

**ADDIS ABABA UNIVERSITY
CENTER FOR HUMAN RIGHTS**

**IMPACT OF POLYGAMOUS MARRIAGE ON WOMEN'S RURAL LAND
HOLDING AND USE RIGHTS IN SIDAMA ZONE, SNNPR**

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Acronyms

CEDAW- Convention on the Elimination Discrimination against Women

DEVAW- Declaration on the Elimination of Violence against Women

FDRE- Federal Democratic Republic of Ethiopia

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

RLAUP- Rural Land Administration and Utilization Proclamation

SNNPR- Southern Nations, Nationalities and Peoples Region

UDHR- Universal Declaration of Human Rights

UN- United Nations

Abstract

This study attempts to investigate the impact of polygamous marriage on women's rural land holding and use rights in Sidama zone. Multi- stage stratified sampling technique was used to undertake this study. A combination of qualitative and quantitative approaches was employed to collect the required data and information for this study. From two woredas and four kebeles 210 polygamous households were selected. Primary and secondary data sources were employed to collect relevant data. Polygamous household survey and key informant interviews were used to collect primary data through questionnaire and discussions. Similarly, review of published and unpublished documents was used to analyze and understand impact of polygamous marriage on women's rural land holding and use rights in Sidama zone. The result of polygamous household survey shows that 77% of respondents replied that polygamous marriage have negative impact on women's rural land holding and use right. From the total sample polygamous wives 98% of them replied that polygamous marriage has negative impact on women's rural land holding and use rights. The survey of this study reveals that the negative impacts of polygamous marriage in relation to women's land rights are fragmentation of land and income from it to support additional wives and their children. So that polygamous households faced land shortage to produce enough food for household consumption. Moreover, this study reveals that 78% of polygamous husbands married their latter wives sharing land from previous wife(s) common land holding. This result implies that polygamous wives have no secured land holding right because one day when the husband wants to marry new wife the common land with previous wife(s) will be fragmented to support additional wife(s) and children. From the total sample polygamous wives first wives constitute 30%. The result of this study showed that 92% of previous wives are not consented to the latter marriages. On the other hand 96% latter wives married polygamous husband due to their parents influence and economic problem. In this situation almost all marriages of polygamous wives were not based on their free consent. Further more, the result of this study indicated that 98% of polygamous wives accesses to land are through marriage. Marriage is the only means of access to land for women. Therefore fragmentation of land due to polygamy negatively affects the wives land right in the study area.

Chapter one: Introduction

1.1. Background of the Study

The notion of equality of women with men is a recent phenomenon after many struggles most importantly led by women. The recognition of women as human beings entitled them to claim their human rights. Men and women, with out any distinction as to race, nation, or religion who have attained majority as defined by law, have the right to marry and found a family and have equal rights when entering in to, during marriage and at the time of divorce. ¹ The legal effects of marriage reflect two general principles; equality of the spouses and unity of the family.²The equality of the men and women has got legal recognition both at national and international instruments.

Marriage exists in two forms which are monogamous and polygamous marriage. The term polygamy is defined as a form of marriage in which spouses of either sex may possess a plurality of mates at the same time.³ Polygamy exists in two forms. The first one is polygny a situation where by one man is having multiple wives simultaneously.⁴ polyandry, when a woman is having multiple husbands at the same time.⁵In practice the prevalent one is polygny.⁶That is why most of the time polygamous marriage is used to refer to polygny. Therefore in this study unless otherwise stated polygamous marriage refers to polygny (plurality of wives).

1. Federal Democratic Republic of Ethiopia Constitution Art. 34.

2. Philips Arthur, survey of African marriage and Family law, 1953.

3. Garner A. Bryan 7th ed. Blacks law dictionary, p 1180

4. Ibid

5. Ibid

6. Ibid.

Polygamy is quit common in southern Ethiopia.⁷ According to a study conducted in SNNPR and Oromia region fifteen percent of the households in the sample were polygamous marriage.⁸ From SNNPR this study is based on Sidama zone selected woredas. There is no actual figure on the prevalence of polygamy in Sidama zone in any concerned government organs but they believe that it is both cultural and religious practice of the society. However the SNNPR family law prohibits polygamous marriage.⁹

Land is central to every ones life.¹⁰ In country as like Ethiopia whose economy is based on agriculture, lack of access to land is the major determinant of poverty and social status of access to other critical resources and services.¹¹ In southern parts of Ethiopia customary laws suggest that boys are given primary rights of inheritance while girls in general have secondary inheritance rights.¹² Access to land for women in the area under study is through marriage, inheriting land is left for men. There fore women's only access to land is challenged by polygamous marriage since the culture allows the husband to marry many wives as far as he has wealth. So that the previous wife (s) common land holding and income from it will be shared to support latter wives and children.

7. Stein Holden, Tewodros Tefera: Summary report 2008: Land Certification in Ethiopia -Early Impacts on Women, United Nations Human Settlements Programme (UN-HABITAT).

From:<http://www.scribd.com/doc/24935867/Land-Registration-in-Ethiopia-Early-Impacts-on-Women>.

8. Ibid.

9. The SNNPR family code, art. 21.

10. Judith Bray 2007 Unlocking Land Law p.1

11. Rural women access to land in Ethiopia, 22/9/2010, http://www.fssethiopia.org.et/rural_women.htm.

12. Yigremew Adal, 2006: Rural women's access to land in Ethiopia: Land and the challenge of sustainable development in Ethiopia, conference proceedings, Dessalegn Rahmato and Taye Assefa (Ed), Forum for social studies, Addis Ababa, p. 35.

Customary laws and traditional practices generally have impacts on land access rights of women in polygamous marriages.¹³ In Polygamous communities; women have practical problems of land access.¹⁴ Land is linked to rural livelihoods and human rights in a multitude of ways. The UN Charter of 1945 sees human rights and economic and social development as closely interrelated. In a statement on poverty released on 10 May 2001, the UN Committee on ESCR considered poverty as a multi-dimensional denial of human rights and, therefore, strongly advocated a human rights approach to poverty eradication. However, with population growth, shrinking farm sizes and diminishing areas of unused land, it has become increasingly difficult to satisfy this right.

So the challenges of polygamous marriage on the enjoyment of women's rural land holding and use right should be studied in detail in relation to implementation of women's human rights. Therefore this paper will try to study the impacts of polygamous marriage on women's rural land holding and use rights in Sidama zone.

1.2. Statement of the problem

The SNNPR rural land administration and utilization proclamation provides equal land holding right to the husband and wife on their common land holding. And moreover for their common land holding joint certificate should be given. But nothing is provided for the polygamous marriage under the proclamation. The practice is that giving joint certificate for a polygamous husband with a wife whom he chooses so that his name will be written in the first place. With the rest of the wives the husbands' name will be written in the second place while the wife's in the first place.

13. Almaz Woldetensaye, Addis Ababa University, women's access to and control over land in the current land administration system in two rural kebeles in Ada'a Woreda of Oromia Region,22/9/2010, <http://hdl.handle.net/10568/618>.

14. Supra note 12.

Here the husband irrespective of number of his wives will get joint certificate with each wife. Therefore the land holding and income from it of previous wife (s) will diminish since it will be shared with many wives. But the husband who married more than one wife will have equal share with each wife. Even though they had given joint certificates practically polygamous wives are not beneficiaries from the common holding. According to one study survey findings on land access rights of women in polygamous marriage reflect that rights of these women is restricted to getting share of agricultural products from household land.¹⁵ Due to social and economic constraints, women have no choice rather to accept polygamous marriages and the status of one of several wives.¹⁶

Moreover, the proclamation encourages individual holding of land. To mean that any of the spouses do not lose their land holding because of their marriage that they possessed individually before.¹⁷ Land will be controlled by a person who brought it in to the marriage. The cultural practice prohibits women's to inherit their parent's land, they are assumed to get land through their husband. If the husband is going to retain what he has individually before the marriage, what will be the fate of the wife to access land?

Furthermore, the proclamation provides equality of both sexes to inherit land who are family members of the land holder. But under the proclamation definition given for family member is a person who permanently lives with land holder sharing the livelihood of the latter.¹⁸ Culturally young girls when they get married move to the residence of their husband and inherit no land. In such situation women can not live with their parents permanently and share the livelihood of the latter rather than their husbands. Therefore, legally and culturally married women are discriminated to inherit land. The economic motivation plays an important role in preserving women's dependency and inequality in marriage relationship.

15. Supra note 13.

16. Anderson J.N.D (ed.) Family law in Asia and Africa, Pragers A. Frederick (pub) 1968, p 17.

17. SNNPR rural land administration and utilization proclamation no.110/2007, article 5(5).

18. Ibid.

According to Stein Holden and Tewodros Tefera study polygamous wives are less knowledgeable of the new land proclamation compared to non-polygamy wife. Polygamous wives lack of awareness on their land rights results accepting male dominance in the land holding and use. This makes women in polygamous marriage less advantageous from their common land holding compared with non polygamous wives. Whatever justification may be given for the conclusion of polygamy, whether religious or customary it cannot be denied that the institution of polygamy is normally associated with a social system in which unchallenged male dominance in effect reflect the inequality of sexes.¹⁹

The economic dependence and discrimination of women treats them as ‘extensions’ of their husbands or other men in the family.²⁰ The right to an adequate standard of living, including housing is severally undermined by having to share hard –earned property with multiple wives and children. Therefore the above problems and the understudy of the area initiated the writer to study on the above specific problem.

1.3. Objectives of the study

The main objectives of the study are:-

- To assess and analyze women’s rural land holding and use rights in the current land holding system under the SNNPR rural land administration and utilization proclamation and at the national level in light of international human rights laws.
- To identify the impacts of polygamous marriage on women’s rural land holding and use rights in Sidama zone, SNNPR.
- Based on the findings of the study to give possible recommendations.

19. Florence Butegwa: Mediating Culture and Human Rights in Favor of Land Rights for Women in Africa: A Framework for Community- level Action, Abdullah A.An-Naim(Ed), Cultural Transformation and Human Rights in Africa, Zed Books Ltd, London.

20. Supra note 16.

1.4. Significance of the study

Land is the most vital economic source for farmers in Ethiopia and about 85% of the countries population is dependant on land for livelihood. Despite its centrality as economic source in SNNPR average land size is less than one hectare.²¹This implies that land is not adequate to lead their life through farming. This gives rise to the importance of access to land holding right as it is central for the enforcement of human rights.

