

**ACCOMMODATION OF DIVERSITY AND RIGHTS OF WOMEN IN ETHIOPIAN
FEDERALISM: THE CASE OF GURAGHE ZONE, SNNPR**

Sisay Kinfe Gebrewold

**A Thesis Submitted to the Center for Federalism and Governance Studies
in Partial Fulfillment of the Requirement for the Degree of Doctor of
Philosophy in Federalism and Governance Studies**

**Addis Ababa University
Addis Ababa, Ethiopia
April, 2018**

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Abbreviations

ACHPR	African Charter on Human and Peoples Rights
APDM	Amhara People Democratic Movement
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CHW	Community Health Work
CSA	Central Statistics Agency
CSO	Civil Society Organization
DLDP	District Level Decentralization Pogramme
EMA	Ethiopian Mothers Association
EC	Ethiopian Calendar
EPDM	Ethiopian People Democratic Movement
EPRDF	Ethiopian People’s Revolutionary Democratic Front
EPRP	Ethiopian People Revolutionary Party
ESM	Ethiopian Student Movement
ESUE	Ethiopian Student Union in Europe
ESUNA	Ethiopian Student Union in North America
EWf	Ethiopian Women Federation
EWLA	Ethiopian Women Lawyers’ Association
EWWA	Ethiopian Women Workers’ Association
FDRE	Federal Democratic Republic of Ethiopia
FEDO	Finance and Economic Development Office
FGM/C	Female Genital Mutilation/Cutting
FSCC	Federal Supreme Court Cassation
GAD	Gender and Development
GAW	Group for the Advancement of Women
GPSDO	Guraghe People Self-Help Development Organization
GRCO	Guraghe Road Constraction Organization
HEP	Health Extension Program
HEW	Health Extension Worker

HIV/AIDS	Human Immuno-deficiency Virus/Acquired Immune Deficiency Syndrome
HOF	House of Federation
HOPR	House of Peoples' Representative
HTP	Harmful Traditional Practice
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFLO	Islamic Front for the Liberation of Oromia
ISEN	Institute for the Study of Ethiopian Nationalities
IWD	International Women's Day
KDA	Kebena Development Association
MDG	Millennium Development Goal
Meison	All-Ethiopian Socialist Movement
MWCYA	Ministry of Women, Children and Youth Affairs
NAPGE	National Action Plan for Gender Equality
NCA	National Cultural Autonomy
NGO	Non-Governmental Organization
NPEW	National Policy on Ethiopian Women
NTA	Non-Territorial Autonomy
OLF	Oromo Liberation Front
OPDO	Oromo People Democratic Organization
PA	Peasantry Association
PDRE	People's Democratic Republic of Ethiopia
POMOA	Provisional Office for Mass Organization Affairs
REWA	Revolutionary Ethiopian Women Association
RFC	Revised Family Code
SEPDM	Southern Ethiopian People's Democratic Movement
SNNPR	Southern Nations, Nationalities and Peoples' Region
TA	Territorial Autonomy
TP	Transitional Period

TPC	Transitional Period Charter
TPLF	Tigrian People Liberation Front
USSR	Union of Soviet Socialist Russia
UDHR	Universal Declaration of Human Rights
USUAA	University Student Union of Addis Ababa
WAB	Women Affairs Bureau
WAD	Women Affairs Departments
WAO	Women Affairs Office
VAW	Violence against Women
WA	Women Association
WCAO	Women and Children Affairs Office
WCC	Women Coordinating Committee
WDA	Women Development Army
WFAT	Women Fighters' Association of Tigray
WID	Women in Development
WWEWSG	World-Wide Ethiopian Women Study Group

Glossary

<i>Anqiti</i>	Customary law and belief of marriage and divorce of women among the Sebat- bet Guraghe
<i>Bureao</i>	Office
<i>Birr</i>	Ethiopian Currency
<i>Boobane Galtita</i>	Customary law and court of the Kebena
<i>Derg</i>	Committee which ruled Ethiopia from 1974-1991
<i>Dortuta</i>	A type of marriage between the sister or close female relatives of ex-wife/fiancée and husband/fiancé of the ex-wife/fiancée among the Kebena
<i>Edir (Sabugnat)</i>	Association of residents to help each other mainly during death at village level
<i>Gordena Sera</i>	Customary local council of the Sodo Kistane Guraghe
<i>Kebele</i>	The lowest administrative unity below district (<i>Woreda</i>) in Ethiopia
<i>Kitcha</i>	Sebat-bet Guraghe customary laws, administration and justice system
<i>Murut Geyeni Asu</i>	A type of marriage concluded by the initiation of the parents of the female among the Kebena
<i>Negarit Gazeta</i>	Ethiopian megazine that publishes laws enacted by House of Peoples Representative
<i>Nicka</i>	Betrothal for followers of Islamic religion

<i>Oguet</i>	General Assembly of clan leaders of the Kebena or customary local council of the Kebena that make customary law of the community
<i>Rega'uu</i>	A type of marriage between a widow and brother/close relative of her ex-husband among the Kebena
<i>Shari'a</i>	Islamic law based on Quran and Hadith
<i>Wagetutaa</i>	A type of marriage between a widow and a man she chose among the Kebena
<i>Waq</i>	<i>In the Sebat-bet Guraghe traditional religion it means sky-god</i>
<i>Woreda</i>	Government administrative level in Ethiopia usually equivalent to district
<i>Wuchequ</i>	A type of marriage concluded with the agreement of the two parties to the marriage among the Kebena
<i>Xaaxequ Ayu</i>	A type of marriage concluded by the initiation of the male spouse and his parents without prior information on the side of the female spouse and her parents among the Kebena
<i>Yajok</i>	Customary local council and appeal customary court among the Sebat-bet Guraghe
<i>Yajok Kitcha</i>	Customary local governance system of the Sebat-bet Guraghe
<i>Zone</i>	Administrative unit below regional state in Ethiopian Federalism containing several Woreda (district)

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Abstract

Absence of women's participation/voice in customary local institutions, limited empowerment of women, shallow understanding of autonomy and multiculturalism, and legislative gaps are factors that hinder the protection of rights of women in the family arena within ethno-cultural communities in Guraghe Zone of the SNNPR. This research by examining institutional system for the protection of collective rights and rights of women showed the opportunities and challenges of resolution of conflict of culture and rights at local level. In doing this, the thesis filled the gaps seen in the literature regarding process of transformation of customary local institutions and its limitation as a mechanism of resolution of conflict of culture and rights in the family arena in Ethiopian federalism. The limited emphasis given to rights of women to participate in customary local institutions is the main factor that undermines enforcement of rights of women in the family arena both in the state and non-state institutions. In patriarchal society, such as Ethiopia, women were/are voiceless in the (re)construction of culture, such as customary laws. This is one of the challenges in the process of elimination of discrimination and harmful customary practices against women within ethno-cultural community as well as in the enforcement of right of exit.

Making multicultural feminist standpoint and human rights norms the theoretical and methodological framework for this research; the researcher explored the institutional systems for the promotion and protection of rights of women at local level. These theories have the purpose of resolving conflict of culture and rights, i.e., conflict between collective and individual right, by making all, who are concerned and involved, to have voice in the resolution of those conflicts. Document analysis, interviews, focus group discussion and observation are the methods used to collect qualitative data. Interpretational and reflective method of data analysis has been used to analyze empirical data.

The findings of the research indicate that local government institutions, particularly local councils, refrain from dealing with transformation of customary laws. Community-based CSO in collaboration with their communities' customary local institutions are the main actors in the transformation/ (re)making of customary laws. Women member of ethno-cultural community hardly participated in the process of transformation of customary laws. In the transformed customary law documents discriminatory and harmful practices against women are not exhaustively prohibited, and in some instances, selectively prohibited, which indicates limited sensitivity of male-dominated institutions to wards rights of women.

In addition, customary local institutions do not respect limits set on collective autonomy in transforming customary laws as well as applying these laws in the family arena. This goes to the extent of denying right of exit from customary institution while entering to marriage and during divorce, which is partly, supported by detailed law on right of exit in the Family Code of SNNPR and some local government institutions. Absence of clearly known state law regarding division of matrimonial property in bi/polygamous marriage also makes women to relinquish their rights of exit. Though entering into bi/polygamous marriage has been made criminal act, formal courts at local level are not sentencing perpetrators in this case based on the Criminal Code of the state due to the need/significance of protecting the best interest of the child or children, and coincidence of ethnicity and religion among some ethno-cultural community.

Chapter One

1. Introduction

In Ethiopia following the adoption of multicultural accommodation paradigm, constitutional mechanisms are set to protect human rights of women against the autonomy of ethno-cultural communities, such as the guaranteeing of right of exit (Reitman, 2004, Shacher, 2001) from intra-group institutions that may contain discriminatory and harmful customary practices against women while entering into marriage and during divorce. This mechanism often focuses on the justice of rights approach of protecting rights, i.e., judicial mechanisms of resolving conflict of culture and rights (Deveaux, 2004). However, due to state oppression many minority ethno-cultural communities have passed through, this kind of mechanism has limited realizability (Weinstock, 2004; Spinner-Halev, 2001). In the context of history of oppression by the state, besides the guaranteeing of exit right, incorporating the voices of women in the making of any policy/law that affects the lives of women is believed to bring better result in the protection of rights of women from within ((Deveaux, 2004; Weinstock, 2004). This mechanism is supported by human rights instruments to resolve conflict of culture and rights (Howard-Hassman, 2011; Singh, 2014). However, in some cases, such as in the case of Ethiopia ethnic based federalism, where there are competitive politico-legal contexts for ethnic autonomy¹, ethno-cultural communities rigidify their cultural identity (Shacher, 2001) as means to get status of indigeneos people over a given territory and ethnic autonomy. This is often reinforced by loose institutional system for the protection of rights by making things related to culture as sacred that requires limited/no intervention from the state (Shacher,

¹ The competitive politico-legal contexts for ethnic autonomy is mainly the result of the the guaranteeing of the right to self-determination for every ethno-territorial community of the state (See, FDRE Constitution, Article 39), and the limited applicability of this principle on the ground for many minority ethno-cultural communities in the country

2001; Banda, 2005). It is in this context that revival and transformation² of customary laws have been undertaken in Guraghe Zone, one of the nationality administrations in the SNNPR of Ethiopia, by the non-state institution of ethno-cultural communities who were/are the main (de facto) policy makers on the lives of women of their community. But how autonomy and multicultural policy of the state have been understood by ethno-cultural communities in applying their customary laws, to what extent the voices of women have been incorporated in the revival and transformation of customary laws as well as what kind of mechanisms are there to enforce right of exit at sub-national in Ethiopian federalism are not given attentions in academic researches. Looking into the place of women member of ethno-cultural communities in the process of cultural revival and transformation at local level following the introduction of ethnic federalism, and examining provisions of the transformed customary laws of ethno-cultural communities' vis-à-vis rights of women in the family arena is one of the main rationales for this research.

The diversities of ethno-cultural communities in Ethiopia range from diversities in terms of culture, clan and religion to that of claiming different ethnic identity from the one assumed by political elites during the federal bargain³. In this regard, the Guraghe Zone is a typical case. The Guraghe Zone is established within the SNNPR of Ethiopia for the autonomous self-rule of ethno-cultural communities known mainly as the Bete-Guraghe categories living in historic Guragheland in general. Historically, the territory referred to as the Guragheland has been known in three regional divisions, i.e., the West (Sebatbet Guraghe), the East (Silte), and the North (Sodo Kistane Guraghe) (Bahiru, 2002). However, after few years of establishment of the Guraghe Zone, it became clear that ethno-cultural communities which are living in this area do

² Transformation of customary law in this thesis refers to the change of customary laws from oral tradition to written form after deliberation and ratification within the framework of customary local institutions of ethno-cultural communities with the purpose of preserving and developing culture as well as prohibition of discriminatory and harmful customary practices against women

³ Accommodating ethno-cultural diversity is one of the main purposes of Ethiopian federalism. To this end, every ethno-territorial community/nation, nationality and people are guaranteed sovereignty and the right to self-determination including secession. See, Proclamation No 1/1995. "Proclamation of the Constitution of Federal Democratic Republic of Ethiopia" Federal Negarit Gazeta 1st Year No. 1. Addis Ababa (here after the FDRE Constitution) Article 8 and 39

not wanted to continue this tradition due to the greater significance visited on ethnicity in the newly introduced federal dispensation of Ethiopia (Nishi, 2005). As a result, the Silte ascertained its different ethnic identity from the Bete-Guraghe categories based on Article 39 of the FDRE Constitution, and established its own nationality Zone in the region succeeding from the Guraghe Zone⁴. There are also other ethno-territorial communities in Guraghe Zone such as the Kebena which has been recognized as distinct ethnic community from the Bete-Guraghe Categories (Markakis, 1998), and claim the right to self-determination, particularly, ethnic autonomy in the region as per the FDRE and the SNNPR Constitutions (Beza, 2016).

The central notion of the right to self-determination including secession in Ethiopian federalism is ensuring collective rights of ethnic communities and building a political community based on recognition and institutionalization of ethno-cultural autonomy and multiculturalism. This is welcomed by many political elites of ethno-cultural communities for guaranteeing autonomy and multiculturalism, on the one hand. On the other hand, it created feeling of suspicion among advocates of rights of women which considered the recognition of customary and religious institutions to regulate family relation as nullifying rights of women, owing to the existence of several discriminatory and harmful practices against women in many ethno-cultural communities in the country (Meaza and Zenebework, 2005; Biseswar, 2011). Many ethno-cultural communities in Ethiopia have patriarchic cultural practices in which women were oppressed and dominated⁵ both in the public sphere and in the domestic sphere of the home/family. These gender based injustice were/are

⁴ The new nationality Zone is called Silte Zone which is established in 2001. Regarding the communality and differences of the Guraghe and Silte identity as well as on the factors that led to ethnicization of the Silte identity see, Makoto Nishi, 2005, "Making and Unmaking of the Nation-State and Ethnicity in Modern Ethiopia: A Study on the History of the Silte People", African Study Monographs, Suppl. 29

⁵ The meaning of oppression and domination as the manifestations of social injustice are taken from Young's work. There is no all-encompassing definition of oppression but it can be understood as an institutional constraint on self-development which can be expressed by one or all of the following faces: exploitation, marginalization, powerlessness, cultural imperialism and violence. Domination refers to structural or systemic phenomenon that excludes people from participating in determining their action or the conditions of their actions. See, Iris Marion Young, 1990, Justice and the Politics of Difference, Princeton, Princeton University Press, Chapter 2; Frank Lovett, 2010, "Cultural Accommodation and Domination", Political Theory Vol. 38 No.2

underpinned by custom and religion of many ethno-cultural communities as well as legal system of the country for long, particularly, in the private sphere of the home and the family⁶ though these did not prevented accommodation of the family arena.

The FDRE Constitution guarantee regional state power to make regional family law taking into account the cultural contexts of their region⁷ and respecting human and democratic norms set in the FDRE Constitution⁸. Every ethno-cultural community has also the rights to use customary and religious laws and courts in the family arena⁹, respecting supremacy of the Constitution, based on the consent of the parties (exit right have been guaranteed), and based on detailed laws that would be enacted¹⁰. These are constitutional mechanisms set to protect rights against discriminatory and harmful practices that may be perpetuated in the name of collective rights/autonomy.

1.1. Statement of the problem

Though the FDRE Constitution sets limits on the exercise of collective rights, ethnic based federal system has been criticized for the risk of rigidifying sub-national identity which results in loose institutional system for the protection of rights of women (Shacher, 2004: 94). The experience of some regional states in Ethiopia which have not yet enacted regional Family Code¹¹ may be one indicator of this. There are also literatures that indicate limited enforceability of right of exit for women, particularly in religious court¹². But there is no research that indicate how exit right has been applied in customary courts in

⁶ For instance, in the 1960 Ethiopian Civil Code, women were considered as minors in her marital life which must be headed and guided by the husband (See The 1960 Ethiopian Civil Code, Article 581 and 635/1)

⁷The FDRE Constitution, Article 52/1, 52/2b and 39/2

⁸The FDRE Constitution, Article 41/1 and 91/1

⁹The FDRE Constitution, Article 78/5 and 34/5

¹⁰The FDRE Constitution, Article 9/1 and Article 34/5

¹¹ This is particularly the case with regard to Ethiopian Somali region and Afar regional state in Ethiopia

¹² Getachew Assefa, 2011, "Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on their impacts on the Protection of Human Rights", *East African Journal of Peace and Human Rights* Vol. 17 No 1, PP. 173-194; Mohammed Abdo, 2011, "Legal Pluralism, Sharia Courts, and Constitutional Issue in Ethiopia", *Mizan Law Review* Vol. 5 No1; Berihun Adugna Gebeye, 2013, "Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State", *Women in Society* Vol. 6

Ethiopia. Scholars criticize exit right for its material and socio-psychological costs that pushes women to accept the status quo even if it is discriminatory and harmful (Retiman, 2004; Shacher, 2000; 2001). Besides, exit right endangers multicultural citizenship rights of women when it pushes the insider to claim to leave the jurisdiction of the community in order to get protection from the state institution or the judiciary (Shacher, 2001).

In Ethiopia to enforce right of exit¹³, some detailed laws have been set in the Family Codes (both at federal and sub-national level)¹⁴. However, some of the detailed laws seem to contravene supremacy of the Constitution by making enforcement of exit right dependent on consent of customary local institutions/elders in case of divorce request due to marital dispute¹⁵ rather than disputing parties as it has been stated in the FDRE Constitution¹⁶. The impact of this kind of detailed law to leave intra-communal jurisdiction on a woman who seeks justice in her marital life has been dealt in this thesis.

Federalism in Ethiopia, particularly the guaranteeing of the right to self-determination and cultural rights, have inspired community based CSO and political elites of ethno-cultural communities in Guraghe Zone to transform their customary laws with the objective of preserving and developing once culture as well as prohibiting discriminatory and harmful practices against women. However, in the processes of transformation as well as in the transformed customary laws of different ethno-cultural communities in Guraghe Zone, several limitations have been observed that undermines rights of women. One of the major limitations is failure to apply human rights principles and democratic norms vis-à-vis women and autonomy of the communities concerned. Though the creation of self-ruling local government

¹³ In the FDRE Constitution right of exit have been set under Article 34/5

¹⁴ In Ethiopia there are eight Family Codes, one for federally administered cities, i.e., Addis Ababa and Dire Dawa; and other seven regional states have also their own Family Code each

¹⁵ See, for instance, the SNNPR Family Code, Article 91/1-4

¹⁶ Article 34/5 of FDRE Constitution stated that “This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. particulars shall be determined by law”

units in Ethiopia federalism allows the integrated and collaborative functioning between customary local institutions and local government institutions (Addisu, 2015), this is not the case in Guraghe Zone. There is situation where customary local institutions function parallel to or detaching itself from local government institutions in a way that undermines the existence/legitimacy of the state (in this case local government unit). Women have hardly participated in assemblies that deliberated and ratified transformed customary laws. As a result, the customary law documents though claimed to be transformed, still contain provisions that are discriminatory and harmful to women. Moreover, the transformed customary law documents were not exhaustive enough in the prohibition of discriminatory and harmful customary practices against women, such as the discriminatory and harmful customary laws of marriage and divorce called *anqiti* among the Sebat-bet Guraghe are not fully prohibited. In the transformed customary law of the Kebena the right of exit has been totally prohibited contravening limits set on autonomy.

The activities of preserving and developing once culture as well as attempts of prohibiting discriminatory and harmful customary practices against women through transformation of customary laws have been appreciated by scholars and cultural experts alike for its role of preserving and developing culture (Bahiru, 2002; Abidella, 2011). From the perspective of gender, the initiative from within to prohibit discriminatory and harmful practices against women is encouraged in Africa considering it as a mechanism of bringing cultural legitimization of human rights through internal discourse as far as it has been done in an inclusive forums (Deveaux, 2004; An Na'im, 2002; Ibhawoh, 2000).

The purpose of cultural legitimization of human rights is addressing the underlying causes of human rights violations from within in the context of wide spread violation of human rights in a given cultural community (Ibhawoh, 2000; An Na'im, 2002). One of the main criteria for successful cultural legitimization of human rights is the respect of democratic norms in the

internal discourse held to transform customary laws, particularly the inclusion of women's voice (Ibhawoh, 2000; Deveaux, 2004). In this regard one wonders to what extent the processes of transformation of customary laws as well as the transformed customary laws in Guraghe Zone have been in-line with democratic and human rights of women. Taking these into account, this research evaluated opportunities and challenges of accommodation of diversity and protection of rights of women in Ethiopian federalism based on empirical data gathered from three ethno-cultural communities in Guraghe Zone: Sebatbet Guraghe, Sodo Kistane Guraghe and the Kebena ethno-cultural community; and indicated areas where further policy making is required to promote and protect rights of women within ethno-cultural communities.

1.2. Research Questions

The main research question of this thesis is what kind of mechanisms are there to rectify injustice against women, and resolve conflict of culture and rights in Ethiopian federalism? The specific questions of the research are

- Do non-state institutions of ethno-cultural communities respect rights of women and limits set on autonomy in the exercise of cultural rights?
- What are the mechanisms set to safeguard rights of women against autonomy of ethno-cultural communities in the family arena? Are women making use of those safeguards to protect their rights? If not why?
- What are the opportunities and challenges of local government institutions in the promotion and protection of rights of women?
- What is the impact of coincidence of ethnicity and religion on the protection of rights of women at local level?

1.3. Objectives of the Research

The general purpose of this research is to examine the mechanisms set to address injustice against women in Ethiopian federalism, and mechanisms used

to resolve conflict of culture and rights within ethno-cultural community in the family arena at local level.

The specific objectives are

- To explore the observance of rights of women and limits set on autonomy in the exercise of cultural rights among non-state institutions of ethno-cultural community
- To assess the mechanisms set to safeguard rights of women against the autonomy of ethno-cultural communities and the level of empowerment of women to apply those safeguards
- To examine opportunities and challenges of local government institutions in the promotion and protection of rights of women
- To analyze the impact of coincidence of ethnicity and religion on the promotion and protection of rights of women

1.4. Theoretical and Methodological Framework

The theoretical framework of this research is intertwined multicultural and feminist perspectives that are underpinned by the human rights norms, what Reitman (2005) calls multicultural feminist standpoint. This theoretical and methodological framework is aimed at giving voice for all who are at the center of conflict of culture and rights in the resolution of those conflicts (Song, 2007; Deveux, 2004). Basically, multiculturalism promotes the equality of culture while feminism promotes gender equality. However, some ethno-cultural communities have cultural practices that undermine rights of women. This creates tensions between policies of multicultural accommodation and protection of rights of women. Feminism indicates that to solve this problem, the voiceless and passive citizenship status of women in many ethno-cultural communities made the search for solution as well as the solution itself too problematic (Yuval-Davis and Anthias, 1989; Yuval-Davis, 1997; Sandra, 2004). For instance, in the multicultural federations like Ethiopia, territorial

and cultural autonomy have been guaranteed to ethno-cultural communities in the family arena assuming that rights of exit and the principle of Supremacy of the Constitution would safeguard rights of women against autonomy of ethno-cultural community.

However, many ethno-cultural communities disregarding these constitutional principles deny women the right of exit from intra-communal institutions. Besides, they attempt to justify these practices based on autonomy guaranteed to the community using only the voices of men members of the community. That is why the researcher included feminist standpoint as theoretical and methodological instrument to explore the voices of women and their positions on some discriminatory and harmful practices justified by some men community members/leaders. In diverse society, feminism advocate that the cultural contexts of a community and women's voice need to be explored and heard simultaneously in order to transform discriminatory and harmful practices from within with limited intervention from the state in the affairs of autonomous ethno-cultural communities who passed through injustice committed by the state .

As a methodology, feminist standpoint theory accommodates differences of experiences among women by making the truth claim not totally dependent on the subject but as situated and discursive (Hekman, 2004: 230). The central theme of feminist standpoint theory contends that knowledge is situated in the material life of social actors (Hekman, 2004: 235), such as women as mother, wife, food providers etc. It argues that the discursive construction of reality is partly based on material reality women experience which can be shared through language. "The power of standpoint is precisely its ability to name experiences that previously were defined in masculine terms which made women's harms invisible" (Hirschmann, 2004: 324). Hirschmann argues that the experiences of women exist in a society dually as discursive and non

discursive; not only discourse materializes experience but also material conditions contract and shape discourses.

Besides, standpoint theory emanates from within a circumstance of shared oppression “which must be shared between at least some members of people and which is a function of political struggle with other people who are similarly placed vis-a-vis oppressive power relation” (Hichmann, 2004: 320). This also makes feminist standpoint an epistemology rather than simple perspective. Feminist standpoint theory has also its own approach to politics which is in line with its definition of knowledge: politics is considered as local and situated activity undertaken by discursively constituted subjects rather than grounded in absolute universal principles and enacted by political agents defined as universal subjects (Hekman, 2004: 234). Hirschmann writes: “As a way of seeing the world, redefining knowledge, conceptualizing social relations, and renaming experience, standpoint theory provides a powerful methodology for understanding “reality” as an ongoing process” (2004: 322). Hence, using multicultural feminist stand point the research can indicate factors that contributed for the perpetuation of discriminatory and harmful practices against women in the study area (if any). In sum, the integration of feminist standpoint theory as a theory and part of a methodology with autonomy, human rights and multiculturalism is used to produce knowledge that is situated and engaged in the women’s material life in the study area.

1.5. Method

This research is qualitative research based on an interpretive epistemology which look social reality as sets of meanings that are constructed by the individuals who participated in that reality with the aim of discovering the nature of those meanings (Gall and Borg, 2005: 305). As a case study research, its main method of investigation is in-depth field based exploration. The purpose of qualitative case studies is to describe, explain or evaluate social phenomenon (Gall and Borg, 2005: 306). The characteristics of case studies are

first studying the phenomenon by focusing on specific instances or cases. For instance, in this research customary law of marriage and marital dispute resolution get due attention starting from how these laws have been (re)deliberated and ratified by institutions of ethno-cultural communities. Secondly, the phenomenon of the case is studied in its natural setting. Thirdly, the study needs to combine or represent both the participants' perspective and the researcher's perspective which helps to make conceptual and theoretical sense of the case (Gall and Borg, 2005: 310).

Method of Selecting Research Participants

Purposive sampling techniques are used to select research participants in order to get credible data on issues raised in the research. Informants are purposively selected from officials, experts, elders and judges from the three categories of ethno-cultural communities in Guraghe Zone: Sebat-bet Guraghe, Sodo Kistane Guraghe and Kebena. Ordinary women members of these communities have also been selected from all the three ethno-cultural communities in order to increase the credibility of the data.

Data Collection Instruments

In qualitative research, data collection is characterized by gathering data in the field at the site where participants experience the issue or problem under study in their own context using multiple forms of data gathering instruments (triangulation) (Creswell, 2009:172). In case study, the data can be gathered from the nature of the case and its functioning, its context (historical, social, political, legal, cultural, etc.) in its physical setting and anything that the case is recognizable (Stake, 2005: 447).

The researcher has collected data in the field, i.e., in Guraghe Zone from February to March 2016, and September, 2016. The primary data are collected using interviews, focus group discussion and observation. Key informant

interview has been made with different individuals. These include four officials and experts from culture and tourism offices, five experts and officials from WCAOs, three formal court judges, one Sharia court judge, four elders that serve in customary local institutions, six members of Zonal and *Woreda* council, and three staff member of community-based CSO from Addis Ababa (see Appendix B). Interviews and focus group discussions have been conducted with women members of each ethno-cultural community: more than eight women have been participated in the interview and three focus group discussions have been conducted. Interviews were held in three rural *Kebeles* and in two towns, i.e., *Zebimolla Kebele* of *Kebena Woreda*, *Negesa Kebele* of *Abeshige Woreda*, *Gogiti Kebele* of *Sodo Woreda*, and in *Walkite* and *Bui* town (See Appendix B). The researcher used focus group discussion as means to gets stories of women's marital life. The communities in Guraghe Zone are bilingual, and those which participated in the discussion speak Amharic fluently besides their mother tongue. Non- participant observation is also part of the instruments of collecting data during interviews and focus group discussion. Observations include understanding of the points of discussion of research participants' even if it is not clearly pointed out, but confirmed by the researcher through follow-up interventions and triangulation. The data gathered using interviews and focus group discussion have been gathered in written and audio formats.

Documents of transformed customary laws are collected from Guraghe Zone, *Sodo Woreda* and *Kebena Woreda* Government Communication, Culture and Tourism Offices. From these Offices the researcher has copied the transformed customary laws of *Sebat-bet Guraghe*, *Sodo Kistane Guraghe* and the *Kebena* respectively. From the *Zone* and *Woreda* WCAOs different reports compiled on issues of family and women has been collected. Besides, different laws and proclamations at federal and regional level are also used as secondary source of data.

Data Analysis

In case study research, methods of data analysis can be classified into interpretational analysis, structural analysis, and reflective analysis (Gall and Borg, 2005: 315). In interpretational analysis, qualitative data are systematically and procedurally classified in a way that leads to the emergence of important constructs, themes, and patterns that can be identified by the researcher. In structural analysis, qualitative data can be analyzed using set of procedure that is “inherent features of the discourse, text, or events that the researcher is studying” (Gall and Borg, 2005: 316). In both interpretative and structural analyses, the researcher’s voice is silent or subdued. But in reflective analysis, researchers rely on their own intuition and personal judgments to analyze the data that have been collected. Interpretational and reflective data analysis methods, which require building patterns, categories, themes, and perspectives to analyze the data, are employed in this research. This method of data analysis gives the researcher flexibility in organizing the themes of analysis as well as in incorporating the researcher and research participants’ perspective.

1.6. Scope of the Research

The scope of the research is limited to examining institutional system for the promotion and protection of rights of women in the family arena, particularly in the conclusion of marriage and marital dispute resolution. Due to prevalence of discriminatory and harmful practices against women in many customary local institutions of ethno-cultural communities, changes/reforms brought at local level as a result of the introduction of federalism in Ethiopia that guarantee autonomy and multiculturalism have been thoroughly investigated. Autonomy to use one’s religion in regulating personal and family matters has been raised only when it has direct relation with the custom of ethno-cultural community. Only the contents of transformed customary laws related with rights of women in the family arena have been analyzed though there are other

provisions of transformed customary laws that positively and negatively affect rights of women. The role of local government institutions has been assessed from the point of view of eliminating discriminatory and harmful practices against women mainly in the family arena. Geographically, the scope of this research is limited to three ethno-cultural communities of the Guraghe Zone: Sebat-bet Guraghe, Sodo Kistane Guraghe and the Kebena ethno-cultural communities.

1.7. Significance of the Research

The rationale of this research emanates from the theoretical and methodological framework used to address marital problems women's face in their communities. To address problem of discrimination and and harmful practices against women within their community human rights frameworks have been used as the main and only framework in many researches. There is no research done integrating human rights framework with multicultural feminist standpoint as theoretical and methodological framework. This research is the purpose of filling this gap by using multicultural feminist stand point underpinned by human rights norms as a theoretical and methodological framework for the research. The research is thought to assist efforts of eliminating discrimination and harmful customary practices against women using mainly local institutions. In particular, it provides an insight on how autonomy and multiculturalism is understood and exercised vis-à-vis rights of women. Secondly, it will have significant contribution in identifying potential areas that require the intervention of the state in order to assist local institutions in their duty to protect human rights of women.

Guraghe Zone, one of the autonomous local government unities in Ethiopian federalism, has been chosen as case study primarily to see the impact of claim for ethnic autonomy on the promotion and protection of rights of women. This Zone is the first nationality Zone in showing crack on the assumed unified ethnic identity. The Silte-ethno territorial community challenged the unified

Guraghe ethnic identity, and later successfully succeeded from the Guraghe Zone and established their own ethnic Zone, the Silte Zone (Nishi, 2005). Secondly, the different ethnic communities living in this Zone are pioneers in engaging themselves to transform their customary laws and practices. Besides, different cultural experts consider the transformation of customary law by different communities of the Zone as a model, and advise other to follow the example. However, looking into the processes of transformation of customary laws as well as provisions of the transformed customary laws, the researcher has found that it is an arena that requires intervention of the state underpinned by an integrated knowledge on autonomy, human rights, multiculturalism and feminism to show the proper ways of transforming customary laws.

In Guraghe Zone, there are more than four ethno-cultural Communities, i.e., Sebat-bet Guraghe, Sodo Kistane Guraghe, Kebena ethno-territorial Community, Mareqo etc. However, I have chosen only three ethno-cultural communities, i.e., Sebat bet Guraghe, Sodo Kistane Gurghe and the Kebena ethno-cultural community for the purpose of this research taking into account mainly autonomy status of the community, religion, inspiring factor for transformation of customary laws, actors pushing for transformation of customary laws, actors pushing for protection of rights of women and primary motive of transformation of customary laws.

The Guraghes (both Sodo Kistane and Sebat-bet) have ethnic autonomy and they are self-ruling autonomous ethnic community or nationality Zone in SNNPR, while the Kebenas are not yet exercised self-rule/ethnic autonomy. This means in Guraghe Zone, the Guraghe ethno-cultural communities is not only local government unit in Ethiopian federal system but also self-ruling nationality Zone in which its experience can be a lesson not only for regular local government units but also for all self-ruling entities in Ethiopian federation whether it is Nationality Zone, Special *Woreda* or regional state. Besides, the Kebena has potential as well as claim for self-rule/ethnic

autonomy as per the FDRE and SNNPR Constitutions. The incorporation of the case of Kebena ethno-cultural community in this research is thought to give an insight on the impact of demand for ethnic autonomy by minority ethno-cultural community on the protection of rights of women.

In terms of religion among the Sebat-bet Guraghe there are significant people who follows Christianity and Islam, besides, practicing traditional religion. Historically, the Sebat-bet Guraghe are known mainly in their traditional religion/belief in *Waq* (Shack, 1966: 186) which has a close relationship with their customary system. The Kebena are predominantly followers of Islamic religion while Sodo Kistane Guraghes are predominantly followers Christianity. This gives an insight on the impact of coincidence of ethnicity and region on the protection of rights of women.

The introduction of ethnic federalism in the country is the main factor that inspired some members of ethno-cultural communities' to transform customary laws of their community. In Ethiopian federalism ethnicity is one of the main pillars to have autonomous territorial unit as well as to claim territorial 'ownership'/indigeneity. This party leads to revitalization of customary institutions in order to make ethnic differences vividly visible in order to have larger ethnically autonomous territory or ethnically autonomous unit (Nishi, 2005). This is clearly seen in the ethnic based disputes between the Sodo Kistane Guraghe and the Oromo (Markakis, 1998); between the Sebet-bet Guraghe and the Kebena as it has been discussed in chapter six of this thesis. Taking this into account this research aims to prove/disprove the theory that ethnic based federalism creates loose institutional system for the protection of rights of women due to competitive bargaining for autonomous unit (Shacher, 2001).

Community based CSO consisting of urban based elites are the main actors for the transformation of customary laws as well as that pushed for the protection of rights of women in the transformed customary laws in the case of Sebat-bet

Guraghe and the Kebena. This is believed to give an insight on the level of sensitivity of urban based elites of ethno-cultural communities for the promotion and protection of rights of women. In the case of the Sodo Kistane Guraghe leaders of customary local institutions are the actors for transformation of customary laws that incorporated the aim of prohibiting marriage related harmful practices.

The primary motive of transformation of customary laws varies among the three groups but directly and indirectly related with the inspiring factors, i.e., the introduction of ethnic federalism that guarantee ethno-territorial autonomy. Strengthen the link between the urban and rural Guraghe community to cope with the changing politico-legal system in the country is the primary motive of transformation of customary laws among the main actors of transformation of the Sebat-bet Guraghe customary law (Nishi, 2008). Overcoming emerging social challenges/problems by strengthening and developing customary local institution is the primary motive for the transformation of customary law of the Sodo Kistane Guraghe¹⁷, while exercising the rights self-government that includes preserving and developing once culture and identity is primary motive of transformation of customary law of the Kebena¹⁸. The primary motives of transforming customary laws among the Sebat-bet Guraghe and the Kebena community have direct relation with the new federal dispensation that makes ethno territorial concentration in a given territory the bases for self-government/autonomy. These motives of the main actors of transformation of customary law together with the absence of participation of women in the process of transformation of customary laws gives the impression that the objective of protecting rights of women is mainly done to legitimizing the works of CSO and support their primary motive in the views of the state. This research has the purpose of proving /disproving this assumption.

¹⁷ See, _____, 2000, Gordena Serra: The History of Kestane Bet-Guraghe Cultural Administration Structure, Walkite

¹⁸ See, Introduction Section of the Kebena Customary Law Document/ Boobane Galtita(2007)

Lastly, the research is also believed to provide an insight on accommodation of diversity and rights of women for policy-makers in federal system, to gender experts, family law scholars, scholars interested in institutional design for diverse society.

Table 1: Summary of rationale for selection of cases within the Guraghe Zone

Main characteristic	Sebat-bet Guraghe	Sodo Kistane Guraghe	Kebena
Autonomy status	Self-ruling Local Government/Nationality Zone	Regular Local Government/ <i>Woreda</i> with a distinct cultural identity	Regular Local Government/ <i>Woreda</i> with a potential for Self-rule/ Special <i>Woreda</i> /ethnic autonomy
Religion	Known in their traditional religion	Mainly Christian	Mainly Muslim
Inspiring factor for transformation of Customary laws	The Guaranteeing of ethno-territorial autonomy	Emerging societal challenges/problems	The Guaranteeing of ethno-territorial autonomy
Actors pushing for transformation of customary laws	Community Based CSO	Leaders of customary local institutions	Community Based CSO
Actors pushing for women's rights	Community Based CSO	Leaders of customary local institutions	Community Based CSO
Primary Motive of Transformation of Customary Law	Strengthen the link between the urban and rural Guraghe community to cope with the changing politico-legal system in the country	To overcome emerging challenges/problems by strengthening and developing customary local institutions	Exercising the right to self-government by preserving and developing once culture and identity

1.8. Organization of the Chapters

This research is organized into seven chapters. The first chapter contains introduction, statement of the problem, research questions, and objectives. A brief theoretical and methodological framework have also been introduced in this chapter followed by explanation of methods, which include types of the research, method of selecting research participants, instruments of data collection and analysis. The scope of the study has also been briefly pointed out, followed by significance of the research.

The conceptual and theoretical framework of the research has been dealt with in the second chapter. In this chapter, the concept and meaning of autonomy and the types of autonomy have been discussed as the main instrument of accommodation of diversity. The rationale of ethno-cultural communities for claiming accommodation in the family arena, and the limitation of accommodation on the protection of rights of women within autonomous ethno-cultural community has been pointed out. Limits set on accommodation of culture vis-à-vis women in international human right instruments as well as the main human rights instruments on the rights of women have also been discussed focusing on CEDAW and African Protocol on the Rights of Women. Policies of multicultural accommodation in the family arena mainly revolve around whether the justice of rights approach or the justice of democracy approach better protects vulnerable individuals within ethno-cultural community. The main debatable issues and the centers of divergence and convergence between justice of rights and justice of democracy approach of governing marital rights are issues of minimum standards, the principle of consent/right of exit, and the level of intervention of the state in the affairs of autonomous ethno-cultural communities which are critically dealt in the subsequent subtitles of the chapter.

Chapter three is historical review of the relationship among women, ethno-cultural communities and the state in Ethiopia. It highlights the discourse of

historical injustice against women and ethno-cultural communities, and their collective struggles for rights and justice under different regimes. The chapter also deals with women associations and policy of the state towards women under different regimes. It is noted that from legislative point of view under the current regime of Ethiopia rights of women have got better recognition, which is partly credited on active participation of women in the collective struggle/civil war waged for autonomy and the policy of the ruling party. The main challenges women based CSO faces in the arena of advocacy of rights are also addressed in the chapter. Lastly, the chapter dealt with organization of WDA mainly in rural Ethiopia, which is used as instrument of creating hegemony of the ruling party policy of developmentalism using the free labour of women in the name of protection of the health related rights of the family.

The fourth chapter tries to relate autonomy, multiculturalism and rights of women in the context of the Ethiopian federalism and the SNNPR. In this chapter the researcher has dealt with the constitutional features of autonomy in Ethiopian federalism juxtaposing it with the practice in the SNNPR. Multicultural accommodation in the family arena vis-à-vis rights of women has been examined based on the FDRE Constitution and the SNNPR Constitution and Family Code. Structure of local governments and their power and responsibilities in relation to the custom of their communities under the SNNPR Constitution are also discussed.

Accommodation of diversity vis-à-vis protection of rights of women in Guraghe Zone, particularly among the Guraghe ethno-cultural communities, has been discussed in the fifth chapter. The geo-political history of the Bete-Guraghe category and inspiring factors for transformation of their customary laws has been examined. The customary local institutions and customary laws including the process of transformation customary laws and its limitations have also been investigated. The chapter elaborated e factors that hindered the participation of women in the transformation of customary laws. The contents

of transformed customary law in the family area have been thoroughly analysed in order to see the gaps of the transformed customary law vis-à-vis prohibiting discriminatory and harmful customary practices against women. The voice of women members of ethno-cultural communities on customary laws of marriage and marital dispute resolution has also been explored. Finally, the roles of local government institutions, particularly WCAOs and courts, in the enforcement of rights of women in the family arena have been dealt with.

Ethnicity, multiculturalism and rights of women among the Kebena ethno-cultural community are the issues analyzed in chapter six. The politics of identity among the Kebena and the surrounding Guraghe Community have been discussed focusing on the challenges surrounding claim for ethnic autonomy. The process of transformation of customary law and the contents of the transformed customary law in the family arena have been analysed emphasizing the place of women in this processes and in the custom of the community. The prohibited discriminatory and harmful customary practices against women, customary laws of marriage and marital dispute resolution incorporated in the transformed customary law of the Kebena have been reviewed and examined for its compatibility with rights of women enshrined in different human rights instruments. The perspectives of the Kebena women on customary laws of marriage and marital life have also been explored. Opportunities and challenges of Kebena *Woreda* local government institutions have also been investigated focusing on WCAO of the *Woreda*.

The last chapter, chapter seven, draws summary of the findings, conclusion and recommendation of the thesis.

Chapter Two: Conceptual and Theoretical Framework

2. Autonomy, Rights of Women in the Family Arena and Multiculturalism

2.1. Introduction

There is global attention on autonomy for institutional design for the accommodation of ethno cultural communities in diverse society since the 1990s. There are several types of autonomous arrangements that have the purpose of accommodating diversity and enhancing democratic participation of minorities to bring social justice within a state. Often, this purpose of autonomy has been challenged in newly autonomous ethno-cultural communities which have long lived customary and religious laws that exclude women from decision making, both in public and private sphere. One of the major areas where injustices against women have been widely seen among many ethno-cultural communities is in the family arena. For many centuries, the family arena was considered as a place where men have absolute control over women in general and their wives in particular. However, since the 20th century, this has been challenged by women's movements/feminism that leads to the intervention of the state in this arena using human rights as its main framework. Feminism has several concerns regarding women in newly autonomous ethno-cultural communities. This has lead to series of debates with scholars of multiculturalism on the appropriate form of institutional design that recognizes the intersectionality of claims for the protection of rights of women within ethno-cultural communities and autonomy of ethno-cultural community¹. There is also a growing recognition that rights of women cannot be protected only by institutionally guaranteeing human rights unless there is

¹In a multicultural context, states needs to respect rights of ethno-cultural minorities for accommodation as well as justice for women because "women members of ethno-cultural community are situated at the intersection of multiple social identities and they are marginalized not just in terms of gender but also in terms of ethnicity and other social identities" (Song, 2007: 6). On intersectionality of identities of women see also Kimberle Crenshaw, 1991, "Mapping the Margins: Intersectionality, Identity, Politics, and Violence against Women of Color", Stanford Law Review, Vol. 4: 1241, 1241-1299.

empowerment of women to solve the vicious circle of problems women face in their personal life, in the family and community.

To elaborate the above points, the concept of autonomy and its link with territory and ethno-cultural minorities as well as its types are reviewed first. Then, the rationale of ethno-cultural communities in claiming autonomy in the family arena, concerns of feminism in this regard, and theories of the way forward have been discussed. Rights of women in the family arena were reflected mainly based on African Human Right Instruments. Multicultural accommodation policies to protect rights of women within autonomous ethno-cultural community have been deliberated. State policies of intervention, non-intervention and characteristics of reforms from within are also discussed in this chapter. The chapter comes to an end by drawing synthesized conclusion.

2.2. The Concept and Meaning of Autonomy

Giving precise meaning and definition of autonomy² is difficult due to the multidimensional nature of the concept that can be applied with different meanings based on different contexts though attempts to define it is also common in the literature. In politico-legal context, in which this thesis focuses on, autonomy refers to collective rights of ethno-cultural communities as means to protect distinct identities and interests using different forms of institutional design. In this regard, Ghai considers the concept of “autonomy” as a generic term used to describe different forms of legal arrangement that “allow ethnic or other groups claiming a distinct identity to exercise control over affairs of special concern to them, while allowing the larger entity to exercise those power which cover common interests” (2000: 8). From the different forms of autonomous arrangements, federalism is one. In the context of federalism, autonomy can be regarded as mechanism of state construction/building in diverse society.

² Linguistically, the term ‘autonomy’ is derived from the Greek *auto* means ‘self’ and *nomos* means ‘law’

Wolff and Weller (2005) consider autonomy as an element of state construction that maintains territorial integrity in the context of post conflict diverse societies and claims for self-determination. They define autonomy as “the legally entrenched power of ethnic and territorial community to exercise public policy functions (legislative, executive, and adjudicative) independently of other sources of authority, but subject to the overall legal order of the state” (Wolff and Weller, 2005: 11). In this definition of autonomy power is transferred from the central government to autonomous entities substantively in the three functions of government when ethnicity and claim for self-determination become one of the sources of conflict. In this context autonomy also helps to prevent future conflicts.

Autonomy in diverse society has also a non-territorial character along with its territorial character. In this regard, autonomy can be defined as “the granting of internal self-government to a region or a group of persons, thus, recognizing partial independence from the influence of the national or central government” (Heintze quoted in Cornell, 2002: 249). Autonomy gives freedom for the autonomous entity in the form of partial independence that implies these entities are subject to national regulations in the areas that can be covered by national competencies.

McGarry and Moore also defines autonomy as “a form of self-rule that gives ethnic and national minorities substantial powers to govern their own affairs but falls short of independence” (quoted in Nootens, 2015: 35). This meaning of autonomy underlines its use as mechanisms of accommodating diversity within a given state structure. Skubarty sees autonomy as being “congenial to integration which presupposes the recognition of distinctive identities and cultures and participation of the members of distinctive groups in political, economic and cultural structures of the state” (Cited in Nooten, 2015:36). Creating integrative national political system that maintains societal cohesion is also one of the aims of autonomous arrangements.

There are consensuses among scholars that autonomy is part of internal self-determination rights which can be primarily applied for accommodating ethno-cultural communities in a state. Woff and Weller argue that autonomy is indeed “substitute for self-determination discourse within a state” (2005: 3). Often the discourses on the rights to self-determination are associated with secession. This makes the state to become reluctant to give autonomy for ethnic communities that have territorial claim. But the claim for autonomy among different ethno-cultural communities within a state may have two types: some are claims for territorial autonomy while others may claim non-territorial autonomy. In some cases autonomy can be both territorial that applies in a given territory designed to accommodate minorities, and non-territorial that applies to minorities dispersed throughout a state simultaneously (Suski, 2015: 97). Here, it’s important to look into the main characteristics of territorial and non territorial autonomy, their differences and similarities as well as who would be the potential beneficiaries of what kind of autonomy.

2.2.1. Territorial Autonomy

Territorial Autonomy (TA) has strong link with the concept of territoriality. It is often used as a means of empowering exclusively or predominantly one ethno-culturally distinct group with a compact area of settlement (Kossler, 2015: 249). This was seen in the failed communist federations and post-conflict multination/ethnic federations. In this regard, Kymlicka (cited in Kossler, 2015: 250) argues that “territorial autonomy promotes the idea of drawing boundaries between autonomous territories within a state in such a way that nationwide minorities turned into regional majorities”. This is partly because territory can be considered as part of identity. In relation to this, some federal Constitutions contain provisions on statements of identity and territorial (re)organization³. TA can be given symmetrically or asymmetrically. In many federations all territorial units derive their autonomous power symmetrically

³ The FDRE Constitution is a good example in this regard. See The FDRE Constitution, Article 39 and 47

from the federal Constitution and have identical relation with the central government. When the autonomy is regional, communities can be guaranteed asymmetrical power entrenched in the central Constitution (Ghai, 2000: 8). Explicitly or implicitly autonomous regionally dominant communities may be created to have strong or weaker link with the territory which can be determined by the legal regime of a given state. In this regard, Palermo identifies three kinds of approaches that indicate the link between ethnicity⁴ and territoriality.

The first approach is where territory becomes exclusive framework for self-government of ethnic communities because of geographic or historic reasons (Palermo, 2015: 15). In this respect, TA is conceived as the exclusive instrument for the protection, representation and participation of ethnic communities within a broader national framework. The second approach indicates that the link between ethnicity and territory is an arrangement where “ethnic and territorial elements do co-exist and interplay with each other, with the consequence that a broader leverage is left in determining which one should prevail in single case, depending on the subject at stake as well as on variable political priorities” (Palermo, 2015: 16). In this approach, unlike the first approach autonomous arrangement takes into account the heterogeneity of the communities settled in the territory. But territorial self-government is primarily designed for the protection of one or more community. The third approach is the context where ethnicity becomes instrumental in determining the reasons for territorial autonomous arrangements, but the institutional design of autonomy emphasize territorial dimensions than ethnicity (Palermo, 2015: 18). In this kind of design ethno-cultural communities themselves are responsible to determine the terms of self-government (Palermo, 2015: 19).

⁴ Ethnicity refers to affiliation or identification with an ethnic community which can be used as “political identity and claim to a specific role in the political process or power” (Ghai, 2000: 4). See also Philip Q. Yang, 2000, *From Ethnic Studies: Issues and Approaches*, State University of New York Press.

Though TA has significant place to address the concerns of territorially concentrated communities, it has also several limitations in addressing concerns of dispersed minorities as well as communities which do not need TA due to various reasons. On this subject, Cornell argues that territorial ethnic autonomy implies a form of institutionalized separateness that violates the norm of equal protection for all (Cornell, 2002: 250). Ethnic autonomy explicitly discriminates among communities on grounds of ethnicity, thereby leading to the lesson that socio-economic life and career turn on ethnic bonds. Secondly, autonomy by involving the different treatment of a certain community may result in protest by the other communities and thus lead to conflict rather than preventing it (Sander, 1991). It may also isolate the minority and prevent its members from political and economic participation in the larger sphere of the state (Lyck, 1995). Consequently, it makes dialogue between communities with society difficult, alienates component communities from one another and leads to segregation.

Kossler also argues that transforming national minorities into regional majorities or empowering one ethno-cultural community in the exclusion of others through TA simply reverses relations between the dominant and dominated communities (Kossler, 2015: 251). The target communities of autonomy which are transformed through TA into regional majorities are nationwide minorities, both numerically and in power. This kind of 'majoritarian ethnic TA' reproduces in smaller scale nation state models or 'nation regions' which "emphasize the cultural diversity of the state as the main argument in the political struggle for self-government, but at some time negates or at least down play cultural diversity of the region" (Kossler, 2015: 251). In other words, other groups within the autonomous territory⁵ are not recognized.

⁵ The other groups within autonomous territory can be called intra-unit minority, internal minorities, and minorities within minorities or non-indigenous people.

Majoritarian ethnic autonomy in the worst case scenario lead to ‘son of the soil politics’ which blatantly discriminates against unrecognized groups in the ethnic territory or in the best case scenario fails to extend the benefits of self government to these groups due to strict dualism this arrangement follows between those groups through assignment of their ‘own territory’ and those in this sense unrecognized (Kossler, 2015: 251).

Hence, TA, if it is not complemented by other elements of managing diversity⁶, by itself cannot solve issues of ethno-cultural minorities within a state.

Contemporary scholars are also against the view that autonomy for ethno-territorial communities’ entails ‘ownership’ to the territory by that specific ethnic community within a state. Concerning this, Palermo states the following

The overlap between one group and one territory reveals an interiorized ownership relation that goes back even to the very names of groups and territories: territories have usually been named after the population residing in them and vice versa, to the extent that makes it almost impossible, in most cases, which name developed first (2015: 20).

This means that ethno-territorial autonomy implicitly, and in some cases, explicitly leads to territories are properties of groups rather than the state. Autonomy may take this relation further and attempts to reflect ethnic rather than civic relation between ethnicity and territory that implies *autonomy* for a particular group. Palermo argues that such an “approach to autonomy-based ownership are getting outdated” (2015: 21). He further argues that “more comprehensive and sophisticated view of autonomy is emerging, focusing on territories rather than on groups “owing” them and including minority rights in

⁶ Other than TA, elements of managing diversity that help to protect the rights of dispersed national minorities include having a list of fundamental rights in the national constitutions, and using non-territorial autonomous arrangements alongside TA.

a wider perspective, which can be called *autonomy of*; of territories as such, rather just for one group thereby settled” (Palermo, 2015: 21). The shift of focus from one ethno-territorial community to territories as a whole is the result of globalization that lead to increasing attention to the rights of minorities sharing a territory, irrespective of their status as formally recognized minorities or not.

Being minority is dynamic nature which depends upon applicable laws of a state. As a result, there is a growing consensus among scholars that “modern instruments for diversity management should address diversity issues in general and should not only focus on the protection of predefined minority groups” (Palermo, 2015: 24). Besides, supranational and international organizations are also becoming part of enhancing protection of minority rights by guaranting minority rights legal instruments that lead to the decreasing importance of the state as the exclusive point of reference for determining minority positions (Palermo, 2015: 21). These global developments are also part of the reasons for the emergence of a non-territorial autonomy as complement to territorial approach to diversity.

2.2.2. Non-Territorial Autonomy

Non-Territorial Autonomy (NTA) is a complement to TA. NTA promotes de-territorialization of self-government as well as shared rule (Nooten, 2015: 55). “In non-territorial forms of autonomy, competences are transferred not in relation to a certain specific territory but in relation to a certain community, ‘irrespective of size and place of residence in the State” (Henrard cited in Nooten, 2015: 41). NTA is considered to be useful for dispersed and intermixed ethno-cultural communities who claim limited autonomy upon a specific matter (Nooten, 2015: 47). It is also considered as a means to enhance democratic participation of ethno-cultural minorities. “NTA would be recognized as a participatory arrangement under Article 25 of International Covenant on Civil and Political Rights (ICCPR) in so far as they have public

functions and advisory tasks” (Suski, 2015: 113). Nimni also see NTA as a means to expand democratic values (Nimni, 2015).

Communities claiming NTA can be called by generic term national minorities that can be ethnic, cultural, religious or linguistic. Peace defines national minority as:

[a]group numerically inferior to the rest of the population of a state, in a non-dominant position, well-defined and historically established on the territory of the state, whose members being nationals (citizens) of a state possess ethnic, religious, linguistic or cultural characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion and language (Cited in Nooten, 2015: 40).

Here, it is important to be cautious because some members of communities who have NTA may also have claim for TA based on other criteria used to guarantee TA. For instance, ethno-cultural community whose demand for religious accommodation has been responded using NTA may also claim TA based on their ethnicity if the legal regime of the state allows that.

Suksi (2015) argues that there are no international normative standards for public institutional design of NTA. The normative standards of NTA are found at national level which varies from one state to the other. NTAs do not entail the exercise of national law making power but only delegation of some public powers, authority, and tasks to an entity that presents itself as an autonomy arrangement for minorities by the national legislature (Suksi, 2015: 86). Unlike TA, NTA follows bottom up approach, but territoriality also matters in NTA to define the scope of the application of non-territorial rights (Kossler, 2015: 247). In some federations such as Russia, the territorial scope of application of NTA

follows the federal structure in a bottom up logic, i.e., institutions are established at local government level, then regional and then federal level.

