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COLLEGE OF LAW AND GOVERNANCE STUDIES
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**Women's Community Leadership at Grass Root Level: The Case of Gereb
Customary Court in Raya Alamata District, Southern Zone of Tigray Region**

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**A Thesis Submitted to the College of Law and Governance Studies, the Center
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Declaration

I, Haregot Zeray, declare that this thesis is my original work. All sources that I utilized in the paper are properly cited and acknowledged. I also confidently declare that the paper is not submitted to any academic institution to acquire any academic reward.

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Acronyms

ACHPR	African Charter on Human and Peoples’ Rights
AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CSA	Central Statistical Agency
DEDAW	Declaration on the Elimination of Discrimination against Women
EPRDF	Ethiopian People Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussion
FGM	Female Genital Mutilation
GCC	<i>Gereb</i> Customary Court
GIS	Geographical Information System
GTP	Growth and Transformation Plan
HTP	Harmful Traditional Practices
HPR	House of peoples’ Representatives
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
MoFED	Ministry of Finance and Economic Development
MOWA	Ministry of Women’s Affairs
NAPGE	National Action Plan for Gender Equality
NEWP	National Ethiopian Women’s Policy

OHCHR	Office of High Commissioner for Human Rights
RDA	Raya Development Association
SNNPR	Southern Nations, Nationalities and Peoples Region
TPLF	Tigray People Liberation Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNESCO	United Nations Education, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund

Glossary

<i>Ab Nebesu Dehadere</i>	Spiritual Person
<i>Abo</i>	Father
<i>Abogar</i>	Holy Men
<i>Abo-Gereb</i>	Judges or Leaders in <i>Gereb</i> Customary Court
<i>Abo-may</i>	Father of Water
<i>Abo-selam</i>	Father of Peace
<i>Abo-wenber</i>	Chair man
<i>Adagami</i>	Assistant of a Killer
<i>Adi -ensesa</i>	Place of Animals
<i>Adiseb</i>	House of Human Beings
<i>Agedidka midfar</i>	Rape
<i>Akal-Megudal</i>	Loss of body organ
<i>Alametew</i>	Swallow it
<i>Allah Meta</i>	Allah has come
<i>Almot bay Tegaday</i>	A Person who killed someone for self defense
<i>Anker Mikla'e</i>	Cutting uvula
<i>Aruha</i>	Elder's Community in Eurobe Community in Tigray Region
<i>Attete</i>	women's spirit cult
<i>Ayte</i>	A title for a Man (Mr.)

<i>Bikelet Kebabi</i>	Environmental Pollution
<i>Birqin</i>	Female genital mutilation
<i>Chat Mekeham</i>	Chewing Chat
<i>Cheguraf Metekua'e</i>	Playing with Whip
<i>Cheguri Menechay</i>	Removing hair
<i>Debes</i>	Fund raised for funeral
<i>Debtera</i>	A Person with spiritual knowledge and who can perform Magic
<i>Dega or Degu'a</i>	Highland
<i>Deni mechifchaf</i>	deforestation
<i>Deyadalu</i>	Impartial
<i>Digis</i>	Ceremony
<i>Dubarti</i>	Collection of Women who partake in reconilation proces
<i>Emnet Megudale</i>	Betrayal of trust
<i>Eno</i>	Mother
<i>Erfo Mereba</i>	Opening language in <i>Dubarti</i>
<i>Erki</i>	Reconciliation
<i>Erqi Mefras</i>	Breaking Reconciliation Agreement
<i>Fekera</i>	Verbal abuse
<i>Forum</i>	Individuals who are appointed at each <i>kushet</i> to mitigate conflicts in Raya Alamata District
<i>Gaeni</i>	A Large pot used as a Container for local Beer

<i>Geleb</i>	Washing the cloths of a mother who gave birth recently
<i>Gereb</i>	Customary court in Raya Alamata, Azebo and Wojerat
<i>Gets Memelat</i>	Scratching of face
<i>Geza Mereqa</i>	Graduation of a house
<i>Gojemo</i>	Pole
<i>Gudumaalee</i>	Clan leader in Sidama
<i>Guezoka Teklel</i>	Collect your property
<i>Gumma</i>	Blood money
<i>Guma</i>	Brave man in Raya communities of southern Tigray
<i>Gutera</i>	Granary
<i>Hada</i>	Digging and finding Water near a river
<i>Higi</i>	Law
<i>Hine Mefeday</i>	Revenge
<i>Hitse mifrase</i>	breaking up relationships and promises
<i>Iddir</i>	Traditional saving institution for emergency cases
<i>Jumu'a</i>	Holy Friday celebrated by Muslim societies
<i>Kalcha</i>	Shamans
<i>Kebabi</i>	Environment
<i>Kebid Akal Gudeat</i>	Grave physical harm
<i>Kedo Abba</i>	Clan Leader in Afar Ethnic Groups
<i>Kitlet</i>	Homicide

<i>Kumri</i>	Collected crop
<i>Kushet</i>	The lowest administrative unit in Tigray Regional state
<i>Ledo</i>	Stick used by women in <i>Dubarti</i>
<i>Mada'abba</i>	Customary Dispute Settlement Mechanism in Afar Communities
<i>Mahber</i>	Association
<i>Mahguma</i>	Cupping (a practice of avoiding a stagnant blood from the neck of ill person)
<i>Makaban</i>	Clan chief who judges on intra-ethnic disputes
<i>Mangara</i>	Receiving payment to return back a stolen property
<i>Matta</i>	Forest
<i>Me'are</i>	Honey
<i>Menekusie</i>	Monk
<i>Mere'a</i>	Weeding
<i>Merkeba</i>	The final meeting day of the relatives of the dead and the killer for reconciliation
<i>Nay Hasote Misekir</i>	False testimony
<i>Nihina</i>	Clan from which Judge of “falla” is nominated in Benshangul Gumuz regional state
<i>Qelil Akal Gudeat</i>	Simple physical harm
<i>Qeyih Dem</i>	Red blood
<i>Qies</i>	Priest

<i>Qola</i>	Low land
<i>Qole'a</i>	Child
<i>Quat</i>	<i>Buffer</i>
<i>Resa</i>	Corpse
<i>Sebeyti</i>	Woman or wife
<i>Sedeqa</i>	Feast of commemoration in Islamic religion
<i>Sewa</i>	Local beer
<i>Seneya</i>	Agreement
<i>Shigara</i>	Cigarette
<i>Shimagle</i>	Elder
<i>Shimglina</i>	Process of Mediation or Arbitration
<i>Shisha Metekame</i>	Consuming Tobacco
<i>Sibeay</i>	Man or husband
<i>Sim Metefae</i>	Defamation
<i>Sini Mewutsae</i>	Pulling out the early teeth of a child
<i>Sinqee</i>	Traditional women's association to handle disputes
<i>Sirit</i>	The law of <i>Gereb</i> customary court
<i>Sirqi</i>	Theft
<i>Tabia</i>	Administrative Unit which is smaller than <i>Woreda</i> and Larger than <i>Kushet</i> in Tigray regional state
<i>Teff</i>	A grain used for making Ethiopian staple food (injera)

<i>Tihti Edme Mere'a</i>	Early Marriage
<i>Tezkar</i>	Feast of Commemoration
<i>Tinqola</i>	Conjuring
<i>Tire Siga</i>	Raw Meat
<i>Tseba</i>	Milk
<i>Tselim Dem</i>	Black Blood
<i>Tush</i>	Smoke
<i>Wedaja</i>	Long lasting pledge
<i>Weizero</i>	A title for a woman (Mrs)
<i>Woina Dega</i>	Middle high Land
<i>Woreda</i>	District
<i>Wueli</i>	Pact
<i>Xeerbeegti</i>	Legislators and judges in Somali customary dispute settlement mechanism
<i>Zar</i>	A spirit possessing individuals

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Abstract

This study examined women's level of participation at customary courts as litigants, leaders and decision makers. It furthermore addressed the multifaceted challenges and barriers for the representation of women at customary courts and the impact of their absence in leadership positions in protecting rights of women. The study focused on a vibrant customary court in the study area, the Gereb customary court in Alamata Woreda of southern Tigray. The Gereb customary court, which is administratively divided into three (Tabia, Zonal and Woreda) levels, entertains both civil and criminal cases. Entertaining cases related to homicide is the power of the Abo-Gereb both at zone and Woreda levels not of the Abo-Gereb at tabia level. The court has a pivotal role in maintaining and restoring peace in the society. Women have a passive and observer status in this customary court. Given this reality, the constitutional non-discrimination provision is not applicable in the customary court under scrutiny. The study uncovers that women's equality with men to partake in leadership positions and decision-making process is less applicable in the comprehensive setting and proceeding of the Ethiopian customary courts in general and in the Gereb customary court in particular. The findings of the study show the numerous intertwined socio-cultural factors that account for the exclusion of women from leadership role. It argues that their absence in the leadership positions of the customary court has also caused a profound impact in protecting and exercising their rights. The study presents how there is a gap between the objective of granting women equal right with men to be represented in leadership positions enshrined in several international, regional and national human rights instruments and the practical gap of gender equality by drawing the empirical data collected from Gereb customary court. The researcher used a qualitative research method. The sources of data for the study were both primary and secondary sources. In depth interview, focus group discussion, observation and case studies were the instruments employed to collect the primary data.

Chapter One

1.1. Background of the Study

Male dominance in various socio-economic domains has been a global reality that existed since time immemorial.¹ However, it is difficult to develop a common consensus about the history and the degree and extent of the domination throughout the world since the context the women have lived in; the different ways in which they have experienced their lives is different in different settings.² Needless to say, how much women have been excluded from decision-making process and were considered as inferior though the degree varies from country to country. There were conflicting and numerous stories about what women's role ought to be in a society. On the one hand, they were told as they are the source of evils like Eve in the bible often used as a justification for their maltreatment in different societies and on the other hand there are narratives highlighting their capability of great piety like Virgin Mary. Philosophers especially in the middle age were less positive and they saw women as distractions from the religious life. For instance St. Thomas Aquinas was the advocate of women's lesser status as a result of Eve's sins in the Garden of Eden. Women were to be ruled by their husband and must be obedient to them.³

The role of women throughout the world in the 17th c and earlier was often reduced to bearing children, cooking and taking care of the home. For instance, an ideal expression of white womanhood was a woman who is an innocent, pious mother and wife who is obedient to her spouse and who dedicated her life to domestic pursuits. Good wives are those who knew their place within the household and they were necessary for maintaining social order in the community. On the other hand, women who overstepped the bounds framed by the society were considered as a threat to the community by the assumption that women are the daughters of Eve in the bible and hence as Eve was made from Adam to be his companion and help meet but she led him into temptation after being beguiled by the serpent to eat the forbidden fruit. Those

¹Mamo Heboet al.2014. "Continuity and Change in the Rights of Arsi Oromo Women to Property in West Arsi, Ethiopia.", Japan Association for Nilo-Ethiopian Studies, p.2.

² Scott, Wallach. 1996. (ed). "Feminism and History.", New York, Oxford University Press, P. 4

³Bardsley, Sandy.2007. "Women's Role in the Middle Age", Green Wood Press.

biblical injections used to justify the weakness as well as inferiority of women. In addition, many people came up with an argument which stresses that to keep women from tempting men; they should to be bound by laws and traditions and should be placed under the subjugation of fathers or husbands. Women who questioned authority or challenged community standards harkened back to the image of 'daughter of Eve' and needed to be punished.⁴ However, women have equal history with men and they have played a critical role and actively participated in various social, economic and political affairs through human history.⁵

The 18th c was a time whereby education for girls has been promoted more than ever before. At this epoch, the elder generations were conscious of a new moral purity among their daughters and sought to protect it and the education of girls has played a critical role in enhancing women's consciousness. The women are also responsible to educate the new generation in its earliest years. Generally, this century was the first time that female education was strongly promoted across Europe.⁶

In addition to the promotion of education for women, Women's campaigns for participation in the public and political arena and women human rights defenders has played a significant role in enhancing women's rights in every sphere. Throughout their struggle, they achieved a greater equality between men and women. However, the achievement is not as significant what is expected in the normative human rights expectations since their work is seen as a challenge to the traditional notion of family and gender roles in society. The human rights defenders are stigmatized and ostracized by community leaders, faith-based groups, families and communities by considering them as a threat to religion and culture because of their work for the realization of women's rights.⁷ As the history of the feminist movement and the national and international debates among feminists imply, there is a considerable difference among women in terms of the degree of exercising their rights and the problems they suffer throughout the world.⁸

As soon as the birth of the UN in 1945 and the promulgation of the UDHR in 1948, the world wide movement for women's equality took a new impetus. Furthermore, women's right took

⁴Merrill, D, Smith. 2008. "Women's Role in the Seventeenth Century-America." Green Wood Press, London.

⁵ Scott, Wallach, supra note 2, P. 4.

⁶Eamon, Jennine. 2010. "Women's Role in the Eighteenth Century." Green Wood Press, London, England.

⁷OHCHR.2014. "Women's Rights are Human Rights." New York and Geneva, P 43-48.

⁸ Scott, Wallach, Supra note 2.

codified form in an international human rights instrument in 1979 for the first time in history. In 1981, the convention on the elimination of all forms of discrimination against women (CEDAW) has been entered in to force.⁹

Despite the non-discrimination provisions of the several human rights instruments, tradition, and prejudice, social, economic and political interests have collectively contributed for the exclusion and marginalization of women. Consequently, women remained to have a subordinate status in their society. Thus, the processes of seeking redress for human rights violations become difficult if not impossible for women.¹⁰

In Africa, most traditional assemblies are dominated by male leaders. In those systems, the male exercises the power of law, decision and policy making. Women cannot sit and speak at the assemblies and as a result, they remained in experienced in terms of exercising power.¹¹ This essentially implies the prevalence of discrimination on the basis of sex, which is strictly condemned in various human rights instruments.

In the Ethiopian context, history is a witness that women and men equally fought for liberation, equality and democratization. During the time of Emperor *Haile Selassie*, Ethiopian political culture was heavily influenced by religious perspectives, predominantly by the Christianity doctrine. During this regime, women were placed at the lowest hierarchical level even in most cases equal status with children and on the other hand they were duty bound to show respect to men. During this regime, judge must be a man by the assumption that man as more intelligent than the woman. Consequently, women lacked the chance to determine and deal with their affairs and status. During this regime women's economic, political and social contributions was denied.¹² According to *Desta Alem* (2008) as cited in *Beza Negwo's* paper, women like *Woizerit*

⁹Hamadeh-Banerjee, Lina et al. 2000. "Women's Political Participation and Good Governance: 21st Century Challenges." UNDP, P.2

¹⁰Bunch, Charlotte et.al. 2000. "Women's Human Rights: An Introduction Rutledge International Encyclopedia of Women." Global Women's Issues and Knowledge, Routledge, P.1.

¹¹Khadar Mohamed. 2013. "*Women Political Participation and Decision Making In Hargeisa, Somaliland.*" unpublished MA Research Report presented to Kampala University, P.5

¹²Biseswar, Indrawatie. 2011. "The Role of Educated/Intellectual/ Women in Ethiopia in the process of Change and Transformation towards Gender Equality." University of South Africa. P. 58-59.

Hoy kebedech Seyoum and *Bitewish Belay* were among the patriotic females who have played an organizing and leading of the guerilla fighters' role against the fascist Italy.¹³

During the *Derg* regime, specifically, upon the establishment of the TPLF, both men and women have actively participated in the struggle for liberty. However, due to the back ward attitude of the society towards women, men gained the honor and respect from the society and the honor and the heroic activities of women in war became disregarded by the assumption that women are only limited to the works like child caring and reproductive role.¹⁴

Consequently, let alone the women who did not participated in the war, even the Ex-combatants lacked equivalent reward for the role that they contributed in the military struggle. They simply forced to return to home and to be restricted to the traditional role which is as a wife and mother regardless of attaining political power and leadership positions.¹⁵

After the 1991 transition, the ruling party of the EPRDF brought hope to women by exploring women's opportunities for progress. It established the women's affairs office to keep women's action. In different circumstances, women have been joined to political offices mainly to monitor actions on women's rights. But still the gendered societal inequality is influencing the various socioeconomic and political domains of societal lives.¹⁶

In order to understand the factors that hinder women's equality in all spheres, studying the grass root level of their status in leadership positions and decision making process in customary institutions will be an important point. So, this study assesses women's community leadership, the factors that affect their participation in leadership positions, the societal justifications towards women's leadership and the impact of their absence in leadership positions in protecting their rights in the case of the *Gereb* customary court in Raya Alamata district of Southern Tigray in light to the international, regional and national human rights instrument and policy frameworks.

¹³Beza, Negawo. 2010. "Post-War Narratives of Women Ex-Combatants of the Tigray People's Liberation Front (TPLF)." Addis Ababa University publishing press, P.22.

¹⁴ Ibid

¹⁵ Ibid

¹⁶Biseswar, Indrawatie, Supra note 12, P.63.

1.2. Statement of the Problem

Customary courts are informal institutions locally established with the objective of settling disputes in the form of negotiation, arbitration and reconciliation in which disputants are highly encouraged to negotiate directly with each other prior to some other legal process. They are also established to manage social tension in a given community.¹⁷ In many rural communities of Africa, the role of customary courts in resolving disputes is pivotal. The decision makers in the proceeding are often male community leaders and the aim of the customary courts is reconciliation and maintaining harmony.¹⁸ The role of customary courts in promoting human rights is highly debatable. For instance, the traditionalists argue that the traditional values in the customary courts have a positive contribution in promoting human rights. On the contrast, the human rights activists argue that certain customary courts undermine the dignity of women and minorities and are often used as a justification for the treatment of women as second-class citizens.¹⁹

In Ethiopia, there are diverse ethnic groups having their own customary institutions that handle disputes.²⁰ The customary courts play a critical role in resolving disputes and restoring peace and stability in the communities.²¹ However, Women's rights in the customary courts are less positive. According to *Assefa* (2013), though customary dispute resolution mechanisms in Ethiopia reflect the basic social values of the society, when it comes to the rights of women, they have limitations. Thus, the legally recognized women's rights are heavily influenced by some religious and customary practices of the different ethnic groups in different parts of the country.²² Several international, regional and national human rights instruments have recognized

¹⁷Brown, Scott et.al. "Alternative Dispute Resolution Practitioners Guide." Available on: <https://www.usaid.gov/sites/default/files/documents/1868/200sb>.

¹⁸OHCHR.2016. "Human Rights and Traditional Justice System in Africa." New York and Geneva, P. 17.

¹⁹Ndulo, Muna. 2011. "African Customary Law, Custom and Women's Rights." Cornell Law Publications, P.89.

²⁰Abera Degefa. 2013. "The Impact on Offenders of Rivalry between the Formal Criminal Justice System and the Indigenous Justice System: Experience among Borena Oromo in Relation to the Crime of Homicide." The Danish Institute for Human Rights, Denmark's National Human Rights Institution, P.41.

²¹Endalew Lijalem. Ethiopian Customary Dispute Resolution Mechanisms: Forms of Restorative Justice? P 125-151 Available at: <http://www.accord.org.za/ajcr-issues/%EF%BF%BCethiopian-customary-dispute-resolution-mechanisms/>

²²Asefa Fiseha .2013. "Customary Dispute Resolution Mechanisms and the Rule of Law: Areas of Convergence, Divergence and Implications." Justice and Legal System Research Institute, Addis Ababa, Ethiopia, P.119.

and guaranteed women's equality with men in every sphere and prohibited any form of exclusion on the basis of sex.

Despite their contribution in restoring peace and stability, most of the customary courts have less if not no room for women's participation as agents in their leadership and decision making process. There are several studies that have been carried out in Ethiopia by several scholars on customary courts. For instance *Gonfa* (2014), in his study argues that in *Harro limmu Oromo*, *Jaarsumma* customary conflict resolution mechanism, dispute is resolved by the *Jaaras* who are all men.²³ Another research done by *Hussein* (2014) also revealed that in the customary laws and practices of the Wolaita community, women have not equal rights with men.²⁴ The Afar ethnic groups in Ethiopia have also their own way of handling disputes arising within an ethnic group or/ and inter-ethnic groups led by men.²⁵

Despite the extensive studies done on customary courts in different parts of Ethiopia, there is a notable absence of exhaustive empirical research done on the level of women's leadership in light to their right to be represented in leadership positions at all levels and the factors that prevent them from partaking in the leadership positions equally with men. This study addresses this gap by drawing on a case study of the *Gereb* customary court. The impact of their absence in the leadership positions of the customary courts in exercising and protecting their rights is also an under researched theme. Besides, there is also lack of information about the justifications of the society towards women's leadership in general and in *Gereb* customary court in particular from the perspective of women's right to be represented in all levels of leadership positions in all spheres equally with men. So, this study assessed the level of women's leadership, barriers that affect their leadership role in the *Gereb* customary court in southern *Tigray of Alamata Woreda* and the impact of their absence in the leadership positions of the customary court in protecting women's rights in light to the international, regional and national human rights instruments and policy frame works aimed at enhancing gender equality at all levels of leadership positions.

²³Gonfa Eibsa.2014 "*Customary Conflict Resolution among the HaroLimmu Oromo of North-west Wallaga: The Case of Qaalluu Institution.*": un-published MA thesis, Addis Ababa university, department of Social Anthropology.

²⁴Husen Ahmed. 2014. "A Woman's Right to and Control over Rural Land in Ethiopia: The Law and Practice." International journal of women and gender studies.p.9

²⁵Kinfe Abrha. 2014. "Dispute Resolution Mechanisms among the Afar People of Ethiopia and their Contribution to the Development Process." P. 156-158.

1.3. Objectives of the study

1.3.1. General Objective

The general objective of this study is to understand the level of women's participation and representation in the leadership positions of the *Gereb* customary court and to review the different legal and policy frameworks aimed at enhancing gender equality in leadership positions and decision making process.

1.3.2. Specific Objectives

- To assess the level of women's representation in the leadership positions of the *Gereb* customary court.
- To identify the factors that hinders the participation of women in the leadership positions of the *Gereb* customary court
- To explore the societal justifications towards women's participation as litigants, leaders and decision makers in *Gereb* customary court.
- To analyze the impact of women's absence in the leadership positions of the *Gereb* customary court in protecting women's rights.
- To review the different legal and policy frameworks aimed at enhancing women's equality with men to partake in leadership and decision making process.
- To evaluate the theory and practice of women's right to be represented in all levels of leadership positions equally with men.

1.4. Research Questions

- How is the level of women's participation and representation in the leadership positions of the *Gereb* customary court?
- What are the root causes that hinder women's participation and representation in the leadership positions of the *Gereb* customary court?
- What are the various justifications given by the society in denouncing Women's leadership in *Gereb* customary court?
- How does women's absence in the leadership positions of *Gereb* customary court affect their rights? What are the violated rights of women as a result of their absence in the leadership positions of the *Gereb* customary court?
- What are the different legal and policy frameworks aimed at enhancing gender equality in all levels and spheres of leadership positions?

1.5. Research Methodology

Due to the exploratory nature of the research topic, a qualitative research method has been employed examining the grass root level of women's leadership role and the factors that determine their level of participation in *Gereb* customary court. Qualitative research method helps to understand the experience, meaning people assign to things and helps to understand how people make sense of their setting and why they think and act as they do. ²⁶ Furthermore, the researcher employed a feminist approach in order to examine females as individuals and as people or as a social category whose experience is interwoven with other women. This approach enables a researcher to put the spot light on women as competent actors and to understand them as subjects in their own rights rather than objects for men.²⁷ The researcher also employed interpretive approach for the purpose of describing the grass root level of women's leadership and to explore the socially assigned meanings, experiences and thoughts towards women's participation in *Gereb* customary court as decision makers and leaders. The researcher has

²⁶Kalof,Linda et al. 2008. "Essentials of Social Research." Open university press, P.80

²⁷ Rein Harz, Shulmit.1992 "Feminist Methods in Social Research." Newyork, Oxford University Press , P. 241-244

realized this by spending enough time with the elder's council in the *Gereb* customary court and the local residents.

Data Collection Tools

Primary Sources of Data

The main data collection tools utilized in this study for gathering the primary data includes in-depth-interviews, focus group discussions, observation and case studies.

Key informants Interviews

A qualitative interview is an interaction between an interviewer and a respondent in which the interviewer has a general plan of inquiry. It is essentially a conversation in which the interviewer establishes a general direction for the conversation and pursues specific questions raised by the respondents.²⁸ In this study, semi structured and unstructured interviews were utilized. The Semi structured questions allowed the researcher to a freedom of probing far beyond the answers to the standardized questions. In addition, the researcher also used unstructured interview where by the researcher asked open-ended questions to respondents since this helps the respondents to explain what they feel about the issue without any limit.²⁹

An interview and FGD checklist was developed before going to field work. A total of 37 informants were interviewed during the course of the study (22 female and 15 male) whose age is in between 16-80. These informants come from different walks of life including; clients of the customary court, ordinary people who are residents in the study area, local elders, the leaders and actors in the customary court, vice chairman of Raya development association, the president of the first instance court of the district, the public prosecutor in the office of justice, crime investigator in the police station in the district, expert of crime prevention and investigation in the office of security and administration of the district and the office of women's affairs of both at zone and *Woreda* levels. The informants were selected purposively and by applying snowball-sampling technique to access the relevant information since they were familiar with the issue.

²⁸Babbie, Earl.2008. "The Basics of Social Research." 4thed, Chapman University, P. 306.

²⁹ Ibid

Focus Group Discussion

Focus group discussion is a conversation held between a researcher and more than one other individual.³⁰ In addition, it is a research technique that enables a researcher to select data through group interaction on a topic determined by the researcher. In this technique, it is the researcher's interest that provides the focus and the data themselves come from the group interaction.³¹ In this study, the researcher has utilized focus group discussion as a data collection technique. Most importantly, Focus group discussion allow a researcher to observe the process of group interaction and access the substantive content of verbally expressed views, opinions, experiences and attitudes. It also provides a means for assessing intentionally created conversations about research topics or problems. In qualitative research, focus group discussion has a critical role in examining topics, which are more psychological, cognitive, and attitudinal and helps to understand a variety of deep structural elements.³² In this study, in order to observe the interaction of individuals, access the substantive content of verbally expressed views, opinions, attitudes and experiences as well as differences and similarities of the respondents' opinions and views about the topic, a focus group discussion approach was utilized. In doing so, the researcher has conducted three FGD with local resident women, which consists 5 women in each group, and one FGD with men local residents consisting of 4 men as well as one FGD with the *Abo Gereb* at *Woreda* level consisting of five members who serve as chairman, vice chairman, accountant and two of them as members.

Observation

In qualitative research, observation is a common tool of data collection technique by which the researcher gathers data based on what he or she sees, hear and feel.³³ In utilizing this method, the researcher applied a non-participant observation and simply the researcher has attended the proceeding and detail activities of the customary court. After attending and observing the activities, the researcher tried to understand the meaning of the activities and the issue why the

³⁰Jean Jschenkul, Margaret D. et al.1999. "Enhanced Ethnographic Methods: Audio visual Techniques focused Group, interview and elicitation Techniques." Altamira press P. 51.

³¹Morgan, L. David.1989. "Focus Groups as Qualitative Research": Qualitative Research Methods Series, Volume 16 Second Edition, Sage Publications *International Educational and Professional Publisher*, Thousand Oaks London, New Delhi.

³²Bruce Lawrence Berg.2001. "Qualitative Research Methods for the Social Science.", 4thed, ,p 115-120.

³³ Robert E. Stake.2010. "Qualitative Research: Studying how things work.", Guilford Press.P.90.

people act as they are doing by writing notes, and audio recording. Apart from getting an insight into the court proceedings, this method also helped the researcher to come up with further questions to be raised to different key informants based on what the researcher has observed.

Case Study

In this study, case study was also used as a data collection technique. This is by the belief that it helps to understand the occurring situation from very practical evidence. So, in order to analyze the real factors that affect women's participation in leadership positions and the impact of their absence in the leadership positions of the *Gereb* customary court in protecting their rights in a detailed manner, certain case studies were used. The cases presented built on experiences of women in leadership positions and at customary courts as a way of exemplifying the general arguments of the thesis.

