the protection and promotion of women’s human rights?
	1.3. What are the impacts of such social changes on the ‘absuma’ marriage in relation to the protection and promotion of women’s human rights?
	2. Are there any associations of women who provide support for such women who oppose ‘absuma’ marriage?

2.1. If there are, what are the supports provided so far to those women and the results obtained so far?
3. Are there educational and awareness raising activities undertaken pertaining to educating women and girls on their right to marry and found a family?
3.1. If there are, what impacts of such awareness raising activities have brought about in the society regarding the 'absuma' marriage?
4. What is the relation of close family members, elders and religious leaders in relation to such acts of defiance by women and girls? What is the perception of the society to such kinds of women?
5. What are the available avenues (in the society) for women and girls who do not want to get married to their 'absuma'?
Practice Role of the State Machinery
1. What kinds of measures are taken so far by:
1.1. The Afar Regional State Council?
1.2. The Afar Regional State Administrative Organs?
1.3. The Afar Regional State Women, Children & Youth Affairs Bureau?
2. What is the involvement of law enforcement agencies (police and public prosecutors) and the judiciary in conjunction with women and girls and 'absuma' marriage formation practices?
3. How do women and girls access and receive adequate services from these institutions?

Annex VIII – Focus Group Discussants Details

FGD DESIGNATED NO.	COMPOSITION	PLACE OF FGD	DATE OF FGD
FGD #1	State Actors	Awash	30/11/2012
FGD #2	Community Members	Awash	30/11/2012
FGD #3	Male Discussants	Gewane	03/12/2012
FGD #4	Female Discussants	Gewane	03/12/2012