There are different forms of non-territorial autonomy that can be used to address issues of religion, ethnicity, culture, and or language. These are power-sharing arrangements (political autonomy), personal autonomy, functional autonomy, and National Cultural Autonomy (NCA) (Nimni, 2015; Palermo, 2015; Suski, 2015). Cultural autonomy is often used as generic expression encompassing all forms of NTA.

To complement the democratic deficit seen in TA, i.e., exclusion of minorities within minorities from political participation, power sharing arrangement or consociational democracy⁷ can be applied (Lijphart, 1979; Palermo, 2015). Power-sharing arrangement or ethnic consociation democracy in a federal arrangement can be expressed as shared rule a kind of “governmental technique that aims at overcoming the majority-minority spillover by obliging all involved group through an institutional cooperation beyond their numerical ration” (Palermo, 2015: 22). This arrangement helps to overcome the limits of majoritarian arrangement by giving way for decision making that “none of the groups may be outnumbered (at least not without having been effectively involved) within the institution of the state or sub-national unit” (Palermo, 2015: 22). In federal system, one of the common institutions of power-sharing is called the Upper House/Second chamber.

The second form of NTA is personal autonomy. It refers to activities done by associations created by persons belonging to minorities to advance the position and cultural interests of their community under the private law of the state (Suski, 2015: 86). Personal autonomy can be expressed in institutional forms

⁷ About the meaning and principles of consociational democracy see Arend Lijphart, 1979, “Consociation and Federation: Conceptual and Empirical Links”, *Canadian Journal of Political Science*, 12:3

of civil law turning into functional autonomy (Suksi, 2015: 87). Article 27 and 22 of ICCPR contained the institutional implications of personal autonomy (Suksi, 2015: 87). These provisions indicates that “persons belonging to minorities have the right to use the horizontal relations in the realm of civil law to create platforms for such activities that may give expression to the linguistic, ethnic, or religious particularities of the group” (Suski, 2015:87). This can be done by registration as legal person if the law of a given state requires. For instance, in the education sector in Europe, public power can be delegated to private entity that makes the private entity to be part of public administration of the state (Suski, 2015: 88).

The third form of NTA is functional autonomy which Suski calls “functional autonomy within the line administration” to separate it from the purely horizontally organized personal autonomy that can be turned into functional autonomy. This kind of autonomy institutionally expressed in regular administrative agencies that are organized to provide separate services based on the same policy for the majority and minority in a given municipalities or level of government (Suski 2015: 89-90). For example, education both in minority and majority language, but based on the same policy. This form of autonomy is integrative in its nature.

Another model for the organization of NTA is National Cultural Autonomy (NCA). NCA can be defined as “right to self-rule by culturally identified groups in regard to matters which affect the maintenance and production of its culture” (Eide cited in Suski, 2015: 91). This is a situation in which the state undertakes not to impose its own regulations in the field covered by cultural autonomy, but leaves a reserved domain for the internal management by the community to which cultural autonomy has been guaranteed. Cornell also defines NCA as “scheme whereby members of particular ethnic communities are endowed with specific rights and duties in relation to the government” (2002: 249). This is used in certain countries for religious communities such as

in Israel for Muslims and Christians, in India for Muslims (Cornell, 2002: 249). NCA may also give special rights to preserve culture and language of community that have autonomy.

NCA can be either individual and community based or either voluntary or compulsory (Cornell, 2002: 249). Suski argues that “NCA could produce outcomes that separate the minority group from at least some of the public services that are provided for general population” (Suski, 2015:92-93). He also indicated some of the weaknesses of NCA. These include first the majority holding the state power actually has no rational incentives to welcome NCA if the chance for genuine conflict is low enough. Secondly, NCA has a normative background and objectives that can be understood to challenge the idea of the nation state. Thirdly, “the imagined communities” for NCA themselves may lack inner solidarity, connectedness and cooperation or they may not be able or willing to create or exploit NCA.

2.3. The Family Arena, Ethno-cultural Communities and Human Rights of Women

Family is one of the arenas where autonomous ethno-cultural communities exercise self-government/autonomy which can be territorial, non-territorial or both. This is mainly due to the role of the family and family law arena to maintain and perpetuate the distinctive cultural identities of communities (Shacher, 2001). Shacher identifies two main functions of the family arena integral to the maintenance and perpetuation of collective identity as well as distribute hierarchical power relation between men and women members of ethno-cultural communities. These are “demarcation function” and “distribution function” (2001: 52-54). In the demarcation function rules/laws of ethno-cultural communities in the family arena are used to maintain membership boundaries vis-à-vis the larger society. For this purpose, they mainly use women as cultural symbol who must pass through strict rule of the

community; for instance, when and who to marry is decided by the rule of the community rather than the individuals concerned.

In the distributive function rules of ethno-cultural communities in the family arena shape and allocate rights, duties, and ultimately powers between men and women within a community. In most instances, the distribution function of rules of the community in the family arena serves to entrench persistent inequalities which “often perpetuate women’s dependence on other family members for survival, crippling their ability to gain minimal economic self-sufficiency” (Shacher, 2004: 54). In this domain it defines property relations between the spouses in the events of death or divorce. This in turn determines the economic and parental consequences of this change such as spouse’s right to an estate or post-divorce support, control of land, or entitlement to child custody. Moreover, often rules/laws of ethno-cultural community in the family arena are set to deter female members of the community from demanding their rights even as per the rule of the community. Because those who claim their rights, besides being treated with unjust rules, they would face condemnation and exclusion from membership in the community, which would be too difficult to bear.

Often policies in the family arena are designed based on the global discourse on gender equality as sameness. This makes the family arena in many autonomous ethno-cultural communities to be seen as a place where widespread injustices against women co-exist with culture. This limits women’s fundamental rights as well as consolidates a system of unequal power relation between men and women. As a result, autonomy for minority ethno-cultural communities is widely criticized for perpetuating injustice against female members of the community. This has led to the academic debate on what kind of institutional limit on collective autonomy, and policy of a state helps to solve these problems. To solve the problem, the main framework promoted by different scholars is using human rights law to protect rights of all citizens in

the state which can also serve as limit on collective autonomy. But, there are several criticisms and debates among scholars on the framework itself and how to apply the framework. The criticisms against human rights as a framework for protecting rights of women come from feminists themselves⁸, while the debates on how to apply is between feminism and multiculturalism as well as within multiculturalism⁹.

Some feminists criticize the human rights law as androcentric, apolitical that does not address the problem of women in the private sphere, individualistic/western, etc (Radacic, 2010). However, the critics of these kinds of feminists deny the contribution of feminism itself for the incorporation of rights of women under different international human rights instruments as well as the progresses achieved in this regard though there are several things that needs to be done to fully implement women human rights everywhere. In relation to this Howard-Hassmann (2011: 436) states: “[t]he articulation of human rights of women was not simply the result of laws or proclamations about women’s legal rights, either by individual states or the international system, rather it was in large part a consequence of the worldwide spread of feminist movement”. She underlines that each wave of feminist movements has its own contributions for the coming into being of women’s human rights as we see today. For instance, the 2nd wave of feminist movements which began in the late 1960s was the result of the success of the first wave of feminist movements which won women’s rights to vote, and to gain other civil and political rights.

Howard-Hassman argues that “[t]he history of feminism is essential to understand the evolution of international women’s rights” (2011: 436). She believes that women’s human rights incorporate all types of feminism that emerged in the 2nd half of the twentieth century. To briefly point out, liberal

⁸ Shazia Qureshi, 2012, “Feminist Analysis of Human Rights Law”, *Journal of Political Studies*, Vol. 19, issue-2

⁹ Ayelet Shachar, 2001, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights*, Cambridge: Cambridge University Press; Will Kymlicka, 1995, *Multicultural Citizenship: Liberal Theory of Minority Rights*, Oxford: Clarendon Press; Oonagh Reitmen, 2005, “Multiculturalism and Feminism: incompatibility, compatibility, or synonymity?”, *Ethnicities* 5(2)

feminism was concerned with and instrumental for the guaranteeing of civil and political rights, especially right to non-discrimination and right to vote and take part in political life. Radical feminism, sharing this perspective, adds to it by making domestic violence against women criminal act of torture/crime against humanity. Radical feminism has also struggled for women's reproductive rights, sexual autonomy, safe and legal abortion rights, etc. Socialist feminism focused on economic, social and cultural rights such as adequate standards of health care, shelter and nutrition.

Postmodern feminism stressed on identity related rights of women in different social and cultural settings. The global discourse on protection of women's rights is often informed by the translation of gender equality as sameness, which is dominant form of meaning of gender equality in the global discourse for protection of rights of women. This did not take into account the role of translation of gender equality in some ethno-cultural communities at 'grassroot level' as gender complementarity through conjugal dialogue that indicates the significance of some customary laws in protecting the autonomy of women beyond maintaining and perpetuating collective identity (Østebø, 2015). In this regard customary law system among the rural Arsi Oromo in Ethiopia can be mentioned. Among rural Arsi Oromo, there is a local concept of respect and sacredness that plays an important role in regulating gender relation called *Wayyuu* (Østebø, 2015: 451). The custom of *Wayyuu* is moral Codes that regulate the roles and behaviours of men and women among the Arsi, by rejecting men's involvement in the domestic domain which in turn secures "women economic autonomy and indirect political influence" (Østebø, 2015: 454). It is particularly "associated with women and material objects" (Østebø, 2015: 452) such as milk pots and the *Sinqee*¹⁰ which should be sacredly respected. As per the customary religion of Arsi Oromo, these items are closely linked to women fertility and related with securing women's power, certain rights and to some extent protect women from violence. Though this kind of

¹⁰ Sinqee is "a stick which a woman receives on her wedding day as a symbol of her respect and rights" (Østebø, 2015: 452)

custom indicates that not all customary laws of ethno-cultural communities/multiculturalism are bad for women, the translation of gender equality may not necessarily be inline with universal human rights discourse. This inturn necessitates academic justification of women's rights as human rights embedded within the custom of ethno-cultural communities with different translations. In sum, Coomaraswamy argues that "[w]omen's rights activists used the international normative framework to pressure their societies for rights they considered pertinent to their own situation, while rejecting homogeneous rights discourse that assumed that women's interests everywhere were the same" (Cited in Howard-Hassman, 2011: 437). Hence, rights of women as part of human rights are recognized by human rights instruments mainly by the active involvement of all types of feminism.

But the achievements in protecting the rights of women in law may not be translated to empirical realities for all women (Singh, 2014; Howard-Hassman, 2011). However, this cannot lead to the conclusion that human rights framework does nothing to solve the problem of injustice against women as some feminist critic argues. Using human rights framework to combat injustice within ethno-cultural communities has an instrumental value in the processes of empowering women in the community that helps women to combat injustice in their life as well as within their community (Singh, 2014). This means that the recognition of women's human rights at various levels obliges ethno-cultural community as well as the state to consider rights of women at least as matter of getting political legitimacy by the state and international community respectively. But for women this can be an opportunity to empower oneself and their community as well as struggle for the protection of their rights¹¹.

The most important international human rights instruments include the 1948 Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social

¹¹ Regarding the meaning of empowerment and how it can be a means to access rights for women see Section 2.8 of this Thesis.

and Cultural Rights (ICESCR) as well as there are several other UN documents that contain provision on human rights of women (Howard-Hassman, 2011: 435). The various human rights of women are culminated in Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, which come into force in 1981 (Howard-Hassman, 2011; Singh, 2014). Almost all states of the world are part to this convention and have the obligation to incorporate this convention in the domestic legal system and enforce it.

There are thirty articles in CEDAW divided into six parts (Banda, 2005: 57-58). The first part (Article 1-6) deal with the definition of discrimination, state obligations, provision on temporary special measures and provision on the suppression of trafficking and exploitation of prostitution of women. The second part (Article, 7-9) discusses women's participation in public and international life as well as nationality rights. Such issues as socio-economic rights, including education, employment, health and specific development oriented provisions pertaining to rural women are treated in the third part (Article, 10-14). Part four (Article, 15-16) contains provisions on equality of men and women before the law, on top of equality in marriage and family life. Setting up and composition of committee which oversees CEDAW and reporting obligation of States under the Convention are incorporated in part five (Article, 17-22) of the document. With the coming into force of CEDAW Optional Protocol in 1999, the committee's functions have been expanded to include receiving communications and making inquiries into violation of rights. The Committee encourages NGOs to submit what are called 'shadow reports' which can supplement, or indeed challenge, some of the claims made by the state reports (Banda, 2005: 58). Finally, part six (Article, 23-30) of the Convention contained 'housekeeping' provisions including provisions for the ratifications, reservation, objections, thereto and invocation of International Court of Justice in case of inter-state disputes on the interpretation or application of the Convention.

CEDAW provisions are directed to bring substantive equality¹² than mere formal equality between men and women acknowledging, first, the ‘intersectionality’ of gender discrimination with discrimination based on caste, class, disability, ethnicity, sexual orientation, etc in many communities (Singh, 2014: 175). Secondly, discrimination is socially constructed; and laws, policies and practices can unintentionally have the “effect” of discriminating against women (Singh, 2014: 176). Thirdly, women have been discriminated against historically and do not necessarily come into a situation on an equal basis with men by only guaranteeing rights (Singh, 2014: 176). Hence, the Convention leaves obligation on states to give due attention to their own contexts in their policies and laws that are aimed at protecting rights of women.

It is also recognized that poor and rural women may not have access to justice and rule of law due to various reasons such as poverty, structural inequalities, pressures coming from traditional stereotypes, as well as lack of education and limited awareness of rights¹³ (Singh, 2014: 179). Besides, many women’s in developing country may have only access to informal justice system than state based formal justice system. This made it important to recognize and collaborate with informal (customary) justice system not only to facilitate women’s access to justice but also to end discrimination against women which often embedded in informal justice system (Singh, 2014: 81).

To improve the problem of accesses to justice and rule of law, it has been advocated that legal empowerment strategies such as legal aid services and legal literacy program needs to be applied both in the formal and informal justice system. But it is also recognized that “barriers to women’s access to justice are multidimensional and go beyond legal aspects” and may include

¹² Substantive equality refers to equality of results in real terms such as equality of opportunity, equality of access and equality of results.

¹³ Access to justice and rule of law are also challenged by lack of information on women’s rights violation on the part of police officers, harmful gender stereotypes in case of gender based violence such as marital rape, women’s credibility as victims and witnesses often challenged by police officers and judges such as by considering women’s clothing and behavior as provocative of the act which indicates that women’s rights are violated not only during the assault but also during the whole process of litigation (Singh, 2014: 180).

political, social, cultural, economic and psychological barriers (Singh, 2014: 183). In this context, there must be women's empowerment programs that integrate various levels of empowerment, i.e., individual and community, political and legal, etc. Though the concept of empowerment will be dealt in the last section of this chapter, here highlights of rights of women in the family arena with particular focus on marriage and consequences of marriage is to be deliberated in the section to follow based on human right instruments adapted to African context.

2.4. Rights of Women in Regional Human Rights Instruments: the African Perspective

To mitigate criticism of human rights as 'western' and to reflect continental perspective, regional human rights instruments such as African Charter on Human and Peoples' Rights (ACHPR). The ACHPR (here after the African Charter/the Charter) recognizes the importance of civil and political rights, socio-economic and cultural rights as well as their interdependency. The Charter prohibits discrimination based on sex and guarantee equality before the law. The Charter makes specific provision for the protection of rights of women¹⁴. The Charter is also considered as context specific, especially in highlighting inseparability of rights and duties of individual towards his/her family as well as in guaranteeing collective rights¹⁵ (Mutua, 2002). But sub Article three of Article eighteen and Article sixty of ACHPR require that international declarations and conventions be considered in the interpretation of the Charter. This makes clear that human rights operate within an international framework that demands the enjoyment of the Charter by all human beings (Banda, 2005: 47). In many respects, the African Charter incorporated rights of women enshrined in CEDAW. CEDAW also served as a model for the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereafter, African Protocol on Women's Rights).

¹⁴ The ACHPR, Article 18/3 states: "State shall ensure the elimination of discrimination against women and also ensure the protection of the rights of woman and the child as stipulated in international declarations and conventions".

¹⁵ The ACHPR, Article 27-29.

Despite the existence of the African Charter and the extensive ratification of CEDAW by African states, it had over time been clear that the issue of gender was not being seriously considered at the institutional level in Africa. This has led to the coming into being of Protocol to the African Charter on Human and People's Rights on the Rights of Women which is adopted by the African Union in Maputo on July 11, 2003, which is also called the Maputo Protocol. The justification for the adoption of the Protocol is reflected in the preamble which states that in spite of the existence of international human right instruments "women in Africa still continue to be victims of discrimination and harmful practices", hence the need for the protocol. It is also noted that the adoption of the Protocol is a determination "to ensure that the rights of women are promoted, realized and protected in order to enable them to enjoy fully all their human rights"¹⁶.

The African Protocol on Women's Rights has several similarities with CEDAW in addressing discrimination against women. It has also its own feature which reflects contextual understanding of problems. The similarities between CEDAW and African Protocol on Women's Rights begin with the definition of discrimination against women:

For the purposes of the present Convention, the term "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, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field¹⁷.

¹⁶ Last paragraph of the preamble of "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa"

¹⁷ CEDAW, Article 1

Similarly, African Protocol on Women's Rights defines discrimination against women as follows:

*"Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life*¹⁸.

Secondly, similar obligations are put on State parties to incorporate principle of equality between men and women in their national Constitutions and other legislative instruments¹⁹. Thirdly, State parties have also an obligation to "take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist"²⁰. On issue of culture, the African Protocol on Women's Rights makes clear that "Positive African values" have to be based on "the principle of equality, peace, freedom, dignity, justice, solidarity and democracy"²¹. Besides, the Protocol in its Article 17 guaranteed the right to "positive cultural contexts", which states that "Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies"²². The Protocol also states that "States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels"²³.

The points of difference between CEDAW and African Protocol on Women's Rights include first, the Protocol includes "girls" in its understanding of

¹⁸ African Protocol on Women's Rights, Article 1/f

¹⁹ African protocol on Women's Rights, Article 2/1/a; CEDAW, Article 2/a

²⁰ African Protocol on Women's Rights, Article 2/1/d; see also CEDAW, Article 2/f

²¹ African Protocol on Women's Rights, Preamble Paragraph 10

²² African Protocol on Women's Rights, Article 17/1

²³ African Protocol on Women's Rights Article, 17/2. Issue of culture is one of the most contested concept vis-a vis women's rights. Many of the reservation to CEDAW are also based on culture and religious interpretation of gender relation in the private sphere, highlight the fact that finding a common consensus on what constitutes equality will be difficult (Banda, 2005: 88).

women²⁴. Secondly, the Protocol incorporates comprehensive definition of violence against women²⁵ (Banda, 2005: 80). The Protocol is also considered as innovative in some of its provisions. This is primarily considered as the first human rights instrument to have substantive provision on reproductive rights and to make provisions, though limited, for the rights of abortion²⁶. Secondly, it contains provisions that prohibit harmful practices and comforts the controversial issue of female genital cutting/mutilation and provides that the practice is proscribed even if performed in a medical establishment²⁷. Moreover, the protocol adopts Gender and Development approach (GAD)²⁸. In doing so, although the Protocol does not have a specific provision on rural women as does CEDAW²⁹, it incorporates a lot of issues that covers concerns of rural women such as the right to food security³⁰, the right to live in positive cultural context³¹, the right to health and sustainable environment³², and the right to sustainable development³³. In general, the Protocol is considered as a radical document that takes women rights seriously though the commitment of states for its enforcement is questionable in many African States (Banda, 2005). For instance, the Protocol is signed, but not ratified by many African states including Ethiopia.

The introduction of human rights principle in Africa by ratification and incorporation of international human right instruments adds to the complexity of the family arena which contained plurality of laws for long that simply co-exists with state laws or with a potential conflict (Banda, 2005: 87). The International Bill of Human Rights contains provisions declaring that family is the fundamental base unit of society and requiring the protection of family

²⁴ African Protocol on Women's Rights, Article 1/k

²⁵ African Protocol on Women's Rights, Article 1/j.

²⁶ African Protocol on Women's Rights, Article 14 and 14/2/c respectively

²⁷ African Protocol on Women's Rights, Article 5 and 5/b respectively

²⁸ GAD approach acknowledges the difference between men and women; culture operates in different way in different places; see women as agents of change rather than mere recipients. See also Section 2.8 of the dissertation

²⁹ CEDAW, Article 14

³⁰ African Protocol on women's Rights, Article 15

³¹ African Protocol on Women's Rights, Article 17

³² African Protocol on Women's Rights, Article 18

³³ African Protocol on Women's Rights, Article 19

life³⁴. In the African Charter, family rights are covered under Article 18/1. Although all calling for the protection of the family, which is seen as a group, the human right instruments such as UDHR and African Charter do not throw light on the obligation and duties of family members towards each other within the family unit (Banda, 2005: 78). Taking into account this gap and the potential conflict between the state obligations to protect the family and women's right, CEDAW and African Protocol on Women's Rights provide detail consideration of the content of rights and responsibilities within the family.

The detailed provisions of African Protocol on Women's Rights on marriage and family relations include Article 6 of the Protocol which states that "States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage". This provision obliges states to take national legislative measure that guarantees marriage to be based on the consent of both parties³⁵, the minimum age of marriage to be 18 year³⁶, encourage monogamous marriage, protect rights of women living in polygamous marriage³⁷, promote registration of marriage³⁸, and partners to choose their matrimonial regime and place of residence by mutual agreement³⁹.

Regarding divorce, separation and annulment of marriage, Article 7 of the Protocol states that "States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage". States have also an obligation to ensure that separation, divorce or annulment of a marriage shall be effected by judicial order⁴⁰; women and men exercises the some rights in this process⁴¹ and have reciprocal rights and responsibilities towards children⁴²; and equitable sharing

³⁴UDHR Article,16/3; ICCPR Article, 23/1, ICESCR Article, 10/1

³⁵African Protocol on Women's Rights, Article 6/a

³⁶African Protocol on Women's Rights, Article 6/b

³⁷African Protocol on Women's Rights, Article 6/c

³⁸African Protocol on Women's Rights, Article 6/d

³⁹African Protocol on Women's Rights, Article 6/e

⁴⁰African Protocol on Women's Rights, Article 7/a

⁴¹African Protocol on Women's Rights, Article 7/b

⁴²African Protocol on Women's Rights, Article 7/c

of joint properties⁴³ has also be guaranteed. The division of property on divorce is often complex by the existence of polygamous unions in many African states. The Protocol is silent about matrimonial property in polygamous marriage except its guarantee of the promotion and protection of rights of women in polygamous marriage. In some African states, such as the South African legislature have tried to address the issue of matrimonial property when the man was married bi/polygmously. The South African “Recognition of Customary Marriage Act 120 of 1998” explicitly provides that when a man has more than one spouse, the other spouses must be joined in the action and the interests of any other third parties considered (Recognition of Customary Marriage Act 1998, Article7/4/b).

Articles 20 and 21of the African Protocol on Women’s Rights are devoted to deal with widows’ rights and right to inheritance respectively in a way that reflects the African context. Regarding widows’ rights Article 20 states that “States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights”. This includes not being subjected to inhuman, humiliating or degrading treatment⁴⁴; to become the guardian and custodian of her children⁴⁵; and the right to remarry the person of her choice⁴⁶. Article 21/1 of the Protocol also states that “A widow shall have the right to an equitable share in the inheritance of the property of her husband”. This includes the right to live in matrimonial house and the right to retain the house in case of remarriage if the house belongs to her or inherited it. The protocol also states that “women and men shall have the right to inherit, in equitable shares, their parents' properties”⁴⁷.

Practically, there are many difficulties experienced by women in trying to get their fair share of matrimonial property or inheritance. The barriers include

⁴³African Protocol on Women’s Rights, Article 7/d

⁴⁴ African Protocol on Women’s Rights, Article 20/a

⁴⁵ African Protocol on Women’s Rights, Article 20/b

⁴⁶ African Protocol on Women’s Rights, Article 20/c

⁴⁷ African Protocol on Women’s Rights, Article 21/2

“ignorance of laws complicated by the plethora of marriage statutes; reluctance to demand their entitlement for fear of ostracism; socialization of women and pure discrimination” (Banda, 2005: 135). The difficulties are not only related to lack of commitment to use laws but there are also problem of access to justice for many African women. In this regard African Protocol on Women’s Rights guaranteed access to justice and equal protection before the law in its Article 8 which states that “Women and men are equal before the law and shall have the right to equal protection and benefit of the law”. In these regard states parties are required to take appropriate measures to ensure women’s has effective access to judicial and legal services including legal aid⁴⁸; to support to local, national, regional and continental initiatives directed at providing women access to legal services⁴⁹; to sensitize everyone to the rights of women⁵⁰; reform of existing discriminatory laws and practices in order to promote and protect the rights of women⁵¹, etc.

Despite the incorporation of these laws of non-discrimination and equality in national laws of many African states, women often do not use the laws due to several reasons such as lack of awareness, even when there is aware of the provisions of the law, there is often great reluctance to utilize it (Banda, 2005: 155). Scholars have argued that these problems might have been partly solved if women themselves have participated in the making of laws and its interpretation at local, sub-national and national level (Deveaux, 2004). In this regard Article 9 sub Article 2 of African Protocol on Women’s Rights states that “State Parties shall ensure increased and effective representation and participation of women at all levels of decision-making”. Women’s effective participation at local level where there are several discriminatory customary laws co-exist with national laws is believed to bring change or cultural transformation which is the main factor to address the underlying causes of

⁴⁸ African Protocol on Women’s Rights, Article 8/a

⁴⁹ African Protocol on Women’s Rights, Article 8/b

⁵⁰ African Protocol on Women’s Rights, Article 8/c

⁵¹ African Protocol on Women’s Rights, Article 8/f

human rights violation (An-Na'im, 1992; 2002). Women's participation in decision making is also believed to lead to democratization of the family assuming that in democratic society family relations are more egalitarian

The following section dealt with theories and debate on the types of justice a multicultural state needs to prioritize in order to promote and protect women's human rights practically in diverse society where conflict of culture and rights has been common.

2.5. Policies of Multicultural Accommodations: Justice of Rights or Justice of Democracy

Multicultural policies of accommodation for communities which have the history of oppression by State/majority communities of a state focuses on weighting and balancing the rights and values of different entities, i.e., those of individual, ethno-cultural community and the State. But there are differences among scholars of multiculturalism⁵² on which rights and values need to be prioritized to resolve conflict of culture and rights: sex equality and individual rights, autonomy of ethno-cultural communities, or responsibility of the State. Based on which criteria need to get priority, the policies to solve problem of discrimination and harmful practices against women in multicultural states can be broadly categorized into two: those which prioritize liberal values or justice of rights, i.e., judicial method of resolving conflicts of culture and rights; and those that prioritize democratic values or justice of authority, i.e., political method of resolving conflicts of culture and rights (Spinner-Halev, 2004). The main points of divergence and convergence on both categories of justice are on issues of minimum standards of living, on the nature and place of right of exit or the justification of consent, and on the kind of state intervention in intra-communal affairs in an intertwined way.

⁵² Multiculturalism is system that allows the existence of diverse culture as equal in the public arena (Mahaja, 2004:90)

The justice of rights approach presumes that states have responsibility to set minimal standards of living that enable individuals to have meaningful rights of exit, and to ensure the existence of robust exit rights that does not invite state intervention in the internal affairs of communities (Spinner-Halev, 2004; Weinstock, 2004; Reitman, 2004). The minimum standards of living necessary for the meaningful exercise of exit rights includes “freedom from physical abuse, descent health care and nutrition, the ability to socialize with others, a minimal education-basic literacy in the basic subjects of reading, maths, science, and mainstream liberal society” (Spinner-Halev, 2004: 160). It is argued that this standard empowers individuals to make a choice to leave unjust practices of community, and enter a society that cultivates different ways of living (Ibid). The justice of rights argument aimed at avoiding state intervention in the private sphere as long as minimal standards of living are fulfilled for all members of a community.

Of course, ethno-cultural communities may have practices that violate the rights of women, and the harms might be visible for anybody who is outsider or insider to the community. As per the justice of rights argument practices that violate the rights of women can be justified when the women under those practices consented/chose to do so voluntarily which underlies the political legitimacy of the practice (Okin, 2004). However, the consent justification must be seen critically. Friedman argues that the woman’s choices and views are reliable indicators of consent only under three conditions: the woman must be “able to choose among a significant and morally acceptable array of alternatives”; she must be “able to make her choices relatively free of coercion, manipulation, and deception”; and she “must have been able to develop, earlier in life, the capacities needed to reflect on their situations and make decisions about them” (Friedman quoted in Okin, 2002: 76). Appeals to women’s own choices about or preferences for their cultural traditions as justifying those traditions implicitly rely on placing value on the women’s autonomy. In sum, for a state which works for the fulfillment of all the above standards of social

life for women members of autonomous ethno-cultural communities, the existence of unjust practices within the community in the private sphere cannot justify state interventions in the internal affairs of autonomous communities. This is rather considered as in line with liberalist values of privacy, pluralism, and toleration (Spinner-Haleve, 2004). But in the absence of these kinds of minimum standards of social life that underppine informed consent, the intervention of the state can be justified as per the proponents of justice of rights approach.

The justice of democracy approach prioritizes non-intervention in autonomy of communities which have democratic legitimacy (Spinner-Halev, 2001; 2004; Deveaux, 2004). The minimum standards required from the state are “to defend and strengthen deliberation and decision-making practices that reflect a radical principle of democratic legitimacy” (Deveaux, 2004: 340). In a multicultural state to ensure democratic legitimacy, the state must work on deliberation process⁵³ to include the interests and needs of formally invisible members of the community by seriously participating and taking into account the views of ethno-cultural community members representatives, women member of the community, civil societies, scholars and the state itself in the negotiation, compromise and renegotiation of jurisdiction between the state and autonomous communities on conflicting cultures and rights (Deveaux, 2004; Song, 2007). In other words, the deliberative approach to solve conflict of culture and rights needs to be radically inclusive and democratic in the designing of autonomous communities’ institutions of conflict resolution in a way that does not invite easy intervention of the state. The newly autonomous communities “deep seated history of being oppressed by the state (or by others in the society, with the state doing little about it)” justifies for the need of only minimal kind of standards or interventions in the internal affairs of autonomous communities (Spinner-Halev, 2004: 168).

⁵³The political deliberative process Deveaux argues for is bound by three normative principle non-domination, political equality and reversibility (Deveaux, 2004-350-353)

Song (2007) also argues that the deliberative approach of resolve conflict of culture and rights promotes justice that respects both the rights of cultural minorities as well as women which are situated in the intersection of multiple identities. She argues that “treating people as equals requires ensuring that they have the opportunity to participate in collective decision making” (Song, 2007: 68). In multicultural contexts, the places of deliberation cannot be official political forum such as legislatures, court rooms, and electoral campaigns only; but also in a range of informal settings in civil society, including political demonstrations, the media, local communities, and cultural associations. Song (2007: 68) adds the following regarding this issue.

Informal deliberation is especially important when it comes to addressing conflicts minority cultural traditions since members of minority cultural communities tend not to have the same level of access to official political forum. The inclusion of a range of voices from minority communities is crucial for clarifying what is at stake in cultural conflicts and for devising contextually wise solution.

Hence, participation in the decision making process is taken as a key element for choosing the justice of democratic approach to resolve conflict of culture and rights.

Participation in deliberation and decision making process requires substantive conditions that must be fulfilled by the state such as ensuring basic rights of citizens’ political liberties, freedoms of conscience, expression, and association. Regarding the necessary minimal condition required for legitimate deliberative outcome, Song states the following:

[M]easures to ensure that individuals have equal opportunity to contribute to and influence over collective decision-making is also necessary, and these require attention to the resources people have, as well as their capacities for deliberation. Attention to capacities for

participation is especially important in culturally diverse societies in which minorities might face linguistic barriers or lack of familiarity with the needs and ideas that are necessary to formulate reasons accessible to others in intercultural dialogue. Here, it is important to think about how individuals might develop deliberative capacities through democratic institutions, including schools, the media, and associations, as well as what sort of influence disadvantaged groups actually have on deliberation (2007: 70).

Deliberative approach to conflict of culture and rights, besides fostering greater inclusion of cultural minorities, has several practical advantages. These are first; deliberation can help clarify the nature of cultural conflicts, both the nature of the interest at stake and the complex sources of conflicts⁵⁴. In some instances cultural values are not the center of cultural conflicts but rather the source of the conflict becomes power struggle over concrete material interests and/or governance structures between different functions within and between communities. In this situation it is important to distinguish which cultural conflict is purely internal and about power struggle on material resources rather than values. Deliberation can clarify the substance and the source of cultural conflict which helps to design context specific strategy of change (Song, 2007: 74). Secondly, the deliberative approach to conflict of culture and rights “expose instances of cross cultural hypocrisy and foster greater cross-cultural understanding” (Song, 2007: 75). Deliberation gives members of minority community the opportunity to challenge the dominant cultures stereotypes about their culture, as well as point out double standards that the state may deploy across different groups.

Deliberation over cultural conflict makes either the state to bear the burden of justifying the burden imposed on minority community practices, or minority community bears the burden of explaining how a particular law or policy of the

⁵⁴Cultural conflicts involve both struggle within minorities cultural community and struggle between cultural communities

state imposes a burden on them. If a community makes a reasonable case that some interests of minority community is at stake in a way that does not burden other members of religious or cultural communities, then the state must demonstrate “a compelling interest is served by upholding the law. If the state cannot demonstrate a compelling interest, then we need to ask how the burden might be more equitably distributed through some form of accommodation (by presentation and weighing of reason from both sides” (Song, 2007: 75). For instance, in this way polygamy might be accommodated but with qualification rather than living women in polygamous marriage unprotected⁵⁵.

In sum, in the policy of accommodation in diverse society the justice of democracy approach that advocates reforms from within needs priority than the justices of rights approach that advocates exit right. This is because right of exit or consent justification would be taken by the community as too much interventions in the internal affairs of the community which can face backlashes. The backlashes can take a form of what Shacher (2001: 11) calls reactive culturalism⁵⁶. The problematic nature of the right of exit which makes it unrealizable option to ameliorate the problem of injustice against women within autonomous ethno-cultural communities has been discussed in the next section.

2.6. The Right of Exit

Oonagh Reitman (2004) deals with three roles of exit: basic role, protective role and transformative role. The basic role of exit is widely exercised in liberal democratic states as well as for groups created mainly through association, while the protective and transformative roles of exit are taken as policy of multiculturalism to solve the problem of injustice within ethno-cultural

⁵⁵ Regarding issues raised in polygamous marriage See, Adrienne D. Davis, 2016, “Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality”, *Columbia Law Review*, Vol. 110 No. 8; Louise Vincent, 2009, “Polygamy in the Recognition of Customary Marriage Act”, *Empowering Women for Gender Equality*, No. 68; Christa Rautenbach, 2010, “Deep Legal Pluralism in South Africa: Judicial Accommodation of Non-State Law”, *Journal of Legal Pluralism* nr.60; Cynthia T.Cook, 2007; “Polygyny: Did the African get it Right?”, *Journal of Black Studies*, Vol. 38, No.2

⁵⁶ Reactive culturalism refers to the response of cultural community for multicultural accommodation policy of the state aimed at self-preservation by enforcing hierarchical and rigid interpretation of cultural tradition which can exacerbate disproportionate cost of accommodation on the less powerful members of the community.

communities. In its basic role, the right of exit is “an opportunity for member of cultural community to be or become a member of society in an unmediated manner, without going through the group and without become subject to its regulatory power” (Reitman, 2004: 190). The basic role of right of exit exists when there is a direct regulatory link between the individual and the state. In this situation, it is believed that any individual can leave the group without great obstacle whether the group practice is unjust or not. The justification for this belief is cultural groups in liberal democracy have no coercive authority over their members as well as if they have a coercive authority the community has a say in the construction and change of the rule of the group (Spinner-Halev, 2004).

Problematic nature of the rights of exit emanates in a situation where there are oppressive and dominating practices against women in which the ethno-cultural community have a visible and invisible⁵⁷ coercive authority over their members. The existence of injustice against women within ethno-cultural community makes the existence of option/alternative forum for the regulation of women’s right on more just grounds compelling. In this situation right of exit is expected to give protection for women against unjust practices of communities as well as gradually transform unjust cultural practices (Shacher, 2001). However, Reitman (2004: 192) argues that both the protective and transformative role of right of exit have limited realizability due to the cost of exit on members of ethno-cultural communities as well as ethno-cultural communities strategy of resistance to change which may result in strengthening value differences rather than narrowing it.

There are several orders of obstacles to exercise the right of exit which can be categorized into two: material and socio-psychological (Reitman, 2004: 192). One of the material obstacles of rights of exit is women’s relegation to the

⁵⁷The visible coercive authority is the autonomy given to the ethno-cultural communities which can be constitutionally guaranteed while the invisible one works along informal line such as ostracizing individuals from the community

private sphere which has no/little economic return that makes women economically subordinate to men for their survival. In case of divorce, many of the rules of ethno-cultural communities often let go the women empty handed etc. Reitman argues that material obstacles to exit are remediable to some degree by way of state policy though it is still a challenge for many women's in diverse society. However, in many circumstances the obstacles to exit are more of socio-psychological than material which makes women to stick and even support patriarchic traditions in their group.

The socio-psychological obstacles are “born of belief and psychological make-up, of fear of ostracism by family, friends, associations and community” (Reitman, 2004: 193). One may simply fear change and the unknown; fear the loss of moral support and sense of belongingness and rootedness derived from the community which is pretty hard to conceive in any situation (Ibid). Besides, cultural membership can be pervasively defining of one's sense of self. In this regard, Weinstock states that “loss of membership in identity conferring group [.....] is an assault on the very person underlying all possible calculation of benefit and cost, rather than being integratable by the person in full reckoning thereof” (2004: 235). Sometimes this cannot vary among religious based or ethnic based communities because in some instances religious belongingness defines ethnic belongingness (Reitman, 2004: 195). Often ethno-cultural communities punish those women who want to leave their community using their rights of exit by ostracism which is too hard to bear for an individual which may have many values s/he values in life except its injustice.

Unlike the material obstacle the socio-psychological costs of exit are not readily addressable by the state for identity coffering community member. “Even once the material difficulties of exit are addressed, the socio-psychological costs endure and they are likely to do so as long as the underlying patriarchy endures” (Reitman, 2004: 196). In this situation, the protective role of exit is seriously restricted and it has little use for a woman harmed by unjust

practices of the community. On the contrary, the threat of exit of members from the community may give greater voice for community leaders to influence the course of events so as to take away the need for exit. These become severe when exit is expected to play transformative role besides its protective role.

The transformative role of rights of exit as argued by Aylet Schacher (2001: 122-124) advocates for creation of cooperative and competitive division of jurisdiction between the state and autonomous communities that transform unjust practice to more just one due to community leaders' fear of losing their members to state jurisdiction. The rights of exit designed by Shacher is institutionalized partial exit which creates for individual members of community the possibility to "opt in" or "opt out" of specific autonomous community positions. The potential of the right of exit rely on collective community self-preservation instinct which would cause evasive action to be taken to prevent women from exiting intra-communal jurisdiction. This encourages changes from within the community because community leaders depend on their individual members' support for their survival; hence, they will be motivated to attune themselves to the needs of their members or encourages change from within the community.

However, Reitman (2004, 197) argues that this kind of designing rights of exit do nothing for women more than creating function within the community, i.e., those who challenge patriarchy and community leaders who see exit as a threat for the survival of their identity. Members who challenge patriarchy would be considered as betrayers by community leaders and "their demands are perceived as products of outside influence and therefore not legitimate" (Reitman, 2004: 199). Moreover, "[t]he symbolism of exit, as egress, may undermine efforts to reform the underlying patriarchy within a culture by linking reform and remedies to internal oppression with what is going on outside, in the surrounding society" (Reitman, 2004: 200). In case of communities whose existence is beleaguered under cultural diversity, cultural

communities resist cultural changes “in reaction to contact with the surrounding multicultural environment, a contact which exit and even the threat of exit merely exacerbate” (Ibid). Here, given the role woman has to play in demarcating identity, change regarding “women well be viewed as the first step down a slippery slope at the end of which lies cultural annihilation and full scale assimilation” (Ibid). Thus, group leaders engage in reforming and retrogressive harmonization of rules to create orthodoxy of their culture/religion (Ibid). But retrogressive harmonization of rules of ethno-cultural community may not always be bad for women (Ibid). Because rules of community, sometimes miss interpreted through time than original meaning and intention of the rule which is more in line with the rights of women⁵⁸.

Eric J. Mitnick (2003) criticizes Shacher transformative design of exit arguing that the treatment of individual will/consent is overly facile. Mitnick argues that the presence of options for individuals is only a necessary not sufficient precondition for jurisdictional competition. For Mitnick jurisdictional competition to be effective, individuals must not only have rights of exit but also the capacity to exercise such options (2003: 1659). But in multicultural context there are reasons to expect that capacity of individuals be limited. Mitnick, (2003: 1659) in this regards has stated the following:

[F]irst, while constitutive attachments are surely more susceptible to individual will than is sometimes imagined, they nonetheless are often quite difficult to abandon. Particularly the more vulnerable members of [ethno-cultural communities] may feel deeply obligated to conform to religious and other cultural dictates. Second, individuals socialized within a particular [ethno-cultural community] to be compliant-individuals socialized into vulnerability that may have a particularly difficult time suddenly exercising agency. Hence,

⁵⁸ See, Narendra Subramanian, 2008, “Legal Change and Gender Inequality: Changes in Muslim Family Law in India”, Law and Social Inquiry Vol. 33, Issue 3, PP 631-672

for the most vulnerable members of cultural groups to exercise even a partial exit, much more in the way of state-sponsored resources and intervention will often be required

Hence, Mitnick concludes that the guaranteeing of rights of exit in diverse society could neither automatically make women to leave the rules of their community, even if it is unjust, nor lead to transformation of unjust practices of community.

2.7. Intervention, Non-Intervention and Reforms from Within

Unfortunately protecting rights is not always the simple matter of getting the state to do so. Oppressed people will rarely look upon their oppressor as their liberators; they must have a say in their own liberation (Spinner-Halev, 2001: 113).

In managing problem of discrimination within ethno-cultural communities the guaranteeing of rights of exit is assumed to relief a state from intervening or to have only minimal level of intervention in the internal affairs of autonomous ethno-cultural communities (Reitman, 2004: 2006). However, scholars argue that in general multicultural policy in itself is an interventionist policy because given the interaction between the state and ethno-cultural community as well as the diversity within ethno-cultural community, “[t]he state inevitably affects in-group power relations and legitimizes certain interpretations of an identity group’s culture over other possible competing interpretations” (Shacher, 2001: 38). Besides, what constitutes a “private affair” in which many women are affected by unjust practices is in itself defined by the state’s regime of law (Seigel, 1996). For instance, personal laws for religious communities are constructed with the help of the state; the state appoints judges and influences the interpretation of the law in Sharia courts (Spinner-Halev, 2001). Reitman also argues that

Measures to make exit more realizable are likely to detract from its non-interventionist nature. To encourage people to exit is perceived by groups as intervening in their affairs. In such circumstances, a non-interference property of exit appears lost (2004: 207).

In addition, Weinstock (2004) contends that the rights of exit strategy for autonomous communities which have passed through the history of oppression and in a minority position in a state is premised upon a misguided view of membership in identity-coffering community which makes it inappropriate to ameliorate unjust practices within the community. This is because

[T]he exit rights strategy requires that individuals be able to act on the bases of calculation on the part of the agent of relative costs and benefits of continued membership in a group that might treat the agent badly. But the group in question are those that membership lends itself the least to such calculation, because of the identity-conferring properties that they tend to have (Weinstock, 2004: 245).

The identity coffering character of community membership makes a woman to feel that she has no choice but to continue to adhere to unjust rules/practices of the community rather than being ostracized from the community or receive very poor or bad treatment. Winstock concludes that to leave a community as it is (non-intervention at all), once the state offered autonomy would bring a better result in the process of changing unjust practices than the state intervention to defend the exit rights of the individual who has the effect of blocking internal reforms due to question that arise from the community on who really represents the community.

Spinner-Halev argues that autonomous communities which passed through history of state oppression have justifiable reasons in refusing to cooperate with the state driven reforms to protect individuals or ensure gender equality (200: 108). These justifications are related with justice claims of the community

and the consequence of the reform. First, the history of injustice by the state targeted on a specific community makes any kind of justice coming from the state questionable by members of the community in question. This is because, even if the reform “the state imposes may have changed from bad to good, the method of imposition of a change forced upon the group by an alien state remains the same” (Spinner-Halev, 2001: 94). Oppressed communities have better case than non- oppressed communities to have group differentiated rights such as cultural autonomy which is often guaranteed by the state; this autonomy itself has the effect of blocking external reforms or the involvement of the state in the internal affairs of the community. In this regard it is stated that

When discussing oppressed groups and their internal minorities, we must take in to account their history of oppression and their current relationship to the larger state. [.....] Newly formed good intentions [of the state] are not enough to cast aside deep sited oppression, and take the state as reformer. The group can rightly ask, should we believe the state will now act with our interests in mind when for years it has done the opposite? This will be the case even if the oppressed group is included in democratic proceedings. Minority groups, particularly if they are small, can be easily out voted. If the entire political community votes on matters that mostly affect the group in question, the minority group will almost surely still see the dominant state’s view forced upon it, even if group’s members get to go to the polls as well (Spinner-Halev, 2001: 94).

Secondly, the effectiveness of external reform on oppressed communities is questionable because the community in question takes into account their history of injustice seriously. For instance, the efforts of the state to protect individual rights disregarding how the state treats the community and its cultural values may end up making the individual less secured. In many contexts when change is imposed by an oppressor, either despondency or

violence is the reaction because members of the oppressed community may feel defeated yet alien in the culture of the oppressors, and unjust to community members (Spinner-Halev, 2001: 95). The state needs not only see justice of ensuring rights and equality for all but also needs to give attention to rectifying past injustice it inflicted on oppressed communities.

Scholars argue that in the circumstances of history of state oppression towards ethno-cultural communities, the better way of improving unjust practices of the community are internal reforms which took into account the new autonomy of the community which can be strengthened with the assistance of the state. “The problem that often result when change is forced upon a group- anomic, despair, anger, resentment, violence will not occur if change comes from within” (Spinner-Halev, 2001: 110). Though state involvement in the affairs of a group is morally dubious and of questionable effectiveness, it is also equally questionable to leave issues of personal law on the hands of cultural and religious leaders of communities. This makes distinction between interventions, non-intervention and reforms from within blurred when it is enforced in diverse society such as Ethiopia⁵⁹.

Then, the question would be what kind of involvement of the state facilitates reforms from within? Strengthening internal democracy and empowering vulnerable members of the group particularly women, are believed to be the major ways for facilitating reforms from within. Based on the assumption that prioritizing justice of democratic approach to conflict of culture and rights better resolves problem of injustice against women⁶⁰, it is argued that states involvement in the internal affairs of autonomous communities need to be restricted to assist communities to establish their personal laws and their interpretation democratically by making the whole community to participate effectively (Spinner-Halev, 2001). It is also anticipated that this approach may

⁵⁹ For instance, how the state and NGO use of religious leaders to combat FGM from within has been interpreted by the community as intervention from above (state). See, Marit Tolo Østebø, 2015, “Are Religious Leader a Magic Bullet for Social Change? A critical look at anti-FGM intervention in Ethiopia”, *Africa Today*, Vol. 60, No. 3, PP. 83-101

⁶⁰ See Section 2.5 above

have the risk of scarifying individual autonomy for collective autonomy or justified acceptance of patriarchal tradition; however, it is believed to bring better results in facilitating reforms from within which have better legitimacy rather than the externally imposed reforms by the state. Rather than attempting to impose reforms from above, as a last resort a state may help vulnerable members of community such as divorced women or widows without directly intervening in the internal affairs of ethno-cultural communities, either directly or by funding community based organization to give care.

In the personal law arena, empowering women members of ethno-cultural communities are believed to reinforce the process of internal democracy and efforts of bringing reforms from within. Reforms from within that include women empowerment have been considered as means of bringing social transformation and development including access to rights for women.

2.8. Women Empowerment: Means for Accessing Rights

The idea of women's empowerment is employed as a policy direction to change vicious circle of social problems with a bottom-up (actors-oriented) approach since the 1980s (Rowlands, 1995). This idea comes into being with the emergence of gender and development (GAD)⁶¹ agenda. The concept of empowerment is central to understand what it means by women's empowerment. Empowerment is one of the contested concepts which are defined in different ways by different scholars. Here, the researcher focus on the meaning of empowerment given mainly from the point of view of understanding the root causes of problems related with gender and its potential solutions.

⁶¹GAD discourse emerged due to the absence of the theme of gender-based discrimination in development projects or initiatives for women-specific development projects. Against these GAD calls for formulation of balanced policy for development and poverty alleviation, and its focus is not only on women but also on men, the study of material conditions of both genders, their socially structured behaviors and socially created opportunities and constraints that are inherent in their lives. GAD approach makes visible that power relation that exists between men and women in many societies lead to the situation of subordination that many women face (Rowlands, 1995: 7-8).

Power is a key concept for understanding what it means by empowerment. Rowlands argues that understanding the different ways of exercising power, i.e., “power over”, “power to”, “power with” and “power from within”, is important to define empowerment (1995: 8). “Power over” refers to some peoples having control or influence over others. In gender analysis, “power over” is wielded by men over men and women and that is domination (Rowlands, 1995: 18). The rest three are interrelated forms of exercising power, i.e., “power to”, “power with” and “power from within”⁶² and do refer to collective and individual exercise of power to have or create positive influence on oneself or community or society. The meaning of empowerment by Rowlands rests on the model of power being assumed by the user (Rowlands, 1995: 22). Hence, empowerment for Rowlands is “more than participation in decision making; it must include the process that lead people to perceive themselves as able and entitled to make decisions” (cited in Ibrahim and Alkire, 2007: 8) at individual and collective level.

Rowlands argues that empowerment can be seen from three dimensions. The first one is personal dimension. In its personal dimension, empowerment is about “developing the sense of self and individual confidence and capacity (which involves undoing the effects of internalized oppression)” (Rowlands, 1995: 22). The second one is the dimension of close relationships. In close relationship, such as within a family, empowerment is about “developing the ability to negotiate and influence the nature of the relationship and decisions made within that relationship (Rowlands, 1995: 22). Thirdly, collective dimension of empowerment that refers to involvement in political structure and collective action based on cooperation in a wide range of scales. In its collective

⁶²“Power to” refers to generative or productive power which creates new possibilities and action without domination or the ability to exercise choice and change external conditions. “Power with” refer to the exercise of power by a community or group to tackle problems together. “Power from within” refers to the unique strength that resides in each individuals humanity that come from self-acceptance and self-respect which extend to respect for and acceptance of others as equal. This is the result of critical consciousness. See, Sophie Charlier et. al., 2007, ‘The Women Empowerment Approach: A Methodological Guide’, Commission on Women <http://www.dgcd.be>

dimension empowerment can be divided into different categories from local level to a global level as well as local/informal and formal.

The three dimensions of empowerment are interrelated, i.e., personal/individual empowerment, empowerment in close relationship and collective empowerments. “Individual empowerment is one ingredient in achieving empowerment in the collective dimension, whether informally or formally, concentration on the individual dimension alone is not sufficient; neither does individual empowerment automatically lead to empowerment within close relationships” (Rowlands, 1999: 32). Hence, successful implementation of empowerment must bring change on each dimension, i.e., “in the abilities of individuals and collectivities of individuals to take charge of the identification and meeting of their own needs, as households, communities, organizations, institutions and societies” (Ibid). This implies for women’s empowerment:

[C]ontrol of their own lives to set their own agendas, to organize to help each other and make demands on the state for support and on society itself for change. With the collective empowerment of women the direction and processes of development would also be shifted to respond to women's needs and their vision. The collective empowerment of women of course, would bring with it the individual empowerment of women, but not only for individual advancement (Young quoted in Rowlands, 1999: 32).

Other scholars such as Keller and Mbewe describe empowerment as “a process whereby women become able to organize themselves to increase their own self-reliance, to assert their independent right to make choices and to control resources which will assist in challenging and eliminating their own subordination” (quoted in Rowlands, 1999: 28). Moser's define empowerment in terms of the capacity of women to increase their own self-reliance and internal strength which is identified as “the right to determine choices in life and to

influence the direction of change, through the ability to gain control over material and nonmaterial resources” (quoted in Rowlands, 1999: 29). Another scholar, Karl, define empowerment as “a process of awareness and capacity building leading to greater participation of women, to greater decision-making, power and control, and to transformative action” (Cited in Khan, 2013: 26). Women can empower themselves by obtaining some control over different aspects of their daily lives, power, structures including the power to change them.

Kabeer defines empowerment as a process of change by which those who have been denied the ability to make choices acquire such ability (1999: 437). Choice and change are key terms in Kabeer’s definition of empowerment. Choice implies the possibility of having an alternative which has different consequences on individuals’ life which can be categorized as first order and second order choices (Kabeer, 1999: 438). First, order choices are strategic life choices which are critical for people to live the live they want such as whether or who to marry, choice of livelihood, whether to have children or not, etc. The second order choices are less consequential choices which may be important to have a quality of life. The concept of empowerment refers to the expansion of individuals’ ability to make strategic life choices in a context where this ability is previously denied. Hence, empowerment aims to change or transform the condition of powerlessness⁶³ regarding strategic life choices (Ibid: 437).

The ability to exercise choice depends on three interrelated dimensions of power: resource, agency, and achievement (Kabeer, 1999: 437-438). Resource refers to pre-conditions necessary to enhance the ability to exercise choices that are available at various institutional domains as actual allocations as well as future claims and expectations that can be found in different rules, norms and laws (Kabeer, 1999: 438). Agency refers to “the ability to define once goals

⁶³Powerlessness is defined by Kabeer as failure to achieve one’s goals due to deep seated constraints on the ability to choice (1999: 438).

and act up on them” (Kabeer, 1999: 438). It is more than an observable action and encompasses the meaning, motivation and purpose individuals bring to their activity, their sense of agency, or ‘the power within’.

Agency can be exercised both individually and collectively in different forms. These are as decision making; bargaining and negotiation; deception and manipulation; subversion and resistance (Kabeer, 1999: 438). It has also both positive and negative meaning. In its positive sense, agency refers to individuals’ “capacity to define their own life-choices and to pursue their own goals, even in the face of opposition from others” (Kabeer, 1999: 438). In the negative sense- ‘power over’- agency refers to “the capacity of an actor or a category of actors to override the agency of others” such as through the use of violence, coercion, and threat (Kabeer, 1999: 438). Power can also operate without any explicit agency, i.e., the exercise of power as ‘non-decision-making (Luke cited in Kabeer, 1999: 438). This is when certain unjust outcome reproduces itself without being questioned. Resource and agencies constitute capabilities, i.e., “the potentials that individuals have for living the life they want, of achieving valued ways of “being and doing”” (Sen cited in Kabeer, 1999: 438). Singh (2014: 176) considering three aspects of women’s life, i.e., women’s ability to make decisions about earned income or family spending⁶⁴, trend in domestic capture intra-household gender dynamics and asymmetric power relation between men and women, and patterns in political voice, i.e., their participation in decision making, leadership and access to power, she concurs that women’s agency in these arena is slow in developing countries.

