

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
CENTER FOR HUMAN RIGHTS

The Human right approach to sexual minority right: the life and experience of gay, lesbian and bisexual Ethiopians living in Addis Ababa

By
Selamawit Tsegaye

December, 2014

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
CENTER FOR HUMAN RIGHTS

The Human right approach to sexual minority right: the life and experience of gay, lesbian and bisexual Ethiopians living in Addis Ababa

By

Selamawit Tsegaye

MA Thesis Submitted to the School of Graduate Studies of Addis Ababa University

In Partial Fulfillment of the Requirements for the degree of Master of Arts in Human Rights

Advisor: Samuel Tilahun, (LLM, LLB)

Declaration

I, the undersigned declare that this thesis is my own original work. To the best of my knowledge, it has not been presented for a degree in any university, and all sources of materials that are used for writing this thesis have been duly acknowledged.

Name: _____

Signature: _____

Place: _____

Date of submission: _____

This thesis has been submitted for examination with my approval as university advisor.

Name: _____

Signature: _____

Date: _____

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
CENTER FOR HUMAN RIGHTS

**The Human right approach to sexual minority right: the life and experience of
gay, lesbian and bisexual Ethiopians living in Addis Ababa**

By: Selamawit Tsegaye

Approved by:

Advisor

External Examiner

Internal Examiner

signature

signature

signature

Acknowledgement

First and for most, I thank people who have contributed, in one way or another, to the success of this study. I would like to thank my advisor Samuel Tilahun for stepping in the most difficult time and offered his professional guidance.

I am also equally grateful to Siseraw Dinku for his insightful and rich thoughts from day one to the end of the project and relentlessly reading and editing my manuscript.

I am also pleased to thank Dr. Getent Tadele for the encouragement and material assistance, Ayalew Getachew for his affirmative encouragement and constructive comments. This study would not have been completed without the support and involvement from all of you, Thank you all so much.

My family, I am always great full and so humbled for the motherly and fatherly duties you have continued to carry out for over half of my life. I could not be more driven, compassionate and strong without the constant moral support and love you have provided me.

My deepest sincere gratitude is to my informants, who were friendly, trustful and honest throughout this study. I have grown to be very fond and respectful, I wish I could list your names and thank each of you , but obvious reasons require me not to do so.

I would like to express my especial thanks to “TG” I owe you ,you have been really consistent and patient since the start of this project I could not made this reality without your support ,Thank you all very much.

I am so indebted to my friends who have been supportive in every possible way and whispering encouraging words in all my worst moments.

My deepest gratitude will also go to the Addis Ababa University, center for human rights for the grand opportunity to be part of the program and academic freedom that is guaranteed to students in exploring different social issues.

ACRONYMS

ACHPR	Africa Commission on Human and Peoples' Rights
AU	African Union
CAL	Coalition of African lesbian
CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic Social and Cultural Right
CRC	Committee on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights
EU	European Union
FDRE	Federal Democratic Republic of Ethiopia
HIV	Human Immune Virus
HRC	Human Rights Committee
ICCPR	International Convention on Civil and Political rights
ICESCR	International Convention on Economic, Social and Cultural rights
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MSM	Men having Sex with Men
OAS	Organization of American states
OAU	Organization of African Union
STD	Sexually Transmitted Disease
UN	United Nation
UNDHR	United Nation Declaration of Human Right
UNSECO	United Nation Educational, Scientific and Cultural Organization
WHO	World Health Organization

Abstract

This paper analyses the living situation and challenges of those who consider themselves as gay, lesbian and bisexual people in Addis Ababa. The study also investigates the stigmatization and vulnerability to abuse from their own experience and discusses the wider human right implication. In addition to this, the writer discusses the major international and regional human right development in relation to sexually marginalized people.

The study employs qualitative approach to investigate the life and experience of LGB people in Ethiopia, the challenges faced by LGB Ethiopians living in Addis Ababa and the human right implication. Both primary and secondary data that are collected through semi-structured interview with key informants', focus group discussions and researcher observations were utilized.

Recently the issue of same-sex sexual act is being discussed in various Medias in which case such people are mentioned in relation with pedophilia, mental sickness and people who choose deviant sexual behavior. Regarding the legal status of same sex-sexual act, the criminal code of Ethiopia under article 629 refers it as a moral offense and Punishable by law. The study reveal that due to dire situation in the country which is partly the result of criminalization of the act; individuals who identify themselves as gay, lesbian and bisexual live in fear, shame, stress and hesitation. Additionally, they are also vulnerable to stigma , hate , violence and number of social problems which affects the fundamental human right principles such as non- discrimination and equal protection of the law , privacy right , equal accesses to health and education, right to honor and reputation.

Table of Content

ACKNOWLEDGMENT.....	I
ACRONYMS.....	II
ABSTRACT.....	III
CHAPTER ONE.....	1
1. Introduction.....	1
1.1. Statement of the problem.....	3
1.2. Research question.....	6
1.3. Objective of the study.....	6
1.4 Significance of the study	7
1.5. Scope of the study	8
1.6. Research Methodology.....	8
1.6.1. In-depth interview.....	8
1.6.2. Focus group discussions (FGDs).....	9
1.6.3. Observation	9
1.7. Sampling technique	9
1.8. Ethical consideration	9
1.9. Limitations of the study.....	10
1.10. Organization of study	10
CHAPTER TWO.....	11
2. Literature Review	11
2.1. Conceptualizing Sexuality	11
2.2. Same-sex sexual act in Africa.....	13
2.2.1. Intimacy rule in Africa: different perspectives on same-sex sexual act	13
2.2.2. Ethiopian Historical perspective.....	17
CHAPTER THREE.....	19
3. Yardsticks in sexual minorities’ rights	19
3.1. Conceptualizing Sexual minority right under the realm of human rights	19
3.1.1. Defining sexual rights	19
3.1.2. Who are sexual minorities?.....	21

3.1.3. Defining Sexual minority right.....	22
3.1.4 The Human right approach to sexual minority right	23
3.1.5. Debate in Universalism and Relativism on sexual minority right	27
3.2. Relevant International and Regional Normative Frameworks for the Protection of Sexual Minorities	28
3.2.1. International human rights system.....	28
3.2.1.1. The Yogyakarta Principles	31
3.2.2 Regional human right system.....	33
3.2.2.1. European regional human rights systems	33
3.2.2.2. Inter- American regional human rights system.....	35
3.2.2.3 African Human rights system	36
3.3. Ethiopian Laws on LGB	40
CHAPTER FOUR.....	42
4. The life and experience of LGB people living in Addis Ababa.....	42
4.1. Identity formation.....	42
4.2. Personal conflict and stress.....	45
4.3. Fear, intimidation and worry.....	49
4.4. Perception of the law	51
4.5. Media role and intolerance	54
4.6. “Heteronormativity” Religious and cultural influence in Ethiopia.....	55
CHAPTER FIVE	57
5. The Challenges of LGB people in Addis Ababa and the wider human rights implications.....	57
5.1. Non-discrimination and equal protection of the law	59
5.2. The right to privacy	60
5.3. Right to education	61
5.4. Equal accesses to health services	62
5.5. State responsibility and response	63
CHAPTER SIX.....	65
6. Conclusion and Recommendations	65
6.1. Conclusion	65
6.2. Recommendations	68

Bibliography	70
Annex-	77

CHAPTER ONE

1. Introduction

After World War II, civil rights movement which aimed at achieving a socio-political and economic equality of minorities has taken over many western countries. In the meantime, sexual minority right also progressed as an important issue that should be considered by the international community. This resulted, inter alia, for the concern of sexual minorities to be given a prominent view later on the years (Sanders, 2002). In this regard, attempts have been made in both international and national arena to improve the situation of all minorities and to outlaw discrimination on any ground including sexual orientation through acceptance and accommodation (Cotter, 2010).

A sexual minority is a group whose sexual identity, orientation or practices differ from the majority of the surrounding society; they are usually referred to as LGBTI people (lesbian, gay, bisexual, transgender and intersex peoples) (Persad, 2011).

Over the years, different scholars and writers have tried to define sexual orientation from different perspectives. According to Edwin Cameron (1993), sexual orientation is an erotic attraction which mostly happens between male and female. He further elucidates that a person can also be erotically attracted to members of the same sex (Cameron, 1993).

Robert Wintemute (1995), also tried to define sexual orientation as an emotional attachment and attraction consisting one's mind decision with who to get involved with (Wintemute, 1995). Additionally in 2006, Amnesty International stated that sexual orientation includes emotional, sexual, romantic, and affectionate attraction towards opposite sex or members of the same-sex (Amnesty International, 2006).

In general, sexual orientation which has also developed under the wider notion of sexuality not only is understood to produce an erotic relationship, but also re-conceptualized as a way of life forming "egalitarian relationships" disregarding age-inequality of opposite or same-sex individuals and gender patterns (Nardi, 1998).

Sexual activity is shaped and constituted in social, religious and cultural contexts. "Traditionally sexual desire was assumed to be natural, automatic and heterosexual"(Gagnon&Parker,1995).

Accordingly, deviation from the orthodoxy of sexual act that is presumed to be normal and natural results in social condemnation. Thus, people who have sex with the same sex member throughout history were considered sinners and criminals in many countries.

In the beginning of the 1980s, sex research shifted the existent cultural and religious context of sexuality by introducing scientific and psychological explanation. Moreover, the study made on the area also resulted change in terms and expressions which were widely used to explain the groups as “The criminal and the perverted” in to sexual minorities (Ibid).

Sexual minorities’ particularly gay, lesbian and bisexual people are more often referred to as “Homosexuals”. The term appeared in 19th century Europe and widely spread by the medical community. However, some argue that the term ‘homosexual’ does not show both an intimate and passionate same- sex relationship as it only focuses on the sexual act (Tamagne, 2006).

Notwithstanding the claim by some writers that the term “homosexual” is a limited terminology and holds a negative connotation, it is still commonly used to describe people who are involved in same-sex relationship. In this study the terms ‘same- sex relationship’, ‘same-sex intimacy’ and ‘sexual minority’ are used interchangeably in describing gay, lesbian and bisexual people.

The issue of sexual minority has become a point of discussion in many socio-political platforms. Currently, even though many western countries recognize and establish it as a human right issue still many countries particularly in Africa are resistant and maintain a strong legal action.

In this regard, more than two thirds of African countries criminalize same- sex sexual behavior in one way or another (Anyamele et al, 2005). Leaders like Robert Mugabe of Zimbabwe and former President Nujoma of Namibia, publicly condemned same-sex sexual act. Both claim that it is un-African practice that deviates from the far long socio-cultural and religious values of the society and it should not be tolerated (HUFF Post Gay Voices, 2013).

In spite of the various opposing viewpoints on the existence and recognition of sexual minorities and the popular reaction by politicians and religious leaders, the global movement in liberation of the LGBTI people which is a recent notion of establishing a “gay identity” as part of human rights is taking historical shifts in developing international human right norm (Nardi, 1998).

In Ethiopia, the issue of sexual minorities is receiving a considerable attention in recent times. According to Daniel Ido Balcha (2009), the issue has fired up in 2008 when hundreds of ‘homosexuals’ signed a petition to appeal to the prime minster for equal right which informed

the wide existence of those who identified themselves as gay, lesbian and bisexual . Consequently, it led to major rejection and resistance from religious leaders claiming homosexuality is “the pinnacle of immorality” and demanded for the constitutional ban of the act (Balcha, 2009).

The print media has played a huge part in bringing the issue to the table, from the observation made by the researcher; there seem to be a generalized understanding of gay and lesbian people character and life style. Additionally, same-sex sexual act, which is commonly referred to as “sodomy” is mostly characterized as western.

Thus, there is a high degree of intolerance and popular rejection towards the gay, lesbian and bisexual people. Organized religious based institutions such as the United for Life and government bodies are initiating a strict law against the group. This study therefore aims in exploring the current situation of gay, lesbian and bisexual Ethiopians living in Addis Ababa given the rise in intolerance. The study also investigates the challenges they experience and the wider human right implications.

1.1. Statement of the problem

Recently the issue of sexual minorities has gained extensive amount of attention globally. Even though in some parts of the world the response towards the issue seems affirmative, in other parts such as in Africa religious and political leaders are expressing a great deal of opposition.

The intimate, loving and sexual relationships of gay, lesbian and bisexual people defined as crimes in many parts of the continent. Many of them suffer the threat of prosecution, which also results in the restriction and infringement to a wide range of human right (Donnelly, 2007).

Until mid-1990 in Africa, there was virtually no discussion about issues related to sexual minorities. However, this has changed after the South African 1994 constitution that expressly guarantees equal right protection and has triggered a wide range of discussion and reaction to the issue over the years (Anyamale et al, 2005).

Counties like Uganda and Nigeria have introduced a stricter law, which punishes same-sex sexual act by multi-year prison terms and death penalty (Kretz, 2012). Furthermore, in Africa in general the active condemning of LGB peoples by political and religious leaders publicly requesting for intolerance, prosecution and social exclusion heavily stoke anti-gay attitude in the

general public (Ibid). In this regard many gay, lesbian and bisexual people are forced to live in fear of prosecution, violence, both verbal and physical abuse and public shame. Consequently, there are only few LGB people who are open about their sexual orientation, while most hide and create a double identity, which also elevates stress and worry (Ibid).

The other important challenge the LGB people face according to the Oxfam 2007, report based on a study made in sub-Saharan countries is lack of accessibility to health care and education. In most African countries, the health program such as the prevention and control of HIV/AIDS ignores gay, lesbian and bisexual people (Anyamale et al, 2005).

Moreover, the denial of their existence and the wide range of rejection are making them vulnerable to a number of social problems and risks including loss of employment or livelihood, being thrown out of their homes in case of adolescents, and eviction from their houses by landlords and neighbors (Ibid).

In Ethiopia, same-sex relationship is also considered un-Ethiopian, a curse and humiliation. Additionally leaders of various religious groups edify the people that it is an abomination, which should not to be tolerated by the society (Balcha, 2009).

The print media and religious institutions sponsored videos made recently discuss the issue as a western practice brought by people who have been in Europe or those who have been sexually abused by foreigners who live in the country.

This contextual and local understanding of same-sex relationship believed to be the main source of stigma, discrimination, and violence in the country. Even though Religion appears to be the driving forces for stigmatization and abhorrence of individuals who are involved in same-sex sexual act; many Ethiopians who are not adherents of any churches or mosques also reject and justify the stigmatization from socio-cultural grounds.

According to Pew Global Attitudes Survey, 97% of Ethiopians believe that same-sex sexual act should be rejected as it deviated from the “natural and normal” way of living. Moreover many also stated that same-sex sexuality is a threat to human kind continuity thus, it should be criminalized (International Refugee Rights Initiative, 2014)

Furthermore, non- governmental organizations cooperating with religious leaders such as United for Life are proposing death penalty on people who exercise same-sex sexual act. They also

claim that those who practice same-sex sexual act are defying the existing tradition and religious value of the society and they should not be tolerated (United for Life, 2012).

Even though there are no many researches and studies that have been done on the topic, the few researches that have been conducted (mostly focusing on Men having sex with Men {MSM}) in relation to eradicating and controlling HIV/AIDS indicates that such people in Ethiopia live in a very dire situation. According to Mekonnen Aderaw (2012); “same-sex attracted men in Addis Ababa have a strong social bond and have created a subculture of their own” (Aderaw, 2012). However, though some of them have accepted their sexuality and enjoy the socio-cultural relation among themselves, they live in constant fear and hesitation of being exposed and prosecuted (Ibid).

The study made by Getnet Tadele (2008), also shows that many of them live in a terrifying and stressful situation creating a double life; and in some instances, some of them have even faced a homophobic attack from individuals, officials of the law enforcement and correction centers (Tadele, 2008).

So far the studies conducted on the issue fail to investigate the life and experience of those who identify their sexual orientation as gay, lesbian and bisexual analyzing the human right implications. Thus, the gap in understanding the challenges experienced by gay, lesbian and bisexual Ethiopians in Addis Ababa and its actual comparative implication to human right principles has inspired this study.

Despite the fact that there is a strong rejection of gay, lesbian and bisexual people in Ethiopia, their existence is undeniable. Accordingly, the study will critically investigate the living situation of those who consider themselves as gay, lesbian and bisexual; the stigmatization and vulnerability to abuse from their own experience and discuss the wider human right implications of the challenges.

The study will also discuss the impact of the changing view on the concept of sexual minority right recognition globally as part of human rights in relation to the reality of being gay, lesbian and bisexual Ethiopian living in Addis Ababa.

In addition to the enraged reaction towards LGB individuals and many are initiating strict law such as death penalty; there is unfortunate instance in which case the basic human right principles are at risks. However, human right organizations or individuals have shown less

interest in discussing and dealing with the issue of gay, lesbian and bisexual people from a human rights perspective.

This study have been inspired by the curiosity of how individuals who identify their sexual orientation as lesbian, gay and bisexual live given the infuriated responses and intolerance of the majority society. Hence, the study discusses the challenges they face on their day to day activity and draw the human right implication. Moreover as there are few studies made on the area and less emphasis is given to the social problems bounded LGB individuals this study strives to bridge this gap by bringing the subject to attention.

1.2. Research question

The study attempts to answer the following general question:

- What is the living situation of those who identify themselves as gay, lesbian and bisexual in Addis Ababa and what are the wider human right implications in relation to their experience?

The study also tries to answer the following specific questions:

- How are the international human rights principles interpreted in the protection and promotion of sexual minority's right?
- How do gay, lesbian and bisexual Ethiopians living in Addis Ababa define and understand their sexuality from the social, cultural and religious point of view of the society they live in?
- What are the challenges of being gay, lesbian and bisexual in Ethiopian living in Addis Ababa?
- What are the human right implications of the challenges faced by gay, lesbian and bisexual Ethiopians living in Addis Ababa?

1.3. Objective of the study

The major objective of this study is exploring the living situation of those who identify themselves as gay, lesbian and bisexual in Addis Ababa in relation to the growing universal understanding of sexual minority right as a human right. Therefore, this study focuses on assessing the multifaceted challenges LGB people face and its human right implications.