Sidama as one of the zones of SNNPR, individual peasants land holding is small due to high population density.²²The zonal average household land size ranges in between 0.5-0.7 hectare.²³As population number increases the size of land holding becomes small and small. In such situation access to land and control over it is determinant of household livelihood. Polygamous marriage is one factor which decreases the household common land holding and income from it.

This study will have great role in achieving better mechanisms for effective and equal enjoyment of women's rural land holding and use rights especially those in polygamous marriage. Moreover tries to identify the impact of polygamous marriage in the enjoyment of women's rural land holding and use rights in the study area.

The significance of this research paper may not be limited only to those mentioned above. The fact that this research will be conducted on impact of polygamous marriage on women's rural land holding and use rights will have great contribution in replicating similar initiatives and research activities which are important for better protection and promotion of women's property rights. Moreover, to the researchers and academicians, as well as to the different stakeholders the findings of the study can serve as a source of information and knowledge about the impact of polygamous marriage on women's rural land holding and use rights.

21. World Bank report of 2007.

22. Sidama Zone Finance and Economic Development Sector.

23. Ibid

1.5. Scope of the Study

The objective of this study is to assess the impacts of polygamous marriage on women's rural land holding and use rights in Sidama zone. Due to financial and time constraints the study is limited to two weredas of the zone. The study has focused on rural farm land holdings of polygamous households in Sidama zone. Therefore study entirely focuses on impacts of polygamous marriage in relation to women's rural farm land holding and use rights.

1.6. Limitations of the Study

Undertaking an adequate assessment of impact of polygamous marriage on women's rural land holding and use right is not an easy task. Finding reliable and recent data were problems faced during undertaking the research. During conducting the interview and questioners unwillingness of respondents is the other problem. Moreover, time and budget shortages which have forced the writer to be limited in small sample size and the result of the findings may be difficult for generalization for the whole region or nation. However the writer had tried her best to minimize such limitations.

1.7. Methodology

Since the study is aimed to understand the impact of polygamy on women's rural land holding and use right, both qualitative and quantitative research methods (mixed approach) were employed to minimize the limitations of each method and to make the research result more reliable. The qualitative approach includes in-depth interview with SNNPR women and children affairs office legal officer, judges and Sidama zone and woreda's rural land administration officers. The quantitative method conducted through distributing structured questioners for 210 sample polygamous households.

Primary and secondary types of data were gathered for analysis of the study. The research data were collected from various sources depending on the objective of the study and type of data to be analyzed. In depth interview and questioners are the main source of primary data while the published and unpublished documents such as relevant laws, books, journals, office records, reports were the key sources of secondary data.

1.8. Description of Study Area

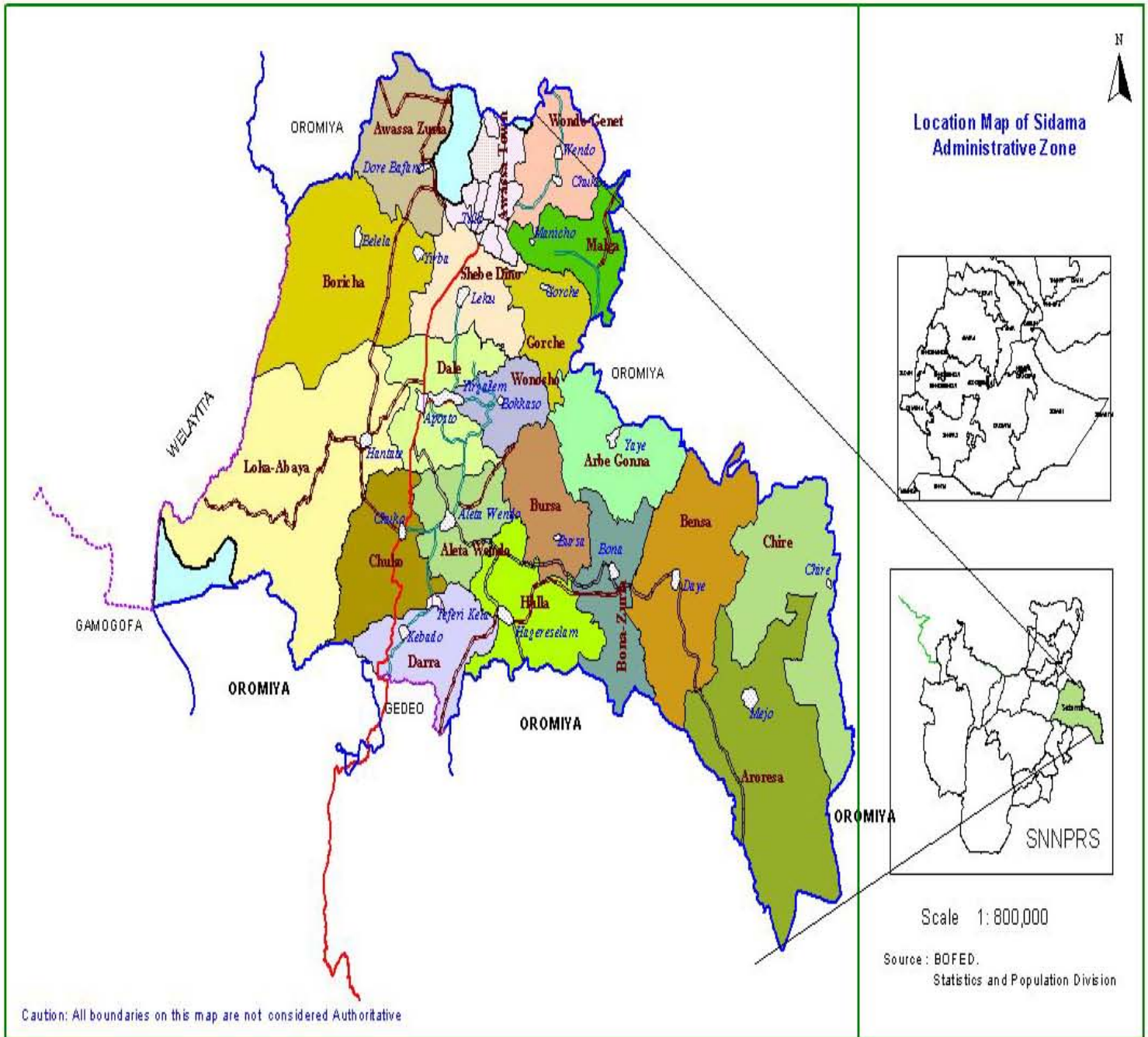
Sidama zone is found in SNNPR regional state and is one of the 13 zones in the region.²⁴ The zone is bordered in north east Oromia region, Gedio zone in the south and in west with Wolaita zone. It covers a total land area of 6,538.17km.²⁵ The zone has total population of 3,154,659 of which 1,592,300 were female and 1,592,359 were male.²⁶ Subsistence mixed farming exists in most part of the zone. It is one of the densely populated zones in the region. Moreover, polygamous marriage is cultural and religious practice of the society.

24. Sidama Zone Finance and Economic Development Sector.

25. Central Statistics Agency 2010.

26. Ibid.

Figure 1.1 Map of Sidama zone



Source: Sidama Zone Finance and Economic Development office

1.9. Organization of the Thesis

The research report was organized in five chapters. The proposal of the study serves as first chapter of the study. The second chapter devoted on general over view on women's human rights. Land is linked to rural livelihoods and human rights in a multitude of ways. It determines economic and social status.

The third chapter deals with requirements and effects of marriage under the SNNPR family law. The legitimate grounds for the conclusion of marriage in the region and also after concluding the marriage what are its effects on the concluding parties are discussed. The fourth chapter is devoted on land holding system in Ethiopia especially in the SNNPR. This chapter has sub topics on history of land holding system and more on women's access to land and land holding rights under the national and regional legislations.

The fifth chapter stresses on the presentation and analyses of data focusing on the impact of polygamous marriage on women's rural land holding and use rights in the Sidama zone of SNNPR.

Chapter Two: Women's Human Rights

2.1 Basic Features of Human Rights

Human rights are those benefits deemed essential for individual well-being, dignity, and fulfillment, and that reflect a common sense of justice, fairness, and decency.¹ They are considered as basic needs to lead decent life and can not be lost by having been usurped, or by one's failure to exercise or assert them.² Moreover human rights are those rights held simply because one is a human being, goods, services, and opportunities to which every one is entitled.³ Any criteria like sex, religion, age and so on are not legitimate except being member of human family. Since women and men are human being, they need to be treated in the same way.

History reveal that the two sexes have not been treated similarly in our diverse cultures, social status, laws and more to this papers concern women's property rights. The struggle for women's rights began in the 18th century during a period of intense intellectual activity known as the age of enlightenment.⁴ Beginning in the 1830s states passed laws that gradually gave married women greater control over property.⁵ The New York State passed the married women's property Act in 1848, allowing women to acquire and retain assets independently of their husbands. This was the 1st law that clearly established the idea that a married woman has an independent legal identity.⁶

1. Louis Henkin: The Age of Rights, Columbia University Press New York p.17.

2. Ibid.

3. Gene M. Lyons and James Mayall (ed): International Human Rights In The 21st Century, Rowman and Littlefield Publishers, INC. New York Oxford. P. 21.

4. Encarta premium 2009.

5. Ibid.

6. Ibid.

After the end of the cold war, human rights jumped to the forefront of international relations, and some social groups emerge from domination such as women movement. The world conference held in 1993 in Vienna marked the birth of an international women's human rights movement. The conference recognized the human rights of women and of the girl child as an inalienable, integral and indivisible part of universal human rights. Moreover challenged the traditional qualifications of human rights of women as private, therefore not deserving of public attention and proceedings, and the justification that culture, tradition and religion rule out the applicability of international legal standards, stating that 'Gender- biased violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice are incompatible with the dignity and worth of the human person and must be eliminated'.⁷ This kind of universal recognition, and broader interpretation of human rights of women is important for respect and promotion of women's human rights universally even though its universality is subject to controversy.

In principle human rights are rights for all human family but in practice some groups of the society are discriminated. From those groups women are one of the discriminated and marginalized members of the societies. Even now-a- days, women are subject to discrimination in all stages of life; education, health, property and participation in society and they are particularly vulnerable groups.

Even where the laws protecting women against discrimination exist, the practice is often one in which the rules are flagrantly violated on a daily basis.⁸ The mere legislation of gender sensitive laws may not bring the intended result, unless the society recognized and accepted the laws to apply in its day to day activities.

7. Wolfgang Benedec, Esther M. Kisaakye and Gerd Oberleitner (Ed): The Human Rights of Women: International Instruments and African Experiences, Zed Books London New York in association with World University Service, Austria, P 46.