There is consensus among scholars that empowerment is processes of acquiring power for positive influence individually and collectively. The main actors in these processes are both the individuals and collectivities concerned at various levels. In this regard O’Neil, Domingo, and Valters argue that empowerment is not something that can be done to or for women rather women

⁶⁴ This reflects women’s control over their own lives and their immediate environment

themselves are the agents of their empowerment (2014: 1). The processes of empowerment requires the change of both actors and structures from within their contexts that moves power from the negative 'power over' to the 'power within', 'power with', and 'power to' in order to bring an empowered woman and realize just social order (Lakwo cited in Namabira and Judita, 2013: 87). Gennet also states that women's empowerment is a process by which women themselves play an active role to take ownership of their own destiny through expansion of their choices (2014: 149). Empowerment has to be driven by the actor or actors themselves. It cannot be given to someone or collectivities. Measure or action taken to empower women to be successful women themselves needs to take effective roles in the action itself to bring social change. In this regard, Spinner-Halev states that an "empowered woman can fight to change personal laws, or if law permits, they can opt out of the personal laws" (2001: 110). Nussbaum (2000) also argues that even religious traditions transform over time if women members of communities are empowered and have a say in reforming of community based laws. This is believed to bring better results in transforming injustice within ethno-cultural communities.

2.9. Conclusion

Autonomy has an important place in institutional design for diverse society in order to accommodate the concerns of ethno-cultural communities within a state and resolve/prevent conflicts that threaten territorial integrity. There are different forms of autonomy that can be applied in diverse society which can be broadly categorized under territorial and non-territorial. In federation, territorial autonomy is supplemented by one or more forms of non-territorial autonomy in order to promote unity in diversity. Ethno-cultural communities often claim exclusive power/autonomy in social arenas that are related with their cultural identities. Among these social arenas, the family is one. Because of the centrality of women and the family to maintain and perpetuate collective

identity, ethno-cultural communities claim exclusive power in the family arena though the intervention of the state is inevitable. Protection of human rights of vulnerable section of ethno-cultural communities, such as women is one of the main rationales for the intervention of the state in the affairs of autonomous ethno-cultural communities in one way or another.

However, there are debates on what kind of multicultural policy/intervention of the state helps to protect rights of vulnerable members of autonomous ethno-cultural communities. The debate is on what kind of combination needs to be promoted between the justice of rights approach (judicial model of resolving conflict of culture and rights) and the justice of democratic approach (political models of resolving conflict of culture and rights) to protect the rights of vulnerable sections within ethno-cultural community. It is argued that the justice of rights approach which aims at resolving conflict of culture and rights using the judiciary by guaranteeing individual right of exit works well in established liberal societies. In the context of diverse society where ethno-cultural communities has passed through state oppression, justice of rights approach or right of exit has limited realizability. Often women within ethno-cultural communities are not in a position to use their individual right to exit due to the material and socio-psychological cost of exit. This makes it important to combine it with the justice of democracy approach and give it a little more emphasis taking into account the historic relationship of ethno-cultural communities with the state as well as the context of the newly autonomous ethno-cultural communities as a whole.

Approaching human rights holistically without prioritizing either individual or collective rights is what makes the justice of democratic approach more preferable in diverse society. Democratic approach to justice minimizes the intervention of the state in the affairs of autonomous ethno-cultural communities by leaving issues that create conflict of culture and rights to deliberation by the concerned community to make reforms from within.

Deliberative approach in the making and interpretation of personal laws of ethno-cultural communities that give voice for women members of the community can be used as an instrument to transform discriminatory and harmful practices from within in a democratically legitimate way. Using simultaneously the two strategies, i.e., facilitating deliberation in the making and interpretation of personal laws of ethno-cultural communities, and empowering women is believed to bring social transformation from within that would result in protection of rights.

Chapter Three

3. Women, Ethno-Cultural Communities and the State in Ethiopia

3.1. Introduction

This chapter assesses the historic injustices against women and ethno-cultural communities that lead to the coming of federalism in Ethiopia and mechanisms used to promote and protect rights of women. In the modern history of Ethiopia, injustice against women and ethno-cultural communities had several common features as well as differences. The common features include formulating Constitution that recognizes neither the rights of ethno-cultural communities nor women, and if done to have only paper values, Civil Code that does not recognize gender equality and declares to abolish customary laws of ethno-cultural communities, the creation of women associations that neither address gender based injustice nor empower women. Though both women and ethno-cultural communities have passed through injustice, the injustices against women often have multiple grounds such as class, gender, nationality, custom and religion. Organized movements of women against injustice have been started within ESM underpinning the struggle for regime change. The change of regime in 1991 lead to the introduction of a kind of liberal Constitution that guarantees the right to equality and promises to rectify all forms of past injustice both against ethno-cultural communities and women. But the protection and promotion of constitutionally guaranteed rights of women is facing challenges related with the new state structure (federalism) as well as the process of building democratic system. These include reluctance of some regional state to protect rights of women in the family arena, women's machineries and associations continued to be used as instruments of control rather than being policy agencies for gender reform, and narrow institutional and political space for advocacy of rights.

The chapter begins with giving an overview of the place of women and ethno-cultural communities in Ethiopian history as a background to introduce the state and its relation with ethno-cultural communities as a whole and with women in particular. Women associations and movements in Ethiopia under different regimes, including the current regime, have been discussed. NPEW, rights of women under the FDRE Constitution and problems in the protection and promotion of these rights has also been discussed. Lastly, conclusion of the chapter has been drawn.

3.2. Women and Ethno-cultural Communities in Ethiopian History

There are scholars who indicate that patriarchal ideology was introduced in Ethiopia during the period of Menelik I around 1000 B.C. (Biseswar, 2011: 83). Menelik I was the son of the legendary queen of Ethiopia, Queen Saba (also known as Sheba) and king Solomon of Israel (Fiseha, 2010). There was myth that prior to and during the era of Queen Saba there was matrilineal society in the highlands of Ethiopia; and the mother's blood line was perceived as the main line of inheritance. When Menelik I came to the throne succeeding his mother, he changed the matrilineal societal set up by declaring that only his direct male descendant would rule the country¹ and would follow the religion of his father King Solomon (Brummelkamp cited in Biseswar, 2011: 84). This indicates the strong link between religion and patriarchy.

Though, since the period of Menelik I, it was declared that only the direct descendant of Solomonic dynasty should rule the country (Ethiopia), there were female rulers of the royal family who ruled directly or indirectly as regent of the King at varying periods through history. For instance, during the era of Zara Yacob (1434-1468), there were well known examples of female rulers. Nine of the daughters and close relatives of the King were appointed as governors by replacing disloyal principal counties (Pankhurst, 1990: 85). Among the women

¹This was documented in the FethaNegest, the traditional legal code or law of Kings in Ethiopia which was written in the 14th century A.D.

who were famous as worriers, Queen Yodit of Flasha in the 8th century, and Dilwenberra, the wife of the Muslim leader Ibn Ibrahim Al Ghazi or Gagn Muhammed (the left handed) in the 16th century, can be cited (Fiseha, 2010). There were also many elite women during the medieval period that ruled either directly or indirectly (as regent) or lead armies to fight in the continuous conflict of the country such as Itegi Elleni, Seblewongel, Mintwab, etc (Fiseha, 2010; Belete, 2001; Minale, 2001). But the presence of women leaders was considered as the exception than the rule in the medieval history of Ethiopia because the opportunity to rule for women is obtained only when that person/s was a member of the royal family.

In the modern history of Ethiopia, this tradition has continued as it was though there were very few women exceptionally fought for the well being and rights of women in a way that have a wider implication for the dignity of women equal to men as a human being. In this regard, Empress Tayitu, the wife of Emperor Menelik II who was the founder of modern Ethiopian state, can be mentioned as forerunner of activism for the rights of women in the country (Biseswar, 2011: 87; Belete, 2001). The Empress was also known as “valiant warrior”, diplomat, and great advisor of the Emperor. Especially during the first Italian invasion (1895-1896) Empress Tayitu was admired in her leadership skill she showed by commanding her own troops and female comp followers. She took part of the leadership credit for the defeat of Italian forces at the battle of Adawa². In her private life she possessed her own property and controlled her own army (Minale, 2001). She was also known in arranging dynastic marriage³ for a political purpose. “Having no children of her own, she gathered her relatives, cousins and nieces around her, using them to create alliance with other rulers through the arrangement of their marriage” (Biseswar, 2011: 86). This could be against the interests and rights of the

² Minale Adugna, 2001, “Women and Warfare in Ethiopia”, No. 13, *Gender Issue Research Report Series*; Belete Bizuneh, 2001, ‘Women in Ethiopian History: A Bibliographic Review’, Vol. 8 No.3, *Northeast African Studies*

³ Dynastic marriage was arranged marriage among different religious or warring groups to build solidarity, to ease tensions, and create alliance which had been practiced among rulers, kings and emperors (Bahiru, 2002: 118).

intended spouses but it was considered as culture and wisdom of politics of the time.

Empress Tayitu's contributions as activist and promoter of rights of women can be expressed in four areas though this had been done for women of her own class only (Biseswar, 2011: 88). In the first place, she recognizes the problem of arranged marriage and advice for the replication of European culture of premarital acquaint between future couples in Ethiopia. Secondly, Tayitu calls for divorce damages to be paid for women. Thirdly, she was protective of her sex; she listen to complaints of women in adjudicating disputes between a husband and a wife; brother and sister; father and daughter; mother and son. Though many of her roles have brought little or no change at that time, her agency was in the processes of self-transformation and change (Biseswar, 2011: 88). Biseswar underlines that these activities of Tayitu marks the beginning of protection of rights of women in Ethiopia though it was discontinued among her succeeding empresses of the country.

Following the death of Emperor Menelik II (1889-1913), his daughter Zewditu was crowned as Empress in her own rights in Ethiopian history. Zewditu had the title of Empress for fourteen years, but there was nothing during her period that could have been attributed to her. She was found to be more concerned to religion than politics. Next to Zewditu, the wife of the Emperor Haile Selassie I, Empress Menen was also devoted to her religion like Zewditu was (Tsehai cited in Biseswar, 2011: 89). Hence, the successors of Epress Tayitu failed to show much commitment or concern for rights of women.

The modern Ethiopian state comes into being through expansion and conquest of many ethno-cultural communities of the southern parts of the country at the end of the 19th century. There are debates on naming the processes of creating modern Ethiopian state vis-a-vis ethno-cultural communities of the country: some considered it as processes of unification/nation building, while other considers it as conquest and internal-colonization of ethno-cultural

communities (Teshale, 1995; Merera, 2003). The latter view is mainly based on the idea that the monarchs (1889-1974) used coercive power and follow a policy of assimilation as major strategy of creating Ethiopian unity and identity. They promoted Orthodox Christianity to be national religion, and Amharic language as sole national language of the state. In this period, many ethno-territorial communities were alienated from their land and become tenants of the ruling class. In this processes the language and ethnic communities that speak the language of the ruling class were expanded to the newly conquered areas. Though with the coming into power of the Derg⁴, land was nationalized and redistributed to the peasants throughout the country and the nationality question/national oppression continued as it was. The nationality question (Balsvik, 1985) and later the national oppression thesis (Merera, 2003) were first articulated by Ethiopian Student Movement (ESM) and these were the main factors for the downfall of Emperor Haile Selassie's regime (1931-1974)⁵.

As discussed below throughout the period of Emperor Haile Selassie's regime, gender relation was dictated by patriarchal norms and values both among speakers of the language of the ruling class as well as the newly conquered ethno-cultural communities. In this regard, Gennet (2014: 31) states that "[t]he doctrine of separate sphere governs the relationship between the sexes in many parts of Ethiopian societies where men were perceived as bread winners and heads of households who represent the family outside of the home, whereas women were relegated to domestic work looking after the children and the social well being of the family". In almost all ethno cultural communities of Ethiopia, women were considered as inferior to men, and this had been underpinned by politico-legal system of the country. The following section

⁴ Derg refers to the military junta which ruled Ethiopia from 1974-1991.

⁵ The Nationality question and later national oppression thesis analyses the assimilation policy of the state on ethno-cultural communities of the country that led to the creation of ethno-nationalist forces which took political power in the country in post 1991 period. See, Balsvik, Randi Rønning, 1985, *Haile Sellassie's Students: The Intellectual and Social Background to Revolution, 1952-1977*, East Lansing: Michigan State University, African Studies Centre; Merera Gudina, 2003, *Ethiopia: Competing Ethno nationalism and the Quest for Democracy, 1960-2000*, Netherlands, Shaker publishing

attempts to throw light on codified rights of ethno-cultural communities and women in the eras of the Emperor Haile Selassie I (1930-1974) and the Derg (1974-1991).

3.2.1. Ethno-cultural Communities and Women in the 1931, 1955 and 1987 Constitutions

With the coming into power of Emperor Haile Selassie I in 1930, the first written Constitution was consequently introduced in 1931⁶. The coming into power of the Emperor in general, and the written Constitution in particular, marked a new epoch of centralization that ended any kind of autonomous kingdom in the country which was expressed in terms of regional autonomy in earlier times⁷ (Assefa, 2007: 34). In the era of Emperor Haile Selassie I, the policy of centralization and assimilation has reached its highest stage using different legislations, besides the Constitution, such as the Civil Code of the 1960 which attempted to repeal customary laws of ethno-cultural communities. Moreover, the Constitution made belonging to the Solomon dynasty and professing of Orthodox Christianity key requirement for leadership or kingship⁸. Hence, both in the 1931 Constitution as well as the 1955 Revised Constitution⁹ of Emperor Haile Selassie I had no provisions on ethno-cultural communities' collective rights in all spheres of life.

⁶The Emperor has two motives in guaranteeing the 1931 Constitution. These are improving the image of the country abroad by conveying an impression of modernity through introducing a legal framework for government, and secondly, to use the Constitution as a legal weapon in his centralization policy. See, Assefa Fiseha Rev. Ed., 2007, *Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study*. Addis Ababa: Artistic Printing Enterprise; Tadesse Melaku, 2017, *Ethiopian Constitutional Law Past and Present*, Vol.II, Alpha Printers, Addis Ababa.

⁷ For the most part Ethiopian history, consciousness of unity and autonomy coexisted more or less in the balance the Emperor slightly prevailed over autonomous regional forces, i.e., the throne represented the symbol of unity and regional forces exercised decentralized power (Assefa, 2007: 34).

⁸ See, Article 3 of 1931 Constitution of the Empire of Ethiopia ; Article 17, 21, 23 and 126 of 1955 Revised Constitution of the Empire of Ethiopia

⁹ The major reasons that lead to the revision of the 1931 Constitution in 1955 were first the five years Italian occupation (1936-1941) has significant input in changing the attitude of Ethiopians towards modernization as well as Ethiopians who learned abroad and returned home started to challenge the legitimacy of the rule of the monarch. Secondly, Ethiopia as a member of the UN ratified the UN Charter which guaranteed democratic and human rights, as signatory state, Ethiopia has to revise its outdated laws. Thirdly, the federation of Eritrea with Ethiopia in 1952 leads to clash of basic principles and values such as while Eritrea is a republic, Ethiopia is a monarchy (Tadesse, 2017: 15-17).

The idea of rights of women was non-existent in the 1931 Constitution¹⁰. In the 1955 Revised Constitution, though there is no mention of rights of women, it contains some human rights ideas under chapter three entitled “rights and duties of people” (Article 37-65). These provisions can be considered as an elaborate regime of civil and political rights¹¹ (Asssefa, 2007: 24). Though the 1955 Revised Constitution incorporated human rights idea in general better than the 1931 Constitution, it remained to have paper value as the regime continued to seriously abuse them. Moreover, in the 1955 Revised Constitution it is clearly stated that “male of royal origin had priority over their female counter parts to ascend the throne even if they were not yet born or remotely related to a reigning emperor” (Tadesse, 2017: 4)¹². This reveals that women, regardless of their class, have been discriminated in leadership positions.

In 1987, the third Constitution of the state, which was called People’s Democratic Republic of Ethiopian (PDRE) Constitution, was adopted by the Derg¹³ and it became the first Constitution to explicitly recognize women’s rights, and the state as multicultural state¹⁴ (Aalen, 2011: 25). Chapter seven of PDRE Constitution is devoted to “Fundamental Freedoms, Rights and Duties of Citizens” which declares that there should not be any discrimination based

¹⁰Human rights guaranteed under the 1931 Constitution were the right to movement; liberty, privacy, property; petition and access to courts (see Article 22 to 28 of the 1931 Constitution of Empire of Ethiopia). However, these rights are also qualified with claw-back clauses, i.e., the rights can be taken away through legislation (Tadesse, 2017: 15).

¹¹The civil and political rights in corporate in Article 37-63 of the 1955 Revised Constitutions includes right to equality (non-discrimination), assembly, privacy, life, liberty, property, right to petition (the emperor), access to courts; right to speedy trial and to confront prosecutorial witnesses, legal counseling, and presumption of innocent until proven guilty, freedom from cruel and inhuman punishment, freedom of movement, of religion, speech and the press etc.

¹² See also the 1955 Revised Constitution Article 5, 6, and 13.

¹³Though the Derg proclaimed a constitution in 1987 after thirteen years it took political power, the basic principles of the Constitution have been lied down and practiced since the 1974 revolution. The revolutionary motto, the proclamations that abolished private ownership of land and nationalized rentable urban houses, the socialist ideology underpinning the political system etc redefined the state, the society and government (Tadesse, 2017: 28).

¹⁴ Recognizing one of the questions of Ethiopian Student Movement (ESM) that led to the revolution, immediately with the coming of the Derg to power denounced the cultural chauvinism of its imperial predecessor and proclaimed the equality of all ethno-cultural communities. The ban on the use of ethnic language was lifted although Amharic retained its official status. In the adult literacy campaign, it was decided to employ vernaculars where Amharigna was not familiar, using the Geez alphabet. Indigenous languages appeared in print and broadcast, and the first tentative attempts to study the history and culture of nationalities of the country were made. The Christian church also lost its official status, while Islam gained recognition and public observance of its major holidays (Markakis, 1998: 136-137). This has been practiced earlier to the coming of the Constitution and reflected in the 1987 Constitution.

on gender, nationality, and religion among citizens before the law¹⁵. Article 36, sub Article 1 of the Constitution declared that women have equal rights with men. Sub Article 2 of Article 36 of the Constitution “states that to make women equal participant with men in all aspects of life, the government would apply a policy of affirmative action”. Sub Article 3 of Article 36 addresses women’s health rights; and Article 37 of the Constitution talks about equal rights of women at and during marriage¹⁶. Though equality of women and nationalities¹⁷ has been declared by the Constitution, the provisions were not put into practice due to the civil war that overthrows the regim. To have clear picture of the rights of women and ethno-cultural communities under Emperor Haile Selassei I and the Derg regim, it is also important to consider the 1960 Civil Code and related laws.

3.2.2. Culture and Women in the 1960 Civil Code and Related Legislations

The 1960 Civil Code of Ethiopia was adopted with the aim of bringing legal unification in the country¹⁸. The Civil Code repeals and substitutes customary laws of ethno-cultural communities. Article 3347 (1) of the Civil Code provides that “Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed”. This provision aims to abolish all cultural rules/customary and religious laws in the country in all areas of civil matters that are/were included in the Code in which family matter was one. However, this provision is not more than legislative wish, because the state institution/courts were not accessible to many areas where the majority ethno-cultural communities live. As a result, many communities continued to use their own customary and religious laws to regulate their

¹⁵ PDRE Constitution, Article, 35

¹⁶ The other human rights incorporated in the 1987 Constitution includes rights to privacy, liberty, election rights, petition, defense counsel, freedom from retroactive criminal laws, freedom of conscience and religion, of speech, press, assembly, demonstration and association, movement and presumption of innocence until proven guilty.

¹⁷ See PDRE Constitution, Article 2 (1) and 2/5

¹⁸ This Code was highly influenced by European legal system. French jurist Rene David was the man that codified the Civil Law of Ethiopia. See, Liku Worku Haile, 2012, “A critical Analysis of Ethiopian Civil Code”, LMM Thesis, University of London.

relationships and resolve disputes both in the area of civil law as well as criminal law.

The different ethno-cultural communities of the state have different customary and religious laws as well as greater value and obedience to these laws. However, there was limited/no attempt to recognize cultural diversity of the state because of the objective of making the Civil Code bringing legal unification; and codification of the law using foreigner which has limited/no sensitivity to laws and values of the Ethiopian society. Due to this, there were resentments in society towards this Code. For instance, the Muslim community demanded for the re-recognition of Sharia courts¹⁹, as its existence was put in difficult situation by this Code which was later allowed to function side by side with the state court system by administrative circulars (Mohammed, 2011: 76). In spite of the Sharia courts, administration of justice was made the sole authority of the state though state justice system was inaccessible to the majority ethno-cultural communities of the country. As a result, customary institutions have been the de facto institutions that deliver customary justice for ethno-cultural communities. However, the absence of collective recognition of cultural rights has not meant that there is no consideration of culture at all in the 1960 Civil Code. Rather, it means that there is no recognition for cultural diversity of the state. But based on the grand policy of the then regime that promotes mono cultural and mono lingual state underpinned by patriarchal leadership, as it is stated in the 1931 and 1955 Revised Constitution, has been reflected in the formulation of rights and duties in the family law arena.

The provisions of the Civil Code in the family law arena, particularly the laws of marriage, were unjust and had little/no room for individual freedom such as choosing one's life time partner and equality of man and woman while entering

¹⁹ The Sharia courts were established in Ethiopia by proclamation since 1942. See Mohammed Abdo, (2011), "Legal Pluralism, Sharia Courts, and Constitutional Issue in Ethiopia", *Mizan Law Review* V. 5 No 1.

into marriage²⁰. From the conditions of marriage, the age of marriage discriminates between male and female. The Civil Code in its Article 581/1 provides fifteen years for a female while eighteen years for a male. Moreover, this Code institutionalizes the subordination of women in her marital life by making the man (husband) sole head/leader of the family entitled to guide the management of the family, protects his wife and watch over her relation and guides in her conduct²¹. It also makes the husband the only person who chooses the common residence²². In many of its provisions, the Civil Code clearly favored men dominance over women. This reflects internalized societal tradition which considers women inefficient to guide her conduct and her family. Hence, the Civil Code perpetuated patriarchal ideology in the private sphere of the home and the family.

Similarly, the 1957 Penal Code does not contain provision that criminalizes practices that inflict such harm on women as polygamy, early marriage, domestic violence, and/or female genital mutilation. In this regard, Gennet (2014: 167) argued that in addition to the failure of the legislator of the then regime to make harmful practices against women punishable act, the state was unable to educate and guide the public to dissociate itself from harmful practices against women for long till the coming of the new Criminal Code in 2004.

3.3. Women Associations and Movement in Ethiopia

Organized women association and movements in Ethiopian history began due to the threat of the 2nd Italian invasion in 1935 which led to the formation of Ethiopian Red Cross Society and Ethiopian Patriotic Association (Minale, 2001). Within these associations, women affiliated to the ruling class, mainly the daughters of Emperor Haile Selassie I, initiated to start women branches

²⁰ See, The 1960 Ethiopian Civil Code, Article 560

²¹ See, The 1960 Ethiopian Civil Code, Article 635, 637& 644

²² See, The 1960 Ethiopian Civil Code, Article 641

which aimed at mobilizing women to help war related activities. The first nationwide women organization called “Ethiopian Women Voluntary Service Association” was set up in 1935 with a similar purpose. After the end of the war in 1941 the name of this association changed in to Ethiopian Women Worker Association (EWWA) (Zenebework cited in Biseswar, 2011: 89). However, women of the country had benefited nothing from this association mainly due to the weakness of the organizers of the association to embrace the oppressed and dominated women. The association was created for few educated women of the capital, Addis Ababa. Bahiru (2014:222) stated that in the organizations established in the name of women, often women were expected to be followers rather than leaders. He raises, for instance, in 1956 the president; vice president and secretary of Ethiopian Women Welfare Association were men. Absence of role model of women leaders as well as absence/limited numbers of empowered women in the society might be factors for absence of women leaders.

Women’s active and conscious engagement in the country’s politics as well as for their emancipation began within the Ethiopian Student Movement (ESM) (Bahiru, 2014). Women in Ethiopian history started to be seen in higher education in the 1950s; however, their number was very few which grows slowly. For instance, the total number of female students in higher education in 1965 was below 5% of the total students of the institutions (Sylvain cited in Biseswar, 2011: 91). Of course, in 1968 there were some politically active female students, such as Martha Meberatu (who was killed in a failed plane hijacking, in 1972), who vibrantly participated in the activities of University Student Union of Addis Ababa (USUAA) (Bahiru, 2014: 226). However, their activism centered on the political problem of the country in general until Ethiopian Student Union (ESU) abroad underlines the need for separate women’s organization like the then socialist countries in which the students had been ideologically oriented. This led to the creation of a kind of first wave women’s movement in Ethiopia (Biseswar, 2011: 93, Bahiru, 2014).

Addressing “women’s question” becomes one of the areas of concern in ESM which was often raised and discussed with the “question of nationalities”²³ both with Ethiopian Student Union in Europe (ESUE) and Ethiopian Student Union in North America (ESUNA) (Bahiru, 2014). The discourse of “women’s question” first emerged at the end of 18th c in the communist and socialist literature. Its aim was the emancipation of women from capitalist (and feudalist) exploitation of labor to another form of labor without exploitation. In Marxist theory the “women’s question” was very weakly developed because it has focused only on actively engaging women in public life to avoid all evils of capitalism and to make a revolution successful. The model followed by the former USSR to respond to the “women’s question” was used as a model for many socialist countries including Ethiopia (1974-1991) (Biseswar, 2011: 107). The “women’s question” model of the former USSR makes the source of women’s problem as relegation to the household that led to discrimination and inferior position in marriage, divorce, etc. It assumes that once women are removed from the household, they would be totally emancipated. This became a reason for the emergency of working women’s movement in socialist countries. It was aimed at drawing women to socially productive labor for the success of socialist struggle. This had a major risk of “loss of women’s independent agency” because women’s full devotion to socialist ideology was the goal of their emancipation (Biseswar, 2011: 95).

Many members of the Ethiopian Student Union consider the “women’s question” as double oppression: class and gender; while some other members of the union, especially women, consider it as triple or multiple oppression: class, gender, religion and nationality. The student unions have also recognized the rights of women to organize separately to overcome these problems, which

²³The “question of nationalities” was first raised and discussed in the ESM and its publication since the 1960s (Balsvik, 1985: 277-289), and it was one of the radical agenda of the students movement that contributed for the downfall of monarchical rule and still shaping the Ethiopia politics. The ‘question of nationality’ was a demand for redefinition of the then Ethiopia identity that opposes the assimilation policy of Emperor Haile Sellasei I and mono-national and mono-cultural representation of the state by the regime of the time. Ideologically it was backed by Marxism-Leninism; and invasion the creation of democratic and egalitarian state where all nationalities of the state have been guaranteed the right to self-determination. See, Bahiru Zewde, 2014, *The Quest for Socialist Utopia: The Ethiopian Student Movement c. 1960-1974*, Addis Ababa university, James Currey

they believed could be achieved through anti-feudal and anti-imperialist revolution or socialist revolution (Bahiru, 2014: 225). This led to the creation of the first women study groups in North America and Europe in 1971 which later established World Wide Ethiopian Women's Study Group (WWEWSG) which started its publication in 1972 with '*Tanash Labadarit*' ('Arise, Ye Female Proletarian), which was later replaced by *Tanash Ityopyawit* ('Arise, Ye Female Ethiopian')²⁴ (Bahiru, 2014: 225). The WWEWSG created links with women's activists in the country through the agency of Gennet Zewde, and Marta Mebratu who distributed its publication in the capital and in the provinces (Bahiru, 2014: 225). In its publications WWEWSG focused on issues that trace the historical evolution of women's oppression²⁵; women's status under different customary laws²⁶ and women's rights in the Civil Code; role of educated women in Ethiopia etc. (Bahiru, 2014: 225).

The creation of the women's study group abroad as well as during the emergence of the 2nd wave feminist movements in the Western world, helped the students to contextualize some of their strategies of women's emancipation based on the situations of women in their home country. But there was no form of feminist awareness among women in the home country, Ethiopia, which could be translated into radical form of action (Biseswar, 2011: 98). Moreover, a student union abroad split and later clearly came as two leftist parties: Ethiopian People Revolutionary Party (EPRP) and Meison²⁷, the "women's question" was used as instrument to get women on board to expand the new party program (Bahiru, 2014; Biseswar, 2011).

²⁴Bahiru argues that the aim of changing the name of WWEWSG publication was in order to reflect the goal of ESM, i.e., national democratic revolution "which rallies all anti-feudal and anti-imperialist forces, rather than proletarian revolution which would be only the ultimate goal" (2014: 226).

²⁵ The historical evolution of women's oppression analyzed through the classical five stage of social evolution-communal, slave mode of production, feudalism, capitalism and socialism.

²⁶ The study focused on Amhara, Tigray, Oromo and Gurage ethno-cultural communities' customary laws.

²⁷Meison means All-Ethiopian Socialist Movement. Both EPRP and Meison were leftist parties; and their major difference lies on the leadership of the revolution and the question of popular government. EPRP argues the revolution should be led by 'proletariat' while Meison considered petty bourgeoisie needs to take the leadership. EPRP calls for the establishment of provisional popular government while Meison saw the revolution as a long term process and hence urged a gradualist approach emphasizing political education (Bahiru, 2014: 243-255).

Activism for women emancipation and rights started to take shape in the country after the 1974 revolution. In 1975, Women's Coordinating Committee (WCC) was established within Provisional Office for Mass Organization Affairs (POMOA). The students mobilized for "Zamecha"²⁸ in 1975 were considered as instruments to the duties given to WCC which had different branches. Clandestinely, this committee was composed of fifteen to sixteen women from EPRP and Meison (Biseswar, 2011: 102). The main strategies used by WCC to mobilize women to struggle for their emancipation were conscientious schemes in the form of lectures, seminars and political education forums.

However, the closure of the "Zamecha" after one and a half year as well as the ensuing of Red Terror²⁹ by the Derg lead to the eradication of radical and conscious women on the "women's question" from WCC who were members of EPRP and Meison. After the mid 1976, a new WCC which was fully staffed by Derg appointees replaced the previous WCC. The new appointee of WCC did not have any level of awareness on the women's issues. Due to this, at the beginning the focus of the women's question is seen as dual oppression. But this outlook, following the Russian model, was changed in 1978 by the Derg which considers class oppression supersedes gender oppression (Biseswar, 2011: 103). Biseswar argues that the takeover of WCC by the Derg marked the end of the 1st wave of women's movement in Ethiopia which was initiated and carried out mainly by student or educated/intellectual women.

²⁸ Zemacha, refers to "development through cooperation campaign". It was one of the early outcome of the 1974 revolution that sent around 60,000 university and secondary school students to the countryside to help the peasants to organize into peasant associations and to carryout various development and literacy activities. See, Randi Rønning Balsvik, 1985, *Haile Sellassie's Students: The Intellectual and Social Background to Revolution, 1952-1977*, East Lansing: Michigan State University, African Studies Centre

²⁹ The split, attack, and counter attack between EPRP and Ma'ison including EPRP clear opposition to the Derg, resulted in the Derg's launch of mass offense called the "red terror" (1976-78) which has primarily targeted on members of EPRP, and on anyone suspected of anti-revolutionary to execute and liquidate them. The terror made no distinction based on sex, religion, class or nationality which resulted in great trauma among many conscientious women who survived the state execution, killing and arrest who did not dare to speak or think independently any more (Biseswar, 2011: 105).

3.4. The Derg and Women Associations

The Derg established Women's Associations (WAs) throughout the rural areas of the country under Peasantry Associations (PAs), following the revolution beginning from 1975. All women above the age of fifteen were made to be members of these associations. These associations at the initial stage had the objectives of "securing the rights of members, monitoring their social, political and economic problem and establishing professional associations" (Biseswar, 2011: 108). But these objectives were not transformed from mere wishes mainly due to the appointment of new leaders, following the collapse of the earlier WCC leadership and the beginning of Red Terror in 1976.

However, the Derg led revolution and its government was appreciated for being creating opportunity as women were able to come out beyond their domestic boundaries and get organized. This move was the first in its kind in the history of the country. It was considered as a path-breaking experience that challenged the country's ancient tradition of confining women to the domestic sphere (Merera, 2003: 111). Women's participation in associations has been considered as a sign of their liberation by the government of the time. International Women's Day (IWD) or March 8 has started to be celebrated since 1975³⁰. Often, March 8 was celebrated by conferences/meetings throughout the country that calls for the attainment of revolutionary objectives instead of women's emancipations (Biseswar, 2011: 112-113). The other achievement of the Derg was its legal reform; the Derg constitution for the first time in the history of the country enshrined the rights of women which guaranteed women legal equality with men though it has only paper value.

The Derg regime created WAs as an instrument of control and to restrict women along its political ideology for the benefit of the regime. This has reached its climax in 1980 when Revolutionary Ethiopian Women's Association

³⁰ This is after more than 65 years later since it was introduced at a global level i.e. 1910/11

(REWA) was established with specific mandate and goals. The objectives of REWA were: one, enhancing women's political consciousness through socialist ideology and to make women take their rightful place in the production processes and make them politically and economically independent. Two, safeguard women's rights as mothers as well as participate women equal to men in the national democratic program to establish a socialist Ethiopia. Three, defend the country from internal and external enemies as well as to create an opportunity for women to have access to skill training (Gennet, 2014: 87). However, there was no democratic environment to enforce these objectives, and as a result REWA used all available compulsory measures to exploit women's labor and make them submissive to all the rules imposed by the Derg.

The compulsory measures taken to make all women members of REWA to take part in mobilization meetings include series of sanctions such as loss of food rations, land, house, employment, *kebele* services, in addition to being fined. They were forced to work for the state without pay in the form of quota and rations which were new forms of exploitation which made women "akin to slaves of the state" (Biseswar, 2011: 121). Gennet expresses REWA as "women's organization against women" (2014: 86). Biseswar portrays the extent of the problem within REWA as follows:

REWA seems to be devoid of any critical thinking capacity and took the Derg's misconceived views for granted. It perceived women's economic equality to be the solution to all women's problems [.....]. It never dealt with the more serious structural problems of subordination and inequalities of women which includes sexual division of labor, land rights for women, VAW, control of women's sexuality and fertility, the cultural and traditional practices of FGM, early marriage and abduction [.....]. It in general refrained from

challenging any issue that could be sensitive to the state (2011: 112).

In sum, REWA did nothing to protect and promote rights of women; rather it served as an instrument for the exploitation and abuse of women's rights by the state.

The other WAs during the Derg were EWWA which was marginalized and on the brink of extinction, but which was not closed by the regime. Many of the leaders of the association were in exile or in prison, and its properties were nationalized by the Derg which reduced it as a symbolic form of women's association. There was also a clandestine WAs called Ethiopian Mother's Association (EMA) which has emerged mainly in Addis Ababa in 1976 as wing of EPRP. The major objective of the association was to protest against the atrocities committed by the Derg against children and youth using the strategy of outcry or cry for help to inform the searched person that the revolutionary guards (the Derg) was around and to help the searched person escape (Biseswar, 2011: 107; Gennet, 2014: 112). However, its existence was limited to the capital, Addis Ababa.

3.5. Armed Struggle for Autonomy and the Place of Women

The ESM was credited for the idea of the "nationality question" and its analysis³¹, which can be regarded as one of the main reasons for the beginning of movement for autonomy through armed struggle/ civil war. The armed struggle was mainly lead by ethno-nationalist forces especially by Tigrian People Liberation Front (TPLF) from 1975-1991. The root cause of the war was the centralization and assimilation policy of the state which was consolidated by Emperor Haile Selassie I and the Derg continued adding more oppressive measures. The demand of many organized ethno-cultural communities of the

³¹ On nationality question see Randi Rønning Balsvik, (1985) *Haile Sellassie's Students: The Intellectual and Social Background to Revolution, 1952-1977*, East Lansing: Michigan State University, African Studies Centre; Bahiru Zewde, 2014, *The Quest for Socialist Utopia: The Ethiopian Student Movement c. 1960-1974*, Addis Ababa university, James Currey

country was a question of autonomy which was experienced by many regional lords before the reign of Emperor Menelik II³² as well as slightly seen during the period of Italian occupation (1936-1941)³³. The refusal of the state to hear these demands lead to the creation of ethno-nationalist forces under the leadership of TPLF/ EPRDF³⁴ to wage protracted war of liberation which overthrew the Derg regime. In the following paragraphs I examine the TPLF stand on the “women’s question” as well as the role and rights of women’s during the armed struggle.

All political parties and ethno-nationalist forces in Ethiopia that emerged in the 1970s including the Derg were shaped on the ideology of Marxism-Leninism. As a result all shares the “women’s question” and sets strategy to emancipate women but with a slightly different interpretations. In this regard TPLF, which was established in 1975 in Northern Part of Tigray, incorporated the agenda in its first manifesto³⁵ written in 1976. The manifesto recognizes equal rights of women with men and plans to eliminate all forms of social inequalities and social problems through class struggle. Biseswar argues that in its manifesto the “the party held similar view with the Derg that women’s active participation in politics/revolution/armed struggle was a sign of their emancipation/empowerment” (2011: 120). Based on this principle, TPLF has

³²In Ethiopia demands for autonomy and guaranteeing of autonomy is not a recent phenomenon. For instance, in the 2nd half of the 19th century, particularly the reign of Emperor Yohannes IV was known as a period of decentralized power or regional autonomy. See, Assefa Fiseha, 2007, *Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study*. Rev. Edn., (Addis Ababa: Artistic Printing Enterprise).

³³The period of Italian occupation was credited for initiation of the idea of ethnic autonomy, even ethnic federalism (Vaghaun, 2003). This is because the colonial governors were willing to give ethnic autonomy for ethno-territorial communities as part of their divide and rule policy by mobilizing the non-Amhara and non-Christian community against the regime. The governorships established along ethnic line during Italian occupation period were: Amhara, Oromo-Sidama, Harar (including Arsi), Somali, and Eritrea (including Tigray and ‘Danakil’) (Vaughan, 2003: 120). From within, some of the Ethiopian patriots were also looking in to a kind of ethnic federalism in order to accommodate the diversity of the country (Bahiru, 2002). Vaughan argues that similarity is observed between the attempts of territorial divisions during the Italian occupation period and the post 1991 ethnic federalism though the incumbent government does not want to create comparisons due to fear of exacerbated resistance for its pan Ethiopian national agenda. Italian occupation period for the first time showed the possibility of modern administration of Ethiopia on the basis of ‘the ethnic principle’ (Sbacchi, cited in Vaughan, 2003: 121) though with the return of Emperor Hail Selasia I this was returned again to recentralization.

³⁴ EPRDF (Ethiopian People’s Revolutionary Democratic Front) is a coalition of four regionally based parties. These are TPLF, Oromo People Democratic Organization (OPDO), Ethiopia latter Amhara People Democratic Movement (EPDM/APDM) and Southern Ethiopian People’s Democratic Movement (SEPDM)

³⁵ This Manifesto was the major political document of TPLF which informs the political direction and rules of the party which succeeded in overthrowing the Derg regime.

established women wing, and women were actively recruited as combatants and comrades. To this end, Women Fighters Association of Tigray (WFAT) was established (Merera, 2003: 111) to mobilize women for the objectives of the struggle, i.e., for the liberation of their areas and autonomy of their community from oppressive rule of the then regime.

During the armed struggle, women's had two rights that had been implemented especially by TPLF and EPDM/APDM which can be considered as iconic for women in their struggle for equality with men. These are the right to participate in the armed struggle on an equal footing with men (right to be fighter), and right to plough the land in the liberated areas (Vaughan and Tronvoll, 2003: 140). Many women members of TPLF and EPDM/APDM were actively involved and sacrificed their life³⁶. As strategy of winning the support of women, the ethno-nationalist forces especially TPLF have gave unreserved support for women and their rights on the bases of party discipline and strategies as well as promising many forms of problems women were facing in the society would be resolved after liberation (Gennet, 2014). However, after TPLF/EPRDF came to power in 1991, many writers considers that women though legally guaranteed rights in many areas of live, were/are not still enjoying the required level of freedom and democracy. For instance, in the 1998 Etho-Eritrea war, women were denied the opportunity to be fighter which was considered by some feminists as denying women their traditional sphere were gender equality in the country was expressed for many centuries (Vaughan and Tronvoll, 2003: 144; Biseswar, 2011). The ruling party policies towards women are also criticized as paternalistic that seek to control women freedom always prioritizing the party agenda than issues of gender equality and rights or leaving the issue to women themselves. Hence, it is possible to conclude that though women have been actively participated in the armed struggle for

³⁶See Gennet Zewide, 2014, *Resistance, Freedom and Empowerment: The Ethiopian Women's Struggle*, New Delhi Concept Publishing Company PVT. LTD; Genet Tadesse, 2015, *Yalitezemerelachew: EPDM/APDM Women's Fighters History of Struggle and Victory*, Graphic Publishers, Addis Ababa (written in Amharic)

autonomy and this has been valued for its contribution to defeat the Derg, the policies of ethno-nationalist forces towards gender equality in armed struggle was/is guided by paternalistic view after liberation.

3.6. Women in Post 1991 Ethiopia

The downfall of the Derg in May 1991 was a turning point in Ethiopia that opened the era of collective rights to self-determination. The rights to self-determination are guaranteed to every ethnic community in the country in the Transitional Period Charter (TPC) and later in FDRE Constitution which is welcomed by many ethno-cultural communities as a means for rectifying past injustice. Taking this into account, policies and institutions of the country has been re-designed in a way that respects collective rights. This is also true with regard to policies on women followed by the incumbent party, EPRDF, which took political power in 1991. In the following sections, the emergence of Women's Affairs Offices (WAO), the National Policy on Ethiopian Women (NPEW), national women human rights standards, affirmative action and women representation, and opportunities and challenges of women based civil society organization under the incumbent party are deliberated.

3.6.1. Women's Affairs Offices and National Policy on Ethiopian Women

Following the control of state power by EPRDF, Women's Affairs office (WAO) has been established under the Prime Minister's Office in 1992. The primary responsibility of the Office was to make National Policy on Ethiopian Women (NPEW) which comes into being in 1993. This policy has three major objectives. These are

- 1. Facilitating conditions to the speeding of equality between men and women so that women can participate in the political, social and economic life of their country on equal terms with men and ensuring that their right to own property as well as their other human right are respected and that they are not excluded from the enjoyment of their*

- fruits of their labor or from performing public functions and being decision makers;*
- 2. Facilitating the necessary condition whereby rural women can have access to basic social services and to ways and means of lightening their work-load; and*
 - 3. Eliminating, step by step, prejudices as well as customary and other practices that are based on the idea of male supremacy and enabling women to hold public office and to participate in the decision making process at all levels³⁷.*

The policy has also contained implementation strategies and implementers which are WAO, Regional Women's Affairs Bureaux (WAB) and Women's Affairs Departments (WAD) in each Ministry and public organizations. Civil societies and donor agencies are also expected to do their share of duties for its effective implementation (NPEW, 1993). After a decade of establishment, it became clear that WAOs throughout the country was proved to have unclear and inadequate responsibilities and roles in addition to its lack of capacity in terms of human power as well as budget (Vaughan and Tronovoll, 2003: 105). In 2005, WAO is upgraded to a Ministerial level with decentralized structures³⁸.

The NPEW is criticized on several theoretical grounds. The first criticism is on its emergency (Biseswar, 2011: 127). The NPEW has emerged during the Transitional Period (TP), and lacks inputs from civil society organizations. The incumbent party cadres were the one who actively engaged in its formulation. Secondly, the policy focused on WID-welfares' approach, i.e., on relief and service delivery that see women as "passive recipient attaining emancipation when and how the party chooses" (Biseswar, 2011: 127). In other words the policy follows "women in development approach". The policy remains salient on the key components of women's empowerment which includes the development

³⁷ See, National Policy on Ethiopian Women (NPEW), 1993, The Transitional Government of Ethiopia, The prime Minister's Office, Women's Affairs Sector, Addis Ababa

³⁸ See, Proclamation No. 471/2005, a Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 12 Years No.1, Addis Ababa

of women's critical consciousness, nurturing their independent agency, promoting their social and political empowerment, gender justice, and taking care of structural reform to ensure sustainable gains on women's rights (World Bank cited in Biseswar, 2011: 128). However, inspite of these theoretical gaps in the policy, the government has been taking multidimensional measures to improve the situation of women in many arenas/sectors such as education, health, economy, politics, etc³⁹.

WAO in collaboration with donor Group for the Advancement of Women (GAW) has prepared National Action Plan for Gender Equality (NAPGE) for the first time in 2006. Unlike NPEW which follows women in development approach, the NAPGE follows gender and development approach (Awotash, 2010: 61). In the NAPGE, the WAO selected five critical areas as national priorities in addressing women's needs in Ethiopia. These are poverty reduction and economic empowerment of women, education and training of women and girls, reproductive rights and health of women, human rights of women and elimination of violence against women/girls, and institutional mechanisms for the advancement of women in decision making (Biseswar, 2011: 129). These five critical areas of concern were selected based on internationally driven global agendas of Millennium Development Goal (MDG) and CEDAW such as women's education, reproductive health, and poverty reduction program (Ibid).

3.6.2. Legal Reforms on the Rights of Women

EPRDF has initiated and promulgated several laws that give emphasis to the human rights of women. The first among these are the 1995 FDRE Constitution which contained explicit provisions on the rights of women. The constitution is generally appreciated for the wide space it provided for human and democratic rights, i.e., of 106 Articles 31 are devoted to human and

³⁹ On the changes and improvements of the situation of women in Ethiopia in the post 1991 period See, Gennet Zewide, 2014, *Resistance, Freedom and Empowerment: The Ethiopian Women's Struggle*, New Delhi Concept Publishing Company PVT. LTD; Helina Beyene, 2015, *Final Report National Assessment: Ethiopia Gender Equality and the Knowledge Society*, wisat, Women in Global science and Technology, Los Angeles

democratic rights providing comprehensive and detailed list of fundamental rights and freedoms that are assigned to individuals and ethno-cultural communities. According to Article thirteen sub two of FDRE Constitution, human and democratic rights incorporated in the Constitution “shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia”. This makes clear that universal rights of women are part of the national human rights law.

Several provisions of FDRE Constitution clearly state the equality rights of women in different spheres of life. For instance, Article twenty five prohibits discrimination on the grounds of sex. Article thirty five of the Constitution, which consists of nine sub Articles is the most comprehensive law regarding the rights of women. The rights incorporated in this Article include equality of rights in marriage, entitlement to affirmative measures, freedom from harmful practices, maternity leave, equal participation in program planning and implementation, equal rights on property ownership, equality in employment, and full access to reproductive health care. Other provisions of the Constitution which have direct bearing on the protection of women’s rights include Article 7, 33, 38, 42, and 89.

Ethiopia is also among the first countries to become signatory to international, and regional/continental convention on the rights of women⁴⁰. These include the Convention on the political Rights of women (1969); the convention on the Elimination of All Forms of Discrimination against Women (1981); the Convention on the Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (1969); and African Charter on Human and Peoples

⁴⁰Convention on Civil and Political Rights ratified on 11 Sept. 1993, Convention on Economic, Social and Cultural Rights ratified on 11 Sept. 1993, Convention on the Elimination of All Forms of Racial Discrimination ratified on 23 July 1976, Convention to Eliminate All Forms of Discrimination against Women ratified on 10 Oct.1981, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ratified on 13 Apr. 1994, Convention on the Rights of the Child ratified on 13 June 1991 (Meaza and Zenebework, 2005: 19)

Rights⁴¹. To domesticate international treaties the FDRE Constitution has also contained a provision in Article 9/4 which states that “all international agreements ratified by Ethiopia are integral part of the law of the land”.

Following the ratification of FDRE Constitution there are revisions of different national laws which are incompatible with the human rights guaranteed by the FDRE constitution. Among the revised laws, the provisions of the 1960 Civil Code in the family law arena and the Penal Code (Criminal Code) can be cited⁴². The national parliament of Ethiopia ratified the Revised Family Code (RFC) for federally administered city of Addis Ababa and Dire Dawa in 2000⁴³ which served as a model for many regional states of the country to have their own regional Family Code in a way that accommodates regional ethno-cultural diversity⁴⁴.

Next to the Family Code, the Criminal Code also revised in 2004 which criminalized harmful practices against women which were not recognized for long as a crime such as abduction as well as increased the penalty for rape from five year imprisonment to fifteen years imprisonment (Gennet, 2014: 167). But there are areas that are not exhaustively dealt within the criminal law though the acts inflict harm on the human nature of mainly women such as domestic violence and sexual harassment (Gennet, 2014: 168); and marital rape which is one cause of the spread of HIV/AIDS (Meaza and Zenebework, 2005: 14) . One of the main reasons for not clearly addressing these issues lies on the controversy on culture, and socialization.

⁴¹ Of course, initially Women’s rights are largely excluded from the African Charter on Human and People’s Rights, but in 2000 draft protocol containing specific articles regarding African women’s rights is added and ratified on 2003 Maputo, Mozambique (Biseswar, 2011: 131).

⁴² The women’s based civil society organization called the Ethiopian Women Lawyers Association (EWLA) was credited for initiating and lobbying for the revisions of these codes though they are not fully successful in influencing the terms of its provisions. See Gemma Burgess, 2013, “Hidden History: Women’s Activism in Ethiopia”, *Journal of International Women’s Studies* Vol.14, Issue 3 Article 7

⁴³ As per FDRE constitution Article 52/1 the family law arena is the competency of regional states in Ethiopian Federalism. This is why the national parliament enacted laws only for federally administered cities.

⁴⁴ All regional state except Afar and Somali has regional Family Code. For Afar and Somali the constitutional limit set on cultural autonomy is considered as one reason for not having regional Family Code.

One of the criticisms on national human rights standards of Ethiopia vis-à-vis rights of women is also related with the recognition of customary and religious institutions of ethno-cultural communities to regulate rights in the family arena⁴⁵. Due to the existence of long lived discriminatory and harmful practices against women in almost all ethno-cultural communities of the country in this arena some human rights advocates considers the recognition of customary and religious institution as nullifying rights of women guaranteed by the Constitution (Meaza and Zenebework, 2005; Biseswar, 2011). However this critic fails to recognize that the significant place customary and religious laws (culture) have among female member of a given ethno-cultural community which cannot be transformed by imposing laws from above.

In the implementation of rights of women problem has been observed in courts of law both with regard to rights enshrined in FDRE Constitutions as well as international conventions ratified by Ethiopian government which has been considered as part of law of the land. Laws are often applied in formal courts in a manner that does not take into account rights of women (Biseswar, 2011: 133). This is related with first little sensitivity of staffs working in the formal justice system to the rights of women which were predominantly composed of men. Secondly, international conventions signed by the country such as the CEDAW are never been promulgated/ published in the country's *Negarit Gazeta*⁴⁶. As a result many judges/law enforcing bodies are not considering the Convention as part of the law in the court rooms.

3.6.3. Affirmative Action and Women Political Representation

Gender based inequality is one of the problems seen in the arena of political representation. To bring justice in this arena international, regional and national human rights instruments underline the significance of affirmative action/ positive discrimination. In this regard Article seven of CEDAW state

⁴⁵ See Article 34/5 and Article 78/5of FDRE constitution

⁴⁶ A government news paper that is authorized to publishes laws enacted by the national parliament

that “[s]tate Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right [...] To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies”. Similarly Article nine of African Protocol on Women Rights stated that “[s]tates Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that [.....]. Women are represented equally at all levels with men in all electoral processes”. In FDRE Constitution Article thirty five sub three serves as a framework to take affirmative action to increase women participation in wide areas of public arena including political representation. This Article states that

The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.

The formulation of affirmative action under FDRE Constitution only from the perspective of rectifying past injustice and discrimination has been criticized for failing to take in to account present domination and oppression against women seen in the society (Awotesh, 2010: 49). The focus on the past and on discrimination undermines the existence of present domination and oppression against women. Awotesh argues that constitutional formulation of affirmative

action needs to be to promote equality and justice between men and women like formulation of affirmative action under the South African Constitution⁴⁷.

In the arena of political representation quota is a mechanism or way to implement affirmative action. Dahlerup defines quota as follows

Quotas for women entail that women must constitute a certain number or percentage of the members of a body, whether it is a candidate list, a parliamentary assembly, a committee or a government. Quotas aim at increasing women's representation in publicly elected or appointed institutions such as governments, parliaments and local councils. Gender quotas draw legitimacy from the discourse of exclusion, according to which the main reasons for women's under-representation are the exclusionary practices of the political parties and the political institutions at large (2005: 141).

Internationally there are different gender quota systems (Dahlerup, 2005: 142). These are first candidate quotas. This type of quota specifies the minimum percentage of candidates for election that must be women, and apply to political parties' lists of candidates for election. Candidate quotas can be further divided in to legal candidate quota and voluntary party candidate quota. In Legal candidate quota laws are laid down in the constitution, in electoral laws or in political party laws that force all political parties to recruit the required percentage of women. Voluntary party quota can be adopted voluntarily by political parties, and are most common in centre-left-leaning parties. The second gender quota system is reserved seats quota. This type of quota "set aside a certain number of seats for women among representatives in a legislature, specified either in the constitution or by legislation"⁴⁸ (Dahlerup,

⁴⁷ See, The Statute of the Republic of South Africa-Constitutional Law: The Constitution of the Republic of South Africa No. 108 of 1996, Article 9/2

⁴⁸ In Ethiopia there is a reserved seat for minority ethnic communities. See FDRE Constitution Article fifty four sub three. But there is no legislation regarding women quota neither in the constitution nor electoral law.

2005: 142). Besides candidate quota and reserved seat quotas there are gender-neutral-quotas and quotas as ‘fast track’⁴⁹.

Since the 2005 election in Ethiopia the ruling party (EPRDF) taking in to account international commitment of the state to increase women representation in parliament introduced voluntary party candidate quota of 30% for women. However, there is no other party (opposition parties) which follows policy of quota system for women. Following voluntary candidate quota policy women representation in national parliament has reached from 7.7 % (42 seats out of 547) in the 2000 election to 21.9 % (116 out of 529) in the 2005 election (Ojulu and Melesse, 2014: 115). In the 2010 national election the number of women representation increased to 27.8 % (152 seats out of 547) while in 2015 national election women’s representation have been able to exceed the minimum threshold of 30% and reached 38% (210 seat out of 547). The achievements in the 2015 national election is a very good change though all the women representatives are members of the ruling party as well as it falls behind 50% women representation.

Similarly women representation at regional council has been increasing in regional state led by member parties of EPRDF⁵⁰. For instance, in the 2010 election period the representation of has reached 34.2% (13 seat out of 38) in Tigray National regional State council; 33.3% (46 seat out of 138) in Amhara National regional State council; 26.4% (47 seat out of 178) in Oromiya regional State council; and 29.3% (36 seat out of 123) in SNNPR State council (Ojulu and Melesse, 2014: 117). Similar and/or relatively higher numbers of women representatives are found in *Zonal*, *Woreda* and *Kebele* councils in these regions. In this regard it can be concluded that women representation at

⁴⁹ Gender-neutral quota is used to refute the arguments of opponents of quota that they are discriminatory against men. This kind of quota constructs a maximum limit for both sexes. Quota as “fast track” often introduced in countries where women historically have been almost totally excluded from politics (Dahlerup, 2005: 142-143).

⁵⁰ There are two types of regional states in Ethiopia: regions relatively developed and emerging. The relatively developed regional states i.e. the regional state of Tigray, Amhara, Oromia and SNNPR has been led by member party of EPRDF while parties that led emerging regional states such as Afar, Somali, Gambella and Benishagul-Gumze are not full members of EPRDF. They are called affiliate parties.

different levels of government from the national to local level has almost reached the minimum threshold (30%)⁵¹ that can enable them (women) to influence policy making. Affirmative action policy and centralized decision making within the ruling party⁵² can be cited as one of the main contributing factor for increasing representation of women in Ethiopia.