Secondary Sources of Data

In this study, secondary sources of data were also utilized. The sources helped the researcher by providing an up-to-date understanding about the issues related to the research topic. The sources are books, journal articles and researches. In addition, in order to cross check the theory and practice of women's rights in the *Gereb* customary court, relevant international, regional and national human rights instruments and policy frameworks were also reviewed.

1.5.1. Sampling Techniques

In this paper, the researcher has used a non-probability sampling technique. For the purpose of this study, purposive or judgmental and snowball sampling were employed. "Purposive sampling is a sampling technique by which researchers use their special knowledge or expertise about some group to select subjects who represent the population."³⁴ Having this statement in mind, the researcher has used purposive sampling and accordingly selected subjects who can represent the population of the society especially those who have a key role in the *Gereb* customary court. Snowball sampling is also the second sampling technique that the researcher has employed in this study. This sampling technique is a best way to locate subjects with certain attributes

³⁴Bruce Lawrence Berg.2001. "Qualitative Research Methods for the Social Sciences.", 4th ed, P. 193

necessary in a study.³⁵ In so doing, the researcher has identified people with relevant characteristics and interviewed them. The selected people also asked others who have the same characteristics as they do. In applying this technique of sampling, the researcher interviewed women in the society about their grass root level of participation in decision making process and leadership positions as well as the factors that determine their level of representation and participation in the leadership positions of the *Gereb* Customary Court and its impact on women's rights by asking them to call others after being asked about the issue.

1.5.2. Method of Data Analysis

Raw data collected from the field are not ready for analysis upon collection. They require some sort of organizing and processing before being analyzed.³⁶ Accordingly, in this study, the researcher first and foremost has edited, corrected, and made more readable the data before engaged in to analysis. Then after, the researcher has transformed the recorded interview in to written text. Finally, the researcher engaged in a detailed analysis by translating the data from Tigrigna and Amharic languages in to English since the respondents were speakers of both Tigrigna and Amharic languages.

1.6. Ethical Considerations

Social scientists have an ethical obligation to their study population, their colleagues and the society at large even to a greater extent than the average citizen since they investigate the human beings' social lives. As a result, various policies, practices and even laws may result from such excursion into private social lives. Thus, rights, privacy and welfare of the people and communities must be protected by the researchers.³⁷ Given this premises, the researcher has considered certain ethical issues while conducting the study. In this study, all the interactions between the researcher and the respondents were based on an informed consent. The researcher allowed the respondents to freely exercise their choice, to be free from any form of fear by telling them about the purpose of the study. The researcher also asked them repeatedly to know their willingness to partake in the interview. All things that the researcher has discussed with the

³⁵ Ibid

³⁶ Bruce Lawrence Berg, 2001. "Qualitative Research Methods for the Social Sciences.", 5thed. P.38.

³⁷ Ibid

respondents are kept confidential. Last but not least pseudonyms are used in order to keep informants unanimous.

1.7. Significance of the Study

The study is believed to have certain significances. First, it will give an insight about the practical application of the constitutional non-discrimination provisions with particular regard to women's rights in cultural lives by revealing the grass root level of women's representation and participation in the leadership positions of the *Gereb* customary court and its potential implication to the rights of women to have equal representation in leadership positions as enshrined in the international, regional and national human rights instruments. It will also help to easily understand the factors that affect and how they affect the realization of women's equality with men to be represented in the leadership positions of the *Gereb* customary court. Furthermore, the study will also serve as a stepping-stone for other researchers who are interested to conduct their study on this area. Last but not least, it will give an insight to the mandated government and non-governmental entities, human rights activists, NGOs, women's affairs and policy makers to pay a considerable attention to the deep rooted factors that affect the implementation of women's rights to partake in leadership positions at the grass root level.

1.8. Scope of the Study

The study is limited to examine the grass root level of women's participation and the factors that determine their participation in the *Gereb* customary court in Raya Alamata District and its implication to women's equal entitlement with men to enjoy their rights to partake in all levels of leadership positions in light to the international, regional and national legal and policy frameworks. In addition, the study has also assessed the potential impacts that affect women's rights as a result of women's absence in the leadership positions of the *Gereb* customary court. *Shimglna* and other customary dispute settlement mechanisms and their role in peace building in the study area were not the focus of this study.

1.9. Organization of the Study

This thesis is structured to five chapters. The first chapter presents background of the study, statement of the problem, objectives of the study, research questions and methodology. Chapter two contains review of related literature and legal and policy frameworks. Chapter three briefly describes the study area and gives an overview of institutions handling disputes in the study area. Chapter four emphasizes on the description of the GCC, profile of judges and leaders, the guiding principles and enforcement mechanisms of the GCC. Chapter five provides the representation of women in the leadership positions of the GCC, the different factors that hinder women's participation and the impact of women's absence in the leadership positions of the GCC in protecting women's rights from the perspective of the international, regional and national legal and policy frameworks aimed at enhancing gender equality at all levels of leadership positions.

Chapter Two

2.1 Review of Related Literature

This chapter centers on two main substantive parts. The first part focuses on the review of related works on customary courts in Ethiopia that has been done by different scholars. The second part presents review of selected international, regional and national legal and policy frameworks intended to enhance women's right to partake in all levels of leadership positions equally with men.

2.1. 1. Brief Overview of Customary Courts in Ethiopia

According to *Rwezaura* (1983) as cited in *Ndulo, Muna* (2011), in Africa, the place of customary courts can be divided in to three approaches.³⁸ The first is the historical approach, which has been adopted during the colonial rule. The second approach is that adopted by new constitutions during post-independence era while the third is the approach in the post modernization period.³⁹ In many rural communities of Africa, customary courts play a critical role in resolving disputes.⁴⁰ On the contrary, customary norms in Africa are also less idealized by the belief that they marginalize and oppress women and minority groups. Furthermore, even though women's rights are legally guaranteed, the weight of traditions militates against the full exercise of those rights.⁴¹ To further impress this line of argument, in several cultural practices, particular regards and rights of women as individuals and as group that have an interwoven life with other women may not be well respected since most cultural practices operate based on the principle of cultural values and norms. At this juncture, individual rights may be violated in the name of culture. It is also better to think that the leaders in the cultural practice may work hard to preserve the culture if they are beneficiary of that practice at the expense of the large population including women in traditional societies.

³⁸Ndulo, Muna, 2011 "African Customary Law, Customs, and Women's Rights.", *Cornell Law Faculty Publications*: Paper 187. Available on :<http://scholarship.law.cornell.edu/facpub/187P.92>.

³⁹Ibid

⁴⁰OHCHR.2016. "Human Rights and Traditional Justice System in Africa." New York and Geneva. 17.

⁴¹Bahru Zewde and Siegfried Pausewang (eds). 2002. Ethiopia the Challenge of Democracy from Below. Nordiska Afrika institute, Uppsala and Forum for Social Studies, Addis Ababa, P.8-9.

In Ethiopia, according to *Alula* and *Getachew* (2008), the relationship between the state and customary courts can be divided into three phases. The first phase is the imperial sacred tradition in the pre-modern era, which begins from 15th century till the early 20th century. This epoch is characterized by the imperial reliance on reference to indigenized translated texts based on imported biblical Roman-Byzantine traditions with a strongly sacred flavor. The second phase is the modern secular imported nation-building period under Emperor *Haile Selassie*. It was a time that Emperor Haile Selassie dwelt on the mission of modernizing the nation. At this era, customary laws were repealed by the civil code. This modernist nation-building phase ended when the military regime with a socialist ideology assured power by overthrowing Emperor *Haile Selassie*. At this epoch, while the centralist project of the *Derg* was continuing, religious and ethnic interests lacked protection and respect. The third phase is the postmodern ethnic federalist period under the EPRDF, which used ethnicity as an organizing principle. The 1995 FDRE constitution in this regime explicitly recognized the jurisdiction of customary and religious laws and courts.⁴² Simply recognizing customary laws and courts in constitutional provisions may not be sufficient to build an effective legal system in a given nation. Though the FDRE constitution gave constitutional recognition to customary laws and courts, the customary and the formal laws are not working collaboratively. Thus, there should be the integration of indigenous legal knowledge to the national laws and vice-versa.

In Ethiopia, most people solve their disputes at local levels.⁴³ There are a large number of ethnic groups and most of them have their own customary institutions of handling disputes. The institutions operate on the basis of their own laws and procedures.⁴⁴ For instance, in the *Gada* system among the Oromo community, male members of the community are the eligible for political and military leadership positions. This system can also be taken as a model for the adopted forms of democracy in the contemporary political discourse.⁴⁵ The *Sera* on the other hand is also local governance, which has been prevalent among the Cushitic-speaking peoples of southern Ethiopia and the Semitic speaking *Gurage* people. Despite the *Sera*, which have had a

⁴² Alula Pankhurst and Getachew Asefa (eds). 2008. "Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution." Addis Ababa: French Center of Ethiopian Studies, P.1-6

⁴³ Tsega Endale 2002. "Conflict Resolution through Cultural Tolerance: an Analysis of the *Micu* institution in *Matakal*" in Baye Yimam et al (eds). Ethiopian studies at the end of the second Millennium. Addis Ababa. Institute of Ethiopian studies. P.25

⁴⁴ Ibid

⁴⁵ Bahru Zewde and Siegfried Pausewang, supra note 41 P.11-12

remarkable resonance among the urban *Gurague* in recent years, traditional institutions in most parts of Ethiopia have been essentially rural based.⁴⁶ Customary courts have a critical role in minimizing the work overload of the formal courts. They are also advantageous especially in terms of resolving minor criminal cases efficiently since they are expected to provide a restorative justice. In addition to their role of reconstruction of disrupted social harmony, they also used as a means of penal mediation in certain criminal cases so as to achieve the resolution process quickly and with low cost.⁴⁷ According to *Alula and Getachew (2008)*, customary courts in Ethiopia are advantageous since they are easily accessible, timeless, cost effective, and restorative and enforceable by community based sanctions.⁴⁸

On the contrary, customary dispute handling institutions have their own limitations especially when evaluated from the standpoint of modern laws and norms. For instance, they exclude women from partaking in decision making process and leadership in their setting, disregard the modern laws, undermine individual rights, they are open to bribery and favoritism and lacks uniformity.⁴⁹ To a broader extent, in most countries that embrace customary courts, the involvement of women is very low. The institutions also prohibit the involvement of lawyers. The actors in the informal justice systems are not trained in legal codes and even they are not familiar with the legal codes of their countries. They function in accordance to the generally accepted and well known customary laws and procedures.⁵⁰ Although some states legally recognize traditional justice systems, the operation of the justice systems may be outside the control of the state. The decisions passed by the traditional justice systems may be legally binding. Though some traditional justice systems are competent to decide serious crimes, there are limitations on subject matters and personal jurisdiction. Legal pluralism within states is recognized in the international law but what the international law underscored is that whatever legal system is used should function in a manner that is compatible with international human rights standards. But, there are many problems of human rights in the operation of traditional justice systems.⁵¹ In Ethiopia, customary courts are preferable since the information which is

⁴⁶Ibid

⁴⁷ Mohammad Jamin. 2015. "The Utilization of Customary Court as Means of Penal Mediation: A Lesson Learned From Papua, Indonesia.": Global Journal of Politics and Law Research, European Centre for Research Training and Development UK, The Department of Law and Society, Faculty of Law, Sebelas Maret University, Indonesia, P.25.

⁴⁸Alula Pankhurst and Getachew Asefa (eds), *supra* note 42, P.260.

⁴⁹ Ibid

⁵⁰OHCHR. 2016. "Human Rights and Traditional Justice Systems in Africa.", New York and Geneva P.27-28

⁵¹ Ibid

relevant to the dispute is disclosed to the decision makers and as the leaders of the institutions are often members of the community and are familiar with the issue. However, this can be disadvantageous especially if the decision makers are not matured, where there is a kinship tie between a disputant and decision makers.⁵² In this point, to strengthen the advantages of the customary courts and to avoid the disadvantages, a positive intervention and assistance from the formal legal system is required. The negative sides of the customary courts can be easily avoided if they work in alliance with the formal legal system by mutually exchanging ideas about legal issues.

2.1.2. Gender and Customary Courts

According to UNESCO (2003), Gender is a socially constructed roles and responsibilities of men and women which is neither biologically determined nor fixed forever. It comprises the expectations about what the characteristics, ability and behavior of men and women ought to be in the society they are living in. This concept has a pivotal role in revealing how women's subordination and men's domination is socially constructed.⁵³

Customary courts are locally established informal institutions aim at settling disputes and managing social tensions in the form of negotiation, arbitration and reconciliation in a given community.⁵⁴ According to Okin (1999), there are clear disparities in power between men and women in most cultures of the world. Obviously, the beliefs, practices and interests of the group in a given society is determined and articulated by men since they are powerful and capable to do so. Under such circumstance, women and girls' capacities and right to live with human dignity equal to those of men and boys and to live in their own chosen lives as they can is limited. Women in cultural practices are likely to be victims of several violence and discriminations than men and boys. In most cultures, women's role has been often associated to the domestic sphere. Most cultural norms are often preserved and transmitted to the younger generations reinforcing the gendered socialization. The capacity to influence and participate in the public parts of the

⁵²Alula Pankhurst and Getachew Asefa (eds), *supra* note 42, p.118.

⁵³UNESCO.2003. "Gender Mainstreaming Implementation Framework: Baseline definitions of key concepts and terms."P.1

⁵⁴Brown, Scott et al. "Alternative Dispute Resolution Practitioners Guide." Available on:<http://2016.ciobwcs.com/downloads/pastsymposiums/2014/proceedings>[accessed 3 May 2018]

cultural life is heavily influenced by the power relationship at home since cultural rules and regulations of both public and private lives are established at home.⁵⁵ Finally, *Okin* underscored that “the more a culture requires or expects of women in the domestic sphere, the less opportunity they have of achieving equality with men in either sphere.”⁵⁶ The above statement is similar to what is prevalent in Ethiopia especially in most traditional societies. Domestic responsibilities and other tasks are the problems that women encounter. Despite the roles what the women played in the social, economic, political and cultural affairs, they are not designated to decision making power. Given this reality, I can safely say that domestic responsibilities are exclusively given to women and decision making power exclusively to men in most traditional societies.

The coexistence of laws in legal pluralistic countries where by traditional and modern laws exist side by side is likely to be conflicting. Many African states such as South Africa and Egypt officially embrace legal pluralism.⁵⁷ However, there is a systematic maltreatment of women by the traditional laws. The traditional laws also diminish women’s status since they treat women less than men.⁵⁸ The other African country that embraces customary laws is Botswana. In Botswana, Equality between women and men is not necessarily guaranteed and only rarely takes precedence over custom. In this country, a woman who is married under traditional law has not the right to buy or sell any property without the consent of her husband. However, the formal legal system stipulates that neither spouse can dispose of joint property without mutual consent.

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Under the customary law of Botswana, men have the right to discipline their wives. Though women’s right to enjoy their civil and political rights equally with men is legally guaranteed, the traditional laws restricted women’s property rights and economic opportunities.⁶⁰

⁵⁵Okin, Moller. S. 1999. “Is multiculturalism Bad for Women?” Princeton University Press, P.12-13.

⁵⁶Ibid

⁵⁷Oppermann, Brenda. 2006. “The impact of Legal Pluralism on Women’s Status: An Examination of Marriage laws In Egypt, South Africa and the United states.”: Hastings women’s law Journal.p.65.

⁵⁸ Ibid

⁵⁹Amantle, Nijel et al. 2016.“Effects of Customary Laws on Basic Human Rights of Women in Botswana.” International Journal of Law and Legal Studies ISSN 24635634 Vol. 4 (7), pp. 225

⁶⁰United States Department of State, *U.S. Department of State Country Report on Human Rights Practices 2002 - Botswana* , 31 March 2003, available on : <http://www.refworld.org/docid/3e918c18b.html> [accessed 19 May 2018]

In Ethiopia, as different studies done by different scholars revealed, in most traditional institutions handling disputes, the participation of women as leaders and decision makers is very low despite certain exceptions. For instance in most parts of Amhara region, women have no equal right with men to partake in the decision making process of customary dispute settlement mechanisms. In addition when dispute happened between husband and wife, the male decision makers tend to side with the men against the women and the traditional cultural decision makers are very reluctant to admit women's equality with men.⁶¹ Similarly, *Jaarsa Biyyaa* is a customary dispute settlement institution in *Oromia* region in areas where by the *Gada* system is not operational. However, in terms of gender representation, the *Jaars Biyyaa* is undemocratic. Women cannot serve on the *Jaarsa Biyyaa* council. They are required to present their complaints through their male representatives usually their brothers, fathers or husbands rather than by themselves.⁶² In the case of *Gada* and *Qullu* customary justice systems, in *Oromia* regional state, women are not allowed to be elected as members in the council of electors. The office of the *Qullu* is hereditary held by a boy in early teens. ..⁶³

According to *Hussein* (2014), in his MA thesis titled "A woman's right to and control over rural land in Ethiopia: the law and practice" argues that in the customary laws and practices of *wolaita* community, women's equality with men in the cultural life is denied.⁶⁴ Similarly, According to *Kinfe* (2014), the Afar ethnic groups in Ethiopia have their own way of handling disputes arising with in an ethnic group or/ and inter-ethnic groups. According to the study, all the actors from low to the top customary legal practices in the communities are men. A single woman is often not allowed to hold position in the customary practice. *Mada'aabbas* is the father of the law who hears cases, which are unhandled by the clan leaders. The sub clan chief is also *Kedo Abba*. In every level, there are designated men leaders such as *bura abba*, *Dalla abba*, *Glub abba* and *kedo Abba*. In addition, in the Afar customary dispute settlement process, there are separated

⁶¹ Melaku Abate and Wubshet Shiferaw.2008. "Customary Dispute Resolution in Amhara Region. In Alula Pankrust and Getachew Aseffa (eds), Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution." Addis Ababa: French Center of Ethiopian Studies P. 109-111

⁶² Areba Abdella and Berhanu Amenew. 2008. "Customary Dispute Resolution in Oromia: the Case of *Jaarsa Biyyaa*. In Alula Pankrust and Getachew Aseffa (eds), Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution." Addis Ababa: French Center of Ethiopian Studies P. 171-182.

⁶³ Asmerom Legesse.1973. "*Gadaa*: Three Approaches to the Study of African Society." New York: free Press.P.209.

⁶⁴ Husen Ahmed. 2014. "A woman's Right to and Control over Rural Land in Ethiopia: The Law and Practice." International journal of women and gender studies.p.9

legislatives (*Kedo Abba*, *Mabelo* and *Maquar'a*), executive (*Fima* and *Fima Abba*) and Judiciary (*Mada'aabba* and *malla*) which are completely the composite of male members.⁶⁵

In the northern part of Ethiopia, *Aruha* (community of elders) is also a popular customary dispute settlement mechanism practiced by the Eurob community in Tigray regional state. Members of the community of elders are elected on the basis of their trustfulness to the society, impartiality and ability to influence. Women are not allowed to be elected as members and agents in the *Aruha*. But the indigenous system allows women to informally participate in the dispute settlement process as mothers, sisters and wives.⁶⁶

In southern nations, nationalities and people of Ethiopia, there are several customary institutions, which are operational in the respective ethnic groups. For instance, the *woma* and elders' councils with three hierarchical structures are among the customary institutions in *Burji*. In this system, the actors in the leadership positions are all men. For instance, the village elders' council, the three men council and the clan leaders' council, which are the three hierarchical structures in *Burji*, are all men.⁶⁷

In Somalia regional state of Ethiopia, women and the members of the outcaste groups are not allowed to partake in customary dispute settlement mechanisms. Their participation is through representation.⁶⁸ In most customary dispute settlement institutions, the actors who involve in the decision making process are those elders who have the time, experience, respect and standing to engage in reconciling litigants. They are obviously the male elders. Women are excluded from partaking as leaders and decision makers in the institutions. Their representation and appearance before the mediators and decision makers is covered by the representation of their husbands or male relatives rather than by themselves.⁶⁹ For instance in *Sidama*, the *Gudumaalee* are the clan leaders who are elected based on their sexual orientation, social status, age, knowledge of local history and customary laws. In this system, women are not eligible to be elected as members in

⁶⁵Kinfe Abrha, supra note 25, P.156-158.

⁶⁶Solomon Berhane. 2014. "Indigenous Democracy: Alternative Conflict Management Mechanisms among Tigray People, The Experience Of Europe Community.": Journal of Science and Development College of social science and Language, Aksum University, Aksum, Ethiopia.p.109-115.

⁶⁸Mohammed Mealin and Zewdie Jotte.2008. "Customary Dispute Resolution in *Somali state* of Ethiopia. In Alula Pankrust and Getachew Aseffa (eds), Grass-root justice in Ethiopia: The Contribution of Customary Dispute Resolution. " Addis Ababa: French Center of Ethiopian Studies P.187

⁶⁹Alula Pankhurst and Getachew Asefa (eds), supra note 42, P. 70-71.

the elder's council because of their sexual orientation.⁷⁰ In Somalia region, *Xeerbeegti* are legislators and judges who are elected by their respective clans and families. They are elected on the basis of their capacity to come up with convincing arguments, honesty, knowledge of the values and traditions of the society, neutrality and their personal experience of responding when they face difficulties. In the election process, women and the outcast groups have not the right to elect and to be elected.⁷¹

The aforementioned accounts of the operation of the customary courts in different parts of Ethiopia indicates the low commitment of the government and the formal legal system to work in collaboration with the customary courts especially in ensuring the equal participation of women with men in the overall proceedings of the customary courts.

Basically, there are three lines of arguments towards the status of women in customary courts. The first argument according to *Hanna and Tarekegn* (2008) as cited in *Meron Zeleke's* article emphasizes that the women are excluded and underrepresented in customary courts. The second argument according to *Nyamu, C.* (2000) as cited in *Meron's* article argues that women have low participation as clients at the customary courts and the third argument assumes customary courts as discriminatory when it comes to women's participation in their overall proceedings.

However, there are evidences that show the representation of women in the customary courts. For instance according to *Meron* (2016), women are better represented at the *Yasahoc chelot* at different levels and they participate as plaintiffs and defendants.⁷² According to *Meron* (2016), recognizing how the legal actors at customary courts selectively appropriate the state discourse of gender equality in the context of legal pluralism is important. In addition, she argued that the oversimplification without considering the heterogeneity of the customary courts is misleading and contradictory with the realities on the ground. There are some customary courts where women have active agency and where their interests are accommodated in the overall court

⁷⁰Ayke Asfaw and Mekonnen Feleke.2008. "Customary Dispute Resolution in SNNPR. In Alula Pankrust and Getachew Aseffa (eds), *Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution.* " Addis Ababa: French Center of Ethiopian Studies , P. 208.

⁷¹Mohammed Mealin and Zewdie Jotte.2008. "Customary Dispute Resolution in Somali State of Ethiopia: In Alula Pankrust and GetachewAseffa (eds), *Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution.* "Addis Ababa: French Center of Ethiopian Studies, P.187-188

⁷²Meron Zeleke. 2015. "Faith at the Cross Roads: Religious Syncretism and Dispute Settlement in Northern Ethiopia A study of Sufi shrine in north eastern Ethiopia." Harrassowitz Verlag. Wiesbaden. P. 114

procedures. Discussions on diversity of customary courts and their varying natures in accommodating or violating interests of women thus poses a challenge to the essentialist argument of the exclusion theses that accents victimhood of women.⁷³

Despite the under representation of women in most customary courts in Ethiopia, though it is very exceptional, there are also customary dispute settlement institutions which are operating exclusively by women. For instance *Aetete* is a new religious practice of the traditional Oromo which is attended by married women, those who have been engaged and those who are at childbearing ages. In some cases girls who have just had their first menstruation also join the group for they are believed to be old enough to start a family. *Ateetee* is considered to be a guardian spirit of women and young girls in general.⁷⁴ Similarly *Sinqee* in Oromia regional state is a good example of women dominated customary dispute settlement institution. According *Jemila Adem* (2014), in *Siinqee*, which is one of the material cultures of Oromo; Women have full right to fight for their rights. No one can stop women from practicing socio-cultural and religious practices in the community. The gathering of women under an institution of *Sinqee* can fight against a person or groups that would injure and do wrong things on any woman in the community. According to the study, *Sinqee* has a significant contribution in protecting women's rights.⁷⁵

A study done by *Mequannt Tesfaw* (2015) also revealed the involvement and role of women in dispute settlement process in *Meket* district of north Wollo. According to the study, women in some areas of the district that the study has been undertaken have a critical role in dispute settlement process. They have also a full right to elect and to be elected in the *shimglana* and to partake as plaintiffs, defendants and mediators. They have also the right to accept or reject the decisions passed by the *shimagle*. There is no any law or provision of *shimglana* institution that

⁷³Meron Zeleke. 2016. "Beyond the Exclusion Theses: Women and Customary Courts in Ethiopia." International Law and policy institute. P.1-7.

⁷⁴Meron Zeleke. 2015. "Faith at the Cross Roads: Religious Syncretism and Dispute Settlement in Northern Ethiopia; A study of Sufi Shrine North Eastern Ethiopia." Harrassowitz Verlag. Wiesbaden. P.77-78.

⁷⁵Jemila Adem, 2014. "Women and Indigenous Conflict Resolution Institutions in Oromia: Experience From Siinqee of The Wayyu Shanan Arsi Oromo In Adami Tullu Jiddu Kombolcha District of The Oromia National Regional State." Un published MA thesis Addis Ababa university, Ethiopia.

prohibits women's participation as *Shimagle*. Hence, the role of women in the process of dispute settlement is unequivocally critical.⁷⁶

All in all, the operation of the customary courts should not be perceived as absolutely negative or absolutely positive. There should be a balanced understanding and commitment from the government side to advance the customary courts since they are helpful in maintaining justice at the grass root level. However, the government should supervise the operation of the customary courts to make sure whether they are operating in a fine line or not especially in terms of protecting individuals' rights such as women's and minorities' rights.

2.1.3. Women and Leadership

2.1.3.1. Conceptualizing Leadership

There is no widely accepted definition of leadership. There are two fundamental difficulties positioned at the heart of the problem of defining the term leadership.⁷⁷ The first difficulty is that the term leadership is complex and open to subjective interpretation. The second is the way in which leadership is defined and understood is strongly influenced by one's theoretical stance. These divergent views have an immense consequence in having different opinion on the issue of leadership.⁷⁸

Different scholars define the term leadership differently. For instance according to *Prentice* (1961), leadership is "*the accomplishment of a goal through the direction of human assistance. Someone who successfully marshals his/her human collaborations to achieve particular ends is a leader.*"⁷⁹

⁷⁶Mekuanint Tesfaw. 2015. "Ethiopian Women; Agents and Subjects in the *Shimagle* (a Customary Conflict Resolution Institution): Amharas' Experience in Meket District, North Wollo Zone." Debre Berhan University, Ethiopia."P. 97-99.

⁷⁷Bolden, Richard.2004. "What is leadership?", Center for Leadership Studies, University of Exeter, P.3-4.

⁷⁸Ibid

⁷⁹Prentice, W. C. H. 1961. "Understanding Leadership." Harvard Business Review, P.102.

According to Peter G. Northouse (2013), leadership is “*a process whereby an individual influences a group of individuals to achieve a common goal.*”⁸⁰

Bernard M. Bass (1992), defined leadership as “*an interaction between two or more members of a group that often involves a structuring or restructuring of the situation and the perceptions and expectations of members. Leadership occurs when one group member modifies the motivation or competencies of others in the group. Any member of the group can exhibit some amount of leadership.*”⁸¹

For the purpose of this study, the definition of Bernard M. Bass is adopted as it reflects the participation and agency of more than one actor and a dynamic and changing role.