8. Gene M. Lyons and James Mayall (ed): International Human Rights In The 21st Century , Rowman and Littlefield Publishers,INC. New York Oxford. P. 102.

Women's rights establish the same social, economic and political status for women's as for men. Moreover it guarantees that women will not face discrimination on the basis of their sex.⁹The lower status of women requires special attention. There are a number of international instruments, which deal with the protection of human rights in general and women's rights in particular.

International human rights law presents an essential tool for women in the pursuit of equal rights and opportunities at the national level.¹⁰ Countries, based on the fact that they have ratified these instruments inspire its provisions in their national legislations to give effect.

Ethiopia was one of the founding member of UN and ratified a number of international instruments on different matters including human rights in general and women's rights in particular. Some of them will be discussed below based on the relevance to the topic of the study and provisions dealing with the issue of women's rights as human rights.¹¹

2.2. Charter of the United Nations

The most significant and widely ratified international agreement making reference to the rights of women is the United Nations Charter.¹² It has been ratified by 159 states.¹³The preamble of UN charter "reaffirms" the faith of the members of the UN in "fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women...".¹⁴As reflected in the preamble of the Charter, the UN's were guided, among others, by the motive to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.¹⁵

9. Encarta premium 2009.

10. Supra note 7 p,9.

11. Office of the United Nations High Commissioner for Human Rights: Status of ratifications of the principal International Human Rights Treaties as of Dec. 2002.

12. Malvina Halberstam and Elizabeth F. Defeis: Women's Legal Rights: International Covenants an Alternative to ERA? Transnational Publisher, INC. Dobby Ferry, NY, p. 18.

13. Ibid.

14. United Nations Charter, preamble.

15. Ibid.

Article 1, setting forth the purposes of the UN, enumerates as one of this purposes, “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinctions as to....sex”¹⁶ as does article 55. Under article 56 “all members pledge themselves to take joint and separate action... for the achievement of the purposes set forth in article 55.”¹⁷ Member states are the responsible organs to respect, protect, promote and fulfill human rights. To take action jointly and separately by member states for the advancement of women’s human rights may take different forms depending on the culture of the society, economic development or politics of the country. But whatever difference exists there is common goal which is achieving universal standard of women’s human rights.

Moreover article 13 directs the General Assembly to “initiate studies and make recommendations for the purpose ofassisting in the realization of human rights and fundamental freedoms for all without distinction as to ... sex...”.¹⁸ The Charter also provides specifically that the UN itself “shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.”¹⁹ Providing equal opportunity for women and men to participate under the UN’s principal and subsidiary organs is great advancement on women’s human rights, which presupposes on having confidence on women’s capacity as that of men. Such opportunities should consider the historical background of women’s status through affirmative action.

2.3. The Universal Declaration of Human Rights.

In 1948, the UN’s General Assembly adopted the UDHR.²⁰ In form it is a declaration, not an agreement to be signed and ratified.

16. UN Charter, Article 1 emphasis added.

17. Ibid, article 55.

18. Supra note 11, article 13.

19. Ibid, article 8.

20. Supra note 1 p. 19.

Even though its universality is challenged by those who say that there is no universally applicable human rights standard, under the 1993 Vienna conference the universality of human rights affirmed within the context of cultural diversity by 171 countries.

The fundamental message of the preamble of UDHR's lies on the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.²¹ Another important element of the preamble is the recognition, in its final paragraph, of the rights and freedoms contained in the Declaration as a common standard of achievement for all peoples and nations.²²

Article 1 of the declaration says that all human beings are born free and equal in dignity and rights. One is the principle of equality and non-discrimination,²³ the principle that plays a fundamental role in the whole of human rights law. One of the most basic rights is the right to equality and to be free from discrimination²⁴ and the rights guaranteed in the declaration are to be respected 'without distinction of any kind, such as....sex'.

Article 16 is specific and related with marriage and family. Sub article one of same article reads as "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." This article provides both sexes who attained majority have the right to found family. The attainment of the majority is subject to countries domestic law.

21. The preamble of Universal Declaration of Human Rights, paragraph 1.

22. Ibid.

23. Universal Declaration of Human Rights, article 2.

24. Ibid, article 1, 2 and 7.

Most importantly women and men have equal right in marriage to administer, manage and dispose their common property. In practice women's access to and control over common property is very limited. Mostly it is the husband who makes decision on their common property. The lower economic status of women in marriage shrinks their bargaining power which leads to compromise any violation of their human rights.

Moreover article 17 of the declaration stipulates that every one has the right to own property. In a country where by agriculture is the back bone of its economy land is vital to secure household livelihood and determines access to social services. But women's direct access to land is often limited in traditional societies. They have access to land indirectly through their husband.²⁵ Girls are viewed in terms of their marriageability- they are destined to leave their respective families and get married elsewhere.²⁶ Deprivation of women's land right through customary practices regarding land inheritance and property distribution after divorce is challenge in many societies.

The UDHR can be seen as a document that has exerted a profound and comprehensive impact internationally and domestically in furthering the promotion and protection of human rights. Its provisions serve as corner stone for countries domestic legislations. Even though the Declaration is not legally binding treaty, it exerts today a moral, political and legal influence far beyond the hopes of its drafters.²⁷ So that it has served directly and indirectly as a model for many domestic constitutions, laws, regulations and policies that protect fundamental human rights.²⁸ The UDHR was the direct precursor to the two most comprehensive UN instruments in the field, The ICCPR and The ICESCR, each of which has been ratified by approximately 150 countries.²⁹

25. Almaz Woldetisaye, 2007 Women's Access to and Control over Land in The current Land administration System in Two Rural Kebeles In Ada'a Woreda of Oromia Region, Addis Ababa University, Institute of Gender Studies.

26. Florence Butegwa : 2002 Mediating Culture and Human Rights in Favor of Land Rights for Women in Africa: A Framework for Community- level Action, An- Naim, Abdullah A. (ed), Cultural Transformation and Human Rights in Africa, Zed Books Ltd, London, p.111.

27. Rhona K.M Smith and Christuen Van Anker: The Essentials of Human Rights, Hodder Amold p 351.

28. Ibid

29. Ibid.

2.4. Covenant on Civil and Political Rights. (ICCPR)

This covenant, adopted by a resolution of the general assembly in 1966, is a broad charter of basic civil and political rights.³⁰ The covenant came in to force on March 23, 1976, after ratification by the necessary thirty- five states.³¹ Every state party undertakes “to respect and ensure to all individuals with in its territory and subject to its jurisdiction the rights recognized “in this covenant without any discrimination and with direct and immediate effect as from the day of entry in to force.³²

The principle of equality, including the prohibition of discrimination, therefore, runs like a red thread throughout the covenant.³³ Article 26 of the covenant is the first provision in an international human rights treaty to contain all of the historical states in the development of the principle of equality: the 18th century principle of equality before the law, the 19th century concept of equal protection of the law, and the 20th century achievements of equality expressed in terms of prohibition of discrimination by state action and protection against discrimination through positive state measures.³⁴

The covenant guarantees the right to dispose of property,³⁵ the right to liberty,³⁶ and equality of spouses as to marriage, during marriage and at dissolution,³⁷ and so on. Several provisions specifically provide that they are to be applied equally to men and women or prohibit distinctions based on sex.

30. Supra note 19.

31. Ibid.

32. Supra note 29.

33. Supra note 8 p, 106.

34. Ibid p, 13.

35. ICCPR article 1.

36. Ibid article 9.

37. Ibid article 23.

Moreover, in addition to requiring states to ensure equality with respect to the rights guaranteed by the covenant, it provides that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as...sex.”³⁸ Now-a –days most of the laws are becoming gender sensitive but in practice they are not applicable due to strong traditions against it. To mean that laws alone may not bring the intended result.

To conclude, the covenant specifically guarantees certain rights to women, enumerates a broad spectrum of rights which must be accorded equally to men and women, prohibits all discrimination based on sex, and requires states to provide effective protection against such discrimination.³⁹ Its contribution for the promotion of women’s legal rights could be enormous.⁴⁰

2.5. International Covenant on Economics, Social and Cultural Rights. (ICESCR)

The ICESCR is a charter of basic rights in the economic, social, and cultural rights.⁴² The covenant consists of 31 articles, of which the first 15 are of a normative character and the last 16 of a more procedural nature. It was adopted by a resolution of the general assembly and was opened for ratification in 1966.⁴³ Socio-economic rights cover most of the basic needs and concerns of human beings and most of them appear in the UDHR and ICESCR as freedoms rather than rights.⁴⁴ They are conditional on societal development and expected to be progressively realized.⁴⁵

38. Ibid article 26.

39. Supra note 8 p. 20.

40. Ibid.

42. Ibid.

43. J. Oloka-Onyango, Reinforcing Marginalized Rights In An age of Globalization: International Mechanisms, Non-state Actors, and the struggle for Peoples’ Rights in Africa.

44. Wiktor Osiatynski, 2006. Re-thinking Socio-Economic Rights in an Insecure World. CEU Center for Human Rights & Onyango: p.9.

45. Stephen P.Marks, 2009. The Past and Future of the Separation of Human Rights in to Categories: p.218.

ICESCR are legally binding to mean that they impose an obligation on the part of state parties. Each state party is under an obligation to undertake steps “to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present covenant, by all appropriate means, including particularly the adoption of legislative measures”.⁴⁶ With ICESCR, the issue of non-discrimination, prioritization and provision of access is at states discretion.⁴⁷ The realization of these rights is subject to countries available resources.

In implementing ICESCR since resources are scarce priorities should be given for those who were marginalized and discriminated from access to these resources. Women are the one who were discriminated based on their sex from access to natural resources especially rural land which have great role in determining economic status. To enable women to have equal access to natural resources with men state parties are obliged to take legislative and other measures. It will be challenging to regulate the equal access of women to natural resources only by law when there is strong culture against it.

Moreover, state parties should recognize that marriage must be entered into with the free consent of the intending spouses⁴⁸. To make free consent the parties should not be in any circumstance dependent or under the control of the other party. To mean that for example in Sidama culture women do not inherit land which is determinant of economic status. They have access to land through marriage. In such circumstance a woman may choose a man who have land or economically strong to over come her economic problem. That is why a man can marry in most cultures many wives as far as he can feed and provide a shelter to his wives. In such situation the wives have no say concerning the common property since their husband is the only reason for such property. Can we say consent given by a woman in such circumstance is free? To make free consent the intending spouses should be free from duress or influence both directly or indirectly. The women should be economically independent to make free consent. It will help spouses to have equal bargaining power during the marriage.