However, the importance of women representation has been mainly measured not only in their descriptive representation but also based on the impact the representation has brought in addressing the women interest (substantive representation)⁵³ in making legislations⁵⁴. So far the representation of women in the national parliament and their collaborative efforts with Women based CSO is cited as the main contributing factor for the revision of the Family and Criminal Codes particularly in outlawing gender discriminatory provisions in these arenas.

3.6.4. Women based Civil Society Organizations

With the coming to power of EPRDF the number of civil society organizations increased dramatically (Dessalegn, 2002: 110), which is also true for those working on women. Many of women based civil society organizations are involved in micro-enterprise, micro-lending or income generating work for their beneficiaries (Vaughan and Tronvoll, 2003, Gebre, 2016). In 1999 there were nineteen women based civil society organizations registered with the Minister of justices which includes Women Aid Ethiopia (WAE), Ethiopian Women Entrepreneurs Association (EWEA), Ethiopian Women Lawyers Association (EWLA), Women Industrialist Association (WIA), Women Empowerment and Assistance Forum (AEAF), Women in Development (WID), and Women in Self-

⁵¹ The 30% threshold for the ruling parties is set by the Beijing Declaration and Platform for Action (1995)

⁵² See, Miki Caul, , 1999, “Women Representation in Politics: the Role of Political Parties”, *Party Politics* Vol. 5, No. 1

⁵³ Political representation is considered as both a means and an end for women. It is a means to achieve the purpose in which the interests of women are taken into consideration in parliamentary decision. It is also an end in itself in which women as a human being takes their share in political decision making through representing their portion of the society. Based on these rational women representation is divided in to descriptive and substantive representation. Descriptive representation refers to the physical existence of women representative in parliament while substantive representation concerned with the rationale behind representation and answers the question why do women needs to be represented by women while men can represent women (Pitikin, 1999).

⁵⁴ See, Sue Thomas , 1991, “The impact of Women on State Legislative Policies”, *The Journal of Politics*, Vol 53, No.4

Employment (WISE) (Vaughan & Tronvoll, 2003: 80). But only few civil society organizations, such as Ethiopian Women's Lawyers Association (EWLA), are engaged in high level advocacy and lobbying for rights of women in the country, especially in its early days (Burgess, 2013). Other civil society organizations such as Action Professional Association for People and Panos Ethiopia advocacy work mainly centers on politically neutral areas of concern⁵⁵ which include promoting the rights of the child, campaigning to end violence against women (VAW), or working for the eradication of harmful practices etc (Dessalegn, 2002: 110).

Many scholars working in Civil Society Organizations (CSO) in Ethiopia are usually challenged by the intervention of the government in their affairs to curb their independent existence and functioning using various policies and laws⁵⁶. In the first place women based CSO are required to function on priority areas identified by the government⁵⁷. And secondly, the 'Proclamation for the Registration and Regulation of Charities and Societies' (Proclamation no. 621/2009) has put series limitations on independent and effective functioning of women based CSO. The proclamation classifies CSOs into three: Ethiopian Charities and Societies; Ethiopian resident charities and societies; foreign charities (Article 2/2-4).

Ethiopian charities or societies are formed by Ethiopians under the Ethiopian laws and should be expected to engage in human rights and policy advocacy. But "they are not allowed to receive more than 10% of their funds from foreign sources" (Yntiso, 2016: 7). Besides, Ethiopian resident charities and societies

⁵⁵ Avoidance of politically sensitive issues is linked to the government's intolerable stance and frequent expressions of hostility on those NGOs working on political issues. For instance, EWLA closed down when it dared to take the government to courts for failure to uphold the law in 2001 (Biseswar, 2011: 137-138)

⁵⁶ See, Dessalegn Rahmato, 2002, "Civil Society Organization In Ethiopia" in Bahru Zewde and Siegfried Pausewang, eds., *Ethiopia: The Challenges of Democracy from Below*, (Stockholm: Elanders Gotab, 2002):PP. 103-120; Indrawatie Biseswar, 2011, *The Role of Educated/Intellectual Women in Ethiopia in the Process of Change and Transformation towards Gender Equality 1974-2005*, PhD Dissertation, University of South Africa; Gebre Yntiso, 2016, "Reality Checks: The state of civil society organizations in Ethiopia" *African Sociological Review* Vol. 202 pp. 1-25

⁵⁷ This is particularly true since 2006 with coming of NAPGE which set five priority areas. These are poverty reduction and economic empowerment of women; education and training of women and girls; reproductive rights and health of women; human rights of women and elimination of violence against women/girls; and institutional mechanisms for the advancement of women in decision making (See, Section 3.6.1 above)

and international NGOs are not allowed to engage in advocacy of rights (Burgess, 2013: 107; Yntiso, 2016). For instance, EWLA, is among the first women based CSO in post 1991 period, that has contributed a lot for the prestige and protection of rights of women, has been put in a precarious position. The funds raised by the Association (8.6 million Ethiopian Birr) were confiscated by the government and the director of the Association fled the country due to fear of government retaliation (Burgess, 2013: 107). In this regard, Messeret argues that “the enactment of CSO law forced many women-focused and rights organizations to change their mandates and terminate advocacy works and legal aid, and this was viewed as setback to the process of combating gender based violence and enhancing survivors access to justice” (cited in Yntiso, 2016: 10).

The ruling party is also establishes parallel government based CSO that could compete non-government organization and gave preferences by the government to advocate for rights and policy (Vaughan and Tronvoll, 2003: 65; Yntiso, 2016). These include the different women associations (Women Democratic Associations, WDA) formed in Addis Ababa and different regions such as Addis Ababa Women Associations (AAWA), the Amhara Women Associations, Tigray Women Association, and Oromia Women Association. These associations are structured along governmental administrative organ at regional, Zonal, *Woreda* and *Kebele* levels and they work in close collaboration with WAO.

In 2009, some of the women organizations have federated under one umbrella organization known as “Ethiopian Women’s Federation”. Around twenty one associations, having both regional and national nature, become members of the federation. The federation campaign of “healthy motherhood” and the sensitization program that it undertook in areas of human rights violation and violence against women were exemplary activities that are worth mentioning. The federation has also worked to minimize the dropout rates of female students in collaboration with teachers’ associations and educational

institutions (Gennet, 2014: 176-177). Women's based CSOs are often criticized for lack of radical agenda that transforms women's live (Biseswar, 2011: 136). This might have be due to the restriction on areas where CSO can work, and limited independency of CSOs, particularly those working on rights and policy advocacy.

In sum, the role of CSO in the protection and promotion of human rights in general, and rights of women in particular, is dependent on the overall democratic environment in the country. The challenges CSO are facing in Ethiopia can also be seen along this line. The democratization process in Ethiopia is facing serious challenges from dominant one party system, especially in post- 2005 electoral period where the ruling party was on the eve of losing popular vote. Since then CSOs freedom to advocate human rights have been seriously scrutinized and controlled by making CSO law that gives little space for the advocacy of rights and policy.

3.6.5. 'Women Development Army'

The creation of women development army is related with developmental state policy adopted by EPRDF in general, and the Health Extension Program of Ethiopian Ministry of Health in particular (Maes et al., 2015). In the aftermath of the 2005 election the late Prime Minister Meles Zenawi declared policy of democratic developmental state, which is considered as a new paradigm not only in Ethiopia but also in Africa (Fesseha and Abtewold, 2017: 17). But many scholars concur that the policy of democratic developmental state in Ethiopia is full of democratic deficit, though it is agreeable that both democracy and development are essentially important for Ethiopia, which is justified by the need to accommodate ethnic or other diverse interests in the country (Ibid). As per the experiences of South East Asian country, developmental state is characterized by two main features: its ideological orientation and institutional capacity (Makandawire, cited in Fesseha and Abtewold, 2017: 12). This is called by Sehen and Tsegaye (2012) the "software" and "hardware" of

developmental state. Ideologically, developmental state promotes the ideal of development through dominant one party system, while institutional capacity refers to the existence of strong bureaucracy or state institutions⁵⁸. In this section, the researcher focus only on how the ideological hegemony of developmental state paradigm has been imposed on women through dominant one party system at local level and its successes and challenges vis-à-vis promoting and protecting rights of women.

The Ethiopian Ministry of Health adopted Health Extension Program (HEP) in 2003, as a strategy to provide primary health care for the rural population of the country, which is also seen as a means to meet the Millennium Development Goal (MDG)⁵⁹ (Maes al et., 2015: 4). This program is appreciated as pioneer, innovative and successful by the international organizations, donors and NGO working on health (Maes et al., 2015: 4). In the HEP thousands of new health posts throughout the countryside has been constructed and job have been created for around 34, 000 young women who have been employed as full-time Health Extension Workers (HEW) ⁶⁰. HEW assisted by voluntary community health workers (CHW) is responsible for range of primary health care services that includes preventive, promotive and curative health care. They have given the right to sit on local government (*Kebele*) councils or cabinets⁶¹, which in principle gives them a way to advocate for themselves and for the people they serve (FMOH, 2010 cited in Maes et al., 2015: 19). And they are supervised by district health and local government officials as well as health center staffs (Maes et al., 2015: 5).

⁵⁸On the nature of developmental state policy adopted by the ruling party in Ethiopia See, Muleta Yirga Shumuye, 2015, “The Role of Developmental State in Development: The Case of Ethiopia”, *International Journal of African and Asian Studies*, Vol.14, PP. 96- 110; Kassahun Berhanu and Poulton, Colin, 2014, “The Political Economy of Agricultural Extension Policy in Ethiopia: Economic Growth and Political Control”, *Development Policy Review*, Vol. 32 (S2): s197-s213; Fesseha Mulu Gebremariam and Abtewold Moges Bayu, 2017, “Ethiopia: A Democratic Developmental State”, *ILIRIA International Review* Vol. 7, No. 2 PP. 9-26

⁵⁹ From the MDGs the HEP of Ethiopian Ministry of Health aims to achieve the goal of ‘promoting gender equality and empowering women, reducing child mortality and improve maternal health’.

⁶⁰ These women have completed secondary school and after receiving one year of health education begin work in rural *Kebel*, the lowest level of administrative unity in Ethiopia.

⁶¹ These councils primarily serve as a venue to take orders and report back on their activities rather than as a means to advocate for their rights and interests or the community they serve

Since 2011, the ruling party replaced volunteer CHW who were mainly men by unpaid women development army (WDA), rationalizing it by the need to accelerate the effectiveness of the program⁶². The WDA consists of a huge proportion of adult women living in Ethiopia's countryside and organized in to 1 to 5 development teams/networks (Maes et al., 2015: 8). The 1 to 5 development team consists of five households, and one woman out of every five households would become a team leader/ women's development army "leader". WDA leader is responsible for promoting the health of five neighboring households. And the WDA leaders/1to 5 leaders are supervised by the HEW. Besides, women called "1-to-30 leaders" are selected to liaise between a HEW and five of the 1-to-5 leaders" (Maes al et. 2015: 8). All of these leaders are tasked with activities similar to those performed by the previous volunteer CHWs and they are unpaid. The top-down approach of organizing women and use of their labor without pay for the achievement of the ruling party policy that makes the WDA particularly the 1 to 5 networking more of a means for political control rather than genuine means of development and women's empowerment as it has often claimed by the ruling party.

WDA is created in a series of "mass mobilization campaign" focusing on women's beliefs and behaviors to fill the vacuum in community health services provided by HEP. Health officials and HEW rationalize the use of the free labor of women for community health valuing women as "naturally" suited for family health and hygiene as well as assuming them as ideally suited to convincing other women to adopt healthy behaviors stated in the HEP (Maes et.al: 2015: 17). Women are framed as being more effective and thus more valuable than men "to accomplish the work of health at home" (Ibid). Women are also valued based on the assumption that they are less likely to expect pay unlike men. There is also an argument that the ruling party valued women and created WDA partly to solidify its rule a countrywide through grassroots network of

⁶² The ideology of developmentalism followed by the ruling party, financial constraint to employ more HEW vis-a-vis the population size of the country and the urgency to meet MDG is also factors for the creation of WDA.

women who will conduct surveillance over their neighbors (Maes et al., 2015: 18).

Why women become willing to provide unpaid labor for the state? Or are they compelled to do so? The ruling party is able to mobilize and organize women into women's development army supporting it by layer of narratives which has been based on political and moral economy. The narratives are saving life, creating model citizens/households and empowering women (Maes et al., 2015: 9). Saving lives narrative takes into account the high rate of maternal and child mortality rate in the country which has showed little or no improvement between 2005 and 2011 (Teklehaimanot and Teklehaimanot cited in Maes et al., 2015: 10) as a background⁶³. Saving life of mothers and the newborn by assisting them to give birth in health posts and center is one of the primary duties of WDA. When the focus is on the moral economy of saving lives, questions of wages are eclipsed (Maes, et. al, 2015: 9). In this regard, Maes et al. stated that "given the perceived urgency of reducing high mortality rates, these methods of encouraging or pushing Health Extension Workers and unpaid community health worker to reduce these rates seemed acceptable", even by the international community (Maes, et al, 2015: 10).

The second narrative that reinforces WDA/leaders engagement in free community health service is the moral economy of empowering rural women. Women's participation in the development army at the first stage required HEW to negotiate with men, particularly with husbands' to support the participation of women that in turn believed to improve not only the life of women but also the whole family. And women's participation in the development army is claimed as increased their knowledge, expanded their social networks, and "develop their leading ability" through new social interaction (Maes et al., 2015: 16). But making women central to domestic life in the domain of health

⁶³ Reaching the MDG also targets on lowering these maternal and child mortality rates which in turn cited as the basis for major investments in Ethiopia's rural health care system, by both the government and major donors like the Gates Foundation.

is criticized for reinforcing gender power structure (Molyneux cited in Maes et al., 2015). Brickell and Chant describes “the inherent contrast between using women to make health development interventions more cost-effective, and simultaneously describing them as “empowering,” as “one of the deepest bastions of gender inequality” (Cited in Maes et al., 2015).

Another main narrative that supports free community health service by WDA/army leaders is the need to scale up creation of model citizens/households⁶⁴. The narrative of creating model households is accompanied by sets of disciplines which have the purpose of meet the ruling party ideologically backed objective of staying on power for relatively longer period. These include, a woman who comes from a “model household” become women development army “leader and lead the women of five other nearby households towards a healthier lifestyle and works in a discipline of an army/military (Provost cited in Meas et al., 2-015: 11). The ruling party also belief that unity in behavior and understanding across the development army/population are key to achieving economic growth and the reduction of poverty (Maes et al., 2015: 14). In this narrative “rent seekers” are enemies who must be indoctrinated with developmental state ideology. And the creation of model households assumes making productive farmers and entrepreneurs that do not need patronage from the state. Accordingly, the WDA is expected to work without seeking “rent,” that is, without expecting any sort of payment” from the state or incentives from NGO (Maes et al., 2015: 12). EPRDF’s purpose of creating model household may also “mean encouraging the population to support the EPRDF’s medium-term hold on power and to be satisfied with contributing unpaid labor to state lead programs” (Bach, 2011; Emmenegger, 2011; Little, 2013 cited in Maes et al., 2015: 16). With its ideology of developmentalism, the ruling party has thus aimed to maintain state power over not only the macro economy, but also over social organization and peoples’

⁶⁴ Creating model households “that adopt a full package of healthy beliefs, desires, and behaviors, and that assume “responsibility” or “ownership” for their own health, particularly with maintaining sanitation and hygiene, seeking antenatal checkups, and giving birth within health posts or health centers” (Maes et al. 2015: 10) is part of the original plan of the HEP.

basic beliefs. Hence, women's are compelled to be WDA or participate in 1 to 5 development networks in order to demonstrate their support for or their lack of open opposition to the ruling party (Little cited in Maes, 2015: 13).

At local level labor without pay by WDA is rationalized using the narrative that "They work for themselves" (Maes, 2015). This means "women's army leaders are simply expected to tend to their routine "house work" with more hygiene in mind; to take care of their own health; and socialize with other women like they usually do, but now with a goal to spread and reinforce healthy household behaviors" (District Health Official cited in Maes et al., 2015: 14). But as Maes et al. indicated army leaders are expected to do more than their own housework and neighborhood socializing such as helping the compilation of health data and report it to the government. Besides, it is clearly acknowledged by health officials that the introduction of the WDA had already successfully eased the workload of HEW⁶⁵ that indicates what is done by WDA leaders are in fact a work that sidesteps the claim that army leaders works for themselves, but without pay (Maes et al. 2014: 14). Labour without pay, besides, violating the rights of women, leads to deterioration of the live of WDA leaders. The major finding of research conducted in Amhara regional state and published in 2018 indicates this,

Volunteer WDA leaders and community members alike tend to have very low levels of schooling and household assets, and to be heavily burdened with daily work in several domains. Large proportions are food and water insecure, many are in debt, and many experience stretches of time with no money at all. Our survey also revealed differences between volunteer WDA leaders and other women that warrant attention. Leaders are less likely to be married and more likely to be divorced or separated. Leaders are also more likely to experience some aspects of food insecurity and report greater levels

⁶⁵ Earlier to the creation of WDA, HEW directly interacts with each household, but with the coming of WDA, HEW contact only with WDA leaders.

of psychological distress and more stressful life events. They also report slightly less social support than other women⁶⁶.

The narrative of creation of model households using WDA is indicative of how the ruling party attempted to increase its power over the rural population with little or no impact on the actual empowerment of WDA/ army leaders.

In sum, the origin, purpose, structure and outcome of WDA by EPRDF have some kind of similarities with type of women's organization during the Derg regime and women's organization within TPLF, i.e., these organizations have been established in the name of women, but women themselves are limited or no role in shaping and setting the objectives of the policy they are used to enforce. In other words, in Ethiopia different regimes adopt a policy on women and structure of women's organization having clear and hidden political agendas. Obviously, the clear political agenda is emancipation/empowerment of women or ensuring gender equality; the hidden political agenda is using women as instrument to create and maintain hegemonic power.

3.7. Conclusions

The history of Ethiopia indicates times when women had played significant role in the politics of the country as well as in shaping the course of history. Though in large part of Ethiopian history the doctrine of separate sphere that undermines the role and rights of women has been entrenched in the society, there had been few women who have ruled the country directly and indirectly as the regent of the kings both in the medieval and modern periods. Empress Tayitu, the wife of Emperor Menilik II, was one of the outstanding women politicians in the modern history of Ethiopia. Tayitu had significant role both for independent existence of Ethiopia, in a continent swallowed by colonialism, as well as in the promotion of rights of women that has been buttressed by modernization. The effort of promoting women rights started by Empress

⁶⁶ Maes et al., 2018, "Volunteers in Ethiopia's women's development army are more deprived and distressed than their neighbors: Cross-sectional survey data from rural Ethiopia", <https://www.researchgate.net/publication/323181074>

Tayitu has been affected by religion of the state, i.e., Orthodox Christianity that pushed her successors to have nominal role in politics even if women such as Empress Zewditu has been ruled the country in her own name for more than a decade in the first half of 20th century. Religion and custom are often the justification for the limited power and influence women have in the society.

Though Ethiopia is home to dozens of ethno-cultural communities, assimilation policy of the state that promotes one religion and language has been regarded as the main source of injustice until the 1990s. The codified laws of the state such as the 1931 Constitution and the 1960 Civil Code underpin a policy of assimilation as well as the inferior position of women both in the public and private spheres. Policy of assimilation and centralization of power led to movements particularly among university students that demand the right to self-determination of nationalities of the country. The question of nationalities is one of the main agenda of ESM that led to the creation of different political associations which demanded regime change. Though women associations and movements have been started in the country during the 2nd Italian invasion, it started to be fortified by knowledge within ESM. Separate women based organization has been created with the student movement and made attempts to analyze the “question of women” in Ethiopia. These associations have been potential forces in the creation of WAs during early period of the 1974 revolution. The eve and early days of the 1974 Ethiopian revolution has been a period of women movement that has been led by educated/intellectual women that was believed to be the 1st wave of women’s movement in the country.

However, the consolidation of power by the Derg after the revolution undermined the objective of women associations from movement for socio-political change to that of serving the regime which exploited the labor of women, both in the urban and rural areas, through compulsory work without pay. Though the Derg has recognized multiculturalism and the right to equality

of sexes, oppression and centralization of power that has been considered as one of the sources of injustice were not improved. This resulted in the consolidation and creation of ethno-nationalist forces who struggle for ethnic liberation or autonomy. In the struggle for autonomy by different ethnic-based liberation fronts, women had been participated as fighters as well as in giving all rounded support for the organization they belong to. All political forces including ethno-nationalist forces that emerged in the 1970s were guided by Marxist-Leninist ideology in their policies. TPLF, the first ethno-nationalist front within EPRDF, has women's policy based on the some ideology that became the base for NPEW when EPRDF came to power. To enforce NPEW women's machineries (WAO) have been established from the national down to local level, and CSO has also been recognized as stakeholder in the enforcement of the policy.

Moreover, the 1995 FDRE Constitution is credited to the wide space it provided for human and democratic rights in general and rights of women in particular. The guaranteeing of rights of women in the federal constitution lead to the revision of some laws such as the family law in order to make them compatible with the rights of women. However, autonomy guaranteed to ethno-cultural communities by the Constitution to regulate rights in the family arena has been considered by some human rights advocates as nullifying rights of women. But these critics fail to recognize the significant place customary and religious laws (culture) have among women themselves as a member of a given ethno-cultural community. Hence, the issue needs to be what kind of policies are there to protect and promote rights of women within ethno-cultural community rather than criticizing autonomy in the family arena taking it at face value.

The other steps taken by FDRE Constitution and the ruling party (EPRDF) to bring gender justice in the country is making affirmative action part of the Constitutional rights of women and enforcing it among others in the political

arena. Quota system is introduced by the ruling party to increase women's representation in the legislative branch at different levels of government. Based on this, the number of women representatives' has reached the minimum threshold (30%) recommended for ruling parties', especially at national level. However, the importance of women representation has been mainly measured not only in their descriptive representation but also based on the impact the representation has brought in addressing the women interest (substantive representation) in making legislations. In this regard, the absence of women representatives from opposition party is indicative of the limited work done to increase substantive representation of women. Though the organization of rural women into 1to5 networks and development army have contributed a lot for the reduction of maternal and infant mortality, it have also used to exploit the labor of women as well as instrument of creating ideological hegemony of the ruling party.

Chapter Four

4. Autonomy, Multiculturalism and Rights of Women in Ethiopian Federalism and the SNNPR

4.1. Introduction

The purpose of this chapter is to illustrate the features of accommodation of diversity in Ethiopian federalism and mechanisms set to protect rights of women in the family arena at sub-national levels of government with particular emphasis on the Southern Nations, Nationalities Peoples Region (SNNPR). One of the unique features of Ethiopian federalism is the guaranteeing of the right to self-determination, including secession, for every ethno-territorial communities of the country. Constitutionally, autonomy is guaranteed to every ethno-territorial communities of the country. Ethnicity is primordially defined in the Constitution; however, ethnicity is also used instrumentally to create autonomous units both at federal and regional level. Multi-ethnic regional states, such as the SNNPR which comprise dozens of ethno-territorial communities have designed regional constitutional mechanisms to guarantee territorial autonomy for ethno-territorial communities of the region using the principle of the right to self-determination in similar way as it is stated under the federal Constitution. Though non-territorial autonomy is not well articulated constitutionally, it is practically exercised by religious communities and recommended by scholars in order to supplement territorial approach and protect rights of ethno-cultural minorities and promote multiculturalism. Multicultural accommodation is guaranteed to every ethno-cultural community in the family arena. To this end, regional Family Code such as the Family Code of the SNNPR gives equal recognition for civil, customary, and religious marriage including its individual and pecuniary effects. Local governance institutions have been the main actors in the enforcement of rights in the family. The SNNPR Constitution has guaranteed recognition to these

institutions, from *Zona* to *Kebele* levels, to make laws in areas that have not been covered by federal and regional legislations as well as enforce laws and policies enacted by different levels of government.

In this chapter, the principles set to exercise territorial/ethnic and non-territorial autonomy under Ethiopian federalism and experience of the SNNPR has been discussed. Multicultural accommodation in the family arena vis-à-vis the rights of women has been reviewed. Rights of women under the SNNPR Constitution and Family Code have also been dealt with. Autonomy and local governance under the SNNPR Constitution are also reviewed in order to indicate the power and responsibilities of local government institutions in the protection and enforcement of rights in the family arena. Lastly, the conclusion section summarizes the main points of the chapter.

4.2. Autonomy under FDRE Constitution

In principle, every ethno-territorial community in Ethiopia has the right to self-determination that guarantees the right to territorial autonomy (self-rule). The principle of right to self-determination is the major guiding principle for the restructuring of the state under a federal system that combines self-rule and shared rule for ethnic communities of the state. Though the right to self-determination, including secession, is guaranteed to every ethnic community or in constitutional parlance ‘nations, nationalities and peoples’ of the country¹, only nine constitute units/autonomous regional states are created under the 1995 FDRE Constitution². But Ethiopia is home to more than seventy ethno-territorial communities. Due to this out of the nine regional states three regional states are multi-ethnic regions that contained “indigenous” ethnic minorities³. These are the SNNPR, the state of Benshangul/Gumuz People, and the state of Gambela People, which do not have single majority/dominant

¹ The FDRE Constitution, Article 39/1

² The nine autonomous regional states are the states of Afar, Tigray, Amhara, Oromia, Somali, Harari People, SNNPR, Benshangul/Gumuz People and Gambela People. See, FDRE Constitution, Article 47/1.

³ For the meaning of ‘indignity’ and ‘non-indignity’ of ethnic communities as per Ethiopian federal constitution and federal practice see Christopher Van der Beken, 2007, “Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level. Afrika Focus, Vol. 20, Nr. 1-2 PP. 105-151

ethnic community in the region. Those regional states whose name is designated with the name of ethnic communities which have territorial autonomy are also heterogeneous in terms of population composition of the region but what is called “indigenous” communities of the area have territorial autonomy or considered as the “owners” of the region⁴. In principle, ethno-territorial communities under multi-ethnic regional states have also the right to territorial autonomy, including the right to secession.

There are two ways of exercising the right to self-determination outside the existing regional state boundaries (Vand der Beken, 2010: 125). The first mechanism is as it is put under Article 39/1 of the FDRE Constitution through secession from the Ethiopian federation which is unconditionally guaranteed to every ethnic community of the country. The second mechanism is put under Article 47/2 of the FDRE Constitution which allows ethnic communities which want to establish their own regional state to do so, following the procedures set under Article 47/3 of the federal Constitution. This means ethno-territorial community under multi-ethnic regional state can exercise autonomy by creating their own regional state at federal level. However, these two mechanisms are not applied so far mainly due to the ruling party’s instrumental approach to ethnicity and focus on integration and regional unity (Aalen, 2009).

To accommodate the rights of ethno-territorial communities in multi-ethnic regional states, regional constitutional mechanisms are set that enables indigenous ethnic communities to exercise the right to self-determination with a special focus on guaranteeing of autonomy within the boundary of the region (Van der Beken, 2007). In the regional Constitutions of Benshangul/Gumuz, Gambela, and SNNPR, autonomy has been guaranteed to every indigenous ethno-territorial community of the region to establish its own nationality Zones

⁴ These regional states are the state of Afar, Tigray, Amhara, Oromia, Somali, and Harari People. In some of these regional states it is recognized that there are ethno-territorial communities who deserve indigenous ethnic community status as per the FDRE Constitution but their rights to autonomy is not well recognized by regional state Constitutions concerned for instance Irbo and Kunama in Tigray and Zay in Oromia.

or Special *Woreda*⁵. The attempt made to create correspondence between ethnicity and territory by the federal constitution as well as the constitutions of multi-ethnic regional states in the creation of local government units is one of the reasons that make Ethiopian federalism ethnic. In this regard Van der Beken argues:

Both the federal and regional constitutional drafters follow the territorial approach to ethnic diversity: ethnic groups are linked to territory, which give them an indigenous status there. The ethnic basis of the territorial entity or of the regional state entails that the region is conceived as the forum within and through which the indigenous ethnic groups exercise their right to self-determination (Van der Beken, 2010: 146).

But practically, creating autonomous ethno-territorial units both at federal and regional levels are neither easy to implement nor consistently follow the constitutional principles due to several reasons. The process of setting detailed principles for the creation of autonomous units is laid down during the Transitional Period (TP) by Proclamation no 7/1992. Study conducted for this purpose indicated the existence of sixty four ethno-territorial communities in the country but only fourteen autonomous units were created at national level during the TP (1991-1995)⁶. The number of constitute units even decreased to nine under the 1995 FDRE Constitution though the number of ethno-territorial communities has been increased more than seventy.

The incompatibility between the constitutional principle for the creation of autonomous ethno-territorial units and the created autonomous ethno-territorial units inspired different debates among scholars. The first of these debates is centered on whether Ethiopia followed the model of the former

⁵ Benshangul/Gumuz Constitution, Article 2 and 45; Gambela Constitution, Article 46; and the SNNPR Constitution, Article 45/2

⁶ These autonomous regions were region 1. Tigray; 2.Afar; 3.Amhara; 4.Oromia; 5.Somali; 6.Benshangul/Gumuz People; 7-11 Southern Nations, Nationality and People (five regions which are merged to one in the post 1994 period); 12.Gambela People; 13. Harari People; and 14. Addis Ababa.

socialist federation, such as the former USSR or multination federations of the West⁷. Based on how the right to self-determination has been recognized in the federal constitution as well as used to create autonomous units empirically by the ruling party many scholars such as Asnake (2009) contends that Ethiopia has followed the model of the former socialist federations⁸. This is evident from many of the contradictory understanding of the right to self-determination of nationalities or ethnic communities in the Marxist theory⁹ which has been applied as it was in the current ethnic federalism in Ethiopia.

In the federal Constitution ethnic communities to use official parlance “nations, nationalities and people” are defined as “a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory”¹⁰. Empirically, there are difficulties among scholars to understand the terminology used by the Constitution to define ethnic communities or “nations, nationalities and people”. Asnake argues that the use the three terms: nation, nationality and people; and the political practice indicate that the Ethiopian federal arrangement is highly influenced by Stalin’s theory of nationality which hierarchically categorizes ethnic communities (2009: 65-67).

On the other hand, Yonatan contends that “the fact that the Constitution makes use of three different terms is indicative of the existence of different type

⁷ On how the Ethiopia federation differ from multination federation of the West See, Will Kymlicka, 2006, “Emerging Western Models of Multination Federalism: Are They Relevant for Africa?” in Davide Tortora (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, East African Studies, Addis Ababa University Printing Press

⁸ However, this does not mean that experience was not shared from western federations in designing the federal structure. See, Assefa Fiseha, *Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study*. Rev. Edn., (Addis Ababa: Artistic Printing Enterprise, 2007).

⁹ The Marxist theory of the right to self-determination of nations and nationalities is based on two contradictory understanding of ethnicity and their right to self-determination. The first understanding of ethnicity by Lenin is based on the instrumentalist approach, i.e., ethnicity is malleable and can be manipulated and mobilized for political ends. Ethnic identities are particularly useful in this endeavor, since they are based on mobilization from the inside, relying on people’s own cultural traditions and knowledge systems. This contradicts with the second approach or Stalinist understanding of ethnicity that reflects a primordial approach to ethnicity: a belief that the criteria for establishing nations and nationalities are objectively and externally identifiable, based on fixed characteristics that can be ascribed from outside, without the involvement or self-reflection of members of the ethnic community. See, Sara Vaughan, 2003, *Ethnicity and Power in Ethiopia*, PhD Dissertation, University of Edinburgh

¹⁰ The FDRE Constitution, Article 39/5

of socio-political categories” rather than ethnic communities or making hierarchies between ethnic communities (2010: 190). As socio-political categories he argues that the distinction between nations and nationalities are “more like “phases” that each ethnic group may or may not go through” (2010: 191). The “phase” can be expressed as the development of political agenda within an ethnic community which transforms an ethnic community from mere social political categorization to a socio-political unit. The development of a political agenda that defines the nature of each ethnic community depends on socio-historical and political circumstances an ethnic community may or may not go through. He presents the Silte case as one example¹¹. Based on this, he expresses the distinction between nations and nationalities as follows:

[A] group of people who satisfy the definition provided by Article 39/5 of the Constitution could be regarded as a nation once they start to rally around a political agenda requesting either a regional state of their own or some sort of political autonomy or, in the most extreme cases, an independent state of their own. [.....] Ethnic groups that fulfill the criteria set by Article 39 of the Constitution and who, nevertheless, have not developed an ethnically defined political agenda, which is characterized by the absence of ethnically motivated political mobilization, can be regarded as nationalities (Yonatan, 2010: 191).

However, there is no scholar who attempted to define the term ‘people’, but many ask who the people as per FDRE Constitution are.

Aalen on her part contends that constitutionally ethnic communities of the state are defined primordially, but the ruling party approach to ethnic

¹¹ When the boundary for autonomous ethno-territorial communities are set by the SNNPR, the Silte community were considered as part of the Guraghe ethnic communities and put under one nationality Zone. However, the Silte claimed a different ethnic identity from the Guraghe and demanded the right to self determination as per the federal and regional constitutions. Having passed through the procedures set to establish autonomous unit, the Silte communities were seceded from Guraghe Zone and established their own autonomous Zone in 2000. See, Yonatan Tesfaye Fessha, 2010, *Ethnic Diversity and Federalism: Constitutional Making in South Africa and Ethiopia*, Ashgate.

communities and their rights to self-determination are guided by instrumentalist approach to ethnicity. She argues:

Self-rule for ethnic groups is not guaranteed because “self-determination for the nationalities” is an end in itself, but because ethnic self-rule is recognized as the most efficient way to mobilize the community, neutralize possible separatist movements, and foster unity and integration. This reflects an instrumental understanding of ethnicity: ethnic identity is not valued for its own sake, or because it is a category which exists independent of the political mobilization of it, but because it is useful as a tool for achieving other aims (Aalen, 2009: 38).

The primordial definition of ethnicity in the Constitution together with absence of well articulated non-territorial mechanism of accommodation of ethnic minorities in the Constitution is creating new majority-minority relations as well as making citizens and ethnic minority vulnerable to different forms of violation of collective rights such as political and linguistic rights. Van der Beken contends that the right to self-determination as per the FDRE Constitution consists of two types of collective rights: rights with territorial component (autonomy and secession) and rights without territorial component (political, cultural and language rights) (2010: 147). He recommends the amendment of the Constitution to incorporate some contextually based non-territorial autonomy to effectively protect the rights of ethnic minorities (both “indigenous” and “non-indigenous”) (Van der Beken, 2010: 147). In the FDRE Constitution there are provisions that underpin the application of non-territorial autonomy¹² but it lacks clear contextualized articulation except with regard to Muslim communities in the country who are exercising National Cultural Autonomy in the areas of personal law.

¹²See, The FDRE Constitution, Article 39/2 and 3; and Article 34

4.3. Ethnic Autonomy in the SNNPR

The SNNPR are one of the autonomous multi-ethnic regional states in Ethiopian federalism which can be characterized by extreme ethnic diversity as it is indicated in the name of the region. The region is composed of more than fifty six non-dominant ethno-territorial communities. The region has enacted the first regional Constitution in 1995 which is amended in 2001 following the District Level Decentralization Pogrammm (DLDP) launched by the federal government¹³. Like the FDRE Constitution, the SNNPR Constitution guarantees every ethno-territorial communities of the region the right to self-determination, including secession, which can be exercised in three ways. The first way is secession from the federation following the procedure set under Article 39/4 of the FDRE and the SNNPR Constitutions. Secondly, ethno-territorial communities have the right to establish their own regional state by seceding from the region as per Article 39/5 and 6 of the SNNPR Constitution and Article 47/2 and 3 of the FDRE Constitution. Thirdly, at regional level every ethno-territorial community has the right to establish its own ethnic/nationality Zone or Special *Woreda*¹⁴. This is particularly true for multi-ethnic regional states, such as the SNNPR.

As per the SNNPR Constitution Article 45/1, the regional state is composed of four levels of administrative hierarchies: Regional, Zonal/Special *Woreda*, *Woreda* and *Kebele*. The SNNPR Constitution in Article 45/2 also states that “the Nations, Nationalities and Peoples in the Region shall have their own Zonal and Special *Woreda* administration, delimited on the basis of the settlement pattern, language, identities and consent of the people concerned”¹⁵. Zones and Special *Woredas* are territorially autonomous units though ethnic autonomy is exercised only when the Zones have numerically dominant ethnic community,

¹³ The DLDP also known as the beginig of the 2nd phase decentralisation program in Ethiopia is aimed at restructuring local government system by devolving political, administrative and financial autonomy to Woredas which were formerly deconcentrated structure of local administration without autonomy (Zemelak, 2014: 132).

¹⁴ SNNPR Constitution, Article 45/2

¹⁵ This provision of the SNNPR Constitution is similar to the criteria set for the creation of regional states/states under the FDRE Constitution Article 46/2 which states that “States shall be delimited on the basis of the settlement patterns, language, identity and consent of the peoples concerned”.

or if it is a nationality Zone. But all Special *Woredas* are autonomous units created for a particular ethno-territorial community and have direct relation with the regional government unlike regular *Woredas* which has no ethno-territorial autonomy. The difference between nationality Zones and Specially *Woredas* are only in terms of geographical size: nationality Zones are geographically wider and composed of several *Woredas* while Special *Woredas* are relatively smaller geographical size (Van der Beken, 2007: 132). So far, the region is composed of thirteen Zones¹⁶ and eight Special *Woredas*¹⁷. Nine of the thirteen Zones and all of the Special *Woredas* are Nationality/ ethnic based territorial units established for the self-government of a particular ethno-territorial community, while the remaining four Zones are multi-ethnic zones or composed of minority ethnic communities¹⁸. This indicates that only seventeen ethno-territorial communities in the Southern Region (SNNPR) have ethnic autonomy¹⁹ while the rest are “indigenous” ethnic minorities in multi-ethnic Zones and nationality Zones/Special *Woredas* or some are regular *Woredas* within the Zone.

It is understood that territorial autonomy in the SNNPR is not exercised by all “indigenous” ethnic communities in the region. As a result, there is a proliferation of demand/claims by “indigenous” ethnic minorities to use the right to self-determination within the region by establishing nationality Zone or Special *Woreda*. Besides, though many Nationality Zones and Special *Woredas* in the SNNPR are established with the assumption of ethnic homogeneity; there are ethno-territorial communities which claim distinct “indigenous” ethnic status that is different from dominant community in the area. In this regard, Guraghe Zone can be an example. In this nationality Zone, though the Guraghe community is majority and autonomy is guaranteed to this community, there

¹⁶ The SNNPR Zones are Sidama, Guraghe, Hadiya, KembataTimbaro, Gedeo, DebubeOmo, Kaffa, Sheka, Bench Majji, Silte, Wolayita, GamoGofa and Dawro.

¹⁷ The eight Special *Woreda*'s are Yem, Derashe, Amaro, Burji, Konso, Alaba, Konta and Basketo

¹⁸ In Ethiopian federalism there is no ethnic community which calls itself as minorities rather the call themselves nationalities/clan.

¹⁹ The autonomous Zones are Sidama, Guraghe, Hadiya, Gedeo, Silte, Wolayita, Kaffa, Sheka, and Dawro nationality zone; and the eight especial *Woredas* are Yem, Derashe, Amaro, Burji, Konso, Alaba, Konta and Basketo (Van der Beken, 2010: 126).

are also small ethno-territorial communities in terms of number which claim ethno-territorial autonomy, such as the Kebena (Markakis, 1998). There are also other communities, such as the Walene people in this Zone who are not yet recognized as a distinct ethno-territorial community, but have the claim to be recognized as distinct “indigenous” ethnic minorities from that of the Bete-Guraghe categories (Abdella, 2011; Beza, 2016).

The ruling party’s (EPRDF) instrumentalist approach to ethnicity lead to rejection of ethnic communities’ demand for regional state and/or Nationality Zone or Special *Woreda* status in the region, except in few exceptional cases such as the Silte²⁰. For instance, Sidama which has been exercising territorial autonomy as a Nationality Zone, have asked for regional autonomy though the request was rejected. Van der Beken argues that the demand for greater autonomy or some form of autonomy within the region is rejected mainly due to fear of similar demands by other communities which are considered as threat for regional integration or unity (2010: 134). Moreover, the territorial approach to ethnicity has many limitations in itself (Van der Beken, 2007: 146). These include, first, the territorial mechanism cannot be a solution for territorially dispersed ethnic communities. Second, newly created Nationality Zone or Special *Woreda* will not be ethnically homogenous. Thirdly, the creation of more Zones/Special *Woredas* conflicts with the objectives of good governance or government efficiency.

Scholars such as Aalen take the root cause of the problem related with ethnic minorities in the country in general and in the SNNPR in particular to the definition of ethnicity in the Constitution. These are first in practice primordial definition of ethnicity in the Constitution has lead an increasing number of peoples/elites to claim ethnic status; on the other hand, the ruling party’s

²⁰ See, Nishi, Makoto, 2005, “Making and Unmaking of the Nation-State and Ethnicity In Modern Ethiopia: A Study On The History of the Silte People”, *African Study Monographs*, Supply. 29: 157-168

instrumental approach to ethnicity allows ethnic political mobilization only when it serves the end goal of unity and integration²¹. Aalen argues that

[T]here is an underlying contradiction: the primordial definition of ethnic groups in the Constitution gives an all-inclusive right to self-determination, which stimulates new groups to advance claims to ethnic self-rule. But as not all such claims are in the ruling party's interest, some will therefore be denied, a situation which again produces political struggles (Aalen, 2009: 40).

Secondly, giving the right to self-determination to “every nation, nationality and people” imposed an exclusive ethnic identity on individuals who previously had no, or mixed, ethnic affinity. All Ethiopian citizens, including those who live outside their “ethnic territory”, are classified according to ethnic category such as when they obtain the official identification card. This may encourage parochialism and essentialism by limiting individual flexibility and choice (Aalen, 2009: 41).

Thirdly, the definition of ethnicity under federal and regional Constitution misses the most common understanding of ethnicity in the social sciences, the social constructivist understanding of ethnicity²². There is a consensus among social science scholars that ethnicity cannot be defined by fixed, inborn, and natural criteria, but is an outcome of self-ascription, selective interpretation of meaningful cultural and historical experiences²³. But with the Ethiopian Constitution's stress on fixed criteria such as common culture, language, psychological make-up, and identifiable territory, there is no room for seeing ethnic communities as flexible and malleable.

²¹The logic behind these new ethnic claims for autonomy appears to run as follows: “the Constitution gives the right to self-determination to those who meet specified criteria, and therefore it is justifiable and legitimate for us to demand self-determination as long as we see ourselves as fulfilling the criteria that the Constitution sets forth” (Aalen, 2009: 39).

²²As per the social constructionist understanding “both the content and the boundaries of ethnic communities are fluid and flexible, that the salience of ethnic identities varies across time, and that individuals may change their ethnic group membership according to situation” (Aalen, 2009: 41). See also Philip Q. Yang, 2000, *From Ethnic Studies: Issues and Approaches*, State University of New York Press.

²³See, Philip Q. Yang, 2000, “From Ethnic Studies: Issues and Approaches”, State University of New York Press

Though there is no social constructionist understanding of ethnicity in the FDRE Constitution, multiculturalism is one of the main features of ethnic federalism in Ethiopia. Every ethnic community in the country is guaranteed the right to develop ones language, culture and history²⁴ including the right to regulate family relation as per its own custom and religion²⁵. The state has also a duty to develop culture and tradition that are in line with national human rights and democratic norms²⁶.

4.4. Multicultural Accommodation in the Family Arena Vis-à-Vis Rights of Women

In Ethiopian federalism, multiculturalism is highly visible in the family arena. The FDRE Constitution establishes dual legislative and court system²⁷, and the power to make family law is the power of both regional governments and federal government in relation to federally administered cities²⁸. Customary and religious institutions have also given recognition to regulate marriage and resolve marital disputes²⁹. Among the nine regional states seven of them have enacted regional Family Codes³⁰ following the federal parliament's enactment of Revised Family Code (RFC) for federally administered cities of Addis Ababa and Dire Dawa. The Family Code enacted by the federal parliament is called RFC due to its major objective of amending some gender discriminatory and unjust provisions of the Civil Code and giving recognition to cultural diversity in the family law arena³¹.

The cities of Addis Ababa and Dire Dawa are composed of members of all ethno-cultural communities of the country; hence it can be argued that the RFC is designed to serve all ethno-cultural communities living in the country.

²⁴ The FDRE Constitution, Article 39/2

²⁵ The FDRE Constitution, Article 34/4-5 and 78/5

²⁶ The FDRE Constitution, Article 41/9 & 91/1

²⁷ The FDRE Constitution, Article 50/2

²⁸ See, the FDRE Constitution, Article 52/2/a and 55/1 respectively

²⁹ See the FDRE Constitution, Article 34/4-5; and Article 78/5

³⁰ The regional states that enacted regional Family Code include the State of Tigray, Amhara, Oromia, SNNPR, Harari, Gambela and Benshangul/Gumuz.

³¹ Regarding the nature of the law in the family law arena in the 1960 Civil Code of Ethiopia see Chapter three of this dissertation

During the ratification of the RFC some members of the parliament argued that they consider it as the family law of all nations, nationalities and peoples of the country owing to the process of drafting and ratification of this Code takes in to account the diversities of the residents of the two cities.³² However, the parliament limited the scope of the applicability of the RFC only to the federally administered cities mainly to respect Constitutional division of power. Due to this, there is limited/no substantive difference between the RFC and the regional Family Codes of many regional states, particularly with regard to civil marriage.

Though there is no uniform family law for civil marriage in Ethiopia, there is a constitutional base for making uniform Family Code for civil marriage if the highest decision making body of the country, i.e., the House of People Representative (HOPR) and House of Federation (HOF) believe that making such kind of law is necessary to create one economic community³³. Based on this provision, women parliamentarian requested uniform Family Code for civil marriage (Meaza and Zenebework, 2005: 20). However, the Constitutional interpretation body, the HOF³⁴, interpreted that Family Code is not necessary to establish or sustain an economic community, and therefore, falls under state jurisdiction (Meaza and Zenebework, 2005: 20).

On this issue it is possible and visible to argue that, as far as the power has been given to regional states/nations, nationalities and people to use and make detailed legislation on customary and religious laws in the family arena, having uniform Family Code for civil marriage would help to better protect and promote rights of women in the family. Besides, uniform Family Code for civil marriage is important to create an economic community in which citizenship rights particularly the individual rights has been respected regardless of place of residence.

³² Minutes of HOPR, July4, 2000

³³ The FDRE Constitution under Article 55/6 guaranteed the federal government to enact civil laws that are deemed by the House of Federations necessary to establish and sustain an economic community.

³⁴ See the FDRE Constitution, Article 62

Ethno-cultural communities in the country have the rights to regulate marriage and marital disputes as per their own custom and religion³⁵. However, there are no customary and religious family laws enacted either by the national, regional or local legislatures³⁶. Due to this, there is no/limited knowledge about the contents of these laws. It is known that many customary and religious institutions in the country have gender discriminatory norms and practices. Because of this that the FDRE Constitution set limit on the application of customary and religious laws of marriage and marital dispute resolution. The constitutional limits to apply customary and religious laws are respecting the Supremacy of the Constitution³⁷, respecting the consent of the parties concerned (right of exit)³⁸ as well as human rights and democratic norms³⁹. The customary and religious institutions of every ethno-cultural community are expected to function respecting these limits though to what extents the different ethno-cultural communities have the knowledge on Constitutional limits and willing to respect is questionable.

Equality of men and women in using their rights in the family arena are also clearly listed under Article 34 of the FDRE Constitution. Among the provisions Article 34/1 states that “[m]en and women, without any distinction as to race, nation, nationality or religion, who have attained marriageable age as defined by law, have the right to marry and found a family. They have equal rights while entering into, and during marriage and at the time of divorce”. Article 34/2 states that “[m]rriage shall be entered into only with the free and full consent of the intending spouses”. Women and men have equal rights in marriage as designated by Article 35/2; and Article 34/4 asserts “[t]he State

³⁵See the FDRE Constitution, Article 34/4& 5

³⁶ Here, it may be helpful to look in to the Experience of South Africa and India. In South Africa there is ‘Recognition of Customary Marriage Act 120 of 1998’ enacted by the national parliament and sets limits on some controversial customary laws and practices regarding marriage and marital dispute resolution. See, Christa Rautenbach, 2010, “Deep Legal Pluralism in South Africa: Judicial Accommodation of Non-State Law”, *Journal of Legal Pluralism* nr.60. In the case of India there are around twelve pieces of legislation in the family arena enacted for the different religious groups in the country. See, Jayanth K. Krishnan and Marc Galanter, 2000, “Personal Law and Human Rights in India and Israel”, *Israel Law Review*, Vol. 34, PP. 101-133

³⁷ The FDRE Constitution Article 9/1 states that “The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect”

³⁸ The FDRE Constitution, Article 34/5

³⁹ The FDRE Constitution, Article 41/9; and Article 91/1

shall enforce the rights of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited”. Besides, Article 35/7 of the Constitution affirms:

Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.

This provision of the Constitution has the purpose of eliminating the economic bases of patriarchy in the country. In sum, the above provisions of the federal Constitution make clear that women are entitled to equal rights, and ethno-cultural communities are expected to function respecting these rights of women in exercising their rights to cultural autonomy in the family arena.

Both the formal and community courts (customary and religious) in Ethiopia are playing pivotal roles in adjudicating marital disputes. The FDRE Constitution in Article 78/5 gives power to the National Parliament and State Councils to give official recognition for customary and religious courts. Based on this provision, a proclamation is ratified by the National Parliament to recognize and consolidate Federal Sharia Courts that serve the Muslim community⁴⁰. However, no law regarding customary institutions is ratified in Ethiopia. This can be related to two reasons; the first one is absence of claim to have such kind of laws owing to the diversity of customary institution even within one ethnic community. Secondly, the recognition of these institutions by the federal Constitution and related laws such as Family Code might have been considered as enough. However, scholars concur that having a more detailed or robust policy on customary institutions is significant for the prevention of violation of rights of women in these institutions which has been widely seen in

⁴⁰ See, Proclamation No. 188/1999, 'Federal Courts of Sharia Consolidation Proclamation', Federal *Negarit Gazeta* 6th year No. 10. Addis Ababa: 7th December 1999.

many customary local institutions⁴¹. This is because a policy is means to enforce constitutional principles; hence, if there is a detailed police the policy possibly indicates mechanisms to observe human rights of women in their day today functioning.

As per the FDRE Constitution the jurisdiction of customary and religious courts are dependent on the “consent” of the disputing parties. Article 34/5 of the FDRE Constitution states the following

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

This means citizens have guaranteed right of exit from intra-communal institutions. But to what extent individual members of ethno-cultural community particularly women have the capacity to make an informed consent is questionable in Ethiopian context. Moreover, the detailed law on the principle of consent/right of exit particularly with regard to request of divorce due to marital dispute has been found in the family Codes, for instance in the SNNPR Family Code⁴². However, the formulation of this law is tilted towards encouraging recconciliation rather than respecting rights which can be seen in-line with the overall attention given to accommodation of culture in the federal Constitution rather than in pure legalistic terms.

It is important to note that as per Article 34/5 the FDRE Constitution, religious and customary courts have the jurisdiction only to adjudicate family and personal disputes, i.e., these courts have no jurisdiction on criminal matters/cases. Various scholars have indicated that the limited recognition of customary courts violates citizens’ rights to access to justice given the limited

⁴¹See, For instance, Gebere, Assefa and Fekade (ed.) 2011, *Customary Dispute Resolution Mechanisms in Ethiopia*, Ethiopian Arbitration and Conciliation Center, Addis Ababa; and chapter five and six of this dissertation

⁴² See, SNNPR Family Code, Article 91/1-4

accessibility of formal courts⁴³ as well as the limited relevance of the values of formal legal system⁴⁴ for the majority of ethno-cultural communities in the country (Gebre, Assefa, and Fekade , 2011; Abera, 2015). Customary courts are rooted in values and norms of the communities they serve as well as they can be easily accessible in each vicinity. Due to absence of recognition of customary courts on criminal cases as well as non-existence of robust policy on the relationship between formal courts and customary courts several problems are observed. In this regard Gebre, Assefa, and Fekade state the following:

In some cases, the same matter is dealt twice. One of the parties may have gone through the formal system, has been found guilty, and served his or her sentence, yet that does not end the story. The same party has to go through the customary system in order to be integrated into his or her community. The reverse scenario is also possible. This raises the problem of double jeopardy: the same case being treated twice (2011: 470).

This forces putting in place robust law or policy on customary institutions compulsory to protect constitutional rights of citizens both in civil and criminal matters beyond what is stated in the Constitution and other laws such as in the Family Code.

Though there are diverse kinds of religious communities in the country, one of the recognized and consolidated religious courts in Ethiopia is the Sharia courts. In the Sharia courts, with regard to the extent of applicability of the principle of Supremacy of the Constitution in the decisions of Sharia courts there are two arguments. One line of argument is as it is indicated in Article

⁴³ Formal courts are often inaccessible to marginalized communities not only in terms of geography but also culture such as their long procedural requirement as well as language barriers lack of money to cover expenses; and time taking features of formal courts (Ayalew 2012).

⁴⁴ For instance, sentencing is one of the main characteristic of formal legal system while reconciliation and compensation is one of the main value/feature of many customary local institutions.

nine sub one of the FDRE Constitution, the Muslim community courts (Sharia courts) should perform their duty both procedurally and in substantive decisions respecting the Supremacy of the Constitution (Getachew, 2011). However, this approach is criticized as 'abolitionist approach' which tries to substitute religious norms by the state law (Mohammed, 2011: 98). In other words, the argument is if the state seriously follows this approach it is relegating the Constitutional systems sensitivity towards culture and accommodation.

The second line of argument is that the final decision of Sharia courts is not necessarily expected to be in line with the Constitution as long as the procedural requirements set in Article thirty four sub five, i.e., 'consent' of the disputing parties (exit right of the individual) is respected (Mohammed 2011: 73). Hence, the decisions of the Sharia courts need to be treated as exception to the 'supremacy clause' and the human right norms (Mohammed 2011: 97). It seems with the intention of curbing the review of substantive decision of Sharia Courts by the formal courts that the Sharia Court Consolidating Proclamation No. 188/99 regulates the relationship between formal and Sharia courts in its Article 5/4 elucidate as: "[u]nder no circumstances shall a case brought before court of Sharia the jurisdiction of which has been consented to, be transferred to regular court; nor shall a case before a regular court be transferred to Court of Sharia". This proclamation somehow gave Sharia courts independent status.

In securing consents of both parties (exit right) in Sharia courts, problems have been observed. In this regard Mohammed (2011: 89) states that "Sharia Courts are lenient towards the interpretation of the consent of the litigant parties to their jurisdiction. They do not usually ask the parties to give their express consent to the jurisdiction of the court upon their first appearance". This by itself created problem on one of the disputing parties who does not want to be adjudicated by Sharia courts or on one of the parties who wants to shift

jurisdiction from Sharia courts to formal courts. In this regard, Mohammed states that one of the parties to the dispute, particularly women, does not usually express their explicit rejection for the Sharia courts due to “fear of negative perception and reaction from the Muslim community. Or they may feel that such an express objection will be considered as an affront to one’s religion” (2011: 89). In some instances, Proclamation No. 188/99 is also misinterpreted and used by formal court judges as justification not to deal with cases first seen by Sharia courts, even if the court allowed the case to be seen by formal courts⁴⁵ in a way denying citizen’s access to justice⁴⁶. Besides, judges of formal courts often become negligent/ ignorant to the constitutional rights of women simply because one of the disputants first brought the case to Sharia courts but often proceeds to adjudicate the case without securing the consent of both parties, even in some instances, ignoring clear objection to jurisdiction of the court by the woman⁴⁷.