2.1.3.2. Constraints of Women’s Representation in Leadership Positions

According to Kiamba (2008) as cited in Khaddar Mohamed’s Research, the prevalence of traditional beliefs and cultural attitudes that prohibit women’s speaking in public, reluctance of women themselves to partake in public leadership and domestic responsibilities of women are among the barriers for women’s participation and representation in leadership positions in Africa.⁸²

In Ethiopia, especially in most parts of the rural areas, women are considered subordinate and second-class members in the family and in the society as well.⁸³ In addition, in most patriarchal societies, women have an inferior status and they are denied their right to have both honored and utilitarian role. Roles such as administration and leadership in societal affairs including religion and governance are exclusively designated to men. The continuation of the negative attitudes regarding women’s ability to lead and govern, lack of experience over burden of domestic

⁸⁰ Bass, B. M. (1990). “Bass and Stogdill’s handbook of leadership: Theory, Research and Managerial Applications.” New York: Free Press. P.19-20

⁸¹Northouse, P. G. 2013. “Leadership: Theory and Practice.” (6th ed.) Western Michigan University: Sage Publications.P.5-6.

⁸²Khaddar Mohamed. 2013. “*Women Political Participation and Decision Making In Hargeisa, Somaliland.*”unpublished MA Research Report presented to Kampala University, P.19-20.

⁸³Shimelis Kassa. 2015. “Challenges and Opportunities of Women Political Participation in Ethiopia.” J Glob Econ 3: 162. doi: 10.4172/2375-4389.1000162, P.4.

responsibilities, and lack of role models of women leaders for young women and girls are among the major barriers for the representation of women in leadership positions.⁸⁴

Corruption is also another constraint for women's representation in leadership positions since the positions are male dominated and hence it is difficult to the women to access the position easily. The broad based social and economic constraints such as inequalities in education, health and employment, the discriminatory practices, gender stereotype and the traditional conservative beliefs that stress a woman's place is at home raising a family, and women are followers not leaders prevent them from participating in public life.⁸⁵ According to *Shimelis* and *Tadese* in *Alula* and *Getachew* (2008), the major factors contributed for the under representation of women in *Abogereb* in the *Wajarat* communities in southeastern *Tigray* include lack of skill to argue or to convince others in public meetings.⁸⁶

2.2. Review of Relevant Legal and Policy Frameworks on Women's Rights to partake in Leadership Positions

The human rights obligation to eliminate sex-based discrimination against women is at the center of human rights discourse.⁸⁷ There are several international, regional and national legal and policy frameworks aimed at enhancing gender equality by eliminating all forms of discrimination against women. Despite few improvements, the application of the non-discrimination provisions in the human rights instruments is understandably less effective basically as a result of the patriarchal cultural belief of most societies across the globe. So, this subsection in this paper is intended to give a brief look on the legal provisions with particular emphasis on the provisions concerning women's rights to be represented at all levels of leadership positions

⁸⁴Endale Alemu. 2014. "Factors that affect Women Participation in Leadership and Decision Making Position.": college of Social Science, Department of Sociology and Social Work, Jimma University, Ethiopia.P.97-98

⁸⁵Report of Online Discussion :Women in leadership Roles Coordinated by the Division for the Advancement of Women Department of Economic and Social Affairs United Nations Hosted by Women watch With support from the Office of the United Nations High Commissioner for Refugees (UNHCR)19 November to 15 December 2007.p10-19.

⁸⁶Shimelis Gizaw and and Tadese Gessese. 2008. "Customary Dispute Resolution In Tigray Region: case studies from three Districts: In Alula Pankrust and Getachew Aseffa (eds), Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution.: Addis Ababa, Ethiopia, p.232.

⁸⁷Waldorf, Lee. 2007. "CEDAW and the Human Rights Based Approach to Programming." United Nations Development Fund for Women., p.5.

2. 2.1. International Legal and Policy Frameworks

UDHR

The UDHR is the first international human rights document adopted by the general assembly in 1948. It consist a catalog of fundamental human rights to be accorded to all people and hence the general assembly proclaimed to be a common standard to all people. Though it is not legally binding by definition, it has strong moral force since many of the rights enumerated in the charter are broad. In its preamble, the document explicitly articulates the inherent dignity of all the members of the human family. It also served as an important platform for the development of other legal frameworks that articulate human rights in general and women's rights in particular.

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Equality between women and men in every sphere of life is explicitly provided in the declaration. For instance article 2, pronounces that

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

This provision has a pretty much important connotation about the absolute equality of men and women in terms of enjoying their rights.

Article 27 (1) of the declaration under discussion also provides that

“Everyone has the right to freely participate in the cultural life of the community.”

As expressed in the aforementioned provisions, the phrase ‘everyone’ is a specific implication of all human beings without any distinction based on any ground including sex.

⁸⁸Smith, K. Rhona. International Human rights.4thed, Oxford University press. P.37-39

ICCPR

The ICCPR is the other international human rights document adopted in 1966 that contains a detailed discussion about the civil and political rights. Anti-discrimination clauses are explicitly expressed in the document.

The covenant in its article 2 (1) provides that:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Women’s equal entitlement with men to exercise their civil and political rights is recognized in the ICCPR. Article 3 of the covenant stipulates that:

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

Article 5 (1) under the covenant under discussion also pronounces that:

“Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”

From this provision, it is quite possible to realize that no action can be used to override the rights recognized in the covenant.

Article 26 of the covenant also explicitly speaks that:

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

ICESCR

The international covenant on economic, social and cultural rights is the first international instrument to deal with economic, social and cultural rights in a broader manner. Women's equality with men to partake in cultural life is explicitly recognized in the provisions of this covenant. For instance: Article 1 (1) of the covenant articulates that:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

This very provision reflects the explicit recognition of women's equal right to determine their social, economic, political and cultural status in general and their status in the cultural life in particular. Accordingly, women are entitled to determine their cultural status literally mean to oppose any cultural practice that suppresses them.

Article 2(2) states that “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the Present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The covenant under discussion also call state parties to ensure the equal rights of men and women in terms of enjoying their economic, social and cultural rights enumerated in the covenant.⁸⁹

Article 5 (2) articulates that:

“No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.”

Furthermore, the covenant under question in article 15 recognized the right of everyone to take part in cultural life.⁹⁰ Participation in this regard encompasses the right of individuals to act freely, to partake in the political life of society alone or in association.⁹¹

⁸⁹ See article 3 of the ICESCR

⁹⁰ See article 15 of ICESCR

Declaration on the Elimination of Discrimination against Women (DEDAW)

The DEDAW is a declaration proclaimed by the UN general assembly in 1967 in its resolution No.2263. According to the declaration, discrimination against women is an unjust act, which constitutes an offence against human dignity. The declaration also calls state parties to abolish existing laws, customs, and regulations which are discriminatory against women.⁹²

Women's right to partake in leadership positions is also stipulated in the declaration. Article 4 states that

*“All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination: (a) The right to vote in all elections and be eligible for election to all publicly elected bodies; (b) The right to vote in all public referenda; (c) The right to hold public office and to exercise all public functions.”*⁹³

CEDAW

The CEDAW, which is also known as the international bill of rights for women, is among the several international nondiscrimination treaties adopted in 1979 by the United Nations general assembly and entered into force in 1981. It is the principal women's human rights treaty, which has played a critical role in advancing women's rights. The document contains civil, cultural, economic, social and political rights of women and covers a variety of situations in which women face discrimination. It is intended to be applicable to all women in the world without any form of distinction. CEDAW is the first international treaty that addresses the fundamental rights of women in politics, health care, education economic and employment. It is a comprehensive human rights instrument, which is intended to protect women from any form of discrimination in any sphere.⁹⁴

⁹¹Para.14.Gen.Rec.23, Adopted by ICESCR Committee at its Forty-third session, (2009): available on: www2.ohchr.org/english/bodies/cescr/docs/gc/E-C-12-GC-21.doc accessed on 5/8/2018.

⁹² See article 1 of the DEDW

⁹³ See article 4 of the DEDW

⁹⁴UN High Commissioner for Refugees (UNHCR), Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women, August 2009, PPLAS/2009/02, available at: <http://www.refworld.org/docid/4a8aa8bd2.html> [accessed 8 May 2018]

The CEDAW provided certain provisions regarding women's rights, which were not well recognized before its adoption. The covenant condemns any form of discrimination on the basis of sex. Accordingly discrimination against women is defined as:

*“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 field.”*⁹⁵

According to the above provision, sex by any means cannot serve as a justification for the exclusion of women from any role that the women can play.

Article 2 of the covenant under discussion also requires state parties to condemn discrimination against women by taking all appropriate measures including legislation, modification or abolishment of existing laws, regulations, customs and practices which constitute discrimination against women and to repeal all national penal provisions which constitute discrimination against women.⁹⁶

Article 3 also calls states Parties to take all appropriate measures in all fields particularly in political, social, economic and cultural fields to ensure the full development and advancement of women and for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.⁹⁷

Article 5 also pronounces that

*“States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view of achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”*⁹⁸

In article 7 of the convention under discussion, it is explicitly recognized women's right to partake in the public life. The provision says that:

⁹⁵ See article 1 of CEDAW

⁹⁶ See article 2 of CEDAW

⁹⁷ See article 3 of CEDAW

⁹⁸ See article 5 of CEDAW

*“ States 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: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country. ”*⁹⁹

The United Nations Committee on the Elimination of Discrimination against Women in its general recommendation No.23 clarified the above provision as

*“The obligation specified in article 7 extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life. ”*¹⁰⁰

The Beijing Platform for Action

The Beijing platform for action is a non-binding international policy framework developed by 180 representatives of different countries gathered in Beijing, China in 1995 for the 4th conference on women reflects the issues and concerns of world's women at the end of the 20th century. Several issues of women were issued. The participants of the conference underscored the advancement of women's equality, development and peace and acknowledge the diverse voice of women. 'Women in power and decision-making' was among the critical focus areas of

⁹⁹ See Article 7 of CEDAW

¹⁰⁰ Para.5.Gen.Rec.23, Adopted by CEDAW Committee at its fifth session, (1986); available on: www.un.org/womenwatch/daw/cedaw/ accessed on 5/8/2018.

the platform for action. To this effect, measures should be taken by the governments to ensure women's equal access to and full participation in power structures and decision making as well as to increase the capacity of women to participate in decision making and leadership positions.¹⁰¹

2.2.2. Regional Legal and Policy Frameworks

Though the UN is the main institution behind setting the norm for Africa, the OAU/AU has appropriated many of the international standards in treaties of its own and the treaties played a significant role in ensuring greater norm legitimacy in the context of Africa. In Africa, the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on the Rights of Women in Africa are among the regional human rights instruments in general and women's rights in particular.¹⁰²

The African Charter on Human and Peoples' Rights (ACHPR)

The ACHPR is a regional human rights instrument that contains plenty provisions which are intended to protect peoples' rights in general and women from any form of discrimination that they face because of their femininity in particular. For instance, article 2 of the charter states that:

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

Peoples' right to partake in cultural lives freely is also guaranteed in the charter under discussion. The charter in its *Article 17(2& 3)*, states that

“Every individual may freely take part in cultural life of his/her community and the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”

Article 18(3) also calls state parties to work on the elimination of any form of discrimination against women and the protection of the rights of the woman and the child.

¹⁰¹ Minnesota Advocates for human rights. 1996. “Summary of the Beijing Declaration and Platform for Action.” P.1-3.

¹⁰² Viljoen, Frans Viljoen. 2013. “Human Rights in Africa: Normative, Institutional and Functional Complementarity and distinctiveness.” South African Journal of International Affairs, P. 191.

The charter has also clearly recognized peoples' equal enjoyment of rights and respect.

Under Article 19 of the charter, it is stated that:

"All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another."

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (The Maputo Protocol)

The Maputo protocol is a regional human rights instrument that contains provisions on the specific rights of African women in the context of Africans. It is a document, which is made up of substantive and detailed discussion of women's social, cultural, economic and political rights. It is possible to call it as African bill of women's human rights. This protocol has played a central role in protecting and promoting women's human rights by placing a moral obligation on the member states of the AU to ensure women's equal opportunity with men in every sphere.¹⁰³

Article 2 of this protocol calls state parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. The protocol in this provision also requires state parties to integrate a gender perspective in their policy decisions, legislations, development plans, and programs and in all spheres of life. In addition, state parties are obliged to take corrective and positive actions in those areas where discrimination against women in law and in fact continues to exist. It is also provided in Article 2(2) of this protocol that:

*"States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men."*¹⁰⁴

¹⁰³ AU ECHO. 2016. "African Year of Human Rights with a Focus on the Rights of Women." 27th AU summit, Africa union commission.p.4

¹⁰⁴See the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol).

2.2.3. National Legal and Policy Frameworks

The FDRE Constitution

Ethiopia has signed the major human rights instruments and incorporated them to the federal constitution. In addition, there are several domestic gender sensitive laws, proclamations, regulations and directives.¹⁰⁵

The constitution of the federal democratic republic of Ethiopia is a compact document, which is devoted for human and democratic rights. Chapter three of the constitution which contains the catalog of human and democratic rights can qualify as the Ethiopian bill of human rights.¹⁰⁶

Equality between women and men is constitutionally guaranteed. The non-discrimination clause is expressed in Article 35(1-5) of the constitution as:

*“Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men. 2. Women have equal rights with men in marriage as prescribed by this Constitution. 3. 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. 4. The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.”*¹⁰⁷

Customary and religious laws and courts are recognized in the FDRE constitution. Article 34(5) of the constitution states that:

¹⁰⁵Negasa Deressa.2016. “The Role of Land Certification in Securing Women’s Land Rights in Beneshangul-Gumuz Region, Ethiopia: does legal pluralism serve their benefits.” Paper prepared for presentation at the 2016 world bank conference on land and poverty,the World Bank - Washington DC, March 14-18, 2016. P.20.

¹⁰⁶Tsegaye Regassa. 2009 “Making Legal Sense of Human Rights: The Judicial Role In Protecting Human Rights In Ethiopia.”Mizan law review Vol. 3 No.2, P.299-300.

¹⁰⁷ See article 35 and 25 of the FDRE constitution

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.

Article 78 (5) of the same constitution also states that:

Pursuant to sub article 5 of article 34, the house of people's representative and state councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the constitution shall be organized on the basis of recognition accorded to them by this constitution.

However, the customary and religious laws are required to operate in a manner, which is compatible to the FDRE constitution. The constitution in its 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 public official which contravenes this constitution shall be no effect."*¹⁰⁸

Cultural rights of all citizens of Ethiopia are also guaranteed in the FDRE constitution. According to the constitution under question, all the nations, nationalities and people of Ethiopia have the right to express, develop and promote their culture. The government is also responsible to support on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals and the provisions of the Constitution.¹⁰⁹

In addition to the constitutional provision with regard to women's equal entitlement to all rights including to nondiscrimination in all spheres, there are also policies that the Ethiopian government adopted to tackle problems of inequality encountered by women. Among the policy frame works, the following are the prominent ones.

¹⁰⁸ See article 9 of the FDRE constitution

¹⁰⁹ See article 91 of the FDRE constitution

The National Ethiopian Women's Policy (NEWP)

This national policy was enacted in 1993 and it announced the commitment of the Ethiopian government to gender equality.¹¹⁰ According to the policy's identification, patriarchal system is the key factor that contributed to women's political, economic and social discrimination, which is re-enforced by traditional practices that give credence to culture and religious norms and values over women's human rights. Thus, according to the policy direction, the harmful traditional practices are the areas that need a concentrated effort by all stakeholders.¹¹¹

National Plan of Action for Gender- Equality (NAP-GE)

The Women's Affairs Office has formulated a national action plan for gender equality in 2006 in keeping with the government's commitment to the Beijing Platform for Action. The plan is intended to be used as a tool for the promotion of gender equitable development. It also works to achieve the millennium development goals and the objectives of gender equality expressed in the 1995 FDRE constitution. To do so, women and men should have equal access to resources and decision making. Women's participation in decision-making is among the priority areas identified by the plan.¹¹² Lack of decision-making rights for women is among the gaps identified by this plan. The plan has provided certain strategies so as to ensure gender equality. Amongst, improving the lives of women and reducing their workload are areas given priority.¹¹³

In addition to the aforementioned policies, Ethiopia is making several efforts to strengthen national structures for achieving gender equality. The GTP I & II also dealt with women's status in social, economic, political and cultural affairs. For instance Promoting and empowering the equitable benefit of women and youth was at the heart of the GTP-I. The plan tried to ensure the socio-economic and political benefit of women by increasing girls' enrollment in school and other reforms to enhance the status of women.¹¹⁴ In addition, equality between men and women, boys and girls is one of the central pillars of the growth and transformation plan II. The plan has given a due attention to implement women's development and growth package and to increase

¹¹⁰ MoWA.2006. National Action Plan for Gender Equality (NAP-GE) 2006-2010: Addis Ababa, Ethiopia. P.1-2

¹¹¹ Final Report: Ethiopia Country Gender Profile, December 2006, *Wabekbon* development consultant plc, P.11.

¹¹² MoWA.2006. National Action Plan for Gender Equality (NAP-GE) 2006-2010: Addis Ababa, Ethiopia. P.1-2

¹¹³ Final Report: ETHIOPIA: Country Gender Profile December 2006 *Wabekbon* Development Consultant PLC. P.11

¹¹⁴ The Federal Democratic Republic of Ethiopia Growth and Transformation Plan (GTP) 2010/11-2014/15, Ministry of Finance and Economic Development (MoFED) September 2010 Addis Ababa, p 11&12.

women's equal participation in political and decision-making process. Furthermore, the plan is aimed at enhancing women's participation in decision-making process and to increase their proportion in leadership positions.¹¹⁵

In the national human rights action plan, it is stated that the government has taken institutional and administrative measures to eliminate problems encountering by women. Institutionally the government has been mandated the ministry of women, children and youth affairs to manage and administer issues related women's rights. There is also a standing committee for women's affairs established by the HPR to oversee the respect, protection and implementation of the Constitutional rights of women. At regional states and City Administrations levels, the women, children and youth affairs bureaus have been mandated to attend to women's affairs. There are also women's affairs sections in all federal executive institutions with the task of mainstreaming gender related issues. There are also established offices that follow up women's affairs at the *kebele* and sub city levels. Plus the government has also been enacting laws providing materials to support efforts of women to organize themselves.¹¹⁶

Administratively, the government has also taken a measure to enhance women's status in all spheres. There are plans and programs developed by the government including the GTP, women's sectorial growth and transformation plan, sustainable development and poverty reduction program and poverty eradication and accelerated development plan, national women's action plan for gender equality, Ethiopian women's growth and change packages and national gender inclusion guidelines and Ethiopian women pastoralists and semi-pastoralists growth and change package. Those plans and programs have enhanced the respect of women's rights in terms of avoiding antidemocratic perceptions on the respect of women's rights.¹¹⁷

Generally, the aforementioned promised non-discrimination clauses have less implementation on the ground because of several reasons. The commitment of the state to ensure their implementation seems less positive especially in cultural lives since most traditional societies are bound by cultural norms and values than by the modern laws.

¹¹⁵The Federal Democratic Republic of Ethiopia Growth and Transformation Plan (GTP) 2015/16-2019/20, Ministry of Finance and Economic Development (MoFED) P. 209.

¹¹⁶ The Federal Democratic Republic of Ethiopia National Human Rights Action Plan, 2013-2015.

¹¹⁷ Ibid

Chapter Three

Brief Description of the Study Area and an Overview of Institutions Handling Disputes in the Study Area

3.1. Description of the Study Area

The study is carried out in southern zone of Tigray region particularly in Raya Alamata district /Woreda/. Administratively, the Tigray region is divided in to 6 zones, 34 rural districts and 12 town districts. Each district is subdivided in to *Tabias* and each *Tabia* is divided into *kushetes*. The division is made based on natural boundaries like rivers, mountains, settlement pattern, and population size.¹¹⁸

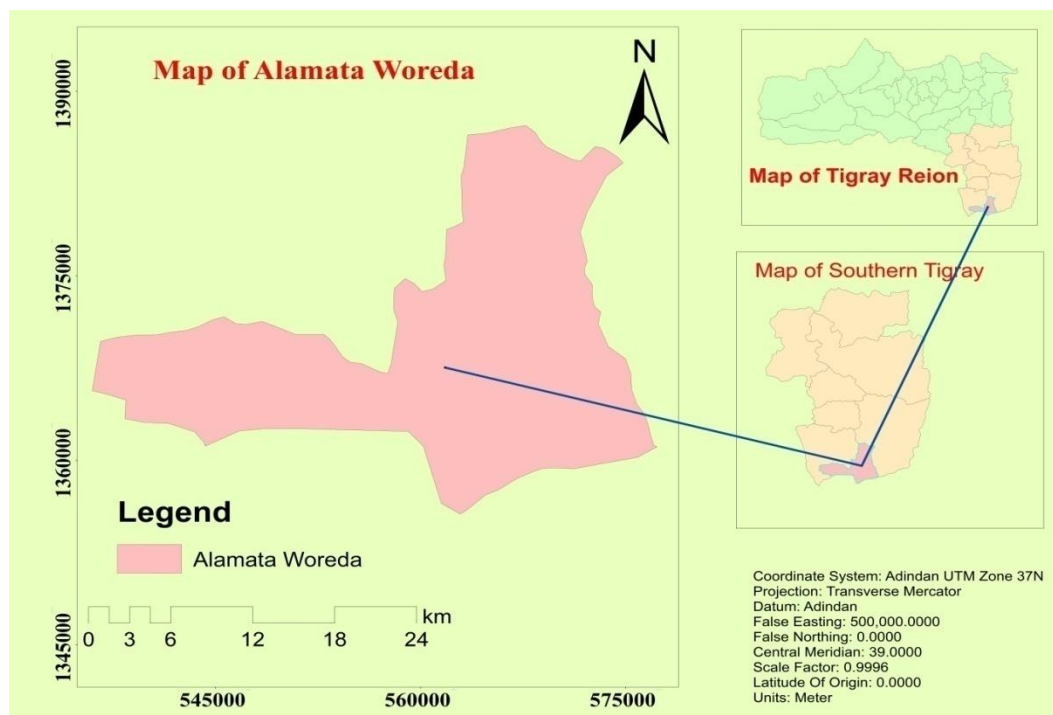
Southern zone of *Tigray* is one of the six zones in Tigray regional state of Ethiopia located between 12°14'53 9"-13° 06'08"N latitude and 39°10'45 7"-39° 53' 41.7"E longitude. The total area of the zone is 499,616.1 hectare. The physical landscape of southern Tigray is characterized by mountains, valleys and gorges. The zone has an average altitude of 1400 to 1800 meters above sea level. The topography of the Zone is divided in to three categories. The first category is *Kola/lowland/* that covers 40.4% of the zone's area. This area has low rainfall and high temperature compared to other zones in the region. The second category of the area is *Woina-dega/middle highland/*. This makes up to shares 29% of area with an average altitude of 1800-2400 meter above sea level. This part has medium rainfall amount and moderate temperature. The third is *Dega/highland/*, which is 2400 - 3400 meter above sea level. This area has relatively higher rainfall and cooler temperature.¹¹⁹

¹¹⁸Nigus Gebremedhn. 2011. "*The Impacts of Climate Change on Rural Livelihood and their Adaptation Methods: The Case of Alamata Woreda, Southern Tigray.*" Unpublished MA Thesis: Addis Ababa University, Department of Geography and Environmental Studies, P.24.

¹¹⁹M.G. Abrha et al. 2015. "Local Climate Trends and Farmers' Perceptions in Southern Tigray, Northern Ethiopia.": American Journal of Environmental Science, Department of Geography and Environmental Studies, Aksum University, Aksum, Tigray, Ethiopia, P.263.

3.1.1. Location and Demography of Raya Alamata District

Raya Alamata is among the 8 districts of the Southern Zone of Tigray region, which is located 600 km north of Addis Ababa and about 180 km south of the Tigray Regional capital, Mekelle. Geographically the District is situated between 12° 15' 0" N and 12° 25' 0" N Latitude and 39° 15' 0" E and 39° 45' 0" E longitude. The total area of the District is estimated to be 550 square kilometers. The average altitude of the district ranges from 1178 to 3148 meter above sea level. 75% of the district is low land, with an elevation of 1500 meter above sea level. Only 25% of the district is located in intermediate highlands between 1500 and 3148 meter above sea level. The district is bordered on the south and west by the Amhara region, on the northwest by Ofla and on the northeast by Raya-Azebo districts.¹²⁰

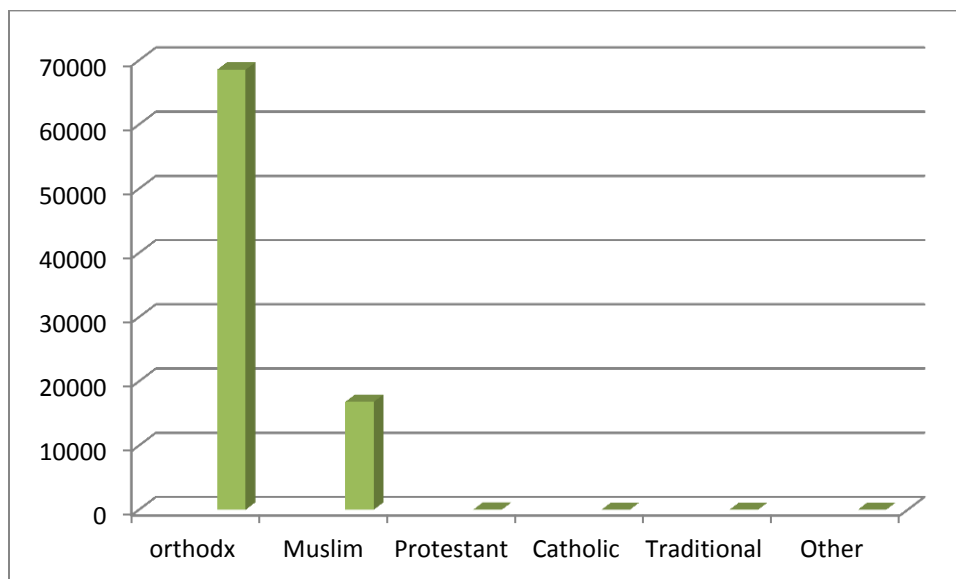


Map 1: Map of Almata District (Source: Developed from GIS Software)

According to the 2007 national census conducted by the National Central Statistical Agency of Ethiopia, the total population of Tigray region is 4,316,988. Of whom, the 2,126,465 are male while the remaining 2,190,523 are female. The south Zone of Tigray region has also a total population of 1,006,504. Of the total population, 497,280 are male and the remaining 509,224

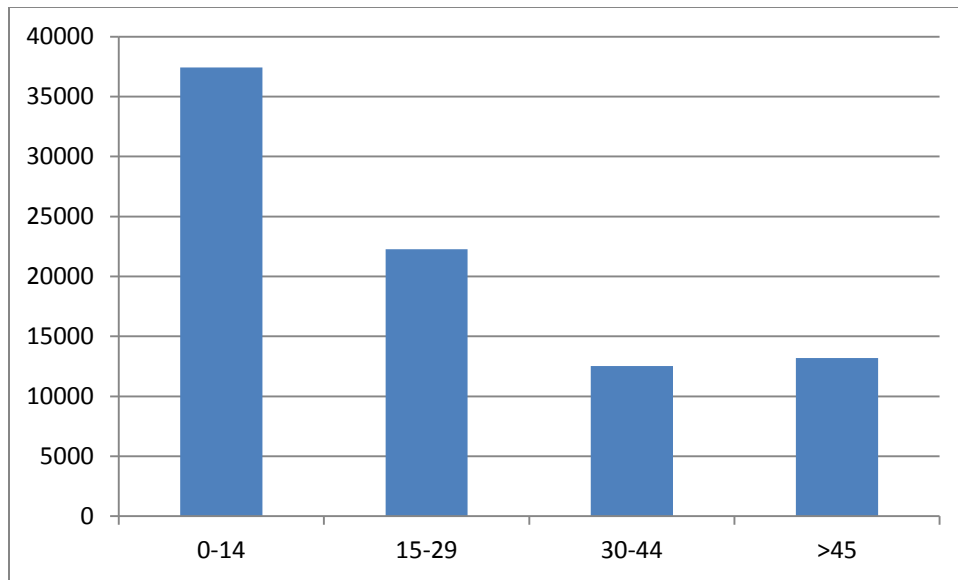
¹²⁰Nigus Gebremedhn, Supra note 117, p.27.

are female. According to the census, Raya Alamata District has a total population of 85,403. Of the total population, 42,483 of them are male and the remaining 42,920 are female. 4,563 or 5.34% are urban inhabitants while the remaining 80,840 are rural inhabitants. Of the total population, 68,550 (34,221 male and 34,329 female) are followers of orthodox Christianity. 16,805 (8241 male and 8564 female) are followers of Islamic religion. 29 (12 male and 17 female) are followers of Protestantism. 17(7 male and 10 female) are also followers of traditional religion. Two men are also followers of Catholicism and other religion (one person in each religion). The following graph summarizes the number of people who are adherents to the religious groups in the study area.