46. ICESCR article 27.

47. ICESCR article 2.

48. ICESCR article 10(1).

Regarding women's rights, two provisions are particularly significant. One is the general provision which requires states to "undertake to ensure the equal rights of men and women to the enjoyment of all ESCR set forth in the covenant"⁴⁹, and to guarantee that the rights will be exercised without discrimination of any kind as to sex.⁵⁰ Mostly women are economically dependant on men. Access to natural resources is limited for them. This implies that state parties should ensure equal opportunities for both sexes to enjoy their rights guaranteed under the covenant.

2.6. Convention on the Elimination of All Forms of Discrimination against Women. (CEDAW)

The most comprehensive convention dealing with women's human rights is the CEDAW.⁵¹ Although there had been many statements in international instruments promising equality and non discrimination on the basis of sex, some in binding instruments and others in non binding declarations- there was no comprehensive and detailed charter of equality for women under international law.⁵² It was adopted by the general assembly and opened for signature and ratification on March 1, 1980.⁵³

The Convention consists of 30 articles, of which the first 16 are of a normative character. Equality and freedom from discrimination by the state and private actors in all areas of public and private life are guaranteed under the convention.⁵⁴ CEDAW is a socio-legal tool which within a single and unified framework is intended to help women fit into development processes in all parts of the world.⁵⁵

49. Ibid article 3.

50. Ibid article 2.

51. Supra note 13 p. 30.

52. Supra note 8 p. 5.

53. Supra note 13.

54. Supra note 8.

55. Ingunn Ikdahl, Anne Hellum Randi Kaarhus, Tor A. Benjaminsen Patricia Kameri-Mbote, 2005: Human Rights, Formalization and Women's Land rights in Southern and Eastern Africa, Studies in Women's Law No. 57 Institute of Women's Law, University of Oslo Revised version of Noragric Report No. 26 Norwegian University of Life Sciences. Accessed on 10/25/2010, http://www.sarpn.org.za/documents/d0001447/P1786-Women-rights_June2005.pdf1786

To address the legal, social and economic structures at the root of women's weak position in law and society, article 2 of the covenant affirms the state obligation to 'pursue by all appropriate means and without delay a policy of eliminating discrimination against women'. To mean that state parties required to "embody the principle of equality of men and women" in their constitutions or appropriate legislation; "to modify or abolish existing laws, regulations, customs and practices" that discriminate against women; "to take appropriate measures to eliminate discrimination against women by any person, organization or enterprise;" and "to ensure effective protection of women against any act of discrimination."⁵⁶

State action is not only limited on legislating gender neutral laws but also to ensure by any appropriate means that in reality women will not be discriminated. Article 1 of CEDAW prohibits discrimination, whether direct or indirect. Statutes, customs and practices that explicitly treat men and women differently constitute direct discrimination.⁵⁷ States should repeal discriminatory customary and statutory laws barring equal land rights for women, particularly in relation to marriage, divorce and inheritance.

In spite of the constitutional and legislative measures put in place to eradicate formal discrimination, *de facto* implementation of such laws and policies have yet to be achieved in many areas.⁵⁸ In practice, the increasingly unified and gender-neutral body of law which puts individual women on an equal footing with men co-exists with gendered practices, norms and values on the ground.⁵⁹ Such practices are obstacles for the law enforcement body to achieve the objectives of the legislator. Indirect discrimination is prohibited under the convention which defines 'discrimination against women' as any distinction, exclusion or restriction made on the basis of sex which has the effect' of impairing the human rights of women.⁶⁰

56. CEDAW article 2.

57. Supra note 55.

58. Ibid.

59. Ibid.

60. CEDAW article 1.

60. Supra note 55.

Furthermore, resources such as time, money, land and power are unevenly distributed between men and women.⁶¹ As a result, the implementation of apparently gender-neutral laws, policies and programmes often results in large groups of female land users being worse-off than their male counterparts.⁶² Thus, to point out indirect discrimination, one must pay attention to the situation on the ground that may cause discriminatory effects.

The convention points on article 13 to the right to equal access of women to family benefits, credit, bank loans and mortgages, as well as to recreation and cultural life. The problem in this area is most visible in rural women. Specifically article 14 of the convention focuses on the equal rights of rural women, with men, to economic benefits, the right to participate in formulating developmental strategies and to have adequate living conditions.

Thus the state parties should take appropriate measures to change the present situation in which the greater majority of the poor in developed and developing countries are women, most of them in rural areas.⁶³ The poverty and the disadvantageous position of rural women is also strongly linked to the almost exclusive ownership of land by men in most developing countries, due to inheritance and other traditional practices, excluding women either de jure or de facto from the possession of property.⁶⁴ Land is determinant of wealth and social status. CEDAW deals explicitly with this problem stating that ‘States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetarised sectors of the economy’.⁶⁵

61. Ibid.

62. Supra note 7 p. 39.

63. Ibid.

64. Ibid.

65. CEDAW article 14.

To follow up the fulfillment of rights guaranteed under the covenant article 17 of the convention establishes the Committee on the CEDAW. It is the UN body which monitors the compliance of states parties to the convention.⁶⁶ The states parties are obliged to submit a report on the 'legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions present in the Convention and on the progress in this respect' .⁶⁷

Pursuant to article 21 of the Convention the CEDAW Committee can 'make suggestions and general recommendations based on the examination of reports and information received from the States Parties'. The CEDAW Committee has issued 25 general recommendations so far.⁶⁸None of the recommendations specifically address the rural women's rights which are embedded in article 14.⁶⁹

2.7. Declaration on the Elimination of Violence against Women. (DEVAW)

The declaration is aimed at the protection of human rights of women and adopted by consensus by General Assembly resolution on 20 December 1993.⁷⁰ Under this declaration violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.⁷¹

Although the universal standards of human rights, contained in the bill of rights, constituted the basis for equal protection against women were considered 'private', 'domestic', or culturally and socially justified because the women 'must have deserved it.'⁷² Violence against women is multifaceted.

66. CEDAW article 18.

67. CEDAW article 16.

68. Supra note 55.

69. Ibid.

70. Supra note 7.

71. DEVAW article 1.

72. Supra note 7.

The definition of violence against women encompassed, but did not limit itself to, physical, sexual and psychological violence occurring in the family and in society as well as that perpetrated by states.⁷³

The declaration emphasizes that women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, and civil or any other field, including, inter alia, the right to life, to equality, to liberty and security of person; to equal protection under the law; to freedom from all forms of discrimination; to the highest standard attainable of physical and mental health; to just and favorable conditions of work; to freedom from subjection to torture or other cruel, inhuman or degrading treatment or punishment.⁷⁴

Under the preamble of the declaration, ‘violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women,...violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men’.⁷⁴ Therefore the declaration points to the roots of violence against women and clarifies the need for its recognition as human rights issue.

73. DEVAW article 3.

74. DEVAW article 2.

75. Supra note 7.

2.8. Traditional Status of Women in Ethiopia

2.8.1. General Overview

The preamble of the CEDAW links law and development stating that ‘the full and complete development of a country, the welfare of the world and the course of peace require maximum participation of women on equal terms with men in all fields’.⁷⁶

Women traditionally have a weaker position than men within households as well as in society overall. The husband is considered to be the head of the household and women become heads of households only if they have no husband.⁷⁷The achievement of women’s de facto equality depends greatly on women’s role in society, and attitudes, perceptions and stereotypes concerning that role.⁷⁸

People’s use and access to land is highly gendered.⁷⁹ Furthermore, resources such as time, money, land and power are unevenly distributed between men and women.⁸⁰It is an undeniable fact that the contribution of both sexes of the society is important for the advancement of any country. Economic development is unthinkable without the participation of women because women constitute half of the Ethiopian population.

Wide spread discrimination against women, based on culture and religion or both, remains wide spread in Africa particularly in the area of access and control of land.⁸¹

76. The UN Convention on the Elimination of All Forms of Discrimination against Women’, adopted 18 December 1979, entered into force 3 September 1981.

77. Stein Holden, Tewodros Tefera : Summary report 2008: Land Certification in Ethiopia -Early Impacts on Women, United Nations Human Settlements Programme (UN-HABITAT). from:<http://www.scribd.com/doc/24935867/Land-Registration-in-Ethiopia-Early-Impacts-on-Women>.

78. Malvina Halberstam and Elizabeth F. Defeis: Women’s Legal Rights: International Covenants an Alternative to ERA? Transnational Publisher, INC. Dobby Ferry, NY, p. 9.

79. Supra note 55.

80. Ibid.

81.Florence Butegwa: Mediating Culture and Human Rights in Favor of Land Rights for Women in Africa: A Framework for Community- level Action, Abdullah A.An-Naim(ed), Cultural Transformation and Human Rights in Africa p. 108.

This culture and religion define the way in which gender roles are constructed in particular societies.⁸² Although women are 50-52% of the total population of most of the countries in Africa, and they do 70% to 80% of the work on land, they often have no say as to how the produce should be used.⁸³

Under international human rights law, women have a right to own and administer property without discrimination⁸⁴ and to an “equal treatment in land and agrarian reform”.⁸⁵ Within the family, both spouses have equal rights in the “ownership, acquisition, management, enjoyment and disposition of property”.⁸⁶

The 15th resolution of the Sub-Commission on the Promotion and Protection of Human Rights stated that discrimination against women with respect to acquiring and securing land constitutes a violation of human rights law, and urged governments to amend and/or repeal discriminatory laws and policies and to encourage the transformation of discriminatory customs and traditions.⁸⁷ Most women are uninformed about their rights, because of low education levels, and even when they know, they are reluctant to insist on them because of cultural taboos associated with such independence.⁸⁸ In some economic sectors women even constitute a proportionally larger group of the labor force than men.

82. Ibid.

83. Muthoni Wanyeki. (Ed), 2002: A Journal Of Culture And African Women Studies, *Women and Land in Africa: Culture, Religion, and Realizing Women's Rights*. Zed Books Ltd., London, 2003, Issue no.7. Accessed from: <http://www.africafiles.org/article.asp?>

84. Article 2 and 17 of UDHR, article 15 of CEDAW.

85. Article 14(2) (g) of CEDAW.

86. Article 16 of CEDAW.

87. Paragraph 1 and 3 of 15th Resolution 1998 of the Sub-Commission on the Promotion and Protection of Human Rights entitled on “Women and the Right to Land, Property and Adequate Housing”.

Frame work for Sustainable Land Management, p 13.

88. Supra note 83.

2.8.2. Rural Women's Economic Status in Ethiopia

Some 85% of Ethiopia's population of close to 79 million live in rural areas and primarily depend on using their local land resources (soils, water and vegetation) to meet their basic welfare needs (for food, energy, shelter, water, cash etc).⁸⁹ From this figure we can speak that land is basic means to secure household livelihood.