Problems seen in Sharia courts so far in securing consent would have been solved if the provision which were dealt with expression of consent in Proclamation No. 188/99 is set in a way that takes into account the social pressure and fear individuals might face in rejecting their intra-religious court. This Proclamation in Article 5/2 states that “if one of the disputants does not confirm his/her objection or consent by appearing before the registrar of the court, s/he shall be presumed not to have objected and the case shall be heard [without notice]”. This provision would have better protect individual rights if it had been put the other way round, i.e., ‘if one of the disputants does not confirm his/her objection or consent by appearing before the registrar of the court, s/he shall be presumed to have objected and the case shall not be heard’, the problem observed so far in Sharia courts in securing consent would have be solved. This may add to the debate on which way the “justice of rights”

⁴⁵ See, Sisay Kinfe, 2015, “Protection of Women’s Rights in the Family Law Arena in Ethiopia”, in Asnake Kefale and Assefa Fiseha ed. *Federalism and Local Government in Ethiopia*, pp. 242-260

⁴⁶ See, FDRE Constitution, Article 37

⁴⁷ See, Getachew Assefa, 2011, ‘Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on their impacts on the Protection of Human Rights,’ *East African Journal of Peace & Human Rights* V. 17 No 1. PP. 173-194

or the “justice of democracy” approach have more influential role in transforming unjust practices within ethno-cultural communities.

4.5. Family and Rights of Women under the SNNPR Constitution and Family Code

Autonomy guaranteed to ethno-cultural communities in the family arena and rights of women under the SNNPR Constitution are similar to rights guaranteed to ethno-cultural communities under the FDRE Constitution. For instance, Article 34/5 and Article 73 of the SNNPR state Constitution recognizes customary and religious institutions to function alongside the state institutions in the regulation of family relation. In many arenas the provisions of the regional Constitution are similar to that of the FDRE Constitution. This similarity is partly the result of the rights in the family arena being part of fundamental rights and freedoms. Of course, regional states have autonomy to make their own regional Family Code that gives the region the right to incorporate “positive cultural values”⁴⁸ in the detailed provisions based on their own contexts⁴⁹.

The SNNPR enacted its Family Code based on Article 52/2 and Article 51/3 of the FDRE and the SNNPR Constitutions respectively as well as following the enactment of the RFC for federally administered cities of Addis Ababa and Dire Dawa in 2000. The RFC is used as a model in the making some of the regional state Family Code in which the SNNPR is one. Though the SNNPR is composed of different autonomous ethno-territorial communities, there is one Family Code in the region. The right to develop ones culture as stated under Article 39/2 of the regional Constitution, besides Article 34/5 and Article 73 gives rights for every ethno-cultural community of the region to use their customs and religions in the family arena. Hence, autonomy in the family arena does

⁴⁸ The term is taken from the ACHPR, African Protocol on Women’s Rights

⁴⁹ For instance the SNNPR Family Code Article six clearly recognizes custom of betrothal while the RFC is silent. The SNNPR Family Code besides clearly recognizing the practice it also set standards of enforcement to control adverse effects on the rights of individuals particularly women by stating that “the maximum period of betrothal shall not exceed one year”

not only refer to ethno-territorial autonomy but also cultural autonomy both in terms of custom and religion.

Like the RFC in the SNNPR Family Code, there are three forms of marriage which require similar preconditions for the conclusion of marriage as well as similar effects. These are civil marriage, customary marriage and religious marriage⁵⁰. The preconditions required to conclude a valid marriage under all forms of marriage include consent of both parties (a man and a woman); the minimum age of intended spouses must be eighteen; requirement of monogamy, i.e., “[a] person shall not conclude marriage as long as he is bound by bonds of a preceding marriage”, etc⁵¹. All forms of marriage have also similar personal and pecuniary effects⁵². In addition to the three forms of marriage, like the RFC the SNNPR Family Code protects irregular union, i.e, when a man and a woman live together as a husband and a wife without having concluded a valid marriage as far as certain conditions have been fulfilled⁵³.The SNNPR Family Code has also contained long provision which deal with the meaning, conditions, and effects of betrothal in the first chapter of the Code. The RFC of the federal government is silent regarding betrothal. The incorporation of betrothal in the regional Family Code indicates the significance of the practice from the point of view of respecting and protecting cultural rights/custom of ethno-cultural communities of the region. Besides, it can also be taken as incorporation of “positive cultural values” of ethno-cultural communities of the region.

Often, ethno-cultural communities use the non-state (informal), i.e., customary and religious institutions to regulate family relations due to different factors, such as inaccessibility of formal institution, as mentioned in Section 4.4 above. However, there is little/no mechanism to supervise to what extent these

⁵⁰ The SNNPR Family Code, Article 11. In Ethiopia there is no hierarchy between different forms of marriage, all forms of marriage are equal before the law

⁵¹ The SNNPR Family Code, Chapter two, Section two

⁵² The SNNPR Family Code, Article 49

⁵³ The SNNPR Family Code, Chapter eight

institutions function respecting the constitutional principles such as supremacy of the Constitution; human rights and democratic norms including right of exit. Ethnic federalism has also led to the revival of customs and traditions that were historically used by men as an instrument to have an exclusive power in the management of the family. Often, the revival of traditions and custom maintain and reinforce the interests of men rather than being in favor of woman's agency (Aalen, 2009: 141). As we will see in chapter five of this thesis, the exclusion of women from the assemblies of customary local institution have been continued as it was though these institutions are nowadays are claiming as the promoters of constitutional rights by transforming their customary laws that are discriminatory and harmful practices. Though it is claimed that the introduction of ethnic federalism in Ethiopia has brought the state structure closer to the people (to local level), the formal-informal distinction with regard to customary institutions have been continued as it was at local level.

The section that follows discussed the power and function of local government institutions under the SNNPR Constitution which are one of the main institutions for collaborative and integrative functioning between customary and local government institutions to promote and protect human rights.

4.6. Powers and Functions of Local Level Government under the SNNPR Constitution

In Ethiopia there are two types of local level governments: ethnic local level government (Nationality Zones and Special *Woredas*) and regular local government units (*Zones* and *Woredas*) which are further divided in to *Kebele*, the lowest local level government unit. Ethnic local level governments- (nationality *Zones* and Special *Woredas*) are established institutions of self-government for regional ethnic minorities with the purpose of accommodation of diversity⁵⁴ while regular local government units are created with the primary

⁵⁴ The FDRE Constitution, Article 39/3

purpose of enhancing democratic participation⁵⁵. Since 2000, i.e., with the introduction of DLDP/second phase of decentralization by the federal government, regular local government units (*Woredas*) have also guaranteed political, administrative and financial autonomy similar to nationality Zones/Special *Woredas* short of the right to secession⁵⁶. Both types of local government units have an important role in the enforcement of laws and policies mainly due to their proximity to the people as well as the purpose of their creation, i.e., accommodation of diversity and enhancing democratic participation.

In the SNNPR Constitution all types of local level government, i.e., Zonal/Special *Woreda*, *Woreda* and *Kebele* have constitutional recognition with various power and responsibilities. Hierarchically, the Zones and Special *Woredas* are local government units next to the regional state⁵⁷ while *Woredas* are next to Zones. *Kebeles* are the lowest level of local government unit below Special *Woredas* and *Woredas*⁵⁸. All units of local level government, i.e., Zones/Special *Woreda*, *Woreda* and *Kebele* have legislative, executive, and judicial bodies with varying degree of power and responsibilities given by the regional (SNNPR) Constitution.

The Zonal and Special *Woreda* council/legislative body is bestowed upon the highest political power in the Zone and Special *Woreda* respectively⁵⁹. The powers and functions of the Zones and Special *Woreda* council include determining working language, protecting the right of nationalities to speak, write and develop their language, and preserving their history. Besides, it makes laws on matters uncovered and those are consistent with the regional

⁵⁵ The FDRE Constitution Article 50/4

⁵⁶ Earlier to the introduction of DLDP *Woredas* were deconcentrated local government unities without any autonomy. See, Zemelak Ayitenew Ayele, 2014, *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities*, Nomos Verlagsgesellschaft, Baden-Baden, Germany

⁵⁷ The SNNPR Constitution, Article 80/1

⁵⁸ The SNNPR Constitution, Article 90 and 103

⁵⁹ The SNNPR Constitution, Article 81/2

state and federal laws and approve its own budget⁶⁰. The Zonal and Special *Woreda* administrative cabine/executive body is given powers and functions, among other, to ensure the implementation of the regional state and federal laws and decisions of Zonal and Special *Woreda* council⁶¹.

The *Woreda* are administrative hierarchy below the Zone and subordinate to the Zone and the region⁶². It comprises *Woreda* council, executive council/cabinet and *Woreda* Courts⁶³. The powers and functions of *Woreda* council include approval of social services economic development administrative plans, program and budget of the *Woreda*⁶⁴. The powers and functions of the *Woreda* executive council includes to implement laws, regulations, policies, directives, plan and program issued by the regional state and federal government⁶⁵.

Constitutionally, the lowest local level government unit, the *Kebele*, is composed of the *Kebele* council, the *Kebele* administrative council and social courts⁶⁶. The powers and functions of the *Kebele* council includes making directive on local matters consistent with policies, laws, regulations, and directives enacted by its superior bodies; approve the appointment of the judges of social court; ensure the well observance of laws⁶⁷. The *Kebele* administrative council is a subordinate body that implements laws, regulations, and directive enacted by its superior bodies⁶⁸. The *Kebele* Social courts function as *Kebele* social judicial organ⁶⁹.

⁶⁰ The SNNPR Constitution, Article 81/3(a-d)

⁶¹ The SNNPR Constitution, Article 85/1

⁶² The SNNPR Constitution, Article 91/2

⁶³ The SNNPR Constitution, Article 90/1-3

⁶⁴ The SNNPR Constitution, Article 93/2a

⁶⁵ The SNNPR Constitution, Article 98/1a

⁶⁶ The SNNPR Constitution, Article 103

⁶⁷ The SNNPR Constitution, Article 105

⁶⁸ The SNNPR Constitution, Article 108/1

⁶⁹ The SNNPR Constitution, Article 114/1

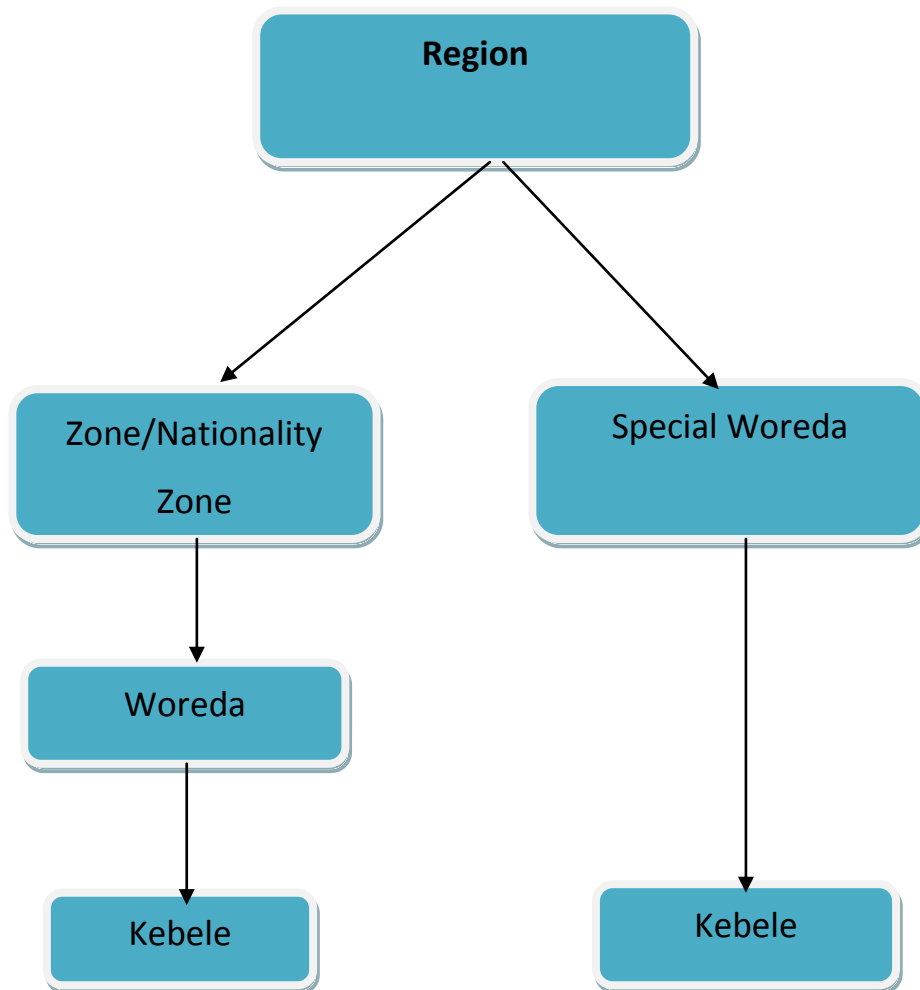


Figure 1. Organizational Structure of Local Governments in the SNNPR

The above description illustrated that all local government units in the SNNPR have the responsibility to enforce laws and policies of their superiors as well as the councils of these units are accountable to the people who elected them. Besides, the *Zones* and *Special Woreda* councils have legislative power to enact laws on local matters that are not covered by federal and regional laws and consistent with these laws⁷⁰. The above discussion made clear that enforcing

⁷⁰ The SNNPR Constitution, Article 81/3/c

rights in the family arena are one of the duties of all local level government units.

4.7. Conclusion

Autonomy, multiculturalism and rights in the family arena focusing on the rights of women under the Ethiopian federalism and the SNNPR Constitution have been discussed in this chapter. Both the Federal and the SNNPR Constitutions are similar in their design of autonomy. Both at federal and regional levels, ethno-territorial autonomy have been the main type of autonomy guaranteed to every ethno-territorial community. Besides, multiculturalism is the underlying premise of Ethiopian federalism that can be promoted using territorial and non-territorial autonomy. Autonomy and multiculturalism are widely exercised in the family arena. Every regional state has the power to make its own Family Code as well as ethno-cultural communities have guaranteed the right to apply customary and religious laws in the family arena. From the perspective of protection of constitutional rights, particularly rights of women, there are limitations in the enforcement of autonomy and multiculturalism in the family arena. One of limitations is absence of robust policy on customary and religious institutions to enforce mechanisms set to safeguard individual rights from autonomy of ethno-cultural communities⁷¹. Though the federal Constitution state that detail laws shall be enacted on how customary and religious law apply in the family arena, detailed laws have not yet been issued, especially on customary local institutions.

Using its regional autonomy, the SNNPR has enacted a Family Code that gives equal recognition for civil, customary and religious marriage including its effects. Basically, the SNNPR Family Code is similar to the RFC which is enacted by the federal government and becomes a model for the latter. This

⁷¹ The mechanisms set to protect constitutional rights from autonomy ethno-cultural communities are respecting the principle of Supremacy of the Constitution, hence human and democratic rights including right of exit.

emanated from the rights in the family arena being part of fundamental rights and freedoms which need to be respected and protected by all levels of government. Given the existence of different customary and religious laws of marriage at local level, exploring the power and responsibilities of local level of government in this arena is significant for the promotion of cultural and family rights. In the SNNPR Constitution, different types of local level government, from the *Zone* to *Kebele* level have the responsibility to enforce laws and policies enacted by their superiors as well as in filling gaps observed based on local contexts. Hence, in the protection and promotion of rights in the family arena the role of local level government has been underpinned by the regional Constitution.

Chapter Five

5. Accommodation of Diversity and Rights of Women in Guraghe Zone

5.1. Introduction

The guarantee of autonomy and multiculturalism for ethno-cultural communities in Ethiopian federalism lead to the creation and consolidation of local institutions. The Guraghe Zone is created as ethnic/nationality based autonomous local government unit for the accommodation of the Bete-Guraghe ethno-cultural community within the SNNPR. Following this different ethno-cultural community of the Zone started to revive and consolidate their customary local institutions. Though the Guraghe ethno-cultural communities have both territorial and non-territorial autonomy (NTA), NTA of the community have been emphasized in the revival of customary local institutions and transformation of customary laws. Due to this the Sebat-bet Guraghe and Sodo Kistane Bete-Guraghe transformed their customary laws separately owing to their cultural differences. Community based Civil Society Organization (CSO) initiated revitalization and transformation of customary laws among the Sebat-bet Guraghe while leaders of customary local institution is the initiators of transformation of customary laws among the Sodo Kistane. Customary laws of each community have been deliberated and ratified by customary local institution before they have been published, which completed the transformation process. Both the process and outcome of transformed customary laws indicate the limited attention given to the protection of rights of women. Though local government institutions such as local councils have the power and responsibility guaranteed by the regional Constitution to involve in developing ones culture, including transforming customary laws, they have refrained from engaging in such kind of activities. The engagement of local government institutions has been particularly significant in order to transform

exclusion of women from forums that (re)makes customary laws that have significant impact on the lives of women. Though women within ethno-cultural communities have been aware of their constitutional rights in the family arena, oftentimes they are hesitant to use these rights owing to the limited sensitivity of male-dominated institutions and their limited empowerment in their communities.

The chapter begins with introducing geo-political structure of the Guraghe Zone and brief history of the Guraghe ethno-cultural communities and its culture. This is followed by assessing the processes of transformation of customary laws among the Guraghes and its limitation vis-à-vis exploring opportunities to incorporate the voices of women. The main contents of the transformed customary laws of both the Sebat-bet and Sodo Kistane Guraghe in the family arena have been discussed focusing on the prohibited discriminatory and harmful customary practices and the limitation of transforming customary laws in this regard. Women's experience in marital life vis-à-vis their guaranteed rights have been explored. This is followed by investigating role and limitation of women's machinery and formal courts at local level in the protection and promotion of rights of women in the family arena. The chapter comes to an end by drawing conclusion.

5.2. Ethno-Cultural Communities in Guraghe Zone and the Guraghe Communities

Guraghe Zone is one of the ethnic/nationality-based autonomous local government units in the SNNPR. It is bordered on the Southeast by Hadiya and Yem Special *Woreda*; on the West, North and East by Oromia National Regional State and on the South-west by Silte Zone (See Appendix A). There are about half a dozen ethno-cultural communities in this Zone: the Sebat-bet and Sodo Kistane Guraghe, Kebena, Mareqo, Dobe, etc. The majority and dominant ethnic community of the Zone (around 90%) is the Guraghe nation, nationality and people (Yewondiwsan, 2011), which are exercising ethnic autonomy as

per the FDRE and the SNNPR Constitution 39/3 and 45/2¹ respectively. The rest ethno-territorial communities of the Zone, such as the Kebena and Mareqo, are “indigenous” ethnic minorities in the Zone which have a claim for ethnic autonomy in the region. The Zone is divided into thirteen *Woredas*, two town administrations (Walkite and Butajira), and four hundred thirty seven rural *Kebeles* (Yewondiwasan, 2011: 37) which contains more than 85% of the total population of the Zone. Eleven of the thirteen *Woredas* are mainly settled by the Bete-Guraghe categories; the rest two (Kebena and Mareqo) *Woredas* are mainly settled by Kebena and Mareqo ethnic communities. Regarding this kind of majoritarian TA, Kossler states that “majoritarian ethnic autonomy in the worst case scenario lead to ‘son of the soil politics’ which blatantly discriminates against unrecognized groups in the ethnic territory or in the best case scenario fails to extend the benefits of self-government to these groups due to strict dualism this arrangement follows between those groups through assignment of their ‘own territory’ and those in this sense unrecognized” (2015: 251).

In Guraghe Zone TA is given to the Guraghe community as a means of empowering exclusively or predominantly Guraghes in its compact area/territory of settlement. And the Guraghe communities have been explicitly created to have a strong link with this territory by the new federal dispensation. As Palermo contends where territory becomes exclusive framework for self-government of ethnic communities because of geographic or historic reasons, TA is conceived as the exclusive instrument for the protection, representation and participation of ethnic communities (Palermo, 2015: 15). Ethnic and territorial elements also co-exist and interplay with each other (Palermo, 2015: 16) in Ethiopian federalism due to the instrumental approach to ethnicity in the creation of autonomous constitute unites. And the

¹ The FDRE Constitution Article 39/3 States that “Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments”. In-line with this the SNNPR Constitution Article 45/2 state that “the Nations, nationalities or people in the region shall have their own Zonal or Special *Woreda* administration, delimited on the bases of the settlement pattern, language, identities and consent of the people concerned”

autonomous arrangement in Guraghe Zone takes into account the heterogeneity of the communities settled in the territory. But territorial self-government is primarily designed for the protection of one/the majority community in the Zone, i.e., the Guraghe. This exclusionary approach of autonomous territorial unity originates from the federal constitution that defines ethnicity primordially and guarantees the right to self-rule for every ethno-territorial community without any condition. The constitutionally exclusionary tendency of the structure of nationality Zones pushes non-Guraghe ethno-cultural communities, i.e., Mareqo and Kebena to claim the rights to self-rule/ ethno-TA² succeeding from the Zone. But the ruling party's (EPRDF's) instrumentalist approach to ethnicity makes their constitutional rights far from enforceability (Aalen, 2011). Though constitutionally every ethno-territorial community has the right to ethnic autonomy, EPRDF applies this constitutional principle only when the guarantying of ethnic autonomy serves the goal of integration and unity. But the limited enforceability of ethnic autonomy as it is stated in the federal and regional constitutions making ethno-territorial community to focus on territorial and cultural aspects of identity and lead to inter-ethnic conflicts as well as it is making inter-ethnic dialogue too difficult as it has been discussed in chapter six of this thesis.

The Guraghe ethnic community is one of the multicultural community where different categories of the Guraghe exercise different forms of culture based on differences in terms of history, clan, localities, region and religion which often are described as the Bete-Guraghe categories in order to indicate differences of culture among the different categories of the Guraghe but similarity in terms of ethnic identity³. The ethno-cultural community called the Bete-Guraghe

² Regarding claims of right to self-rules presented to EFDRE HOF see, Beza Dessalegn Beza, 2016, *Ethnic Federalism and the Right to Political Participation of Regional Minorities in Ethiopia*, PhD Thesis, AAU

³ There are assertions that the assumption of one ethnic identity among Bete-Gurage categories of people living in Gurageland is far from reality based on historical evidences that indicate peoples with different identities and customary governance system have lived in the area called Gurageland without having and claiming the some ethnic identity though there were attempts to transform these categories of people to one ethnic identity both in pre and post 1991 period See, Mehamed Tadesse, 2009, *Hazo: A Political History of the People in Gedebano, Gutazer, Welene, and Agemjay Localities of the Guragheland –Ethiopia (to*

category by the Zonal Culture, Tourism and Government Communication Office (2011) are Sebat-bet Guraghe, Sodo Kistane Guraghe and Welene Bete-Guraghe, Mesqan Bete-Guraghe and Dobi Bete-Guraghe⁴. In the history of traditional governance system in Guragheland, the Guraghe ethno-cultural communities were/are known with a tradition of political fragmentation which lead to the development of two well-known different administration rules and structures along the geographic divide between the north and western Guraghe: Sodo Kistane and Sebat-bet respectively (Bahiru, 2002). Documents testify that Sodo Kistane Guraghe settled at the existing place of Guragheland around the 14th century, while Sebat-bet Guraghe has been there many centuries before the coming of Sodo Kistane⁵.

Though the basic socio-political organizations of the two categories of the Guraghe community are similar (which are divided in to three level of authority: village, clan/territory and region), they have different religious composition, speak different dialects of Guragigna⁶ and have different customary laws. The Sebat-bet Guraghe comprises followers of both Christianity and Islam which are almost in equal percentage, while the Sodo Kistanes are mainly followers of Christianity. Of course, the Sebat-bet Guraghes are mainly known in their religious cult, which is the source of their customary laws (Yewondiwosen, 2011). In this regard, Shack stated that “ritual power, authority, and wealth are vested in the lineages directly associated with

1991 AD), PhD Dissertation; John Markakis, 1998, “The Politics of Identity – The Case of the Gurage”, in M.A. Mohamed Salih and Jone Markakis (ed.) *Ethnicity and the State in Eastern Africa*, Stockholm, Elanders Gotab: Routledge-Cavendish

⁴ See, ____, 2011, *Guraghe Cultural Values*, Guraghe Zone Culture, Turism and Government Communication Office, Walkite. Though the Zonal administration considers that the Welene are one of the Bete-Guraghe categories, there is a claim by the Welene elite to get recognition as a separate ethnic community from the Bete-Guraghe categories presented to the FDRE HOF. On the history and culture of the Welene see, Mehamed Tadesse, 2009, *Hazo: A Political History of the People in Gedebano, Gutazer, Welene, and Agemjay Localities of the Guragheland –Ethiopia (to 1991 AD)*, PhD Dissertation; Abdulfeta Abidela, 2004, *The Gordenna Sera: Welene People Cultural Rule*, Alem Printing Press (written in Amharic).

⁵ See Tesfa Gebreyes, 1995, *Aymeleti: Guraghe Sodo Gordena People*, Short Historical Note, Addis Ababa; Yewendiwesaw Awilachew, 2011, “Yajok Kitcha: Sebat-bet Guraghe Customary Dispute Resolution Mechanism” in Gebere Yntiso, Assefa Fiseha and Fekade Azeze (ed.) *Customary Dispute Resolution Mechanisms in Ethiopia*, Vol. 1, Ethiopian Arbitration and Conciliation Center, Addis Ababa, pp. 37-61

⁶There are around twelve to sixteen different dialects of Guragigna spoken in Guraghe Zone. Shack (1966) makes different dialects of Guragign spoken among the Sebat-bet Guraghe equal to the number of clans of the Sebat-bet

the principal Guraghe religious cults: the male Cult, *Cast*⁷, the Female Cult, *Damwamwit*⁸, and the Cult of the Thunder God, *Boza*⁹ (1966: 2). Here, it is important to note that though political authority of the Sebat-bet Guiraghe was known in its fragmentation along clan line, contrary to this the religious cults was known in its centralized form (Shack, 1966: 2). However, in recently written history of the Guraghe ethno-cultural community by authors of the community, these kinds of religious cults are considered as having limited observance compared to Christianity and Islam (Diniberu, Menigist, Fiker and et.al., 1995: 193-195).

In terms of language, the Guragna language belongs to sematic language family. But there is dialectical difference between the two categories of Guraghe (Sebat-bet and Sodo) even within the Sebat-bet Guraghe among the different clans (Shack, 1966: 7). It is contended that in the use of language the difference between the two categories of the Guraghes was/is not merely dialectical since the Sodo Guraghe did not understand the Sebat-bet language⁹ (Fekadu cited in Markakis, 1998: 134). The other differences between the two categories of the Guraghe are in their social organization. The bases of social organization for the Sodo Kistanes are territory while clan was/is the bases of social organization for Sebat-bet Guraghes. Markakis argues that the differences between the two categories of Guraghe indicate the limited historical, genealogical and religious, language and territorial bases for united Guraghe identity. This indicates the limited relevance of the primordial definition of ethnicity set in the FDRE Constitution¹⁰ at least in relation to the Bete-Guraghe category. Markakis argues that the Guraghe identity emerged

⁷ *Cast* refers to yearly ceremonial in honor of the Sky-god *Waq*, the cult of *Cast* was the central force that unites the Sebat bet Guraghe men of all clan (Shack, 1966: 180)

⁸ *Damwamwit* was/is a female cult exclusively women partake in its annual festivals. This cult is considered as a 'guardian spirit', devoted herself to looking after the welfare of the Guraghe, and harms those who failed his or her social obligation and ritual duties (Shack, 1966: 185).

⁹ This is confirmed to the researcher by informants both from Sebat-bet Guraghe and Sodo Kistane. Interviews, February-March 2016

¹⁰ Ethnicity, in the Constitutional parlance "nations, nationalities and people" is defined as "group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory" (The FDRE Constitution, Article 39/5).

“when the need for it arose” first among urban dwelling Guraghes and later in the post 1991 Ethiopia (1998: 144). This means when unity of the Guraghe ethnicity become a condition for exercising the rights to self-rule/ self-government, the unity of the Guraghe ethno-cultural communities has been (re) constructed. This is in-line with the social constructionist as well as integrationist theories of ethnicity (Yang, 2000). In the social construction theory of ethnicity, the basis of ethnic identity is society; it is socially constructed identity with a flexible ethnic boundary. In integrationist theory of ethnicity, the social (re) construction of ethnic identity takes some features from primordial, instrumental as well as social construction theory of ethnicity, i.e., the bases of ethnic identity can be society, ancestor, or cost/benefit analysis; it is (re) constructed based on ancestry and society, it has relatively stable and changeable ethnic boundary¹¹.

The difference in terms of myth of origin/history, religion, language, and social organization among the Bete-Guraghe categories explain why revival and transformation of customary institutions and laws have been undertaken by the Sebat-bet and Sodo Kistane Guraghe separately following the introduction of ethnic federalism in the country¹² even if in terms of ethnicity the unity is sought and advocated by political elites of the community¹³. This made NTA, which is a form of de-territorialized self-government (Nooten, 2015) a viable option for transformation of customary laws. Besides, the motive of the initiators of transformation of customary law of the Sebat-bet Guraghe, i.e., strengthening the relationship between the Guraghes living dispersed indifferent urban centers including the capital, Addis Ababa, with their ethnic homeland, Guraghe Zone¹⁴, also makes applying NTA significant. This is in-line with Kossler's argument that NTA follows bottom up approach, but territoriality

¹¹ See, Philip Q. Yang, 2000, *From Ethnic Studies: Issues and Approaches*, State University of New York Press.

¹² See, Bahiru Zewde, 2002, “Systems of Local Governance among the Gurage: The Yajoka Q[K]icha and the Gordanna Sera”, in Bahiru Zewde & Siegfrie Pausewang, eds., *Ethiopia: The Challenges of Democracy from Below*, Stockholm, Elanders Gotab,

¹³ See, Diniberu, Menigistu, Fikire et.al., 1995, *Gogot: The Guraghe Nation History, Culture and Language*, Walkite (Written in Amharic Language)

¹⁴ Interviewee 45 and 44, Addis Ababa, Nov. 15 and Sept. 1, 2017 respectively

also matters in NTA to define the scope of the application of non-territorial rights (2015: 247). From the different forms of NTA¹⁵, the NTA applied by the Guraghe communities to transform their customary laws, particularly by the Sebat-bet Guraghe can be categorized under personal autonomy, which refers to activities done by associations¹⁶ created by persons belonging to minorities to advance the position and cultural interests of their community under the private law of the state (Suski, 2015: 86). However, the researcher argues below that the collaboration of community based CSO not only with customary local institution but also with local government institution in the process of transformation of customary laws would have brought better results in terms of making use of autonomy of the community to promote and protect rights of women from within.

Currently, the Sebat-bet Guraghes are dominant in eight *Woredas*¹⁷ of the Guraghe Zone while the Sodo Kistanes are living concentrated in one *Woreda* of the Zone, Sodo *Woreda*. The Sodo *Woreda* is bordered with Oromia in the North and East, Meskan and Dobi in the South, Walene in the West, and Mareqo in the South East¹⁸. The population of the *Woreda* is around 185, 498 (in which 91,373 is male, and 94,117 is female), (Projection of FEDO of the Sodo *Woreda*, 2015).

5.3. The Guraghe Customary Laws and Its Transformation

This section provides the rationale for revival and transformation of the customary laws, and an overview of customary local institutions and customary laws of the Sebat-bet and Sodo Kistane Guraghes respectively. The community based CSO of the Sebat-bet Guraghe called the GPSDO¹⁹ took the

¹⁵The different forms of NTA are political autonomy, personal autonomy, functional autonomy, and national cultural autonomy, See Section 2.2.2 of this Thesis

¹⁶ The GPSDO that initiated transformation of the Sebat bet Guraghe Customary law is community based CSO registered currently under Charities and Societies Proclamation No. 621/2009

¹⁷ The *Woredas* mainly settled by Sebat-bet Guraghes are Chai, Gumare, Geto, Enimorna Enir, Azhi, Muhirna Akilil, Enidegagni, and Abeshige (See Appendix A)

¹⁸ See, _____, 2000, *Gordena Serra: The History of Kestane Bet-Guraghe Cultural Administration Structure*, Walkite

¹⁹ The GPSDO is formerly called the Guraghe Road Construction Organization (GRCO). This name is changed in to GPSDO in 1988. The GRCO was one of successful CBO established in the 1960s in southern Ethiopia, which is managed by volunteers

initiative of transformation of customary law of the Sebat-bet Guraghe. The GPSDO formerly known as the Guraghe Road Construction Organization (GRCO) is mainly composed of urban elites of the Guraghe community which has been actively engaged in the development of roads in their homeland for more than four decades in a close collaboration with the rural communities, particularly with customary local institution of the community (Nishi, 2008). The coming of ethnic federalism in Ethiopia to some extent detached the urban Guraghe community from the rural community, since the new nationality administration (the Guraghe Zone) is supposed to represent the interests of the Guraghes (Nishi, 2008: 19). This made the GPSDO to focus on issues that strengthen the link between the urban and rural Guraghe community to cope with the changing politico-legal system in the country. In other words, the nature of Ethiopian federalism which gives greater emphasis for the right to self-determination of ethno-territorial communities and identity related issues is one of the main factors that inspired the GPSDO to engage in transformation of customary laws.

The idea of transforming customary laws was informally welcomed by Guraghe Zone political elites including leaders of customary local institutions owing to the need to revive identity in order to show appreciations for cultural rights guaranteed by the federal Constitution²⁰ as well as to be competent enough and beneficiary from federal dispensation at regional as well as national levels. As a result the processes of transforming customary laws has been done with active direct and indirect support from political elites and leaders of customary local institutions, which is expressed by allowing halls in the Zonal capital,

from urban and rural Guraghe community. Though 'elite' of the Guraghes who migrated to Addis Ababa were the core body of the organization, different clans of the Sebat-bet Guraghe has been represented in the central executive committee as well as they had strong relation and link with *Yajok* (customary local institution of the Sebat-bet Guraghe) and the rural community. By collecting money through fund raising campaign both from urban and rural Guraghe community, GRCO supported extended and multiple communities of the Guraghe by constricting roads. Following the completion of the construction of major homeland road networks in 1980s, and the change of development need of the community as well as due to the major politico-legal changes in the country the name of GRCO is changed to GPSDO. See, Makoto Nishi, 2008, "Community-based Rural Development and the Politics of Redistribution: The Experience of the Gurage Road Construction Organization in Ethiopia" *Nilo-Ethiopian Studies*, Vol. 12, PP. 13-25

²⁰ See, the introduction Section of the Guraghe Customary Law (*Guraghe Kitcha*)

Walkite and other towns in the Zone for gathering to deliberate on the draft of transformed customary law. Participants to deliberate and ratify the transformation of the customary law have been selected from three categories of the Sebat-bet Guraghe community: those living in Addis Ababa, in Guraghe Zone/mainly representatives of customary local institutions and professionals of different fields²¹. There is no resistance on the significance of transforming customary laws as well as on the objectives set to transform customary laws, i.e., preserving and developing once culture as well as prohibition of discriminatory and harmful customary practice²².

In Ethiopia many customary laws of ethno-cultural communities have been criticized for having discriminatory and harmful customary practices against women; and the constitutional recognition of customary and religious institutions to regulate family relation are also been criticized by advocates of rights of women (Meaza and Zenebework, 2005). The urban elites organized under GPSDO are aware of this. Besides, leaders of customary local institutions have got these impressions from the policies of the state as well as awareness raising works done by governmental and NGOs. These lead to reconsideration of customary laws vis-à-vis women members of the community. This resulted in taking into account elimination of discriminatory and harmful customary practices against women as the concern of not only the state but also CSO. This is expressed by making one of the objectives of transformation of customary laws prohibition of discriminatory and harmful customary practices against women. Hence, the main actors who pushed for the protection of rights of women in the transformed customary laws by making one of the objectives of transformation of customary laws prohibition of discriminatory and harmful customary practices against women are the initiators of transformation of customary law, i.e., elites in the community based CSO. The GPSDO published the transformed customary law of the

²¹ See Appendix of Guraghe Customary law.

²² See, Appendix of the Guraghe Customary Law/*Guraghe Kitcha*

Guraghe/Guraghe *Kitcha* in 1998 having sixteen chapters and forty three Articles.

Unlike transformation of the Sebat-bet Guraghe customary law, transformation of customary law of the Sodo Kistane has been initiated by leaders of customary local institution and supported by political elites of the Zone mainly due to expansion of societal evils in Sodo *Woreda* and the capital of the *Woreda*, Bui town²³. These problems include the expansion of theft, the limited attention given to eradicating marriage related harmful practices, and the limitations of state centered laws to solve these problems²⁴. To transform the customary laws leaders of customary local institution has been given permission from the Sodo *Woreda* administration as well as supported by Guraghe Zone Culture, Truism and Government Communication Office, which financed the publication of the transformed customary law of the Sodo Kistane. Initiators of transformation of customary law of the Sodo Kistane are also advocates for the prohibition of discriminatory and harmful customary practice against women, which is the result of the positive influence of the state policy towards women²⁵. Similar to transformation of customary law of the Sebat-bet Guraghe, transformation of customary laws of Sodo Kistane are encouraged by those who are concerned and involved in this process.

As it has been indicated in the introduction section of transformed customary laws of both the Sebat-bet and Sodo Kistane Guraghe, the primary purpose of changing orally found customary laws²⁶ to a written form is to preserve and

²³ Interviewee 34, Bui town, March 8, 2016

²⁴ Ibid, See also introduction section of Customary Law of the Kistane; _____, 2000, *Gordena Sera: History of Kistane Bete-Guraghe Cultural Administrative Structure*, Walkite

²⁵ Interviewee 34, Bui town, March 8, 2016

²⁶ Here, it may be important to distinguish between customary law and customary international law which often has common feature in terms of their existence as unwritten and non-negotiated laws but different interms of their scope and contents. Customary laws are norm of action, percept or rules of conduct, which is generally accepted and practiced by group of people/community in a given locality. This means it various from place to place within a given state. On the other hand customary international law refers to the law of nations or legal norms that have developed through customary exchange between states over time, whether based on diplomacy or aggression. These norms are gained their strength from universal acceptance, such as the prohibition of genocide and slavery. This means in customary international law the main actors are states while in customary laws the main actors are communities within a state. See, Murado Abdo and Gebreyesus Abegaz, 2009, *Customary Law: Teaching Material*, Prepared under the Sponsorship of Justice and Legal System Research Institute of Ethiopia; Laurence

develop once culture as well as to prohibit discriminatory and harmful customary practices against women²⁷. This makes the process undertaken by the Guraghes to produce written customary law document “transformation” rather than only “restatement”, which can be done by any interested body with or without the active participation of the community concerned²⁸. In short transformation refers to reform from within. As Spinner-Halev (2001) indicated reform from within to eliminate/prohibit unjust practices against women within ethno-cultural community needs to be done by the communities concerned with minimal intervention from state, but in an inclusive forums by incorporating the voices of all sections of the community, particularly, the marginalized sections of the community, such as women (Deveaux, 2004; Song, 2007). However, in the deliberation and ratification of transformed customary laws of both the Sebat-bet and Sodo Kistane Guraghe women’s have been hardly participated though there is no intervention of the state, which indicates the greater attention given to preservation of historical roles of customary local institutions and customary laws rather than developing them as it has been discussed below.

5.3.1. The Sebat-bet Guraghe Customary Local Institution and Customary Law

The main customary local institution/ cultural administration system of the Sebat-bet Guraghe is called *Yajoka*. *Yajoka* is Sebat-bet Guraghe Cultural Shengo/council which is the highest decision making body in terms of making legislation as well as kind of appeal customary court (Bahiru, 2002). The

R. Helfer and Ingrid B. Wuerth, 2016, “Customary International Law: An Instrumental Choice Perspective”, *Michigan Journal of International Law*, Vol. 37, Issue 4, pp. 563-608

²⁷ See Introduction Section of the Guraghe Customary Law (*The Guraghe Kitch*). As it is expressed in chapter two section 2.7 reforms from within is considered by many scholars a better way for protection of rights of women within autonomous ethno-cultural communities

²⁸ Restatement of customary laws comprise the writing down and compiling of the laws and usages into single document covering the main areas that customary law operates which has the purpose of increasing the pool of knowledge which would inform future codification of the laws (Kane, Oloka-Onyango, and Tejan-Cole, 2005: 17). Like restatement, the transformation of customary laws consisted of the writing down and compiling of the laws and usages into single document, not only to increase the pool of knowledge but also to make it compatible with codified national laws. Taking this in to account, and the conscious desire of initiators of transformation of customary laws, to make it compatible with the new national laws, particularly with the rights of women, the term transformation rather than restatement better expresses the processes of writing customary laws of ethno-cultural communities in Guraghe Zone.

Sebat-bet Guraghe customary law is called the “Guraghe *Kitcha*”. The term *Kitcha* refers to the Guraghe cultural rules, administration and justice system²⁹. To enforce the decisions of *Yajoka* as well as solve the social problem of the community in every locality in day to day basis the Sebat-bet Guraghe cultural administration system is structured in five hierarchal structures. The first of which is *Serra Genna Administrative Kitcha*. It is the smallest *Kitcha* at village level to enforce communal rules, such as burial ceremony, theft of animals, etc. The second administrative hierarchy is *Murra Gana administrative Kitcha*, which has wider power than *Serra Genna* and deals with controversial issues. Thirdly, *Tibbe/Clan Administrative Kitcha*, which adjudicates issues or conflicts between different clan members as well as issues on land and damage of property etc. Fourthly, *Kifle-Hizibi Kitcha* is the higher decision making body on issues which have regional and national character; and male members of the community from different sections of the society participate in its meeting. The last and highest administrative structure is the Guraghe *Kitcha (Yajoka)* Council which is the highest decision making body of the system. From the above administrative structure issues of family under different themes were/are discussed in one or all of the above administrative structures³⁰ though marital disputes are often resolved by family council and are advised to end there.

Historically, well documented issue of women and family case presented to *Yajoka*, the highest decision making body of the Guraghe cultural governance system, are the Case of *Yaqaqe Wardwat* in the second half of 19th century. In Guraghe custom, membership to the *Yajoka* assembly including adjudicating any kind of disputes as per the customary law is exclusively the power of men. In the customary institutions of the Sebat-bet Guraghe, women hardly participate even when they want to take a case to customary courts. They present their case through their relatives or husband, and they are not allowed

²⁹ See, The Guraghe Customary Law/Guraghe *Kitcha* (1998)

³⁰ See, ____, 1998, *Gurage Customary law (GurageKitcha, Walkite*; _____, 2011, *Guraghe Cultural Values*, Guraghe Zone Culture, Turism and Government Communication Office, Walkite *Gurage Cultural Values*, 2011

to speak for themselves. Moreover, in the Sebat-bet Guraghe customary institutions, there is law of *anqiti* which was aimed at avoiding divorce requested by a woman. *Anqiti* is a customary law and cultural belief among the Sebat-bet Guraghe about marriage and divorce of women (Yewondiwesen, 2011: 55). This custom was believed to be the first customary law that comes with the establishment of the Guraghe customary law system before three hundred years. The rationale for the coming of this law was believed to be the problem of wife looting at that time. Though the problem was caused by men, *anqiti* law was established only for women.

Woman in identity group are a special focus of concern as a social categories due to their human reproduction role as well as they are full members of collectivities, institutions or groupings (Diduck & O'Donovan, 2006: 6). Maintaining the boundary of collective identity is one of the major roles of women in the group (Ibid; Shacher, 2001). As a result of this boundary maintenance function of women's, identity groups control not only the individual women as identity bearers but also with whom and on what terms they should undertake their child-bearing and child-rearing functions (Malik, 2006:215). Women are also often given the responsibility to transform the groups history, tradition and its social, cultural and religious norms to the next generation. In the group women's are assigned "the role of bearers of cultural values, carriers of traditions, and symbolism of the community" (Shacher, 2004: 50). This seems why the law of *anqiti* was set for the Sebat-bet Guraghe woman, even if the rationale for the making of this law is problems among men member of the community.

Since its establishment, the law of *anqiti* forbids the Sebat-bet Guraghe woman from divorce and remarriage without the will of the man she once married or engaged. Therefore, if a woman wants to divorce her husband in any reason, she must get the will of the husband. Without the will of the husband, even if the woman has no relation (sexual or other type) with the husband, the

marriage is not dissolved and she was not allowed to remarry. But the man is free to divorce his wife at any time as well as marry as many women as he likes without divorcing his former wife. As per the *anqit* law, unless the woman is divorced with the will of the husband (which has an established cultural ceremony), it is believed that she would be caught by curse of *anqiti*. It is believed that this curse makes a woman infertile and if she is fertile the baby would not grow up; she would not be healthy or she would die by lightning. Moreover, as per this custom, a woman who decided to divorce her husband whether with the will of the husband or without his will takes almost nothing from the matrimonial property.

The discriminatory and harmful customary law of marriage and divorce of the Sebat-bet Guraghe was challenged by a woman called *Yaqaqa Wardwat* who led a group of women “to one of the *Yajoka* assemblies and demanded at the very least to be free to attend meetings and that they should have the right to divorce their husbands” (Bahiru, 2002: 25). Her request is eloquently expressed as follows:

We women, your sisters, your mothers and your obedient servants for all time, appear before you today to ask for our rights if we, at all, have any! We women are treated as if we are created only for the pleasure of men. You never make us participate in things you are doing or planning. We have no security. If you like us, we are lucky, we live with you, and when you dislike us, we are chased out empty-handed. Therefore, we came here to Yajoka today to beg for some rights even if it is not the same rights as for men. It is not to beat our husbands as you do your wives or to scold them. We shall remain obedient to our husbands, continue to wash their feet and cook food for them. We are not asking you either to test us in the battlefield at the initial stage. This can come eventually. All we are asking you is to give us some minimum rights, like to be free to come

to Yajoka and share our views with you concerning all the problems pertaining to “your country” or if we will be allowed to say so, “our country”. Second, when we feel repressed, to leave our husbands and go without being tied up by the rigid procedures of divorce, which remain based upon rigid customary laws and traditional beliefs, the Anqiti. When you divorce us, you just say go because you are not tied up by anqiti. Let us have the same right, although we cannot tell you go from our establishments. But for us to be able to say, “I am going, and goodbye” (Gebreyesus, quoted in Bahiru, 2002: 25).

Bahiru states that what follows the determined action and speech of *Yaqaqa Wardwat* have little or nothing in changing the tradition. In the contrary, her tragic death by a thunderbolt has served the elders of the *Yajoka* to warn the Guraghe women to stay in their traditional place. But *Yaqaqa Wardwat* can be considered as feminist of the 19th century Ethiopia. Because as the history of *Wardwat* indicates she was self-consciously determined woman who understood change starts from the self and she achieved protection of her rights through struggle³¹ as well as initiated other women to struggle for the protection of their rights.

However, the exclusion of women from customary local institution has continued in the twenty century. In this regard Sebat-bet Guraghe woman stated that “in our culture it is only men that participate in Yajoka, besides women did not have the interest and time to engage in such kinds of affairs except in situation where the woman seeks justice from this institution in which she is represented by her close male relatives”. The Sebat-bet Guraghe women had hardly participated in the deliberation processes and ratification of

³¹ As the history of *Wardwat* tells us, though the *Yajoka* elders were able to isolate her from the women gathered under her leadership for gender justice, they mollified *Wardwat* after they gave her the right “to choose her husband; divorce him whenever she so wished; and the option of attending *Yajoka* meetings” (Bahiru, 2002: 24).

the transformed customary law³². The absence of participation of women in the deliberation and ratification of the transformed customary law makes the transformed customary law to have no/limited democratic legitimacy. A similar problem is observed in the customary local institutions and process of transformation of customary laws of Sodo Kistane.

5.3.2. The Sodo Kistane Customary Local Institution and Customary Law

The cultural administration system/the main customary local institution of the Sodo Kistane Bete-Guraghe are called *Gordena Sera*. Tesfa Gebreyes define the term *Gordena* as referring to “a community who lives in one culture and system that has strength and unity” (Tesfa, 1995: 16). In other document, the term *Gordena* is described as having the meaning or values of cultural administration, symbolized by woods of the wool of a house given to the Guraghe by the surrounding Oromo people. In a document published by the Guraghe Zone Culture, Tourism and Government Communication Office, *Gordena Sera* is described as the Kistane and Walene Beta-Guraghe Cultural Administration Shengo/council³³. This indicates that *Gordena Sera* cultural administration system is not limited to one category of the Guraghe but shared between the Bete-Guraghe categories as well as with the Oromos, especially with the Sodo clan of the Oromo. There is also intermarriage between the Oromo and Sodo Kistane Guraghe communities. This intermarriage is considered as the main reason to use the name “Sodo” and “Kistane” interchangeably with the Kistane Guraghe³⁴. Moreover, the majority of the Sodo Kistane Bete-Guraghe also speaks Afaan Oromo, besides Kestanigna and the Amharic language (Tesfa, 1995:16).

³² The Guraghe Customary law document indicates the participation of only one professional woman, i.e., W/ro Aleminech Hailemariam. W/ro Aleminech indicated that as a member of GPSDO, she has engaged in professional consultation which is limited on advising the drafters of the Kitcha to incorporate the right to education for girls. Interview on Sep.1, 2017

³³ _____, 2011, *Guraghe Cultural Values*, Guraghe Zone Culture, Tourism and Government Communication Office, Walkite P. 13

³⁴ Often urban dweller Guraghe prefer to call themselves Sodo, While Guraghes living in Guraghe Zone, particularly in rural areas, often call themselves Kistane. Interview with different members of the community, Bui, Sodo Woreda, March 2016

It seems due to these intermarriages and neighborhood that “[t]he Oromo factor has caused the first crack to appear in the image of the Guraghe identity”³⁵ (Markakis, 1998: 140) in areas where Sodo Guraghe is mixed with the Oromo during the delineation of boundary along ethnic line³⁶. The Oromos called Sodo Jida which are predominantly Christian, are retained distinct identity as exogamous descent groups. Based on this background, Oromo based political forces³⁷ advised members of Sodo Jida group in Addis Ababa to agitate for the inclusion of their home district into Oromia regional state, on the grounds that its inhabitants were not Guraghe but Oromo. To this end they formed a political organization called Sodo Jida Democratic Action. But this move is opposed by other Guraghe political organizations and the issue is handled by a commission established by the central government in which some of the contested areas were included to Oromia while the large part of Sodo district became part of Guraghe Zone (Markakis, 1998: 141). The cultural and social relationships among the Sodo Kistane, Oromo and Welene Bete-Guraghe reveals the socially constructed nature of identity that can be deconstructed, constructed or reconstructed depending on the national politico-legal contexts³⁸.

Historically, *Gordena Sera* as the Sodo Kistane cultural administration system had five administrative structure that are hierarchically organized. But, with the transformation of their customary law which has been published in 2000³⁹, its structure is made to follow governmental structure and has been re-

³⁵The second being the Silte case which ended in the secession of the Silte from the Guraghe not only from the Zone but also from its identity itself. See, Makoto Nishi, 2005, “Making and Unmaking Of The Nation-State And Ethnicity In Modern Ethiopia: A Study on the History of the Silte People”, *African Study Monographs*, Suppl. 29. The crack does not seem to end there because the Wollene are also demanding the rights to self-determination (recognition) asserting their distinct identity from the Guraghe category. See, Beza Dessalegn Beza, 2016, “Ethnic Federalism and the Right to Political Participation of Regional Minorities in Ethiopia”, PhD Dissertation, AAU

³⁶ Markakis indicated that groups of Oromo origin are found in twenty of the twenty-four Soddos (*agers* (territory)), and are the majority in three of them (1998: 140).

³⁷ The political forces that supported the inclusion of the whole territory of Sodo to Oromia regional state were Oromo Liberation Front (OLF), Oromo People Democratic Organization (OPDO) which is affiliate of EPRDF and Islamic Front for the Liberation of Oromia (IFLO)

³⁸ For instance, though the Sodo Kistane and the Welene Bete-Guraghes have the some/similar cultural administration system, the Walenes are claiming different ethnic identity from the Bete-Guraghe categories. See, Beza Dessalegn Beza, 2016, *Ethnic Federalism and the Right to Political Participation of Regional Minorities in Ethiopia*, PhD Thesis, AAU

³⁹ See, _____, 2000, *Gordena Sera: History of Kistane Bete-Guraghe Cultural Administrative Structure*, Walkite

organized in three levels: *Woreda*, *Kebele* and *Atibia Edir (Sabugnat)* level. Though the *Gordena Sera* of the Sodo Kistane Guraghe plays many roles in protecting and promoting social peace of the community, this institution is male-dominated that exclude women from participation and decision making. The transformed customary law of the Sodo Kistane deals with four main issues of urgent problems of the community. These are theft, disciplinary rules for the meetings of *Gordena Sera* at *Woreda*, *Kebele* and *Sabugnat* level, marriage related harmful practices, and environmental protection⁴⁰.

In Sodo Kistane arranged marriage was long lived tradition which has popular acceptance by the community. In marital life, the Sodo Guraghe women were/are praised for their strong hard working culture, however, this did not translate into equality of husband and wife in decision-making or between male and female children. Rather a Sodo Guraghe woman was expected to give fearful respect for her husband. In this regard Tesfa states the following

Among the Kistane, women were/are expected to live respecting, fearing, and assisting their husbands in every aspect of life. A Kistane woman did not call her husband in his name in all her marital life; she did not speak in front of him what she feels, and rather she calls him with great cultural respect saying “Erso”⁴¹ and she lives with sheer respect and shyness (1995:66).

This is particularly true among older women of the community. Unlike, other women member of ethno-cultural communities in Ethiopia, such as in the case of rural Arsi Oromo in which women member of the community have been organized under the institution of the *Siniqe* to defend their rights as a married woman⁴², there is no any customary local institution among the Kistane women which have such kind of function. But hardworking and submissive

⁴⁰ See Introduction of the Customary Law of Sodo Kistane Guraghe

⁴¹ “*Erso*” is a term used to indicate respect mainly for older person

⁴² Marit Tolo Østebø, 2015, “Translation of Gender Equality among Rural Arsi Oromo in Ethiopia”, *Development and Change*, Vol. 46, No. 3, PP. 442-463

woman for the demand and interests of her husband by sacrificing her rights was respected by the community.

Historically, among the Sodo Kistane the husband had the sole authority (right) during divorce, as it was the case in the Sebat-bet Guraghe community. If the wife persists in requesting divorce, she would be evicted empty-handed except her clothes. But the custom allows a man to divorce his wife on three grounds and all of which were considered the faults of the woman only. These were infertility, adultery, and very bad behavior (Tesfa, 1987: 75). If due to one of the three factors divorce happens, a woman takes only her clothes. From her ex-husband, other than the clothes, nothing was given to the woman. In case she had children, the husband was forced to give maintenance for the upbringing of the children.

The cultural history of Kistane community also indicates that land was common property owned by clan/s. Due to this, female children were not allowed to inherit land of their parents, because the marriage of a woman to a new clan or to a clan different from her parent's results in transfer of land to different clan based on patrilineal lineage (Tesfa, 19995: 50). Moreover, women were not entitled to own land in any circumstances, such as by buying land or through inheritance. Giving land to a woman in the form of sale or inheritance was forbidden by the custom of the community in earlier days; nowadays through the help of the law of the state women can inherit and own land⁴³. In this regard the state law is empowering women⁴⁴.