Graph1: Religious groups in the study area (Source: 2007 CSA)

With regard to the ethnic groups in the area, there are three ethnic groups namely Tigryans, Amharas and Oromos. Of the total population, 37430 (43.8 %) are children who are under the age of 14. 22265 (26%) of them are also youth whose age ranges from 15-29. 12518 (14.7%) of the total population are adults who are in the age of 30-44. The remaining 13190 (15.4%) are those whose age is above 45. The following graph shows the age interval of the people.



Graph 2: Age group of people in the study area (Source: 2007 CSA)

3.1.2. Brief History of the Study Area

The term Raya refers to both the community's ethnic identity and its homeland. There are studies that hint as Raya is among the Oromo clans who expand to *job'a* and north *Angot*. Thus, the place named by the clan.¹²¹ It is also believed that the word Raya is derived from an *Afan* Oromo word *Rayti* that is a place in Harar.¹²² The Oromo people have the culture of naming their actual residents by their former place where they were living in. Most places in the current Raya are named by them.¹²³ So, when the Oromo people move from Harar to the present place-Raya, they named the place *Rayti* referring to the name of their former place and later become to be called Raya. There are also people who argue that the origin of the word Raya is a Tigrigna word *-Nereaya* and later become to be called Raya.¹²⁴

Raya Alamata is also among the areas known by the name Raya. As far as the meaning of the word Alamata is concerned, there are three lines of arguments. According to the first argument,

¹²¹Mengesha Retie .2010. "Cultural and Ethno-History of Raya in Ethiopia: Conflict Resolution and Ritual Practices in Raya since 1930 ."

¹²²Haftu Kidanu. 2006. "Gumma: The History and Struggle of the Raya People on the History of the Tigray people ." Bedayo publishing press, Mekelle, Ethiopia, p.7

¹²³Kibrom Asefa. 2005. "The Culture and History of Raya people." Far East Publishing Press, Addis Ababa, Ethiopia. P.75-76.

¹²⁴Haftu Kidanu, supra note 122, .p.7

the word Alamata is derived from an Amharic phrase - *Allah Meta* (አላህ መጣ). Within this phrase, there are two different views on the historical event that caused saying *Allah metta*. According to the first view, the historical event for the phrase of *Allah metta* is as a result of shortage of rainfall in the area since time immemorial. During this incident, while the farmers were plugging their land without rainfall, someone who is new to the area asked them why they are plugging without rainfall. They replied that ‘wait Allah will come’ (አላህ ይመጣል ጠብቅ). The people in the area prayed with the mediation of the *Dubarti* (female prayer ritual leaders) and the rainfall came immediately. Consequently, the man who formerly asked them about why they are plugging the land without rainfall said to them ‘Allah has come’ (አላህ መጣ). From this historical incident onwards, the name of the area becomes to be called Alamata.¹²⁵ The second misleading oral account similar to the above narrative argues that though the phrase *Allah metta* is the origin for the name Alamata, the historical event for the saying of *Allah Meta* is quite different. Accordingly, it was during the reign of *Libne Dingle* that the phrase *Allah Meta* has been said by the emperor’s troops. This means, during the invasion of *Ahmed Gragn*, the troops of the emperor were adjourned in the current place-Alamata. At this time, when the troops of *Ahmed Gragn* came, the emperor’s troops said that ‘collect your property Allah (Islam) has come’ (ጉዕዞኻ ጠቅልል አላህ (እስላም መጣ). From this saying, the name after a time became to be called Alamata.¹²⁶

The other etymological origin for the name Alamata is an Amharic word –‘*Alamtew*’ (አላምጠዉ) that means ‘swallow it’. This phrase has been said by *Emperor Libne Dingle*. When the troops of the emperor have been defeated by the troops of *Ahmed Gragn*, the troops of the emperor were escaping from central Ethiopia to Tigray. During their journey, they were adjourned in the present place-Alamata. The military troops of *Ahmed Gragn* were looking the troops of the emperor by using the symbol of smoke (ጡሽ). The king has ordered his troops to eat raw meat to escape from the subjugation of the troops of *Ahmed Gragn*. However, the troops of the king had not the experience of eating raw meat. The troops asked their emperor by saying ‘how we can eat it?’ At this juncture, the king said that ‘አላምጠዉ፣ አላምጠህ ዋጠዉ (feed on! Chew and swallow it!).’ From this historical event, the troops began to call the place as “a place where by we

¹²⁵Haftu Kidanu, supra note 122, p.187-188.

¹²⁶ Ibid

chewed and swallowed a raw meat” (ጥሬ ሥጋ አላምጠን የዋጥንበት ቦታ). After a time the name has become to be called Alamata.¹²⁷

The third argument on the meaning of the word Alamata is historically and linguistically quite different from the above views. According to this point of view, the word Alamata is derived from two of *Afan Oromo* words ‘*hadda* and *matta*’ (ሃዳማጣ). ‘*Hada*’ means digging and finding water in a place near to river and ‘*matta*’ refers to forest. The two words jointly gave the meaning of ‘finding water in forest area through digging.’¹²⁸ The present area - Alamata was also covered with a very dense forest until 1940’s. The Oromo people who were settled in this area were digging the land and finding water especially in winter season. Thus, they called the place *Hadda matta* and later become to be called Alamata. The name Alamata was formerly designated to the current Alamata town but after a time it become a general name for both the town and the rural and urban areas within the jurisdiction of Alamata district.¹²⁹

The current places called by the name - Alamata can be classified in to two categories. The first is the highland area, which includes places like *Soria*, *Merewa*, *Aqojera*, *Tsetsera* and *Bora*. The majorities of people settled to the west direction of *Alamata* town are those who have Tigryan identity and are followers of Orthodox Christianity. The second category of the area is the lowland, which is occupied by the people who are settled in the east and south direction of Alamata town. The place is also known by the name- *Raya*. The former settlers in this place were the *Tigrians* and *Amharas*. But, after a time, the area occupied by Oromo expansionists. The *Tigrians* migrated to the direction of *Qelisha* and *Tsetsera* and the Amharas to Kobo. At this time, *Afan Oromo* was the dominant language in the area. After a time, the descendants of the former settlers (the *Tigrians* and *Amharas*) over which the two communities have a claim come from different parts to restore their forefathers’ place of residence. Finally, the three ethnic groups fused together and continued living together in peace and harmony. Regarding to the faith of the people, formerly, Islamic religion was the dominant one in the area. But now, followers of orthodox Christianity are the majority. With regard to the language of the people, Tigrigna language has large numbers of speakers. But in areas such as *Selen wuha* and *WajaTimuga*,

¹²⁷ Ibid

¹²⁸ Ibid

¹²⁹ Ibid

Amharic is the dominant language. *Afan Oromo* is also the third language in the area especially in *Dayou* and *To'o*.¹³⁰

3.1.3. Major Livelihood Activities in the Study Area

As in most parts of Ethiopia, the livelihood strategy in *Raya Alamata* district of southern zone in *Tigray* regional state is predominantly dependent up on the performance of agricultural sector. The area is known for mixed farming whereby rearing of livestock is the second source of livelihood. The production of crops such as *Teff*, sorghum, maize particularly in the low lands is common. On the other hand, the high landers produce barley, wheat and pulses. The farmers used oxen as the major plough engines. Furthermore, donkeys, horses and mules contribute significantly in the transportation of people, water and goods.¹³¹ According to the 2007 national census conducted by the CSA of Ethiopia, of the total population, 35,699 are economically active and 9,154 of them are economically in active. 34,424 of them are also employed and 1,273 of them are unemployed.¹³²

3.2. An Overview of Institutions Handling Disputes In the Study Area

Dispute is among the characterizing features of human life. It is quite possible to conclude that life itself is a struggle. When people struggle to attain their need, there are consequential bounds arising out of such struggles. Sometimes, the struggles in life lead into disputes.¹³³ At home with our families, at work with colleagues, in our social lives or in negotiations between governments often dispute pervades our relationships. Hence dispute is often described as a fact of life, a natural phenomenon woven deeply in our daily life.

According to the data obtained from the police station of *Raya Alamata* district, the main factors that lead people in to dispute in the study area include border related issues, issues of inheritance,

¹³⁰ Ibid

¹³¹ Pamphlets Prepared by the *Raya Alamata Woreda*, Office of Agriculture and Rural development, 2016

¹³² 2007 National Central Statistical Agency of Ethiopia

¹³³ Gowok. M, Shipi. 2008. "Alternative Dispute Resolution in Ethiopia - A Legal framework." Available on: <https://www.ajol.info/index.php/afrrrev/article/viewFile/41054/847>, P.265.

grazing and excessive alcohol consumption. As a result of these and other factors, several criminal offences happen in the district. The nature of the disputes is more interpersonal. The types of the criminal offences include, robbery, fighting each other, physical attacks, trial of killing, murder, rape, theft, burning of home and crops, kicking someone and trying to escape. Thus, any dispute happening in the study area is resolved either in formal or in an informal way.¹³⁴

3.2.1. Formal Ways of Dispute Settlement Mechanisms in the Study Area

Forum

The *forum* is composed of individuals who are assigned at all *Kusshets* for the purpose of preventing and easily handling criminal offences in their localities. Their appointment is by the *Aboselam* in collaboration with the people. Their primary task is serving as a forum of communication to the *Aboselam* by informing the individuals who cause any form of conflict in their surroundings.¹³⁵

Abo-Selam

Abo Selma is a police who is assigned by the government and placed at each *Tabia* to maintain peace and stability. The *Aboselam* in *tabia* perform their duties in collaboration with the Forum. The forum brings cases to the *Aboselam* if the case is beyond their capacity. Based on the difficulty of the case brought to them, they try to resolve the issue as much as possible. However, if the case is beyond his/her capacity, he/ she will refer to the police station and the formal court will resolve it.¹³⁶

¹³⁴ Interview with Solomon T. Crime investigator in *Raya Alamata Woreda* police station, April 3,2018

¹³⁵ Ibid

¹³⁶ Ibid

Formal Courts

The formal Courts are also the main formal institutions used to administer justice and minimize the degree and extent of disputes. In the study area, there are two levels of courts. The first one is the social court, which is operational at each *Tabia*. This means the entire 15 constituent *Tabias* have their own social courts. There are three judges who serve as chairman, secretary and accountant. The most cases that the social courts can handle are cases related to land administration, family issues and interpersonal conflicts, which are not resolved at the grass root level by the *Shimagiles*. The second is the first instance court at the *Woreda* level. The cases, which are not handled effectively by the social courts, and serious criminal cases will be brought to the first instance court at the *Woreda* under discussion. If the litigants are not still satisfied by the decision of the first instance court, they have the right to appeal to the higher court at zone level. If the issue is still unresolved, they can appeal to the Supreme Court at regional level. The final court of appeal that litigants can appeal to is the federal Supreme Court.¹³⁷

3.2.2. Overview of Customary Dispute Settlement Mechanisms in the Study Area

In Tigray region, customary dispute settlement mechanisms have a critical role in handling disputes. Customary dispute settlement institutions are more preferable than the formal justice system since they are easily accessible and cost effective. Most people accent the point that it is difficult to establish an effective and practical justice system without the involvement of the traditional dispute settlement institutions. In the region, *Shimglma*, *Iddir*, *mahber* and the Shari'a court are the institutions that play a critical role in resolving disputes.

The customary courts most of the time handle civil cases since the state does not allow criminal cases to be handled by the customary courts. The customary dispute settlement institutions in the region under discussion plays a critical role by supporting the formal justice system, preserving social harmony and establishing permanent peace in the community, minimizing the amount of time and money that a litigant spend in the formal justice system and providing socially

¹³⁷ Interview with Teemti, Secretary in the Social Justice in *Garjale Tabia*, March 29, 2017 and Mengesha C., president of Raya Alamata Woreda first instance court, March 23, 2018.

acceptable solutions for people in the respective communities.¹³⁸ In some parts of Tigray region, the Sharia court, which is a religious dispute settlement mechanism, is operational at *woreda*, zonal and regional levels. The court examines cases like divorce, family issues and other related cases. In the study area, the Muslim society handles disputes through the sheiks at all mosques and if the case is not easily solvable, they can bring their case to the Sharia court at *woreda* level in Alamata town.¹³⁹

In *Raya Alamata* district, there are several customary ways of dispute settlement mechanisms. From among, the following are the prominent ones.¹⁴⁰

Shimgilina

Shimgilina is a traditional method or process of instigating and settling disputes usually carried out by certain socially elected elders' council. The actors in the process of handling disputes in this system are called *Shimagiles* or elders' council. In the study area, *Shimgilina* has an important grass root peacemaking role and restoration of relationships among people. The *Shimagiles* are all men who are appointed by the community. They are available at each *Kushet* (the lowest administration institution in the study area) and they serve as mediators by using their accumulated experience and wisdom of handling disputes. They handle several issues such as family case, divorce, marriage and other easy interpersonal conflicts in a restorative manner.¹⁴¹

Dubarti

Dubarti is a traditional system practiced by a group of women in the study area especially in the times of difficulties. This cultural practice serves as a conciliatory forum between disputants particularly in homicide cases. Though the *Abo-Gereb* are the authorized entities to conclude the reconciliation process, the powerful language of the *Dubarti* in the process of reconciliation is very influential. Culturally, it is believed that denying the *Dubarti* will bring divine punishment and hearing for the *Dubarti* will bring divine blessing. In this cultural landscape, socio-cultural role women play in the society is attributed to women's special place in the society i.e, their

¹³⁸Shimelis Gizaw et.al 2008. "Customary Dispute Resolution in Tigray Region: Case Studies from Three District: in Alula Pankrust and Getachew Aseffa (eds), Grass-root justice in Ethiopia: The Contribution of Customary Dispute Resolution. " Addis Ababa: Ferench Center of Ethiopian studies, p. 217.

¹³⁹ Interview with Sheik Tijan, April 14,2018, in Waja town

¹⁴⁰ Interview with shewit, in *laelay dayou Tabia*, March 22, 2018.

¹⁴¹ Interview with Hirit, in *Garjale Tabia*, March 26,2018.

maternal role. They are considered as being sources of life. Among the powerful languages that the women in the *Dubarti* used in the reconciliation process includes ሕደጉ! ትርጉሙ የኹም! ካብ ፍቅድ ባህልና የኹም ትወፅእኹም! ካብ ባህሊ ድወፅኦ ወጋ የብሉይ! ዉሉድ ኣይተክልይ! This means stop! You will be cursed! Don't be out of our culture! Anyone who is deviant from his culture is worthless! If you deny the *Dubarti*, you will not establish your generation in the place you are living now! They begin the reconciliation process by saying እርፎ መረባ-- መረባ (erfo mereba... Mereba--staring of healing process) ዕርቆ ሰነዖ ይዉረድ እርፎ መረባ--መረባ (Let us have a reconciliation) ፀባይ መዓርይይ ይግበረልና -እርፎ መረባ--መረባ (Let God make to us honey and milk), እግዚአብሔር ከርስቶስ (lord has compassion up on us O! Christ!).¹⁴²

On the other hand, the women who are the speakers of Amharic language in the study area express their healing process by saying ምድርን በዘረጋዉ ባህሩን ባረጋዉ ጌታ ይዘንሃል ታረቅ (reconcile please for Lord's sake who is the creator of earth and sky.)¹⁴³ ለኣላህ/ለእግዚአብሔር/በለህ ታረቅ (please reconcile for Allah's/ God's sake), ተዉ እሱም ሳያስበዉ ነዉ (Leave it! He did so unintentionally), ሊገድል ብሎ ኣስቦ ሳይሆን ጌታ ወርዶብት ነዉ (His intention was not to kill but all things happen on him by God as a punishment against him),ተዉ ብለን ቁመናል ሸህም ቄስም መነኩሴም ለማስታረቅ ጌታን ይዘን ቁመንብሃል(we are standing here with priests, monks and sheiks for reconciliation.)¹⁴⁴

This resonates to the *Erfo Mereba* customary court in Wollo whereby a woman religious association known as *Erfo Mereba* resolves disputes. In north Wollo it is called *Erfo Mereba*, while the lowlanders in the southern part of north Wollo zone call it *Duberti*. In the study area, the *Duberti* is an association of women while *Erfo Mereba* is the opening statement the women used while starting the traditional prayer in the reconciliation process.

Abo-gar

Abo-gar literally means Muslim holy men. It is a title which is designated to the religious leaders in Islamic religion. They have good social acceptance especially by the Muslim communities.

¹⁴² Interview with Asmamaw A., public Prosecutor at the office of justice in Raya Alamata *Woreda*, March 23, 2018, in Alamata Town.

¹⁴³ Interview with Jember, April 14,2018

¹⁴⁴ Interview with Debitu, in Waja town , March 23, 2018

Thus, the *Abo-gar* in Raya Alamata have a critical role next to the *Abo-Gereb* in successfully achieving dispute settlement and peace agreements.¹⁴⁵

Abo-may

The literal meaning of *Abo-may* is father of water. The *Abo-may* are individuals who are elected by people of a certain community so as to regulate the utilization of water in irrigation. This system is common in the communities that have a water resource that can be used for irrigation. The primary task of the *Abo may* is handling disagreements and conflicts between the farmers while utilizing the water. As water is often a source of conflict especially in settings where there is a shortage of water, the *Abo-may* plays a significant role in resolving disputes related to the scarce resource.¹⁴⁶

Abo-Gereb

Gereb literally means river. The nomenclature of the customary court under question has an analogical meaning with a river. The actors in the customary court are called *Abo-Gereb* (father of river). The analogical reason for naming the system as ‘*Gereb*’ or river is that as a river is a place where by some one finds water in his/ her time of thirsty and become satisfied after he/she drink , disputant parties who come to the *Abo-Gereb* seeking consensus will also be satisfied by the decision of the *Abo-Gereb*. So, it is a locally established mechanism of handling disputes deposited within elders and transmitted from generation to generation. Currently, the work of the *Abo-Gereb* is not limited to handling cases of homicide. They also contribute significantly in preventing other criminal offences and HTPs in the communities.¹⁴⁷

The *Abo-Gereb* are more powerful than the *Shimagiles*. They examine cases, which are not effectively handled by the *Shimagiles*. Within the *Abo-Gereb*, there is a hierarchy of power sharing and hierarchical structure. There are *Abo-Gereb* at *Tabia*¹⁴⁸, zone¹⁴⁹ and at *woreda* levels. In this hierarchical setting, the cases that the *Abo-Gereb* at *tabia* level can handle are

¹⁴⁵ Zenabu Abebe.2014. “*The Contemporary Use of Traditional Medicine: The Case of Raya Alamata.*” Un published MA thesis: Mekelle University, department of History and Cultural Studies.

¹⁴⁶ Interview with Darge K., Chairman and Judge in the GCC at Woreda level, April 13, 2018.

¹⁴⁷ Interview with Ayte Abrha k., vice Chairman and Judge at Zonal GCC, March 22, 2018, in Alamata town.

¹⁴⁸ *Tabia* is the administrative unit which is lower than a district and higher than the *Kushet*.

¹⁴⁹ According to the *Gereb* administrative structure, Zone is the collection of three or four tabias which is narrower than the *woreda* and broader than *tabia* in its scope and geographical coverage.

easier than the cases handled by the zonal and woreda level *Abo-Gereb*. The *Abo-Gereb* at *Tabia* level most of the time handles case, which are not resolved by the *Shimagle*. Though there are no clearly mentioned exclusive and concurrent powers and functions in the *Sirit/law/* of the GCC, handling cases of homicide are exclusively given to the *Abo-Gereb* at zone and *woreda* levels.¹⁵⁰

The *Gereb* customary court is established for the purpose of preventing revenge, maintenance and preservation of social peace and keeping social harmony in the communities. Ayte Abrha K. who is a vice chairman and judge in the zonal customary court, expressed the necessity of the GCC as:

*“In our community it is difficult to imagine the peaceful existence of the community without the Abo-Gereb. You know the Raya community is characterized by struggling for dominance within each other. Given this living fact, several cases of murder and other serious criminal offences are obvious in the society. Worst of all, revenge (ሕጎ ምፍሳሪ) against someone who injured or killed one’s relative is the culture of the society. Revenge is also characterized by killing each other. So, the establishment of the GCC is to stop killing one another or revenge in the communities. But, currently the scope of the customary court is broader than before. For instance, in addition to dealing with cases of homicide; it also works in avoiding harmful traditional practices and crimes.”*¹⁵¹

According to some informants, the GCC has a significant role especially in restoring peace even more than what the government can do. The government is highly dependent on the *Abo-Gereb* especially if case of homicide is happened in the communities. The *Abo-Gereb* have the power to easily restore the social harmony especially between the relatives of the disputants.¹⁵²

¹⁵⁰ Interview with Darge K., Chairman and Judge in the GCC at *Woreda* level, March 27, 2018, in Alamata Town.

¹⁵¹ Interview with Ayte Abrha K., vice Chairman and Judge at zonal GCC, March 21, 2018, in Alamata Town.

¹⁵² Interview with key informants, March 23, 2018, in Alamata town

Chapter Four

Brief Description of the Gereb Customary Court

4.1. Brief History of the Gereb Customary Court

The GCC is the most popular locally established customary court in Raya communities in general and in Alamata district in particular. The word *Gereb* refers to the system while *Abo Gereb* stands for the actors in the system.¹⁵³ Historically, GCC was established by a person whose name is *Nur-Geta Tewodros* since time immemorial. The immediate cause for the establishment of the system was the death of the son of *Nur-Geta* who has been killed by someone. *Nur-Geta* has held the killer of his son, veiled him and retaliated by placing him in granary (*Gutera*). The brothers of the deceased were angered by the act and started looking for the killer in order to revenge for the killing of their brother. But the killer was in the container and *Nur-Geta* protected him by giving food and water. The brothers of the dead continued searching the killer of their brother and finally they failed to find him. At this point, *Nur-Geta* told to his sons that “if you failed to find him, why don’t you make reconciliation with him?” The brothers get confused and they replied that ‘ኣብ ኹሉ ደሊናዮ ናግንዮ ኣይኸኣልናይ ንቻትሎላ ንተዓረቕላ ኣበይ እንሆ?’ This means ‘we looked for him everywhere and we could not find him and now whether we will kill him or go for reconciliation where can we find him?’ *Nur-Geta* said to his sons that ‘ኣብ ድጉበኣ ገብኡ ሽማግሌ ያምፅኦባ ንዕረቕ የና ብልኹም ቻል እተደለይ’ this means ‘the elders will bring him and promise me to make the reconciliation with him. Looking for him and holding him accountable is the duty of the elders.’ He went on and reaffirmed by asking his sons again to promise him that they won’t go for revenge but rather agree for the reconciliation. The sons said ‘ደግሞ ታማ ንዓዩኹይንና ደኽምና ስእንናዮ ንፈዲ ነበርና እሺ ታማ ንዕረቕ’ this roughly translates ‘from now onwards what can we do? We strive to find him for revenge and we failed to do so, thus, we are ok with reconciliation.’ Subsequently, *Nur-Geta* selected elders from the community. At this time the sons said that ‘ዓዲ ሰብ ይፅናሕ ዓዲ እንስሳላ ኣይቻረየናይ ምድላይ, ሽማግሌ ካበይ ካምፅኡዎ ይኡ?’ this means ‘let alone the residences of human beings we even looked for him at places where animals stay. So where can the elders find him?’ *Nur-Geta* replied that “ሽማግሌ ኮ ሃም ሥላሴ ይኡ which

literally means ‘elders are like the Holy Trinity’ as the Holy Trinity brought the human nature from unknown to known, from non-existence in to existence and the elders will also do the same. Now if you fail to find the killer of your brother, let’s make an appointment and specify a place that we can meet for the reconciliation.” They made an appointment. At the time of the appointment, *Nur-Geta* brought the criminal from the granary where he kept him and passed him over to the elders’ council at night. Subsequently, they made the reconciliation. At that time, the elders asked *Nur-Geta* about the compensation for the homicide. *Nur- Geta* said that ‘I cannot decide the amount of compensation for homicide on my son. This is the task of the elders’ council.’ The elders refused his idea and gave him the authority to decide the amount of compensation. He decided the compensation of homicide to be 40 *birr*. At that time, it was difficult to raise 40 *birr*. He intentionally made the compensation (penalty). So that people will be discouraged to commit such crime. Accordingly, the amount of the punishment increased from time to time. From this historical antecedent, the system has been transmitted from generation to generation. Nowadays, the court is fully operational throughout the *Raya Alamata* district.¹⁵⁴

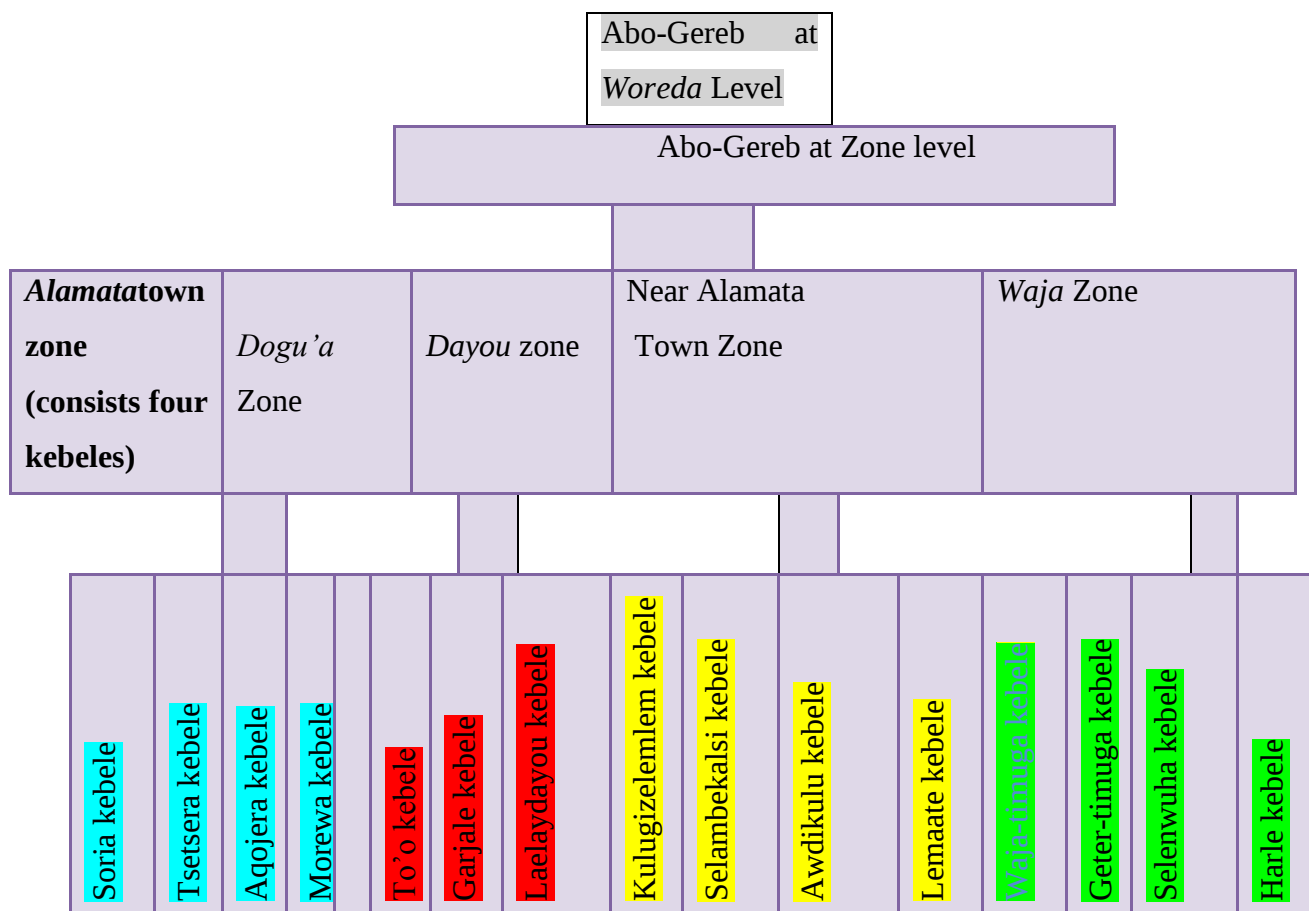
4.2. The Administrative Structure of the *Gereb* Customary Court

The institutional setting of the GCC has a hierarchical structure. In the hierarchical setting, the lower courts are the *Gereb* at each *Tabia*. The next court is also the *Gereb* at the Zone level which comprises four *Tabias* except one zone (*dayou*) which comprises three *Tabias*.¹⁵⁵ The final and the highest court of appeal and that has an oversight mandate to all the courts both at zone and *Tabia* levels is the *Gereb* at the *Woreda* level. The level of the difficulty of cases examined by the aforementioned levels of courts varies based on the hierarchical setting.¹⁵⁶ The following figure summarizes the structure of the *Gereb* customary court.