Similar to the widely documented experience of other African countries, in Ethiopia most agricultural production depends on female labor.⁹⁰ Among those members of the agricultural households who were engaged in economic or productive activities women constitute 49% of the population.⁹¹

Despite their key roles for the countries economic development history has revealed that their socio- economic, political and legal status has been neglected and disregarded for centuries. Even though rural women's contribution is significant in agricultural production and domestic food processing, still they have low status in economic, social and political aspects and they are subordinate to men. Due to lack of due attention for their participation in the economy has not been valued, Ethiopian women have not received their fair share of the nation's wealth.⁹²

The 1995 FDRE constitution gave more emphasis compared with those constitutions previously adopted on equality of men and women and to the institution of marriage which is based on equality of spouses. Based on the provisions of the constitution specific laws are enacted in line with such guidelines. From such special laws the Federal and Regional Family laws reaffirmed the equality of both sexes in marriage and administration of common property. Due to strong cultural practices the newly adopted **gender neutral** laws did not bring the intended result. Since most of the legislations which are in contrary with the societies cultural practices remain unpractical.

89. FDRE Ministry of Agriculture and Rural Development, March 2010, Ethiopian Strategic Investment

90. Federal Democratic Republic of Ethiopia, The Women's Affairs Office: Implementing the Ethiopian Policy for Women: Institutional and Regulatory Issues, 1998, from: <http://www.ethioembassy.org.uk/fact%20file/a-z/women-1.htm>.

91. Yigremew Adal, 2005: Rural Women's Access to Land in Ethiopia, Forum for Social Studies, accessed from: http://www.fssethiopia.org.et/rural_women.htm.

92. Supra note 90.

Chapter Three: Requirements and Effects of Marriage.

3.1 Definition and General Over View on Marriage.

The term ‘marriage’ in most contemporary societies generally means a voluntary relationship between a man and a woman or women, intended to last for their joint lives.¹ In this definition both polygamous and monogamous marriages are included. However, it ignores homosexual marriage which is now-a day accepted as legitimate in some western countries. Marriage is more than a personal relationship between a man and a woman. It is a legal status, founded based on agreement and established by law.²It constitutes a social institution involving the highest interests of society, and therefore is subject to state regulation based upon the general welfare of the people of the state.³

The SNNPR Family code does not provide definition for marriage. But from the understanding of the provisions of the code marriage can be defined as a special contract concluded by a man and women united in accordance with the law for life or until divorce to live as husband and wife. So that the contract of marriage is concluded by the free consent and capacity of spouses but as a special contract involving the interest of society both spouses can not dissolve it in a way as they want, there are rules and procedures for its termination. The validity and invalidity of a marriage has far-reaching social, legal, and economic implications.⁴

1. Alice Armstrong, Chaloka Beyani, Chuma Himonga, Janet Kabeberi Macharia, Athaliah Molokomme, Welshman Ncube, Thandabantu nhlapo, Bart Rwezaura and Julie Stewart: Uncovering Reality: Excavating Women’s Rights in African Family Law, Women and Law in Southern Africa Working Paper no.7, P, 3.

2. H. Clark: Law and Practice in Divorce Matters, p 20.

3. Ibid, p 21.

4. Ibid, p 2.

Moreover marriage is an important legal and social status that affects the parties' financial rights and duties and many other aspects of their lives. Marriage as creating the most important relation in life, have always been subject to the control of the legislature through prescribing minimum age requirement to conclude marriage, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects up on the property rights of both ... and the acts which may constitute grounds for its dissolution.⁵For such serious commitment before its conclusion some basic requirements are needed. To have legal effect marriage should be entered in accordance with the requirements set by the law.

3.2. Requirements for the Conclusion of Marriage.

3.2.1. Age Requirement for the Conclusion of Marriage

The minimum age requirement for both the man and the women under the SNNPR family law is 18 years.⁶This means before attaining 18 years marriage is not allowed but it's subject to exception. There are several reasons for the determination of minimum marriageable age and is related to legal, medical, social and economic reasons.⁷Below the minimum fixed age, it is assumed that children can neither physically consummate marriage nor intellectually understand its significance. Minors are believed to be incapable to take responsibilities that are associated with marriage due to their inexperience in life.⁸Medically; early marriage has a number of problems especially, associated with pregnancy and child birth. Under customary law, **age in years** did not normally determine a girl's capacity to marry.⁹

5. Supra note 2.

6. The SNNPR family law article 17(1).

7. Supra note 1.

8. Ibid.

9. Supra note 1, p. 18.

Early age of marriage contradicts with the principle of consent since minors may lack the ability to make a mature decision and also with education policies which make education compulsory or desirable for all school age children, since if a girl is married whilst still at school she will more likely than not ‘drop out’ of school, especially if she becomes pregnant.¹⁰ To abolish such problems the SNNPR family code fixed the minimum marriageable age for both sexes which is 18 years. However marriage at 16 years may be allowed for exceptional circumstances prescribed in accordance with the code.¹¹

3.2.2 Consent

The marrying spouses must give their free and full consent for the marriage.¹² Besides having adequate mental capacity to marry; a person must enter marriage freely. In addition to domestic legislation international conventions such as the UN convention stipulates that “No marriage shall be entered in to with out free and full consent of spouses.”¹³

Fundamental error or mistake of one of the spouse results her/his consent defective.¹⁴ The SNNPR family law under article 23(3) has given an illustrative enumeration of the grounds of fundamental error instead of limiting the grounds. This provision leaves the grounds for fundamental mistake to the judge’s discretion. This may result in such unfair consequences as judges interpreting facts as a fundamental error based on their personal understanding and experience. Since marriage is a social institution which needs protection from the state the grounds for the invalidation based on fundamental errors must be restrictively regulated by the law.

10. Supra note 1, p. 19.

11. Supra note 6, article 17(2), which provides deduction of two year from the minimum marriageable age by the Ministry of Justice for a justifiable cause on the application of the future spouses, their parents or guardians.

12. SNNPR family law article 16.

13. UN’s Convention on Consent to Marriage Minimum Age Registration, article 1, Resolution No. 1763//xiii.

14. SNNPR family law article 23.

Moreover if consent is extorted by force or by compulsion, such consent is a defective one which results defective marriage.¹⁵ According to article 24(2) the use of force to compel may not be limited to the victim alone it can be consent given to protect one of her/his ascendants or descendants, or any other close relative from a serious and imminent danger or treat of danger.

3.2.3. Limits Based on Relationship

Laws that forbid marriage between people related to one another by blood or marriage are the most widespread kind of barrier to marriage in the world, though the contours vary significantly from society to society.¹⁶ The justifications for the prohibition of marriage between relatives are children are often stricken by deafness, insanity, epilepsy or as to the moral reasons, between close relatives family life is often intimate, it brings them together under the same roof.¹⁷ Due to such moral and health issues marriage between relatives is prohibited. However such restriction should only be to the degree of the relationship which is prone to genetic problem to the descendants of the spouses related by blood.¹⁸

People who are related with consanguinity and affinity with in a limited degree are prohibited from marrying each other under the SNNPR family law.¹⁹ Marriage between persons related by consanguinity in the direct line, between ascendants and descendants is prohibited and also in the collateral line, the prohibition is up to seventh degree of relation.²⁰ Marriage between ascendants and descendants is prohibited whatever the distance between these persons, they can not marry each other.

15. SNNPR family law article 24.

16. Marriage and Requirements for its Conclusion, accessed from <http://www.lectlaw.com/def/m087.htm> on 10/11/2010.

17. M. Planiol, Treaties on the civil law, 12th Ed, translated by Lausiona law institute, voll part one, p.415.

18. Krause, HD., Family law in a Nut Shell, 3rd Ed, 1995, p 49.

19. SNNPR family law article 18 and 19.

20. Ibid.

In the affinity relationships there are affinity in the direct and affinity in collateral line. Concluding marriage between persons related by direct affinity relationship is prohibited. But for persons related by affinity in collateral line the prohibition is up to third degree.²¹ Moreover the SNNPR family law has no provision with regard to continuation of relation by affinity after the dissolution of marriage.

3.2.4. Bigamy

Under article 21 of SNNPR family law bigamy is prohibited. Bigamy is concluding another marriage or to have irregular union while she/he is bound by a previous marriage.²² Depending up on the type of sexes doubled it can be polygny (a situation where a husband marries more than one wives), or polyandry (a situation where by the wife marries more than one husband). Bigamy is not only prohibited under the SNNPR family law, but also it is criminal act under the federal criminal code.²³ Article 650 of the criminal code states that ‘whoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled’ is punishable. However under the criminal law having irregular union while the previous marriage subsists is not considered as bigamy. The SNNPR family law has given a broader coverage than that of the criminal law by including irregular union. Therefore, the violation of the prohibitions results the invalidation of the latter marriage²⁴ and criminal sanction.²⁵

3.2.5. Observance of Period of Widowhood

The SNNPR family law states that “A women may not remarry unless one hundred and eighty days passed since the dissolution of the previous marriage”. This article imposes a duty to observe the minimum fixed days before concluding the latter marriage on divorced women. It was not intended to impose unnecessary burden on women’s rather to minimize paternity conflict.

21. SNNPR family law article 19(2).

22. Ibid

23. The FDRE Criminal Code, article 650.

24. SNNPR family law article 42.

25. Supra note 23, article 650.

In doing so the interest of the child of knowing his/her father and be cared by his/her parents will be assured. All divorced women are not obliged to observe periods of widowhood ²⁶:

- If the women gave birth after the dissolution of the marriage,
- if she remarries her previous husband,
- Where medical test shows that the women is not pregnant or
- Where the court dispenses the women from obeying the period of widowhood.

Even though the law provides the above requirements to be observed, the violation of such requirement could not be challenged. Any opposition or application on non observance of period of widowhood is not provided under the SNNPR family law.²⁷

3.3. Polygamous Marriage and its Prohibition

Polygamy exists in two forms. Depending on the kind of sex doubled it can be polyandry (where the wife has two or more husbands at a time) and polygny (a situation where one man is having multiple wives simultaneously). This study focuses on the practice of polygamy as practiced by men. Polyandry was practiced in some communities in Africa, but now phased out and in practice the prevalent one is polygny.²⁸

In many countries, the customary law on polygamy allows a man to take multiple wives and it mostly does not consider the consent of current wife from objecting to her husband's marriage to a new woman.²⁹

26. SNNPR family law article 26.

27. Ibid, article 28.

28. Lasok, Dominick 1968, Polish Family law p 48.

29. Vanessa von Struensee: The Contribution of Polygamy to Women's Oppression and Impoverishment: An Argument for its Prohibition,
From: <http://www.austlii.edu.au/au/journals/MurUEJL/2005/2.html>.