But the assemblies held for transforming the customary law of the Sodo Kistane are exclusively dominated by men. As a result, the rights of women to participate on matters that affects their life are not respected by the customary local institutions of the Sodo Kistane though one of the objectives of transformation of customary law is eliminating marriage related harmful

⁴³ Focus Group Discussion, Bui, Sodo Woreda. March, 10 2016

⁴⁴ See, FDRE Constitution, Article 35/7

practices against women⁴⁵. Why were women excluded from participation in the transformation of customary laws of their communities even if one of the objectives of transformation of customary laws is related with respecting rights of women both in the case of Sebat-bet and Sodo Kistane Guraghes? The following section dealt with this question.

5.4. Factors that Hindered the Participation of Women in the Era of Women's Rights

In this sub-section factors that contributed for the perpetuation of exclusion of women from forums held to (re)make customary laws have been identified. The factors are identified based on the researcher's observation during the field work as well as analysis of documents that govern the functioning of local institutions. The factors have been categorized into four: patriarchy, absence of women's movement in the study area, shallow understanding of autonomy and democratic norms, and partial recognition and absence of policy of transformation on customary local institutions as it have discussed below.

i). Patriarchy

One of the main features of patriarchy is division of spheres (public and private) and the relegation of women into private sphere. Often this sphere is governed by customary institutions, and these institutions exclude women from its public sphere. In multicultural state the customary local institutions may attempt to respect constitutional standards that recognize their existence without transforming the underlying rules that guides the functioning of these institutions; as a result the exclusion of women from customary local institution continue as it is. The exclusion of women from participation in (re) making/ transformation of customary laws mean failure to address the underlying causes of discrimination both in the public and private sphere because the transformed customary laws regulate not only public life of the

⁴⁵See, _____, 2000, *Gordena Sera: The History of Kestane Bet-Gurage Cultural Administration Structure*, Walkite, p. 47

community but also private sphere particularly the family arena where a future life of a person has been determined. Non-recognition of rights of women to participate in customary local institutions disempowers women both in the public and private sphere. This is one of the major strategies of patriarchy to maintain its advantageous position in social relations. In this regard Facio has stated the following:

Patriarchy is made up of structures or institutions that exclude women from participation in, or contact with, spaces of higher power, or what are believed to be the spaces of the greatest power economically, politically, culturally and religiously (2013: 4).

Scholars concur that the historical origin of patriarchy is the family. Then, it extended to the entire social order and perpetuated by different mechanisms and institutions that maintain and reinforce male solidarity. In patriarchal institution “men as a social category, individually and collectively oppress all women as a social category, but also oppress women individually in different ways, appropriating women’s reproductive and productive force and controlling their bodies, minds, sexuality and spirituality mainly through "peaceful" means such as the law and religion”, which can be “reinforced through the use of physical, sexual, and/or psychological violence” (Facio, 2013: 2). In doing this, patriarchy creates system of male dominance both in the public and private sphere⁴⁶.

With the wide spread political recognition of Convention on the rights of women (CEDAW), gender equality in general and rights of women in particular have got constitutional recognition both in the private and public sphere. This is a pushing factor for transformation of customary laws. However, due to limited

⁴⁶ See Abedo Sultana, 2011, “Patriarchy and Women’s Subordination: A Theoretical Analysis” *the Art Faculty Journal*; Lynne Henderson, 1991, “Laws Patriarchy” in *Law and Society Review* Vol. 25; No. 2

experience of cultural legitimization of human rights⁴⁷ in many African states (Ibhawoh, 2000), the underlying causes of violation of rights of women (exclusion of women in the making of customary laws) remain as it is. Transformations of Customary laws among the Guraghe communities are one of the manifestations of cultural legitimization of human rights because one of its objectives is addressing the underlying causes of violation of women's rights by prohibiting discriminatory and harmful customary practices against women. Though this is acknowledged as a means to bring changes from within, the long established patriarchal institutions presents itself as defender of collective identity including rights of women member of the community mainly to avoid the intervention of the state (Weinstock, 2004) in the internal affairs of the community rather than collaborating with the state to bring cultural legitimization of human rights in its communities.

Ibhawoh states that cultural legitimization of human rights in Africa has been seen from two contrasting paradigm, i.e., conservative paradigm (guided by patriarchal ideology) and dynamic paradigm of cultural legitimacy (2000: 850). The conservative paradigm is represented by male-dominated, urban-based elites who are disposed to the main human rights regime within the state. Their perception of cultural legitimization of human rights focuses on collectivism: the retention of cultural initiative on issues of private social relations, such as those concerning the family and gender role. On the other hand, the dynamic paradigm of cultural legitimacy is represented by emerging groups who work for women and minority rights. The dynamic perspective subscribe to the view that universal rights be given some form of cultural interpretation and use the global human rights debate in criticizing present cultural practices, which

⁴⁷ Cultural legitimization of human rights is an on-going process that aims at bringing internal validity of human rights in a given culture by addressing the underlying causes of human rights violation (Nienaber, 2000: 44). See Abdullahi A. An-Na'im (ed.), 2002, *Cultural Transformation and Human Rights in Africa*, London New York, Zed Books Ltd; An-Na'im, Abdullahi Ahmed, 1994, "States Responsibility Under International Human Rights Law to Change Religious and Customary Laws", in R. Cook (ed.) *Human Rights of Women, National and International Perspective*, Philadelphia, PA: University of Pennsylvania Press PP. 167-188; Abdullahi Ahmed An-Na'im (eds.), 1992, *Human Rights in Cross-Cultural Perspectives*; Ibhawoh, Bonny, 2000, "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State", *Human Rights Quarterly* Vol. 22No. 3, PP. 838-860

infringe human rights. Ibhawoh underlines that “the cultural legitimacy of human rights in Africa has tended to focus more on the conservative paradigm” (2000: 851). Little has been done by advocates of the dynamic paradigm⁴⁸ of cultural legitimacy of human rights.

The main actors advocated for the protection of rights of women in the transformed customary law, particularly in the case of the Sebat-bet Guraghe were urban-based elites organized under community based CSO who have been exposed to human rights norms, but they took rights of women at face value simply to get support from the political elites of the state and focused on collective tradition than rights. This in turn served as means to preserve patriarchal thinking and practice as it is, in spite of its contradiction with one of the objectives of transformation of customary laws, i.e., prohibiting discriminatory and harmful customary practices against women. Here, it is important to note that in principle the urban-based elites organized under community based CSO supports women’s participation in the process of transformation of customary laws. However, practically they did not taken measures to that end mainly presenting the limited empowerment of women in their community as an excuse⁴⁹.

Besides, the transformation of customary laws immediately after the introduction of ethnic federalism makes the focus on maintaining cultural/ethnic identity using so called “authentic” customary institutions in the face of competitive political atmosphere which has been seen in the history of the Guragheland after the introduction of ethnic federalism⁵⁰. However, the legitimate way of ensuring cultural legitimacy of human rights needs

⁴⁸The Dynamic paradigm of cultural legitimacy emphasizes on the need for human rights work to focus more on traditional systems of support for women; reciprocal relationship between rights and social responsibilities; and traditional methods of conflict resolution (Ibhawoh, 2000: 153).

⁴⁹Interviewee 44, Addis Ababa, Sept,1, 2017

⁵⁰ In this regard the secession of the Siltes from the Bete-Guraghe category as well as the boundary dispute between the Sodo and the Oromos were taken as threat for unified Guraghe identity. See, Makoto Nishi, 2005, “Making and Unmaking Of The Nation-State And Ethnicity In Modern Ethiopia: A Study On The History of the Silte People”, African Study Monographs, Suppl. 29 PP. 157-168; John Markakis, 1998, “The Politics of Identity – The Case of the Gurage”, in M.A. Mohamed Salih & Jone Markakis Ed., Ethnicity and the State in Eastern Africa, Stockholm, Elanders Gotab, Routledge-Cavendish, PP. 208-233

broadening the internal discourse and dialogue to integrate the two paradigms of Ibhawoh, i.e., conservative and progressive views, and reaching on acceptable compromise, one that does not deny women fundamental rights to participate equal to men on issues that affect their life, such as in the transformation of customary laws. But the absence of women's participation in the processes of transformation of customary law in Guraghe Zone have ended up even without opening the opportunity for compromise by privileging only the historically dominant section of the community, i.e., men.

ii) Absence of Demand for Participation by Women of the Communities

Unlike the mid-19th century when *Yaqaqe Wardwat* had organized the women of the Sebat-bet Guraghe to demand representation and recognition of rights of women by *Yajoka*, in the end of 20th century in Guragheland there is no organized women movement that requested right to participation in customary local institutions though these is not unique to the Guraghe Zone⁵¹. Patriarchal system has alienated women from the customary institutions. One of the researcher's woman informant stated that "it is not our culture to attend meetings of *Yajoka*, even if we want, we (women) have no time to seat and discuss with men"⁵². The other women (Sodo Kistane) stated that "person who participates in *Gordena Sera* are respected elders who are capable and wise person that can resolve different forms of disputes. I do not think there are women who are wise enough like men and want to participate in *Gordena Sera*"⁵³.

Though it is hardly possible to argue that there were/are no wise or educated women among the Guraghe community who can articulate women's rights and

⁵¹ Many customary local institutions in Ethiopia are composed of men member of each community; except few customary local institutions exclusively composed of women. However, there is no clear demand from women for participation in these institutions though the significance of these institutions and their recognition by the state have been increasing for their role in resolving different form of conflicts and disputes.

⁵² Interviewee 2, Walkite, February 8, 2016

⁵³ Interviewee 31, Gogiti Kebele of Sodo *Woreda*, March 7, 2016

interests, they are limited in number with a bulk of responsibilities⁵⁴ which makes many women to live in a sense of shortage of time for public engagement in their communities. Moreover, the recognition of women's rights in the national Constitution has been widely propagated by the political elites of the community as if it is more than enough for a woman guaranteed by the state legal system.

It is often raised that the participation of women in local government institutions at different levels as the manifestation of protection of equality of women in the community though when it comes to making policy regarding women in the family arena, customary local institutions are the main actors. Therefore, education of women may not be enough to protect the rights of women to participate, particularly in customary local institutions, unless these women start to consciously work with customary local institutions and struggle for the representation of women in these institutions; or the integration of customary local institutions with local government institutions. What kind of conducive situations are there for collaborative and integrated functioning of customary local institutions and local government institutions is partly dealt below.

iii) Shallow understanding of Autonomy and Democratic Norms

In the process of transformation of customary laws, customary local institutions and CSO of the community have not taken in to account what autonomy of the Guraghe ethnic community mean vis-à-vis its culture or customary laws which are one of the manifestations of Guraghe identity and culture. "Recognition of the basic rights to collective identity in a federal structure would be meaningful only if it can bring the institutions and norms of the community into direct operation under the state system" (Addissie, 2015: 105). Ethnic autonomy is a means for recognizing and transforming identity

⁵⁴ Interviewee 44, Addis Ababa, Sept,1, 2017

based customary laws from informal existence to that of formal existence through legislative recognition at different levels in a way that respects rights of citizens enshrined in the Constitution. This is in line with the purpose of creation of nationality/ethnic based local government unit in Ethiopia: accommodation of diversity and enhancing democratic participation⁵⁵.

The nationality Zone of the Guraghe is bestowed with full measure of the rights to self-rule (autonomy) which have three main critical features. These are first, making national minorities' local majorities and restoring the dignity and pride of community in their cultural rights, especially for those communities who passed through state oppression. Secondly, it leads to the establishment of government institutions (legislative, executive and judicial) in the territories of the ethnic community inhabits to exercise political power. Thirdly, there should be devolution of clearly defined competences which are relevant for the protection of the identity and culture of the relevant ethnic community (Zemelak, 2014: 248- 252).

With regard to the first feature of autonomy in Guraghe Zone, the Guraghe community is now local majorities in the Zone. The Zone has also established all the three branches of government, i.e., legislative, executive and judiciary, which exercise political power. Regarding the third feature of self-rule, the federal Constitution Article 39/2 lists potential area of competences, such as developing and promoting culture that can be exercised by every ethno-cultural community in the country. This provision can be read together with Article 34/5 of FDRE Constitution, which leaves space for making detailed laws for applying customary and religious laws with regard to personal and family matters. Similar provision is in place in Article 39/1 and 34/5 of the SNNPR Constitution respectively. Moreover, Article 81/3 of the SNNPR Constitution

⁵⁵ The FDRE Constitution, Article 39/3, and Article 51/4; see also Zemelak Ayitenew Ayele and Yonnatan Tesfaye Fessha, 2012, "The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia". *Africa Today* 50 (4) 89; Zemelak Ayitenew Ayele, 2014, *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities*, Nomos Verlagsgesellschaft, Baden-Baden, Germany

states that Zonal council “shall issue laws on matters uncovered and that are consistent with the state and federal laws”. Making use of custom, including transforming customary laws, is cultural rights of ethnic communities, which have constitutional base and uncovered by state and federal laws. This makes autonomous local government units in the SNNPR to exercise their power left for them in the transformation of customary laws.

However, when the researcher examines the process of transformation of customary laws in Guraghe Zone, there is no clear role played by local government institution, particularly local council/legislative body. This is basically the result of shallow understanding of autonomy and democratic norms by the community and political elite of the community. Because, having a policy for using customary laws can be articulated at local level as far as there is constitutional recognition of these institutions both at federal and regional levels. The absence of collaborative functioning between customary and modern local institutions in Ethiopia is contrary to the experience of South Africa where there is “Traditional Leadership and Governance Framework Act”. The act sets out the roles and responsibilities of different levels of traditional leaders, institutions, dispute resolution mechanism and their relationship to the different levels of government⁵⁶.

From the point of view of achieving the two purposes of creation of ethnically autonomous local government units in Ethiopia⁵⁷ as well as from the point of view of achieving the objective set in the transformed customary laws with regard to women, the parallel role of customary local institution and local government institution have several problems. These are first, if the autonomous local institution fails to entertain issues related to culture in the local government institution, particularly in local council, it endangers

⁵⁶Government Gazette Republic of South Africa Vol.462, No. 25855; Act No. 41, 2003 “Traditional Leadership and Governance Framework Act” Article 3/2/b

⁵⁷ The two objective creation of autonomous unit are accommodation of ethnic minorities and enhancing democratic participation.

multicultural policy of the state in a way that undermines the legitimacy of the state itself⁵⁸.

Secondly, laws enacted by only half section of a community would pose problem of democratic legitimacy. In a modern state, any law to have democratic legitimacy, it needs the participation of all section of the society including women who constitute half of the total population. Democratic legitimacy in the making of laws that affects the rights and interests of women requires the participation and deliberation by all section of society, i.e., men, women, civil society organizations, women's associations, scholars, etc., in order to reach on a justified compromise between the rights of women and group right to culture (Deveax, 2004). In other words Kane, Oloka-Onyango and Tejan-Cole state the following:

It would be important in any discussion of customary law today to ensure that the voices of all the people who are impacted upon by the laws are heard. Customary laws are not a monopoly to be applied and understood by the few over the many (2005: 24).

Thirdly, absence of women's participation makes the genuineness of one of the objectives of transforming customary laws, i.e., prohibition of discriminatory and harmful customary practices against women, equivocal. Because, justifying exclusion of women from customary institution based on custom by itself violates human rights of women. Here, it is important to note that to ensure democratic participation of women, the integrated and collaborative functioning of customary local institutions and local government institutions become critical. Local government institutions have the responsibility to ensure participation of women in their legislative institutions, and women's have been participating in the local government council. This has broken the

⁵⁸ Multiculturalism advocates the protection of not only collective cultural rights but also rights of vulnerable sections of society such as women using the appropriate policy of intervention. On what kind policy of state intervention helps to maintain the right balance between culture and rights as well as helps to transform unjust customary practices See Jeff Spinner-Halev, 2001, "Feminism, Multiculturalism, Oppression, and the State" Ethics. Vol. 112 No. 1, PP. 84-113

discriminatory practice of exclusion of women from the public arena. Hence, if there is policy of transformation that allows the integration or collaboration of customary local institutions with that of local government institutions, it would have helped to solve problem of exclusion of women in the deliberation and ratification of transformed customary laws.

In sum, though autonomy for ethno-territorial community in federal system means using the state resources for self-government based on culture and positive cultural values, the understanding of autonomy in the Guraghe Zone in the transformation of customary laws indicate that development of parallel system between customary local institutions and local government institutions rather than collaborative and integrated functioning. This is clearly seen in the legislative functions of the two institutions. Of course, there are instances where the two institutions collaborate in their legislative function though on ad hoc bases without clear law or policy⁵⁹. The absence of collaborative and integrated functioning between customary local council and local government council emanates from shallow understanding of autonomy and democratic norms. This in turn is systemic impediment for elimination of all forms of discrimination and harmful practice against women.

iv). Partial Recognition and Absence of Policy of Transformation on Customary Local Institutions

As per the FDRE Constitution, customary institutions have the power to regulate civil matters, particularly personal and family matters⁶⁰. However, in almost all ethno-cultural communities customary local institutions function and functioning both in civil and criminal matters⁶¹. In the transformed customary law documents of the Guraghe, the customary laws both in civil and

⁵⁹Interviewee 41, Walkite, Sep. 16, 2016

⁶⁰The FDRE Constitution, Article 34/4 and 5

⁶¹ See. Dolores A. Donovan and Getachew Assefa, 2003, "Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism", *The American Journal of Comparative Law*, Vol. 51, No. 3 pp. 505-552; GebereYntiso, Assefa Fiseha and Fekade Azeze (ed.) 2011, *Customary Dispute Resolution Mechanisms in Ethiopia*, Ethiopian Arbitration and Conciliation Center, Addis Ababa

criminal matters have been transformed against the Constitution or in a way that violates limits set on autonomy in applying customary laws⁶². The absence of recognition for customary institutions other than personal and family matters seems one of the reasons for doing business as usual, i.e., using customary local institution and its traditional authority to amend (transform) customary laws both in civil and criminal matters. Rather than showing interest for collaboration or integration with the local government institutions which may automatically rejects half of the most valued customary laws of the community, especially those customary laws in criminal matters. The perpetuation of exclusion of women from customary institutions may also be a backlash for partial recognition of customary institutions in the federal Constitution.

Scholars concur that limiting the power of customary institutions is necessary to make it compatible with human rights norms but without undermining its important norms and values as well as without dichotomizing the arenas of exercising cultural rights⁶³. It is argued that the non-recognition of customary institutions in criminal matters without any qualification undermines the important contribution and values these institutions have for ensuring peace and justice. For instance, Donovan and Getachew (2003) argues that in case of the crime of homicide the state has to sentence the perpetrator on individual bases at the sometime it also needs to recognize reconciliation processes carried out by customary institution between the victims and perpetrators families which has the effect of deterring revenge which is one of the sources of other crimes⁶⁴.

⁶² Here, it is important to note that making criminal law is the exclusive power of the federal Government. See the FDRE Constitution, Article 55/5.

⁶³ To have the list of scholars who wrote on customary institution in Ethiopia see GebereYntiso, Assefa Fiseha and Fekade Azeze (ed.), *Customary Dispute Resolution Mechanisms in Ethiopia*, Ethiopian Arbitration and Conciliation Center, Addis Ababa Vol. 1&2; Yonas Birmeta (ed.), 2015, *Ethiopian Human Rights Law Series* Vol.VII

⁶⁴ See, Dolores A.Donnovan and Getachew Assefa, 2003, "Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism", *The American Journal of Comparative Law*, Vol. 51, No. 3

Moreover, it is also argued that limiting recognition of customary laws only in civil matters means undermining inseparability of rights and duties observed in many customary laws of African society (Mutua, 2002). Developing important values of customary institutions in a way that does not undermine human rights is part of the right to self-determination. Scholars recommend that customary institutions to abandon gender based discrimination, and to be inclusive⁶⁵. They also argues that taking into account the advantageous customary institutions have in both civil and criminal matters, giving some kind of recognition in both arenas together with a policy that indicates the requirement of collaboration and integration with the formal institution might bring better protection of human rights⁶⁶. The researcher also believes that the gaps observed in customary local institution in respecting human rights can be filled by having a policy of transformation on customary local institutions.

In this regard lessons might be taken from the South African experience. South Africa has enacted “National Traditional Leadership and Governance Framework Act” in 2003. In this Act it makes a third of traditional local council to be women⁶⁷. The absence of participation of women, in customary institution is indicative of the failure of the Ethiopian state to carry out its obligation under international and regional human rights instrument that requires designing appropriate measures to eliminate discrimination and harmful practices against women. Both CEDAW and ACHPR, the African Protocol on the Rights of Women deals with the duty of member states to ensure an increased and effective representation and participation of women at all levels of decision-making. These instruments obligate states to ensure

⁶⁵ See, GebereYntiso, Assefa Fiseha and Fekade Azeze (ed.), 2011/12, *Customary Dispute Resolution Mechanisms in Ethiopia*, Ethiopian Arbitration and Conciliation Center, Addis Ababa

⁶⁶ See, Zelalem T. Sirna and Moti Mosisa Gutema, 2015, “Legal Pluralism and Its Implication on Human Rights in Ethiopia: A Look for Policy Framework”, *Ethiopian Human Rights Law Series* Vol.VII pp. 71-104; Addissie Shiferaw, 2015, “Legal Pluralism in Ethiopian Ethnic Federalism: Potential for Non-State Legal Systems” *Ethiopian Human Rights Law Series* Vol. VII PP.105-143

⁶⁷ Government Gazette Republic of South Africa Vol.462, No. 25855; Act No. 41, 2003 “Traditional Leadership and Governance Framework Act” Article 3/2/b

representation of women in bodies exercising public authority, both at state and non-state levels⁶⁸.

5.5. The Guraghe Customary Laws in the Family Arena

5.5.1. The Sebat-bet Guraghe Customary Laws in the Family Arena

The Guraghe *Kitach* or transformed customary laws of the Sebat-bet Guraghe contained relatively detailed customary laws⁶⁹ in the family arena in its second chapter. This law can be comparable with the Family Code of the SNNPR as well as going beyond and incorporated sanctions on criminal cases of discrimination and harmful customary practices. This has been done violating limits set on applying customary laws by the FDRE Constitution Article 34/4 & 5. The transformed customary law of the Sebat-bet Guraghe in the family arena can be categorized as rules aimed at prohibiting practices that are discriminatory and harmful to women and sanctions on those who trespass this laws, cultural rules of marriage and divorce, relationship between different forms of marriage and scope of interpretation of the customary law.

i) Prohibited Harmful Practices

The harmful practices that lived as culture for long in the Sebat-bet Guraghe community but clearly prohibited in the transformed customary law document includes abduction, marriage without the consent of a woman, forcing woman to get out of home after long period of marital life. Regarding abduction, Article six of the Guraghe *Kitcha*/customary law deals with the issue with the possible penalties on those who transgress these rules. As per this Article, all unmarried females can be potentially victims of abduction: those who did not reach the age of puberty, those who reached the age of puberty as well as an engaged girl.

⁶⁸ See, CEDAW Article 5/1; ACHPR, African Protocle on the Rights of Women, Article 2

⁶⁹ The comparison is with the Sodo Kistane and Kebena transformed customary laws.

The Guraghe customary law Article 6/1 deals with abduction of female which reached the age of puberty (though the age of puberty is not specified) but not engaged. The penalty for this crime, as per the customary law, varies based on whether the abduction is followed by sexual violence or not. Abduction, which is not followed by sexual violence, is punishable in five thousand Ethiopian Birr compensation. Abduction followed by sexual violence would be penalized by ten thousand Ethiopian Birr compensation. However, what exactly would happen after the compensation is paid, especially with regard to abduction followed by sexual violence, is not specified in the customary law document. According to the researcher's informants, abduction followed by sexual violence is often made to end in reconciliation with the family of the abducted girl and often a marriage would be concluded assuming that the girl has conceived (even if she does not, the families of the woman fear that she would not get a respected marriage after this incidence)⁷⁰. This lead to the creation of marriage without the consent of woman. This makes the woman to live in a sense of powerlessness throughout her marital life. This is because as Kabeer (1999) clearly stated this woman has denied first order choice or strategic life choices.

The Guraghe customary law Article 6/2 describes about a man who abducted an engaged girl/a girl who concluded betrothal. In this situation, similar to abduction of female who reached the age of puberty, if the abduction is followed by sexual violence, the penalty shall be ten thousand Ethiopian Birr compensation for the abducted girl and ten thousand Ethiopian Birr compensation for the man who has lost his would be wife by abduction. The document says nothing on what to follow. Informants of the researcher confirmed that abduction is oftentimes followed by sexual violence, and as a result of this the woman would be forced to establish a marriage with the abductor⁷¹. Among the conditions forcing woman to live with the abductor

⁷⁰ Focus Group Discussion, February 21, 2016

⁷¹ As per the law of the State any form of abduction is a criminal act which is punishable by rigorous imprisonment which reaches up to 25 years (See 2004 Criminal Code of FDRE, Articles 586-590). Besides as it is stated in 2004 Criminal Code of

include the greatest probability for pregnancy to happen, the man who engaged her would not be willing to marry an abducted woman, etc. This also leads to the establishment of marriage without the consent of a woman and this in turn makes the abducted woman to live in a sense of powerlessness due to denial of strategic life choices.

Lastly, Article 6/3 of the Sebat-bet Guraghe customary law document dealt with abduction of female who are not yet reached the age of puberty. If the abduction is not followed by sexual violence, the penalty would be ten thousand Ethiopian Birr compensation. But if the abduction is followed by sexual violence, the compensation covering all her medical expenses will reach up to fifteen thousand Ethiopian Birr. The researcher's informants indicted that nowadays abduction is highly decreasing in the Zone, which may be a witness for the influence the customary institutions have on the elimination of some harmful customary practices against women⁷² such as abduction.

The second harmful practice in the Guraghe customary law implicitly prohibited is giving a girl for a husband without her knowledge and consent⁷³. In Sebat-bet Guraghe culture, parents have significant place in the conclusion of marriage; and asking the consent of woman to the proposed marriage is/was not accustomed (Tigist, 2011). Thirdly, the *Kitcha* implicitly considers forcing a wife to get out of the house by the husband after long period of marital life is regarded as harmful practice and has been prohibited⁷⁴. In other words, historically as per the law of *anigit* in Sebat-bet Guraghe a man was free to divorce his wife at any time, and he would not be obliged to give her share of matrimonial property, i.e., she leaves the house empty handed, everything is considered as the sole property of the husband. It seems to rectify this cultural injustice that the customary law sets laws that prohibit forcing wife to get out

FDRE, Article 587/3 “The conclusion of a marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability”.

⁷² Focuss group discussion, February 9, 2016

⁷³ See, The Guraghe customary law, Article, 3/1

⁷⁴ Guraghe customary law, Article 5/5

of the house after long period of marital life. However, this customary law by itself is discriminatory, because it works only for women who have passed through a long period of marital life (though the period is not specified). In other words, it means that a husband who stayed in marriage for a short period are allowed divorcing his wife, with or without respecting the woman's right to equality during the time of divorce. Lastly, all kinds of cultural practices during the celebration of betrothal and marriage that are expensive and extravagant practices to such an extent of affecting the spouses and their families are considered as harmful customary practices and are prohibited⁷⁵.

However, the harmful customary practices against women among the Sebat-bet Guraghe are not only those prohibited in the transformed customary law document. In the community, there are still harmful practices that are not yet prohibited though some of these practices are decreasing in recent years, mainly by awareness raising works done on the rights of women by government and NGO in the Zone⁷⁶. The harmful practices which were not incorporated as prohibited harmful customary practices but known in the community as harmful for women include: female genital mutilation and domestic violence, especially wife beating. Violence, particularly beating of a wife by a husband in some instances reaches up to loss of life of the woman⁷⁷. Though killing of a person is one of the highly condemned and punishable crimes in the Guraghe culture, the silence of the customary law regarding such kind of violence (wife beating) against women that have been widely seen in the community indicate limited sensitivity of patriarchal institutions on harms inflicted on women⁷⁸.

⁷⁵ Guraghe Customary Law, Article 3/6

⁷⁶ Interviewee 42, Walkite, September 17, 2016

⁷⁷ Regarding a woman who has lost her life while pregnant due to beating by the husband see, Yewendiwesan Awilachew, 2011, "Yajok Kitcha: Sebat-bet Guraghe Customary Dispute Resolution Mechanism" in GebereYntiso, Assefa Fiseha and Fekade Azeze (ed.) *Customary Dispute Resolution Mechanisms in Ethiopia*, Ethiopian Arbitration and Conciliation Center, Addis Ababa

⁷⁸ Though this kind of violation of rights is a crime than harmful practices which is beyond the scope of the authorities guaranteed to customary institution, as indicated above the customary institutions are already making/transforming customary laws in both civil and criminal arena

ii) Cultural Marriage and Divorce Laws

Among the Sebat-bet Guraghe, it is customary that marriage is concluded with the consent of the families/parents of the future spouse with a betrothal/*Chegi* and then marriage ceremonies⁷⁹. The transformed customary law of the Sebat-bet Guraghe makes the existence of full consent of the future spouse before betrothal/*Chegi* compulsory⁸⁰, which is one of the mechanisms of empowering woman. The period of betrothal as per the rules of the *Kitcha*/customary law of the Guraghe must not exceed one year from the day of betrothal except on agreed upon grounds between the future spouses and their parents. If one of the intending spouses ceased to conclude the marriage within one year after betrothal s/he has to pay one thousand Ethiopian Birr moral compensation as well as other expenses and the betrothal would be dissolved. Besides, it states that after one year of betrothal a woman has no obligation to wait further, the betrothal is dissolved and she is free to marry any one she likes⁸¹. Hence, *anqiti*⁸² on an engaged woman is prohibited in such manner.

Regarding *anqiti*, the transformed customary law of the Guraghe does not totally prohibit this law of divorce and marriage; rather it sets preconditions for lifting it (regarding this practice see Section 5.3.1 above). In Article 5/7 of the Guraghe customary law two preconditions are set for lifting of *anqiti*. First, if a man takes a woman (for marriage) which is in a marital life, the man (the new husband) must pay ten thousand Ethiopian Birr for the woman's former husband; in doing this the *anqiti* would be lifted. However, this rule does not indicate whether the woman consented to the new marriage or not. This rule seems to be aimed at avoiding possible disputes between men rather than protecting the interests and rights of the woman.

⁷⁹The Guraghe customary law in its Article 3 underlines that customary marriage ceremonies need to be improved from time to time owing to the existence of several customary marriage ceremony that tends to harm the families of the bride and the bridegroom as well as the future spouses.

⁸⁰ The Guraghe Customary Law, Article 3/1

⁸¹ The Guraghe Customary Law, Article 3/2

⁸² *Aniqit* was a customary law and belief set only for woman not to divorce or remarry without the will of the man she once engaged or married. See also Section 5.3.1 above

Secondly, *anqiti* is lifted if a man is not able to administer his home economically; the wife can ask for divorce. In this case, the women have to wait for two years for the *anqiti* be uplifted without the will of the husband, and after two years she did not have *anqiti*, i.e., she is free/divorced, she may remarry. In relation to divorce, the transformed customary law of the Sebat-bet Guraghe declares that “when divorce is inevitable, the rights of both parties to the issue must be respected equally”⁸³. But when it comes to uplifting *anqiti*, the right to divorce of men and women is not respected equally. Hence, in the customary law there are provisions which contradict each other, particularly with regard to marital rights of women.

In sum, the sebat bet Guraghe customary law contained laws that aimed at avoiding divorce as much as possible by encouraging resolution of marital dispute using family council and the customary laws⁸⁴. Though divorce results in harm on members of the family, discouraging divorce should not be done at the expense of denying human rights of women as well as perpetuating gender inequality by denying strategic life choices.

5.5.2. The Sodo Kistane Customary Laws in the Family Arena

i) Prohibited Harmful Practices

One of the prohibited harmful practices against women in the transformed customary law document of the Sodo Kistane Guraghe is abduction. A person who kidnaps a girl without her consent would be punished in cash ranging from three hundred up to two thousand Ethiopian Birr; and any person which helped him in this process would be punished with two hundred up to one thousand Ethiopian Birr. Unlike the Sebat-bet Guraghe customary law document, the Sodo Guraghe transformed customary law document states that an abductor and his collaborators must be taken to formal courts. This is in-

⁸³ The Guraghe Customary Law, Article 5/1

⁸⁴ The Guraghe Customary Law, Article 5/4

line with the FDRE Criminal Code Article 587/3 which states that “The conclusion of a marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability”.

Secondly, cutting of fingernail of a bride earlier to her wedding day is prohibited harmful customary practice against woman, or crime in which a person who did this action or any one compliant to the act is punishable with one hundred up to three hundred Ethiopian Birr. Thirdly, shunning from eating meat by a woman after the death of her husband is also prohibited harmful customary practice. A woman who infringes this customary law after its ratification would be punished by one hundred Ethiopian Birr due to expanding harmful customary practice⁸⁵.

The harmful practices against women among the Sodo Kistane are not only those listed in the customary law documents. Like the Sebat-bet Guraghe customary law/*Kitcha*, the Sodo kistane customary law document also did not exhaustively list and prohibit discriminatory and harmful customary practices against women. Bigamy/polygamy, wife beating and forbidding a woman from making use of the land she was entitled to, after divorce are long lived harmful customary practices against women observed in the community, many of the Sodo Kistane being traders in different parts of the country, male members of the community marry two or more wives: one in the rural area of Guraghe Zone, while the other in urban area where the husband often lives. The psychological and economic harm inflicted are felt by the women of the community though there were no women’s movements held within the community to change these practices unlike that of the history of the Sebat-bet Guraghe women (see, Section 5.3.1). Wife beating is not considered as an issue worth dealing in customary local institution unless it is expressed by vividly visible physical injury. This illustrates the “denial of first order/strategic life

⁸⁵See, The Annex of the book entitled *Gordena Sera: The History of Kestane Bet-Gurage Cultural Administration Structure* (Walkite, 2000)

choices” (Kabeer, 1999) results in vicious circle of powerlessness on the life of a woman, i.e., at individual, family and community level.

ii) Amended Customary Laws Related to Marriage and Divorce

In the transformed customary law of the Sodo Guraghe there are several customary laws of marriage and divorce that are amended. The amended customary laws include rules regarding dowry and bride wealth. Spending huge amount of money and requesting huge amount of gift for betrothal/*Chegi* and wedding on both sides of the bride and the bridegroom is considered as extravagant practice which needs to be amended. Request of huge amount of bridal wealth is one of the reasons that lead a man to marry through abduction⁸⁶. Dowry which requires a huge amount of money is also regarded as harmful practice. Besides, the document sets the amount of money necessary for bride’s wealth (two hundred Ethiopian Birr) as well as things and preparations which are considered enough for betrothal, wedding and other ceremonies that come following marriage ceremony (wedding). It also puts pecuniary punishment on those who transgress those rules⁸⁷. Regarding divorce, unlike the Sebat-bet Guraghe customary law, nothing is said in the transformed customary law of the Sodo Kistane. This seems owing to the state law that covers the issue.

5. 6. Marriage, Marital Dispute Resolution and Right of Exit from Customary Institutions

This section discusses the voices of women regarding customary laws of marriage and marital dispute resolution and evaluates the extent to which the right of exit is applicable, particularly in the resolution of marital dispute in customary courts in the Guraghe Zone. Among the Guraghe, the dominant marriage form is customary marriage mainly due to inaccessibility of

⁸⁶ Interviewee 34, Bui, March 8, 2017

⁸⁷ See, *Gordena Sera: The History of Kestane Bet-Gurage Cultural Administration Structure* (Walkite, 2000)

institutions that offer civil marriage certificate as well as due to limited awareness about civil marriage. It is observed that customary marriage gives little space for the consent of the woman and often the marriage is concluded by the permission of the parents of the woman, particularly of the father. In this regard, let us see the story of a Sebat-bet Guraghe woman who has been married for seventeen years. She says:

My father gave me to a man who has already married and has children as his wife through wedding. This was done with no consent from my side. When I knew that my husband is a married man, I am very much angry. I cried on my father and asked him to help me divorce. But my father advised me to stay. I have no choice but to stay in the marriage. Because I became pregnant. Secondly, my parents do not support my decision, where can I go? Through time the chores in the house and in the farm as well as upbringing of children made me forget about what happened. Sometimes, when I quarrel with my co-wife or husband, I go to my father's house but often my father and elderly people sent from my husband advise me to return. With no other better option, I reconcile for the sake of my children who would suffer more if I divorced leaving them in the hands of stepmother. At times, I also think of going to formal courts but when I hear the formal courts also return the issue to village elders, I prefer to stay caring my entire problem at least not to make my children suffer⁸⁸.

From the above story and the researcher's observation, a woman who married without her consent lives in a sense of powerlessness throughout her marital life due to lack of strategic life choices that often makes a vicious circles of problem for the married women. As Kabeer (1999) pointed out strategic life choice are critical for individuals to live the live they want in which its denial

⁸⁸ Interviewee 8, Negasa Kebele, Abishighe Woreda, February 9, 2016

results in powerlessness. Powerlessness is inability to exercise choice due to denial of resources such as education and rights as well as agency in once life. In some instances, a woman concludes marriage knowing nothing about the marital status of the man she married. Village elders (customary court judges) including fathers have key role in the marriage and marital life of a woman. Often they encourage the resolution of marital disputes through reconciliation though some of the disputes have serious questions of rights by a woman such as request for divorce than being a second wife or live in bigamous marriage which often the girl/woman know after the conclusion of the marriage.

Practically, for a woman who has married through customary marriage, divorce is not an available and preferable option. This is because customary institutions in alliance with formal courts work to avoid this choice, particularly for women, by condemning the act and the formal courts by pushing the issue to customary courts⁸⁹. For a woman divorce is also not a preferable option due to the multifaceted consequences of customary marriage such as the socio-psychological influence of the community on woman to respect the laws of marriage by itself, if it once happened, and the highest probability of giving birth within a short period of interval⁹⁰. These often make a woman to live in unjust relation by meeting societal expectation than insisting on divorce or exit rights. Moreover, often woman as mother prioritizes the need of her children and prefers to sacrifice her rights than hurting their children by divorcing their father⁹¹.

Bigamy/polygamous marriage were considered as custom of the Guraghe community in earlier days. Nowadays, members of the community indicated that this kind of marriage is decreasing but not eliminated⁹². This is the result of increasing awareness about the rights of women as well as due to economic

⁸⁹ On how formal courts push requests of divorce presented to it to customary courts as well as encourage the resolution of this kind of question through reconciliation see the SNNPR Family Code, Article 88 and 91; and Section 5.7 below

⁹⁰ Focus group discussion, Negasa *Kebele*, Abishighe *Woreda*, February 9, 2016

⁹¹ Focus group discussion, Negasa *Kebele*, Abishighe *Woreda*, February 9, 2016

⁹² Focus group discussion, Negasa *Kebele*, Abishighe *Woreda*, February 9, 2016; Interviewee 10, Jejibona Gaso *Kebele*, February 10, 2017

factor such as shortage of land since the introduction of federalism⁹³. Regarding bi/polygamous marriage, one of the main problems seen related with the outlawing and criminalization of this kind of marriage by the FDRE Constitution and subsequent laws⁹⁴ is legal gap to protect rights of woman who has lived and living in this kind of marriage⁹⁵. This in turn is making customary courts to be the de facto authoritative bodies to deal with issues raised in bi/polygamous marriage, such as division of matrimonial property after the dissolution of marriage. In this regard, let us see the story of a Sodo Kistane Guraghe woman aged 67:

My husband married to his second wife after I have given birth to five children and accumulated wealth. Though I was angry at the situation, I have no option than tolerating because it is our custom. After he has married to his second wife I have given birth to four more children; now I have a total of nine children. The second wife has given birth to three children. It is now five years since my husband had passed away. After his death, I started to quarrel with my co-wife on issues of division of property [It is known that she was married in my property]. The property added after she has married to him is nothing, but she wants to take equal share of the property. I took the case to formal court, and the court recommended the case to be seen first by social courts and elders. However, she (the second wife) strongly insisted on finishing the issue through elders. The elders begged me to handle the case through them. My oldest son also begged me to share the property based on the rules of customary law.

⁹³ The FDRE Constitution as well as laws revised following the Constitution outlawed bi/polygamous marriage. See, the SNNPR Family Code Article 21; the FDRE Criminal Code, Article 650/1

⁹⁴ In the FDRE Criminal Code, Article 650/1 states that “Whoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled, is punishable with simple imprisonment, or, in grave cases, and especially where the criminal has knowingly mislead his partner in the second union as to his true state, with rigorous imprisonment not exceeding five years”.

⁹⁵ Rights of women living in bi/polygamous marriage have been covered by African Protocol on Women’s Rights

Finally, I agreed and the property was shared equally in two (50%-50%). They divided the 50% equally between us (the two wives) and the rest 50% is shared equally between the children. Though I am not happy on this decision due to my great contribution for the marriage, the larger part of the wealth was allotted to my children as they are greater in number. This made me happy⁹⁶.

The psychological and economic harm incurred by bi/polygamous marriage on woman, particularly for the first wife, are often immeasurable. The harm inflicted by such a marriage, though justified by culture, is discerned by men in the community beyond affecting. Due to the cultural justification and fear of consequence of dissolution of customary marriage, which punishes the woman to leave the matrimonial house having nothing from matrimonial property in earlier periods (before a decade or two) there was limited number of women who request divorce. Elderly women in bi/polygamous marriage who went to formal courts looking for division of matrimonial property after the dissolution of marriage due to death is forced to cease their cases from formal courts. This is done primarily by the procedure of formal courts that encourage the resolution of this kind of dispute through customary courts partly due to absence of provision in the law that deal with issues in bi/polygamous marriage⁹⁷ and because of the influence of members of the community to avoid hostility between co-wives and siblings⁹⁸. Besides, the formal court judges also confirmed that for bi/polygamous marriage concluded before the coming of the RFC, the principle applied in the division of matrimonial property will be similar to customary courts, i.e., the wives shares 50% of the total matrimonial

⁹⁶ Interviewee 31, Gogiti Kebele, Sodo Woreda, March 7, 2016

⁹⁷ Regarding the legal status of bi/polygamy and matrimonial property in this kind of marriage in Ethiopia see, Jetu E. Chewaka, 2014, "Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Option", *Oromia Law Journal* Vol.3, No. 1

⁹⁸ On issues of bi/polygamy the transformed customary laws of both the Sebat-bet and Sodo Guraghe provide nothing though such a marriage is widely seen societal problem in both communities.

property equally among themselves⁹⁹; however, they indicated that so far they did not come across such kind of cases. This implies exit right for a woman who has stayed a long period in bi/polygamous marriage has little or no significance¹⁰⁰. Moreover, as the researcher observed in customary courts exit is not at all an issue, both in case of bigamous as well as monogamous marriage. Rather, customary court judges insist that women should relinquish their right of exit. This is owing to the formal courts procedural rule of referring marital disputes to customary courts/elders, as has been discussed in the next Section.

From the three roles of exit identified by Reitman, i.e., basic role, protective role and transformative role (2004: 190), here exit rights is expected to play protective and transformative role in order to protect women from injustice within their communities as well as empower women. However, he also argues that both the protective and transformative role of right of exit have limited realizability due to the cost of exit on members of ethno-cultural communities as well as ethno-cultural communities strategy of resistance to change which may result in strengthening value differences rather than narrowing it (Reitman 2004: 192). There are orders of obstacles to exercise the right of exit which can be categorized into two: material and socio-psychological (Reitman, 2004: 192). One of the material obstacles of rights of exit is women's economic subordinate to men for their survival. In case of divorce, many of the rules of ethno-cultural communities often let go the women empty handed, as it is the case both among the Sebat-bet and Sodo Kistane Guraghes.

Reitman argues that material obstacles to exit are remediable to some degree by way of state policy though it is still a challenge for many women's, however, in many circumstances the obstacles to exit are more of socio-psychological

⁹⁹ Interviewee 35; and Interviewee 36, Bui, March, 9, 2016

¹⁰⁰ Here, it is important to note that Federal Supreme Court Cassation (FSCC) applying the principle of equal division of matrimonial property between the first wife and the husband in a way leaving the husband to lead and equally share his property with the second wife (if divorce happens). See, Jetu E. Chewaka, 2014, "Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Option", *Oromia Law Journal* Vol.3 No. 1

than material which makes women to stick and even support patriarchic traditions in their community. The socio-psychological obstacles are “born of belief and psychological make-up, of fear of ostracism by family, friends, associations and community” (Reitman, 2004: 193). One may simply fear change and the unknown; fear the loss of moral support and sense of belongingness and rootedness derived from the community which is pretty hard to conceive in any situation (Ibid). Besides, cultural membership can be pervasively defining of one’s sense of self. In this regard, Weinstock states that “loss of membership in identity conferring group [.....] is an assault on the very person underlying all possible calculation of benefit and coast, rather than being integratable by the person in full reckoning thereof” (2004: 235). Often ethno-cultural communities punish those women who want to leave their community using their rights of exit by ostracism which is too hard to bear for an individual which may have many values s/he values in life except its injustice. Unlike the material obstacle the socio-psychological costs of exit are not readily addressable by the state for identity coffering community member. “Even once the material difficulties of exit are addressed, the socio-psychological costs endure and they are likely to do so as long as the underlying patriarchy endures” (Reitman, 2004: 196). In this situation, the protective role of exit is seriously restricted and it has little use for a woman harmed by unjust practices of the community. On the contrary, the threat of exit of members from the community may give greater voice for community leaders to influence the course of events so as to take away the need for exit. This is reflected not only by custom of Sebat-bet and Sodo Kistane Guraghe, but also in the functioning of local government institutions as well as Family Code of SNNPR as it has been discussed below.

5.7. The Role of Local Government Institutions in the Protection of Rights of Women

Protecting women's rights as human rights are the responsibility of all the three branches of government (legislative, executive and judiciary) at all levels of government¹⁰¹. So far the local council (legislative body) of Guraghe Zone has no visible role in the transformation of customary laws or in democratizing customary local institutions, hence, in the promotion and protection of rights of women. The executive branch of government through Women's and Children Affairs Office (WCAO) has visible role in awareness raising and protection of rights of women. In the Zone, the local government courts are also playing their roles in protecting the rights of women. However, the framework set for collaboration between formal courts and customary courts, in some instances, is used to deny right of exit, especially for women. On the question of how and why the framework is used to deny right of exit is dealt with towards the end of this section.

WCAO of the Guraghe Zone and each *Woreda* of the Zone has department of legal Officer who works mainly to protect rights of women. Besides, WCAO has also responsibility to collaborate with many sector Offices at Zonal as well as *Woreda* level. Among others the collaboration of WCAO with the Health Office at Zonal and *Woreda* level is one of the main structures that enabled the Offices to reach many women who mainly live in rural *Kebeles* of each *Woreda*. Health Office of each *Woreda* in collaboration with WCAO of each *Woreda* have organized women of each rural *Kebele* into WDA, particularly, into 1 to 5 networks, and 1 to 30/45¹⁰² development team¹⁰³. The main purpose of creating WDA is to enforce HEP that work for the protection of rights of women and children related to health.

¹⁰¹ See, FDRE Constitution, Article 13/1

¹⁰² The number of members of 1 to 5 networks as well as 1 to 30 development team is not fixed, depending on the context the 1 to 5 network may contain up to seven members as well as 1 to 30 development team may also have up to 45 individuals/women.

¹⁰³ The 1 to 30/45 development team is created by making 5 upto 7 1to 5 networks together, See also Maes et al., 2015, "A Women's Development Army: Narratives of community health worker investment and empowerment in rural Ethiopia", <https://www.researchgate.net/publication/282160318>

Of course, as Maes et. al. clearly indicated the 1 to 5 network leaders and 1 to 30/45 development team leaders, besides working on promotion of healthy life style in their networks and development team for free, they also engage in political works. In this regard, my informant from Sodo *Woreda* stated that “members of 1 to 30 development teams have been encouraged to be members of EPRDF Women’s League of the *Woreda* if she is willing to be a member, she will pay three Birr per annum membership fee”¹⁰⁴. For the question I have raised in what ways does being member of Women’s League benefits women or contributes for protection of rights of women? My informant responded that

It has no direct benefit, but it is believed that organizing women in these structures [into 1 to 5 networks, 1 to 30/45 development teams as well as their membership to Women’s League] enables them to develop their speaking skills and decision making capacity. Since often women keep quite in public sphere, in these forums it is expected that they speak about their problem in which they did not talk, if they have been gathered with men. Of course, the Woreda WCAO has used these forums to know about the needs of women and to assist them in terms of improving their health and economic benefits in cooperation with sector Bureau in the Woreda.

As per my informant any kinds of work done on rural women must be informed to and gets permission from each *Woreda* WCAO. She also affirms that in organizing women more works has been done on rural women than urban women. The main beneficiaries are also rural women¹⁰⁵. These indicate WCAO is one of the main institution used by the ruling party to create its hegemony using different structures. This makes the focus of WCAO more on collaborating with different sectors

¹⁰⁴ Interviewee 46, Oct. 18/2018

¹⁰⁵ Interviewee 46, Oct. 18/2018

and promoting the ruling party policy¹⁰⁶ rather than on protection of rights of women though issues of protection of rights of women have not been totally ignored.

As it has been indicated above WCAO have department of legal office. The main responsibility of the department of legal office is awareness raising on the rights of women and children and giving legal aid for women. Awareness raising trainings are given at various levels three to four times a year¹⁰⁷. The Zonal and *Woreda* WCAO is the main organizing body of trainings for each *Woreda*, *Kebeles* trainees as well as for traditional and religious leaders. Legal aid services given by the Zonal and *Woreda* WCAO legal officers include: legal counseling, facilitating free of charge services by lawyers for women who are the poorest of the poor and follow up of their cases in court of law, and follow up of issues of crimes against women and children reported to the police through the Office¹⁰⁸.

Though there is societal expectation of WCAO as an institution mandated to solve almost all the problems of women, the power and capacity of the department of legal officers are very much limited in terms of budget as well as human resource¹⁰⁹. At Zonal as well as in each *Woreda* the legal expert department is staffed only by one legal officer, but the cases that come to the office per day cannot be covered by one person. No budget is allocated to this department which can be used in times of emergency kind of cases. For instance, there are women, who come to the Office with their children empty handed, fearing violent attack by the husband. In such instance, the Office is not able to keep these destitute women, even for a single night¹¹⁰. Oftentimes, women's access to formal justice system is determined by the woman's

¹⁰⁶ Here, the state policy refers to developmental state paradigm adopted by EPRDF since 2006 which requires creating ideological hegemony by creating dominant one party system and institutional capacity. See, Muleta Yirga Shumuye, 2015, "The Role of Developmental State in Development: The Case of Ethiopia", *International Journal of African and Asian Studies*, Vol.14, PP. 96- 110

¹⁰⁷ Interviewee 40, Walkite, September 16, 2016

¹⁰⁸ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

¹⁰⁹ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

¹¹⁰ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

empowerment both legally, individually, and economically. This makes empowerment a means for accessing rights for women¹¹¹. An informant to the researcher indicates that in terms of legal awareness, almost all women of every locality/ *Kebele* are aware of their rights in the family arena. The gaps they may face can be filled by legal officers of WCAO as well as other legal aid providers¹¹². Individually, however, many women lack the necessary skill and economic capacity to make independent decisions in their lives¹¹³. This indicates that though law is one of the instruments to solve the problem women encounter in their marital life, it is not the only option. In order that this instrument to be effective it needs to be underpinned by socio-economic empowerment of every member of the community at individual, family/close relationship and collective levels¹¹⁴.

Empowerment enables people to perceive themselves as able and entitled to make decisions (Rowlands, 1995). Rowlands argues that empowerment can be seen from three interrelated dimensions. The first one is personal dimension. In its personal dimension, empowerment is about “developing the sense of self and individual confidence and capacity (which involves undoing the effects of internalized oppression)” (Rowlands, 1995: 22). The second one is the dimension of close relationships. In close relationship, such as within a family, empowerment is about “developing the ability to negotiate and influence the nature of the relationship and decisions made within that relationship (Rowlands, 1995: 22). Thirdly, collective dimension of empowerment that refers to involvement in political structure and collective action based on cooperation in a wide range of scales. “Individual empowerment is one ingredient in achieving empowerment in the collective dimension, whether informally or formally, concentration on the individual dimension alone is not sufficient; neither does individual empowerment automatically lead to empowerment

¹¹¹ See, Section 2.8 of this thesis

¹¹² My informants indicated that Walkite University is giving legal aid services in Walkite town and its Surrounding.

¹¹³ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

¹¹⁴ Economic empowerment of women is beyond the scope of this topic; hence it is not dealt with.

within close relationships” (Rowlands, 1999: 32). Hence, successful implementation of empowerment must bring change on each dimension.

Women who go to WCAO for legal aid are both in civil and criminal cases and the Office also gives services in both areas in collaboration with stakeholders in the justice system¹¹⁵. In civil cases the majority of women who come to the Office for legal aid request consultation regarding divorce, maintenance, division of property, question of land ownership, dissolution of betrothal, ensuring succession, and ensuring paternity. The data gathered from Zonal WCAO from 2003-2008 E. C. in the Zone indicate that request for legal aid services on divorce covers the largest portion, followed by request for maintenance and division of property which are interrelated in one way or another.

Table 1: Number of women who received legal aid services from WCAO’s in Guraghe Zone from 2010-2014.

Types of service requested	No. of Women who have received legal aid services	Decided by Formal Courts With the assistance and follow up of WCAO legal officers
Request for divorce	4, 803	2, 305
Request for maintenance	1, 471	778
Question of division of property	1,137	391
Question of land ownership	1, 149	174
Dissolution of betrothal	82	39
Ensuring succession	1, 066	667
Ensuring paternity	109	74

¹¹⁵ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

On issues raised above, the Office gives service in two ways: helping disputants to resolve the dispute by reconciliation either through the mediation of the legal Officer, or using customary courts or helping them to get justices through formal courts¹¹⁶. If the issues are question of divorce due to minor disagreements between husband and wife, there are instance where the Legal Office gives advice in order to reconcile them prioritizing the well-being of the whole members of the family. But if the issue is unresolved through reconciliation, the Officer writes letter to the formal courts requesting divorce (if the woman is economically poor/or not in a situation to get money for legal councilor)¹¹⁷. For instance, in Sodo *Woreda* many of the issues that come to the *Woreda* legal office of WCAO are questions of divorce. In 2014/15 Ethiopian budget year one hundred and three divorce questions were raised by women and ninety of them were concluded by dissolution of marriage through divorce (see Appendix D). In 2015/2016 Ethiopian budget year in Sodo *Woreda* the questions of divorce were one hundred and nine and out of which ten of them were resolved by reconciliation while forty five were concluded by divorce and the rest (fifty four) were on court appointment (see Appendix D).

There are also individuals who report violence against women to WCAO legal office¹¹⁸. For instance, in 2015/16 Ethiopian budget year, thirty women came to the Sodo *Woreda* Office. Three of them came due to attempt of sexual violence of whom two of them have ended through mediation, while the other one case was presented to courts though the file was closed due to absence of adequate evidence. Twenty one cases of light disabilities due to beating occurred in which nine of them were punished with many; six of them were on appointment and the rest six cases were closed. Five heavy disability cases were reported, of which two of them were punished with money and the rest three were on appointment (see Appendix D).

¹¹⁶ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

¹¹⁷ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

¹¹⁸ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

Women also went to WCAO at Zonal and *Woreda* level to consult about their institutional preferences (customary and religious court, or formal court) on different themes¹¹⁹ as indicated above. Often, formal courts are the first preferences of women¹²⁰. But the legal officers of WCAO advises woman to be pragmatic because, in some instances, a woman's decision to go to formal courts has adverse results both psychologically and materially. The influence on her children and the intimidations she may faces from her/ex-husband and his relatives to forbid the woman from using the shared property, especially when the property is land¹²¹. Above all, taking into account the laws and procedures followed by formal courts to resolve marital disputes which push disputants to use and exhaust customary dispute resolution mechanisms in a way denying the woman's first choice to exit from intra-communal institution both in case of no fault divorce as well as divorce due to marital disputes.