More specifically the objectives of the study are to:

- Discuss the universal human rights norm regarding sexually marginalized peoples

- Assess the existing living situation of gay, lesbian and bisexual Ethiopians living in Addis Ababa
- Investigates the challenges of gay, lesbian and bisexual Ethiopians and the wider human right implications

1.4 Significance of the study

The issue of sexual minorities has become a constantly debatable issue in various social media as the global pressure extends dividing two strong groups with strong arguments on the existence of gay, lesbian and bisexual people. On one hand, many argue that it should be recognized as a human right issue in protecting sexually marginalized people establishing “gay identity” as part of human identity. On the other hand, there is a strong argument and resistance claiming that it is a deviant behavior that goes against the culture and religious values of the society and that it should be criminalized.

Recently in Addis Ababa, people who identified themselves as gay have come out with a view of creating awareness on the life experience of sexual minorities and the challenges they incur claiming for equal right. Following this a counter movement by religious groups, non-governmental organization and individuals have been made demanding for stronger legal action. Same-sex sexual act being a criminal offense in Ethiopia, according to article 629 of the criminal code, makes the gay, lesbian and bisexual people to be vulnerable to abuse, stigmatization and discrimination.

So far few studies have been made particularly on Men having sex with Men (MSM) in general in relation to HIV/AIDS prevention and control efforts. Generally, the studies lack focus in discussing the issue from the wider human rights perspective by isolating those who identify themselves as gay, lesbian and bisexual. In this regard, this study intends to make a modest contribution in understanding the issue from the current human right perspective of sexual minority rights.

Furthermore, providing information on the subject matter for interested groups like academicians, human right advocates, lawmakers, students, non-governmental organizations, civil societies and other institutions who aim at working on the area is also the significance of the study.

1.5. Scope of the study

The scope of this research is delimited in investigating the life of those who identify themselves as gay, lesbian and bisexual in terms of the already existing socio-cultural view of sexuality along with the growing intolerance towards the people. The study particularly focuses on people who identify themselves as gay, lesbian and bisexual (LGB), even though terms like LGBTI and sexual minorities are used in discussing the issue in general terms. Geographically, the study is limited to Addis Ababa given the time and financial constraint. Furthermore, in discussing the wider human right implication the study discusses international and regional human right instruments and national laws that are relevant to the topic.

1.6. Research Methodology

The study investigates the lives of gay, lesbian and bisexual people, the challenges they face and the wider human right implications. The study discusses how the existing views, the intensive reaction and intolerance towards their existence have determined their social experience. This has been done through a qualitative approach, as it enables detailed investigation of the social phenomena based on the feelings, experience and reasons that govern such behaviors of people.

Therefore, phenomenological study is a more accommodating qualitative study approach to describe the experience of members of minority group through their eyes. In this study, it has employed to investigate the lives of gay, lesbian and bisexual Ethiopians living in Addis Ababa, how they understand and construct their sexuality, within the overall social and cultural perception, the challenges their sexuality holds from their own perspective and the human right implication.

In achieving these purpose different methods such as in-depth interview, and focus group discussions and researcher observation is employed in the study. In further elaborating and analyzing the wider human right implication, different literature, human rights principles and guidelines, regulations, laws, court decisions have also been reviewed.

1.6.1. In-depth interview

Semi-structured and flexible interviews have been conducted with a number of informants with diversified social and economic status, educational background, age group, religious affiliation, ethnic background and family status using snowball technique. Accordingly, the informants that have already been contacted engage in bringing more informants with different experience and

stories as it is difficult for identifying and building rapport and trust with the community given the fear of being exposed , stigmatized and prosecuted.

As the issue is very much sensitive and highly condemned by the society, establishing contact has been very difficult. Even more challenging was discussing what considered to be private, which are sexuality and its presumable challenges required extended interaction with the participants that again entailed more than one time interview.

1.6.2. Focus group discussions (FGDs)

In addition to its benefit to extract large amount of data in short period of time from significant number of informants, FGD is known for synthesizing different individuals, with difference of opinion to interact on a table which is believed to familiarize the researcher with new issues and insight of the broad and common problems informants raised. Moreover, FGD have served as a cross check on validating data that has been obtained through various methods of data collection such as in-depth interviews and observation

1.6.3. Observation

Personal observation was made based on informal dialogue with the community and the general reaction of the public regarding LGB issues. This method was used to understand the challenge faced by the community.

1.7. Sampling technique

The writer used purposive or judgmental sampling, usually utilized in the context of qualitative research. Accordingly, twelve key informants who identify their sexuality as gay, lesbian and bisexual with different background have been chosen. Moreover, to get perspective of the challenge more participants have been included in the focus group discussions.

1.8. Ethical consideration

Interviews and focus group discussions with the informants of this study were conducted in a manner consistent with ethical principles of this type of research. Accordingly, consent of the informants by disclosing the aim of the research was requested and acquired.

Given the fact that the issue is highly sensitive and the data collection method required face-to-face contact with people who are living in shame and fear of prosecution the study required

confidentiality of the informants' identity. For this reason, the researcher has omitted the real names of participants and used random names while maintaining the sex and age of the informants.

1.9. Limitations of the study

The scope of this study is limited due to time and financial constraint. In addition, inadequate information and material was also major limitation in assessing historical facts and discourse of same-sex sexuality in Ethiopia. However, the results of the study provide insights into gay, lesbian and bisexual experience, challenges and the possible human right implications.

1.10. Organization of study

This study is organized into five chapters. The first chapter deals with the background, statement of the problem, research question, objectives, methodology, significance and scope of the study. The second chapter discusses sexuality, discourses and historical prospect of same-sex sexuality in Africa and Ethiopia. The third chapter discusses sexual rights, sexual minorities, sexual minority right and human right and the international and regional human right instruments interpretation and court decisions regarding sexual minority right which have a ground breaking effect in international human right development for sexually marginalized people. Chapter four presents the data collected from informants through interviews, focus group discussions and personal observations of the researcher. Chapter five based on the data collected discusses the challenges, and analyses the human right implications. The last chapter concludes on the challenges of LGB people in Addis Ababa and their human right implications followed by recommendations of the writer. List of references and data collection instruments are presented at the end.

CHAPTER TWO

2. Literature Review

2.1. Conceptualizing Sexuality

Even though the modern concept of sexuality remains to be difficult to define, it is mostly argued that a contemporary definition of sexuality would have to acknowledge the complex biological, social, cultural and intrapersonal factors that affect human identity (Adgug, 2007).

According to Simon (2006) , sexuality could be described as “the element of identity which contains a sense of a self in which sexual feelings, ideologies, desires and needs are integrated with one another and reconciled with modes of sexual expression and behavior” (Simon et al, 2006). Within the term sexuality different aspects of human behavior are represented such as, sex, attraction, reproduction, the organization of masculinity and femininity. Additionally, sexual identities such as “heterosexual” (individuals who are sexually and romantically involved with an opposite sex member) and “homosexual” (The term invented by the Hungarian Karoly to explain a person who have sex with the same-sex member) are also represented within the term sexuality (Vance, 2007).

Over the past few decades, sexuality has become a point of political controversy; and more often, discourse of sexuality is deemed to be sensitive to religious, cultural and right-based debates. Sexuality has been investigated by many disciplines and fields, thus over the years, different approaches have been introduced in defining and understanding human sexuality.

Generally, conceptions about sexuality and secular debates revolve around the essentialist and social constructionist approach. In the first case, the biological factors such as gene and hormone are considered to play a huge role in determining human sexuality. In case of social constructionist approach, socio-cultural and environmental factors deemed to play a significant role in the determination of human sexuality (Parker &Aggleton, 2007).

Before the 19th century in Europe, the traditional Victorian society, which existed in the Victorian period briefly 1837 -1901, frowned upon any open discussion and dialogs about sexuality which also lead to a repressed and tabooed sexual expression. Therefore, early research on sexuality focused on the dangerous and unhealthy aspects of sexuality (Gagon &Parker, 1995).

Eventually the study of sexuality took a revolutionary turn in Europe at the end of 19th century when different scholars introduced a secular, independent and scientific explanation of human sexuality (Ibid). Later on, with a new popular, individualistic and optimistic culture, the United States became the center for the study of sexuality. Hence, a group of experts from different studies, religious leaders, politicians, and social workers have developed different explanations of sexuality (Ibid).

According to sociological studies, human sexuality is a very complex construction of socio-cultural phenomena. Thus, sexuality is deemed to have different meanings and functions in different times and places (Forrest & Ellis, 2006).

Additionally, Simon citing Foucault states that, “sexuality is a product of cultures and defined by the interaction of the personal with social norms, scientific knowledge, [and] religious and legal doctrine” (Ibid).

On the same note, Kole citing Foucault noted that due to the suppressed and tabooed social structure of sexuality in many cultures, same-sex sexual identity or practice were concealed and considered non-existent (Kole, 2007). According to Padgug (2007) referring to Sigmund Freud, who is known for developing psychoanalytic theory which is pertinent to the study of human sexuality, stated that individual sexual interest is determined and shaped by events in the first six years of life as it is motivated by both inborn instincts and drive (Padgug, 2007).

Learning about sexuality starts in infants and goes on throughout a personal life. In this regard, individual sexual choice and desire in all social contexts influenced by both biological and social factors (Forrest & Ellis, 2006).

Following Freud analysis, many argue that human sexuality is a matter of sheer biology and physiology, such as genetics and hormones (Padgug, 2007). Nevertheless, this biological theory is criticized for its ignorance of the impact of learning and societal influence in determining human sexuality. Thus many argue that, though the biological analysis seem to be sufficient in understanding human sexuality, still the different cultural interpretation of sexuality are undeniably influential (Ibid).

The other major development in 19th c regarding sexuality is the development of Queer theory. This theory particularly studies same-sex sexual behavior along with the political and socio-cultural factors in the polarized categories of homosexual and heterosexual identity

(Gagon&Parker,1995). In this case, different scholars argue that the tendency to sexually interact with the same-sex member is something innate with human nature and different cultures have defined such sexual behavior in various ways (Ibid).

In further elucidation of different perspectives of sexuality, Marx view that sexuality, class, and politics cannot easily be disengaged from one another as all are an ongoing struggle in the society. Thus, looking at the historical prospect is the only way to understand the social reality and conception of sexuality (Simon et al., 2006). Furthermore, based on Marxist understanding of sexuality biology cannot be the sole influence of sexuality. Within roles of society, an individual has no fixed and inherent nature, “we become human only in human society. For this reason social reality cannot simply be peeled out in conceptualizing sexuality” (Padgug, 2007).

On the other hand, for feminist authors like Catherin MacKinnon, the context of sexuality is a cultural effect dependent on the constructions of gender role that is aimed at stabilizing the political hegemony of male heterosexuality (Simon et al., 2006).

Needless to say, forms, content and context of sexuality always differ, there is no abstract and universal context of sexuality to all societies at all times (Ibid). Therefore, sexual deviancy is also relative in different cultures depending on the normative expectation of that particular society (Davis & Whitten, 1987).

In general, sexuality is described as purely biological factor, including sexual attraction and derives something that is innate to humanity. On the other hand, there is a strong contention that it is somehow developed within societal values and norms which have little to do with biological factor. Thus, today sexuality is mostly a very divisive issue in public and subjected to socio-political, religious, medical and right based debate.

2.2. Same-sex sexual act in Africa

2.2.1. Intimacy rule in Africa: different perspectives on same-sex sexual act

Sexuality is the very last aspect discussed and dealt by many scholars in Africa. Thus, there are no regional frameworks in further understanding of African sexuality. Meanwhile on the recent dialogue made on Sexuality and Geopolitics which took place in Lagos, Nigeria 2010, Sylvia Tamale, Ugandan feminist lawyer and the first female Dean of Law at Makerere University in 2004, stated that “in Africa sexualities are defined based on the act of sexual intercourse and

reproduction in which case there is less focus on wellness, desire, eroticism and pleasure factors (SPW, 2010).

In Africa where there is a diverse social, ethnic and religious environment, same sex-sexual act is currently considered unhealthy, deviant and morally wrong. Among the major arguments regarding the same -sex sexual act is that it is un-African, “white men disease and white men imposition” which is imported from the western countries through colonialism and neo-colonialism (Hoad, 2007).

This argument has become popular after the Zimbabwean President Robert Mugabe made a notorious pronouncement that “if dogs and pigs don’t do it, why must human beings? Can human beings be human beings if they do worse than pigs?” which later on caused a worldwide controversy (EBSCO Host, 1995). Following this sturdy remark made by President Mugabe in 1995 many African heads of states started to publicly condemn the act claiming its un-African nature.

In 1999 Kenya President Daniel Arap Moi announced that it’s not only against the African culture for a man to be with another man and for a woman to be with another woman but also against the majority people Christian values and bible teachings (Kisia &Wahu,2011). President Yoseri Museveni of Uganda also stressed that same-sex sexual act is not part of African tradition and the society is not going to be tolerant with it. Furthermore Namibian President also announced that practicing same-sex sexual act is the devil’s act and destroys the nation (Ibid).

In general, in Africa there are two dominating views regarding same-sex sexual act public discourse. The first is based on studies made mainly by western scholars focusing on the historical fact prior to colonization on the diverse prospect of sexuality in African society (Anderson, 2007). Accordingly, many writers claim that though it is denied, there is historical indication of same-sex sexual act existence even before the arrival of the white settlers in Africa. The anthropological studies made in Sub-Saharan Africa particularly indicate that boy wives and female husbands existed long before colonialism (Murray &Roscoes, 2001).

Furthermore, Anderson (2007) discusses citing Davis and Whitten (1987) in places as Kenya, Nubia, and Congo, lesbianism in polygynous households were also widely practiced (Anderson, 2007).

One of the famous historical case claimed by those who argue that same-sex sexual act is not actually an alien practice is the 1886 King Mwanga the last indigenous ruler of Buganda's act who executed over thirty people for their refusal to have sex with him following their conversion to Christianity (Hoad, 2007).

The second strong opposing view that is based on the contemporary studies made on the explanation of sexuality in post-colonial Africa mainly by African researchers arguing that same-sex sexual act is virtually unknown in African tradition (Ben, 2007). In this regard, African culture is considered pure heterosexual. Thus, issues concerning same-sex relationship are strongly opposed as it is perceived to be a threat to the cultural heritage and pre-colonial way of life (Stychin, 2004).

Agreeing on the claim same-sex sexual act was not in fact popular in traditional Africa; some writers explain that a high value was given to heterosexual marriage leading to many children. Hence, African cultures had ways to explain and accommodate those men and women who did not fit the ideal sexual matrix (Epprecht, 2008).

Among the major popular discussion made on same-sex sexual in African is the March 2011 British Broadcasting Agency (BBC) sponsored debate. In this debate, the theme was "Is Homosexuality Un-African?" which was an indication of the current popular view in Africa that is being argued back and forth (BBC, 2011). On the debate, it has claimed that children in Africa are being recruited to join the same-sex sexual behavior which sponsored by the western countries (Ibid).

Furthermore, it has claimed by African scholars that same-sex industry have advanced in colonial time, which resulted for the act to spread underground. Particularly in North Africa as the soldiers or administrators of the colonial power or the tourist were able to purchase the sexual service of native males (Greenberg, 1990). As the argument for the existence of same-sex sexual act in Africa continues some writers also claim that even though there is a long history of diverse engagement of same-sex relationship in Africa the eventual development of homophobia is perhaps the result of the white missionary settlers and introduction of religion (Anderson, 2007).

Additionally the colonial induced homophobia is reflected by the direct copy of legal measures that have been inherited from the colonial powers in Africa. The 1886 penal law of Angola and Mozambique that sends people who are involved in same-sex act to labor camps is a direct legal transplantation from Portuguese colonial power (Ibid).

Hoad (2007) argues that western writers have introduced the term "Homosexual" which is widely used nowadays. Homosexuality is only defined as a same-sex erotic attraction after 1869. In this regard it's safe to say that colonialism have brought the western conception of same- sex relationship as merely a random misguided sexual act without the eroticism to Africa (Hoad, 2007).

Based on the recent development on human rights in Africa, many argue that first, it's never important to discuss if being gay and lesbian is African or not since the current existence of such people is undeniable. For this reason, the issue of sexually marginalized people should be governed by human rights. Secondly, it's also argued that African culture is accommodating and tolerant of different sexual expression thus, homophobia represents the lingering imperialism of both colonialism and imported religion (Anderson, 2007).

In many African societies historically though particular name were not given to difference in sexuality, people who are incapable of being attracted to an opposite sex were recognized and compensated. Such as in Zimbabwe the custom of kupindira among the Shona people is one of the examples in which a trusted relative of the husband is called to pregnant the wife, as he was sexually incapable of doing so (Epprecht, 2008)

In this case, one thing is a fact that in Africa marriage and procreation is not seen as a choice rather as a moral and social obligation one has to fulfill. For this reason particularly among the Hausa people men get married and father their children with woman despite the same-sex desire and erotic relationship they have aside (Greenberg.1990).

Similarly, the women to women and men to men sexual in nature physical intimacy encounters such as playing, teasing, touching is not labeled as a sexual desire or sexual identity (Ibid). Moreover, in Coastal traditional Kenya a trained young boy live with an older lover, who may be married to a woman as well and have a family and usually the wife know and accept the situation (Anyamele et al, 2005).

To generalize, in traditional African LGB people existed though they did not identify themselves as such. However, many of them for family, economic, spiritual, political or for any other reasons get married and have (or appear to have) children (Ibid).

In addition to this many argue that the harsh homophobia that African leaders have voiced in recent years does not reflect the tolerant African culture, but the Christian missionary

propaganda and Islamic fundamentalism among other foreign influences (Anderson, 2007). On the other hand still many African leaders, scholars and religious institutions disagree with the above argument saying it is western world scheme to distort the pure African cultural norms and values (Ibid).

2.2.2. Ethiopian Historical perspective

Currently, in Ethiopia same-sex sexual act, as in most African countries, considered as an alien practice that is imported from the western world. Ethiopia could be explained as religious and one of the most culturally diversified countries in Africa. Accordingly, same-sex sexual act is claimed to deviate from the cultural and religious values of the country (Balcha, 2009).