¹⁵⁴ Interview with Ayte Abrha K., vice Chairman and Judge at zonal GCC, March 21, 2018, in Alamata town.

¹⁵⁵ Interview with Tibereh, Expert of crime prevention and investigation, March 22, 2018.

¹⁵⁶ Interview with Darge K., chairman and Judge of GCC at Woreda Level, April 4, in Alamata Town.



Picture1. Hierarchical structure of GCC

There are various leadership positions in customary courts. According to Kuma (2017), there is power division among members of *daanyii*s in the *Warra- Danfaas qaaluu* court which include chairperson, secretary, cashier and members.¹⁵⁷ Similarly, in the GCC there is a power division among the actors whereby different tasks are assigned to different individuals such as the chairman, vice chairman, secretary, cashier, and member.

The rationality behind the hierarchical establishment of the GCC is described by informants as to share powers, to make the court accessible to the society and to easily handle cases at the grass root level. The mandate of the *Abo-Gereb* at all levels is similar except entertaining case of

¹⁵⁷ Kuma Beyene. 2017. "The Inheritance Rights of Women: The Case of Yaa'aa Yaaboo Customary Court in Ambo District, West Shewa Zone of Oromia National Regional State." un- published MA thesis: Addis Ababa university, College of Law and Governance Studies, Center for Human Rights, P.65.

homicide which is the power of the *Abo-Gereb* at *Zone*¹⁵⁸ and *Woreda* levels. The *Abo-Gereb* at *Tabia*¹⁵⁹ level, have not the power to entertain cases of homicide. All *Abo-Gereb* at all levels have the mandate to educate the people about the impact of harmful traditional practices and to interpret the *Sirit* (law of the GCC). Cases other than cases of homicide first and foremost should be brought to the *Abo-Gereb* at *Tabia* level. If the *Abo-Gereb* at this level are not in a position to solve effectively, litigants have the right to appeal to the *Abo-Gereb* at zone level and if not yet resolved, finally they can appeal to the *Abo-Gereb* at *woreda* level. The decision of the *Abo-Gereb* at the *Woreda* level is the final decision. According to the *Sirit* (law of the *Gereb* customary court), crimes and wrong doings are classified in to two categories namely; punishable HTPs and crimes and non-punishable HTPs that can be avoided through awareness creation. Other than case of homicide, the *Abo-Gereb* at *tabia* level imposes a penalty on certain criminal offences and HTPs such as the act of FGM (ብርቅን), rape (አገድድኻ ምድፋር), intimidation and verbal abuse (ፈኸራን ምፍርራሕን) , playing by using whip (ጭጉራፍ ምትኳዕ), deforestation (ደኒ ምጭፍጫፍ), extravagant expenditure for engagement and wedding (ብሕፀ ምክንያት ዝግበር ወፃኢ), breaking up relationships and promises (ሕፀ ምፍራስ), removing hair for loss of a deceased person (አብ ቀብሪ ጨጉሪ ምንጫይ), scratching of face (ገፅ ምምላጥ), extended mourning the death of beloved one crying sitting near graveyards (አብ ሳልሳይ መግልቲ አብ ቀብሪ ቦታ ከይድኻ ምብኻይ), sitting in a specifically chosen place to express grief (አብ ሓዘን ቦታ ፈሊኻ ኮፍምባል), going ahead of a corpse by carrying food and local beer and riding an ox (አብ ቅድሚ ኣስከሬን እንጀራ፣ ሰዋ፣ ብዕራይ ወዘተ ኣሰሊፍኻ ምኻድ), receiving funeral fund with out registration(ደበስ ብደይ መዝገብ ምቕባል), burning a house (ዝሃ ምቅፃል), burning a collected crop (ኩምሪ ምቅፃል), ceremony of return and meeting of spouses, (ናይ መልሲን ቅልቅልን ድግስ), conjuring (ጥንቆላ), wedaja (ወዳጃ), feast of commemoration in Islamic religion (ሰደቓ), Ceremony (ድግስ), assistant of a killer, (አዳጋሚ), revenge (ሕላ ምፍዳይ), theft (ስርቂ),betrayal of trust (እምነት ምጉዳል), loss of body organ (ኣካል ምጉዳል) and breaking reconciliation (ዕርቂ ምፍራስ.) There are preset penalties for the aforementioned list of crimes and HTPs. There are also practices that have no penalty rather that can be avoided via awareness creation.

¹⁵⁸ In the case of the administration structure of the GCC, Zone is a group of Tabias which is smaller than the Woreda. The GCC with the constituent units of four kebeles in Alamata Town is also considered as a fifth zone. But, the GCC of Alamata town is not included in this study since Alamata Town is a separate woreda.

¹⁵⁹ Tabia is an administrative unit which is larger than *Kushet* and smaller than the *Zone* and the *Woreda*

Among the non-punishable practices or practices that can be avoided through awareness creation include the acts of cutting of the uvula (ዐንቀር ምክላእ), Milk teeth extraction (ሰኒ ምዉፃእ), cupping or practice of avoiding stagnant blood from the neck of ill person (ማሕጉማ), washing of the cloths of a mother who gave birth recently in a river in a manner that can pollute the water that most people used for drink from (ገለብ), giving birth through the help of traditional midwives (ጥንቃቄ ዝጎደሎ ምዉላድ), breast feeding for an orphan (ኣድኡ ዝሞተቶ ቆልዓ ጡብ ምጥዋይ), environmental pollution (ናይ ከባቢ ብክለት), chewing *chat* and consuming tobacco (ጫት ምቅሓምን ሽሻ ምጥቃምን), smoking cigarette in the age of under 18 (ትሕቲ 18 ዓመት ሽጋራ ምጫስ), sending a child who is under 18 years old to buy cigarette (ትሕቲ 18 ዓመት ህፃን ሽጋራ ንክዕድግ ምልኣኽ), staying a dead body at home for more than one day until the arrival of all the relatives of the deceased from different parts (ዝሞተ ሰብ ሬሳ ምዉዓልን ምሕዳርን), crying by moving quickly here and there during funeral (ኣብ እዋን ቀብሪ እናጎዮኻ ምብኻይ), refusal to wear shoes as an expression of sadness (ብምክንያት ሓዘን ሳእኒ ዘይምግባር), being dependent and hating work (ተጸባይነትን ሥራሕ ምፅላእን), educating the people who have a misbehaved animal to protect their animal from causing any form of danger on human beings and asking parents to supervise their children's attendance of class are the major mandates of the *Abo-Gereb* at all levels especially those who are at *tabia* level since the Zonal and *Woreda Abo-Gereb* principally handle cases of homicide and other cases which are not handled at *tabia* level.¹⁶⁰

The awareness creation is conducted in churches on Sunday and saints' days, in governmental meetings and in mosques during *jum'a*. In governmental meetings, the governmental officials give one hour to the *Abo-Gereb* in order to deliver their message to the general public. The security and administration office, the Raya development association, the *Abo-selam* and the office of justice in the *woreda*/district/ are the stakeholders that have a positive intervention in the activities of the *Abo-Gereb*.¹⁶¹

The aforementioned practices that the GCC prohibited have a significant contribution in the society in terms of protecting the people from multifaceted problems. Indirectly, the law protected civil, social, cultural and economic rights of individuals in the given society. There are several provisions with regard to civil rights of the people in the concerned society such as

¹⁶⁰The 2008 revised Sirit/law/ of the GCC

¹⁶¹Interview with Ayte Abrha K., vice Chairman and Judge at zonal GCC, March 21, 2018, in Alamata Town

provisions prohibiting homicide, physical harm and revenge. With regard to women's rights, certain provisions are provided. For instance, in the *Sirit*, FGM, early marriage, rape and kicking a pregnant woman are prohibited. In addition, though it is discriminatory, a compensation for a raped girl is provided. Health rights are also indirectly protected in the *Sirit*. For instance the provisions prohibiting practices such as cutting of the uvula, Milk teeth extraction, cupping or practice of avoiding stagnant blood from the neck of ill person, washing of the cloths of a mother who gave birth recently in a river in a manner that can pollute the water that most people used for drink from, giving birth through the help of traditional midwives , breast feeding for an orphan and chewing *chat* and consuming tobacco are aimed at protecting the health of the concerned people. Furthermore the *Sirit* also protected environmental rights. For instance, according to the *Sirit*, deforestation and environmental pollution are prohibited. This provision indirectly protected the right to clean environment.

4.3. Criteria for Selection of Mediators (*Abo Gereb*) at Gereb Customary Court

The Process

The *Abo-Gerb* are elected by local community members. The election begins from the grass root level. The people elect *Abo-Gerb* from each *kushet* to serve at *Tabia* level. The elected ones also elect *Abo-Gereb* to serve at the zone level from among the *Abo -Gereb* at the *Tabia* level. Then the Zonal *Abo-Gereb* elects five people from among themselves to serve in the *Abo-Gereb* at woreda level.¹⁶²

In the case of the *Abo-Gereb*, there is no written guideline that regulate about the time interval and re-election of the leaders and Judges. Hence there is no regulation regarding time of service. However, if the leader is not capable of discharging his duty effectively, he will be recalled and substituted by other person.¹⁶³

In the northern part of Ethiopia, *Aruha* (community of elders) is the most popular customary dispute settlement mechanism in the *Eurobe* community of Tigray regional state. The actors in the institution are elected on the basis of certain qualities such as truthfulness, impartiality and

¹⁶²Interview with Eyasu T., vice Chairman of RDA, March 26, 2018, in Alamata town.

¹⁶³ Ibid

ability to influence while passing a decision.¹⁶⁴ This is also a similar trend existing in other parts of Ethiopia. The person to be elected as a mediator in customary courts like *shimglina* is expected to be someone who is very well conversant with the norms, values, culture of the community and he should be someone who is respected by the society. Information and opinions obtained in the course of field, an interview implies that members to the leadership positions of the GCC are elected based on certain qualifications. The most fundamental criteria that all people consider while electing members to the GCC include level of knowledge about the culture and values of the society, capacity to pass binding and consensual decisions, way of speaking, experience of reconciling disputants, loyalty, popular acceptance, ሓብ ነብሱ ድሒደረ (spiritual), ደያዳሉ¹⁶⁵ (impartial) and to some extent age. Religion and ethnic background are not fundamental criteria. No one can be excluded from the participation as a leader or judge because of his or her ethnic background and religion.¹⁶⁶ Furthermore the individuals should be wise, capable of keeping things confidential and tolerant especially in the process of handling cases.¹⁶⁷

Most customary courts in Ethiopia are founded on patriarchal norms and the leaders as well as decision makers in the courts are often exclusively men. The customary institutions deliberately excludes women from partaking in the decision making process.¹⁶⁸ For instance, According to *Kinfe Abrha* (2014), all actors from bottom to the top of the customary court of the Afar communities are exclusively men. A single woman is not allowed to participate in any position in the customary practice. *Mada'aabbas among the Afar ethnic groups* is the father of the law who hears cases which are unhandled by the clan leaders. The sub clan chief is also *Kedo Abba*. In every social level of the Afar ethnic groups, there are designated men leaders such as *bura abba*, *Dalla abba*, *Glubabba* and *kedo Abba*.¹⁶⁹

Similarly, as informants in the course of field interview quite clearly indicated, most of the time men are the ones who are eligible to attain leadership positions and pass decisions in the GCC.

¹⁶⁴Solomon Berhane. 2014. "Indigenous Democracy: Alternative Conflict Management Mechanisms among Tigray people, the experience of Europe community." *Journal of Science and Development College of Social Science and Language*, Aksum University, Aksum, Ethiopia.p.109-115.

¹⁶⁵ Interview with Amarech, April, 14, in *Selam bekalsi kebele*

¹⁶⁶ Interview with Shewit, March 22, in *laelay dayou tabia*

¹⁶⁷ Interview with Ayte Abrha K., vice Chairman and Judge of GCC at Zone level, March 21, 2018, in *Alamata Town*

¹⁶⁸KeriakoTobikoCbs, Sc.2013. "The Relationship between Formal Rule of Law and Local Traditional Justice Mechanisms": The office of the director of public prosecutions, P.15.

¹⁶⁹Kinfe Abrha, supra note 25, P.156-158.

This is because of the historical fact that men were historically in better position of power relation and hence found the system based on patriarchal norms which excluded women from partaking in its leadership positions. Another reason that many people provide for the exclusion of women from the leadership positions of the customary court is societal attitudes and perceptions towards women's leadership role.¹⁷⁰

4.4. Court Proceeding of the *Gereb* Customary Court

With regard to the proceeding of the customary court, when case of dispute is presented to the *Abo-Gereb*, the *Abo-Gereb* first specifies the date of meeting and on the specified date the *Abo-Gereb* and the litigants meet under a venue which usually is a tree. The litigants and the *Abo-Gereb* meet at the specified venue and sit forming a circle.



Picture 2. *Abo-Gereb* at *Woreda* level entertaining case of homicide

¹⁷⁰ Interview with key informants, March 20, 2018, in Alamata Town

The *Abo-Gereb* calls the disputants and gives the plaintiff the chance to explain his/her case. Based on the presented case, if witness is required, they will let him/her to bring a witness. Subsequently, they impose a punishment on the criminal based on the *Sirit*. Depending on the difficulty of the crime and degree of harm it has caused, the mediators will call for reconciliation.¹⁷¹ Besides handling the cases brought to them, the *Abo-Gereb* have the responsibility to intervene in serious criminal cases especially cases of homicide. The killer himself or his close relatives immediately inform to the *Abo-Gerb*. At this point, the *Abo-Gereb* first and foremost makes sure that the criminal has reported to the police. If the murderer has not reported to the police, the *Abo-Gereb* never attempts to reconcile the case by the assumption that doing so is considered as supporting a criminal. But, if the killer is already imprisoned, the *Abo-Gereb* immediately interferes and begins the reconciliation process by going to the relatives of the deceased. This essentially implies that the customary court works in collaboration with the government. In the reconciliation process of homicide cases, the *Abo-Gereb* first orders the relatives of the killer to cover all the expenditures of the funeral ceremony. Then, they try to calm the relatives of the deceased by speaking healing words like “the killer is already imprisoned and his relatives also confirm the action. So, now we are here to conduct the reconciliation by leaving all things to God.” After calming the families of the deceased they set up a date for the reconciliation ritual. An accessible place will be chosen to commence the reconciliation process. The relatives of the killer especially the women relatives, wear black cloth that symbolizes their sadness, the murderer is told to hide himself until the reconciliation with the other relatives is carried out.¹⁷²

On the specified date, all the reconciliation process will be commenced. At this point, the *Dubarti* (female ritual leaders) appear to the venue for the reconciliation holding a ritual stick known as the *ledo*. Furthermore, religious heads, priests, monks and *Sheks* also participate in the reconciliation process. In addition to their crucial role in the *Dubarti*, women have a critical role in preparing food and other ceremonial activities.¹⁷³

From this time onwards, the reconciliation process will proceed. In the reconciliation process, the murderer will be kept aside by the *Abo-Gereb* until reconciliation is commenced between the

¹⁷¹ Interview with key informants, March 26, 2018

¹⁷² Interview with Asmamaw A., A prosecutor at the office of justice in *Raya Alamata Woreda*, March 23, 2018, in Alamata Town.

¹⁷³ Ibid

families and finally the murderer will be called to attend the ritual and for the final reconciliation. There is a belief in the area that the reconciliation by the *Abo- Gereb* do not hold the plaintiff as a wrong doer but it rather goes back to the 7th generation of the killer including his close relatives. The final day of their meeting is called *merkeba* (መርከባ).¹⁷⁴

Cases of homicide according to the *Gumaa* proceeding among the Oromo clans are classified in to three types namely *Gumaa* of intentional homicide, *Gumaa* of negligence and *Gumma* of homicide other than the above two cases.¹⁷⁵

Similarly, according to the *GCC*, homicide is categorized as black blood homicide (ፀሊም ደም ቅትለት) and red blood homicide (ቀይሕ ደም ቅትለት). The black blood homicide is a pre-planned and deliberate killing of a person. This can be done by using weapons like gun and knife. The reason of naming the action as black is to indicate the badness of the action. The red blood homicide is an unintentional killing of a person. i.e. መኪና ሓደጋ (Car accident). However, if the killer failed to report the case to the police and failed to bring the deceased to hospital, he/she will be accused by crime of black blood homicide (ፀሊም ደም ወንጀል).¹⁷⁶



Picture.3. *Abo-Gereb* at zone level entertaining case of Physical harm

¹⁷⁴ Ibid

¹⁷⁵ Areba Abdella and Berhanu Amnew.2008. "Customary Dispute Resolution institutions in Oromia Region.In Alula Pankrust and GetachewAseffa (eds), Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution. " Addis Ababa: French center of Ethiopian studies, P.176.

¹⁷⁶ Interview with Ayte Abrha K., vice Chairman and Judge at zonal GCC, March 21, 2018.



Picture4. *Abo-Gereb* at *Tabia* level entertaining case of rape

In most customary courts of Ethiopia, in serious criminal cases such as homicide, blood money is required and is believed to compensate for the wrong doing.¹⁷⁷

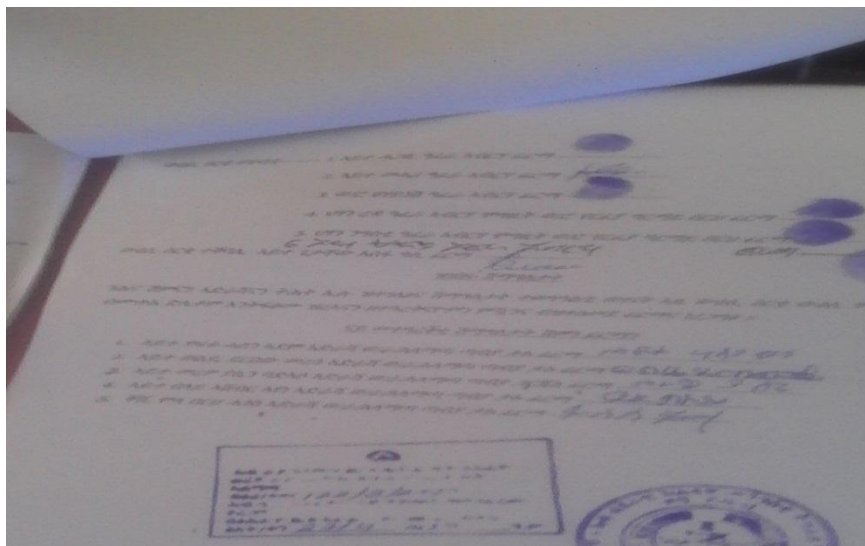
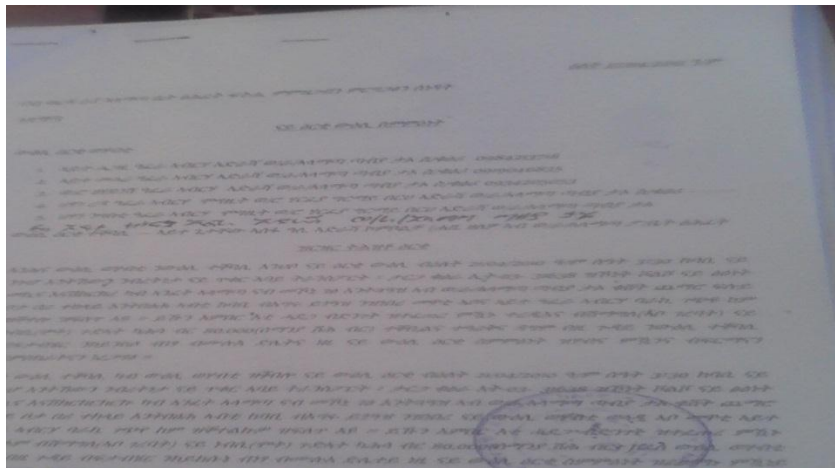
According to the law of the *GCC/Sirit*/, the compensation or punishment for black blood homicide is 100,000 birr while it is 80, 000 birr for the red blood. Based on the agreement of the disputants, the reconciliation process will be concluded in a written form.¹⁷⁸ The pact of reconciliation agreement (ፍይ ዕርቂ ውል ስምምነት) is given by the *Abo-Gereb* to the disputants and submitted to office of justice and to the first instance court of the district. So, the agreement of reconciliation serves as an instrument of Mitigation and Exemption as provided in article 179 and 180¹⁷⁹ of the federal criminal code of Ethiopia.¹⁸⁰

¹⁷⁷ Alula Pankhurst and Getachew Asefa (eds), *supra* note, 42, P.65.

¹⁷⁸ Interview with Ayte Abrha K , vice Chairman and Judge at zonal GCC, March 21, 2018, in Alamata town

¹⁷⁹ See article 179 and 180 of the criminal code of the Federal Democratic Republic of Ethiopia

¹⁸⁰ Interview with Darge K., Chairman and Judge of GCC at Woreda level, March, 22,2018, Alamata town



Picture 5. Copy of Pact of reconciliation Agreement of red blood homicide case written in Tigrigna Language

In Afar region, in homicide cases, the implementation of the *makaban*'s decision is guaranteed by the family and relatives of the offender often they contribute to compensation payments. The murderer must also leave the area and appeal to other groups.¹⁸¹ Similarly in the case of the GCC, the relatives of the killer are expected to contribute some amount of money to cover the amount of penalty imposed on the killer. In addition to contributing to the blood money, if the homicide case is black blood, the sons and daughters of the murderer are required to pay 500 birr each of them. Half brothers and sisters of the murderer also pay to the relatives of the killer 400 birr (if they are

¹⁸¹Ibid

economically independent) to reconcile with them. But if the killer's brothers and sisters are both sons and daughters of his mother and his father, they shall pay 600 birr for reconciliation. The cousin of the killer will also pay 200 birr to reconcile with the relatives of the deceased. If the sons and daughters of the killer fail to appear on the day of the reconciliation for a justifiable reason, the killer himself or his relatives are required to organize a reconciliation ritual. In the case of black blood homicide, the murderer must leave his *woreda* and appeal in another *woreda*. But in the case of red blood homicide and serious physical harm, he can live in his *Tabia* after the reconciliation is carried out. But if the relatives of the deceased demand that the killer should leave his area, he must leave his *kushet* but not his *Tabia*.¹⁸²

4.5. Factors Contributing for the Preference of the *Gereb* Customary Court

According to *Alula* and *Getachew* (2008), customary courts in Ethiopia are more preferable compared to the formal court since they are easily accessible, timeless, cost effective, and restorative and enforceable by community based sanctions.¹⁸³ They are also preferable since the decision makers are familiar with the nature of the conflict.¹⁸⁴

Similarly, *Meron* (2010), underscored the reasons that people opt the court of the sheikhs than the formal court is because of the fact that the sheikhs' court focus on reconciliation and re-establishing social harmony, distrust on the state's legal system, the state's failure to recognize certain deep rooted cultural elements of the community and the procedural flexibility of the court of sheikhs.¹⁸⁵

During the stay in the fieldwork, the researcher has witnessed the work over load of the *Abo-Gereb* at the zone and *Woreda* levels. Homicide cases have a prior place among the cases presented to the courts at the zone and *Woreda* levels by the fear of revenge. For instance, during the researcher's stay with the *Abo-Gereb* at one *Tabia*, they only entertained one case of rape. But both the *Abo-Gereb* at zone and *Woreda* levels were busy in entertaining several criminal cases

¹⁸² Interview with Ayte Abrha K., Vice chairman and judge at zonal GCC, March 21, 2018 in Alamata town.

¹⁸³ *Alula Pankhurst and Getachew Asefa*, supra note 42, P.260.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Meron Zeleke*. 2010. "Yeshekocho Chilot (The courts of Sheiks): A traditional Institution of Conflict Resolutions in Oromia Zone of Amhara Regional state." *African Journal on Conflict Resolution*. P.71.

mostly cases of homicide. During the fieldwork, the researcher observed the *Abo-Gereb* at zone level while entertaining two cases of physical harm, and two cases of homicide within one day. On the other day, the researcher has also attended the proceedings of the *Abo-Gereb* at *Woreda* level. They entertained one case of illegal expenditure in commemoration feast and three cases of homicide. They worked starting from 4:00am up to 12:00 pm. This shows almost all especially cases of homicide and other serious criminal offences like physical harm are expected to be entertained by the *Abo-Gereb* even though they are resolved by the formal legal system in order to establish a permanent peace in the society. The mediators at the customary courts informed me that on average they handle from 6-10 cases per week. All the *Abo-Gereb* at all levels have their own fixed day of meeting which is on monthly saint's days. For instance, the *Abo-Gereb* at *Woreda* level meets every month on the Day of saint Marry (21).

Most people prefer the GCC because of several reasons. *Asmarech* who is a local resident in the study area expresses the reason of preferring the customary court than the formal court as:

*“Abo Gereb knows everything as it exists in its natural setting and from the beginning to the end. They are also easily accessible compared to the formal court. The role that the Abo-Gereb are playing is more than what the government can play. We are living in peace because of the Abo-Gereb since their decision is more binding than the government's punishment. They also play a significant role in maintaining peace and harmony by preventing the culture of revenge in the society. They are also preferable than the formal court since the formal court cannot see the practical situation in the society. Its decision is based on what it heard not what it saw. But Abo-Gereb decides based on what they saw. ‘ሕገ ሕገኛ ደህ ኃይረ የብሉይ’ this roughly translates as ‘the law has not an eye but ear.’ This means the court decides based on the information generated from the witnesses and it can fail to easily find the criminal. But the Abo-Gereb are part of the practice since they are within the communities.”*¹⁸⁶

According to *Yeshiwork*, previously people prefer the *Abo- Gereb* and the unconscious (ignorant) ones prefer the formal court. Nowadays all people prefer the *Abo -Gereb* than the formal court. If a person is killed, it is difficult for the government to maintain peace in the remaining relatives of the disputants. So, by the very fact that it is difficult to ask the judges in the formal court system

¹⁸⁶ Interview with *Asmarech*, March 20, 2018, in Alamata Town

to conduct arbitration, *Abo -Gerb* are the only alternative that the society has at hand to restore peace.¹⁸⁷

So informants have accented the deep trust they have for the *Abo-Gereb* and the strong preference in taking their cases to the customary court than the formal court.

4.6. Normative Frameworks of the *Gereb* Customary Court

In the customary dispute settlement mechanism of the *Nuer* people in Gambela region, there is a stated punishment for all types of criminal offences. For instance Homicide costs 40 cattle and adultery, 5 cows.¹⁸⁸

Gereb is a locally established customary court which has been operating based on norms transmitted from generation to generation without having codified principles especially prior to 1996. According to the data obtained from the key informants, the *Abo-Gereb* were functioning drawing on the oral tradition which has been passed on to generations before the adoption of the current *Sirit*. Compiling a written law is initiated by the members of the RDA and other scholars of the area. This initiative was promoted as a move to preserve the cultural norms and values of the society. So, the members of the RDA, the *Abo-Gereb* and other scholars around Alamata jointly developed the *Sirit* in 1996. The codes were all conversant. However, with regard to the provisions stating penalties for over expense in ceremonies, there are people who still oppose and argue as they have the right to own their property and to use it for whatever purpose.¹⁸⁹ The *Sirit* is made up of three parts and seven articles.