As per the SNNPR Family Code, though no fault divorce is guaranteed¹²², the court has the authority to ask the spouses together or separately to change their decision of divorce¹²³. If the spouses decided not to change their decision of divorce and made this known to the court, the court will give cooling-off period that do not exceed three months¹²⁴. Article 98 of the SNNPR Family Code also states that "the court ratifies this kind of divorce only when it believes that divorce is the real interest and consent of the spouses as well as if the divorce is not contrary to law and morality". Here, it is clear that using their rights of exit spouses can request divorce from formal courts, however, this does not mean that their right of exit is respected by formal courts. Rather the court has to make sure that the request of no fault divorce is not contrary

¹¹⁹ Interviewee 40; and Interviewee 37 Walkite and Bui, September 16, 2016 and March 10, 2016 respectively

¹²⁰ The researcher confirmed this from different women but preference does not mean they will take their case to formal courts rather than community based courts. But the counseling helps them to be pragmatic in their decision.

¹²¹ Land being one of the scares resources, often women face several challenges to use/own land both in cases of divorce as well as succession. In case of succession challenges come from siblings that emanates from patriarchal ideology which insists the settling of disputes through customary courts. Interview with, Interviewee37, Walkite, February 9, 2016

¹²² The SNNPR Family Code, Article 86/1

¹²³ The SNNPR Family Code, Article 87/1

¹²⁴ The SNNPR Family Code, Article 87/2

to law and morality. This may be taken as protecting the basic unity of the society, i.e., the family by the state¹²⁵.

Regarding divorce request due to marital dispute, courts have the authority to negotiate with one of the spouses separately or together with both spouses on the ways the dispute will be resolved peacefully either by themselves or with the support of customary institutions such as elders¹²⁶. If the spouses did not agree to resolve their dispute by themselves or through the help of elders, the court will give them cooling-off period which did not exceed three months¹²⁷. After all, these efforts to reconcile the spouses or resolve the dispute using customary institutions that the courts allow divorce within one month after the completion of the cooling-off period or following the decision of elders¹²⁸. The SNNPR Family Code also encourages the consensus-based decision on consequences of divorce¹²⁹. These authorities of formal courts, on the one hand, for a woman who often has limited resources and life choice mean in a way denying right of exit. On the other hand, by delaying right of exit formal courts seems to have the intention of protecting the well-being of the family as a whole rather than just the marital rights of woman¹³⁰. Here, it is also important to note that these laws are set based on the assumption of monogamous marriage; regarding bi/polygamous marriage courts are neither fully dependent on the law nor avoid dealing with the issues mainly when the woman is determined to apply her right of exit.

When women report to formal courts about the creation of new bigamous marriage and request the dissolution of the second marriage, the formal courts may not take measure that lead to the dissolution of the second marriage and

¹²⁵ See, the FDRE Constitution, Article 34/3 which states that “The family is the natural and fundamental unit of society and is entitled to protection by society and the State”.

¹²⁶The SNNPR Family Code, Article 91/1-2

¹²⁷ The SNNPR Family Code, Article 91/3

¹²⁸The SNNPR Family Code, Article 91/4

¹²⁹ The SNNPR Family Code, Article 93

¹³⁰ See, the FDRE Constitution, Article 34/3

punishment of the husband¹³¹ as it is stated in the SNNPR Family Code and the FDRE Criminal Code respectively¹³². In resolving marital disputes in bi/polygamous marriage judges of formal courts are sympathetic and do focus on considering the issue from different angles such as the rights of the child rather than being totally dependent on the law¹³³. Empirically, request for dissolution of bigamous marriage has been complicated in two ways. The first instance is when the first wife accuses her husband on conclusion of the second marriage which was/is practiced both among the Sebat-bet and Sodo Kistane Bête-Guraghes, and asks for the dissolution of the second marriage. Secondly, due to absence of clear laws regarding division of matrimonial property in bigamous marriage¹³⁴. With regard to the first case, often the first wife accuses her husband after the second wife gave birth to child/ren¹³⁵. In such cases, the basis of decision of the formal court becomes protecting the best interests of the child¹³⁶ and the well-being of the family rather than directly addressing the question¹³⁷. Informants of the researcher also at face value argue that bigamous/polygamous marriage is the culture of the community and marriage concluded according to the culture of the area has recognition by the SNNPR Family Code. Hence, the request of the first wife for dissolution of a second marriage after the second wife gave birth to child/children does not necessarily lead to the dissolution of the second marriage.

In such situation, if the first wife insists on the formal court to adjudicate her case refusing the courts suggestion and request to use customary institutions, the formal court judges changes the theme of the case from request of

¹³¹ Interviewee 35; and Interviewee 36, Bui, March 9, 2016

¹³² See, the SNNPR Family Code, Article 21; and the FDRE Criminal Code, Article 650/1

¹³³ Interviewee 35; and Interviewee 36, Bui, March 9, 2016

¹³⁴ See, Jetu E. Chewaka, 2014, "Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Option", *Oromia Law Journal* Vol.3 No. 1

¹³⁵ As per my observation often the two wives live different places one in urban center the other in rural kebele. Both women did not ask for divorce rather the first wife asks for the dissolution of the second marriage.

¹³⁶ The best interest of the child is the main legal principle in addressing issues of family and the child in international convention which has been incorporated under FDRE Constitution. See, FDRE Constitution, Article 36/2

¹³⁷ Interviewee 35; and Interviewee 36, Bui, March 9, 2016

dissolution of second marriage to division of matrimonial property¹³⁸. In deciding division of property, the judges use principles set by the Federal Supreme Court Cassation (FSCC)¹³⁹. Accordingly, the first wife shares half of the total matrimonial property (50%) based on the principle of monogamous marriage. Then the husband can lead his life on the rest fifty percent with his second wife, or with both wives without mixing their property¹⁴⁰. This is the way of adjudicating request of dissolution of the second marriage of a husband after the husband has given birth to child or children from the second marriage. “If the second marriage is a new one, the marriage is dissolved immediately though we did not come up with these kinds of cases while request for dissolution of a second marriage after the second wife gave birth to child/children is common”¹⁴¹. In bi/polygamous marriage, the marital disputes become between co-wives than a dispute between husband and wife in its proper sense. Formal courts in their ruling of issues raised in bigamous marriage tend to depend on the civil law, disregarding the categorization of this kind of marriage under criminal law. This is partly related with sympathy to the culture of the community and interpreting laws related with culture widely with the purpose of protecting the well-being of the family as a whole rather than just enforcing the law of the state; besides, protecting the best interest of the child.

In sum, the role of local government institutions in the protection of rights of women have been burdened with the ruling party policy and the tension between culture and rights, which is reinforced by ambiguous policy on the relationship between customary local institutions and local government institutions. Particularly, partial recognition, and the absence of clear policy on customary local institution on the ways of its collaboration with local

¹³⁸ Interviewee 35; and Interviewee 36, Bui, March 9, 2016

¹³⁹ Regarding the principles set by the FSCC to decide division of matrimonial property in bi/polygamous marriage See “Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Option”, *Oromia Law Journal* Vol.3 No. 1

¹⁴⁰ Interviewee 35; and Interviewee 36, Bui, March 9, 2016

¹⁴¹ Interviewee 35; and Interviewee 36, Bui, March 9, 2016

government institutions are making local government institution to emphasis on respecting customary laws rather than focusing on enforcing the laws of the state in the enforcement of rights of women. The deep rooted customary practices of the community together with the limited empowerment of women are also hindering women from strongly claiming their rights from local government institutions.

5.8. Conclusion

The implementation of policy of multicultural accommodation vis-a-vis rights of women in Guraghe Zone indicates several gaps in applying human and democratic norms in the exercise of autonomy. As Wolff and Weller (2005: 11) put it autonomy allows ethno-territorial community to exercise public policy functions subject to the overall legal order of the state. In Ethiopian the guaranteeing of autonomy lead to revival and transformation of customary laws in Guraghe Zone of SNNPR, which made one of its objective prohibitions of discriminatory and harmful customary practices against women. In the process deliberation and ratification of transformed customary laws, the TA of the community has not been taken into account. Non-state institutions of the community, particularly community based CSO and customary local institutions preferred to apply the NTA/CA of the community. In doing this, the process of transformation and the transformed customary laws are not fully achieved its gender related objective. Women members of the communities have hardly participated in the deliberation and ratification of customary laws which would have been changed if transformation of customary laws is carried out by Guraghe Zone council using their territorial autonomy where women mebers of the community have been represented. The Guraghe Zone council/legislature has the power to deal with customary laws including the transformation of customary laws. However, due to shallow understanding of autonomy by the political elites of the community and absence of policy of transformation on customary local institution, these rights have not yet been

exercised. Moreover, both customary local institutions and local government institutions are not sensitive enough and capable to respect limits set on autonomy and protect rights of women in the family arena owing to the loose institutional system for the protection of rights, limited empowerment of women, and due to partial recognition and absence of policy of transformation on customary local institutions.

Chapter Six

6. Ethnicity, Multiculturalism and Rights of Women among the Kebena

6.1. Introduction

The objective of this chapter is to examine the impact of coincidence of ethnicity and religion in Ethiopian federalism on the promotion and protection of rights of women among minority ethno-cultural communities who have not yet achieved ethnic autonomy. In the restructuring of the Ethiopian state ethnicity has been the basis of the right to self-rule/ ethnic territorial autonomy though several territorial ethnic minorities have not yet achieved this right in different parts of the country in which the Kebena is one. The Kebena communities are one of the ethno-territorial minorities living in Guraghe Zone of SNNPR in which their ethnic identity overlaps with their religious identity: Islam. This community has decentralized administrative autonomy at *Woreda* level, but they claim for Special *Woreda* status/ethnic autonomy based on the SNNPR and the FDRE Constitutions. The cultural autonomy guaranteed to every ethno-cultural community of the country has been exercised by the community with regard to customary as well as religious institution. The principal source of customary laws of the Kebena is Islamic/Sharia law. Hence, in many instances, customary laws of the Kebena and Sharia laws in the family arena overlap. Whether this overlap has the effect of promoting or inhibiting the protection of rights of women has been discussed by exploring the processes of transformation of customary law, the provision of transformed customary law in the family law arena, voices of women's of the community, and the role of local government institutions in the promotion and protection of rights of women.

In the first section of this chapter political question of the Kebena community that is used as a rationale to claim ethnic autonomy is explored. Then, the

Kevena customary law, its transformation and provisions of the transformed customary laws in the family arena have been discussed focusing on customary law of marriage and marital dispute resolution. This is followed by discussion on marriage, marital dispute resolution and the right of exit from intra-communal institutions from the perspective of women. The role of local government institution in the protection of women human rights in the family arena is also discussed. Lastly, the chapter comes to an end by drawing synthesised conclusion.

6.2. Politics of Identity

The Kevena are one of the ethno-territorial communities who live geographically concentrated in Kevena *Woreda* of Guraghe Zone. They are mainly followers of Islamic religion and their custom is related with their religion. The Kevena have their own language, Kevenign that belongs to Cushatic language family unlike Guraghigna which belongs to Semetic language family. Historically, the Kevena call themselves and their language 'Womba' (Markakis, 1998: 143). Historical documents also indicate that the Kevena are one of the migrant people from Southern Arabia and who moved to Northern and Southern Ethiopia and settled in different parts of the country in different historical times. They were known in their movement from place to place and their struggle to defend their settlement area and religion. The defeat of the Kevena leaders Shek Hassen Anjemo by the force of Menelik II in the 1880s' curbed their movement in the present area of Guragheland, especially around Walkite town. Many Kevena are intermarried with different ethnic communities of the country such as with the Oromo, Guraghe, Sidama, Hadia, Alaba, etc., and live in different parts of the Guragheland and beyond adopting the language and culture of the area they reside¹.

¹ See, Grover Hudson, 1976, "Highland East Cushitic", in Bender M. Lionel (ed.), *The Non-Semitic Language of Ethiopia*, Michigan State University, PP. 232-278 ; Lapeso G. Delebo, 1989, *Ye Ethiopia Regim Ye Hezb ena Ye Mengist Tarik* , Addis Ababa; _____1996, *Woma: The Kevena Community Culture and History*, Kevena Development Association

With the coming of ethnic empowerment in Ethiopia since 1991, the Kebena asserted their distinct ethnic identity, particularly, from the Bete-Guraghe category and established their own political organization called “Kebena Nationality Democratic Organization” (Markakis, 1998: 144). This political organization worked for the recognition of the Kebena identity as distinct ethnic identity from the Bete-Guraghe category² based on the primordialist understanding of ethnicity (nation, nationality and people) set under FDRE Constitution³. Though this together with their struggle for recognition as distinct ethnic community from the Bete Guraghe category enabled the political elite of the community to get recognition as well as representation in FDRE HOF⁴, empirically instrumentalist approach to ethnicity followed by the ruling party (EPRDF) (Aalen, 2011) sidelined their right to self-government/ethnic autonomy. To get self-government/ethnic autonomy in the SNNPR, as it has been promised in the FDRE Constiotution, and historic ownership to land/indigenous people status in the territory of the town of Walkite, capital of the Guraghe Zone, the Kebena community started to struggle, sometimes, disputing with the neighbourign Guraghe community⁵ as it has been discussed below.

The majority of the Kebena live in rural areas surrounding the Walkite town. This made the land settled by the Kebena a potential area required for expansion and development projects of the town⁶. However, the Kebena community has resentment in the political administration of the town, which ranges from claim for meaningful representation (kind of minority veto) in the

² Interviewee 13, Walkite, Febraury, 12, 2016

³ See, the FDRE Constituion Article 39/5

⁴ Every nation, nationality and people have at least one representative in the HOF, which is one of the highest authority in Ethiopian Federalism, the other being the HOPR; See, the FDRE Constitution Article 61/1 and 2 as well as the FDRE Constitution, Article 50/3

⁵ One of the disadvatege of creation of constitute unit solely based on ethnicity in highly diverse society, such as, Ethiopia is inter-ethnic disputes/conflict over scares resources such as territory; See, Asnak Kefale, 2009, Federalism and Ethnic Conflict in Ethiopia: A Comparative study of the Somali and Benishangul-Gumuz Regions, Doctorial Thesis, Leiden University

⁶ Interview with different members of the Kebena and Guraghe Community including officials of the Zonal and Walkite town administration, Walkite, Febraury, 2016

town council to that of recognition as indigenous people in the town of Walkite⁷.

Historic ownership to land/indigenous people status to territory, which is raised by the Kebena ethno-cultural community, are controversial and complex concept (Merlan, 2009; Pelican, 2009). The origin of the term indigenous people is political; and may refer to different kinds of subjects in different contexts (Hodgson and Kuper cited in Palican, 2009: 53). For instance, in America where indigenous activism has long history, the status of first peoples is generally uncontested while the situation in Africa is different. In Africa “defining which groups may count as indigenous is much more problematic and controversial as there are long and ongoing histories of migration, assimilation, and conquest” (Palican, 2009: 53). In Ethiopian federal political system, the significance of the term emanates from the federal Constitution which makes guaranteeing of autonomy for every ethnic community on the bases of ethno territoriality⁸, and defines ethnicity primordially, but often these rights is applied instrumentally to create autonomous units (Vaughan, 2003; Aalen, 2011). As Aalen (2011: 39) pointed out the logic behind the claim for self-government/territorial autonomy by many minorities ethno-territorial community primary rests on the fulfillment of constitutional criteria while the ruling party enforces this right only when it serves the goal of unity and integration. The federal experiment in regional states indicates that ethnic communities’ which were known historically inhabiting a given territory are the main bearers of the right to territorial self-government in some cases regardless of the current population size and situations in the territory, such as in the case of Harari regional state⁹. This understanding of the FDRE Constitution

⁷ Interview with different members of the Kebena community, Walkite, February, 2016

⁸ See the FDRE Constitution, Article 39(3); Christopher Van der Beken, 2007 “Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level. *Afrika Focus*, Vol. 20, Nr. 1-2

⁹ See Sara Vaughan, 2003, *Ethnicity and Power in Ethiopia*, PhD Dissertation, University of Edinburgh

and federal experiments¹⁰ in some regional states of the country/ethno-territorial community seem to be one factor that motivate the Kebena nationality elites to claim the right to ethnic autonomy in the form of Special *Woreda*¹¹ in the SNNPR, in addition to recognition as ethnic community, cultural and administrative autonomy.

The Kebena has been recognized as distinct ethnic identity from the Bete-Guraghe categories in the early 1990's¹². However, they were not candidates for ethnic autonomy even for *Woreda* status during the creation of local government units in the SNNPR due to different socio-political, demographic and geographical reasons¹³. The socio-political factors are mainly related with the capacities of the ethnic community to self-government and policies of the ruling party (Voguahn, 2003). Demographically, the Kebena population size is less than the average population size required to create *Woreda*, i.e., one hundred thousand (Ayenew, 2017). Geographically, the people (the Kebenas) live relatively dispersed within and surrounding Welkite town¹⁴.

However, in the Second Phase of Decentralization in Ethiopia, which has unstated motive of discouraging the demand for territorial autonomy (Assefa cited in Zemelak, 2014: 38), the Kebena are given *Woreda* status: Kebena *Woreda*. This is considered by the community as one step forward to have ethnic autonomy. The claim for ethnic autonomy, historic ownership status/ indignity over the territory of the capital of the Zone, Walkite town, together with economic problem, such as, poverty, unemployment and the increasing

¹⁰ On how the definition of ethnicity in the FDRE Constitution including the practice are inspiring factor for claiming ethnic autonomy See, Lovise Aalen, 2011, *The Politics of Ethnicity in Ethiopia: Actors, Power and Mobilization under Ethnic Federalism*, Leiden, Netherlands

¹¹ In the SNNPR the Kebena has a *Woreda* status which guarantees local administrative autonomy but not ethnic autonomy. In the context of the SNNPR difference between *Woreda* and Special *Woreda* is that Special *Woreda* is the 2nd administrative unit in the region equal to Zone in terms of power while the *Woreda* is the third decentralized administrative unit below Zone. See also Zemelak Ayitenew Ayele, 2014, *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities*, Nomos Verlagsgesellschaft, Baden-Baden, Germany

¹² Interviewee 13, Walkite February 12, 2016. See also John Markakis, 1998, "The Politics of Identity – The Case of the Gurage", in M.A. Mohamed Salih and Jone Markakis (ed.) *Ethnicity and the State in Eastern Africa*, Stockholm, Elanders Gotab: Routledge-Cavendish, 2006): 208-233

¹³ Interview with different members of both Kebena and Guraghe ethnic community, Walkite, February, 2016

¹⁴ Interview with Kebena and Guraghe members of ethno-cultural communities in Welkite town, February, 2016

economic value of land lead to tension and sometimes disputes between the Guraghe and Kebena youths of the town¹⁵.

Among the Kebena elders and elites there is narration that the territory of Walkite is primarily settled by the Kebena and Oromo¹⁶. This narration considers the Guraghe as latecomers to the town who come for commercial purpose, as they do elsewhere in the country¹⁷. Their evidence for this claim is that many areas surrounding the town and some areas within the town are mainly inhabited by Kebena community, and Oromo terms are used to name these areas¹⁸. The former name of the *Woreda* of the town and the first secondary school in the town were called *Goro*, which is an Oromo term, meaning “plateau created due to flood”. The name of the town itself, Walkite, (which means “equal”) and the name of some areas in the town, such as *Abadalecha* are Oromo terms. This narration is also emphasizing the contribution made by the Kebena and Oromo communities to build the first secondary school in the town. But, they assert that the Kebena communities within the town are not benefiting from the constitutionally guaranteed rights to first settlers: right to self-government/ethnic autonomy. In other words, the right to internal self-determination of the Kebena within the SNNPR is not yet implemented. However, the historical evidences narrated by the Kebena do not indicate that the Kebena people are the first settlers of the area unless they can argue that the legitimate successors of the Oromo are the Kebena who have good historical relationship with the Oromos. Or, deconstruct the fact that they are migrated from South Arabia. This means that they did not fulfill the criteria

¹⁵ For instance, in 2015 two violent disputes that lead to the loss of life and imprisonment of many youths occurred. One of the immediate causes of the dispute was the digging of illegal houses built mainly in Kebena dominated areas of the town. But many Kebena informants indicate that the underlying cause of the dispute was resistance to expansion of the town to historically Kebena dominated lands. From the perspectives of the Kebena elite this would have been solved if the Kebena have given their constitutional rights of self-government (ethnic autonomy) in the territory they historically inhabited.

¹⁶ The Oromos are one of the nation, nationality and people of Ethiopia which have its own regional state: Oromia National Regional State. see the FDRE Constitution Article, 47/1

¹⁷ In Ethiopia the Guraghes were/are Known as one of the main communities who move from place to place particularly to urban centers for commercial purpose. See, Worku Nida, 2000, “Fanonet: Ethnohistorical Notes on the Gurage Urban Migration in Ethiopia”, *Ufahamu: A Journal of African Studies*, Vol. 28 (2-3)

¹⁸ Five rural *Kebeles* of Kebena *Woreda* are bordered by the town of Walkite. These are Kolla, Remogaa, Raggabooqaa, Feqado and Zebimolla. From the Gurage dominated *Woreda* only one *Kebele* of Abeshighe *Woreda* borders the town of Walkite. Interview with different residents of Walkite, Walkite, February, 2016

set in international legal regime, which underlines as Merlan (2009) and Pelican (2009) stated the contravesial nature of indigeneous people status in African context where there is a series of (re) conquest and migration of people. This inturn confirms the controversy and tensions between ethno-cultural communities as indigeneous/non-indigeous mainly emanates from within the context of Ethiopian federalism.

The informants of the researcher concur that identity-based tensions in Walkite town changed into disputes first when the name of *Goro* High School was replaced by the name *Aberose* High School in 2014. Students revolted and broken the new post that contain the name of the school (*Aberose* High School) considering the change of the name of the school as an act of exclusion of the Kebena community from the symbols and history of the town/city built by the labor and land of their forefathers and fathers. To pacify the situation, police took forceful measures, and some Kebena youth were made responsible for the revolt by the city administration. Secondly, after a week of this light revolt, some Guraghe youth has broke the post of Kebena *Woreda* administration which is found in Walkite town. However, for this disaster no one was made responsible and questioned by the court of law, unlike what is done on those who break the post of the school name¹⁹. This created resentment on the Kebena community who consider it as one manifestation of unfair treatment of the two ethnic communities of the town by the town administration²⁰.

Thirdly, in 2015 when the Walkite town/city administration started to demolish illegal houses in the town, another identity-based dispute has started; this took the life of two people. There were other underlying factors which contributed to the revolt of Kebena community in the town, besides its immediate cause: demolishing of illegal houses. These include unpaid compensation for individuals (whose nationality is Kebena) whose houses were dug by the town administration due to the development plan of the town. The

¹⁹ Interviewee, 26; and Interviewee 15, Walkite, February, 2016

²⁰ Interviewee 26 Walkite, February 22, 2016

town administration is agreed to pay compensation by giving letter of compensation but failed to do so. This was also the time when the town administration planned to draw a new master plan that includes a number of rural *Kebeles* from the neighboring *Woreda* of Walkite is under discussion²¹. Of course, the expansion plan aimed at including rural *Kebeles* not only from Kebena *Woreda* but also from three Guraghe inhabited *Woredas* as well. But the Kebena were expressing their objection to the plan fearing eviction of their community from their land without adequate compensation as well as considering it as a strategy for denying the communities rights to ethnic autonomy.

In this regard different scholars, such as Kossler (2015) argues that guaranteeing territorial autonomy or ethnic autonomy in ethnically diverse society can not solve problem of ethnic minorities. They are also against the view that autonomy for ethno-territorial community's etail 'ownership' to territory by that specific ethnic community.

The overlap between one group and one territory reveals an interiorized ownership relation that goes back even to the very names of groups and territories: territories have usually been named after the population residing in them and vice versa, to the extent that makes it almost impossible, in most cases, which name developed first (Palermo, 2015: 20).

This means that ethno-territorial autonomy implicitly, and in some cases, explicitly leads to territories are properties of groups rather than the state. The guaranting of ethnic autonomy may take this relation further and attempts to reflect ethnic rather than civic relation between ethnicity and territory that implies *autonomy for* a particular group. Palermo argues that such an "approach to autonomy-based ownership are getting outdated" (2015: 21). He

²¹ Interviewee 26, February 22, 2016

further argues that “more comprehensive and sophisticated view of autonomy is emerging, focusing on territories rather than on groups “owing” them and including minority rights in a wider perspective, which can be called *autonomy of*; of territories as such, rather just for one group thereby settled” (Palermo, 2015: 21). The shift of focus from one ethno-territorial community to territories as a whole is the result of globalization/recognition of minority rights under international human rights instruments that lead to increasing attention to the rights of minorities sharing a territory, irrespective of their status as formally recognized minorities or not

Short of ethnic autonomy, the question of the Kebena ethnic community regarding the town of Walkite revolves around having meaningful representation in the town council that enables the representatives of the community to safeguard the interests of the community which are endangered by majoritarian decision of the town council²². For instance, when the town council discusses to change the name of a secondary school called “Goro High School” into *Aberose* in 2014, Kebena members of the council strongly opposed and questioned the rationale behind changing the existing name to Guraghe name. They further argued that the change is undermining the contribution of the community for building the school and destroy the history of the town²³. However, the council ratified the proposal regardless of their objection. Similar issue is raised regarding discussions on naming sub-cities and *Kebeles* of the town which the Kebena believe that it was first settled by the Kebena and Oromo community²⁴.

In sum, the crux of this section is to highlight that the Kebena who have not yet achieved self-rule/ethnic autonomy as per the FDRE and the SNNPR Constitutions claimed ethnic autonomy partly due to outdated understanding

²² Interviewee 13, 14, 15, 26 Walkite, February, 2016

²³ Interviewee 26, Walkite, February 22, 2016

²⁴ One Kebena elder told me that when the city is divided into Kifle Ketema/sub city, one of the sub cities is called *Bekure* which mean primary I raised a question “why you do not name it “abadalecha” who is the primary man among the founders?” A similar issue is also raised when *Kebele* in this sub city is renamed as *Ediget Bire* which was known as the Village of “abadalech”: why not “abadalecha” *Kebele*. Interviewee 28, Walkite, February 23, 2016

of ethnicity and territory²⁵, and absence of good governance²⁶ in the area including in the Guraghe Zone Capital, Walkite. As Palermo stated the the outdated understanding of ethno-territorial autonomy attempts to reflect ethnic rather than civic relation between ethnicity and territory that implies autonomy for a particular group (2015: 21). Identity based struggle of the Kebena community with the surrounding Guraghe Community (majority ethnic community both in Walkite town as well as Guraghe Zone) is also aggravated by absence of good goernance, particularly, the threat of elimination of once history/identity in the town of Walkite due to absence of inclusive decision making mechanism²⁷.

In the following sections, transformation of the Kebena customary law and its main contents in the family arena has been examined focusing on the impact of these activities on the rights of the Kebena women.

6.3. The Kebena Customary Law and its Transformation

Like the Sebat-bet Guraghe community, the Kebena Development Association (KDA), community based civil society organization, have initiated and facilitated the transformation of the Kebena customary law. The KDA is established in 1994 following the the establishment of Kebena People Democratic Front (KPDF) with the objective of promoting the history, culture and language of the Kebena people by urban elite members of the community²⁸. Headquarter of the association is Addis Ababa, but having several members from the homeland of

²⁵ See, Francesco Palermo, 2015, “Owned or Shared? Territorial Autonomy in the Minority Discourse” in Tove H. Malloy and Francesco Palermo ed., *Monority Accommodation through Territorial and Non-Territorial Autonomy*, Oxford University Press pp. 13-32

²⁶There is no uniform definition of the concept of good governance. The concept is often understood by its major principles used to measure the prevalence or otherwise of good governance in the governance of a given institutional set up. Muhammad Ali (2015) summarises the principle of good governance as follows: *The government should be participatory, consensus oriented, accountable, transparent, responsive, effective and efficient; as well as equitable and inclusive; at the same time, it follows the rule of law. More importantly, it gives assurance to its people that its governance would be free from corruption practices. In addition to that, the government should give priority to the views of minorities and listen to the voice of most vulnerable group of people in the society when it comes to decision making* (Ali, 2015: 69). Based on this when the researcher evaluate the Guraghe Zone and Walkite town administration vis-à-vis the Kebena community, it is observed that its governance is not consensus oriented, transparent, based on rule of law, effective and efficient and does not give attention to the views of minority in this case the Kebena community in its decisions.

²⁷ The impact of absence of good governance in the demand for ethnic autonomy by minority ethno-cultural communities need further research to see to what extent the resolution of problem of good governance curbs the demand for ethnic autonomy

²⁸ See, [www. peopleofkebena.org/index.php/kda](http://www.peopleofkebena.org/index.php/kda)

the Kebena (kebena *Woreda*) including leaders of customary local institutions, similar to the GPSDO. The transformation of the Guraghe customary laws inspired the KDA and political elites of the community to engage in the transformation of Kebena customary law which is considered as means for preserving and developing once culture and identity. The draft of transformed customary law have been prepared by members of KDA, and deliberated by members of the association, political elites of the community and clan leaders of the community (leaders of customary local institutions).

The general assembly of clan leaders/semi-legislative body of the Kebena ethno-cultural community Colled *Oguet* ratified the transformed customary law of the community. Kebena has thirty nine clans and all of them are represented in *Oguet*. All members of this assembly as well as those participated in the deliberation of transformed customary law are men, hence, the transformation of customary law is deliberated and ratified only by male members of the community. But the transformed customary law in its Article 37/6 says “on issues of their community and country women give opinions in the public sphere”. However, paradoxically, there is no attempt to participate women in the customary local institutions. There are also other several contradictory provisions²⁹ in the document that indicate the superficial commitment of the makers of transformed customary law of the Kebena for the respect and protection of rights of women in the community.

The KDA published the Kebena customary law colled “Kebena Nation Cultural Administration Decree”, which is also called in the language of the community *Boobane Galtitaa*³⁰, in 2007. As it has been clearly written in the transformed customary law document, the process is considered as part of exercising the community’s constitutional rights to self-government, right to preserve and

²⁹ For instance, some forms of customary marriage listed under Article 23 of Boobane Galtitaa (Kebena Customary law) outrightly undermine the right to equality and it is not concluded based on consents of the spouses. This kind of customary marriage includes *Rega'uu*,/inheritance marriage, *Dortuta*,/substitution (See, below Customary Laws of Maariage)

³⁰ *Boobane Galtitaa* also refers to customary court of the Kebena.

develop once culture as well as the right to use customary courts³¹. As it is observed in the transformed customary law of the Kebena, the transformation of customary law has the objective of not only changing customary law from oral tradition to written form but also the intention of prohibiting discriminatory and harmful customary practices against women. However, unlike the customary law documents of the Guraghe, in the Kebena customary law document this is not clearly stated. But there are provisions in the transformed customary law of the Kebena that indicate the inclusion of this objective³².

Like the Guraghe transformed customary law documents, a wide range of issues, such as public-private, civil-criminal which covers the whole areas of customary life of the community are included in the Kebena transformed customary law document. The document is divided into four chapters and ninety-nine Articles. The first chapter of the document treats the origin of the Kebena cultural administration system and its development; general rules and definition of different terms. Chapter two deals with the Kebena cultural foods and drinks, cultural dresses, rules of marriage, wedding and divorce, systems of mourning and celebrating holydays; cultures that needs to be improved and needs to develop from time to time. The structure of cultural administration council, its members and function; organization of different committees and their function are included in the third chapter. The last chapter deals with potential penalties on the violators of the customary law, accountability and the scope of the customary law.

6.4. Customary Law of the Kebena in the Family Arena

The Kebena customary law document has been transformed mainly with the sense of perpetuating and maintaining culture. This is highly visible with regard to customary laws related to marriage. Though the customary law has

³¹ The Kebena Customary law document states that the bases for its publication are Article 39(2-3) and Article 78 (5) of the FDRE Constitution. See, the Introduction of *Boobane Galtitaa* (Kebena customary laws)

³² For instance, this is seen from Article 17/3 of the Kebena customary law which states that “women are equal to men in all aspects of life”

clear provision that declares equality of men and women in all aspects of life³³, many of the customary types of marriage indicated in the document has discriminatory and harmful features. Of course, in the customary law document, there are provisions of discriminatory and harmful practices that are prohibited, but it is not exhaustive and detailed enough similar to that of the Guraghe customary law documents. Besides, several discriminatory types of marriage and dissolution of marriage are put as it was.

This because as Shacher (2001) clearly put it due to the role of the family and family law arena to maintain and perpetuate the distinctive cultural identities of communities. Shacher identifies two main functions of the family arena integral to the maintenance and perpetuation of collective identity as well as distribute hierarchical power relation between men and women members of ethno-cultural communities. These are “demarcation function” and “distribution function” (Shacher, 2001: 52-54). In the demarcation function rules/laws of ethno-cultural communities in the family arena are used to maintain membership boundaries vis-à-vis the larger society. For this purpose, they mainly use women as cultural symbol who must pass through strict rule of the community; for instance, when and who to marry is decided by the rule of the community rather than the individuals concerned. In the distributive function rules of ethno-cultural communities in the family arena shape and allocate rights, duties, and ultimately powers between men and women within a community. In most instances, the distribution function of rules of the community in the family arena serves to entrench persistent inequalities which “often perpetuate women’s dependence on other family members for survival, crippling their ability to gain minimal economic self-sufficiency” (Shacher, 2004: 54). In this domain it defines property relations between the spouses in the events of death or divorce. This in turn determines the economic and parental consequences of this change, such as spouse’s right to an estate or post-divorce support, control of land, or entitlement to child custody.

³³ See, Boobane Galtitaa (Kebena Customary Law), Article 17/3

The section to follow will discuss the prohibited harmful practices; customary law of marriage, marital life and dissolution of marriage as it is stated in the transformed customary law document of the Kebena and examines its primary role: maintaining and perpetuating collective identity or protecting rights of women.

i) Prohibited Harmful Practices

The Kebena customary law in Article 17 lists names of harmful practices among the Kebena that are against the rights of women and children, hence, prohibited. These are practices that make a woman to hurt herself by refraining from eating nutritious foods such as meat and butter, sleeping in uncomfortable situations, abandon washing one's clothes, and not taking care of herself properly after the death of a husband³⁴. In Article 7/2 of the customary law document it is declared that women are equal to men in all aspects of life; anything that undermines this is considered as harmful practice. The customary law document in its Article 17/4 states that any kind of violence against women and children are harmful practice that is prohibited. Articles 17/2-4 of the Kebena customary law are in-line with international, regional and national instruments of human rights of women that prohibit discriminatory practices³⁵. Article 90/3 of the Kebena customary law states that for the sake of marriage, interrupting girl without her consent from education is forbidden. This is used to indicate one of the prohibited customary marriages that are one of the main sources of the limited empowerment of women of the community.

Unlike the Guraghe customary laws in the transformed customary law of the Kebena, there are no mechanisms set to punish perpetrator of prohibited

³⁴ See *Boobane Galtitaa* (Kebena Customary Law), Article 17/1

³⁵ See, for instance, African Protocol on the Rights of Women, Article 5

harmful practice³⁶. Besides, contrary to what is stated, such as in Article 17/3 of the Kebena customary law that declares equality of men and women in all sphere of live, there are several types of customary marriage and divorce laws that undermine the equality of women with men, hence, violating CEDWA, African Protocol on the Rights of Women as well as rights of women enshrined in the FDRE Constitution. But one needs to be conscious in scrutinizing and evaluating these kinds of marriage because almost all of the marriages types have not only customary but also religious bases or allowed by the Sharia as far as certain conditions for these types of marriage are full filled, which indicates the significance given to the demarcation function of customary law (shacher, 2001) which is reinforced by coincidence of ethnicity and religion.

ii) Customary Law of Marriage

One of the important adaptations of customary law and practices to new circumstances expressed in the transformed Kebena customary law is compulsory requirement of medical examination on HIV/ADIS on all male and female before entering into a new marriage³⁷. This is one of the provisions that make the Kebena customary law different from the Guraghe customary laws. The other important development seen in the transformed customary law of the Kebena is the human rights standards for lawful marriage which are put as prerequisite for marriage in the Family Code of the SNNPR are also included as part of customary law of the Kebena. These include the requirement of full consent of the spouses before marriage, and the age of the spouses that must be eighteen or above³⁸. The transformed customary law document also clearly states that a woman has the right to choice her spouse³⁹. These provisions of the transformed customary law are inline with not only SNNPR Family Code, but also Article 16 of CEDAW as well as African Protoco on Wome's Rights Article 6/a and b that obliges states states to take national legislative measures

³⁶Regarding punishments of perpetrators of prohibited discriminatory and harmful customary practices in Guraghe Customary law see, Section 5.5.1 and 5.5.2 of chapter five

³⁷ *Boobane Galtita* (Kebena Customary Law), Article 21

³⁸ *Boobane Galtita* (Kebena Customary Law), Article 32

³⁹ *Boobane Galtita* (Kebena Customary Law), Article 37/6

that guarantees marriage to be based on the consent of both parties, and the minimum age of marriage to be eighteen year.

As per the Kebena customary law and Islamic law (Sharia) “Nicka”/betrothal is concluded before marriage in the presence of parents or in their absence with the presence of their representative or close relative to the parents, judge of the Sharia court and witnesses⁴⁰. As stated in the transformed customary law of the Kebena, consent of the future couples as well as their parents are mandatory requirement to conclude “Nicka”⁴¹. The intending spouses not only have to consent to marry, but also their parents’ needs to express their consent, as this is required by Islamic religion⁴². A similar content is also put under Article 19/1 of the customary law document which states that “the full consent of the male and the female is required before marriage contract/Nicka”. Regarding betrothal period, Article 20/2 of the Kebena customary law following the SNNPR Family Code states that the maximum period of betrothal is one year. Betrothal, which lapsed more than a year, can be regarded as void unless there is convincing evidence to extend the period of betrothal⁴³. Breach of betrothal by one party to the agreement, i.e., failing to conclude marriage without good cause is punishable in the form of refunding all the expenses relating to betrothal and one thousand Ethiopian Birr moral compensation⁴⁴.

The Kebena customary law document presents six ways of entering to marriage which would be concluded after passing through Nicka/betrothal. These are *Wuchequ*, *Xaaxequ Ayu*, *Rega’uu*, *Murut Geyeni Asu*, *Dortuta*, and *Wagetutaa*⁴⁵. *Wuchequ* is a type of marriage concluded mainly with the agreement of the two parties to the marriage⁴⁶. *Xaaxequ Ayu* is a way of entering to marriage by the

⁴⁰ *Boobane Galtita* (Kebena Customary Law), Article 25

⁴¹ *Boobane Galtita* (Kebena Customary Law), Article 18

⁴² Interviewee 16, Walkite, February 16, 2016

⁴³ *Boobane Galtita* (Kebena Customary Law), Article 21/1

⁴⁴ *Boobane Galtita* (Kebena Customary Law), Article 22/2

⁴⁵ *Boobane Galtita* (Kebena Customary Law), Article 23

⁴⁶ *Boobane Galtita* (Kebena Customary Law), Article 23/1-2

initiation of the man and his parents without prior information on the side of the woman and her parents⁴⁷. In case of the *Xaaxequ Ayu*, suddenly the man and his friends go to the house of a woman whom he wants to marry in a wedding style, and the parents of the woman would be compelled by the culture to give their daughter to the man⁴⁸. The third type of marriage is *Rega'uu* (meaning inheritance) marriage. This is a type of marriage in which a widow would marry the brother/close relative of deceased husband⁴⁹. At face value, this kind of marriage is covered with the intention of helping the widow in upbringing of children born from the deceased husband by helping the widow in agricultural works⁵⁰. But the main objective of this kind of marriage was/is to maintain the land of the spouse within the family and clan of the deceased husband in a way forbidding the widow right to own property/land, and the right to choice whom to marry. This is against the rights of widow stated in the African Protocol on Women's Rights. African Protocol on the Rights of Women in its Article 22 states that "States Parties shall take appropriate legal measures to ensure that Widows enjoy all human rights". These include not being subjected to inhuman, humiliating or degrading treatment⁵¹; to become the guardian and custodian of her children⁵²; and the right to remarry the person of her choice⁵³. The Protocol in its Article 21/1 also states that "A widow shall have the right to an equitable share in the inheritance of the property of her husband".

The fourth kind of marriage is *Murut Geyeni Asu* (meaning gift). This is a type of marriage concluded by the initiation of the parents of the female to give their daughter to a man whom they know in his hard work and good behavior⁵⁴. The parents of the woman have a great role in the establishment of the marriage

⁴⁷ *Boobane Galtita* (Kebena Customary Law), Article 23/1-2

⁴⁸ Interviewee 15, Walkite, February 13, 2016

⁴⁹ See, *Boobane Galtita*(Kebena Customary Law), Article 23/3

⁵⁰ Interviewee 15, Walkite, February 13, 2016. Here, it is important to note that the majority of the Kebena community life is dependent on agriculture.

⁵¹ African Protocol on Women's Rights, Article 20/q

⁵² African Protocol on Women's Rights, Article 20/b

⁵³ African Protocol on Women's Rights, Article, 20/c

⁵⁴ Interviewee 15, Walkite, February 13, 2016; See also, *Boobane Galtita*(Kebena Customary Law), Article 23/4

with/without the consent of the woman/their daughter or the prior consent of the future spouse of their daughter. The fifth kind of marriage is *Dortuta* (meaning substitute)⁵⁵. This is a type of marriage concluded between the sister or close female relatives of the late wife/fiancée and the husband/fiancé of the late wife/fiancée⁵⁶. The last kind of marriage is *Wagetutaa*⁵⁷. This is a type of marriage between a widow and a man of her choice⁵⁸. In sum, the customary marriage of *Xaaxequ Ayu, Rega'uu, Dortuta, and Murut Geyeni Asu* violates the equality of spouses while entering into marriage; right of a woman to choose whom to marry, as well as right of widow to own property⁵⁹. Moreover, these kinds of marriage contradict Article 17/2 and 3 of the Kebena customary law itself. Hence, the institutions that reified the transformed customary law need to reconsider the visibility of perpetuating these kinds of marriage in the name of culture, not only from the point of view of perpetuating custom but also developing once culture⁶⁰.

As stated in the transformed customary law of the Kebena, customary marriage and wedding ceremonies according to the Kebena culture are encouraged⁶¹. In this regard, Article 83/1 of the customary law document states that “though in Ethiopia there are three forms of marriage: cultural, religious and civil, it is not advisable for the Kebena community to carry out marriage other than the cultural one”. This is in a way violating individual right of exit. In sub Article 2 of Article 83 also it is stated that “concluding marriage, wedding and divorce other than the Kebena nationality culture allows would be punishable from five hundred upto two thousand Ethiopian Birr”. By making these kinds of provisions, the customary local institution of the Kebena community has passed their constitutional limit set on cultural autonomy by making

⁵⁵ See, *Boobane Galtita* (Kebena Customary Law), Article 23/5

⁵⁶ Interviewee 15, Walkite, February 13, 2016

⁵⁷ See, *Boobane Galtita* (Kebena Customary Law), Article 23/6

⁵⁸ Interviewee 15, Walkite, February 13, 2016

⁵⁹ See FDRE Constitution, Article 34/1; African Protocole on Women's Rights, Article 21 respectively

⁶⁰ Here, it is important to not that there are customary marriage forms in the community, such as abduction, which has been tacitly prohibited by customary local institutions. A similar mechanism of prohibiting may also be applied in the case of those discriminatory and harmful customary marriages which have been incorporated in the transformed customary law.

⁶¹ See, *Boobane Galtita* (Kebena Customary Law), Article 26

customary laws that contravene Supremacy of the Constitution by denying constitutional right of exit. This is because, as stated in Article 34/5 of the FDRE Constitution choosing the form of marriage is individual rights rather than an issue left to ethno-cultural communities. Individuals have the right to exit intra-group institutions if s/he wishes. The setting of customary law that prohibits individual right of exit means this law has no legally acceptable effect because it contravenes human and democratic rights of citizens enshrined in the Federal Constitution. However, it can function in the shadow of law and may also serve to perpetuate and maintain discriminatory and harmful practices. This mainly emanates from patriarchal interest to maintain custom as it is, rather than being genuine to promote and protect women's rights. As stated in Chapter 5 Section 5.4 of this thesis, the absence of policy of transformation on customary institutions as well as shallow understanding of autonomy, in this case cultural autonomy, vis-a-vis the state institution and women may also take their own share as a factor that perpetuate patriarchal customary laws that violates rights of women. Moreover, the demarcation of distribution function of laws in the family arena (Shacher, 2001: 52-54) might have been the tacite rationale that underppines the denial of rights of exit in the transformed customary laws of the Kebena. This kinds of challenge cannot be challenged unless women members of the community themselves participate to make their voices heard in the (re) construction of community laws in which the state can help mainly by empowering women of the community by fulfilling minimum standards of living for meaningful exercise of exit rights (Spinner-Halev, 2004: 160). The minimum standards of living for meaningful exercise of exit rights include basic eduction, freedom from physical abuse, descent health care and nutrition.

iii) Consequences of Marriage and Dissolution of Marriage

The Kebena customary law document contains laws regarding consequence and dissolution of marriage which are more or less similar to the Family Code

of the SNNPR⁶². As it is stated in Article 28 of the transformed customary law of the Kebena, the consequences of marriage include, first, properties produced during marriage are common properties of the husband and wife. Secondly, properties produced before marriage can be private properties of one of the spouses if registered as private property earlier to or at the time of marriage. Thirdly, any property which is not registered while entering into marriage as private property is common property. Fourthly, when a marriage is dissolved due to death, the remaining spouse enters into a new marriage after division and transfer of property of the passed away to his/her children or legal inheritor. In other words, this implies that the right of widow to own property and choose whom to marry is respected though one of the types of customary marriage called *Rega'uu* marriage is not prohibited. The duties of husband and wife to live together and jointly choose the place of their residence⁶³, having equal responsibility for the upbringing of children, etc⁶⁴ are also part of consequences of marriage which is in line with the principle of equality in marital life which have been underlined in national, regional and international human rights instruments. In principle the provisions on consequences of marriage is written with the assumption of only monogamous marriage though in the community bi/polygamous marriage has also been widely seen. The rights of woman living in bi/polygamous marriage have been clearly protected in the African Protocol on the Rights of women⁶⁵.

The causes of dissolution of marriage include, first the absence of consent of one of the spouses while entering into marriage, and if s/he requests the dissolution of this marriage. Secondly, if the customary court of the Kebena decides that the marriage is not concluded as per the customary law of the Kebena. This cause of dissolution of marriage is against the constitutionally guaranteed right of exit. Thirdly, due to death or disappearance of one of the

⁶² In the SNNPR Family Code Article 28 and 29 deals with consequences of marriage and dissolution of marriage

⁶³ See, *Boobane Galtita* (Kebena Customary Law), Article 33

⁶⁴ See, *Boobane Galtita* (Kebena Customary Law), Article 30

⁶⁵ African Protocol on Women's Rights, Article 6/c

spouses and when his/her disappearance is declared by court; and when the act of the spouse contradict culture, morality, or law⁶⁶. The dissolution of marriage can also be due to divorce with the consent of the spouses. The Kebena customary law Article 29 states that divorce concluded with the agreement of both parties needs to be in written form which must be ratified by customary court judges' office⁶⁷ or in a formal court office. The customary law in its Article 97 declares that any parties whose cases are seen in customary courts have the right to apply to formal courts.

In sum, the transformed customary law of the Kebena in the family arena contained provisions which can be considered as progressive, such as making medical examination on HIV/AIDS before marriage, clearly prohibition of some harmful practices, such as violence against women. However, there are several contradicting provisions which in effect undermine the rights of individual members of the community such as the provisions that deny right of exit while entering into marriage, in celebrating marriage and during divorce⁶⁸. This is one of the major areas where conflict of culture and rights has been vividly seen. This clearly illustrates the superficial commitment of the initiators of transformation of the Kebena customary law, i.e., KDA, as well as leaders of customary local institution of the Kebena community towards prohibition of discriminatory and harmful practices against women; hence, promotion and protection of women's rights.

6.5. Marriage, Marital Life and Dissolution of Marriage from the Perspective of Women

Marriage as per the Kebena culture is not only the affairs of the intended spouse but also the affair of the fathers of the intended spouse and the extended family. Both the father/elders and extended family have key role in convincing the woman to marry a man chosen for her as well as in silencing

⁶⁶ See, *Boobane Galtita* (Kebena Customary Law), Article 27

⁶⁷ Customary local institutions of the Kebena have office in Walkite town administered by KDA. Interviewee, 17 Walkite, February 15, 2016

⁶⁸ *Boobane Galtita* (Kebena Customary Law), Article 83/2

prior wife in case of bi/polygamous marriage. Bi/polygamous marriage is widely practiced and underpinned by custom and religion of the community⁶⁹. Culture in general and religion in particular is means to justify the practice, to reject the woman's objection as well as to cool down a woman affected by the practice⁷⁰. In this regard, let us see the story of a Kebena woman:

When I was given to a husband I was nineteen. I know that the man proposed for me to marry was already a married man. But my father informed me that the man has good behavior and is wealthy; our religion allows such a man to marry more than one wife. I tried to say 'no' but my father confirmed that if I face any problem he will stand by me and blessed me to be a good religious woman, without waiting to hear my consent. It is difficult to share a husband for both his first wife as well as for me but we (the two wives) tried to live peacefully as much as possible even if there are situations that take as to dispute. After fifteen years of my marital life, his first wife has been ill and she died. Following this my husband wanted to take another wife in the house of his first wife. I was aware of this plan despite he said nothing to me. Then, I went to my father's house and told what my husband planned. My father advised me to cool down and promised to help me to live in dignity without losing the respect that needs to be given from a husband to a wife (even if he would be married to a third wife). My father, including other members of my family and relatives asked me to tell them when he planned to marry, and I told them. At the day of his wedding my parents together with their relatives came to my house carrying different gifts for me. As per our culture in the wedding day of a husband, there must be equal kind of preparation for invitation of relative not only in the house of the new wife but also in the house of the earlier

⁶⁹ Focus group discussion with the Kebena women, Zebimolla Kebele of Kebena Woreda, Feb. 19, 2016

⁷⁰ Focus group discussion with the Kebena women, Zebimolla Kebele of Kebena Woreda, Feb. 19, 2016

wife and different gifts will be given to the earlier wife by close relatives to help her to get cool down and accept the situation. My husband came to our house in the night of the wedding day and promised not to make any distinction between the new wife and me in front of my parents and relatives. He did this as well as gave the necessary thing to have similar ceremonies in both houses for that night. In this way my parents and relatives made me accept the situation rather than disappearing from the house which makes a woman disrespectful for her parents and culture, particularly to our religion as well as harmful to my children⁷¹.

This story clearly illustrates powerlessness of woman in the Kebena custom, i.e., the absence of opportunity to achieve one's goal due to deep seated constraints on the ability to choice (Kabeer, 199: 438). The constraint on the ability to make 'strategic life choice' has been underpinned by close family members and relatives as well as the community at large. This makes powerlessness among the Kebena women a deep seated constraint. To exercise choice there are necessary pre-conditions, such as resources and agence (Kabeer, 1999: 437-438). Resources include rules, norms and laws that guarantee rights as actual allocations and future claims, which have been denied for women in the Kebena custom or set in a way that undermines women's ability to exercise choice. As a result the women have limited/no agency in her live, i.e., she can not define her goal and act upon them. There is limited/no space for the exercise of individual rights of women in the community.

According to the custom and religion of the Kebena before Nicka/betrothal, the consent of the fathers of the intended spouses is mandatory⁷². However, the consent of the woman including her mother is not an issue at all owing to the

⁷¹ Interviewee 20, Zebimolla Kebele of Kebena Woreda, February, 19, 2016

⁷² Interviewee15, Feb. 17, 2016; and Interviewee 16, February.16, 2016

inferior value attached to women. Father of a daughter/woman gives his daughter for a husband chosen based on the father's calculations. Fathers engage in advising their daughters to enter into a bi/polygamous marriage rationalizing it based on their custom and religion and the "good behavior and wealth" of the supposed husband. Often, the woman have no courage to say "no" to the advice of her father or /elders at the time of marriage as well as in her marital life owing to limited choice she has in her community. This indicates the extent to which access to rights has been hindered by powerlessness of a woman in her family in particular and her community in general. As Rowlands (1995) indicates empowerment has three interlated dimension: individual, in close relationship and collective. In the case of the Kebena powerlessness of women has also three inerlated dimation: at individual level, in close relation and collective level that indicates the limited probability of reforms from within without the intervention of a state at least in the form of fulfilling minimum standards of living, such as basic education⁷³.

Informants of the researcher indicated that as per the religion of the Kebena: Islam, a man who wants to marry additional wife needs to be "wealthy" enough as well as needs to have the moral capacity of treating his wives equally in every aspects of marital life. But all of the women informants concur that the religious requirements are too difficult to full fill in their community, and they did not come across a man who fulfill these requirements though many of them are brought up and lived in bi/polygamous marriage⁷⁴. Women are aware of the harmfulness of living in bi/polygamous marriage psychologically, in terms of health and economically⁷⁵, but they did not do away with these kinds of marriage mainly due to their limited ability to exercise choice⁷⁶. Moreover, in

⁷³ Full filling minum standards of living for all members of a given community or citizens is responsibility of the state that emantes from international human rights instruments, such as ICSECR which enables individuals to excercise exit rights as well as releaves a state from intervening in the affairs of autonomous communities (Spenner-Halev, 2004).

⁷⁴ Focus group iscussion, Zebimolla *Kebele* of Kebena *Woreda*, Febuary, 19, 2016,

⁷⁵ From ten women who are interviewed and participated in the focus group discussion, six of them are live/lived in bigamous/polygamous marriage

⁷⁶ Many women live in a situation were the minimum standards of living have not been full filled, i.e., the state are not yet made the minimum kind of interventions in the life of many women's.

some instances, women relatives are indirectly support the perpetuation of the practice which emanates from loyalty to culture than human dignity of woman. In this regard, let us see the story of one of the Kebena woman/wife:

I am the first wife of my husband when I gave birth to my third child; my husband was preparing to take his second wife. When I knew this I am angry and become sick. My husband's mother was the one who prepared his wedding. I begged her to abandon, but me to cool down. Later on, I became seriously ill. She blamed me for not respecting our culture and told me that the cause of my illness was the disrespect I showed to our culture and religion by refusing to cool down and accept the situation. Gradually, I started to cool down myself, because I want to be alive for my children.[.....]I did not ask for divorce. Because, my father has passed away and I had no brothers that means no one to support me. [.....]. I know the pain of hearing that your husband is preparing to take a second wife and living in bigamous marriage because I have lived in it⁷⁷.

A Kebena woman, whether she is a first or second wife, often did not ask for divorce. On the one hand, this is a respecting the decision of father/elders as well as custom/religion of the community⁷⁸. On the other hand, motherhood also makes her to stick to her husband because of the economical and psychological significance of the father for her children.