In patrilineal societies a man had to be wealthy to acquire more than one wife, because bride wealth had to be paid.³⁰ Wives are considered as source of wealth and social status. Polygamy also confers wealth in the sense that the wives labor and the labor of her children increase the productivity of their husbands' fields.³¹ Moreover polygamy confers status, because a large family kips the man's name alive, allowing him ultimately to become an ancestor to a larger clan of people.³² So that having more than one wife will increase man's respect and social status in the society.

In the past when a man marries subsequent wives, he automatically acquires the means to maintain her in the form of land from the chief but now- a- days when a man takes a second wife, he does not acquire the means to support her.³³ Due to population growth and scarcity of natural resources, average per household land size becoming less and less from time to time. Due to both religious and cultural practice, polygamy is quite common in SNNPR.³⁴ Sidama zone is one of the zones of SNNPR where polygamy is being practiced.

30. Supra note 2, p 23.

31. Ibid.

32. Supra note 2, p 23.

33. Ibid, p 25.

34. Land registration in Ethiopia: Early impacts on women, Summary report 2008, accessed from: <http://www.glt.net/en/home/land-rights-and-records/land-registration-inethiopia-early-impacts-on-women/details.html>

Polygamous marriage is prohibited under the SNNPR family law and is also punishable under the Federal Criminal Code. Some of the reasons for the prohibition of polygamy are³⁵

- The existing demographic conditions in any society of the world do not suggest polygamy. That is, unless artificial factors are involved, the number of men and women in any society is equal or nearly equal. So that the natural factor would not suggest polygamy.
- Since it is men who are usually allowed practicing polygamous marriage, it also seriously affects the property rights of women. For the purpose of concluding another marriage, the man utilizes the resources of the previous wife through drawing the marital property to another place.
- Polygamy weakens ascendant- descendant relationship and consequently, family bonds, etc. Children may not adequately get their fathers care since he has many families.

The 1995 Ethiopian constitution prohibits discrimination on the base of gender.³⁶ Regarding women's property rights, the constitution affirms equal rights of women before and during marriage and at divorce.³⁷The general principle stipulated is that women have equal rights with men in the enjoyment and protection of the rights provided by the 1995 constitution.³⁸ Polygamous marriage forces women to share scarce resources. To give effect to such constitutional provisions the SNNPR family law prohibits polygamous marriage which is believed that contravenes women's rights.

The CEDAW in its General Recommendation 21 from 1994 discusses marriage and the family.

35. Mellese Damtie, 2004: Cases and Matterials on the Ethiopian Family Law.

36. FDRE constitution article, 25.

37. Ibid, article 34.

38. Fassil Nahom 1997: Constitution for Nation of Nations: the Ethiopian Prospect, Red Sea Press Inc, Asmara.

Under article 3 stipulates that CEDAW recognizes the inalienable rights of women but goes further than other conventions “by recognizing the importance of culture and tradition in shaping the thinking and behavior of men and women and the significant part they lay in restricting the exercise of basic rights by women.”³⁹

With reference to article 16 of CEDAW on the family, the commentary argues that polygamy is practiced in many countries and that this contravenes a woman’s right to equality with men. “The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary laws. This violates the constitutional rights of women, and breaches the provisions of article 5(a) of the Convention.” Here customary laws are described as responsible for the persistence of polygamy.⁴⁰

3.4. Effects of Marriage

Laws and cultures have traditionally restricted women’s opportunities, their legal rights and required them to be under the supervision of men. However, over the past several years social, economic, political and cultural changes have dramatically altered attitudes on the institution of marriage, particularly the roles of husbands and wives.⁴¹ The old family law (civil code), in relation to the effects of marriage, by and large rendered the husband superior to his wife.

Due to societal change, the SNNPR family law replacing the civil code introduced equality of women in marriage. Once the existence of marriage is proved, it produces legal effects between spouses. These effects are broadly speaking two, namely personal and pecuniary effect of marriage.

39. Commentary 14 under Article 16, General Recommendation 21.

40. Ibid.

41. Medhanit Legesse: Major Changes Made By The Revised Family Law of 2000 Regarding Women’s Rights And The Need To Enhance Awareness of The society, Addis Ababa University Library p, 42.

3.4.1. Personal Effects of Marriage

History reveals that women were considered as second class citizens and their political, social and economic rights were very limited. Taking in to account the change of society's perception to women's rights the 1995 FDRE constitution under article 35(2) provides that women have equal rights with men. Moreover, CEDAW requires that "states parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations." As Ethiopia is one of the signatories of CEDAW should respect and fulfill its provisions. Based on the FDRE constitution and international instruments in which Ethiopia is party the SNNPR family law was adopted.⁴²

A) Head of the Family

According to the 1960 civil code, article 635 the husband is considered as a head of the family and the wife owes him obedience in all lawful things, whatever he orders. The wife's disobedience is exceptional. As like a minor is under the direction and control of his parents, the wife was under the direction of her husband. The difference is a minor will be free from control and supervision of her/his parents when he/she attains majority while the wife obey her husbands order until end of the marriage which can be for life long.

One of the reasons for justification of such kind of discrimination was that since every human society have head, the elimination of the head speed ups the dissolution of the family so that the husband must be the head because he is able to support the family.⁴³ Such dominance of the husband with in the family does no longer keep up with the modern principle of the constitution i.e. - equality of sexes. Article 35(2) of the constitution provides that women have equal rights with men in marriage. Therefore, any law which is contrary to the constitution is void, so that consistent with the FDRE constitution the SNNPR family law under its article 59(1) states that spouses shall have equal right to administer their family. Here both sexes have equal rights and duties in matters concerning the family.

42. Yohannes Nega: Major Departures of the Draft Family Law of SNNP Region of Ethiopia from the 1960 Civil Code, 2004, Addis Ababa University Library.

43. George Krzeczunowich, 1967: The Nature of Marriage Under the Civil Code, vol. 11 NO. 3, p.177.

B. Management of the Family

Throughout much of the world, the legal rights of wives have been unequal when compared to that of husbands.⁴⁴ According to article 637(1) of the civil code; spouses shall assist each other in the interest of family, to ensure the moral and material direction of the family, to bring up the children and to prepare for their establishment. Such duty of spouses is carried out by the direction of the husband. This means it is the husband who sets the standards of moral and material direction.

The SNNPR family law replacing the provision of the civil code governing family matters stipulates that on the interest of the family, the wife and the husband shall cooperate and guide the family jointly to ensure the natural and moral growth of their children and to properly bring them up and to facilitate their proper establishment.⁴⁵ Spouses have equal rights in management of family which may mean the administration of their common property, raising their children, etc. In the management of the family if the spouses fail to reach consensus and before they go to court for divorce what will be the remedy? The SNNPR family law does not address such issue rather generally stating that both have equal rights.

C. Establishment of Residence, Cohabitation and Fidelity

Family residence is a place where the couples with their children, if any, live. With the increasing participation of women in economic, social and political aspects influenced legislations to enshrine equality of both sexes to decide on their family matters. Article 63 of SNNPR family law provides that “spouses shall jointly decide their common residence. Even though the family law states that both spouses have equal rights in deciding their common residence, it does not provide any remedy if they fail to reach consensus.

44. Supra note 1.

45. SNNPR family law article 59(2).

Article 62(1) of SNNPR family law states that spouses are bound to live together. It is difficult to lead a meaningful married life if the spouses live separately. However this general rule of the law that orders spouses to live together has an exception. Article 64 provides that spouses can live separately for definite or indefinite period of time by their mutual agreement. Moreover under article 62(2) spouses are bound to have sexual relations, which is normal in married life unless it is harmful to their health. In addition, on article 65 spouses have duty of fidelity to each other. Spouses are bound to have sexual relations only between themselves. Adultery is prohibited and punishable under the criminal code.⁴⁶

3.4.2. Pecuniary Effects of Marriage

The right to own and control property is crucial indicator of the balance of power between women and men because property relations are usually closely related to power relations.⁴⁶ When a man and a woman marry and live together as husband and wife, questions arise as to their property rights. Pecuniary matters are those that are related to money and pecuniary effects of marriage refers to the rights, interests and duties of the married couples regarding the matrimonial property.⁴⁷ Matrimonial property is generally categorized as personal and common property.

A. Personal Property

In addition to the property they own commonly, spouses have the right to own property personally.⁴⁸ It refers to the private property of either the husband or the wife. FDRE constitution under article 40(1) provides that “Every Ethiopian citizen has the right to the ownership of private property.” This right is guaranteed for all citizens with out any distinction as to sex. Moreover under the same article private property is defined as “any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen.”

46. The FDRE Revised Criminal code article 652.

47. Supra note 1 p, 32.

48. Supra note 41, p 46.

49. SNNPR family law article 68(1).

In line with the above constitutional provision the SNNPR family law has guaranteed ownership of personal property to the spouses. The personal property of spouses includes: property owned prior to the conclusion of the marriage, unless it is converted in to common property by contract of marriage, property acquired by donation or will, and also property acquired by onerous title, by one of the spouses after marriage shall also be the personal property of a spouse where such acquisition has been made by exchange for property owned personally, with monies owned personally or derived from the sale of property owned personally.⁵⁰

Regarding administration of personal property each spouses shall administer her/his own personal property, receive the income of, and the owner spouse can freely dispose of her/his personal property.⁵¹ Moreover the spouses may agree in their contract of marriage for one of them to administer and dispose of all or part of the personal property of the other.⁵²

B. Community Property

Community property can be defined as a property owned in common by spouses each having an undivided one half interest by reason of their marital status.⁵³ According to article 71(1), all incomes of the spouses that are derived by their efforts shall make the common property of spouses. In a country where by agriculture is the back bone of the economy rural land holding is the main means of livelihood and asset. Taking this fact in to consideration the SNNPR RLAUP under article 5(5) provides that “husband and wife have equal use right on their common land holding.” Both sexes have equal rights on their common land holdings despite the fact that who brought it to the marriage and in disposing the income and control over it.