In Ethiopia, there is strong heterosexual culture that bases its legitimacy on the male dominance and hegemony of masculinity. Historically, same-sex sexual act is considered unknown in Ethiopian culture (Ibid). The social construction is based on the values of family, gender role that reject same-sex sexual act. In which case many argue that same-sex sexual act is alien to Ethiopian culture and somehow introduced by outsiders (Ibid). Moreover, religious teachings strongly condemn the act stressing the abnormality of the act. Thus, same sex- sexuality is not only something that is not discussed but also subject to state scrutiny and prohibition as well (Tadele, 2008)

Sexuality is barely studied in Ethiopia in general, thus it's a legitimate question for one to ask if there is a same-sex sexual practice in traditional Ethiopia.

According to Ben citing Davis and Whitten (2007), stated that in sub-Saharan Africa including Ethiopia women same-sex sexual relationship is also reported to exist in vast manner (Anderson , 2007). In this case, in northern part of Ethiopia particularly around Gonder in 1760s, same-sex eroticism among women in which two female living together as husband and wife is also claimed to have existed (Ibid).

Moreover, in his Biography Getachew Haile (2008) mentioned that some women who are involved with a man are also involved in same-sex sexual interaction with women (Haile, 2008). Historically it's told that in 1762-1769 a woman had filed a complaint to the king at the time seeking maintenance for herself and her child to the woman she was sexually and romantically involved with (Ibid).

According Mekonnen Aderaw (2013), referring to Frederic Gamst stated that same-sex sexual relationship was also practiced in central part of Ethiopia among shepherd boys (Aderaw, 2013). Furthermore, in the eastern part of Ethiopia particularly Harari sodomy also practiced not only among opposite sex but also among the same sex members (Ibid). Murray and Roscoe citing Bieber (2001), described also male same-sex sexual act also have been practiced among the Oromo and Somali pastoralists (Murray & Roscoe, 2001).

As stated above this area particularly from a minority right angle is barely studied in Ethiopia the first exhaustive research made on the life and experience of people who exercise same-sex practice in relation to the prevention and control of HI//AIDS is by Getnet Tadele (2006). In this study he explains that, though many admit the existence of people who practice same-sex sexuality in the city the study was conducted (both in Addis Ababa and Dessie) there is also a wide spread belief that it is unnatural -sexual behavior (Tadele, 2006).

Additionally, the research made by Mekonnen Aderaw, which also investigates the lives and experience of same-sex attracted men in Addis Ababa, explores how such men deal with health matters particularly HIV/AIDS and further deals with the historical discourse on same-sex sexual practitioners in Ethiopia and the overall current reaction towards such people (Aderaw, 2013).

The other research made on sexually marginalized people in Ethiopia is by Daniel Ibbo Balcha. The study analyzes same-sex practice in Ethiopia and the role of cultural, religious teachings and the gender construction norm in general. Moreover, he also reviews the role of the media in framing same-sex sexual practice and its consequential impact within the public (Balcha, 2009).

As mentioned above the issues of LGB people have gained a lot of attention in the public discourse recently. This was followed by high rejection and condemnation from different institutions. In this regard the Addis Ababa Youth Federation cooperating with religious leaders declared that the number of people who engage in same-sex sexual act are increasing in the country and called on for demonstration against such act in Addis Ababa in April 26, 2014 which was latter on canceled by the government (Berhane , 2014).

The other important recent phenomenon that was part of the discourse was the proposal of the Council of Ministers to the parliament for same-sex sexual act to be non-pardonable criminal act. In this instance, the request was also rejected claiming that the criminal law of Ethiopia already prohibits the act and provides equivalent punishment (The Washington times, 2014).

CHAPTER THREE

3. Yardsticks in sexual minorities' rights

3.1. Conceptualizing Sexual minority right under the realm of human rights

3.1.1. Defining sexual rights

Bringing sexuality to human rights is perhaps an evolutionary process in the discourse of human rights. The term sexual right as the name indicates is both the combination of sexuality and rights. However, the scope is still controversial; the extent of human sexual behavior and identity it is supposed to govern is still questioned and debated over (Berer, 2004).

The early day's engagement of sexuality with human right was initially focused on reproductive health rights and more importantly on protection of people from sexual harm in case of girls and women. Nevertheless, over the last twenty years, sexual rights have emerged from this narrow conception in to a wider inclusion of lesbian, gay and bisexual, transgender and intersex rights (Miller, 2009).

Within sexual rights discourse there are three main sub-streams. According to conduct-based right claim, sexual act is an innate drive and integral status of being human, which includes the right to participate in fulfilling sexual activity (Richardson, 2000). Moreover, conduct-based claims to sexual rights involve claims for civil rights; both in terms of the removal of laws that prohibit restriction of certain sexual act and the right to expressing one's sexuality without any fear (Ibid). In this case, sexual rights incorporate matters that are not widely covered by health right. Thus, by asserting sexuality as a natural fact of being human, sexual rights promotes the equality of every individual in accessing health care and education, protection from violence, coercion and inequality (Miller, 2009).

The other sub-stream is an identity-based rights claim, which is considered as the major shift in sexual right development in the late 70s and 80s. In this case, a high emphasis has given to sexual identity as it determines sexual practice. According to this new development, publicly identifying sexual orientation without fear also considered to consist sexual right (Ibid). Sexual rights have a strong sense of universality as it focuses on a fundamental and common element of all human personality. Accordingly, sexual right not only protects the freedom and integrity of sexual minorities but also individual freedom of sexual majorities (Ibid).

Relationship based claims as the third sub-stream of sexual rights on the other hand focuses on the right to have consensual sexual partner and seek public validation of the relationship within social institutions such as marriage and adoption. (Richardson, 2000).

In general, sexual right addresses sexuality along with right, as human beings are sexual by nature it guaranties the protection of individual right despite the conformity to the majority standard of sexuality . Hence, sexual rights enable us to address any human right violations including discrimination and restrictions on sexual expression and identification.

Paul Hunt, UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental health from 2002 to 2008 commented that sexual rights derive its normative force from the fundamental principles of human rights. Furthermore, he stated that “sexual rights include the right of all persons to express their sexual orientation without fear of persecution, denial of liberty or social interference” (Miller, 2009).

On the same note, based on the 2002 report of the World Health Organization sexual rights:

“Are generally understood to include the right of everyone - without force, discrimination or violence – to enjoy the highest standard of sexual health, including access to sexual and reproductive health services; seek, receive and give information about sexuality; have their body respected; choose their sexual partner; decide to be sexually active or not; have consensual sexual relations (where both people agree); get married; decide whether or not, and when, to have children; pursue a satisfying, safe and pleasurable sexual life” (Ibid).

Even though development is seen over time in linking sexuality to human rights, the concept of sexual right barely begun to be entered into social realization in many countries. For this, the major reason is that many governments do not pay enough attention in creating public awareness through policies and education about sexual health and right (Ibid). Since the early 2000s, there has been an intense effort by advocates to use the principle of human rights to require governments to enact laws and policies for realization of sexual rights (Bere, 2004).

In Africa, over the years sexual right has gained an extensive amount of attention. The right based approach to health access including health care education and reproduction right along with prevention and control of pandemic disease such as HIV/AIDS are the focus of sexual right in most African countries (Ibid). However, health care programs including health education only

deal with what is regarded as “normal” sexual behavior excluding sexually marginalized group such as gay, lesbian and bisexual people (Miller, 2009).

3.1.2. Who are sexual minorities?

The term ‘sexual minority’ refers to people whose sexual identity, orientation or practices differ from the majority of the surrounding society. Sexual minorities are usually referred to as LGBTI peoples (Morrow, 2006). Sexual minorities include all individuals who have traditionally been distinguished by societies because of their sexual orientation, inclination, behavior or gender identity (Ibid). In this regard it includes people who are involved in to same- sex love including gay men (men who are sexually attracted to men), lesbian (women who are sexually attracted to women), and bisexual (men or women who are sexually attracted to men and women). Transgender (males who feel themselves to be female, and females who feel themselves to be male) and intersex (people who are born with both sexual organ) are also included (Ibid).

In many instances, such people experience discrimination, abuse and social exclusion. In this regard Heinze (1995), explains that discrimination against sexual minorities is conceived for the reason that they are viewed as departing from the dominant “normative heterosexual paradigm” (Heinze, 1995). This concept is based on the idea that the structure of society is related to the structure of a ‘normal’ family, which is defined as a unit comprising of a man, a woman and children condemning other sexual attractions and preferences (Ibid).

Regarding the issue of sexual orientation and sexual identity, many argue that both issues should not be treated as the same since the very nature of their marginality and consequential social view is different (Ibid). Concerning people who identify themselves as lesbian, gay, and bisexual particularly their sexual desires is directed toward a person of the same sex (Long, 2001). In this case the experience, desires and the practice which are identified as sexual orientation have transformed in to social identity of a particular group (Ibid). On the other hand, transgender and intersex people share a particular experience that their psychological gender is different from what they are assigned at birth. In which case also they have transformed their experience of gender identity in to social identity and identify as a group (Morrow, 2006).

Notwithstanding the above argument still human right advocates agree that Sexual orientation and gender identity are social identities in which human beings can organize themselves and in most societies hatred and prejudice can adhere (Long, 2001). Thus, the claim they have is

inseparable, which is equal recognition of humanity and indiscriminate. However, the focus of this study is only on gay, lesbian and bisexual people.

3.1.3. Defining Sexual minority right

The development of human rights for sexual minorities was probably one of the most divisive topic in the UN human right system which has continued to remain so until today. Many still argue that sexual minority right should not be realized as part of human right since there is no particular reference in the existing human right documents (Ibid).

In this case, it is important to keep in mind that, in many countries, minorities are often found to be among the most marginalized groups in society and severely affected by social problems. For this reason, regardless of the existence of clear provision in the universal human right system linking human right to sexuality is pertinent in protecting fundamental individual and group rights (Anderson, 2011). In this regard identifying who sexual minorities are and what comprises sexual minority right is important.

As discussed in the previous chapter sexual minorities comprise of people whose rights are violated based on their real or perceived sexual practices with consenting adults, or their experience or expression of their own gender. Sexual minorities include lesbian, gay, bisexual, transgender and intersex (LGBTI) people, who face discrimination and stigma in most societies around the world (Long, 2001).

However, over the years many have argued that sexual minority right is a request for privilege instead of a claim for right one possess by virtue of being human (Ibid). Most advocates on the other hand argue that across many cultures people who do not fit to the majority norm of sexuality including the erotic attraction and gender identity are socially excluded (Cáceres et al, 2008). For this reason, such people have little social value and they cannot enjoy the economic and social opportunities. Here it is also important to keep in mind that social exclusion results the denial of human dignity and fundamental human rights of an individual including rights to life, liberty, privacy, education and health among others (Ibid).

According to a definition offered in 1977 by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities,

“A minority is: a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members being nationals of the State.” (OHCHR, 2014).

The important question that often arises in this case is whether persons with a particular sexual orientation or identity (lesbian, gay, bisexual, transgender or intersexual persons) constitute minorities within the UN human right system. However, the term minority apparently does not expressly include sexually marginalized people under the existing human right documents.

The 1992 United Nations Minorities Declaration which aimed at combating multiple discriminations apparently does not make any reference to sexual orientation as one ground of non-discrimination. However, it's argued that as the purpose of the declaration is protection of minorities from discrimination of any ground including gender, disability and sexual orientation (Sanders, 2002).

Sexual minority right as the name implies is the pronouncement of a human right to sexually marginalized people or to those people who do not confirm to the majority sexual and gender identity. According to Yogyakarta principle “All human beings are born free and equal in dignity and rights. Consequently, as sexual orientation and gender identity are integral to human identity it must not be the basis for discrimination or abuse.” (The Yogyakarta Principles, 2007).

Therefore, sexual minority right is based on the analogy that the idea of human rights is on the assumption that all human beings have certain basic rights simply because they are human and despite the difference in sexual orientation and identity, everyone should be entitled to rights prescribed in the international human right instruments.

3.1.4 The Human right approach to sexual minority right

The term yardstick in this research refers to the standards on the human right protection of sexual minorities within the universal and regional human right system. Recently advances have been made in developing both universal and regional human right status for sexually marginalized people. However, sexual minorities continue to be among the most marginalized, excluded and discriminated people in many societies (O'Flaherty Fisher, 2008). This chapter is therefore devoted to discuss the efforts made to recognize the human rights of sexual minorities at both international and regional levels.

Despite the fact that there is a general protection that the UN human right system grants to an individual, sexuality remains to be a reason for discrimination in many countries (Sanders, 2002). One of the major questions raised in this case is that does the universal human right system protect the right of sexual minorities? It's a clear-cut issue that the United Nations human rights treaties make no literal reference to sexual identity or orientation. In this regard, the other important question here is that, though there is no international agreement or convention on sexual minority right is it legitimate to invoke that the existing international human right documents protect sexual minority's right.

Accordingly, there are two competitive arguments. First, despite the lack of clear statement under the human right documents, discrimination based on sexual orientation of an individual is a clear violation of basic human rights principle (Ibid). Hence, terms like, equality, liberty, privacy have a general representation of anyone and they should not be interpreted in to giving an exclusion meaning of gay, lesbian and bisexual people (Ibid).

On the same note many argue that the broad range of human rights civil, political, economic, social and cultural-rights do not make exclusion of sexually marginalized people (UNAIDS, 2007). Hence, fundamental human rights and freedoms include the rights of gay, lesbian and bisexual people to the full enjoyment of the right enshrined in the international human right instruments (Ibid).

The counter argument is that general approach to discrimination has not been characteristic of international human rights law. Instead, different treaties are promulgated in dealing with particular discrimination for specific groups such as discrimination based on race and sex, cultural minorities and indigenous peoples, to mention a few (Ibid).

Therefore, the international human right principles should not be interpreted to the extent of including sexual minorities. On the same note, many argue that preserving the sentiment of group or societal identity is another aim of human right principle in which case this imposition goes to the point of distorting the values and norms of different cultures (Ibid).

Sexual minorities rights is claimed to be an intersection between human rights on the one hand; and the relative cultural identity, norms, tradition and family-values of different countries on the other hand (Kole, 2007). Accordingly, the human right approach to sexually marginalized groups

such as the gay, lesbian and bisexual people is clearly subject to the relative understanding of sexuality of the particular culture and society (Ibid).

The UN human rights documents state that national and regional cultural practices and norms should not contradict the basic human right principles. However, across the world, many countries still punish same-sex sexual act mostly on the ground of non-conformity to cultural and religious rules (Anyamele et al, 2005). Additionally the criminalizing laws, which mostly encourage close and brutal police regulation of public and private behavior, LGB individuals experience arbitrary arrest and physical abuse in the hands of police (Ibid). Nevertheless, human beings are sexual by nature and the limitation and discrimination based on certain sexual behavior or identity of an individual is deemed to have an overall negative impact on the physical, integral character of human nature.

According to the UN High Commission for Refugees (UNHCR) report the recognition of sexual minority rights in terms of human right upheld the health rights of all citizens without any discrimination (UNESCO, 2011). Moreover international organizations such as Amnesty international in 1991 announced that discrimination on the basis of sexual orientation is a human right violation (Anderson, 2008). However, many states not only prosecute and punish sexual minorities but also are unwilling to provide any help or protection to them from non-state actors. In this regard in many countries, HIV control and prevention programs are not accessible and responsive to the sexual health needs of sexually marginalized people (Ibid).

It's only at the end of the 20th century that socio-political movement of sexual minorities for equality, non-discrimination and protection was brought to the attention of international community. Following the growing intention to give sexual minorities right a universal human right recognition, in December 2008, a statement signed by 66 countries stating that the international human right principles should be interpreted in protection of sexually marginalized people has been presented to the UN General Assembly (ICJ, 2010). As a result a counter-statement was signed by 57 countries claiming that the UN has no legal foundation in recognizing sexual orientation as part of accepted universal human right principle (Ibid). Additionally they stressed that recognition of gay, lesbian and bisexual as a "human identity" contradicts with the existing norms, values and cultural identities of many societies. Thus, it should not be promoted as a universal human right principle (Ibid).

The Universal Declarations of Human Rights are a reference point to many consecutive conventions and treaties which are pertinent to various marginalized group rights. However, one significant absence in international human rights law has been an express articulation of the specific interests of sexual minorities (Long, 2001).

In this regard, many human rights activist argue that despite the lack of clear convention on sexual minority rights, universal human right law already protects private lives of individuals including the right to engage in sexual activity (Ibid). Likewise, international human rights law, that protects individuals from discrimination based on fundamental personal characteristics implying sexual orientation, is very much a part of human rights law.

Even though the major human right principles can be invoked for the protection of sexual minorities' rights, still the principle of cultural relativity argument is a barrier in the way human right principles are interpreted and applied (Ibid). The UN consensus documents have stressed that national and regional cultural and religious values cannot trump fundamental human rights. It's also argued that human rights apply to everyone simply because they are born human. Thus all human beings, regardless of whether they are lesbian, gay, bisexual are entitled to the full enjoyment of all human rights (ICJ, 2010). However, in practice state sovereignty, national identity and traditional values are reasons states use to deny equal rights for sexual minorities (Long, 2001).

The international human right approach is claimed to be the only hope against the array of abusive laws and practices that demonize those whose sexual orientation does not fit the perceived norm. Nevertheless, the progress in achieving standardized universal human rights norm to sexually marginalized people seem tampered by the constant claim of governments that the existing universal human right norm does not extend to the protection of such people (Saiz, 2005). This issue remains to be a battleground in many conferences and forums. Thus, a word which may refer to sexual orientation has consistently been bracketed and systematically written out of any instruments adopted in the UN human rights (Ibid). Although this is the case at the universal level, regional human right system such as European human right system have emerged as a lead in establishing a benchmark human right approach to sexually marginalized people .

3.1.5. Debate in Universalism and Relativism on sexual minority right

The international human rights regime came into existence after the Second World War with the view of laying down standardized universal human right principles (Smith, 2013). The 1945 UN Charter created state obligations to respect human rights which was fortified by the adoption of the 1948 Universal Declaration on Human Rights (UDHR). Since then, the international community has adopted numerous additional instruments to protect human rights (Ibid).