Moreover, as per the culture during divorce women are not entitled to share matrimonial property except taking the *Beher money*⁷⁹ she has been given by the husband at the time of marriage, if it is not consumed⁸⁰. Though

⁷⁷ Interviewee 22, Zebimolla *Kebele* of Kebena *Woreda*, February 19, 2016

⁷⁸ As per the Kebena custom consent of the father is also mandatory in order for a woman to divorce besides the choice of the woman and will of the husband to divorce without sharing matrimonial property. Interviewee 25 a Kebena women who has been divorced her husband due to infertility and remarried to another husband, Jejubana Gaso *Kebele* February 20, 2016

⁷⁹ “Behor Money” is a gift given by a husband for a wife at the time of marriage either in kind or cash to be an exclusive property of the wife which she can take it with her if divorce happens or do anything she likes. This Practice is underpinned by the custom and religion of the Kebena. Interviewee 15 and 16, Walkite February 16, 2016

⁸⁰ Focus group discussion, Zebimolla *Kebele* of Kebena *Woreda*, February 19, 2016

bi/polygamous marriage has been outlawed since the coming into effect of the Federal Constitution, there is no clear national law which protects the rights of women who have lived and living in bi/polygamous marriage⁸¹. This kind of marriage has still practiced in the Kebena community⁸². This is mainly due to the failure of the state to make at least a minimum level of intervention (Spinner-Halev, 2004), and limited empowerment of women of the community that resulted in perpetuation of cultural functions of customary laws in the family arena⁸³.

Almost all marital disputes among the Kebena have been resolved by customary courts/village elders without going to either formal or Shari courts⁸⁴. In the Kebena community customary courts are exclusively composed of men. In customary courts, women are not allowed to present their cases by themselves in any issue; rather their cases are presented by their male relatives with or without her physical presence⁸⁵. Informants confirmed that these procedures are still practiced. This is contrary to what is stated in the transformed customary law of the Kebena that declare: “women are equal to men in marital life and during the dissolution of marriage”⁸⁶. In customary courts, marital disputes are often resolved by reconciliation. But sometimes, in case of bi/polygamous marriage the customary court judges/elders may decide to divide the property between the husband and the wives without ratifying any divorce when the dispute has reached its climax and cannot be resolved⁸⁷. As per the culture of the community, divorce is the sole authority of the husband, i.e., only the husband has the right to divorce his wife⁸⁸. Woman living in bigamous marriage and who request divorce but fail to get the will of the

⁸¹ See, Jetu E. Chewaka, 2014, “Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Option”, *Oromia Law Journal* Vol.3 No. 1; See also Section 5.7 of Chapter Five

⁸² Focus group discussion, Zebimolla Kebele of Kebena Woreda, Feb. 19, 2016

⁸³ About the functions of laws in the family arena within ethno-cultural community who have autonomy and claim autonomy see, Ayelet Shachar, 2001, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights*, Cambridge, Cambridge University Press

⁸⁴ Focus group discussion, Zebimolla Kebele of Kebena Woreda, Feb. 19, 2016

⁸⁵ Focus group discussion, Zebimolla Kebele of Kebena Woreda, Feb. 19, 2016

⁸⁶ See, for instance, *Boobina Galtita* (The Kebena Customary Law), Article 37

⁸⁷ Focus group discussion, Zebimolla Kebele of Kebena Woreda, Feb. 19, 2016

⁸⁸ Interviewee 15, walkite, February, 19, 2016

husband may ask for division of matrimonial property as informants of the researcher confirmed. Through negotiation the woman may get some share of her matrimonial property, particularly if she has children as maintenance for her children and can live without any sexual intercourse with her husband⁸⁹ though this does not dissolve the marriage, i.e., the woman are not allowed to remarry⁹⁰. This clearly illustrates how demarcation and distribution function of rules in the family arena functions to maintain and perpetuate collective identity using women of the community.

Women who participated in the focus group discussion highlighted that nowadays owing to the prohibition of bi/polygamous marriage and awareness of women about their rights, male members of the community have started to fear their wives and the law of the state to enter into bi/polygamy marriage. However, this does not mean that they have stopped this kind of marriage rather they are creating/using mechanisms to show it as acceptable in the views of the local government institutions, particularly by the views of WCAO of Kebena *Woreda*.

6.6. The Role of Local Government in the Protection of Rights of Women

Protection of women's rights as human rights are the responsibility of all the three branches of government (legislative, executive and judiciary), whether the local government is nationality Zone, regular *Woreda* or Special *Woreda*. So far the local council (legislative body) of Kebena *Woreda* has no visible role in the transformation of discriminatory and harmful customary practices against women. The executive branch of government mainly Women's and Children Affairs Office (WCAO) has making attempts to protect rights of women. To raise awareness on the rights of women the *Woreda* WCAO uses different structures created to organize women of the *Woreda*, particularly rural women. The 1 to 5 women networks created by the HEP, and 1 to 30/45 development team as well as Women Associations created in each *Kebele* of the *Woreda*, are used as

⁸⁹Focus group discussion, Zebimolla *Kebele* of Kebena *Woreda*, Feb. 19, 2016

⁹⁰ Ibid

means to raise awareness on the rights of women. As per my informants the objectives of 1to 5 networks, the 1to 30 development team as well as Women Association are working together for the improvement of the life of each family and the community, engage in development work, helping each other, awareness raising about the rights of women⁹¹. But, as Maes et. al. (2015) clearly indicated the main purpose of 1to 5 network and 1to 30/45 development teams are enforcing the ruling party policy, particulay the HEP, and meeting the development policy of the state which has unstated objective of creation of hegemony of EPRDF over the rural population.

According to the researcher's observation, development teams as well as Women Association of each *Kebele* have good relationship with the *Kebena Woreda WCAO*. The achievements and problems of the team and association have been directly reported to the *Woreda WCAO*. The *Woreda WCAO* also serves as the main consultant on issues of marital rights⁹². In this regard, the Chair of Zebimolla *Kebele* Women Association, states the following:

Women of our Kebele came to be aware about their rights. Experts from different sectors gives training on such topics as rights of women, saving, health care and family planning for all development team leaders and chair women of women's associations in the Woreda, and when we return we teach our members. If one member of our association faces violation of rights, we report to the Woreda WCAO and they consult us and give solution unless the source of the problem is the woman herself. [.....]For instance, there are cases in which experts of WCAO stopped through consultation those who have plans of concluding second marriage. But if the wife signs a paper that allows the husband to take a second wife the association as well as the Woreda WCAO experts do nothing

⁹¹ Interviewee 18, Walkite; Focus Group Discussion, Zebimolla Kebele of Kebena Woreda, February 18 & 19, 2016 respectively

⁹²Ibid

*because if the wife allows her husband to take another wife our religion allows that*⁹³.

Women who participated in the focus group discussion as well as the Kebena *Woreda* gender experts concede that in Kebena *Woreda* there is no problem of awareness about rights among women. However, due to the communities' culture, particularly religion, women in the community have not been seen struggling to eliminate the conclusion of new bi/polygamous marriage as far as it has been done based on the mechanisms created/used to make it acceptable by male members of the community in the views of WCAO of the *Woreda*.

The mechanism created/used to make bi/polygamous marriage acceptable in the views of local government institutions, particularly WCAO of Kebena *Woreda* and women members of the community, are first negotiating with the existing wife and her parents, particularly with her father. This is to convince the wife to accept the situation (the husband's marriage to a second wife) as it was seen in the story of interviewee 20 above in Section 6. 5. Often the wife would not be in a position to object the advices of her parents, hence there will be no way the wife accuses her husband for conclusion of bi/polygamous marriage. Besides, bi/polygamous marriage concluded in this situation is acceptable in the views of the *Woreda* WCAO experts considering the implied silence of the women as implied consent⁹⁴.

The second mechanism is by getting the signature of the existing wife to guarantee her permission for the husband to marry another wife⁹⁵. However, this is not underpinned by law or policy of the state at any level of government in Ethiopia. As per my informants, a man who wants to enter into bi/polygamous marriage uses different tactic to get the signature. They concur that there is no woman who can sign for her husband to marry

⁹³ Interviewee 19, Zebimolla, February 19, 2016

⁹⁴ Focus group discussion, Zebimolla *Kebele* of Kebena *Woreda*; Interviewee 18, Walkite, February 19 & 18, 2016 respectively

⁹⁵ Ibid

another woman unless “she is infertile or mad”⁹⁶. But there are men who got the signature of the wife and married to a second wife. These persons got the signature using different deceitful tactics, such as coming home with friends making the woman emotional at the same time requesting her to sign a paper that guarantees her share of matrimonial property if she wants to divorce him⁹⁷, the wife signs the paper without understanding the content of the paper seeking her share of matrimonial property. But the paper contains contents that indicate the wife’s permission to her husband to take additional wife; the wife knows that, i.e., she was deceived after she took her case to the chair of *Kebele* women association and *Kebena Woreda WCAO* (to consult her problem after her husband took a new wife)⁹⁸. When such a case appears to the *Woreda WCAO* the first thing they do is to call and ask the husband about the problem raised by his wife. The appearance of the husband with a signed paper implies first, the existing wife has permitted the husband to marry another wife. Having seen this kind of paper, the experts do nothing than telling the woman that she has been deceived and advise her to cool down and accept the situation as this kind of marriage is acceptable by both the custom and religion of their community⁹⁹.

The mechanisms used to impliedly legitimize bi/polygamous marriage by the *Woreda WCAO* indicate, on the one hand, the *WCAO* of the *Woreda* is not protecting the rights of women based on the law of the state. On the other hand, the role of formal courts in resolving marital dispute is either unknown or not needed by the community. There is tendency of considering family and marital life as institution that needs limited intervention by the state among gender experts of *Kebena Woreda WCAO* as well as community leaders, even if violation of rights has been vividly seen. As Shacher (2001: 52-54) illustrated, this emanated from understanding the role of laws in the family arena as

⁹⁶ Infertility is one of the rationales that justify bigamous marriage as per the culture of the *Kebena* which is often considered as the problem of woman only; focus group discussion, *Zebimolla Kebele*, February. 19, 2016

⁹⁷ Focus group discussion, *Zebimolla Kebele*, February 19, 2016

⁹⁸ Interviewee 18, *Walkite*; Focus group discussion, *Zebimolla Kebele* of *Kebena Woreda*, February 18 and 19, 2016 respectively

⁹⁹ Focus group discussion, *Zebimolla Kebele* of *Kebena Woreda*; Interviewee 18, *Walkite*, February 19 and 18, 2016 respectively

maintaining and perpetuating collective identity, which has been mainly done using women's of the community as cultural symbols and conduit that needs to pass through strict customary rules. This has been done by perpetuating hierarchical power relation between men and women members of the community in the name of culture, which is the main source of gender inequality in many societies.

Women members of the Kebena community are aware of their right of exit, but they are not interested to use this right due to different factors. These are first the customary local institutions work to prohibit request to use exit right by (re) making customary laws that clearly denies this right. In this regard, Article 83/1 of the transformed customary law of the Kebena stated that "though in Ethiopia there are three forms of marriage: cultural, religious and civil, it is not advisable for the Kebena community to carry out marriage other than the cultural one". This is in a way violating individual right of exit. Sub Article 2 of Article 83 also states that "concluding marriage, wedding and divorce other than the Kebena nationality culture allows would be punishable from five hundred upto two thousand Ethiopian Birr". These provisions of the transformed customary laws of the Kebena are clear indicators of rejection of state intervention in the internal affairs of the community. In this regard Weinstock (2004: 245) argues that the rights of exit strategy for autonomous communities which have passed through the history of oppression and in a minority position in a state is premised upon a mis guided view of membership in identity-coffering community which makes it inappropriate to ameliorate unjust practices within the community. The identity coffering character of community membership makes a woman to feel that she has no choice but to continue to adhere to unjust rules/practices of the community rather than being ostracized from the community or receive very poor or bad treatment.

The second factor is the limited relevance of the solution of the formal courts, such as divorce, in addressing the pragmatic problems of women. Similar to

the right of exit, divorce for women has both materially and psychological coast¹⁰⁰ which is too difficult to bear individually. Thirdly, women are aware of the procedure of the state legal system which encourages the resolution of marital disputes through customary institutions which takes a longer period of time if one is determined to apply her/his exit right. Regarding divorce request due to marital dispute the SNNPR Family Code authorizes formal courts to recconcile the disputing spouses by itself or through elders taking more than three months rather than directly applying exit rights¹⁰¹. This authority of formal court for a woman who often has limited resources and life choice mean in a way denying right of exit. It is also stated that in the *Kebena Woreda* formal court, so far there is no request for dissolution of marriage or division of matrimonial property¹⁰². These illustrate the relegation of marital issues to the customary local institutions. In sum, it can be concluded that in *Kebena Woreda* the role of local government institutions in the protection and enforcement of marital rights of women is limited due to the greate emphasis given to enforcing the ruling pary policies using women as an instrument rather than genuine commitment for the protection of human rights.

6.7. Conclusion

The Kebenas are minority ethno-territorial community in which their ethnic identity concides with ther religious identity. Almost all members of the *Kebena* ethno-cultural community are followers of Islamic religion; and the main source of their customary law is their religion. As ethno-territorial community, the *Kebenas* live concentrated in *Kebena Woreda* of Guraghe Zone in the SNNPR. Although the SNNPR Constitution guarantees rights to self-government/ethnic autonomy without any preconditions for every ethno-territorial community in the region, practically it seems impossible for the

¹⁰⁰ Regarding the material and psychological coasts of exit See, Oonagh Reitman, 2004, "On Exit", in Avigail Elsenberg and Jeff Spinner-Halev (ed.), *Minorities within Minorities: Equality, Rights and Diversity*, Cambridge, Cambridge University Press pp. 189-208

¹⁰¹ See, the SNNPR Family Code, Article 91/1-4

¹⁰² Interviewee 17, Walkite, Feb. 16, 2016

Kevena community to have ethnic autonomy incorporating the territories they have been claiming which includes the Zonal capital, Walkite.

The cultural autonomy guaranteed to every ethno-cultural community in the country has been used by the community, particularly to transform their customary laws from oral tradition to a written one which is initiated by KDA. The processes of deliberation and ratification of the transformed customary law of the Kevena have carried out by men members of the community similar to that of the case of the Guraghe ethno-cultural communities (See, Section 5.3). Customary local institutions of the Kevena are also exclusively composed of men. Women hardly participated in these institutions including in customary courts. Though the transformed customary law states that equality of men and women are observed in every aspects of life, there are several conflicts of culture and rights, and self contradictions have been observed in the document. For instance, though there is a provision that underlines the equality of men and women while entering into marriage, some of the customary types of marriage listed in the customary law document have discriminatory features. There are also provisions that contravene the Supremacy of the Constitution, such as denying the right of exit from intra-communal institution while entering into marriage and during divorce. Moreover, challenging some of the discriminatory and harmful customary laws of marriage and marital dispute resolution is difficult in the Kevena community owing to the close relationship between the customary and religious laws as well as limited empowerment of women of the community. Local government institutions, particularly Kevena *Woreda* WCAO, have limited role in protecting rights of women in their marital life due to the priority and respect this institution has to the custom and religion of the community rather than the laws of the state. Hence, it is possible to conclude that ethnic federalism in Ethiopia inhibits the protection of rights of women in the family arena, particularly when ethnic identity coincides with religious identity as it is the case among the Kevena.

Chapter Seven

7. Summary of Findings and Conclusion

7.1. Summary of Findings

This thesis examined institutional systems for the promotion and protection of rights of women within etho-cultural community in Ethiopian federalism focusing on the family arena taking the case of Guraghe Zone of SNNPR, particularly the Sebat-bet, Sodo Kistane and the Kebena ethno-cultural communities. The findings of the research have been summarized in a way that shows the brief answer to the research questions of the thesis. The main research question of the thesis is *what kind of mechanisms are there to rectify injustice against women, and resolve conflict of culture and rights in Ethiopian federalism?* Since the change of regime in 1991 different mechanisms have been designed and in the process of implementation to promote and protect rights of women as well as empower women at national level. The first one is the ratification of NPEW in 1993 followed by the creation of WAO, which is upgraded to ministerial level in 2005, and mainstreaming this Office in each Ministry and sector Buraux. Though the NPEW has been criticized for its gaps in addressing gender based societal problems, such as on issues of nurturing critical consciousness, the different policies of the state adopted at different times have attempted to fill the gap. In this regard, the work done to expand access to education for all including affirmative measures taken to increase the participation of women in higher education institutions can be mentioned. The introduction of quota to increase women representations in the legislative branch of the government from the federal to local level can also be mentioned as measures taken to fill the gaps observed in the NPEW. However, the machineries created to enforce rights of women, WCAO, from the federal to local level is often criticized for its limited capacity as well as instrumental role

it plays for the creation of hegemony of the ruling party, particularly among the rural women.

As part of implementing international and regional human rights instruments on the rights of women, human rights of women have been adopted into national laws. In this regard, the FDRE Constitution makes rights of women constitutional rights, and this serves as the main framework in the process of promoting and protecting rights of women in the country. Different laws which are not compatible with the national human rights standards on women's rights have been amended following the ratification of the Constitution. In this regard, the enactment of Revised Family Code and Criminal Code¹ can be mentioned. Several regional states have also enacted regional Family Codes taking into account the main framework set to promote and protect rights of women in the country. Ethiopia is also signatory to human rights instruments that guarantee women human rights, such as CEDAW and ACHPR/African Protocol on Women's Rights. Women based civil society organizations have also been created and encouraged by the state to work for the promotion and protection of rights of women. However, these CSOs face different challenges to proceed in their advocacy of rights. These include the ruling party manipulation of women associations; since the coming of Societies and Charities Proclamation in 2009, the space for advocacy of rights has been narrowed.

Do non-state institutions of ethno-cultural communities respect rights of women and limits set on autonomy in the exercise of cultural rights? This question has been examined based on empirical data gathered from the three cases studies using documents, interviews and focus group discussion. It is argued that introduction of ethnic based federalism that centers on ethnicity for the exercise of self-rule/ self-government lead to revival and transformation of

¹ In the Criminal Code bi/polygamous marriage has been made to be criminal act punishable by law.

customary laws, which has mixed result in respecting rights of women and limits set on autonomy.

Transformation of customary laws is done mainly using cultural autonomy of the community, but magnifying territorial aspects of autonomy guaranteed to every ethno-territorial community in the country. Among the Sebat-bet Guraghe and the Kebena ethno-cultural community, community based CSO initiated and engaged in transformation of customary laws of their community in collaboration with customary local institutions in Guraghe Zone, while in the case of Sodo Guraghe leaders of customary local institutions initiated and transformed their customary laws. The roles of community-based CSO in the transformation of customary laws are expressed mainly by giving technical and financial support for customary local institutions and the publication of transformed customary laws of their respective community.

The customary local institutions of ethno-cultural communities covered in this study, i.e., Sebat-bet Guraghe, Sodo Kistane Guraghes and the Kebena, are composed of only male members of the community both in customary local councils/legislative body and customary courts. In the process of transformation of customary laws, i.e., in its deliberation and ratification, women members of the community have hardly participated though one of the objectives of transformation of customary laws is prohibiting discriminatory and harmful customary practices against women. This in turn resulted in transformed customary laws that have limited/no democratic legitimacy as well as selective prohibition of discriminatory and harmful customary practices against women.

Discriminatory and harmful customary practices against women that have been prohibited in the transformed customary laws include marriage through abduction, marriage without the consent of the woman, cutting of the fingernails of a bride, an extravagant betrothal and marriage ceremonies. Though all the three transformed customary laws declare that discriminatory

laws of marriage and divorce have been prohibited, it also contains provisions that nullify these provisions and maintain discriminatory laws of marriage and divorce. In this regard, the Sebat-bet Guraghe transformed customary law; the discriminatory and harmful customary law of marriage and divorce called *anqiti* are amended, but not prohibited even if this customary law of marriage and divorce is both discriminatory and harmful for women.

The Kebena customary law also maintains the types of customary marriage called *Xaaxequ Ayu* which has no place for the consent of the women; *Rega'uu* /inheritance marriage which violates the widows right to own property and her right to choose whom to marry; *Murut Geyeni Asu*/gift which has no place for consent of future spouse; and *Dortuta*/substitute which violates the right of woman to choose whom to marry. Moreover, the Kebena customary law clearly denies individual right of exit while entering to marriage and during divorce. It orders all members of the Kebena community to conclude marriage as per the custom of the community; concluding marriage other than what the customary law allows is made a punishable act by transformed customary law of the Kebena. In doing this, the transformed customary law of the Kebena clearly violates limits set on autonomy in the exercise of cultural rights, i.e., as per the FDRE Constitution customary laws apply based on the consent of the parties² or as far as exit rights have been respected.

In all the three ethno-cultural communities who transformed their customary laws, there are also discriminatory and harmful practices that are hardly raised in the transformed customary law documents. These include exclusion of women from customary local institution, wife beating, female genital mutilation and bigamous marriage. Regarding female genital mutilation and bi/polygamous marriage there is at least discussions and theoretical consensus on the need to eliminate these practices. With regard to the need of inclusion of women in customary local institution and wife beating, however, it

² See, FDRE Constitution, Article 34/5

is not an issue at all both among customary and state institutions. Wife beating gets the attention of these institutions only when the act is expressed in terms of vividly visible physical injury.

In the transformed customary law documents marital dispute resolution using customary institutions, such as family council and customary courts are encouraged. These institutions are composed of male members of the community and there is no provision that supports the inclusion of women in these institutions. Often, customary institutions resolve marital dispute through reconciliation including in instances where there is clear violation of rights of women. This is partly encouraged by the formal legal system that encourages the delay of right of exit by taking time to hear the final say of customary local institutions/elders, besides the cooling-off period as well as due to the absence of law that protects the rights of women living in bi/polygamous marriage. In resolving marital disputes in bi/polygamous marriage, in some instances customary courts become the only option due to absence of clearly known state laws that deal with issues in this kind of marriage. In sum, non-state institutions, particularly customary local institutions respect the rights of women and limits set on autonomy only when there is no clear contradiction with the established customary tradition of their communities.

The other questions addressed in the thesis underpinning it with empirical data from the case studies are *what are the mechanisms set to safeguard rights of women against autonomy of ethno-cultural communities in the family arena? Are women making use of those safeguards to protect their rights? If not why?*

The existence of long lived discriminatory and harmful customary practices against women in the family arena made the intervention of the state in the affairs of autonomous communities using different mechanism compulsory to protect rights of women within ethno-cultural communities. These mechanisms are often designed at national level taking into account

international responsibility of the national government to enforce human rights of women. In the FDRE Constitution the mechanisms designed to protect rights of women against the autonomy of their community include respecting Supremacy of the Constitution and respecting exit right of individuals from intra-group institutions. In principle, the protection of collective cultural and family rights is subject to the Supremacy of the Constitution³ that guarantees human and democratic rights. In doing this, the FDRE Constitution limits autonomy of ethno-cultural communities (both territorial and non-territorial) and safeguards fundamental freedoms and rights in general and rights of women in particular. Using their territorial autonomy, seven regional states have enacted regional Family Code that takes into account rights of women guaranteed by the FDRE Constitution. Two regional states are not yet enacted regional Family Code. This means, women's human rights guaranteed by the FDRE Constitution in the family arena in these two regional states have not yet been protected by directly enforceable laws of autonomous ethno-cultural communities. This in turn strengthens loose institutional system for the protection of rights of women in the family arena both in the state and non-state institutions, such as customary and religious institutions.

The second mechanism set in the FDRE Constitution to safeguard rights of women against autonomy of ethno-cultural community is guaranteeing right of exit for individuals from intra-group institutions while entering to marriage and in the resolution of marital dispute. However, the enforcement of these principles is subject to interpretations and further policies. In this regard, the national parliament has enacted laws regarding how to apply religious law of the Muslim community respecting individual right to exit. In this law, the mechanism set to protect rights of the individual against the cultural autonomy of the Muslim community tends to favor collective autonomy by making applicability of exit subject to clear objection, i.e., silence or absence is

³ See, FDRE Constitution, Article 9/1

considered as consenting to the jurisdiction of Sharia court rather than objection.

With regard to how exit rights have been applied in customary institutions, the SNNPR Family Code contains laws. As it is stated in the SNNPR Family Code, exit right have been applied if there is no way disputants resolve their problems through reconciliation mainly using customary local institutions/elders. In relation to this the voices of women have been explored from all the three ethno-cultural communities to see their relation with customary local institutions as well as to answer the question, are women making use of constitutional safeguards to protect their rights? If not why? Both in the Guraghe and Kebena community, women hardly participate in customary local institutions. Among the Sebat-bet Guraghe in the 2nd half of the 19th century, there was women's movement opposing this discriminatory system. However, in the 21st century there was no movement of women in Guraghe Zone to eliminate this discriminatory practice even if the exclusion of women from customary law (re)making bodies and customary courts was/is the main instrument used to oppress women.

The consent of the woman (exit right) has limited or no place in the conclusion of customary marriage and marital dispute resolution. In all the three ethno-cultural community, bi/polygamous marriage was practiced and still new bigamous marriage has also been created though it is limited in number. Limited empowerment of women in their community as well as negligence of formal courts to consider the act as crime disregarding the FDRE Criminal Code is contributing factors for the creation of new bigamous marriage. Often women clearly object bigamous marriage except in few instances. For instance, followers of Islamic religion express the acceptability of the practice as far as it has been done respecting and fulfilling religious laws. But they also affirm that there is no one in their community who is engaged in bi/polygamous marriage respecting religious laws. This view is shared particularly among the Kebena women. Women of all the three ethno-cultural communities agree that though

bi/polygamous marriage is harmful for women, they live in these kinds of marriage due to absence of choice.

In relation to marital dispute resolution, customary local institutions play the major role in all the three ethno-cultural communities. But nowadays the primary institutional preference of women members of ethno-cultural communities is formal courts taking into account the protection of their rights in the state legal system. However, often women are pragmatic in their decision owing to limitations and legislative gaps seen in the formal legal system. For instance, women who have found themselves in this kind of marriage without their knowledge find it too difficult to get out of it due to limited choice they have in their communities as well as responsibilities that come with motherhood. In resolving marital disputes, the Family Code encourages disputants to resolve their problems using customary courts. This means, the right of exit is not automatically applicable and it has not been interpreted by formal courts without delay. This in turn make right of exit to have limited realizability, particularly for women living bigamous marriage as well as for women who have limited choice in their life. In addition, the absence of directly applicable law that protects rights of women living in bi/polygamous marriage are making women living in these kinds of marriage unprotected by formal legal system at local level. This in turn makes customary local institutions to remain dominant institution on marital issues, particularly in case of bi/polygamous marriage. This power of customary local institutions has not been as such challenged by local government institutions that have the primary responsibility to protect rights of women.

What are the opportunities and challenges of local government institutions in the promotion and protection of rights of women?

As it is stated in chapter four, local government units in Ethiopia have two main functions: accommodation of diversity and enhancing democratic participation. Based on this, the SNNPR Constitution gives recognition for local

government units which have three hierarchical levels: Zones/Special *Woreda*, *Woreda* and *Kebele* having their own powers and responsibilities. Zones, particularly Nationality Zones and Special *Woredas* have autonomous power to make legislation in the areas which are not covered by the federal and regional laws. Taking this into account as well as the nature of customary institutions, which are often found and function at local level, the power to (re)make/transform customary laws is the power of Nationality Zones/Special *Woredas*. However, the practice so far in the Guraghe Zone indicates that this power is not yet used by the Zonal council/legislative body which can be applicable at least with regard to Guraghe ethno-cultural communities. In other words, though the nationality council has the opportunity to transform customary laws which is believed to be a means for elimination of all forms of discriminatory and harmful customary practice against women at local level, this opportunity is not yet used by the legislative body of Guraghe Zone. The researcher in Section 5.4 of chapter five argued that the exclusion of women from customary local institutions would have been solved if there had been a policy of transformation on customary local institutions that may allow integrated and collaborative functioning between local government units and customary local institutions. Hence, shallow understanding of autonomy, particularly territorial autonomy and democratic norms is one of the main factors for perpetuation of exclusion of women from customary institutions

With regard to executive branch of government at local level, WCAO at Zonal and *Woreda* level have been engaged in the protection of rights of women. In the family arena, to help women who have marital problem, the WCAO legal Office gives legal aid and social counseling. Though WCAO of the Guraghe Zone and each *Woreda* is playing roles in giving legal aid and counseling service for women, they have limited capacity and resource to promote and protect rights of women in marital life. In terms of human resource, though there are a number of customers coming to the Office, the Office is staffed by only one legal Officer per *Woreda*. There are destitute women who fail to fulfill their

basic need due to marital dispute, particularly due to violent attack by their husbands, but the Office does not have to keep the women for a while or no sufficient budget is allotted. Moreover, the counseling services given from the Office, in some instances, is dependent on respecting custom of the community rather than fully relying on legal rights of woman. For instance, in *Kebena Woreda* where religious and ethnic identity of the community coincides, WCAO Officials advise women to respect cultural rules, particularly religion of their community (see Section 6.5). This in turn makes women to refrain from seeking formal justice. In general, the services given by WCAOs legal office in the Zone and *Woreda* level indicates the limited capacity and resources this Office has to enforce marital rights of women.

The formal justice system in the family law arena encourages resolution of marital disputes through customary courts by delaying exit right as well as due to absence of directly applicable laws that protect rights of women who lived in bigamous marriage. Though concluding bi/polygamous marriage has been a punishable crime, formal courts at local level are not sentencing perpetrators based on the Criminal Code. Moreover, the recognition of marriage as per one's custom and religion, in some cases, has been broadly interpreted as allowing this kind of marriage, particularly in cases brought to court after a child or children has been born from the second marriage. Having children from bi/polygamous marriage and societal consideration of the practice as culture of the community make formal court judges focus on the best interest of children in these kinds of marriage rather than directly applying the law of the state, which indicates the limited applicability of the state legal system to the existing experience of ethno-cultural communities including women not only in the civil matters but also in the criminal matters. The procedural rules to adjudicate marital disputes that delays exit right and legislative gaps are pushing factors for women members of ethno-cultural communities to be dependent on customary institutions in resolving marital disputes despite their preference of formal justice system to protect their rights.

What is the impact of coincidence of ethnicity and region on the protection of rights of women at local level?

The Sodo Kistane Guraghe and Kebena communities are ethno-cultural communities in which the majorities' ethnic identity coincides with their religious identity, the former being predominantly Christian while the latter predominately Islam. The Sodo Kistane Guraghes and the Kebena ethno-cultural community live concentrated in Sodo *Woreda* and Kebena *Woreda* of Guraghe Zone respectively. The Sodo Guraghes are exercising ethnic autonomy together with the other Bete-Guraghes, while the Kebena's are not yet exercised ethnic autonomy though this right has been guaranteed both by the federal and regional Constitutions. The religion of the Sodo Kistane has little or no contribution for the development of their customary laws, while among the Kebena religion is the main source of their customary laws. Among the Sodo Kistane, religion has no place in the justification of some discriminatory and harmful customary practices, such as bi/polygamy which is widely seen in both communities. In the Kebena community, religion next to custom is used by male members of the community as a justification for undermining rights of women. The main source of the Kebena customary law is religious/Islamic law. Women in the Kebana community concur that challenging religious laws of marriage and marital dispute resolution is too challenging in their community though almost all male members of their community who enter into bi/polygamous marriage are not fully respecte religious laws. Women of the community concurs that a woman enters into this kind of marriage due to absence of choice rather than based on her free consent.

The coincidence of ethnicity and religion among the Kebena community influences the functioning of local government institutions as well, such as WCAO. WCAO refrain from intervening to protecte rights of women as far as the discriminatory practice and its justification has some relation with religion as well as meets minimal criteria designed by men members of the community to make the practice legitimately acceptable in the community. In this regard,

for instance, the mechanism designed to make bi/polygamous marriage acceptable is getting the signature of the women in whatever means. As far as the man gets the signature of the wife, the *Woreda* WCAO concludes that bigamous marriage is entered into with the agreement of the first wife, even if it is known that she is deceived or there is no informed consent of the woman. In this regard, it is argued that local government institutions do not directly address the issue based on the law of the state. Rather, these institutions are submissive to custom and modified mechanism used by male members of the community to show the practice as legitimately acceptable. Here, it is also important to indicate that from the three transformed customary laws in Guraghe Zone, it is the Kebena customary law document that clearly denies the rights of exit for individual while entering to marriage and during divorce (see, Section 6.4). Hence, it is argued that among ethno-cultural communities who have not yet achieved ethnic autonomy the coincidence of ethnicity and religion/Islam reinforces the loose institutional system for the protection of rights of women.

7.2. Conclusion

To rectify historic injustices against ethno-cultural communities, territorial and non-territorial autonomy have been guaranteed to accommodate diversity in Ethiopian federalism. This policy of accommodation also aims to rectify injustice against women as well as protect the rights of women against the autonomy of ethno-cultural communities in the family arena. Constitutional recognition of rights of women have been taken as one step forward in rectifying past injustice, while to protect rights of women against the autonomy ethno-cultural communities the justice of rights approach of resolving conflict of culture and rights have been designed constitutionally that guarantee the right of exit for individuals from intra-group institutions, particularly in the family arena. However, exit right has been criticized for its limited sensitivity to

the historical context of ethno-cultural community as well as women⁴ that makes it to have limited realizability⁵. This is proved to be the case among the Guraghe and Kebena ethno-cultural communities. Though as a means to resolve conflict of culture and rights exit right have been constitutionally guaranteed, it has limited realizability among the Guraghes and Kebena communities not only due to its material and socio-psychological coasts⁶ but also due to limited support from the formal legal system of the country. This is clearly reflected in the SNNPR Family Code that makes rights of exit available in case of request of divorce due to marital dispute only when customary local institution affirms that there is no way the disputants will reconcile.

Different theories indicated that in diverse society the justice of rights approach of protection of human rights needs to be underpinned by inclusive internal discourse for transformation of discriminatory and harmful customary practices against women in order to address underlying causes of wide spread human rights violation⁷. This may lead to democratically legitimate way of bringing change from within that may result in cultural legitimization of human rights of women in historically patriarchic society. In Africa there are attempts of bringing cultural legitimization of human rights, which can be seen from two paradigms: conservative paradigm (guided by patriarchal ideology) and dynamic paradigm of cultural legitimacy (Ibhawoh, 2000: 850). These paradigms divides the community on gender issues into two, those supporting conservative paradigm who are leaders of customary local institutions, and those that advocates for protection of rights of minorities including women using human rights as instrument to achieve their goals. However, there are

⁴See, Jeff Spinner-Halev, 2001, "Feminism, Multiculturalism, Oppression, and the State" *Ethics*. Vol. 112 No. 1; PP. 84-113

⁵ See, Ayelet Shachar, 2001, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, Cambridge, Cambridge University Press

⁶ About the material and socio-psychological coast of exit see, Oonagh Reitman, 2004, "On Exit", in Avigail Elsenberg and Jeff Spinner-Halev Ed., *Minorities within Minorities: Equality, Rights and Diversity*, Cambridge, Cambridge University Press, pp. 189-208

⁷See, Monique Deveaux, 2004, "Deliberative Approach to Conflict of Culture", in Avigail Elsenberg and Jeff Spinner-Halev (ed.), *Minorities within Minorities: Equality, Rights and Diversity*, Cambridge, Cambridge University Press pp. 340-362; Abdullahi A. An-Na'im (ed.), 2002, *Cultural Transformation and Human Rights in Africa*, London New York, Zed Books Ltd.; Song, Sarah, 2007, *Justice, Gender, and the Politics of Multiculturalism*, Cambridge, Cambridge University Press.

limited attempt to integrate the two paradigms which can be critical for the protection of rights of women from within. This is mainly due to limited intervention from the state. On the one hand, the limited intervention from the state is sought to make changes from within sustainable⁸. On the other hand, reluctance of the state is making the conservative paradigm to perpetuate gender discriminatory norms and practices with limited modification due to the absence of the voices of women from within that in turn undermines the legitimacy of the state itself. In this regard, in Guraghe Zone non-state institutions of ethno-cultural communities refrain from seriously taking into account mechanisms of accommodation of diversity designed by the state. Though in principle leaders of non-state institutions accept the need to protect rights of women and made one of the objective of transforming customary laws prohibition of discriminatory and harmful practices against women, limited/no attempt have been made to incorporate the voices of women in this process. As a result the transformed customary laws of the Guraghes and the Kebena reflects the views of the conservative paradigm that maintains and perpetuates gender related customs as it is even if it is discriminatory and harmful for women. From the gender perspective, this makes the intervention of the state necessary condition for the protection of at least the voices of women members of ethno-cultural community, which is often in-line with their legally recognized rights. In Ethiopian context, this requires the state to have a policy of transformation on customary local institution that takes in to account the territorial autonomy of the communities it serves.

Though the main actors for transformation of customary laws as well as protection of rights of women in the transformed customary laws of the Sebatbet Guraghe and Kebena are urban based elite members of community based CSO who are exposed to human rights discourse, there is limited/no attempt to transform the composition of members of customary local institutions in the

⁸ See, Daniel M. Weinstock, 2004, "Beyond Exit Rights: Reframing the Debate", in Avigail Elsenberg and Jeff Spinner-Halev Ed., *Minorities within Minorities: Equality, Rights and Diversity*, Cambridge, Cambridge University Press, pp. 227-246

deliberation and ratification of transformed customary laws. As it has been argued in the thesis the primary motive of transformation of customary laws is related with the introduction of ethnic federalism in the country. In this regard Shacher (2001) argues that ethnic based federalism in diverse society reinforces the tension between accommodation of diversity and protection of rights of women, particularly among minority ethnic communities who are not yet achieved ethnic autonomy. In Ethiopia, ethnic federalism inhibits protection of rights of women among minority ethno-territorial community who claim ethnic autonomy due to loose institutional system for the protection of rights which is reinforced by coincidence of ethnic and religious identity, such as in the case of the Kebnea, on the one hand. On the other hand, in Ethiopian federalism the promotion and protection of of rights of women depends on the sum of different factors. These includes full legislative recognition of rights of women, efficiency of local government institutions in enforcing the state policy, empowerment of women, the existence of democratic space for internal discourse on culture and advocacy as well as the level of collaborative functioning between the state and non-state institutions.

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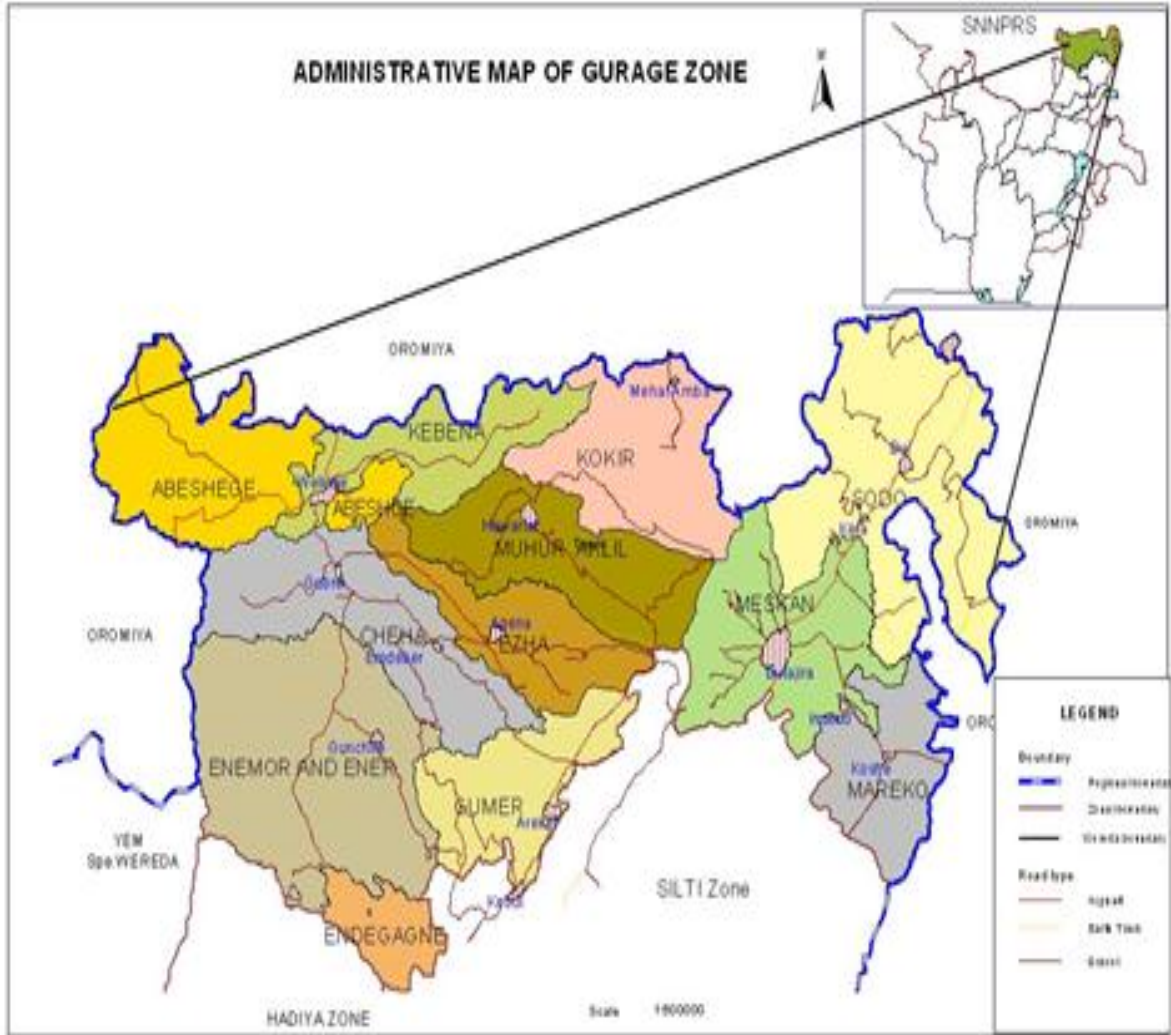
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Appendixes

Appendix A: Administrative Map of Guraghe Zone



Source: Google Maps

Appendix B: List of Interviewee and Participants in the Focus Group Discussion

Interviewee Number	Interviewee	Affiliation	Location	Date
Interviewee 1	W/ro Yeshi Nurga	Sebat-bet Guraghe Community Member	Walkite	Feb, 8, 2016
Interviewee 2	W/ro Yeshuminesh Aserati	Sebat-bet Guraghe Community Member	Walkite	Feb, 8, 2016
Interviewee 3	Ato Alemu	Abishge Woreda Culture and Tourism	Walkite	Feb. 8, 2016
Interviewee 4	W/ro Tenaye Teserat	Sebat-bet Guraghe Community Member	Negesa	Feb. 9, 2016
Interviewee 5	W/ro Werkinesh	Sebat-bet Guraghe Community Member	Negasa	Feb. 9, 2016
Interviewee 6	W/rt Lemilemi	Sebat-bet Guraghe Community Member	Negasa	Feb. 9, 2016
Interviewee 7	W/ro Tesfanesh	Sebat-bet Guraghe Community Member	Nagasa	Feb. 9, 2016
Interviewee 8	W/ro Likee	Sebat-bet Guraghe Community Member	Negasa	Feb.9, 2016
Interviewee 9	W/ro Shewalem	Sebat-bet Guraghe	Negasa	Feb.9, 2016

	Misgana	Community Member		
Interviewee 10	W/ro Aberashi Ketema	Sebat-bet Guraghe Community Member	Walkite	Feb. 10, 2016
11	Rahimush Mohammed	Community Member	Jejibona Gaso Kebele	Feb. 10, 2016
Interviewee 12	Ato Muzemil Kadir	Abishge Woreda Court	Walkite	Feb. 10, 2016
Interviewee 13	Ato Ahmed Sultan	Kebena Woreda Culture and Tourism Office	Walkite	Feb. 12, 2016
Interviewee 14	Emmam Jemmal Mohammed	Kebena Community Elder	Walkite	Feb. 12, 2016
Interviewee 15	Ato Musema Bediru	Kebena community Elder	Walkite	Feb. 13, 2016
Interviewee 16	Shehi Mehamed Zayit Husen	Kebena Woreda Shari'a Court	Walkite	Feb. 16, 2016
Interviewee 17	Ato Tariku	Kebena Wareda Court	Walkite	Feb. 16, 2016
Interviewee 18	W/ro Fetiya Sulixan	Kebena Wereda WCAO	Walkite	Feb. 18, 2016
Interviewee 19	W/ro Sito Asefa Kedir	Kebena Community	Zebimolla	Feb. 19, 2016

		Member		
Interviewee 20	W/ro Alewiya Mohammed	Kebena Community Member	Zebimolla	Feb. 19, 2016
Interviewee 21	W/ro Hadiya Aliyu Sayidi	Kebena Community Member	Zebimolla	Feb. 19, 2016
Interviewee 22	W/ro Lubaba Bisire	Kebena Community Member	Zebimolla	Feb. 19, 2016
Interviewee 23	W/ro Zuilfa Jemal	Kebena Community Member	Zebimolla	Feb. 19, 2016
Interviewee 24	W/ro Kedija Nikana	Kebena Community Member	Zebimolla	Feb. 19, 2016
Interviewee 25	W/ro Rahimute Mohammed	Kebena Community Member	Jejibona Gasu Kebele	Feb. 20, 2016
Interviewee 26	Ato Kazile Haji Shikuru	Kebena Woreda Council	Walkite	Feb. 22, 2016
Interviewee 27	Haji Nure Haire Mohammed	Guraghe Zone Council	Walkite	Feb. 22, 2016
Interviewee 28	Haji Mustefa Hussen	Kebena Community Elder	Walkite	Feb. 23, 2016
Interviewee 29	W/ro Shawaye Anidiru	Sodo Kistane Community Member	Bui	March 7, 2016

Interviewee 30	W/ro Aleminesh	Sodo Kistane Community Mamber	Gogiti	March 7, 2016
Interviewee 31	W/ro Wide Ruga	Sodo Kistane Community Member	Gogiti	March, 7, 2016
Interviewee 32	W/t Adanechi	Sodo Kistane Community Member	Gogiti	March 7, 2016
Interviewee 33	W/ro Ayinalem	Sodo Kistane Community Member	Gogiti	March 8, 2016
Interviewee 34	Ato Tsegaye Tabor	Sodo Woreda Culture and Truism office	Bui	March 8, 2016
Interviewee 35	W/ro Yetinayet Bogale	Sodo Woreda court Judge	Bui	March 9, 2016
Interviewee 36	Zenebe Sayifu	Sodo Woreda Court Judge	Bui	March 9, 2016
Interviewee 37	Ato Aweke Dagne	Sodo Woreda WCAO	Bui	March 10, 2016
Interviewee 38	Ato Gebireyes Kassa	Guraghe Zone Culture & Turism Office	Walkite	Sep. 15, 2016
Interviewee 39	Ato Belay Gebre-Mikael	Guraghe Zone Culture and Turism Office	Walkite	Sep. 15, 2016
Interviewee	Ato	Guraghe Zone	Walkite	Sep. 16,

40	Challachew Mekonen	WCAO		2016
Interviewee 41	W/ro Aster Gizaw	Guraghe Zone Council	Walkite	Sep. 16, 2016
Interviewee 42	W/ro Askale Wolde- Hawariya	Guraghe Zone WCAO	Walkite	Sep. 17, 2016
Interviewee 43	Geremew Ashenafi	GPSDA	Addis Ababa	Aug. 20, 2017
Interviewee 44	W/ro Alemnesh H/Mariam	GPSDA	Addis Ababa	Sep. 1, 2017
Interviewee 45	Ato Tesfaye Boyete	GDCA	Addis Ababa	Nov. 15, 2017
46	W/rt Adanech Abera	Sodo Woreda WCAO Gender Expert	Bui	Oct. 18/2018

Appendix C: Semi-structured Interview Questions

A) Questions to Zonal and Woreda Culture and Tourism Office Officials and Experts

1. How do you see the process of transformation of customary law of your community?
2. Who are the actors in the process of deliberation and ratification of customary law? Are women's participated in this Process?
3. To what extent do you think traditional local institutions recognized the rights of women enshrined in the federal Constitution?

4. Why this customary law is not ratified by *Zonal/ Woreda* council?
5. Do you think that the right to self-government guaranteed to your community allows the deliberation and ratification of customary law by *Zonal/ Woreda* council?

B). Questions to Women Members of the Communities

1. When and how do you married? What do your marital life looks like?
2. What are the discriminatory and harmful practices against women that have been eliminated in your community since the introduction of federalism?
3. What kind of discriminatory and harmful practices against women still exist in your community?
4. What kind of advantageous and disadvantageous does customary/religious marriage have? Is there a possibility to conclude civil marriage in your community in recent days?
5. How do you evaluate the process of adjudicating marital disputes in customary courts? Are the judges give fair decision? If not why?
6. To adjudicate family disputes which courts do you prefer: formal courts or customary/religious? Is there any factor that influences your preference?
7. What is the advantage and disadvantageous of bi/polygamous marriage?
8. What do needs to be done to enhance the enforcement of women's rights in the family arena?

C). Questions to Members of the Zonal and Woreda Council

1. How many women's are there in the *Woreda* council?

2. What kind of relationship do you have with customary local institutions? Are there issues in which your council and customary local institutions function in cooperation?
3. How do you see the deliberation and ratification of customary laws of your community? Why the transformation of the customary law have not been discussed and ratified by the *Zonal/Woreda* council?
4. Who are the main actors in the deliberation and ratification of customary law? Do women's has been participated in this process?
5. To what extent customary local institutions recognize and respect women's rights enshrined in the federal Constitution?
6. Do women have the rights to participate in customary local institutions? If No. What are you doing to make customary local institutions to include the voice of women in issues that affect the whole community members such as transforming customary laws?
7. Why you have not brought the issue of transformation of customary laws to local government council?

D). Questions to WCAO Officials and Experts

1. How do you manage cases of family coming to your office by women?
2. To which institution do you advise women's to take cases of marital dispute if the case is beyond your mandate: to formal justice system or informal justice system?
3. Do you think women's in your area freely make institutional choice to regulate their marital rights?
4. How do you evaluate the changes brought by the federal system with regard to family cases?
5. What kind of challenges do you face in the services you institution provides for women particularly in relation to family cases?

6. What kind of challenges do you observe in the process of enforcing women's rights?

E). Questions to Judges and Legal experts

1. How do you evaluate the changes brought by the federal arrangement with regard to adjudicating marital cases?
2. What kind of challenges do you face in adjudicating marital cases from the point of view of the federal system?
3. How do adjudicate division of property in bi/polygamous marriage?
4. What kinds of family cases often come to your office?

F). Question to Sharia Court Judge

How do you adjudicate marital cases in your court? Do you ask the consent of the parties to the dispute in their first appearance?

G). Questions to Elders that Serve in Customary Institutions

1. How do you express your experience in the transformation customary laws and practices? What inspired you to transform your customary law and practice?
2. Do you believe that the transformed customary law is prohibited all discriminatory and harmful practices observed in your community?
3. Do you ask parties to marital dispute whether they want to adjudicate their cases as per you custom or not?
4. From your experience who (male or woman) that wants to settle marital disputes using customary courts?

Appendix D: Number of women who received Legal Aid services from WCAOs in Guraghe Zone from 2010-2014

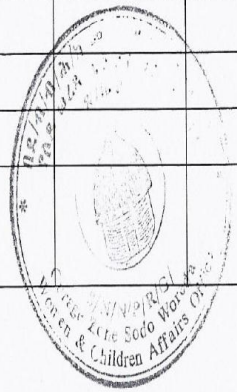
Appendix A

ከ1/11/2006 ዓ.ም እስከ ሰኔ 30/10/07 ዓ.ም ድረስ

2014/15

ፍትህ ብሔር

ተ/ቁ	የአቤቱታው ዓይነት	እንደ ፍ/ቤት የቀረቡ አቤቱታዎች ብዛት	እንደ ፍ/ቤት በቀረቡት አቤቱታዎች የማስታረት ስራ የተሰራላቸው አቤቱታዎች ብዛት	እንደ ጸ/ቤት ክትትል ውሳኔ ያገኙ አቤቱታዎች	በቀጠሮ ላይ ያሉ መዝገቦች ብዛት	ይግባኝ እንዲጠየቁ ድጋፍ የተደረገላቸው አቤቱታዎች ብዛት	በተለያዩ ምክያት የተመዘገቡ መዝገቦች
1.	የፍቺ ጥያቄ	103		90			
2.	የቀሰብ ጥያቄ	21		18			
3.	የንብረት ክፍፍል ጥያቄ						
4.	የመሬት /ይዘታ/ጥያቄ	12		7			
5.	የመተጫጨት ውል ይፍረስልኝ ጥያቄ						
6.	ወራሽነት ይረጋገጥልኝ	76		76			
7.	ውል ይፈጸምልኝ						
8.	ውል ይፍረስልኝ						
9.	አባትነት ይረጋገጥልኝ ጥያቄ በወረዳቹ ቀርቦ በከፍተኛ ፍ/ቤት ስለመረጋገጡ	2					እንደ ለፍ/ቤት የተጻፈላቸው



Appendix B.

ታሪክ
 ከ1/11/2007 ዓ.ም እስከ 30/01/08 ዓ.ም ድረስ
 15/16

ፍትህ ስልጠና

ተ/ቁ	የስልጠናው ዓይነት	እንደ ፍ/ቤት የቀረቡ አባቶች ብዛት	እንደ ፍ/ቤት በቀረቡት አባቶች የማስታረቅ ስራ የተሰጠው አባቶች ብዛት	እንደ ጽ/ቤት ክትትል ውሳኔ አባቶች ብዛት	የተሰጡ ሰዓቶች ብዛት	የተደረገው ስልጠና ብዛት	የተደረገው ድጋፍ	የተሰጠው ምክንያት
1	የፍቺ ጥያቄ	109	10	45	54			
2	የዋሰን ጥያቄ	10	-	7	3			
3	የንብረት ክፍፍል ጥያቄ	10	-	7	3			
4	የመሬት ይዘታ/ጥያቄ	52	-	22	30			
5	የመተግበሪያ ውል ይፍረስልኝ ጥያቄ	-	-	-	-			
6	ወራሽነት ይረጋገጣልኝ	49	-	49	-			
7	ውል ይፈጸምልኝ	-	-	-	-			
8	ውል ይፍረስልኝ	-	-	-	-			
9	አባትነት ይረጋገጣልኝ ጥያቄ በወረዳቸው ቀርቦ በከፍተኛ ፍ/ቤት ስለመረጋገጡ	-	-	-	-			



Appendix C

ታኅሣሥ
 ከ1/11/2007 ዓ.ም እስከ ሰኔ 30/01/08 ዓ.ም ድረስ
 15/1/08

ወንጀል

ተ/ቁ	የክስ ዓይነት	የአቤቱታው የቀረበ አቤቱታዎች ብዛት	እንደ ፍ/ቤት ጉያቸው በችሎት የቀረበ(ዎታ)ቸው ብዛት	እንደ ፍ/ቤት በችሎት የቀረበ(ዎታ)ቸው ብዛት	በክትትሉ ውሳኔ ያገኙ መዝገብ ብዛት		የውሳኔው ዓይነት	በቀጠሮ ላይ ያሉ መዝገቦች ብዛት	ይግባኝ የተጠየቀቸው መዝገቦች ብዛት	ይግባኝ ተጠይቆ ዳግም ውሳኔ ስለሚገኙቱ	በተለያዩ ምክንያት የተዘገቡ መዝገቦች	ምርመራ
					በገንዘብ	በአስራት						
1.	አስገዳጅ መድረር	-	-	-	-	-	-	-	-	-	-	-
2.	አስገዳጅ መድረር መከራ	3	-	-	-	-	-	2	-	-	1	-
3.	ጠሰፋ	1	-	-	-	-	-	1	-	-	-	-
4.	የጠሰፋ መከራ											
5.	ከባድ ድብደባ											
6.	ቀላል አካል ማጉዳል	21	-	-	9			6			6	
7.	ከባድ የካህል ማጉዳል	5	-	-	2			3				
8.	ግድያ	-	-	-								
9.	የግድያ መከራ	-	-	-								
10.	በጋብቻ ላይ ጋብቻ	-	-	-								
11.	የሌላ ልዩ ግርዛት	-	-	-								