Part one discusses a detailed list of harmful traditional practices that can be avoided through awareness creation without the imposition of any form of punishment. The punishable HTP are listed in part two of the *Sirit* and Part three discusses the amount of punishment and compensation for each action in a detailed manner.

The following table summarizes the list of crimes and HTPs and the penalty for each action.

¹⁸⁷ Interview with Yeshiwork, March 20, 2018, in Alamata town

¹⁸⁸ Dereje Feyissa. 2008. "Customary Dispute Resolution in the case of the Nuer of the Gambella Region. In Alula Pankrust and Getachew Aseffa (eds), Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution." Addis Ababa: French Center of Ethiopian studies, P. 135

¹⁸⁹ Interview with Darge K, chairman and Judge at zonal GCC at *woreda* level, May 25, 2018, in Alamata town

No.	Punishable Harmful Traditional Practices (HTP) and Crimes		
	List of crimes and HTP	Frequency, type of the action and actor	Amount and type of penalty or measure
1	FGM (ብርቅን)	For one child	500 birr
		twice	1000 birr
		three times	3000 birr
2	Disturbance in town (አብ ከተማ ከይድኻ ምርባሽ)	To the first time	Advice
		To the second time	500 birr
		To the third time	1000 birr
3	Using harmful materials outside work places such in meetings		500-1000 birr
4	Intimidation and verbal abuse(ፈኽራን ምፍርራሕን)		500 birr
5	Playing harmful traditional play which involves whipping each other (ጭጉራፍ ምትኳፅ)	If the actors are under 18 years old	Their parents will be penalized 50 birr
		If the actors are above 18 years old	The boys themselves Pay 50 birr
6	Hunting wild animals	To the first time	300 birr
		To the second time	600 birr
7	Deforestation	Simple deforestation	1000 birr
		Grave deforestation	2000 birr
8	over spending on a gift for a fiancée	Giver of the gift	500 birr
		Receiver of the gift	500 birr
9	Labor support demand from the family of a bride		500 birr penalty against both families
10	traditional practice of grieving the death of beloved one by spending days at a ritual place		100 birr

11	Going ahead by carrying food and local beer and riding an ox in front of a corpse		100 birr
12	Removing hair (ጨጉሪ ምንጫይ)		100 birr
13	scratching face (ገፅ ምምላጥ)		100 birr
14	Un necessary feast while visiting a new born		2000 birr
15	Receiving funeral fund without registering		100 birr
16	Showing dis -respect to someone b/c of his /her race or profession		500 birr
17	Defamation		500 birr
18	Destruction of property, Burning of collected crop and feeding crops to animals		Full Compensation of the destructed property and 20% of the destroyed property punishment
19	Sorcery and magic	The magician	1000 birr
		The client of the magician	1000 birr
		protocol in the process	2000 birr
20	Extravagant expenditure on ceremonies	Baptism: preparing more than 2 barrel of Sewa/local beer/ and slaughtering more than 1 goat or 1 sheep	1000 birr
		Receiver of gift in the baptism ceremony	500
		Tezkar: if the expenditure is more than 10	2000birr

		ጋላ (barrel) ሰዋ (local beer) and 1 ox	
		Receiver and giver of a Gift in <i>mahber/religious association/</i>	1000 birr
		Weeding: if the expenditure is more than 15 ጋላ (barrel) ሰዋ (local beer) and 1 ox or 1 cow	2000 birr
		Graduation of a house: receiver of gift in the graduation ceremony	500 birr
		Wedaja: ¹⁹⁰	
		A Christian who prepared a wedaja	500 birr
		A <i>kalcha</i> who attend a <i>wedaja</i>	500 birr
		A <i>debtera</i> who went to the home of the <i>kalcha</i> seeking spiritual consultation	500 birr
		Ceremony in the meeting day of relatives of spouses	1000 birr
		Commemoration feast in Islamic religion (ሰደቃ) (if he/she slaughtered more than 1 ox or cow)	1000 birr
21	Early marriage		3000 birr
22	Rape	If the raped girl is virgin but above 18 years old	10,000 birr
		If the raped girl is virgin and below 18 years old	20, 000 birr
		If she is not a virgin	4,000 birr
		If the woman is married	6000 birr compensation to her

¹⁹⁰ Wedaja is a prayer celebrated by dibe (hot Islamic music) which is common in Muslim societies

			husband
23	Homosexuality		40,000 birr
24	giving false testimony		5000 birr
25	Intentionally transmitting a disease		40, 000 birr
26	Theft of property		1000 birr after returned back the stolen property
27	Receiving <i>Mangara</i>		1000 birr
28	Theft of Water in irrigation	To the first time	200 birr
		To the second time	500 birr
		Forceful taking water in irrigation to the 1 st time	500 birr
		To the second time	1000 birr
29	Betrayal of trust		Return back the taken property and compensation of 1/4 of the property
30	Homicide	Red blood homicide	80,000 birr
		Black blood homicide	100,000 birr
		Attempted murder (መከራ ቅትለት)	10,000 birr
		car accident (መኪና ሐደጋ)	80,000 birr and additional 20,000 if the accident is happened on a pregnant woman
		Killing someone for self-defense(ብኣልሞት ባይ ተጋዳይ)	5,000 birr
		Assistant of a killer (ኣዳጋሚ)	40, 000 birr

		If the killer committed suicide	The inheritor of his property will pay 20,000 birr compensation
		Revenge (ሕገ ምፍሳሪ)	100,000birr
31	Kicking a pregnant woman	If the kicking is intentional and abortion happened	20, 000 birr
		If the kicking is not intentional but abortion happened	10,000 birr
32	Simple Physical harm		Cover all the expenditure spent for medication and 3000-10,000 birr compensation
33	Medium physical harm	loss of one hand, one leg, one eye	Cover medical expense and 30,000 birr compensation
34	Grave physical harm	Loss of two hands, two legs and two eyes	Cover medical expense and 60,000 birr compensation

Table 1: list of HTP and crimes in the *Sirit* of GCC (Source: 2008, Revised Sirit of the GCC)

4.7. Enforcement Mechanisms of the *Gereb* customary court

In most circumstances, customary courts do not have enforcing mechanism in place. They rather largely rely on spiritual sanctioning.¹⁹¹ The sanctions are heterogeneous in nature varying across time and space. It is commonly known that customary dispute settlement institutions lack machinery that can enforce their judgments. In the case of the *Mada'a* in Afar region, a clan that refuses to respect the decision of the *Makban* will be socially sanctioned and ostracized.¹⁹² Similarly, in the *Sherra* dispute settlement mechanism in *Benshangul Gumuz*, the decision of the *Nihinaa*(the judge) would result ostracism and isolation from the community.¹⁹³

According to *Shimelis* and *Taddesse* (2008), in the *Wajerat* communities, failure to respect the decision of the *Abo-Gereb* will cause ostracism. There are also sanctions used as enforcement mechanisms of the GCC. For instance, the people will be reluctant to visit the disobedient of the decision of the *Abo-Gereb* when he or she needs some sort of assistance in weeding, funeral, harvesting, plugging and etc.¹⁹⁴

Similarly, the *Abo-Gereb* in the study area, do not have any established police force for the enforcement of their decisions. However their major instrument is ostracism. If someone failed to accept the decision of the *Abo-Gereb* at *tabia* level, they transfer the issue to the zonal *Abo-Gereb* and then to the *Abo-Gereb* at *woreda* level. There are circumstances that the police help their activities. Finally, the *Abo-Gereb* at *woreda* level will go to the locality of the person who denied their decision and declare that “this person has refused the decision of the *Abo-Gerb* and hence do not collaborate with him in any issue. If you assist him in any issue, you will be ostracized like him.” Any one from among his relatives cannot bring any case to the *Abo-Gereb*. Subsequently,

¹⁹¹Zartman, William .2000. “Ethnic Conflicts: Mediating Conflicts of Need, Greed, and Creed”

¹⁹²Getachew Talachew et al. 2008. “Customary Dispute Resolution in Afar Society. In Alula Pankrust and Getachew Aseffa (eds), *Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution*”. Addis Ababa: French center of Ethiopian studies, P.101.

¹⁹³Bayisa Besie et al. 2008. “ Customary Dispute Resolution in Benshangul Gumuz with emphasis on Shinasha Society. In Alula Pankrust and Getachew Aseffa(eds),*Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution.*” Addis Ababa: French center of Ethiopian studies, P.130.

¹⁹⁴Shimelis Gizaw et.al 2008. “Customary Dispute Resolution In Tigray Region: Case Studies From Three Districts”: In Alula Pankrust and Getachew Aseffa (eds), *Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution.*” Addis Ababa: French center of Ethiopian studies, p. 226.

she/he will be ostracized by the community. Thus, the decision is easily enforceable.¹⁹⁵ So, the enforcement mechanism of most customary courts in Ethiopia is exclusion and social sanction than arresting by the command of police which is the common enforcement mechanism of the formal courts.

With regard to the amendment procedure of the *Sirit*, there are certain preconditions for amendment. According to Article 10 of the *Sirit*, the *Sirit* can be amended only under the following conditions; 1. When the *Abo-Gereb* at Zone level by 2/3 majority vote, approves the proposed amendment. 2. When the *Abo-Gereb* at *Woreda* level approves the proposed amendment by 2/3 majority. 3. When the executives of RDA approves the proposed amendment by 2/3 majority vote. The bill of amendment shall be prepared by five persons (two persons represented by the *Abo-Gereb* at *woreda* level and three persons who are the representatives of the executives of RDA).

The bill of amendment shall be approved by the *Abo-Gereb* at *Woreda* and zone levels and executives of the RDA by 2/3 majority vote in a joint session.¹⁹⁶

¹⁹⁵Interview with Ayte Abrha K., vice Chairman and Judge at Zonal GCC, March 21, 2018, in Alamata Town.

¹⁹⁶See article 10 of the revised *Sirit* of the GCC, 2008.

Chapter Five

Women's Representation in *Gereb* Customary Court

5.1. Women's Participation as Leaders and Litigants in *Gereb* Customary Court

5.1.1. Women's Leadership Role in the *Gereb* Customary Court

Women in different parts of Ethiopia suffer discrimination when it comes to their equal participation with men in leadership positions and in decision making process particularly in customary dispute settlement institutions.¹⁹⁷ In most patriarchal societies, there is a prevailing gender asymmetry and vulnerability of women. Areas such as administration and partaking in leadership positions are exclusively designated to men.¹⁹⁸ For instance in Somalia regional state of Ethiopia, women have not the chance neither to vote and elect members nor to serve as judges and legislators in the traditional justice system. Women in this society are considered as minors and incapable of doing juridical acts.¹⁹⁹ It is also a living fact that in most parts of Ethiopia especially in traditional institutions, every avenue of power and participation in decision making processes in the society is entirely in male hands.

In the case of the GCC, there is no clearly stated prohibition of women's participation as leaders and decision makers in the system. The *Abo-Gereb* accented that women's right to partake as leaders and litigants in the customary court is protected. However because of several reasons that will be discussed below in section (5.2), Women are in no position to enforce their equal rights of partaking in the leadership positions of the GCC.²⁰⁰

¹⁹⁷ Alula Pankhurst and Getachew Asefa (eds), *supra* note 42, P.71.

¹⁹⁸ Endale Alemu. 2014. "Factors that affect Women Participation in Leadership and Decision Making Position": College of Social Science, Department of Sociology and Social Work, Jimma University, Ethiopia, P.97-98.

¹⁹⁹ Mohammed Mealin and Zewde Jotte. 2008 "Customary Dispute Resolution in Somali state of Ethiopia. In Alula Pankhurst and Getachew Aseffa (eds), *Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution.*", Addis Ababa: French Center of Ethiopian Studies. P.195.

²⁰⁰ Interview with key informants, March 21, 2018, in Alamata town.

According to the key informants, though the involvement of women would be essential for the overall operation of the GCC, the societal conventions regarding gender and leadership traditionally excluded women and leadership is viewed as a masculine domain and is traditionally attached to men. In the society under discussion, masculinity and femininity are constructed to a greater extent and reinforced by the cultural norms. The men have more social acceptance than women especially in terms of participation in leadership positions. A man who failed to do something that can be performed by women will be questioned by the society about his masculinity. The society asks him by saying ‘አይ ስብአይይ ደኻ?’ This means ‘aren’t you a man?’ On the other hand, a woman who performs actions that are socially attributed to be the tasks of men is said to be ‘ደርጋ ስብአይ ኮይኦ’ this means ‘she is like a man.’ Thus, decision-making and leadership roles are typically gendered and designated to men.²⁰¹

What makes different the GCC from other customary courts in Ethiopia is that women’s right to partake in the proceeding of the customary court as leaders, decision makers or judges and as litigants has a protected status at least in principle regardless of the reality on the ground.

There are 75 *Abo-Gereb* at the 15 *Tabias* (five *Abo-Gereb* in each *tabia*) in the study area, of the total of 75 *Abo-Gereb*, there are only two women namely *Nigisti* and *Hadas* who are appointed to the leadership positions of the GCC at *Tabia* level. At the four zones, there are 20 *Abo-Gereb* (five *Abo-Gereb* in each zone). There are also five men judges appointed to serve at the GCC at *woreda* level. A single woman is not represented in the leadership positions of both the zonal and *woreda* levels of the customary court.²⁰² According to *Hadas*, there were some women who were elected to the leadership positions of the GCC. But because of several reasons that will be discussed in section (5.2) below, they resign from the leadership positions to which they were appointed.²⁰³ The women living in a society dominated by perceived male superiority suffer multiple discriminations to exercise their right to partake in all leadership positions in general and in the leadership positions of the GCC in particular.

²⁰¹ Interview with key informants, March 20, 2018, in Alamata Town.

²⁰² Interview with Nigisti A., vice Chairman of GCC at *tabia* level, March 26, 2018, in laelay Dayou *tabia*.

²⁰³ Interview with *Hadas G.*, member in GCC at *tabia* level, March 24, in *To'o tabia*.

5.1.2. Women's Participation as Litigants in Gereb Customary Court

Though the law of the GCC does not prohibit women's participation as litigants in the system, their participation as litigants is very low since male norm mind is prevalent in the society. The women are reluctant to bring their cases to the court. In most instances, a man is socially preferable to bring cases to the *Abo-Gereb* since women are considered as less conversant and incapable of arguing in the verbal debate in the court proceeding. If someone is accused by the *Abo-Gereb* or if he or she wants to bring a case to the *Abo-Gereb*, it is the father or husband that can appear before the court. According to the researcher's observation in the course of fieldwork, in the *Abo-Gereb* at all levels, 22 clients were appeared. Of all the total 22 clients, only two women have participated.

According to the key informants, women are not prohibited to bring their cases to the GCC. The *Abo-Gereb* equally accepts cases presented by men or by women. Even when they decide the time of appointment and if the husband is not able to appear at the specified date, they allow him to represent his wife. Generally, the *Abo-Gereb* have not the problem of gender in presenting cases to them. However, the widened custom and the perceived male dominance, which is prevalent in the society, limited their active participation as litigants in the customary court under question.²⁰⁴

In the society that the study has been carried out, a woman is not always accepted as an independent household head unless she is a widow who doesn't have a grown up son. For instance, *Mekkonena* was accused by the *Abo-Gereb* because of over expense in his daughter's wedding ceremony. The *Sirit* does not allow slaughtering two or more oxen in weeding and *Tezkar*. But, *Belay* slaughtered two oxen. Though the *Sirit* provide 2000 birr penalty, the *Abo-Gereb* mitigated the penalty and punished him 1000 birr. This all accusation was against him not against his wife. His wife was not in a position to appear before the court. He justifies her failure to appear before the court as:

“እሳ ታ እንሆዋ (what has she got to do with such an issue?)’ እነ ህላጩ ዶ... ድኣ ታከብልዋ?’
(Since I am present there is nothing they can say to her) እሳ መፅኣ ታረድኡም ኣይትከእልይ (she
cannot convince them by coming here.) ሰብኣይ ድንሆዋ ሰብኣይ ድኣም እሳ ኣይትጥየኛይ ናቲ ዓዲ ሓላፊ
እቲ ሰብኣይ ስለ ድኮነ (a woman whose husband is still alive is not liable for such an issue

²⁰⁴ Interview with key informants, March 26, 2018

since the head of the household is the husband.) ሰብአዊ ደረብ ለጉድገር ኾይና ግን ባዕላ ትመጣ
(but if she is not married or if she is a widow, she can appear herself.)²⁰⁵

The analysis of Belay's statement above clearly indicates the existing gender stereotype, which describes women as being incapable of explaining issues and convincing the other party. This partly relates to their experiences, which often limit their exposure to the public sphere limiting their exposures to the private and domestic sphere. In addition, *Belay's* statement further shows the societal view that on the presence of a male figure at the household he is always in charge of presenting cases. The phrase the head of the household sends out the strong message that the patriarchal system is a well-grounded social structure in the society. The analysis of the above case shows the fact that there is a strong societal bias that the women are lacking the basic communication skills to present their cases and to defend their positions in situations where victims and perpetrators engage in verbal debates.

The participation of women in the court especially as plaintiffs is also very low because of two basic reasons. The first one is entertaining cases which are likely to be presented to the court by women such as issue of divorce, inheritance, domestic violence and other forms of disputes that affect the women is not the power of the *Abo-Gereb*. It is not also mentioned in the *Sirit* of the *Abo-Gereb*. The power of entertaining such issues is given to the *Shimagiles*. The other reason is that women are represented by their husbands, brother, father or other nearest relative who files their case on their behalf. This is happened not by the influence of the *Abo-Gereb* but the women consider themselves as less capable to argue and persuade people in the court proceeding. Of the two female clients in the customary court, *Adanech* is a 16 years old girl who has been raped by someone. She brought her case to the *Abo-Gereb* at tabia level. The researcher witnesses that her presence was symbolic. It is difficult to say she was a litigant. Her father was the litigant on her behalf. Her presence was solely to sign the decision passed by the *Abo-Gereb*.

²⁰⁵ Interview with Mekonnen, client at the GCC, March 25, in Ayeremarefia village

5.2. Factors that Hinder Women's Participation in Gereb Customary Court

According to *Endale Alemu* (2014), socio-cultural attitudes, overburden of domestic responsibilities, continuation of the negative attitudes regarding women's ability to lead and to govern, lack of role models of women leaders for young women and girls are the major barriers hindering women from partaking in public leadership and decision-making positions.²⁰⁶

In the society that the study has been carried out, no matter how capable women are in reconciling disputants, the final say in most circumstances comes from men. Thus the women remained having a passive observer status in the leadership and decision making process of the GCC. The following are the major barriers that hinder women from partaking in the leadership positions of the GCC as explored by this study.

I. Socio-Cultural factors

In order to better protect human rights in cultural lives, different international human rights documents have imposed an obligation on state parties to take measures to modify the social and cultural pattern of conduct of men and women with a view of achieving the elimination of prejudices and customary and other practices which are based on the idea of inferiority or the superiority of either of the sexes.²⁰⁷ Despite this normative human rights expectation, it is a very challenging for women in the area that the study has been carried out to partake in leadership positions since they are living in a society dominated by perceived male superiority and patriarchal belief system. Leadership role of women in general and in GCC in particular is heavily influenced by the backward attitude of the society. The society considers women as a threat to the society if they attain a certain leadership position. They are also societally perceived as conservatives in law enforcement and hence to freely live, excluding them from partaking in any leadership positions is socially justifiable.²⁰⁸ For instance *Nigisti A.* who is a vice chairman in GCC at tabia level expresses her experience as:

²⁰⁶Endale Alemu.2014. "Factors that Affect Women Participation in Leadership and Decision Making Position." Department of Sociology and Social Work, Jimma University Collage of Social Sciences, Ethiopia, P.97

²⁰⁷ See Article 5 of the CEDAW

²⁰⁸ Interview with Abebech A., vice Head of office of women's affairs of Raya Alamata district, March 22, in Alamata town.

“The society perceives me as merciless in imposing punishment on those who violate the the Sirit. There is a deep-rooted belief with in the society on women’s coming to power. The society says ‘ሰባይቲ ሰልጣን እንድትሰጥ ሕዛ አይታችምጠናይ አሰጥማ ይላ ትድሕዘና (if a woman come to power, we will not get a relief).’ When we together (the Abo-Gereb) impose a certain punishment on some individuals, they directly blame me by saying ‘እሳ ይላ ድግበረትና’ (we are punished because of her). They also know my firm stand to fight injustice. When I commit myself and do my job diligently, now they start intimidating me by brainwashing my son who is 23 years old. They repeatedly told him that ‘አደኻ ሃም አንላስቲ ዓዲ ደይታዉዕል! ነገር ታምፅአልኻ ይላ!’ (Why don’t you let your mother to be at home like other women? A serious problem will happen to you because of your mother’s misconduct.) The society also says ‘ሰባይቲ ታ አለትዩዋ አቦ-ገረብ ትኾን?’ This means what a woman has in Abo-Gereb? When I speak in front of a gathered people about the operation of the Sirit and to inform them about the punishable activities, the people often say ‘ታ ይሉ ድግበረሎ ሰባይቲስ አቦ ገረብ ትኾን ደይርኣይ አርእዮምልና, ወይግርም ሰባይቲ አቦ ገረብ ኾይና ምስ አሸኡን ትዞርላ (what is going on? How a woman could be an Abo-Gereb? They show something that should not be shown to women. It is amazing that a woman is moving with men by being Abo-Gereb.)’ I am suffering with such attitudes. So, in a society with such continuing negative attitude, how women can have the motive of partaking in GCC as judges, leaders and decision makers? The society requires a one year conference.”²⁰⁹

According to some female informants, gendered attitude of the society especially with regard to leadership role lays the ground for a systematic discrimination of women and the resulting gender inequality in the study area. There is a deep seated societal assumption towards the exclusion of women from joining the Abo-Gereb mainly due to the fact that they tend to be less corrupt and fair unlike their male counterparts. Tekabech who is a local resident in the study area expresses this as:

“A woman’s behavior is not suitable for the functional behaviors of the Abo-Gereb since the woman is careful on issues. That’s why the Abo-Gereb dislikes the integration of women in their functioning. A woman speaks what she saw, she can die for truth. Because of this the Abo-Gereb do not want us to be with them in the decision making process. The

²⁰⁹ Interview with Nigisti A., vice Chairman in GCC at tabia level, March 26, 2018.

*men can easily change their standpoint if somebody asked them through some sort of incentive. Such suspect is in the mind of the large population and murmuring what we always hear though we have not tangible evidence since we never work with them. Women are not susceptible to corruption on the same scale as male. ሰበይቲ ጠልቆምቶም ኣይትፈትዉይ (a woman dislikes any form of contact with corrupt acts.) But the men get to meet each other at bars and restaurants and they eat and drink together. Such behavior is exclusively of the men not of the women. That's why they are not voluntary to invite us to work with them.*²¹⁰

Culture plays a quintessential role in the exclusion of women from partaking in the leadership positions of the GCC. According to *Debitu* who is a local resident in Waja, it is difficult for the woman to partake in the GCC as a leader and decision maker by blocking the cultural bound framed by the society. She expresses this as:

*“ኣሁን ሕጉ በሙሉ ሴት ላይ ኣይደለ የሚሰራው? ይህ ግን የደም ጉዳይ ስለሆነ በወንድ ነዉ የሚያልቀዉ በባህላችን ሴት በደም ጉዳይ ወሳኔ መስጠት ኣትችልም (all laws are enforceable on women but this is to be carried out by men since a woman is not allowed by our culture to decide case of homicide.)”*²¹¹

There are also ambiguities within the society with regard to the notion of equality between men and women. There are people who consider women as inferior and incapable of discharging their duties effectively by being leaders and decision makers in all leadership positions in general and in GCC in particular.²¹²

The cultural barriers prohibiting participation of women in customary courts debates often relate to the societal gender stereotypes portraying women being incompetent. As the cases presented above shows, the low turnout of women at leadership positions in customary courts is attributed to the gendered stereotype of women appearing in the courts which are often described as being unconventional and unruly. This relates to *Ndulo* (2011) point that women who are spending times partaking in public domains are often considered in patriarchal communities as eccentric.²¹³

²¹⁰ Interview with Tekabech, March 20, 2018, in Alamata town.

²¹¹ Interview with Debitu, March 23, in waja town

²¹² FGD with local residents

²¹³ Ndulo, Muna. 2011. “African Customary Law, Customs, and Women's Rights.”: *Cornell Law Faculty Publications*, Paper 187. <http://scholarship.law.cornell.edu/facpub/187P.92>.

The chauvinism of the men is also a serious challenge that hinders equality between men and women in discharging leadership and decision-making capacity in the zone in general and in the *Woreda* that the study has been carried out in particular. Some men think that a woman is not the right person to discharge duties by being a leader. They express this as “How a woman could be a leader? If so, how she can lead? ኣይትመርሓይ ወፅኢታዊ ኣይትኾንይ. This means she could not discharge her leadership role, she will not be effective.”²¹⁴

There are informants who contest the intellectual incapability of women as an argument raised in the preceding paragraph as a reason contributing to the exclusion of women from leadership roles. Informants interviewed during the study strongly accented the intellectual inferiority of women used as a justification for women’s exclusion from the leadership positions of the GCC. Intellectual capacity is locally described as an intellect and reasonable judgment that one gains as a result of attending a modern education or at least basic education. According to those informants, no matter how capable women are in knowing about issues, decision-making power is extremely limited to men. *Woizero Zenebech*, A 70-year’s old woman justifies the exclusion of women in GCC as:

“ኣእምሯችን ደካማ ነዉ (our mind is weak) women have less capacity than men especially in their rational soul and hence they should not be leaders. A woman’s contribution in all affairs may be crucial. However whatever women did needs to be endorsed by a male figure, as men are the final decision makers. That is why our ancestors said ‘ሴት ያዉቃል በወንድ ያልቃል’ a woman knows a man performs.’ The same is true in the case of the GCC. It is the task of the men to pass a decision and discharge a leadership role. In addition, women are not also capable of attending at issues carefully. They tend to pass decisions being emotional. However, the men are not emotional and they are capable of looking at issues carefully. If you are claiming the election of women to the leadership positions of the Gereb like what the government is saying what you call it equality in all spheres, ሞከሩት! ግን ጨርሰዉ እንዳይዘቀዝቁኝሁ (Just try it! But they may slant you all).”²¹⁵

²¹⁴ Interview with Abebech A., vice head of office of women’s Affairs in Raya Alamata, March 22,2018, in Alamata town and Etsay, head of office of women’s affairs in southern Zone of Tigray Region, March 27,2018 in Maichew town.

²¹⁵ Interview with *Weizero Zenebech*, March 23,2018, in waja town

Few female informants highlighted the point and the opinion that they view the exclusion of women from customary court as a well thought out project of men. For these few groups of informants the exclusion of women is done deliberately by the men since the beginning of the customary court. Issues related to local arbitration and handling disputes are culturally designated to the men. *Weizero Wolamo* expresses the exclusion as:

*“I think our ancestors have made a mistake in such issues since they begin everything by the domination of men and this becomes a binding culture which could not be easily transformed. But if we think of critically about it, changing and transforming such gender blind activities is a very easy task and nothing can also prevent us from doing so since the act is not sin.”*²¹⁶

The exclusion of women in the GCC customary court is a matter of historical trend, which is not because of the incapability of women to be appointed for such position. They would never face any challenge if they got the chance to be elected as leaders in the GCC since the punishment for each illegal act is provided in the *Sirit* of the customary court under scrutiny.²¹⁷

Informants also acknowledged the contribution of the women in peace making since mother urge forgiveness by caring a heavy stone on hear head to remind her family as to the weight of her responsibility. So, a considerable attention is not given to the women in the societal endeavor.