Human rights principles are based on a notion that every individual, by virtue of being human, have certain fundamental and inalienable rights (Cáceres et al 2008). However, although states agree with the conception of international human right principles, the definition and scope of human rights remain contested until this day. Among the debate regarding human right principles, the universal versus relative nature of rights is the major one (Ibid). In this case the issue of sexually marginalized people remains one of the grounds where the universality of human rights is under constant attack (Sanders, 2002).

According to Universalists, the post-World War II human rights movement developed on a ground of establishing a single universal human right standard that transcends cultural and political lines across the globe (Lau, 2004). This intention of the founders exemplified by the fact that the foundation of the international human rights regime rises from an instrument called the Universal Declaration of Human Rights (Ibid).

Despite this strong claim on the importance of universality in human right standard over the years, universalism has been challenged, first and foremost by non-Western states. Non-western states argue that the relativity of cultures across the globe and different understanding of right is not considered in the international human right instrument (Ibid). The relativity factor mainly applies to the sexual behavior of an individual, implying that a particular society has a strong normative value towards a specific sexual identity. Thus, according to proponents of this view, providing a standard principle of such norms regardless of the different perspective of sexuality by many cultures is not only inconsiderate but also impractical (Ibid).

Relativists further argue that most non-western states did not participate in the drafting of the UDHR because of colonialism. Thus, the human rights regime's supposition of universalism has a cultural bias since it's based on Western liberal philosophy disregarding the rest of world value and norms (Ibid).

The basic identification of human right is its notion that individuals, by virtue of being human, have fundamental rights. In this regard relativist claim that some cultures do emphasize on community and social authority values that trump individual freedoms. However, the universal human right norm developed under the influence of western liberal individualistic philosophy which contravenes the norms and values of many societies (Sachedina, 2009). For this reason, the relativists argue that the universal human right regime is rather an imposition and way of importing western values to non-western states (Ibid).

Universalists counter argue that “culture is neither static nor monolithic; there is divergence within every major culture and those dynamics are fluid over time” (Lau, 2004). Thus, states instead of requesting cultural exception to human right law promoting the advancement of their culture in accommodating universal human right standard should be the desired solution (Ibid). Over the past decade, despite the struggle to include sexual minority right under the universal human right norm, the forms of rights it consists are still unclear (Ibid).

This is partly for the reason that there is no human rights treaty with the word "sexual minority" in its title, nor any treaty that specifically delineates sexual orientation rights. Consequently, this leads to the existence of two extreme state positions about gay, lesbian and bisexual people. In most cases, African states and many religious countries claim cultural and religious values as a defense for their discriminatory laws in their country (Cáceres et al 2008).

In general, despite the contradictory point of view regarding sexual minority right being part of universal human right principle, UN treaty bodies and transnational tribunals have declared that sexual minorities are protected by existing human rights treaties (Saiz, 2005).

3.2. Relevant International and Regional Normative Frameworks for the Protection of Sexual Minorities

3.2.1. International human rights system

Though it's argued that minority rights are an integral part of human rights law, still there is no internationally agreed definition as to which groups constitute minorities (Barelli et al, 2001). Despite the lack of comprehensive universal definition, the concept of minority right has become a popular issue in the UN human right system. However, sexual identity apparently has never become part of the agenda in attaining an equal protection of minority right until recently (Kole, 2007)

The issue of minority right besides being covered under the core human rights instruments; in 1992 the UN General Assembly adopted a particular declaration dealing with minority rights. This document provides for state responsibility in realizing the existence of minorities and the protection of their rights (Barelli et al, 2011). Notwithstanding this major development in minority right protection, it is criticized for its exclusion of sexual minorities (Ibid).

The issue of sexual minorities is probably the major issue regarding the discussion of rights that the international community fails to come in to consensus. Among the reasons for this resistance, as stated above, the relativist argument that the bill of rights which are considered to be the footprint of human right principles do not make any reference to sexual minorities claim is the major one (UNESCO, 2011).

In this case, many relativists argue that recognizing different sexual identities and accepting it as part of human right should be left to the discretion of states. Accordingly, states can address the issue based on the particularities of the cultural norms of the society (Lau, 2004).

In distinct contrast to this view is that the claim that the UN consensus documents have stressed, those national - regional cultural and religious values should not be invoked in dismissal of the fundamental human rights principles. Thus, the wide margin of discretion including the discriminatory laws against sexually marginalized people is a clear contradiction with the international instruments (Long, 2001).

On the same note, many human right scholars emphasize the point that all the major human right treaties can be invoked to challenge laws which criminalize individuals on the ground of their sexual identity (UNESCO, 2011).

Following this, UN treaty bodies and trans-national tribunals like the European Human Rights Court have declared and issued opinions on the status of sexually marginalized people (Siaz, 2005). Thus, there is a growing jurisprudence regarding the application of human right principles in relation to people with diverse sexual orientation such as LGB people (Ibid).

Under the UN human right system it's witnessed that recognition of the legality of sexual minority rights under the international human right instrument is realized in time of interpreting the treaties (Ibid). Accordingly, some of the treaty bodies have repeatedly and consistently called for the repeal of laws criminalizing same-sex sexual act in countries around the world (O'Flaherty & Fisher, 2008).

The legal doctrine to sexual minority's right not only revolves around the general trend of human rights law principle of equality regardless of sexual identity of an individual but also focuses on the legal principle of privacy right protection (Ibid).

Regarding non-discrimination, the major argument is based on Article II of UDHR which declares that 'everyone' is entitled to the enjoyment of the rights. This article enumerates lists of certain categories of discrimination including 'race, color, sex, language, religion, political or other opinion, national or social origin, property, birth' 'or other status.' (Cáceres et al, 2008). Many argue that 'other status' in the list includes discrimination based on sexual orientation or gender nonconformity (Ibid).

In March 1994, a groundbreaking decision was made by the Human Rights Committee concerning the *Toonen v. Australia* case. Accordingly Nicholas Toonen, a gay right activist in Tasmania, Australia, brought a case before the UN Human Rights Committee seeking the repeal of the law which prohibits "homosexual act". Even though all other Australian jurisdictions had repealed the discriminatory laws against LGB people the law was not enforced in Tasmania. In this regard, Toonen argued that the law clearly contradicts Article 17 of the ICCPR which bars "arbitrary or unlawful interference" with privacy and Article 26 of the same convention which prohibits discrimination (*Toonen v. Australia*, 1994). In this case the committee declared that Tasmanian laws which happen to criminalize all sexual relations among men were in breach of the International Covenant on Civil and Political Rights (ICCPR). Here the Committee has gone to the extent of interpreting the non-discrimination clause "sex" stated under article 26 of the ICCPR includes "sexual orientation" as it refers to the sex of individuals and the sex of the people they desire (Ibid).

At the time, this juridical recognition of people who do not fit in to the majority sexual identity had an impeccable authoritative reference on a universal level. Consequently, the decision besides boasting the LGB movement for equality it also served as path in challenging discriminatory criminal laws against such people around the world (Saiz, 2005).

Moreover, the Committee on Economic, Social and Cultural Rights (CESCR) has also explored the nexus between the right to health and discrimination on grounds of sexual orientation (Saiz, 2005). The Committee addressed under its general Comments of 2005 on the right to work, 2002 the right to water and 2000 on the right to the highest standard of health that the ICESCR also prohibits any discrimination based on sexual orientation (Ibid). In this regard, the Committee argued that the term "other status" which exists under article II of the ICESCR

should also refer to sexual orientation, thus any law or official decision that affects the equal enjoyment of the right in question with intention is against the conventional rights (O’Flaherty&Fisher, 2008).

Following the HRC, the committee of CESCR also links the categories of sex and sexual orientation invoking Article 3 that addresses the equal rights of men and women by prohibiting discrimination based on sexual orientation (Ibid).

The Committee on the Rights of the Child (CRC) also in its General Comment No. 4 of 2003, stated that, State Parties should provide protection to everyone below 18 according to Article 2 of the Convention without any discrimination including language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or “other status”. These grounds also cover [inter alia] sexual orientation (Saiz, 2005).

Moreover, the Committee on the Elimination of Discrimination against Women (CEDAW), though it has not addressed the issue with an applicable provisions under the Convention it did call up on states to stop discrimination on the basis of sexual orientation on many instances (O’Flaherty&Fisher, 2008).

Although progress has been made within the treaty bodies in interpreting and deciding the existing human right documents in favor of sexually marginalized people, until this day many states argue that it doesn’t have any legal ground and should not be imposed as binding on them (Ibid).

Additionally there is no specific reference to gay, lesbian and bisexual people in any binding UN human rights treaty, or in any final political commitment document resulting from a UN world conference (Sanders, 2002).

3.2.1.1. The Yogyakarta Principles

Under the UN agenda sexuality used to be considered something restricted and regulated for the benefit of the public health, order and morality. As mentioned above the existing UN human right instruments are more or less silent in referring to sexually marginalized peoples (Saiz, 2004).

Around the world many individuals who don’t fit in to the majority sexual matrix such as gay, lesbian and bisexual people experience abuse discrimination and violence. Consequently, this

called on for universal standard for the protection of the human rights of such people (Yogyakarta principles, 2007). Hence, for the first time in history sexuality is implicitly recognized as a fundamental and positive aspect of human development which should be governed by Human rights principles (Ibid).

Accordingly, on 26 March 2007, a group of human rights experts launched the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (O'Flaherty&Fisher, 2008). The Principles stressed the point that states are under obligation in respecting, protecting and fulfilling the human rights of all persons regardless of their sexual orientation or gender identity (Ibid).

The Principles also affirm binding international legal standards in which case all people are born free and equal in dignity. Thus, any discrimination based on the sexual identity of an individual is a serious infringement of international human right rules (Yogyakarta Principles, 2007).

The Yogyakarta Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, and members of treaty bodies and NGO's (O'Flaherty&Fisher, 2008).

The Principles aimed at addressing a broad range of human rights standards including extrajudicial executions, violence and torture, access to justice, privacy, non-discrimination, rights to freedom of expression and assembly, employment, health, education, immigration and refugee issues, public participation, and a variety of other rights (ICJ, 2010).

Even though the Yogyakarta Principles considered as the biggest step in setting a standard with issues of sexual minorities' right in the international human right system, the principles are mere guidelines which elucidate the right of sexual minorities under the existing international human right law. Moreover, the principles are not legally binding since it is a mere declaration instead of an open treaty or convention, which may be signed and ratified by state members.

3.2.2 Regional human right system

3.2.2.1. European regional human rights systems

The European Court has handed down several ground breaking decisions on the rights of sexual minorities against various European states, based on both the right to privacy and the right against discrimination (Roth & Martín, 2009).

The first European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) came into force on September 3, 1953 (Ibid). This convention was the first legal treaty to protect human rights at regional level, as well as the first international human rights treaty with enforceable mechanisms (Eide, 2011).

The Convention which was adopted by the Council of Europe, for the purpose of implementation establishes the three organs; the first being the Commission which is responsible in accepting complaints, issuing statements and opinions (Roth & Martín, 2009). The other prominent organ within the EU human right system is the Court, which gives final judgment on issues referred by the commission (Ibid). Similarly, the Committee of Ministers, the Council of Europe's executive organ, is the third organ in the European human right system that is responsible for giving final and binding decisions on cases not referred to the Court (Ibid).

The ECHR Convention was only signed by member states to the Council of Europe therefore its jurisdiction was only limited to few European states. Latter on with the coming of the European Union in 1992 with the view to establish economic integration, peace, security and protection of citizen rights a Charter of Fundamental Rights of the European Union was first drafted in June 1999 (O'Flaherty & Fisher, 2008).

Regarding minority right the ECHR contains no minority rights provision akin to Article 27 of the International Covenant on Civil and Political Rights. The first framework which deals with minority rights came in to existence in 1995. The Framework Convention for the Protection of National Minorities, though it doesn't define who the minorities are, is considered to be the first binding international treaty to offer protection specifically for minorities (Ibid).

Still, neither this specific Convention on minorities nor European Convention makes any reference to sexual minorities. In this regard though the Convention does not include specific provisions on minorities, rights to equal treatment and non-discrimination reflect many minority concerns.

As discussed above the United Nations human rights system seem to have blurred position in recognizing the human rights of gay, lesbian and bisexual people, however many claim that the story begins in Europe (Sanders, 2002).

The 1981 European Human Rights Court decision is considered as the first step forward in sexual minority right at the international level. Dudgeon Jeffrey, an activist of the Northern Ireland Gay Rights Association United Kingdom challenged the 1967 law which criminalized gay male sexual activity in England and Wales on the ground of discrimination (Ibid).

Though the European Convention on Human Rights did not have a general equality provision it was necessary to find a specific right in the convention that had been denied. The Court ruled that the law violated Dudgeon's right to respect for his private life. Following this, though many cases were presented before the court in relation to sexual minority, except cases who were the same as the Dudgeon case, all were rejected (Ibid).

The European Convention on Human Rights is an international treaty that sets out fundamental rights for the benefit of persons within the European region. According to the Convention persons claiming to be the victim of a violation of the rights protected under the Convention by a State Party to the treaty may apply to the European Court of Human Rights for redress (Eide, 2011).

In 1999 another successful case was also brought before the European Human Right Court. The case was brought to European Court of Human Rights by Salgueiro da Silva Mouta a Portuguese national who was prevented by his Ex-wife from visiting his daughter. On appeal he made to the Lisbon Family Affairs Court in 1994. The court gave the parental responsibility to the mother calming that he was a homosexual and he is living with another man (Salgueiro da Silva Mouta v. Portugal, 1999). In this case the European Court of Human Rights concluded that the applicant had been discriminated against on the basis of his sexual orientation, a concept which is undoubtedly covered by Article 14 of the Convention (Ibid).

The Court further explained that the list set out in that provision is illustrative and not exhaustive, as is shown by the words 'any ground such as' therefore it should also be interpreted to mean discrimination on the bases of sexual identity (ICJ, 2010).

The other decision made by European Court of Human Rights which is pertinent to sexual minority right is the 1999 gays in the military case. The ECHR held that the United Kingdom's

ban of gay individuals not to join the military violated the European Convention on Human Rights (Sanders, 2002).

As noted above, despite the lack of express provision in the European Convention of Human Rights or a particular convention regarding the right of sexual minority right, the European human right system has managed to include the issue via interpretation of the existing human right principles. For this reason although the ECHR is a regional system, due to the paramount steps it took to protect the rights of sexually marginalized people it's possible to argue that it have persuasive authority on the development of human rights norms regarding sexual minorities.

3.2.2.2. Inter- American regional human rights system

The Organization of American States (OAS) was founded in 1948 and has a membership of 35 states. This regional organization beside dealing with the wide range of political and economic aspect in the region it also plays a great role in the promotion and protection of human rights since the 1960s (Shelton, 2010).

In this regard, all states members are not only bound by the OAS Charter but also they are obliged to duly consider the 1948 American Declaration on the Rights and Duties of Man (Ibid). Eventually more specific human right treaties which established the Inter-American human right regime have been adopted including the American Convention on Human Rights and its Additional Protocols on Economic, social and cultural Rights.

In the promotion and protection of human rights in the region the two important OAS bodies are namely the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (Neuman, 2008). The Commission is empowered to monitor the human right situation within the member states through country reports, individual complaints and also by conducting visits (Ibid).

On the other hand, the Court besides passing a finale binding judgment on the case brought before the Court it also is empowered to issue advisory opinions on various aspects of human rights, including the compatibility of domestic legislation with the American Convention (Ibid). Regarding the protection of minorities under the Inter-American human right system, despite the lack of particular treaty in the protection and promotion of minority rights, the major

instruments, the American Declaration and the American Convention on Human Rights are claimed to undoubtedly protect such people's right (Shelton, 2010).

The Declaration addresses a broad range of human rights. The 1969 Convention is concerned primarily with civil and political rights as it also has been expanded by an additional protocol on economic, social, and cultural rights. Accordingly, it is important to bear in mind that minorities are entitled to all of the rights set forth in these documents

Both the OAS Declaration Article 2 and the Convention under Article 1 assure the equality of everyone before the law, without the distinction as to race, color, sex, language, religion, national birth or any other factor. Moreover, the Convention under Article 1 obliges States to respect Convention rights (American declaration on duties and right of man, 1948).

Coming to the issue of sexual minority right within the OAS, *Marta Alvarez v. Colombia* was the first case concerning sexual orientation heard by the Inter-American Commission on Human Rights in 1998 (Colombia Report, 1999). Marta Alvarez a lesbian woman presented complaint against the republic of Colombia contesting the fact that she was denied conjugal visits from her partner while heterosexual couples within the same prison were granted this right. Accordingly the petitioner alleged that the denial has violated her right to integrity, honor and equality which are protected under article 5(1) (2) and 11(1) of the American convention on Human Rights. After analyzing the alleged violations and the domestic remedies available the Commission gave unpublished report of its findings and recommendations to the State, giving the State time to comply assuring the submission of the case to the Inter-American Court of Human Rights for a binding decision if the State fails to comply (Ibid).

Additionally on June 5, 2013 the general assembly of OAS adopted the convention against all forms of discrimination and intolerance. According to OAS secretary general Jose Miguel Insulza this convention holds "great symbolic and legal value" in inter American human right system as it is the first legally binding instrument to condemn discrimination for any reason including sexual orientation and gender identity (OAL, 2013).

3.2.2.3 African Human rights system

On 27 June 1981, member states of the Organization of Africa Unity (now the African Union) adopted the African Charter on Human and Peoples' Rights for the protection and promotion of

human rights on the African continent (Okere, 1984). The African Charter is distinctive in its nature from the other regional human right instruments as it incorporates all the three generation of rights (Ibid).

The African Charter on Human and Peoples' Rights ("Charter") became widely recognized for breaking new conceptual ground in human rights law by including civil, political, economic, social and cultural rights in a single instrument. Additionally, as the Charter's incorporates group rights, such as the right to development, the right to peace, and the right to environment, it's considered revolutionary and well-articulated document in human right discourse.