Moreover, any income from an income generating property is also a common property and unless other wise stipulated in the act of donation or will property donated or bequeathed conjointly to the spouses shall be common property.⁵⁴

50. SNNPR family law, article 67(1).

51. Ibid, article 68.

52. Ibid, article 70.

53. Henery Campbell: Blacks Law Dictionary, 5th Ed 1968 p. 363.

54. SNNPR family law, article 71(3).

According to article 116 partners in an irregular union who live together as husband and wife for not less than three years will have community properties acquired during the union. Therefore the mere fact of absence of marriage does not lead us to the conclusion that community property shall not exist. To be consistent with the constitutional provision of the right to property⁵⁵, the SNNPR family law has provided mechanisms whereby parties in an irregular union will have community property.⁵⁶ Partners in an irregular union who lived together for minimum of three years will have community property unless other wise evidence is presented to the contrary.

55. The FDRE Constitution article 40.

56. SNNPR family law article 116.

Chapter four

Land Holding System in Ethiopia

4.1. The Role of Land in the Rural Society.

Land is recognized as primary source of wealth, social status and power throughout history to those who have access to and control over it.¹ Moreover it is the most significant livelihood- sustaining asset for the vast majority of the population.² The livelihood of around 80% of Ethiopians is as well intimately dependant on rural land.³

Land is linked to rural livelihoods in a multitude of ways. It is important for life, food, housing and health. Furthermore land is central for status and identity and is a source of cash for consumption. Despite its role, in practice access to land is affected by factors such as gender, ethnicity, and social and economic status.⁴ These factors in access to land result one to poverty. Which is not only violation of covenant on economic, social and cultural rights but also civil and political rights, including the right to participation in public and political life and decision-making, and the right to protection of property.⁵ In a country like Ethiopia where majority of the population depend on land to secure their livelihood access to land is basic for ensuring basic needs.

1. Almaz Woldetinsaye, 2007: Women's Access to and Control Over land In the Current Land Administration System in two Rural Kebeles in Ada'a Woreda of Oromia Region, Addis Ababa University, Institute of Gender Studies.

2. L. Muthoni Wanyeki (Ed): Women and Land in Africa: Culture, Religion and Realizing Women's Rights, Zed Books Ltd London. NEW YORK, David Philip Publishers CAPE TOWN, p, 79.

3. Daniel Kassahun, 2006: Towards the Development of Differential Land Taxation in Ethiopia, Land and the challenge of Sustainable Development in Ethiopia, Dessalegn Rahmeto and Taye Assefa (ed) Forum for Social Studies Addis Ababa, p 131.

4. Ingunn Ikdahl, Anne Hellum, Randi Kaarhus, Tor A. Benjaminsen, Patricia Kameri-Mbote, 2005: Human rights, formalization and women's land rights in southern and eastern Africa, Studies in Women's Law No.57, Institute of Women's Law, University of Oslo, Revised version of Noragric Report No.26, Norwegian University of Life Sciences, accessed from: http://www.sarpn.org.za/documents/d0001447/P1786-Women-rights_June2005.pdf 1786.

5. Ibid.

The social, cultural and economic rights, including the right to an adequate living standard,⁶ requires that everyone shall enjoy the necessary subsistence rights and are also relevant for access to and protection of land. The right to livelihood is inextricably linked to the rights to food, water, health and housing.⁷ Moreover CEDAW explicitly states the state obligation to ensure equal treatment between men and women in land and agrarian reform.⁸ Even though national and international instruments ensure equal access of women and men to land the practice is still governed by pre existing societies cultural norms which preserves men superiority over resources.

4.2. History of Land Holding System in Ethiopia.

4.2.1. Pre- 1974 Land Holding System.

The extent and characteristics of tenancy in the pre-1974 Ethiopian agrarian sector varied from region to region and with in regions.¹² There were on the one hand small- scale owner cultivators, and on the other large landholders who in many instances obtained their possessions through political means.¹³ Moreover, there was what was known as the rist system of tenure in the northern part of the country.¹⁴ Rist was a form of customary rights held by a corporate community or descent group in which individuals had only use rights to their allotment.¹⁵

6. CESCR art 11 and UDHR art 25.

7. General Comment no. 12, 15, and 14 by the UN Committee on Economic, Social and Cultural Rights: 'The right to adequate food' (1999), E/C.12/1999/5, 'The right to water' (2002), E/C.12/2002/11 and 'The right to the highest attainable standard of health' (2000), E/C.12/2000/4 respectively.

8. For the implications of article 14 of CEDAW with regard to land and water reform in countries like Tanzania, South Africa and Zimbabwe.

12. Teketel Ababe: 1998 'Tenants of the state' The limitations of revolutionary agrarian transformation in Ethiopia, 1974 – 1991, Lund Dissertations in Sociology, Department of Sociology, Lund University, p. 96.

13. Dessalegn Rahmeto: From Hetrogeneity to Homogeneity: Agrarian Class Structure in Ethiopia since the 1950s, Land and the Challenge of Sustainable Development in Ethiopia, conference proceedings, Forum for Social Studies Addis Ababa, p. 4.

14. Ibid.

15. Ibid.

The following statement summarizes most of the characteristics of tenancy in pre-1974 Ethiopian agriculture:

*Tenancy contracts were mostly oral, and tenancy was very much merged with political and social servility. The form of rent was mostly in kind, often involved labor services and ranged between a quarter and a half of the tenant's crop.*¹⁸

In the Imperial regime, the landed nobility and local gentry were “surrounding” the peasantry, all of which played no part in the production process but placed demands and obligations on it.¹⁹

4.2.2. Pre 1991 Land Holding System

The class structure of rural Ethiopia was profoundly altered by the land reform of 1975 and subsequent legislations by the Derg which resulted nationalization of the estates of the landed classes, the nationalization of landed property, the transformation of all rights of holdings of peasant cultivators into use right and the abolition of private ownership in land.²⁰

The land reform law entitled “A proclamation to provide for the public ownership of rural land, proclamation no. 31 of 1975”. The proclamation under article 3 provides that “All rural lands shall be the collective property of the Ethiopian people”.

16. Ibid.

17. Ibid.

18. Supra note 12, p. 97.

19. Supra note 13, p. 5.

20. Ibid, p. 13.

Private ownership of rural land by individuals or organizations was prohibited. In doing so it was clear that rural land is under exclusive state control as Dessalegn stated “the state is the owner of the property, and peasant cultivators have only usufruct rights over the land they have allotted by the peasant association.”²¹

Furthermore, article 4 provides that “with out differentiation as to sexes, any person who is willing to personally cultivate land shall be allotted rural land sufficient for his and family maintenance not exceeding ten hectares.” Women’s were entitled equal access to land right with men who want to cultivate land. However, in practice land allocation and membership in peasant associations was made on the bases of household and also in the existing practices it is male members who were accepted as head of households.²² Strong argument has been made for equal access of land among both rural women and men in this way:

*Although the proclamation stated that “With out differentiation of the sexes” in most cases the implementation was discriminatory towards women. Land was distributed by family size and registered under male heads of households. Although female -headed households are allocated land, often the land titles are of minimal size. Moreover, women who married outside their community ‘lost’ the shares of land allocated to them in their parental homes. Similarly, divorced women lost their shares of land if they left their marital households.*²³

21. Supra note 13.

22. Ibid.

23. Supra note 2 p. 81.

4.2.3. The FDRE Constitution and Land Holding System

The 1995 constitution concerning ownership of land provided in article 40(3) as follows:

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

The 1995 constitution retained state ownership of rural and urban land, as well as of all natural resources. Ownership of rural and urban land is common property of the Nations, Nationalities and Peoples of Ethiopia. Even though private ownership of land is prohibited, the constitution further recognized every Ethiopian to own “private property”.²⁴ It provides that ‘unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise’. Any person can sell; use or transfer fruits produced from the land or built on it. In practice land can be indirectly subject to sell under the cover of its fruit or building. Property which can not be detached from the land or if it is detached will be value less especially for plants will be sold including the land. If the building or plant is soled including the land here land is becoming indirectly subject to sell. Therefore the principle of state ownership of land will be challenged. Furthermore, every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory. But if one peasant wants to change his/her undertaking he/she can not sell his/her rural land holding rather he/she can rent it out for few years.

24. The 1995 FDRE constitution article 40(1).

Furthermore, the FDRE constitution provides equal rights of women and men with respect to use, transfer; administration and control of land.²⁵ Due to cultural norms women in the area under study do not inherit land. Their access to land is through marriage until the marriage subsists. During divorce the wife do not get share of the common land with the husband. In such situation where access to land is limited, providing right to transfer, administer or control of it will be unpractical. To the contrary of the cultural norm the constitution ensures equal treatment in the inheritance of property.²⁶ The inclusion of women's rights in the Constitution initiates women to demand for its enforcement if they are aware of it.

4.3. Division of Legislative Authority over the Rural Land

The FDRE constitution article 51(1) states that the federal government shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects. This responsibility is to be exercised in accordance with article 55(1) which confers upon the House of Peoples Representatives the power to legislate in all matters assigned by the constitution to federal jurisdiction.

The Federal rural land administration and utilization proclamation No. 456/2005 reaffirms the constitutional provision stating that peasants and pastoralists, irrespective of gender, engaged in agriculture for living, are entitled to and will be given rural land free of charge.

Furthermore, access to the use of land may be obtained by way of donation, inheritance or grant by a regional authority with powers to administer land. The proclamation concludes by requiring each regional council to enact rural land administration and land use laws containing detailed provisions which establish institutions at all levels to implement them. Moreover, the constitution under article 52(2(d) provides that each regional state has power to administer land and other natural resources in accordance with federal laws.