Berhe who is a local resident in *Selam Bekalsi* tabia justifies the exclusion of women from the leadership positions of the GCC as:

*“Though she has the capacity of discharging leadership tasks, but ሰበይቲ አብ አቦ ገረብ ምስታፍ ግን ኣይኖሩታትናይ (since time immemorial women are not part of it.)”*²¹⁸

Nowadays, most people are acknowledging women’s commitment and capacity. But they fear to block the cultural bound framed by the society. Furthermore there is a strong societal stereotype that labels women as catalysts especially during disputes. *Weizero Amarech* expresses this as

²¹⁶ Interview with *weizero Wolamo*, March 24,2018, in *Garjale tabia* .

²¹⁷ Ibid

²¹⁸ Interview with *Berhe*, March 20, 2018, in *Selam Bekalsi* tabia.

*“Women tend to be very emotional and they do not know how to keep secrets unlike male. This can affect the confidentiality and instead of making things confidential she might end up making it worse.”*²¹⁹

II. Lack of pro-women Advocacy to partake in GCC

Various human rights documents to which Ethiopia is also a party calls state parties to progressively achieve the realization of the rights recognized in the covenants by adopting legislative measures and to guarantee the rights are exercised without discrimination.²²⁰ Furthermore, the covenants calls state parties to make sure that men and women are equally exercising all the economic, social and cultural rights.²²¹ In order to guarantee women’s enjoyment of human rights and freedoms on the basis of equality with men, State parties are also obliged to ensure the full development and advancement of women.²²²

However, in the area that the study has been under taken, the absence of any local advocates (both from governmental organizations and non-governmental organizations) that advocate for women’s right to equally partake in the leadership positions of the GCC is a factor for their lower participation and under representation in the leadership positions of the customary court under question. *Meresa* who is a local resident in *qunqura kebele* village expresses this as:

*“In many instances, we hear about different advocacies being launched that aim in enhancing the participation of women at different socio-economic and political activities at societal level calling for equality between men and women in all spheres by the government side. But we never hear an advocacy of women’s equal participation with men in GCC. አንተ የምትለው (ሴቶች በአቦ ገረብ መሳተፍ) ገና አልተወጋም እንዲህ ይሁን ብሎ የሚያማክር የለም (The issue that you are talking about (participation of women in Abo-Gereb) is not yet touched. There is no single individual who can advise by saying this should be like this).”*²²³

²¹⁹ Interview with weizero Amarech, in selam bekalsi tabia, April 14,2018

²²⁰ See Article 2 of the ICESCR

²²¹ See article 3 ICESCR

²²² See article 3 of CEDAW

²²³ Interview with Meresa, March 23, in Qunqura kebele village

The election of members to the leadership positions of the GCC is targeted to men. This is due to the fact that the male norm and the perceived subordinate status of women are in the mind of the large population. Thus the society used sex as a ground for exclusion in the election process of the GCC. Asmarech expressed this as

“I never hear an idea in the election process of Abo-Gereb that advocate for the election of women and it is unthinkable issue. The society says ‘ሰበይቲ ይአባ አብ አቦ ገረብ ታ ትሰርክ? This means ‘she is a woman what she can do in the Abo-Gereb’. In GCC, no one has ever raised the issue of electing women to fill the leadership positions of the GCC and the women themselves never claim to be elected.”²²⁴

This social reality essentially implies the need to pay an increased attention to the multiple discriminations encountered by women. The existing gender disparity calls for including the call for equal participation at the grass root level as well. If the call for equal participation for men and women in leadership roles only address the representation of women in formal and government based establishments it will be difficult to achieve the goal.

III. Lack of Government Support

The government is responsible to make sure that whether all of its citizens are free from any form of discrimination or not. The international human rights documents to which Ethiopia is a party also requires all state parties to take all the necessary measures on activities that nullify citizens’ rights on the basis of sex, language, religion and other backgrounds. It is also provided in the legal documents that any cultural practice cannot be a justification for the violation of the rights of human beings recognized in the covenants.²²⁵ So, in the case of the GCC, the government’s intervention with the intention of incorporating women in the leadership positions of the system seems less positive and hence little attention is placed on the operation of women’s right to be elected as leaders and decision makers in the customary court.

According to the data obtained from the office of women’s affairs of the Zone and the *woreda*, there is no single activity aimed at incorporating women in leadership positions of customary

²²⁴ Interview with Asmarech, March 20, 2018, in Alamata town

²²⁵ see article 5 of CEDAW, Article 2 of the ICCPR, article 19 of the ACHPR

institutions in general and in the GCC in particular. Abebech A., who is the vice head of the office of women's affairs in Raya Alamata Woreda, says:

*“We the women's affairs never consider the participation of women in the GCC as an important issue. We remained silent due to the subtle cultural influence, which prescribes non-interference in cultural practices. We never ask the Abo-Gereb about their justification towards the exclusion of women and we never move one step. So, for the future, you gave us an insight that we never think about it.”*²²⁶

Women's participation in the formal legal system in the study area is well protected and hence the proportion of women in the formal court is equal with the men.

According to Mengesha C., president of the first instance court in the Woreda, women have 50% representation as judges at the formal court. However, the formal court never considers the participation of women in the GCC. This happened because of the reason that the GCC is established customarily not by proclamation. So, the formal court abstained from supervising the gender composition of the customary court and its impact in maintaining justice.²²⁷

IV. Laxness and Bias of the Abo-Gereb towards Women's Participation as Leaders and Decision makers in GCC

Equality and non-discrimination are the central pillars of human rights discourse enshrined in several human rights documents. All human beings are entitled equal rights without discrimination²²⁸ on the basis of race, sex, religion, and color.²²⁹ Accordingly, all human beings are equal before the law and they should enjoy equal protection by the law.²³⁰ So, all people are entitled to equal respect and equal right. Nothing can be used as a justification of domination of people by others.²³¹

²²⁶ Interview with Abebech A., vice head of office of women's affairs of Raya Alamata District, March 22, 2018 in Alamata town.

²²⁷ Interview with Mengesha C., president and Judge of Raya Alamata first instance court, March 23, 2018, in Alamata Town.

²²⁸ See article 25 of the FDRE constitution

²²⁹ See article 2 of the ACHPR

²³⁰ See article 7 of the UDHR

²³¹ See article 19 of the ACHPR

Though the *Abo-Gereb* never officially prohibits the participation of women in the leadership positions of the GCC, they reflect discouraging vindications and women are dominated by the superiority of the men *Abo-Gereb*. The *Abo-Gereb* also remained silent about the gender composition in the leadership positions of the customary court.²³²

The weak commitment of the *Abo-Gereb* to integrate women in their activities has a significant contribution for the under representation of women in the leadership positions of the GCC.²³³

Ayte Belay A. who is a vice chairman of the GCC at zone level confirmed the weakness of the *Abo-Gereb* as a cause for the under representation of women in the leadership positions of the GCC. He expressed this as:

*“We are responsible for the underrepresentation of women in the leadership positions of the GCC. We never encourage them to be with us. Unlike in the Dubarti, the power to pass a decision on cases related to homicide by being an Abo-Gerb is not yet given to women. But what the Abo-Gerb did instead of inviting them to partake in the GCC as decision makers is that educating them about the impact of homicide and other criminal offences and harmful traditional practices.”*²³⁴

There is also a perception of considering women as less capable of defending themselves in times of difficulties compared to men. Accordingly, regardless of their age, the men *Abo-Gereb* (even aged) are by any means stronger than the women. Ayte Abrha, vice chairman and judge at the zonal GCC who is also 72 years old justify their exclusion as:

*“The work of the Abo-Gereb is very difficult. It is like the long prayer in the church. We stand more than two hours during the reconciliation process. Entertaining the case of homicide is also precarious and difficult for the women. For example when we go to the home of the relatives of the deceased, it is difficult to ask for reconciliation since they are very angry at the moment. The men can easily escape from the potential danger that might arise from emotional reactions but women are not in a position to do so.”*²³⁵

²³² Interview with Asmarech, Mmarch 20,2018, in Alamata Town.

²³³ Interview with Jemila, March 24,2018, in Abergele village .

²³⁴ Interview with Ayte Belay A., vice chairman of GCC at Zone level, March 24, in Garjale Tabia.

²³⁵ Interview with Ayte Abrha k., Vice chairman and judge at zonal GCC, March 21,2018, in Alamata Town

The above statement clearly shows the underlying gendered bias among the leaders of the *Gereb* institution, which paints a picture of women as weak and physically unfit members of the society lacking the strength it takes to overcome some potential risks and dangers associated to the mediation process.

There are also leaders in GCC who consider women as emotional and incapable of looking at issues carefully. *Darge B.* who is a secretary general and judge at zonal GCC justifies the exclusion of women as;

*“It is obvious that women are not careful and they are emotional while passing a decision. But men are careful especially in passing decisions and unlike women; men never give up in handling difficulties. But women cannot repeatedly ask the disputants for reconciliation because of their emotional behavior. It is difficult for a woman to be Abo-Gereb. Abo-Gereb means the one that discharges decisions and commits itself to do its tasks even at night without hesitation and fear. There are circumstances that the Abo-Gereb works day and night without rest. Hence, it is difficult for a woman to discharge such tasks in such scenario.”*²³⁶

The quotation from *Darge* likewise hints at a preexisting bias that labels women as not being courageous enough to make decisions and also as not being committed enough to avail themselves day and night for different duties.

The perception of Women’s incapability to discharge duties by being leaders and decision makers in the GCC is in the mind of the actors in the customary court. *Darge K.* who is a chairman and judge in the GCC at *woreda* level justifies this as:

*“Women are not the right persons to be elected to the leadership positions of the GCC since the nature of the work of the Abo-Gereb is very difficult. Let alone to be elected in the GCC as leaders and decision makers, even in the government offices, the women leaders are working and discharging their leadership roles in a manner which is on and off.”*²³⁷

²³⁶ Interview with *Darge B.*, General Secretary at zonal GCC, March 21, 2018, in Alamata Town.

²³⁷ Interview with *Darge K.*, chairman and Judge of GCC at *woreda* level, march 25, 2018.

Like the afore-presented accounts of the other *Abo- Gereb*, *Darge K.*'s account also hints at another preexisting bias related to the lack of commitment of women and unreliability in terms of availing themselves for different duties and responsibilities assigned to them.

V. Women's Lack of Confidence and Deep Rooted Fear

Women are less committed to partake in the GCC as leaders and decision makers. During the interviews conducted with female informants and from the researcher's own observation during the fieldwork, the researcher witnessed the fact that women have deep rooted fear in facing the public and also they tend to be less confident in themselves and whether they can deliver as much as their male counterparts. They consider themselves as less capable of persuading the public and fear about the acceptance of their idea and decision they passed. They also fear not to be hated by people as a result of their participation in the given leadership position to which they are appointed. *Weizero Wolamo* expresses this as:

*“No one can accept my decision, let alone for women, the society is difficult to be ruled even by the men. ’ ምስ ሰባት ካብ ከፃላእ ኣብ ዓዲይ ከፍ ምባል ይሓሸኒ (I shall better to sit at my home rather than being hated by persons.)”*²³⁸

Women have a serious problem of fearing of coming to certain leadership positions. This is caused as a result of the historical experience since historically; they had a passive observer status in several public spheres. Even nowadays, the women who can exercise their rights are those who have no husbands or a male authority around. The married women have not the chance to partake in several public discussions and they fear to stand with men let alone to be represented in the leadership positions of the GCC.²³⁹

²³⁸ Interview with *weizero Welamo*, March 24, 2018, in *Garjale tabia*

²³⁹ Interview with *Hadas G.*, member in GCC at *tabia* level, March 24, 2018, in *To'o tabia*.

VI. Domestic Responsibilities

Women's contribution to the welfare of the family and the development of the society is pivotal. Given this reality, women's role in procreation should not be a basis for discrimination. Upbringing children requires a shared responsibility between men and women. The traditional role of women and men in society and in the family should be changed. So, there should be full equality between men and women in the family as well as in the society.²⁴⁰ Despite the normative frameworks that states the shared and equal responsibilities of men and women, in the society that the study has been carried out, there is a strict division of labor. Workload is a significant factor contributing for the low level of women's participation in leadership positions in general and in the GCC in particular. *Ayte Abrha K. expresses this as:*

*"It is difficult for women to work with us since women have a work load at home. It is suitable for men since all works of the Abo-Gereb are conducted during saint's days. The reason for the selection of these days is for the sake of not influencing the workdays. These days are suitable for the men not for the women since women are always busy at home. 'ዓዲ ድሓዘት ሰበይቲ ኩሉ ግዜ ኣብዚ ከፍ ብላ ኣይትወዕልይ' this means 'a woman having a home work cannot spend her time by sitting here throughout the day.' "*²⁴¹

In the society under discussion, a woman does not have a spare time and spends her days on domestic duties starting from morning up to evening. All works at home such as baking *injera*, cooking, washing clothes, and rearing children are the exclusive works of women. So, it is difficult for the woman to partake in *Gerb* as a leader and decision maker. It is difficult to elect a woman as an *Abo-Gereb* and her husband at home. እሳ ኣቦገ-ረብ ኾይና እሱ ድስቲ ላላለወ ኣይወግላይ ባ (it is unthinkable to see the wife as an *Abo-Gereb* whereby the husband stays at home taking care of the cooking).²⁴²

It is societally perceived that a man who engages in the areas of work, which are socially designated to women, has a very low dignity and status and is less manly. The works, which are

²⁴⁰ See preamble of the CEDAW, para.12

²⁴¹ Interview with Ayte Abrha K. , vice Chairman and Judge at Zonal GCC , March 21, 2018, in Alamata town

²⁴² Interview with Nigist, March 20, 2018, in Alamata town

designated to women, are known as የጉምብስ ሥራዎች (works which are to be done by looking down). This seriously affected the participation of the woman in the public sphere.²⁴³

This relates to a structural problem of gendered socialization pattern whereby girls are often raised in a way that they are groomed to take up the ‘ideal female responsibilities’ at the household. A recent study conducted by UNICEF in 2016 mentioned that girls spend 40% more time than their male age mates performing household chores²⁴⁴. Such gendered division of labor from an early age onwards and gendered socialization has a long term impact where by it normalizes gendered division of labor and ultimately equipping young girls with the basic skills needed for their domestic chores.

In addition to the domestic duties, the reproductive role of women is another drawback. A woman who bears a child is not in a position to handle issues that demand immediate solution. Tomorrow she will be pregnant and then she will give a child. In such scenario, it is difficult for her to discharge her leadership role effectively.²⁴⁵

The natural responsibility that women have is a barrier to participate in public spheres. Informants expressed this as ‘እኛቆልዓ ሐንካስ ይላባ (the mother of a child is like a person with disability).’ She cannot easily work and feed for herself because of the child. ሽቂል ከበልዕ ከይትብል እቲ ቆልዓ ኣበይ ትድርብዮ? If she wants to work and feed for herself, where can she leave her child? Due to this natural burden, she lacks the capacity to discharge her obligations by being a leader.”²⁴⁶

VII. The Influence of the Husbands

Several human rights documents require state parties to ensure equality of rights and responsibilities of spouses in their overall relationship irrespective of their marital status.²⁴⁷ So, both spouses should have a shared responsibility at domestic and public spheres.²⁴⁸ However, most husbands including those who are in certain leadership position in the study area do not need to see their wives in certain leadership position. In most instances, those women who are eligible

²⁴³ FGD with local residents

²⁴⁴ Tekendra Parmar “Girls Spend 40% More Time on Household Labor Than Boys”. *Times*. <http://time.com/4522527/girls-household-labor-chores-boys-children-unicef/>. Accessed on 19.5.2018.

²⁴⁵ Interview with Amarech, April 14, 2018, in Selam bekalsi tabia

²⁴⁶ Interview with Teemti, March 26, 2018, in Garjale tabia

²⁴⁷ See article 23(4) of the ICCPR

²⁴⁸ See article 16 of CEDAW

to attain leadership positions are the unmarried or divorced ones. The married women are not voluntary to attend even meetings at all levels let alone to be leaders. Their legal status is covered by their husbands' representation.²⁴⁹ The two women who are serving as an *Abo-Gereb* are both divorced. For instance, in the leadership positions of government institutions especially at *kebele* level, the most women who are assigned to certain leadership positions are the unmarried, divorced and whose husband is not alive.²⁵⁰ In addition, the emphasis of the government officials on divorced women than on the married ones while nominating women to certain leadership positions also affects the divorced women since they are the head of the house hold. So, appointing them to fill a certain leadership position is adding additional load over their tasks. For instance Nigisti A. says:

*“I have repeatedly raised the issue of exclusively emphasizing on women who have no husband while electing women to fill certain leadership positions. Because, electing the women who have no husbands is adding additional burden over what they have. You see, at home she is the head of the household and outside home, if she is appointed to fill certain leadership positions, it would be over burdening her. But the married woman is the right person to be elected to the leadership positions of the GCC. This is because of the reason that her husband will help her in different aspects. But this idea always has no any acceptance in our society. ብደይረብሕ ምክንያት እጥፍእፍእ አቢሉም እቲ ሓሳብ አይቸበሉምይ (they ignore the idea by unjustifiable reason.) They fear the husband while thinking to elect a married woman.”*²⁵¹

According to the above statement, the government officials do not want to enter in to dispute with the husbands since they know what the counter response of the husbands will be if their wives are appointed to fill certain leadership position. The officials also calculate the time that the duty can be achieved via the leadership and the time to persuade the husbands about the purpose of the appointment of their wives. This all process takes much time. There is also an influence from top leaders to done things on time. So, the remedy what they have at hand is to appoint the women who have no husbands.

²⁴⁹ Interview with Abebech A., Vice Head of office of women's affairs in Raya Alamata District, March 22,2018, in Alamata Town.

²⁵⁰ Interview with Nigisti A., vice chairman in GCC at tabia level, March 26,2018.

²⁵¹ Ibid

There are practical cases that exemplify how the influence of husbands is seriously affecting women's participation in leadership positions in the study area. The influence is both in the literate and illiterate husbands. For instance the following case is a witness that reveals the prevalence of the problem even in the educated ones.

*Abebech is the vice head of the office of women's affairs in Raya Alamata. Currently, she is divorced. The cause of the divorce was as a result of her husband's influence and requesting her to resign from power. He asked her by saying ስልጣን ልቸኛ (you have to resign from power). At this juncture, her reply was አይለቅይ ተመሰለካ ሕደር ተደይሎ ሕደኝ (never, if you are willing lets continue together, if not leave it!). Finally divorce has been happened. Now she is alone and discharging her leadership position. ”*²⁵²

In addition to the husbands' own negative perception towards the participation of their wives in certain leadership positions, they are also highly influenced by the society's belief system. It is difficult for them to develop sense of trust on their wives partaking in public affairs. The society forced the husbands to let their wives stop partaking in public affairs or to divorce if they are uncontrollable. If he failed to do so, he is less manly. So, in order to show their power over their wives, most husbands limit their wives from partaking in any leadership position. If the wives are uncontrollable and continue their participation in the public affairs, potential divorce is inevitable. The following case is a witness for such problem in the study area.

*Hadas is a 45 years old who is a local resident in the study area. In 1990s, she had the chance to attend a health care training in Maichew town which is far from her resident. At this juncture, her neighbors restlessly told to her husband as she went there for prostitution purpose. They express this as ‘ሰባይቲካ’ኮ ትሸርሙጥ ድኣም ጥዕና ትሰልጥን ኣይኾነይ ማይጨው ድኻደት’ (your wife did not go to Maichew to attend health care training but for prostitution.) Upon her return she realized that her husband has suspected her as well, and due to a fight they often had over this issue, finally she decided to get divorced and continued partaking in leadership positions. According to her, married women nowadays fear partaking in leadership positions for a fear of potential divorce.*²⁵³

²⁵² Interview with Abebech A., vice Head of office of women's Affairs of Alamata woreda, March 22,2018

²⁵³ Interview with Hadas G., member in GCC at tabia level, March 24,2018, in to'o tabia.

Hadas is not the only victim of such influence. There are also several women who were appointed to fill the leadership positions of the GCC. However, people who meet their husbands laugh on them by saying ‘ሰበይቲኸማ ትሽርሙጥ ደልያ ይኡ ምስ ኣወዳት ላወዳለት ናወዳት ስራሕ ትሰርሕላ ሃም ሰበይቲ ደማ ዓዳ የትወዕልይ (your wife’s reason of working with men is to have fun and extra martial relationship with men. If that was not her reason, she would limit her work at home like other women.)’ As a result of this influence, the nominated wives to fill the leadership positions say ‘ሓዳር ካብ ክብተን ሓላፊነቱ ይቕረየኒ (I shall better resign from power than being divorced.’ In addition, when the women who are partaking in different leadership positions encourage other women to partake in leadership positions, they are not willing. They fear not to be divorced and they value their marriage more than the position.²⁵⁴.

The above cases imply the seriousness of the influence of husbands on the wives who partake in certain leadership positions. The women also fear the influence of their husbands and prefer to limit themselves at home. Generally the husbands intimidate their wives if they attain a certain leadership position by saying:

“ኣመራርሐ እንድሕር ኹይንኺ ሰበይተይ ኣይኾንኺይ! ሰብኣይኺ ‘ዶ ትመርጂ ወይስ መሪሕነትኺ! (If you are in leadership position, you are not my wife! choose either your husband or the position!).The wives reply that ሓዳረይ ካብ ክፈርሽ ሓላፊነቱ ይቕረየኒ (I better leave the position than my marriage.)”²⁵⁵

VIII. Exclusion of Women justified as a Protection from Adultery and Divorce

In the study area, exclusion of women from any leadership position in general and from partaking in GCC as leaders and decision makers in particular is used as a mechanism of protecting them from committing adultery and divorce. It is socially perceived that allowing a woman to partake in leadership position is allowing her to engage in the business of prostitution. So, in order to create harmony between the husband and his wife, she should not partake in any leadership position including in the GCC.²⁵⁶

²⁵⁴ Ibid

²⁵⁵ Ibid

²⁵⁶ Interview with key informants , March 20,2018 in Alamata town.

According to the key informants, this social justification is a serious barrier for the women to think about participation in leadership positions since their husbands suspect them and they can be divorced. They fear the consequence of divorce since a woman who gets divorced is less likely to marry another husband.²⁵⁷

When a married woman is nominated to fill a certain leadership position, the large population objects with the point that she is married, አይኾንይ እሳማ ብዓልቲ ሓዳር ይላ (no no she is married).)”²⁵⁸

In addition, according to some people’s perception in the society, a woman who partakes in leadership positions is less likely to get a husband. For instance, *Jemila*, who has been nominated to several governmental leadership positions and to the GCC several times, expressed the justification of the society towards a woman who partakes in leadership positions as:

“ሰልጣን እንድሕር ሒዝኺ ካብ ሓዳር ትቻርዩ የኺ ኣብ መይዳት ቻርዩየኺ (if you attain a power, you will be divorced! You will be left on the field).”²⁵⁹

So, excluding women from leadership positions is partially explained as a well-intended act of preventing her from potential divorce and not to lack a husband, which is socially justifiable. Thus, married woman fears partaking in the leadership positions not to be divorced and the unmarried women fear not end up single as a result of their participation as a leader and decision maker in the customary court.

In the society that the study has been carried out, a woman who leaves her home for whatever purpose is a suspect of an act of prostitution and adultery by the general public. So, what comes to the mind of the woman while she thinks about leadership is the society’s suspicion on her and disagreement with her husband. She realizes the inevitability of divorce if she is appointed to certain leadership position. At this juncture, the woman is compelled to choose one from the two either. It is difficult for her to be a wife and a leader at the same time. This deep rooted belief system caused the establishment of strict gendered labor division and the attitude of exclusion of women from any form of participation in the public sphere. *Woizero Zenebech justifies* the exclusion of women from partaking in the leadership positions of the GCC as:

²⁵⁷ Interview with key informants, March 20,2018, in Alamata town

²⁵⁸ Interview with Abrham, March 26,2018, in Garjale tabia

²⁵⁹ Interview with Jemila, March 24,2018, in Abergele village

“Women’s role should be limited at home to avoid adultery and to maintain family peace. For instance in the old good days we had a due respect for our husbands. Partaking in the leadership positions of the GCC was not our concern. Our task was cooking, baking injera, rearing children and other tasks at home. When our husbands went out of home, we used to wait for them after cleaning the house, taking care of kids and preparing their meals. But now, this culture has been forgotten. A husband cannot command for his wife. If he tried to do so, she will reply to him by saying ‘ምን ማለትህ ነገገ እኔምኮ አሁን ነገገ የገባሁት (what do you mean by that? I also entered home now).’ This is wrong. The woman should be always ready to serve her husband.”²⁶⁰

The above statement indicates the prevalence of a perception of limiting women at home so as to prevent her from adultery. According to the statement, the notion of equality between men and women at all levels has not an acceptance since sometimes it can override the relationship of the spouses. So, clear labor division is taken as an alternative so as to sustain family peace in the study area.

5.3. Women’s Underrepresentation in the GCC and its Impact in protecting their Rights

Institutions that reflect the interests of the dominants may pass judgments that can affect women, children, and minorities.²⁶¹

Similarly, the absence of women in the leadership positions of the GCC has an impact on the protection of women’s rights. In this point, the researcher is not arguing that the *Sirit* of the GCC has not any room for women’s rights. There are rights of women which are protected in a better manner. The researcher argues that there are also rights of women that both the *Sirit* and the *Abo-Gereb* failed to protect and respect in a better manner as a result of women’s under representation in the leadership positions of the customary court.

In an institution dominated by men, rights and particular needs of women are likely not to be respected and protected. There are several complaints and suspicions about the fairness of the

²⁶⁰ Interview with weizero Zenebech ,March 23, 2018 in waja town

²⁶¹ Alula Pankhurst and Getachew Asefa (eds), Supra note 42, P.7.

Abo-Gereb.²⁶²To further impress this line of reasoning, as some informants indicated, there is a low trust by some people on the *Abo-Gereb* especially with regard to the representation of women's interests. There are also women who are willing to partake in the leadership positions of the GCC in order to represent women's interests by the assumption that women's interest can be better represented by women than by men. For instance *Asamaranch* express this as:

*"I would be very happy if I joined them and work with them since a single woman is not represented in the leadership positions of the customary court especially at zone and woreda levels. I always think that the particular interests and rights of women may not be respected. You see nowadays it is difficult to confirm that the Abo-Gereb are honest and loyal especially while they pass decisions. Because we hear several issues though we are not in a position to present a practical case that can reveal the violation of women's rights since we never partake in the overall proceedings of the system. But if women were represented with the men Abo-Gereb, the woman would protect the interest of women and they may not keep silent while the women are facing challenges and problems as a result of misunderstanding their problems by the men Abo-Gereb. For instance the proceedings of the customary court is characterized by full of appointments. At this time, the impact of the appointment especially on the mother with her child that she travels from far area may not be taken seriously by the Abo-Gereb. But if the woman was there such women related challenges might be easily understood."*²⁶³

Some female informants also pointed out the circumstances that women's interests can be disregarded by men and the way how women can understand their problem from their own experiences in governmental leadership positions. For instance *Weizero Amarech* who served in the social justice for seven years narrates her experience that she protected women's interests and concerns as:

"While I was serving as a judge at social court, I have observed several issues with regard to the men's less concern towards women's interests. In principle, disabled, handicapped, pregnant and aged people cannot pay a fee (15 birr) for file while receiving aid from the government. One day the men judges want to receive money from a pregnant woman.

²⁶² Interview with *Asmarech*, March 20,2018, in Alamata town.

²⁶³ *ibid*

After observing this, I warned them and I emotionally say to them ‘you guys! What are you doing? You have to consider the problem of a pregnant woman. To the best of my knowledge, a pregnant woman should eat a food four times per day. She may buy coffee and tea and bread as well by this 15 birr when she travels from her local resident. A pregnant woman needs enough and balanced diet since she is not feeding alone but with her baby. From your action, I observed that you were to do other similar things if I were not with you.’ Their reply to me was ‘are you a medical doctor? You are becoming beyond our capacity.’ from that time onwards, they feared to repeat similar action.’²⁶⁴

The above case hints that the men cannot understand the problem of women from its natural setting. But it is the woman who can easily understand what a woman requires and the way of protecting her interest.