So far the normative force of the Charter has an immense impact in the continent. As it is the foundation of the regional human rights system like similar regional human right system, it provides substantive rights, enforcement procedures and supervisory body (Solomon, 2012). The Charter is claimed to have opened up a new era on the development of human rights in Africa by setting standards and groundwork for the promotion and protection of human rights. For such purpose the Charter established the African Commission on Human and Peoples' Rights to oversee the promotion, protection and interpretation of the rights enshrined under the Charter (Ibid).

The Africa Commission on Human and Peoples' Rights is expressly mandated to examine the human rights situation of states parties to the African Charter through the national periodic reporting procedure of the African Charter (Ibid).The Charter also mandates the Commission with a power to issue resolutions regarding the violation of the right enshrined under the Charter (Ibid).

Additionally the African Court of Human and Peoples' Rights was established by Article 1 of the protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights which was adopted in 1998 and entered in to force in 2004. The Court has jurisdiction over all cases and disputes submitted to it and designated to pass legally binding decision "concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument" (African Union,2014).

In reviewing the issue of minorities under the African human right system though it's claimed that the Charter provides all-inclusive legal materials which can serve as normative framework for addressing the issue in the region so far too little attention is being paid to the issue in the various human rights and governance platforms (Solomon, 2012).

Minority rights under the African human right system are generalized to only include the postcolonial Africa question for the democratic accommodation of the ethno-cultural diversity. Thus, under the Charter due to the majority moral values reference to sexually marginalized people is claimed to be nonexistent (Ibid).

As far as legal protection and the exercise of human rights are concerned, sexual minorities or LGBTI people in Africa have not been privileged with any recognition. Moreover, African human rights organizations have been reluctant to address human rights violations of LGB peoples (Ndashe, 2011). The main reason for this is alleged to be “the theory of normative heterosexual paradigm” (Ibid).

Sexual minorities more precisely gay, lesbian and bisexual people, are mostly viewed by many as deviant from the cultural sexual norm. Even though the Charter guarantees equal protection of human right to everyone such attitudes towards people who don't exactly fit in to the majority sexual paradigm lead to a more oppressive and discriminatory laws and a great deal of resistance towards recognizing their sexual identity.

Many African leaders have argued that the issue is not an African problem as the act itself is something brought by the western countries thus, it is considered to be a threat to the existing cultural norms and a stricter action has been proposed against sexual minority people (Hoad, 2007).

The African Charter on the Human and Peoples' Rights in its preamble (paragraph 3-4) states that everyone is entitled to freedom, equality, justices and dignity (African charter on Human and Peoples' Rights, 1981). In this regard, though there is no literal reference to sexual minorities these provision extends the protection for LGB people by virtue of their status as human beings. Similar to other international and regional human rights instruments, the African Charter embodies the principles of equality and non-discrimination as one of its paramount principles. Hence, it's argued that the silence of the Charter regarding the protection of sexual minorities should not amount to condoning the discrimination of individuals based on their sexual orientation (Murray & Viljoen, 2007).

Accordingly since the 53 signatory member states of the charter are also party to the UN declaration of human rights, the jurisprudence in the protection of sexual minorities in Africa human right system should be consist to the international and regional systems. This is because of the theoretical understanding that all regional and international human rights principles share

the same value, and thus they are interrelated and interdependent (African charter on peoples and human right, 1981)

In this case referring to Article 60 and 61 of the African Charter, the African Commission in interpreting the provision of the charter is obliged to take due consideration of international law on human and peoples' rights. On the same note according to Article 3 and 7 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court it's important that the decisions made by the court should be in line with other international human right legal instruments. Hence it's a legitimate argument that dealing with sexually marginalized people in the region due consideration has to be made to the international human right approach to sexual minority right.

Furthermore, Article 2 of the African Charter provides that every individual shall be entitled to the enjoyment of the rights and freedoms recognized under the 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 (African charter of human and peoples right, 1981). In this regard Heyns (2002) argues that the list is not exhaustive as implied by the word 'other status' at the end of the article. Moreover, the list also failed in mentioning the major grounds of discrimination such as gender, age, disability in which case sexual orientation and gender identity are also considered to be included (Heyns,2002).

According to Murray and Viljoen (2007) , despite the lack of express inclusion of sexual minorities the fact that there is no rejection of inclusion of sexual orientation as a ground for non-discrimination during the drafting process shows that somehow the charter is open for interpretation (Murray & Viljoen, 2007).

However, the counter argument towards the above discussions is based on the importance of preserving the cultural norms of the people in the continent which is more clearly stipulated under the charter. Article 27(2) provides that the rights and freedom of each individual shall be exercised with due regards to the rights of others, collective security, morality and common interest. Thus, the interpretation of the provisions to include different sexual identity is greatly limited by this particular provision.

Among the cases that were brought before the Commissions is from the Coalition of African lesbian (CAL) for observer status at its 44th Ordinary Session. This issue raised a great debate within the Commission and most of the Commissioners argued that sexual orientation and gender identity are not guaranteed rights in the ACHPR. Following this the commission denied

CAL the observatory status claiming that the coalition does not work to protect rights guaranteed under the ACHPR (Ndashe, 2011).

Despite the prevailing arguments made against human right approach to sexual minority right and the strong resistance over the past few years there has been a gradual growing movement in the protection of sexual marginalized people (LGBTI) rights at the African Commission on Human and Peoples' Rights .

Recently the African Commission meeting at its 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014 adopted a groundbreaking resolution “on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity”. The resolution recalling the already existed human right principle under the charter denounces discrimination, violence and any kind of human right violation of the individual on the basis of sexual orientation and gender identity of an individual (African Commissions on Human and Peoples' Rights, 2014). Moreover the resolution calls on State Parties to ensure the protection of the right of sexual marginalized people which also include creating enabling environment, free from violence, abuse (Ibid).

3.3. Ethiopian Laws on LGB

Even though the FDRE Constitution doesn't specifically ban same-sex sexual act, the 2005 revised criminal code of Ethiopia which followed the 1957 Penal Code punishes same-sex sexual act. Revising the legal status of LGB peoples in Ethiopia in general the 1957 penal code, which was drafted by Jean Graven and introduced new objective of criminal law as it focused on prevention of crime and rehabilitation of criminals, under article 600 prohibits same-sex sexual practice on the ground of public offense.

Following this the 2004 criminal code of Ethiopia title IV which covers crimes against morals and the family under section II of sexual deviation article 629 punishes “homosexual act or any other indecent act” with simple imprisonment. In this case the penalty may be increased by more years when the offender is making a profession out of such activity or exploits a dependency relation in order to exercise influence over the other person.

In this case the scope and nature of activities that consist “indecent act” is not defined however, the criminal code highlighted that the criminalization is over the homosexual act rather than the status of being identified as one. Moreover, the criminal code which prohibits homosexual act,

which also religiously refereed as to the act of sodomy, is not only inspired by the cultural family paradigm but also religious dogmas that integrated in the society.

According to the 1995 Constitution of the Federal Democratic Republic Ethiopia (FDRE) which devotes its chapter three to the fundamental human right principles under article 9(4) stipulated that, all international agreements ratified by Ethiopian are part and parcel of the law of the land. Regarding the scope of application and interpretation of chapter three, articles 13 of the constitution states that the fundamental rights and freedoms should be interpreted in light of the universal human rights instrument. Furthermore reading through article 10(1) and 25 of the FDRE constitution human rights are natural, inviolable and inalienable rights that are equally guaranteed to all persons irrespective of race, nation, nationality or any other status (FDRE Constitution, 1995).

Even though the FDRE constitution have guaranteed equal right to every individual by virtue of being human , the fact of the matter is the criminal law has clearly stipulated the illegality of same-sex sexuality in protection of the public morality.

According to Luladey Berhnu (2013), the rights that are predetermined under chapter three of the FDRE constitution is subject to limitation and in case of same-sex sexual act it is articulated as crime under the criminal code of Ethiopia. Moreover, she argues that “as a legal provision is legitimate so long as it aims at the protection of public peace, health, morals or national security” the limitation of the rights in case of “deviant” sexual orientation of an individual doesn’t contradict the constitution aim of providing protection for everyone (Luladey, 2013).

Here it’s the researcher believe that the law clearly is inspired by the condemnation of the society and aimed at preserving the hetro-normative traditional values of family which assumed to be between man and woman .However its undeniable fact that the state surveillance of what is considered to be a private matter such as such as sexual act evidently contradicts to the notion of human rights which is possessed by virtue of being a human.

CHAPTER FOUR

4. The life and experience of LGB people living in Addis Ababa

4.1. Identity formation

Though sexual minorities have always existed in Ethiopia commonly in invisibility and silence and sometimes in culturally sanctioned forms their issues have never seriously been articulated to date. As highlighted in the earlier Chapter, gay men, lesbian and bisexuals still grow up within a context of pervasive homophobia and expectation to be heterosexual. Due to the law, societal values and mainstream culture being unfavorable towards sexual minorities, very few, if any, can afford to be open about their ‘illicit’ sexual orientations. Consequently, identity awareness, acceptance and affirmation, a process known as coming out to self and others, remains to be challenging for them.

In this section, the researcher has put together the testimonies of key informants with respect to their experience in identifying and acknowledging their sexual orientation. As indicated in the methodology section above, the names of the informants have been changed to protect their confidentiality, understandably, because of fears expressed about victimization.

The researcher has observed from the interviews with those who now identify themselves as gay, lesbian and bisexual that although they all had realized the signs at early age, most of them had resisted and struggled in identifying and accepting their sexuality. They rather tended to view their sexual orientations as some forms of terrifying disability and sin that had to be denied and rejected as the pervading ideology of the society dictates.

According to Daniel, a twenty year old medical student at Addis Ababa University who identifies his sexual orientation as gay stated his experience as:

“I always knew I was different though I did not regard it as a different form of sexuality but rather as a form of deformity and divine punishment I even prayed to God to make me normal. Growing up I always had questions about my sexual interest but never had the guts to disclose it to anyone; rather, I used to ignore and suppress my feelings. However, after I joined higher education I started hearing and reading about sexual orientations and started to ponder over my sexual inclinations. The religious teachings and public opinions made about people who are involved in same-sex eroticism are stressful and make it hard especially for young LGB people to

accept ourselves. In my family I am the last born and often when the issue is brought up the immediate reactions of my parents and my brothers are hateful, intimidating and violent, making me wonder what their reaction might be if they happen to know that I am gay.”

Moreover Daniel explained that especially when a boy or a man is not a typical ‘masculine’ in terms of his mannerisms, people, particularly friends and family members do question his possible sexual behavior which also triggers the “what if I am question“.

“Even my own brother had once asked me if I am a “Bushiti” (an Amharic derogatory word which refers to men who have sex with men) or otherwise to act manly. I had denied and even created a fake girlfriend just to convince them that I am straight. Peoples around me including my brothers are very homophobic, and I don’t think in our society any family is ready to accept that a member could naturally be a gay or lesbian. Despite this, I have acknowledged my sexuality when I was eighteen or nineteen”.

Results of the interviews reveal that some have identified and accepted their sexuality later than others. Some of the informants stated that for quite some time even after they have realized it they had to undergo a state of suppressing and ignoring the signs.

According to Tamerat a 29 civil servant described his experience as:

“For a very long time I was confused, I was raised in a strict religious house and I was part of the choir in church until my late teen when I started realizing my sexual interest. Eventually when I faced the reality that I am not attracted to women as most of my peers of same gender, I began to enjoy the company of men/boys instead of girls. Acknowledging this fact has created a troubling self-conflict, shame and guilt. I hear the religious teachings and people’s reactions towards LGB people which made me think that I was sick. Consequently, until I was in my mid-twenties I suppressed and ignored my sexual interest”

The thirty-four years old computer science graduate Yohannse, who is currently working for a non-governmental organization, stated that, despite his early awareness of his sexual interest, he hadn’t identified himself as a gay until he finished his higher education and started living alone.

“I grew up in a big average-income family in Addis Ababa. As a family we were all close. Even though I had noticed things about my sexuality earlier, I didn’t want to acknowledge it until my mid-twenties. In school peers/classmates used to call me “Setaset” (literary. ‘of feminine behavior’) and my sister used to teach me how to walk, talk and have masculine qualities in general. I undermine my sexual drive until I graduated from the university, but it’s still unendurable and a huge risk to identify oneself as gay because of the prevailing perceptions about LGB people. Thus, most of us prefer or are obliged to hide our identity and suppress our associated feelings. “

The process of coming out, including the early perception of identity and responses to the realization of sexual orientation, shows no difference between the ‘sexes’ or forms of sexual orientation. Alike the case of gays, lesbians also pass through phases of early detection, denial, abhorrence, reproach, etc. and taking of measures to subdue or preferably change the nascent identity until they eventually give in. The story of Rahel, who identifies herself as lesbian, illustrates this struggle:

“Since I was thirteen I remember being overly attracted to one of my girlfriends and as a child I never gave it much thought or realized the contradictions my sentiment had with the religious and cultural moral values. However, in time it became clear to me that my interest was not the same as my other girlfriends (who were presumably heterosexual) regarding sexual intimacy and desire. It was a confusing experience. Once the woman I was living with after finding letters I exchanged with another woman told to the church minister and they tried to pray for me, which was of no consequence and after that incident I had to leave the house. Moreover thinking it would change me, I had even tried to have many male sexual partners.”

The experiences of gays and lesbians documented by this research suggests not only that sexual orientation is fluid or not fixed, moving around on the homo- hetro-sexual continuum owing to internal and/or external pressures (such as a coping mechanism or cover up in the case of Rahel above), but also that recognition of one’s sexual orientation may not always and easily culminate with or crystallize into an accepted identity at any one time. Even though some of the contacted key informants stated that they have settled or made peace with the reality of their sexuality, the experience of a twenty nine year old gay informant, Abdu, who owns a private business, bears

testimony to the prolonged struggle and embarrassment. He stated that until now he doesn't find comfort in acknowledging his sexuality:

“I have started questioning the signs and said to myself what if I am a gay when I was in high school. After I joined the university, I had internet accesses and tried to reach out groups of similar interest and read issues about sexual orientation. To be completely honest, it was disturbing I didn't have any romantic intimacy the whole four years I spent in the university. I was scared and ashamed. I still did not find the balance and it gets worse in time when my family expectation and pressure is added to get me married (to a woman) and start my own family.”

In general, in the process of identifying their sexuality and acknowledging it in their adolescence LGB people experience confusion and hesitation, irrespective of gender, form of sexual orientation or any other factor. This as divulged by focus group discussants, is because of lack of awareness on issues of sexuality and early sole acceptance of heterosexuality as the “normal” and “natural” sexual behavior. Additionally, the focus group discussants stated that their comfort zone in which case they discuss many personal issues including sexual experience is among themselves.

As stated above some of the informants identified their sexuality early and acknowledged it as part of their identity but from the interviews it is also clear that though some of the LGB people identify their sexuality as gay, lesbian and bisexual mostly they are not comfortable and still endure the experience of shame and guilt. Moreover, the record of testimonies vividly show that for sexual minority individuals in Ethiopia, privacy, secrecy and invisibility remain to be of paramount importance as one's sexual identity is critical to family relations, maintaining employment, membership in religious institutions, accessing services, etc.

4.2. Personal conflict and stress

Most of the participants of this study describe being LGB in Ethiopia as a tiresome, stressful situation. The cultural expectation and the religious moral system along with the general public attitude have created a constant personal conflict and stress.

Most of the participants of this study (both key informants and focus group discussants) share that their sexual identity is a natural phenomenon something they have not opted for. Still some

of the participants argue that growing up with the cultural and religious understanding that heterosexuality is the only and the right sexual orientation has made the journey of identifying their sexuality and accepting it to be stressful and conflicting. Particularly in the interview with the key informants, some still claim that they struggle with the possible idea that same-sex sexuality being natural to human sexual experience rather than a mistake they have got involved with regardless of the ongoing nature vs. nurture debate on the issue in the academic circle.

The operation of societal institutions builds an outlook wherein the affected individuals begin to consider themselves as worthless; to which the experiences they face in their lives adds its own form of oppression creating in many the feeling that they are the ones condemned to such 'unfit' desires, leading to an enormous erosion of self-esteem, cycles of depression and self-rejection, and sometimes to attempts at suicide. Daniel reflected in his personal account of the constant self-conflict as follows:

“In early days when I started discovering my sexuality, it was hard to accept myself as one. Being confused, the only available response to the signs was that I was sick or cursed. I have tried many ways including using holy water and performing prayers to remove my temptations. For a while, I was very depressed and tried to kill myself. Even after I acknowledged it, still it is hard for me to measure up my sexuality with my religious beliefs. Even though now I have somehow settled with the issue, I still have many insecurities and hesitations about getting along with my sexuality”.

The young civil servant Tamerat, who is a gay, also shares the same experience:

“For a very long time I was lost and confused. I was raised in a strict religious family and was a choirboy in the church. I used to hear what the church leaders teach us about same-sex sexual acts and people’s reactions, including my own family. I struggled with myself and my sexuality throughout my entire teen age. Until my late twenties, I used to think that I had a biological disorder. I used to love going to church I was a member to many religious associations (such as Mahebere kedusan, lit. ‘a society of the holly ones’), but now I have not been to the church for a very long time and has ended all my relationships with others who are involved in church matter because of the constant conflicting views and feeling of shame. It’s

hard to counsel my desire with the words in the scriptures. I used to feel guilty following sexual or intimate acts with another person of my own sex. One time I even had tied my penis with my lap partly as a punishment. Eventually I started getting depressed; this feeling had cost me a lot of things, it had affected my education, eroded my self-esteem destroyed my relationship with my family.”

The final year university student Tesfaye also explained his experience as:

“First realizing that my sexual interest is towards men was confusing, it’s not something I wanted to be and viewed it as a sin and socially unacceptable. For a long time I have tried to balance my sexuality and my religious belief. Before I was certain about my sexuality I started goggling and tried to reach out different platforms and slowly I have settled with the issue. However, it is still a struggle even though I had a general understanding about it I could not be fully comfortable with the issue and I prayed to God so many times to remove my temptation or kill me before anyone finds out.”