Female informants accented that the presence of women in the leadership positions of the court would have a crucial value since “ብሓደ ሊድ አጨብጭብኻ አይደምቅይ (it is difficult to clamp by one hand”).²⁶⁵

According to Nigisti A. who is a vice chairman in the *Abo-Gereb* at *tabia* level, her participation in the GCC has a good implication for the protection of women’s rights whereas she is strongly concluding that the absence of women may affect their interests.²⁶⁶

Informants list the multiple effects as follows;

Marginalization of women’s voice

The GCC that is run predominantly by men is described to marginalize the voices of women. As informants highlighted, women’s problems are less likely to be easily understood by the mediators at the court. For instance when the *Abo-Gereb* entertains case of rape, they tend to compromise the girl’s interest and want to hide the exact reality to protect the criminal from imprisonment. They might not examine the issue from the perspective of women’s rights and with a gender lens. According to most informants, female are better positioned when it comes to understanding the challenges women face. In addition, women’s rights and particular regards are

²⁶⁴ Interview with Amarech, April 14, 2018, in *Selambekalsi tabia*.

²⁶⁵ Interview with key informants , March 20,2018

²⁶⁶ Interview with Nigisti A., vice Chairman in GCC at *tabia* level, March 26, 2018, in *Garjale tabia* .

less considered in the whole proceeding of the customary court.²⁶⁷ The following case of rape entertained by the *Abo-Gereb* at *tabia* level best exemplifies how women's voice can be marginalized in the customary court.

Adanech who is 16 years old was raped on her sister's wedding. She immediately reported the case to her parents. The parents of the boy who raped her asked her to reconcile with the boy through the elders' council (Shimagle). The council's decision was letting the boy to marry her and if he is not voluntary to do so, to compensate her with 9000 birr. Her parents also agreed and forced her to agree on the decision. However, after a time, the boy told her as he is not willing to marry her. At this juncture, she told again to her parents and she with her father brought the case to the Abo-Gerb at Tabia level to make the agreement formal. The Abo-Gereb simply approved the decision without letting the girl to express her idea on the issue. It was her father who was the litigant on her behalf. They called her to sign on the agreement that explains as she has already received 9000 birr compensation and not further accuse the boy. Though the letter explains as she received 9000-birr compensation, but in reality, she did not receive the money. The implicit decision of the Abo-Gereb is letting the boy to marry her rather than paying 9000 birr compensation²⁶⁸.

In this regard, the *Abo-Gereb* subtly forced the girl to sign un-received money as a receiver. The girl's autonomy was not respected. In addition, her right to access to justice²⁶⁹ as enshrined in various human rights documents was not considered by the *Abo-Gereb* since they consider their action as legitimate and just. The girl has not also a guarantee about her compensation since the decision of the *Abo-Gereb* is to be compensated if the boy is not voluntary to marry her. The decision favors more the boy than the victim since he can marry her for the time being and after a time, he can divorce her and hence he will be free from liability. At this juncture, the girl becomes a victim in multifaceted dimensions.

The discriminatory practice observed during the fieldwork relates to the regulation that only men are responsible to partake in court hearing sessions of disputes. This relates to the notion of

²⁶⁷ Interview with key informants, March 24, 2018, in To'o tabia

²⁶⁸ Interview with Adanech, March 25, 2018, in *Ayer marefia* village.

²⁶⁹ See article 8 of the UDHR, article 14 of the ICCPR, and Article 37 of the FDRE constitution.

manhood. The concept of manhood in this perspective refers to men's prerogative in taking household issues not the public sphere.

Adanech's case best illustrated how women and young girls' voices can be undermined at the court. The court's decision on the case of *Adanech* best protects the interest of the boy who raped *Adanech* since she has been implicitly enforced to sign an agreement showing as she is already compensated. The decision is implicitly to form the marriage with the boy who raped her. In addition, her voice about the issue is not heard. Even though *Adanech* was 16 and a minor who was under age, the elders estimated her age as being above 18. However during an interview she mentioned the fact that she is 16. By the time she started mentioning about her age, her father came and interrupted the interview and mentioned that he can be interviewed on her behalf. The researcher explained the fact that the interview is only for a research purpose and posed the question of her age to him. He mentioned that she is 18. This encounter clearly shows how much *Adanech* did not get the chance to mention her right age let alone to express the details of what happened to her during the entire process. This essentially implies that the law enforcement bodies often interpret the existing laws in conjunction with cultural traditions or public sense of justice by disregarding the gender sensitivity of the issue. According to the *Sirit* of the GCC, the punishment for the crime of raping a virgin girl who is below 18 years old is 20,000 birr. But in the case of *Adanech*, they disregarded this normative principle. So, if women were with them, they would struggle against such marginalization of voices and interests of women and young girls in the court. So, this essentially indicates the women are bound by the culture than presenting their cases to the legal system. In this regard, the women's and girl's right to a fair and public hearing by a competent, independent and impartial tribunal as provided in different human rights documents is not applicable at the traditional justice system.²⁷⁰

Gender based discrimination

Informants also accented that the absence of women in the leadership positions of the GCC as a cause for injustice especially while entertaining women's issues. Such problem of fairness is inevitable to be happened since the laws of the system are to a greater extent re-enforced by cultural norms. Thus, according to the informants, let alone in GCC, which is inherently

²⁷⁰ See article 14 (1) of the ICCPR and article 37(1) of the FDRE constitution

dominated by men, it is also a living reality even in governmental institutions that men favor men since they get to meet in informal gatherings.²⁷¹ The following case best exemplifies this.

In 2006, a conflict happened between Haji Mohammed and Kebede Yayew. The cause of the conflict was an incident whereby Kebede Yayaw wanted to take the ox of Haji Mohamed without asking the permission of Haji Mohammed. Haji Mohamed and his mother stopped Kebede from taking the ox away. But Kebede yayaw refused. Haji Mohamed was annoyed with his act and the men go in to physical fight. Hajji Mohammed ended up beating Kebede brutally. Kebede on his part had a sharp material known as Gojemo (pole). When Haji Mohamed kicked him via his stick, his mother interferes for mediation and when kebede yayew try to kick Haji Mohamed, Kebede ended up stabbing Haji Mohammed's mother with the Gojemo. Though the mother of Haji Mohammed was seriously injured, the Abo-Gereb imposed 6000 birr punishment on her and her son. The kicker was not liable for his criminal offence. The Abo-Gerb wanted to hide their decision from the community. She justifies here silence from bringing the case to the formal court by saying 'ይብሉኝ ብዬ' (I allow them to eat it). The men collaborated to each other. After this issue has been heard in the society, Tekabech who is a leader in the women's association at Tabia level has revealed the case in a joint meeting between leaders of women's affairs at Tabia level and the Abo-Gereb organized by the Woreda's office of justice. From the decision on this case on wards it is realized that the occurrence of such sex based discriminatory decisions especially that affect women as a result of their absence in the decision making process of the customary court under discussion.²⁷²

According to the above case, the issue is not seen from a gender perspective. Here, both the mother and her son are victims. So, key informants accented that the *Abo-Gereb* decided such decision since she is a woman. But if a woman representative were with them, such problem may not be occurred.

The case of *Adanu* and Haji Mohammed's mother mentioned above has a negative connotation on the fairness of the traditional court. In this regard, the women's and girls' right to a fair and public

²⁷¹ Interview with Abebech A., vice head of office of women's affairs of Raya Alamata woreda, March 22,2018

²⁷² Interview with Tekabech , March 20,2018, in Alamata town

hearing by a competent, independent and impartial tribunal is not applicable at the traditional justice system.²⁷³

Another systematic dimension of gender-based discrimination is with regard to the contribution of the two sexes in the society and their level of benefit from their contribution. Informants hinted that the women have a critical role in peace making in the society. For instance, women through the *Duberti* have an instrumental role for the successful achievement of restoring peace by the *Abo-Gereb*. The visible gender gap is that the *Duberti* have not a formally structured setting like the *Abo-Gereb*. Unlike to the *Abo-Gereb*, there is no also any provided payment to the women in the *Duberti*.

The contribution of women via the *Dubarti* is a voluntary service. *Shek Tijan*, a local resident in Waja town expresses the role of *Dubarte* as:

“በእያንዳንዱ የነፍስ ዕርቅ ዱባርቲዎች አሉ። ለዱባርቲዎች ተብሎ የተቀመጠ ክፍያ ግን የለም። ትልቁ የማስተረቅ ሚና ያላቸው ዱባርቲዎች እያሉ ክፍያ ያላቸው ግን ወንዞች (አባገረብ) ናቸው። የአባገረቦች ሥራ ማዘዝና በተፃፈው መሰረት ወሳኔ መስጠት ነው (the Dubarti partake in every reconciliation process of case of homicide. But there is no any payment provided for them. Though the Dubarti have the significant take in the process of the reconciliation, the payment is for the Abo-Gereb. The task of the Abo-Gereb is commanding and passing a decision).²⁷⁴

The *Abo Gereb*'s decision is highly dependent on the *Dubarti*'s healing. Though the women have a critical role in the reconciliation of homicide cases, they have no any provided payment for their contribution. Their equal entitlement with men to the right to get equal payment for equal works with men²⁷⁵ is not respected in the traditional system under question. In addition the following case more exemplifies the living experience.

Jember who is a famous leader in the Dubarti healing throughout Raya and Kobo woredas has a critical role in reconciling the relatives of the deceased and the killer. According to her, all reconciliation that the Dubarti engaged in her leadership never failed. She works not to earn a certain payment but for God's sake.²⁷⁶

²⁷³ See article 14 (1) of the ICCPR and article 37(1) of the FDRE constitution

²⁷⁴ Interview with Shek Tijan, April 14, 2018, in waja town

²⁷⁵ See article 23 (2) of the UDHR, Article 7 of the ICESCR

²⁷⁶ Interview with Jember, April 15, 2018 in waja town

Her daughter expresses the living situation of women and her mother's contribution in the reconciliation process as:

“The women are the one who works even more than what the Abo-Gereb can do in the process of reconciliation. Now you see there is no any difficulty in the work of the Abo-Gereb since they decide by reading the guiding principles. The difficult work is carried out by the women via Duberti without any payment. My mother is the famous Dubarti leader without any payment. But those people who call her may give her by saying ‘ቋትሽ ባዶ እንዳይሆን’ (for not to be your buffer empty), for your coffee or transportation.’ In the reconciliation process, the Abo-Gereb asks the amount of their payment. The disputants after reconciled also give some payment to the Abo-Gereb. But my mother never receives a payment like what the Abo-Gereb receives. There are also circumstances that they left her after the conclusion of the Duarti without letting her returned back to her home. (እኔ ራሱ ወድቃለች ነዬና አንሺ ተብዬ የሄድኩበት ጊዜ አለ። ከፍያ ቀርቶ እሷን አምጥቶ ከቤት ማድረስም አልቻለም። እናቱ ግን ሲጠሩዋት የምትሄደው አላህ ይወደዋል በማለት ነው። ዱባርቲዎች እሺ ባለባሉላቸው ወንዞች ወሳኔ ይሰጣሉ። አሁን እሷ ሁሉን አካሄድ ታወቀዋለች ወሳኔ ለመስጠት ግን አይጠሯትም (there is a day that they called me and told me as my mother is not in a position to walk by her stand as a result of being tired of the healing in the Dubarti and to let her take to her home. Let alone payment, they failed to bring her to her home. But my mother says ok when they call her for Duberti by the belief that Allah likes such activity. The Abo-Gereb pass a decision after the Dubarti convince the disputants. My mother knows everything but they never call her for decision making).”²⁷⁷

Unlike the women in the Duberti, the Abo-Gereb have a payment (3%) from each side of the disputants for instance in the case of homicide. The justification of the Abo-Gereb towards the un-payable contribution of the women is that they are many in number and hence it is difficult to pay for each of them. But there are women who have a leading role like Jember without whom the reconciliation process cannot be commenced. Even the Abo-Gereb themselves calls them when they think of reconciling disputants of homicide case. The Abo-Gereb are reluctant to provide a

²⁷⁷ Interview with Semira, April 15,2018, in waja town

payment for the women for their contribution. This living reality is against the right to remuneration.²⁷⁸

The absence of women in the leadership positions of the GCC has its own negative impact on women's rights. Weizero Teemti expressed the importance of women's participation in the leadership positions of the GCC as:

*"If a woman were in the GCC, she would do like what I am doing in the social justice (i.e. protecting the women's rights and particular interests). ሰበይቲ አብ ገረብ ካትኣትዉግ ጨለ ድኣም ነብሩ ምኽንያቱ ካብኣቶም ድንገል እሳት እርመሎም ነብሩ (the representation of women in GCC would be very interesting. She would correct points missed by the Abo-Gereb.) she would comment on the decision by best defending the interest of women."*²⁷⁹

Provisionally, the *Sirit* of the customary court has certain discriminatory statements. In the *Sirit* raping a married woman is prohibited. Though the prohibition is admirable, the provision best protected the man than the raped woman since the rationality of the prohibition is implicitly intended to protect the man from communicable diseases such as HIV/AIDS and genitalia. The mental, psychological and physical health of the raped woman is disregarded. In addition according to the *Sirit*, A man who raped a married woman is required to compensate 6000 birr for her husband and for his wife. No compensation is provided for the raped woman. In this regard, the woman's right to access to justice and right to psychological and physical health is disregarded. On the other hand, though the provision of compensation for a victim of rape is admirable, the penalty for the crime of rape is discriminatory. For instance, the penalty for the crime of raping a girl whose age is under 18 is 20,000 birr, 10,000 birr if she is above 18 and 4000 birr if the raped girl is not a virgin irrespective of her age. Those provisions clearly violates the women's right to access to justice as provided in the international²⁸⁰, regional²⁸¹ and national²⁸² human rights documents.

²⁷⁸ See article 23 of the UDHR, Article 7 of the ICESCR

²⁷⁹ Interview with weizero Teemti, March 26,2018, in Garjale *tabia*

²⁸⁰ See article 10 of the UDHR

²⁸¹ See Article 7 of the ACHPR

²⁸² see Article 37 of the FDRE constitution

Discourage and limit women's interest of participation in leadership positions

Women's right to partake in leadership positions at all levels is guaranteed in various human rights documents. For instance article 7 of the CEDAW call state parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country.²⁸³ In this regard, political and public life of a country is a broad concept that includes the exercise of political power, in legislative, judicial, executive and administrative powers as well as all aspects of public administration and many aspects of civil society including public boards and local councils and community-based organizations.²⁸⁴

The exclusion of women from partaking in the leadership positions of the GCC is limiting and discouraging them from partaking in leadership positions at all levels.²⁸⁵ It has also a negative connotation on equality between men and women in all spheres. If they are from now onwards dominated and marginalized at the grass root level, they will remain marginalized forever and may not have the experience of leadership and decision-making.²⁸⁶ Tekabech expressed this as

“We are saying that the Abo Gereb are working effectively, striving to maintain peace by struggling with so many people. However they do not incorporate women. By excluding women from the leadership position in the court, they are also reinforcing the perception that women cannot take up a leadership position in a way that affects the future chances of women taking up leadership positions as they do not get to see any role model.”²⁸⁷

The actual setting of the *Abo-Gereb*, which is administratively male dominated, contravenes with the principle of equal participation of men and women in cultural lives.²⁸⁸

²⁸³ See CEDAW article 7

²⁸⁴ Para.5.Gen.Rec.23, Adopted by CEDAW Committee at its fifth session, (1986); available on: www.un.org/womenwatch/daw/cedaw/ accessed on 5/8/2018.

²⁸⁵ Interview with Asmarech, March 20,2018, in Alamata town

²⁸⁶ FGD with local residents

²⁸⁷ Interview with Tekabech, March 20,2018, in Alamata town

²⁸⁸ See article 27 of the UDHR, Article 1 of the ICCPR, Article 1 of the ICESCR, Article 17(2) of the ACHPR

Conclusion and Recommendation

Conclusion

In the African continent more than ten countries make it to the top first fifty countries in the globe having high percentage of women in decision-making positions. However as presented in this thesis, the lived realities on ground show the state of discrimination against women in law and in practice in customary courts in Ethiopia with a specific case of the *GCC*. This is a reality existing at the grass root levels despite the drastic changes Ethiopia is witnessing in post 1990s period in women's representation in socio-political spheres in general.

At customary courts, there is a persistent under representation of women at top leadership positions. Unlike the representations of women at government structures there are no strong women's movement on the ground advocating for greater representation of women at the *GCC*. Furthermore, there is no strong political commitment at the lower government levels to ensure the incorporation of women in decision-making positions at customary courts. Unlike the formal government institutions where the quotas and electoral systems have helped in increasing the number of women in parliament, at customary courts the strong patriarchal system tends to constrain the very existence of a system that accommodates women to take up leadership positions as best presented in the case of the *Gereb* institution above.

Ethiopia has developed constitutional framework, institutional and policy architecture with a goal of empowering women and ensuring gender equality. Ethiopia's constitution clearly indicates the value for gender equality and equality between citizens.

Even though the changes in rules to address deep-rooted gender imbalances in public government institutions tend to be quintessential, it is equally imperative to encourage the participation of women at grass root customary institutions. As the study found out, even the few women who make it to the few exceptional heads of the customary court face a double hurdle. The first hurdle is with regard to the very first access or election to the office. The second hurdle presented in this study relates to having influence in decision-making processes by and large. These are the two intertwined challenges. The second hurdle presented in this study has shown how participation of women in leadership posts is not necessarily a precondition for their influence. Hence as the study found out it is not something that consequentially impacts the efficient decision making power of

women.

The following paragraphs give a brief overview of the entire structure and functioning of the GCC with particular focus on women's rights to be represented in leadership positions of the customary court and the rights violated in reference to their under representation in the customary court in light of provisions of the international, regional and national human rights documents.

Equality of men and women is the central guiding principle in the human rights discourse. It is guaranteed in several international, regional and national human rights instruments and policy frameworks. The 1945 UN charter, the 1948 UDHR, the 1966 covenants (ICCPR and ICESR), the 1976 CEDAW, the African charter on human and people's rights, the protocol to the African charter on human and Peoples' rights on the rights of women in Africa and the FDRE constitution explicitly underscored the equality of men and women in every sphere including in leadership positions. In addition to guaranteeing equality of men and women, the documents also call state parties to take all appropriate measures, including promulgating laws, modifying or abolishing existing laws, regulations, customs and practices which constitute discrimination against women and to repeal all national penal provisions which constitute discrimination against women. However, the application of such normative promises is not effective in the GCC. The cultural practice leaves women aside from partaking in the leadership positions and decision-making process. This is against the principle of nondiscrimination based on sex and the right to equally partake in cultural lives as enshrined in the aforementioned documents. Their exclusion from the leadership positions of the GCC has caused a profound impact on the protection of their rights. As a result of their absence in the leadership positions of the GCC, their rights to equality and non-discrimination, to partake in cultural lives, to access to justice, to be leaders, to equal payment for equal work and to choose spouses (since the Abo-Gereb used intermarriage as a means of healing social wounds²⁸⁹) are dis regarded.

Ethiopian women in general and women in Alamata *woreda* in particular have played and continuing playing a pivotal role in the society. In post 1991 Ethiopia, women have joined political offices. Even though the proportion of women in the governmental leadership positions is increasing remarkably, women remain vastly underrepresented in the leadership positions of the

²⁸⁹ Interview with Takele T., secretary general and judge at zonal GCC, April 2,2018, in Alamata town

GCC and are still suffering male dominance. As a result of their absence in the leadership positions of the customary court, there is a profound impact on the protection of women's rights in the proceedings of the customary court. The office of women's affairs, the formal court, the security and administration office and the office of justice in the *woreda* are the stakeholders that have direct or indirect tie with the activities of the GCC. However, neither of the aforementioned stakeholders pay due attention to the gender disparities existing at the institution of GCC.

Recommendations

Based on the findings of the study, this research forwards the following recommendations.

- The government needs to provide comprehensive provisions of legislation on gender equality and non-discrimination of women in the leadership positions of customary courts;
- The government should hold training on gender equality for civil servants and awareness-raising activities on gender equality at all levels;
- The civil society , NGOs and government institutions working on gender related themes at grass root levels should build alliances with men and network to promote women's participation at grassroots levels;
- The civil society and the government should try to build bridges between communities through constructive dialogue;
- Different stakeholders mainly the government should conduct training and sensitization workshop to leaders of customary courts on existing national and international policies protecting the rights of women and calling for equal participation of women ;
- As in the leadership positions of the government institutions, the GCC should provide quotas for women in its leadership positions.

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Table 2: List of key informants

No	Name of informants ²⁹⁰	Age	Sex	Place of interview	Time of interview	Remark
1	Adanech	16	F	Ayer Marefia village	March 25,2018	Client in GCC at tabia level
2	Mekonen	53	M	Ayer Marefia village	March 25,2018	Client in GCC at Woreda level
3	Yeshiwork	45	F	Alamata town	March 20,2018	Local resident
4	Abebech A.	30	F	Alamata town	March 22,2018	Vice head of office of women's Affairs
5	Takele T.	53	M	Alamata Town	April 2, 2018	Secretary and Judge in GCC at zone level
6	Darge K.	50	M	Alamata town	March 25,2018	Chairman and judge in GCC at Woreda level
7	Abrham	48	M	Garjale tabia	March 26,2018	Local resident
8	Teemti	55	F	Garjale tabia	March 29,2018	Local resident
9	Eyasu T.	41	M	Alamata Town	April 3,2018	Vice chairman of RDA
10	Darge B.	57	M	Alamata Town	March 21,2018	Secretary and judge at zonal GCC
11	Amarech	50	F	Selam Bekalsi tabia	April 14,2018	Local resident
12	Abrha K.	72	M	Alamata Town	March 21,2018	Vice chairman and judge at zonal GCC
13	Asmamaw A.	55	M	Alamata Town	March 23,2018	Public prosecutor in the office of justice in <i>Raya Alamata district</i>
14	Debritu	48	F	Waja town	March 23,2018	Local resident
15	Etsay	38	F	Maichew Town	March,27,2018	Head of office of women's affairs of Southern Zone of Tigray
16	Zenebech	70	F	Waja town	March 23,2018	Local resident
17	Wolamo	44	F	Garjale tabia	March 24,2018	Local resident
18	Semira	27	F	Waja town	April 15, 2018	Local resident
19	Berhe	46	M	Selam bekalsi tabia	March 20,2018	Local resident

²⁹⁰The names of the informants are pseudo names.

20	Belay A.	57	M	Garjale tabia	March 24,2018	Vice chairman and judge at Zonal GCC
21	Hadas G.	45	F	To'o tabia	March 24, 2018	Member in GCC at <i>tabia</i> level
22	Jemila	40	F	Abergele village	March 24,2018	Local resident
23	Nigisti A.	40	F	Laelay Dayou	March 26,2018	Vice chairman in the GCC at tabia level
24	Shek Tijan	63	M	Waja town	April 14,2018	Local resident
25	Shewit	39	F	Laelay Dayou tabia	March 22,2018	Local resident
26	Asmarech	40	F	Alamata town	March 20, 2018	Local resident
27	Amir	40	M	Waja town	March 23,2018	Local resident
28	Meresea	52	F	Qunqura kebele village	March 23,2018	Local resident
29	Desta	39	M	Merewa tabia	April 12,2018	Local resident
30	Tekabech	45	F	Alamata town	March 20,2018	Local resident
31	Nigist	39	F	Alamata Town	March 20,2018	Local resident
32	Mengesha C.	40	M	Alamata town	March 23,2018	President and judge in Raya <i>Alamata</i> 1 st instance court
33	Solomon T.	25	M	Alamata Town	April 3,2018	Crime investigator in Raya Alamata district police station
34	Jember	80	F	Waja town	April 15,2018	Leader in <i>Dubarti</i> healing
35	Azmera	22	F	Merewa tabia	April 12,2018	Local resident
36	Hirit	28	F	Garjale tabia	March 26,2018	Local resident
37	Tebereh G.	30	F	Alamata town	March 22,2018	Expert of crime prevention and investigation

Appendix One: interview and FGD guidelines

Informants' background

Name.....Age..... Sex.....Religion.....
Education background.....Occupation.....Marital status.....
Place of interview..... Role in the *Gereb* Customary Court (if any) -----
Date of interview..... Time of interview

Section I - Interview Guide Questions to Local Elders and leaders in the Gereb Customary Court

1. Would you briefly tell me about the history of the Gereb customary court?
 - How is the establishment of the *Gereb* customary court?
 - What is the purpose of its establishment?
 - What is the importance of its establishment?
2. What are the main positions with in the customary court?
3. How is the power sharing and structure of the customary court?
4. What are the guiding principles (norms) of the customary court?
5. What types of dispute cases are handled at the court?
6. Is there a regular court hearing (calendar of the hearing; weekly, monthly bimonthly etc) ?
If yes, how regular is it and why are the specific days selected?
7. Who are the principal actors and decision makers in the overall proceedings?
8. What are the criteria of selecting individuals to the leadership positions in the customary court?
9. Are there tasks and roles given to women in the customary court? If yes, what are the tasks and roles? How is the level of women's leadership role in the customary court?
10. Do you think that the leadership roles and positions in the *Gereb* customary court are gendered?
11. Why are men over represented in the leadership roles or/and positions? Is leadership role is exclusively bestowed to men?
12. Does the *Gereb* customary court allow women to be represented in the leadership positions of its system at least in principle? If yes, what are the main reasons hindering them from having the leadership positions?

13. Why women are underrepresented in the leadership positions of the court system? Aren't they qualified or interested to partake in the leadership positions in the customary court? What is your justification towards the exclusion of women in the leadership positions of the *Gereb* customary court?
14. Do you accept the idea that women have equal decision making capacity with men? If no, why? What type of gap do you know between men and women in leadership roles or in decision making process? Do you think that the gap has a feminine element? Do you believe men are naturally endowed of leadership quality than women?
15. Do you think that the inherently men dominated customary court will address women's issues successfully? If yes how?

Section II Interview Guideline for key informants (Community Members)

1. Are there customary institutions (courts) that handle cases in the community? Please mention?
2. Do people prefer the *Gereb* customary court? If yes, why they prefer it? What it makes different from the formal courts?
3. Who are the leaders in the customary court?
4. What are the criteria to select leaders to the customary court?
5. Do women have equal right with men to be elected to the leadership positions of the *Gereb* customary court?

Section III- Interview guide questions for women's affairs office

1. How do you see the gender power relationship in the community?
2. What are the challenges of ensuring gender equality in the *southern zone of Tigray*?
3. How do you see the representation of women in the *Gereb* customary court and its implication to women's rights to be represented in leadership positions?
4. Have you ever taken any measure to enhance women's capacity of leadership in the customary court? Was the measure effective? If not, why?
5. What are the challenges you face in enhancing women's leadership role in the leadership positions of the *Gereb* customary court and beyond?

6. How do you see the implementation of women's rights to be represented in leadership positions at the grass root level in reference to the *Gereb customary court*?
7. Are there planned enforcement mechanisms of women's rights and policy frameworks for the future intended to enhance women's representation in the leadership positions of *Gereb customary court*? If yes, please mention them.

Section Iv- FGD guiding questions with the community

1. Do men and women have equal rights and opportunities in all affairs in your community?
2. What are the areas that women are not allowed to partake in equally with men?
3. Do women have equal rights with men to partake as leaders in the *Gereb customary court*? If not, what are the factors that limit women from partaking as leaders in the *Gereb customary court*?
4. What are the societal justifications towards women's underrepresentation in the *Gereb customary court*?
5. Are women willing to partake in the leadership positions of the *Gereb customary court*?
6. Do you think that women's absence in the leadership positions in the *Gereb customary court* affects their rights? If yes, how?
7. What are the rights violated because of women's absence in the leadership positions?
8. To what degree and extent women attempted to be represented in the leadership positions of the *Gereb customary court*?
9. Are there social sanctions imposed on women who challenge the functioning of the customary court? What are the sanctions?