The twenty four year old Simon who graduated recently and has relatively went an easier phase in accepting and understanding his sexuality stated that:

“I went to a very open and culturally diversify school so I knew or heard about gay or lesbian people. I got curious and started browsing on the Internet about sexuality and somehow started relating myself with the characteristics. I was seventeen and eventually it was clear to me that I am gay. Even though my exposure made me to become okay with it still I want to talk to someone. In my family I know someone who has not came out or described his sexuality as gay openly to us but the whole family somehow knew about it and he was isolated. Eventually he got extremely depressed for quite some time and finally he committed suicide. I always try to see the positive yet something’s such as my future, the social and family expectation and my personal desire of having a family and partner haunt me. Thinking about this always reminds me how serious the issue is. “

Mahlet who identified herself as lesbian also stated that:

“The conflicting ideas and the confusion start the day I started realizing my sexuality. It is not only confusing and scary it’s also stressful it has affected my social life and social interaction. I grew up in a tight religious environment that I have never had any information about different sexual identification except that it’s a sin. After I started noticing my special interest in girls I thought it’s a sickness or devils work and I started fasting and praying. I have tried to suppress it for a very long time and wished it goes away but instead I was depressed with serious health problems for some time. I got married thinking it would change my sexuality but it did not, it rather created more problems and complicated my life. There is a constant debate with myself and trying to balance the normal or right way of living and the desire I have remains to be stressful.”

Rehima a nineteen year old university student who is relatively not comfortable in discussing her sexuality as the other key informant stated that the gender characterization and the expectations that come with her religious upbringing and sexuality is something she struggled with until these days:

“I still do struggle with my faith to Allah and my sexuality and I do feel unworthy and if I could change it I would in a second but this is me. I am created for a purpose and I cannot do anything about it. Every time I acknowledge the fact that I am romantically and sexually attracted to the same –sex member, I feel like I am abandoning my God and committing a huge crime.”

The twenty eight year old Kassahun who is working as computer engineer in a private company stated that in many instances he meets many people who happen to have wife and kids but consider themselves to be gay or bisexual leading a double life.

“After a certain age most of us are questioned and pressured to get married and create a family in which case most of us are forced to lead a two sided life which created a very complicated life and affects our physical and mental health.”

According to the interviews with the key informants and focus group discussions conducted, LGB peoples in Addis Ababa live in constant personal conflict with the religious value and cultural sentiments as part of the society and their sexual orientation. Additionally most of them also

struggle to maintain a double life (public and private) and stress about their feature given the family expectation and their sexual orientation.

4.3. Fear, intimidation and worry

From the interview conducted and focus group discussions, many of them not only share the constant intimidation and fear of being prosecuted but also fear that one day their family and friends will find out and will humiliate and abandon them. The perceived fear and intimidation include both prosecution and social exclusion.

According to Daniel:

“Many of us live in fear of being identified or caught as the consequence is being stigmatized and abused. I am not masculine and some people in my school and even my siblings somehow question my sexuality and I can see their reaction so I am very careful around them”.

Regarding this Rahel twenty four year old who currently works in government office described her experience as:

“I was suspected of being lesbian in my school and a committee was set up to investigate my “deviant” behavior and they were going around and asking about my sexual behavior. Everyone in the school including peers I attended the church with was questioning my character in general. At that time I was totally isolated till the point that I had to leave out of the compound and rent a house which also resulted in total isolation and loss of support from my family and friends.”

Similarly, Tesfaye the finale year university student who was suspended from school after hearsay information about his sexuality said that:

”After I was suspended from school they were telling everyone the reason. My classmates, my teachers and even staffs from registrar were looking at me as an alien. I was ashamed and humiliated. People were coming to me and asking me if what they were told was true. I wanted to go somewhere far so that everything cools down. I was forced to say that I am involved in deviant sexual behavior as they were treating to expose me to my family and friends”

Yohannse also explains that many LGB people do maintain a stressful multiple identity to hide their sexuality since many people don't hesitate to abuse verbally or even physically. In this case he stated that:

” Back in high school students from my class used to call me “Setaset” (literary. ‘of feminine behavior’) and I used to get embarrassed and fear that people would seriously question my sexuality.”

Daniel stated that his biggest worry and fear were being caught and exposed by his parents.

“I hear the comments my siblings and friends make, my brothers are hateful and violent towards gay people and if they find out about me I am sure they will abandon me.”

Kasshaun explained his fear as:

“What worries me the most is the future, the question how am I going to live in my country being gay and still being around my family and friends; the intense reaction and the constant condemnation do scare me. Its intimidating to constantly be aware that if anyone knows about me then I will not only be publically humiliated and isolated but there is also a prison time.”

Tadious explained his fear and worry as:

“For me it's like sleeping with one eye opened I have this fear of being caught one day, let's face it one day people will question why I don't have a girl friend or not married either. So it's much more stressful to hide this huge fact of your life and you constantly tip toe looking back your shoulder if someone notice or suspect something.”

The thirty-five years old information technology professional, Abebe, who also had to struggle in accepting his sexuality for quite some time stated that:

“Many people are very reactive to gay, lesbian and bisexual people because of the generalized character that is promoted by the mainstream media including the print media and recently the radio stations labeling us as sick or who got deceived for money and previously raped individuals. This perception has affected many people perception about us. Thus, the preconceived notion and the general characterization is the major reason for people to be reactive and violent toward LGB people.

Moreover, the popular attitude that to be gay or lesbian is deviant western sexual behavior young people's choose to adopt along with the criminalization of the act imputed the discrimination and abuse.”

This perception seems to be shared by Robel's family too, the twenty six year old graphics professional, who identify his sexuality as bisexual, has been asked to leave out of his family house when they found out about his sexuality. He explained his experience as:

“When my sister found out about my sexual interest, she blamed it on my childhood friend who went abroad and came to visit after sometime, she openly asked me if he is the one who deceived me in to such western deviant act and since then I have been totally isolated from my family“.

Abdu stated that the fear and intimidation have also impacted their access to health services.

“I would never go to health center for issues related to sexuality even if I had problems. Mostly in the community we try to help each other regarding sexual health issues, rather than going to a random clinic and discuss my sexual life. This is partly because I know for sure they wouldn't be professional and consult me and partly because of the fear of being reported and exposed. Given the experience of others, particularly regarding problems related to sexual act they have been enacted and mistreated because it was obvious that they were involved in the same-sex sexual act. I think the doctor will look down on me and I have heard this from one of my friend that the doctor was disgusted with him and he failed to treat him professionally after he find out that my friend had exercised same-sex sexual act.”

4.4. Perception of the law

Informants explained their perception about the law that criminalizes same-sex sexual act and the impact it has on their day-to-day life. Moreover, their view and predication on the changing circumstances regarding the legal status of LGB issue in the country is narrated below.

In this regard Mahlet noted that:

“The law of the country including the constitution doesn't seem to protect the equal humanity and privacy right of gay, lesbian and bisexual people. I hear what everyone says about us and the moment people find out our sexuality everything

works against us even the law, if anyone finds out that I am a lesbian I have no doubt that people will be violent and abusive. So the remedy is to be very careful with what we display in public and stay invisible.”

Moreover Tamerat stated that:

“Most of us don’t have any trust in the law to protect our rights I know two gay men who have been detained in prison and get beaten up by other homophobic prisoner mates and the police officers did nothing to protect them.”

In this regard Rehima explained the situation as:

“In case of LGB issues people are morally convinced that the abuse and discrimination is justified. The criminalization of same-sex act somehow authorizes individuals to be abusive towards LGB people in school, health center and prison in some instances; I don’t think once I am exposed the law would protect me. The society is more powerful and authoritative than the law which is supposed to protect the equality of everyone.”

Tesfaye from his personal experience stated that:

“After being suspected of being gay I was forced to incriminate myself and sign a paper stating that, I got suspended from school because of my involvement in immoral sexual activity. Except a hearsay they never had a prove and they threatened me that if I try anything they will publicly humiliate me. At the time I wanted to communicate a human right institution but I was afraid.”

Participant of the focus group discussion stated that:

“There is no human right institution working on LGB issue which we can complain and ask a legal assistance without any discrimination abuse and violence. Even among the LGB community some individuals get raped but it’s impossible to communicate anyone without exposing ourselves also”

Moreover Yohannes highlighted the point that:

“Regarding medical service, our existence is completely denied, the policies and services don’t include LGB people, and there is no sexual education or medical service. In case of any health problem related to our sexuality we all fear communicating a professional. There are many people in the community who don’t have any idea about safe sex, lubricant condoms which are not easily accessible.

Therefore, few of us wish to demand for change at least in the health sector but the criminalization of the act and the reaction of the public is something we all fear.”

In this regard Daniel also noted that:

”I don’t think decriminalizing same-sex sexual act makes any change at all. Even if there is a push for equality in few sectors such in health service things will be worse just like what we witnessed in other African states; the public will be reactive there will be more discrimination, abuse and violence so I prefer for the issue to be concealed and left alone. The change in the law would not work in our favor. “

However, some of the informants don’t share Daniel’s opinion. Simon on the other hand argues:

“It’s impossible to claim our right through organizing or using any other media because of fear of being abused and criminalized and I hear all the time my friends and relatives who don’t know about my sexuality saying Ethiopia needs to maintain strict law against LGB peoples and even they talk about taking matters in to their own hand. This is partly motivated by the criminalization of the act, thus decriminalizing the act is a first step. “

Abdu noted that in case of being suspected as most of the time there is no proof that the individual has committed same-sex sexual act LGB people not only face challenges in school, their home and health centers but also in prison there are many abuses and discrimination faced by particularly gay individuals. He further states that:

”When individuals are under arrest for being suspected gay mostly they are verbally and physically abused by both the officials and other prison inmates. Additionally there are instances we know in which individuals are accused of committing same-sex sexual act and detained without formally being charged for long time and we have to give money unofficially to bail them out. However while they are still in prison they face different kinds of humiliation such as being forced to seat by toilet and being completely isolated from any activity including meetings and play with the others ”

In general the informants do agree that the criminalizing law did fortify the fear and stress. Moreover, it's an authoritative source which empowers individuals including officials to act abusive and discriminatory towards LGB people in some instance.

4.5. Media role and intolerance

The participants of this study mentioned that the media play huge role in sensitizing the public and shaping public opinion and perception. Thus the media are a weapon in prompting violence, hate and intolerance against gay, lesbian and bisexual people.

Regarding this Kassahun stated that:

“When the issue was concealed and not covered by the media people were much more ignorant about the issue and people were not suspecting and violent, but recently the discussions through the mainstream media portraying gay people as pedophiles has made the public to be aggressive.”

Abraham also explained the situation as:

“Particularly the print media is playing a huge role in making the public homophobic by generalizing the character of LGB community. There are people who don't have the accesses to different explanation for different sexual orientation or gender identity. Therefore the media manipulate the issue and relate it with rape, mental sickness; evil possession and a western culture influenced life style. This has made the public to be intolerant and hateful towards LGB people.”

Abdu also discussed about the media sponsored hate ad intolerance:

“Even though the media have a positive side by discussing our existence but it also has negative impact because of the media sponsored hate and intolerance. Recently professional people are discussing the issue through a radio station claiming that LGB people are people who have been molested in their early childhood and had a mental problem.”

Regarding the role of media the informants agree that though it is playing a huge role in bringing the issue to the table for discussion, the portrayal of LGB people and the conclusion drawn has intensified the intolerance.

4.6. “Heteronormativity” Religious and cultural influence in Ethiopia

The word heteronormativity refers to the social ideology that manifests gender conventionality, heterosexuality and family traditionalism as the correct way for people to be. Accordingly, the norms and practices are established as the only possible and natural form of sexual relation while other sexual behaviors are judged to be abnormal or deviant (Oswald et al, 2005). This implicit moral system acknowledges the hegemony of heterosexuality and everything that surrounds the practice (Tamale, 2013). In the ideology, culture and religion are regarded as the most influential factors which are also reflected through State made laws.

According to Sylvia (2013) in Africa through time religious norms have formed part of cultural rules. Many cultural values are based on the notion that the godly or permitted sexual act is between man and woman which as well manifests the importance of procreation and family (Ibid). The cultural value of many societies such as Ethiopia magnifies the patriarchal heterosexual-norms and those men and women outside of it are stigmatized and discriminated against (Tadele, 2008).

In Ethiopia, same-sex eroticism is highly condemned and considered un-Ethiopian which is mostly motivated by religious arguments. Balcha (2008) claimed that even the criminalization of same-sex sexual act on the ground of public morality is the influence of the past close relationship between State and religion which eventually fashioned the cultural norms (Balcha, 2008).

Until 1974 Ethiopia had a State religion and the laws of the country were based on religious dogmas (Ibid). Mamo (2008) argues that same-sex sexual acts have never been part of Ethiopian culture but rather a western culture that is considered as luxuries and modern life style introduced by missionaries and Ethiopian individuals who have been abroad (Mamo, 2009).

Based on the religious video made by Dereji Negash released on October 25, 2013 in which an interview was conducted with individuals who claim to have sexual interaction with same- sex members; same-sex attraction has been presented as the devil’s work and manipulation. Furthermore, the video also shows that such people are confused, drug addicts, promiscuous, immoral who are deceived by the devil and started the life and end up being an addict to the sexual act. Moreover, the video also makes the bold assertion that such people also rape young children in order to maximize their number (EOTC,2013). Additionally a video, which made by

religious institutions and uploaded for viewers on YouTube on Oct 28, 2011, also shows that such people also have sexual acts with animals against their conscious wish as they are possessed by evil spirit (New Ethiopian Orthodox 666 witness, 2011).

According to participants of the present research, the teachings against gay and lesbian people created extremists and fundamentalist individuals holding different official positions including service centers such as health institution. Moreover the overall generalizations now for some time have been pushed by the religious institutions is promoting hate and fear among the society.

The accusations made by leaders of organizations such as United for Life Ethiopia (a local Evangelical Christian organization) that gay, lesbian or bisexual people are pedophiles and mentally sick fuels the fire of hate and intolerance. This makes the lives of young gays, lesbians and bisexuals who are confused and live on the edge of self-pity and hate to be stressful, shameful and lead a very secretive or double life.

In December 2008, the Orthodox Church in alliance with the Roman Catholic and Protestant Churches and other interested participants launched a new crusade against people who exercise same-sex sexual act. Claiming LGB issues should not be considered as part of human rights, the participants requested for a constitutional ban and death penalty. In the meeting, the former Patriarch of the Ethiopian Orthodox Church, the late Abuna Paulos, stated that such people are “stupid and dumb” like animals and it’s important for them to be discriminated and disciplined (United for life Ethiopia, 2012). Additionally there is strong claim by professional individuals such as Dr Seyoum Antoniyos, President of United for Life Ethiopia, through public media and conferences that people who are gay, lesbian and bisexual are responsible for the increase in sexual attacks on children and young men (Polari Magazine, 2014). Hence the researcher has observed that this has contributed to the public intolerance and violence against such people.

CHAPTER FIVE

5. The Challenges of LGB people in Addis Ababa and the wider human rights implications

This chapter attempts to provide an analysis of the data collected through interviews and focus group discussions by linking to chapter three on the standard human right principles.

The UN Charter under its preambular paragraph two states that the United Nations is determined in “reaffirming Faith in fundamental human rights, in dignity and worth of the human person and the equal rights of everyone” (UN charter, 1945).

Similarly, the preamble of the UDHR under article 1 & 2 of the Universal Declaration of Human Rights, adopted and proclaimed by the United Nation Assembly in resolution 217 A (III) in 1948 asserts that ‘all human beings are born free and equal in dignity and rights’ and recognizes equal treatment for everyone. The ICCPR, and the ICESCR also recognize that the “inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Moreover, all the three documents mentioned above list the same grounds of non-discrimination “without distinction of any kind” including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.

The phrase “without distinction of any kind” is all-inclusive and the itemized list is non-exhaustive as expressed by the terms ‘such as’. Here the presumption is that all the rights listed in the instruments apply equally to everyone. The same argument can be applied to the African Charter on the Human and Peoples’ Rights, which in its preamble paragraph 3-4, asserts that freedom, equality, justices and dignity are essential objectives for the achievement of the legitimate aspiration of the African people.

In spite of these (and the fact that Ethiopia is member state to the above mentioned human right instruments) sexual orientation remains overlooked, in which case violation of LGB people’s rights sustained in Ethiopia. The section below examines the implications of the specific challenges of LGB people in the context of Addis Ababa.

As discussed in the previous chapter, people who practice same-sex sexual act in Addis Ababa, face multiple challenges which have direct human rights implications. Among the many human rights implication of the challenges faced by gay, lesbian and bisexual people in many countries

which also shared by LGB community in Addis Ababa are denial of the rights to security of the person, discrimination in accessing economic, social and cultural rights such as health, education and the right to privacy, the right to honor and reputation, the right to integrity and human dignity, suppression on the right to expression including one sexual identity as there is a pressure to remain silent and invisible and social exclusion are the few .

Gay, lesbian and bisexual people living in Addis Ababa suppress their sexuality and live under constant personal conflict. Most of them stated that though they had always known about their sexuality they never wanted to admit and accept it mostly due to fear of exclusion and harassment. The existing public views, the rejection and the comments made on LGB people that they are either mentally sick or possessed by evil spirit force them to suppress and hide their sexuality. This is more difficult for those who are dependent on families that do not understand or accept their sexuality, putting them at greater risk of losing housing or financial support in case of exposition.

Social exclusion, which most of the informants fear, describes the alienation or disenfranchisement that certain individuals or groups experience within society. Social exclusion is closely linked to recognition and legitimacy often connected to a person's social class, gender, age, sexual orientation and gender identity (Cáceres et al , 2008).

Those who are socially excluded have little social value as they may be marginalized economically, politically and socially (Ibid). Social exclusion not only offends a human dignity but also denies individuals their fundamental human rights including rights to life and liberty, citizenship, education and health among others.

Furthermore, the popular view which is also maintained by the State through criminalizing laws against such people not only weakens their sense of human dignity and worth in the community but also leads to living double and secretive life by suppressing their identity which eventually leads to depression and even to suicide. Most of the informants agree that in Addis Ababa the loss of stable housing in most cases leads to increased HIV risk behaviors, including unprotected sex in exchange sex for money, food, shelter and protection.

Particularly in their teenage, as most of them do not have any idea on the diverse sexual identity, they tend to conclude that they have mental and physical health problem. Even though most of

them do not put a label on it noticing their sexual desire starts earlier, the lack of information on the issue results LGB people to lead highly stressful, shameful and conflicting life. Moreover, it's also a risk to act up on or communicate anyone including family members about their sexuality because of the existing negative perceptions and hostile reactions. LGB people live in secrecy and fear of being exposed; and in any event of exposure, they deny their sexuality due to public shaming, fear of prosecution and more importantly because of fear of losing their family and social protection.

5.1. Non-discrimination and equal protection of the law

The terms "equality" and "non-discrimination" are among the fundamental concepts in human rights. International human rights instruments prohibit both direct and indirect discrimination on specific grounds such as disability, race, sex and on any "other status" which are not specifically listed in the documents. The principle of "non-discrimination" therefore encompasses the commitment not to engage in such forms of discrimination and to take steps to counter more subtle and indirect forms of discrimination. However, regarding sexual minorities the understanding and application of equality and non-discrimination in human rights advocacy is directly or indirectly discriminatory in itself.

The ICCPR under Article 2 and the ICESCR under Article 2 stress the importance of equality and non-discrimination on any ground. Furthermore Article 26 of the ICCPR reinforces Article 2 by setting out the principle of equality:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law".

Similarly, Article 2 and 3 (1) & (2) of the African Charter underlines that the rights in the charter should be invoked without discrimination. It provides that individuals are entitled to the rights under the African Charter 'without distinction of any kind and individuals shall be entitled to equal protection of the law. Despite these provisions, LGB people living in Addis Ababa are denied of the equal benefit of the law and are discriminated against on the basis of personal characteristic.

Non-discrimination and equal protection of law is a means in protecting individuals from systemic abuse and life-threatening situations. However, LGB people in Addis Ababa live under constant intimidation of being exposed and prosecuted. The equality of such people is

disregarded in various aspects such as schools and health protection policies. The criminal law of the country which criminalizes same-sex sexual act based on the ground of public morality disregards the equal enjoyment of such rights.

LGB people in Addis Ababa also experience discrimination and abuse in many institutions , and due to the criminalization of the act, it is possible to conclude that the law is reluctant in providing them protection against violence, harassment, exclusion, stigmatization and prejudice. Any particular reason for discrimination, which is expressed indirectly through criminalizing same-sex sexuality, should be considered as undermining the dignity and equal humanity of individuals.

Despite the fact that the equality and equal protection of law is something that is granted to everyone, under article 25 of the FDRE Constitution without any discrimination, many informants argue that there is no equal protection of law or protection of constitutional rights in case of gay, lesbian or bisexual people. This is partly because of the overall low level of understanding of human rights and most importantly the criminalization of same-sex sexual act. In due process of law people who are detained over suspicion or exposition face harassment and violence in detention centers as the people who are responsible in enforcing the laws are part of the society, they are more committed to the popular social values than to the constitutional rights of the individual.

5.2. The right to privacy

Regarding the right to privacy, though there are various arguments whether sexual activity should be governed by law to maintain the majority moral value, the important question is whether it affects the right to privacy of individuals. According to the report made by UNESCO in 2010 laws that prohibit private and consensual sexual activities violate privacy right of individuals. Additionally when the law only prohibits same-sex private sexual activities, not only it is contradictory to equality principle but also have a consequential effect on the social life of the individuals as it leads to fear, worry and stress (UNSECO, 2010).

Internationally the right to privacy has been reported successful in protecting sexually marginalized people by different UN bodies as it is discussed in the above chapter. Everyone is entitled to have his/her privacy in all private matters including sexuality. Article 17.1 of the ICCPR underlines that all state parties that have ratified ICCPR are under obligation to ensure

the protection of individual freedom from any kind of invasion on their right to privacy, "honour and reputation". Furthermore, Article 17.2 asserts that everyone has the right to protection by law from any kind of unlawful invasion of their privacy.

In case of the African Charter though the right to privacy is not explicitly recognized rights such as the right to personal integrity which is stated under Article 4 and dignity under Article 5 require the protection of individual liberty and respect for individual privacy. Furthermore, Article 26 (1) of the FDRE Constitution grants the right to privacy to everyone. Article 24 (1) which also assures the right to honor and reputation of everyone asserts the right to respect for a person's dignity, reputation and honor.

Notwithstanding the above recognized individual rights in addition to the constant fear of being humiliated and socially excluded, fear of being prosecuted is shared among the LGB people in Addis Ababa. In many places, including in schools, health institutions and detention centers there is intrusion on the privacy right and human dignity of individuals on the ground of sexual deviancy.

Particularly individuals who are detained for committing same-sex sexual act in prison are humiliated and openly insulted even by the officials of the detention center making them vulnerable to physical attack. Privacy right is interdependent with various rights thus; the intrusion of privacy of individuals in public affects their social interaction leading them to be isolated. Additionally in case of accessing health services fear of being exposed and humiliated affects the day to day life of LGB people. In higher education center where students live closely and social interaction has its own value allegation and exposition of a private sexual matter in public brings humiliation which affects the honor and reputation of an individual.

The major reason is the criminalization of same-sex sexual act, which gives the authority to individuals on their official duty to infringe the right of an individual.

5.3. Right to education

Education is one of the basic human rights which should be enjoyed by everyone. In this respect, States have the obligation to protect, respect and fulfill the right to education without any discrimination (UNICEF, 2012). The right to education requires for states not only to allow the promotion and understanding of the right but also to create a suitable environment which

manifests tolerance and friendship. However, according to the UNESCO report, LGB people living in many countries are afraid to attend school or university because of an unsafe or unwelcoming climate (UNESCO, 2010).

Young LGB people are dependent on their family, and the role of education on their independence and freedom is perceived to be pivotal. Yet, many of the informants, particularly those attending higher education, struggle to maintain their social life in schools and the secrecy of their sexuality.

In time of exposition or being suspected of being LGB, they are forced to incriminate themselves, which is often followed by suspension or dismissal from the schools making them vulnerable to various kinds of problem including homelessness, risky sexual behavior and both mental and physical health problems.

According to the interviewed informants in the school compounds, where group activities prevail and many things are shared, allegation and investigation of the sexual history or behavior of an individual not only brings humiliation in public but also affects the reputation and interaction of such student with the community in the school. Moreover, it promotes and provokes people to react negatively towards such persons and make the student unsafe and vulnerable to physical and verbal abuse, complete isolation from family and friends leading to stressful situation.

In sum, we can argue that the act and reaction not only infringes the right to equal access of education but also promotes an unwelcoming and unsafe environment for such individuals in the education system.

5.4. Equal accesses to health services

Right to health includes protection of both physical and mental wellbeing of an individual. Such protection also includes protection from violence and any act that forces the repression of individual identity (UNESCO, 2010). Within the UN system, the Special Rapporteur on the Right to Health, Paul Hunt, has significantly advanced the thinking on the links between sexuality, health, and rights. He highlighted that sexual health is "a state of physical, emotional, mental and social well-being related to sexuality, not merely the absence of disease, dysfunction but also "requires a positive and respectful approach to sexuality and sexual relationships, as well as the

possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination, and violence."

In many countries, the health sector usually overlooks same-sex relationships. Thus, same-sex partners are denied a broad range of entitlements available to heterosexuals (O'flaherty & Fisher, 2008). A comprehensive health care program should include every citizen in a country. However, in Ethiopia health care programs like the HIV/AIDS protection and control program seem to ignore people who are involved in same-sex sexual act (Balcha, 2009). Furthermore, Balcha argues that the ignorance of such people in the protection and care programs has direct or indirect link to the general population's well-being (Ibid).

Key informant interviews and focus group discussions have revealed that the criminalization of same-sex sexual act prevents gays and lesbians and bisexual people from seeking medical help or counseling in case of suspected sexually transmitted diseases including HIV/AIDS for fear of being exposed and prosecuted. Most of the research participants also stated that sex education and health services ignore the existence of LGB people. Moreover, informants stated that lubricant condoms are not accessible to everyone. All these make LGB persons vulnerable to endemic disease such as HIV/AIDS and other sexual health problems.

5.5. State responsibility and response

The principle of equality clearly requires the state to take affirmative action in order to diminish or eliminate conditions that cause or help to perpetuate discrimination. The equal protection of law includes State responsibility in promoting and protecting right to life, liberty, and security of the person. Individuals have to be protected from systemic and life-threatening situations (UNSECO, 2011). States must also ensure that they address issues of discrimination regardless of whether the discrimination occurs just between individuals or in a more systemic way, such as through legislation, policies, and regulations (Ibid).

As reported by informants, it's reasonable to argue that prosecuting individuals based on their sexual orientation is not only an example of arbitrary law resulting in absence of legal protection for LGB people but also disregards basic human rights. The criminalization of same-sex sexual act also infringes the private and consensual sexual activities of individuals, the right to freedom of thought, conscience, opinion, and expression which requires States to allow both private and public expressions of one's sexual orientation and protection.

Similarly, right to equal protection of the law requires states to afford sexual minorities the same legal protection from any crimes. Despite the various human right violations, nevertheless, LGB people in Addis Ababa prefer not to pursue legal action due to fear of further prosecution and exposition. Furthermore, right to physical and mental health, not only includes the protection from violent hate crimes but also guarantees protection of LGB people from policies that effectively force them to repress their identity, thereby hindering their health rights.

According to Article 17(2) of the FDRE Constitution, no one should be subjected to arbitrary arrest or detained without formal charge or conviction however, in case of LGB individual's detention for a long period of time without formally being charged for any crime is witnessed by the informants of this research. On the same note during detention LGB individuals face physical abuse from other prison inmates however knowing the reaction towards individuals who are claimed to have same-sex sexual act the interference of the officials to protect the victims is rare in many cases.

5.6. Response of the Ethiopian Human Rights Commission

Proclamation No.210/2000 provided for the establishment of the Ethiopian Human Rights Commission (EHC) as an autonomous organ with its own juridical personality. According to Article 5 of the Proclamation, the objective of the Commission shall be to educate the public to be aware of human rights, see to it that human rights are protected, respected and fully enforced as well as to have the necessary measures taken where they are found to have been violated. Reviewing the Commission's annual performance reports of June 2010 to July 2011, it's clear that in all of the activities which aimed at achieving the goal of the institution issues regarding LGB people's right are not included. Additionally in reviewing the inaugural report of the EHRC, published in 2011, covers the first five years of programs and activities that the commission has undertaking in promoting and protection of human right in the country. However still the LGB human right violations have not being dealt so far.

CHAPTER SIX

6. Conclusion and Recommendations

6.1. Conclusion

The status of LGB people in the international human rights regime is still controversial. Though some countries have made changes to the better in protecting the human rights of such people many states criminalize same-sex sexual acts mostly on the ground of public morality.

The international bill of rights did not include sexual orientation as one of the enumerated grounds of non-discrimination. However, many argue that the exclusion of sexual orientation from the non-discrimination list under the international law instruments is partly because of the lack of consensus on the possibility of such character to be innate to human behavior at the time of promulgation.

Even though there is no agreement whether such human sexual behavior is inborn or a choice, it is a reality that sexual minorities face much challenge in many countries particularly in Africa. Over the years established human rights principles such as the freedom from discrimination, equal protection of law, the right to privacy and security have been used in protecting the rights of sexually marginalized people. Though there is no binding international instrument so far, UN organs and the European regional human rights system are making a huge change in setting the benchmark for the protection of LGBTI people.

This study had set out to investigate the lives and challenges faced by LGB people in Addis Ababa and analyze the wider human rights implications. Currently, the issue of sexually marginalized people has become a public discussion agenda in both print and electronic media.

Even though same-sex sexual act is highly condemned and criminalized by the Criminal Code of Ethiopia, the researcher has learnt that despite the lack of particular estimated number there are significant number of people who identify their sexual orientation as gay, lesbian and bisexual, with different religious affiliation, educational background, living standard, employment status, occupation, age category, etc. living in Addis Ababa. The LGB people including the participants of this study have formed a close relationship in which they spend time together as a community. This is for the reason that they live in secrecy maintaining double identity. The only comfortable and free environment where they get to express their ideas and share their problems openly is only among themselves.

Although some of them have accepted their sexuality and enjoy their relation, it is common fact for all that they live in personal conflict and stress. Some of them are partially or completely isolated from their families and relatives and constantly live in fear and apprehension that one day their family and friends might find out about them.

Most of them have struggled and still struggle to accept their sexuality due to the negative rhetoric, which is associated with or reinforced by religious values and cultural norms, they hear about same-sex eroticism. The first impression they had when they came across with their sexuality was that they were mentally sick or cursed. With respect to their sexuality and religious belief, there are many who still live in conflict and some who have completely disengaged themselves from church or mosque activities due to the confusion and sense of guilt.

More recently, the campaigns against people who are involved in same-sex sexual activity and the stress for stricter law have accelerated the intolerance and stigma by the public. Because of this gay, lesbian and bisexual people live in constant intimidation and worry, and their struggle to fit in with the general public hiding their sexuality has become harder. The intolerance and stigma, which are partly motivated by the criminalization of the act and the popular condemnation of such people, force them to lead a highly secretive life which fosters distress, worry, depression and even suicide.

In case of young LGB people who are financially and morally dependent on their families being suspected or exposed results in the loss of suitable housing, both moral and material support, and sometimes in exchanging sex for money, food and shelter. Furthermore, the loss of protection from their family, friends, teachers and other social support system results in both mental and physical health problems.

Furthermore, fear of stigmatization by service providers and fear of being reported to the police prevents LGB people from getting information and health services related to their sexuality. Among the community except in few cases there is limited awareness of the various sexually transmitted diseases and protection methods due to which some become victims of endemic diseases. Unavailability of sexual health education and specific condoms in affordable price for LGB persons are the major challenges they face. This is for the reason that the existence of LGB people in the country is denied even by the government and the reproduction and sexual health care programs don't include LGB people.

The law plays a huge part in the oppression of sexual minorities. The criminalization of same-sex sexual act has made them to be vulnerable to various kinds of human rights violation. Most of the participants stated that they don't have trust in the law protection with issues related to their sexuality.

There seems to be a general consensus on the life style of gays, lesbians and bisexual as being a chosen deviant life style, pedophiles. Students suspected of being one are often suspended and dismissed, making their life miserable as for most education is the only hope in shaping their own and their families' future. Moreover, apart from the denial of their right to get education on the mere ground of being gay or lesbian in some cases the personal details of their lives is publicly investigated and shamed. Consequently, the privacy intrusion and public shaming results complete social exclusion, discrimination and vulnerability to both physical and verbal abuse. This is also proved to be true in prison, where individual who are suspected of being gay are isolated and often abused by the officials of the prison and prison inmates.

The basic principle of human rights are ignored in various sectors such as LGB individuals get detained without being formally charged or convicted in prison for more than a year in some cases . In general, the concepts of equal protection of law, privacy right, non-discrimination, the right to get health services and education, the recognition of human dignity and reputation and honor have been taken for-granted in many instances. This has an overall negative implication on the survival, freedom, liberty, self-expression rights and human dignity of LGB people.

6.2. Recommendations

This study focuses on mirroring the importance of realizing the fundamental human right principles in discussing pertinent human characters such as sexuality. For the most part, the developments made through the years in realizing the equal humanity of everyone; the core meaning of human rights seem to be put aside in case of LGB peoples.

Over the century across the globe various types of outrageous violations of human dignity have been witnessed. Discriminatory laws, abuse and inhuman treatment based on racial difference, gender and religion are registered in history.

As mentioned in the previous chapter there is no express article or reference to the right of sexually marginalized people in the international human right instruments. However, it's important to remember that the very nature of human rights rests on the basic assumption that all human beings have certain basic rights simply because they are human. The equal humanity of every one and the need to protect the integrity and dignity of every individual is something that is expressly stated under the core international human right instrument in which almost all member states are signatories. Taking this in to account criminalizing a human behavior such as sexuality is not only privacy right intrusion but also an offense to equality and non-discrimination. According to Cotter (2010), "legislation has an impact on the society" (Cotter, 2010). Thus, the criminalization of the act is a driving force for violence, intolerance and stigma and decriminalizing the act is a step in attaining the equal protection and promotion of human right for all.

Secondly, LGB issue has become a sensitive public discourse due to the popular cultural and religious norms and values. Hence, a leveled conversation on the general discourse of LGB people's scientific, anthropologic and rights based conversation using various kinds of media has to be initiated by the government to give the general public a different global perspective of the issue.

Thirdly, successful health care programs which are motivated by health right principle should cover all the society without any discrimination. The government which is actively working towards eradicating endemic diseases such as HIV/AIDS and other STD through distribution of appropriate condoms, testing and counseling services, etc. should take in to account the existence of LGB peoples and equally address their specific needs.

Fourth, the role of human right institutions in monitoring the protection of fundamental rights of the individual is undeniable. Accordingly, the Ethiopian Human right Commission should to the minimum have to be dedicated in creating awareness on the overall human rights principle particularly in relation to sexually marginalized people equal treatment and non-discrimination. In addition, civil societies who are invested in providing Human right education to the public should also cover to initiate a right based discussion regarding LGB people. In this case the writer believes that such changes should be made gradually and it should be initiated by local human right organizations.

Finally to make the public familiar with the issue and making a gradual change in the protection of LGB people directives and polices should recognize the existence of LGB people and the equal treatment of every one without any discrimination. Moreover a strict implementation of the fundamental human rights granted on the constitution in attaining the full human dignity and worth is necessary.

Bibliography

- ACHPR. (2011). Celebrating the African Charter at 30: A guide to the African Human Rights system. South Africa: Pretoria University Law Press.
- Aderaw, M. (2012). Perspectives on Life and Health (Doctoral dissertation, University of Oslo). Unpublished
- Anderson, B. (2007). The politics of homosexuality in Africa. *Africana*, 1(1), 123-136.
- Anyamele, C., Lwabaayi, R., Nguyen, T., & Binswanger, H. (2005). Sexual minorities, violence and AIDS in Africa. World Bank.
- Arriaza, R. N. (1990). State responsibility to investigate and prosecute grave human rights violations in international law. *California Law Review*, 449-513
- Balcha, I. D. (2009). Homosexuality in Ethiopia (Doctoral dissertation, Faculty of Law, Lund University). Unpublished
- Berer, M. (2004). Sexuality, rights and social justice. *Reproductive Health Matters*, 6-11.
- Berhnu, L. (2013). Homosexual Rights claims under the International Human Rights Jurisprudence: focus on the Ethiopian context. (Faculty of Law, Addis Ababa University). Unpublished
- Bromley, P. (2008). Legitimacy and the Contingent Diffusion of World Culture: Diversity and Human Rights in Social Science Textbooks, Divergent Cross-National Patterns (1970-2008). *Canadian Journal of Sociology*.
- Cameron, E. (1993). Sexual orientation and the constitution: A test case for human rights. *S. African LJ*, 110, 450
- Cáceres, C. F., Pecheny, M., Frasca, T., Rios, R. R., & Pocahy, F. (2008). Review of legal frameworks and the situation of human rights related to sexual diversity in low and middle income countries. Geneva, UNAIDS.
- Chanika, E., Lwanda, J. L., & Muula, A. S. (2013). Gender, Gays and Gain: The Sexualized Politics of Donor Aid in Malawi. *Africa Spectrum* 1, 89-105
- Criminal Code of Ethiopia (2004) .*Negarit Gazetta* Proclamation No. 414/2004 Addis Ababa, Ethiopia.
- Cole, M. (ed.). (2006). Education, equality and human rights: issues of gender, 'race', sexuality, disability and social class. New York: Routledge
- Cotter, A. M. M. (2010). Ask No Questions. An international legal analysis on sexual orientation discrimination. England: Ashgate.

- Davis, L. D. & Whitten, G. R. (1987). *The Cross-Cultural Study of Human Sexuality*. *Annual Review of Anthropology*, 16, p 69-98
- Dersso, S. (2012). *The African Human Rights System and the Issue of Minorities in Africa*. *African Journal of International and Comparative Law* 20.1 (2012): 42–69.
- Donnelly, J. (2007). *The Relative universality of human rights*. *Human Rights Quarterly*. Volume 29, No 2. 281-306
- Donnelly, J. (1999). *Non-Discrimination and Sexual Orientation: Making a place for sexual minorities in the global human rights regime*.
- Donnelly, J. (1986). *International human rights: a regime analysis*. *International Organization*, 40(03), 599-642
- Douglas Sanders (2002) *Human Rights and Sexual Orientation in International law*, *International Journal of Public Administration*, 25:1, 13-44, pp 14 DOI: 10.1081/PAD-120006537
- Eaton, A. A., & Matamala, A. (2014). *The Relationship between Heteronormative Beliefs and Verbal Sexual Coercion in College Students*. *Archives of sexual behavior*, 1-15
- Ethiopia Constitution of the Federal Democratic Republic of Ethiopia (1995). *Negarit Gazeta Proclamation No1/1995*, Addis Ababa, Ethiopia.
- Epprecht, M. (2005) "Hidden" histories of African Homosexuaities. *Canadian Woman Studies/Les Cahiers de la Femme*. 24, (2, 3). 138-144
- Essien, K., & Aderinto, S. (2009). "Cutting the Head of the Roaring Monster": *Homosexuality and Repression in Africa*. *African Study Monographs*, 30(3), 121-135
- Forrest, S & Ellis, V (2006). *The making of sexualities: Sexuality, Identity & equality*. In: Cole, M. (ed.). *Education, equality and human rights: issues of gender, 'race', sexuality, disability and social class*. New York: Routledge.
- Greenberg, D. F. (1990). *The construction of homosexuality*. University of Chicago Press.
- Haile, .G. (2008). *And Afta Lawgachihu*. Avon: Minnesota. (Translated by the researcher)
- Heyns, (2002) 'Civil and political rights in the African Charter' in M Evans an R Murray *The African Charter on Human and People's Rights' The System in Practice*
- Heinze, E. (1995). *Sexual Orientation: a human right*. Dordrecht: Martinus Nijhoff.
- Huamusse, L. (2006). *The right of sexual minorities under the African human rights system*. (Doctoral dissertation, University of the western cape, Faculty of Law). Unpublished
- ICJ. (2010), *International Human Right Law & the criminalization of same-sex sexual conduct*. International commission of Jurists, Briefing Paper

- Kollman, K., & Waites, M. (2009) the global politics of lesbian, gay, bisexual and transgender human rights: an introduction, *Contemporary Politics*, 15:1, 1-17, DOI: 10.1080/13569770802674188
- Kitzinger, C. (2005). Heteronormativity in action: Reproducing the heterosexual nuclear family in after-hours medical calls. *Social Problems*, 52(4), 477-498.
- Kretz, A. J. (2012). From Kill the Gays to Kill the Gay Rights Movement: The Future of Homosexuality Legislation in Africa. *North western Journal of International Human Rights*, 11(3) .207-245.
- Lau, H. (2004). Sexual orientation: testing the universality of international human rights law. *The University of Chicago Law Review*, 1689-1720
- Mammo, Haile G. 2009. The Truth about Homosexuality in Our City. *Kumneger*, 28 Jan. p.1-5 & 28-32.
- Miller, A. M. & Roseman, M. J. (2011). Normalizing sex and its discontents: establishing sexual rights in international law
- Miller, A. (2009). Sexuality and human rights: discussion paper. Switzerland. Versoix: International Council on Human Rights Policy
- Morrow, D. F., & Messinger, L. (eds.). (2006). Sexual orientation and gender expression in social work practice: Working with gay, lesbian, bisexual, and transgender people. New York: Columbia University Press.
- Mos, M. (2013). 'Conflicted Normative Power Europe: The European Union and Sexual Minority Rights', *Journal of Contemporary European Research*. 9 (1), p. 78-93.
- Morrow, D. (2006). Sexual orientation and Gender identity Expression. In: Morrow, D. F., & Messinger, L. (eds.). *Sexual orientation and gender expression in social work practice: Working with gay, lesbian, bisexual, and transgender people*. New York: Columbia University Press.
- Murray, S.O., & Roscoe, W. (2001). *Boy-wives and female husbands: Studies in African homosexualities*: Palgrave Macmillan veins
- Mrray.R & Viljoen.F . 2007 'Lobbing on Sexual Orientation Issue: The possibilities before the African Commission on Human and Peoples' Rights and Africa Union', forthcoming, HRQ4
- Nardi, P. M. (1998). The globalization of the gay & lesbian socio-political movement: Some observations about Europe with a focus on Italy. *Sociological Perspectives*, 41(3), 567-586
- Narrain, A. (2004). The articulation of rights around sexuality and health: Subaltern queer cultures in India in the era of Hindutva. *Health and Human Rights*, Vol. 7, No. 2, 142-164

- Neuman, G. L. (2008). Import, export, and regional consent in the Inter-American Court of Human Rights. *European Journal of International Law*, 19(1), 101-123.
- Neville Wallace Hoad. (2007). *African intimacies: Race, homosexuality, and globalization*. London: University of Minnesota Press.
- O'Flaherty, M. & Fisher, J. (2008). Sexual orientation, gender identity and international human rights law: Contextualizing the Yogyakarta Principles. *Human Rights Law Review*, 8(2), 207-248 Oxford University Press
- Okere, B. O. (1984). The protection of human rights in Africa and the African Charter on Human and Peoples' Rights: a comparative analysis with the European and American systems. *Human Rights Quarterly*, 141-159.
- Oswald, R., Blume, L., & Marks, S. (2005). Decentering heteronormativity: A model for family studies. In V. Bengtson, A. Acock, K. Allen, P. Dilworth-Anderson, & D. Klein (Eds.), *Sourcebook of family theory & research*. Thousand Oaks, CA: SAGE Publications.
- Padgug, R. (2007). *Sexual Matters: On Conceptualizing Sexuality in History*. In Parker, R. G., & Aggleton, P. (eds.). *Culture, Society and Sexuality*. Cambridge University Press.
- Parker, R. G., & Aggleton, P. (eds.). (1999). *Culture, society and sexuality: a reader*. Psychology Press.
- Persad, X. B. L. (2011). An Expanding Human Rights Corpus: Sexual Minority Rights as International human rights. *Cardozo JL & Gender*, 20, 337-521.
- Richardson, D.(2000). *Constructing sexual citizenship: theorizing sexual rights*. London: Sage Publication..
- Sachedina, A. (2009). *Islam and the challenge of human rights*. Oxford University Press.
- Saiz, I. (2004). Bracketing sexuality: Human rights and sexual orientation: A decade of development and denial at the UN. *Health and Human Rights*, 48-80.
- Sanders, D. (2002). *Human rights and sexual orientation in international law*.
- Sexuality policy Watch.(2010) *The African Regional Dialogue on Sexuality and Geopolitics*. Lagos, Nigeria, October -6.p1-30 (Final report)
- Smith, R. (2013). *Textbook on international human rights*. Oxford University Press.
- Stychin, C. F. (2003). Same-sex sexualities and the globalization of human rights discourse. *McGill LJ*, 49, 951-968
- Sue, D. W. (2010). *Microaggressions in everyday life: Race, gender, and sexual orientation*. John Wiley & Sons. John Wiley & Sons, Inc., Hoboken, New Jersey

Tadele,G., (2011) Heteronormativity and ‘troubled’ masculinities among men who have sex with men in Addis Ababa, *Culture, Health & Sexuality: An International Journal for Research, Intervention and Care*, 13:04, 457-469, DOI: 10.1080/13691058.2010.540082

Tadele, G. (2008). Under the cloak of secrecy: Sexuality and HIV/AIDS among men who have sex with men (MSM) in Addis Ababa. Research report sponsored by collaborative research project between Department of Sociology and Social Anthropology, Addis Ababa University and Christian Michlesen Institute of Norway and UNAIDS Ethiopia.Unpublished

Tamagne, F. (2004). *A History of Homosexuality in Europe, Vol. I & II: Berlin, London, Paris; 1919-1939 (Vol. 1)*. New York: Algora Publishing.

Tamale, S. (2014). Exploring the contours of African sexualities: Religion, law and power. *African Human Rights Law Journal*, 14(1), 150-177.

Tamale,S.(2013). Exploring the Contours of African Sexualities: Statutory, Customary and Religious Laws. *Law and Religion in Africa: Comparative Practices, Experiences and Prospects*. Accra: University of Ghana.

The Yogyakarta principle (2007), Principles on the application of international human rights law in relation to sexual orientation and gender identity on the application of human right law in relation to sexual orientation and gender identity.

UNESCO Bangkok.(2011).*Human Rights Protections for Sexual Minorities in Insular Southeast Asia: Issues and Implications for Effective HIV Prevention: ISBN 978-92-9223-361-7*

Vance, A. (2007). *Anthropology Rediscovered Sexuality: A Theoretical Comment* .In: In Parker, R. G., & Aggleton, P. (eds.). *Culture, Society and Sexuality*. Cambridge University Press

Wintemute, R. (2002). *Sexual orientation and human rights. The United States Constitution, the European Convention and the Canadian Charter*. Clarendon Paperbacks.

Websites

African Commissions on Human and Peoples' Rights. (2014). African commission on Human and peoples’ Rights Available: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity. [Online] Available from: <http://www.achpr.org/sessions/55th/resolutions/275/>. [Accessed; June 19th 2014]

African Union.(2014) The African Court on Human and Peoples' Rights. [Online] Available from: <http://www.au.int/en/organs/cj> [Accessed: June 15th 2014]

Amnesty International demanded the respect and promotion of lesbian, gay, bisexual, and transgender peoples right in the USA (2006). [Online] Available from: <http://www.amesty.org./library/Index/ENGAMR510012006?open&of=ENG-347> [. Accessed 30th June 2014]

BBC. (2011). World Debate program in Johannesburg-South Africa "Is Homosexuality un-African?".[Online] Available from: https://www.youtube.com/watch?v=zhRe6Jy_Nsw[Accessed: May 13th 2014].

Daniel Berhane . (2014) Ethiopia: Anti-Gay rally to be held by EPRDF affiliate Youth group.[online] Available from: Honaffairs.com/en/2014/03/04-ruling-party-youth-anti-gay-rally/. [Accessed: August 17, 2014]

EBSCO Host (1995). African president to 'hunt' for gays. [Online] Available From:<http://connection.ebscohost.com/c/articles/9601024675/african-president-to-hunt-gays>. [Accessed: June 15th 2014]

Eide,A.(2011). Pamphlet No. 5&7 of the UN Guide for Minorities, The final text of the Commentary to the UN Declaration on Minorities. [Online] Available from: <http://www.ohchr.org/en/issues/minorities/pages/minoritiesguide.aspx>. [Accessed: June 15th 2014]

European Court of Human Rights.(1999) Press release issued by the Registrar 741,21.12.1999, The applicant, João Manuel Salgueiro da Silva Mouta v. Portugal. [Online] Available From: <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-68195-68663>. [Accessed: June 15th 2014]

EOTC. (2013) we won't be silent about the 666 influence of homosexuality in Ethiopia. [Online] Available from: <http://www.youtube.com/watch?v=AkWgvYHgW6w>. [Accessed; June 12, 2014] (Translation by the researcher)

HUFF Post Gay Voices (2013) Robert Mugabe, Zimbabwe President, Threatens To Behead Gay Citizens. [Online] Available From:http://www.huffingtonpost.com/2013/07/26/mugabe-zimbabwe-behead-gays_n_3659454.html. [Accessed: May 12th 2014].

Inter-American Commission on Human Rights (IACHR), *American Declaration of the Rights and Duties of Man*, 2 May 1948. [Online] Available from: <http://www.refworld.org/docid/3ae6b3710.html>. [Accessed: August 26, 2014]

Kisia.A & Wahu. M (2011) the Human Rights Status of Lesbians, Gays, Bisexual in East Africa 2009-2010. [Online] Available from: <http://archive.globalgayz.com/africa/rwanda/gay-rwanda-news-and-reports-2011-2/>[Accessed: May 13th 2014].

New Ethiopian Orthodox witness of 666. (2012). [Online]. Available from:<http://www.youtube.com/watch?v=1OecvXka3c>[Accessed; June 12, 2014] (Translation by the researcher)

OAL.(2013). Inter-American Convention Against all Forms of Discrimination and Intolerance (A-69).[online] Available from :<http://www.oas.org/en/sla/dil/newsletter-American-treaties-jun-17-2013.html>[Accessed :July: 24th ,2014]

OAS.(1969).*American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969.* [Online] Available from: <http://www.refworld.org/docid/3ae6b36510.html>. [Accessed: August 26, 2014]

OHCHR.(2014).Minorities under International law. [Online] Available from: <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx>. [Accessed: June 25th 2014]

Polari Magazine (2014).Villains: United for Life Ethiopia. [Online] Available from: <http://www.polarimagazine.com/heroes-villains/villains-united-life-ethiopia/>. [Accessed: July 18th, 2014]

Rainbow Ethiopia Health right Initiative.(2012). LGBT Human Rights in Ethiopia. [Online] Available from: <http://rainbowethiopia1.net/lgbti-human-rights/>. [Accessed: July 18th, 2014]

The Washington times (2014). Ethiopia to list homosexuality as ‘non-pardonable’ crime [online] Available from: <http://www.washingtontimes.com/news/2014/mar/25/ethiopia-list-homosexuality-non-pardonable-crime/>. [Accessed: August 26, 2014]

UNICEF (2012). Basic education and gender equality. [Online] Available from: http://www.unicef.org/education/index_44870.html [Accessed: June17th, 2014]

United for Life Ethiopia (2012) Ethiopian Religious Leaders Call for Death Penalty for Homosexuality. [Online]Available from: http://www.diretube.com/united-for-life-ethiopia/ethiopian-religious-leaders-call-for-death-penalty-for-homosexuality-video_d43e3bf74.html . [Accessed: July 18th, 2014]

University of Minnesota Human right Library (1999). Colombia: Report N° 71/99 *Marta Lucía Álvarez Giraldo*, Admissibility, Case 11.656, 4 May 1999. [Online]Available from: <http://www1.umn.edu/humanrts/cases/71-99html> [Accessed: July 24th, 2014]

University of Minnesota Human right library. (1994) *Toonen v. Australia*, Communication No. 488/1992, and U.N. Doc CCPR/C/50/D/488/1992.[Online]Available From: <http://www1.umn.edu/humanrts/undocs/html/vws488.htm>

Annex-

Semi-structured In-depth Interview Guide Question

1. Preliminary questions
 - a) How old are you?
 - b) Are you student/ on job/ other?
 - c) How do you describe your living status/class?
 - d) Do you live with your family/alone/friends/other?
 - e) Where did you grow up?
 - f) What is your Religious value or belief system?
 - g) How do you describe your childhood?
2. How do you label your sexual orientation?
3. When did you first discover that you are sexually attracted to the same sex or both sexes?
4. When did you first come across with specific definition of your sexual orientation?
5. How do you describe your first sexual experience?
 - a. Have you been abused as a child by same or opposite sex?
 - b. Have you ever exchanged sex for money?
 - c. Do you have a partner, how did you meet?
6. Have you ever disclosed your sexuality to family members, friends, relative or other? What was the initial response or degree of acceptance?
7. Have you been suspected or exposed for being gay or lesbian, what was the reaction?
8. Have you ever experienced abuse, stigma and violence at home, in work place, service centre, school.etc?
9. Have you ever complained or reported an abuse, violence or discrimination to your parents, police, any other law enforcement agents, or the national human right commission? What was the response you got?
10. Do you feel that you rights as gay/lesbian/bisexual are recognized and protected? Why? Why not?
11. Do you feel that the laws of the country (including the constitution) recognize and protect your rights sufficiently?
12. How do you explain the role of religion and cultural values as per your experience and challenges?
13. How do you explain the role of the law in protecting your rights?
14. How do you describe the role of the media and social media particularly in constructing gay, lesbian and bisexual identity as a right?
15. From where we stand, do you think things will change for the better or worse in the future? Why?
16. What do you suggest should be done to improve your situation? The Government? Civil society? Religious organizations? National human right institutions? The society?