25. FDRE constitution, article 35(7).

26. Ibid.

4.4. Rural Land Holding System under SNNPR Rural Land Administration and Utilization Proclamation no. 110/2007.

The SNNPR council adopted the RLAUP No.110/2007 replacing proclamation no. 53/2003. Under the proclamation holding right is defined as “the right of any peasant farmer or semi-pastoralist and pastoralist to have use right on rural land for the purpose of agriculture and natural resources development, lease and bequeath to members of his family or any lawful heirs, and includes the right to acquire property produced on his land thereon by his labor or capital and to sale, exchange and bequeath same.”²⁶

Rural land holding right is for unlimited period of time²⁷ even though it’s not absolute, it is inheritable²⁸, alienable by way of lease, “donation”, bequest and it is asset creating, hence a basis for private property accumulation. In accordance with the basic principle, land will not be subjected to sale or exchange by any means. But property produced by the labor or capital of land holder on his/her land can be sold, leased, bequeath, and pledge.²⁹

In a country where agriculture is the back bone of its economy access to land is fundamental means of ensuring household livelihood and to generate income. Moreover, access to land also determines social status and paves the way for social services. Considering this in to account the proclamation No.110/2007 provides that any resident of the region attaining the age 18 years or older, who wants to engage in agriculture has the right of getting rural land holding and use.³⁰ The minimum farm size for each farmer for rain fed agriculture is 0.5 hectare.³¹

26. SNNPR rural land administration and utilization proclamation No. 110/2007, article 2(6).

27. Ibid, article 7(1).

28. Ibid, article 8(1(5)).

29. Ibid, article 8(1(6)).

30. Ibid, article 5(2).

31. Ibid, article 11(1(a)).

4.5. Women’s Rural Land Holding and Use Rights under the Proclamation No. 110/2007.

4.5.1. General over view

According to 1999 E.C census, the SNNPR population is about 15,494,636 of which 7,707,504 were males & 7,787,132 were females. This indicates that percentage share of females is relatively high. Moreover, about 89.5 % of the population resides in rural areas. Despite of their number and labor women are the most disadvantaged group of the society from their labor. The customary marriage and divorce rules established that the husband, through his marital power, holds property on behalf of the family.³²

Article 16 of CEDAW obliges states parties to establish equal property rights for women in relation to marriage, divorce and death. The 1995 FDRE constitution regarding women’s property rights affirms equal rights of women before and during marriage as well as at the time of divorce.³³ During the marriage concerning their community property the wife and the husband have equal right to control, use and administer it. But women are not seen enjoying these rights due to strong cultural constraints against it.

4.5.2. Women’s Rural Land Holding Right

In line with equality provision of the constitution and international instruments in which Ethiopia is a party the SNNPR council adopted RLAUP no. 110/2007. The preamble of proclamation provides that “ensuring women’s land holding right is necessary for agricultural production and productivity and to speed up the environment development.” Unequal ownership and control of land is a critical factor which creates and maintains differences between women and men in relation to economic well-being, social status and empowerment.³⁴

32. Supra note 4.

33. FDRE constitution, article 34.

34. Supra note 4.

The World Bank policy research report of 2003 on land policies for growth and poverty reduction points to evidence that increased control by women over land and other assets could have ‘a strong and immediate effect on the welfare of the next generation and on the level and pace at which human and physical capital are accumulated’. The importance of women’s access to land and control over it is for the society as well.

Married women have equal rights with their husband on common land holdings under the proclamation.³⁵ Both spouses have equal rights concerning their common land holding to control, use, and transfer as well as administer it. Moreover, where land is jointly held by husband and wife, the holding certificate shall be prepared in the name of joint holders.³⁶ The certificate should describe the size of the land, land use type, borders, and level of fertility as well as the obligation and rights of the holders. However the proclamation is silent on polygamous marriage. Since the culture allows a man to marry as many wives as he pleases so that the previous wife land right will be challenged through sharing the common land holding and income from it.

4.5.3. Women’s Access to Rural Land Right

Land is considered as the primary means for generating the livelihood for most of the poor living in rural areas.³⁷ Access to land determines households’ economic, political and social status. A study of Ethiopian rural households by Fafchamps and Quisumbing on control and ownership of assets revealed that the 1406 sample households from different regions of Ethiopia shows that women are in lower economic position even at the beginning of household formation, which affects their claims at the time of divorce and, hence, for the rest of their lives as heads of households. Since access to land is one of the determinant factors of economic status which results shrinking women’s bargaining power.

35. The SNNPR Rural land administration and utilization proclamation No. 110/2007, article 5(5).

36. Ibid, article 6(4).

37. Supra note 32, p. 21.

The proclamation provides that in addition to the general provision which guarantees all residents of the region access to land; women who want to engage in agriculture, have the right to get and use rural land.³⁸ This implies that it gives for women more weight to access land which seems to address the cultural norms constraints to access land.

Moreover, the proclamation guarantees equal right for wife and husband on their common land holding. Both sexes have equal right to administer, control and use the common land holding irrespective of who brought the land to the marriage. Article 5(5) of the proclamation provides that spouses do not lose their land holdings because of their marriage that they possessed individually before. Spouses can have personal holding of land. This provision is not advantageous for women whose land access is mostly through marriage. However under the previous proclamation no. 53/2003 land separately held before marriage was deemed common land after marriage.

Any person who is family member of a peasant, or pastoralist has the right to use rural land that can be obtained from his family by inheritance.³⁹ According to the proclamation family member means any person who permanently lives with land holder sharing the livelihood of the latter.⁴⁰

38. The SNNPR Rural land administration and utilization proclamation, article 5(11).

39. Supra note 38, article 5(3).

40. Ibid, article 2(7).

In many cases, as girls are expected to go to their husbands' residence when they marry, unlike sons, daughters usually miss to be considered during the allocation of land by the family as well.⁴¹ They are destined to leave their respective families and get married elsewhere.⁴² In line with this cultural norm the proclamation gives narrow definition for family members which exclude women who married elsewhere from inheriting their parents land. In such circumstance women's access land through marriage. However the proclamation encourages individual holdings of land by spouses that they possessed before the conclusion of the marriage. Such kind of provisions in addition to cultural norms creates impediment on women's land holding and use rights.

40. Supra note 32, p. 34.

41. Florence Butegwa: Mediating culture and Human rights in favour of land rights for women in Africa: A framework for community – level action, Cultural Transformation and Human Rights in Africa, Abdullah A.An-Naim,(ed), p 111.

Chapter Five: Impacts of Polygamous Marriage on Women's rural Land holding and Use Right in Sidama zone.

5.1. General Overview.

According to the preamble of SNNPR RLAUP No. 110/2007 guaranteeing women's land holding right is important for agricultural production and productivity. In Ethiopia women constitute 49.6% of those members of agricultural households engaged in productive activities.¹ Despite women's active participation in the agricultural sector they are one of the most disadvantaged groups from their labor. Development in any aspect is unimaginable when half of the population is incapacitated. Giving due attention for women's role in the agricultural production the proclamation provides that securing women's land holding right is essential for agricultural production and productivity.

Moreover, under the proclamation wives have equal use right with their husbands in their common land holding.² Even though the proclamation provides equal land holding and use right for both sexes the practice is the other way round due to strong cultural norms against it. One of the cultural practices which create hindrance on women's land use and holding right in the study area is polygamous marriage.

1. Yigremew Adal, 2006: Rural women's access to land in Ethiopia: Land and the challenge of sustainable development in Ethiopia, conference proceedings, Dessalegn Rahmato and Taye Assefa (Ed), Forum for social studies, Addis Ababa, p. 19.

2. SNNPR rural land administration and utilization proclamation no. 110/2007, article 5(5).

5.2. Demographic Features of Sample Polygamous Households

5.2.1. Sex Composition of Sample Polygamous Households

From the total respondents of the questioner polygamous wives constitute 60%. To understand the real impact of polygamous marriage on women's land holding and use rights the importance of the response given by those who actually feel the problem are many and unquestionable. From the total sample respondents polygamous husbands constitute 40%. They involved in the response as they are the main actors of the polygamy. There fore polygamous husband's response on their wives land holding and use rights and their understanding to wards it is so important.

5.2.2. Family Size of Respondents

As mentioned above the respondents are both polygamous husbands and wives. The family size of the husband may not be equal with the wives. The family size of the wives is limited to her husband and only her children but the husband's family size includes all his wives and children. The average family size of sampled polygamous wives is about 8.2; where as the average family size of polygamous husband's is about 12.3. The maximum family size of sample polygamous households is 26. This implies that polygamous husbands have larger family size as they have more than one wife and will have many children. Having such extended family size will result in shortage of resources.

The average polygamous husband's wives are 3.5. According to the sample, the maximum number of wives in the polygamous households is 5. About 30% of respondent, who are polygamous wives are first wives and the others 70% are latter wives. This will help to understand the perception of first wives to wards polygamy in relation to their land holding and use right and also the latter wives too.

Furthermore, 97% of respondents the main means of households' livelihood are based on agriculture. According to the zonal average household land size is between 0.5- 0.7 hectare. Land size of less than one hectare with such large number of the family size is

not proportional and this will lead to unsecured livelihood of the household and the result will be poverty.

5.2.3. The Reasons for Polygamous Marriages.

A person who marries more than one wife may have his reason what ever its legitimacy is. According to the sample, polygamous husband's response to the reason for having more than one wife, 10% of them responded that they married additional wives seeking male. According to the culture of study area, male is preferred over the female one. If the first wife does not give birth to son, or even if she has few sons, the husband will marry another wife. Male child is considered as perpetuating the family lineage and therefore, keep the land within the family. To the contrary young girls are expected to leave their respective families when they get married.

Furthermore, 55% of sample polygamous husbands' response states that they married more than one wife in need of many children. According to the culture, a person who has many children has higher social status. In addition to this, the need of many children is justified by economic importance by getting free labor and controlling over it. The other 32% of respondents replied that their reasons were due to culture of the society and having more than one plot of land. The respondents choose having more wives in order to control each plot of their land. This is not aimed at equal share of benefits between husband and wife but wife will be resided there in order to look after the farm and other properties. The other 2% of respondents replied that they married more than one wife due to religion case as their religion permits them to marry more than one wife according to their interest. The other 1% replied that they married more than one wife when the first married wife got aged. According to the culture of the society under study area, age is not a matter for a male, even at old age he can marry a young woman.

Late married wives have been asked why they married to polygamous husband? 56% of the late married replied that they got married to polygamous husband by their parents' influence. The other 40% responded that due to economic problem that they married to polygamous man. The other 4% of latter wives respondents stated that the marriage was concluded based on their full consent.

From the above figures one can understand that almost all the polygamous marriages concluded in the area under study is not based on full consent of intending spouses. Parents have great role in the marriage by choosing the spouse especially for the female.

Bride wealth is a pervasive and enduring feature of many customary marriage systems through which a man pays some property for the right or privilege to marry a woman.³The opponent of this cultural practice argues that it's real social significance as a vehicle for the oppression of women in marriage. Moreover, the practice turns women in to exchangeable object and there by contributes to their subordination in marriage where, in the circumstances they cannot claim equality with their husbands.⁴In such circumstance the husband considers the wife as one of his asset since he gets her through consideration.

In addition to parents influence significant number of the polygamous wives married due to economic problem. To make full and free consent the intending spouses should be free from any direct and indirect influence. Economic dependency of women on their families is one reason that makes them to accept whatever decision their parents make and also the intending spouse economic strength influences their decision. Therefore economic problem influences a woman to marry a man who has many wives in order to secure their livelihood.

As mentioned above, 4% of respondents replied that they married polygamous husband, based on their consent. According to the writer's believe, such small percent of respondents may not be free at all, from any influence of their families and the society.

3. Alice Armstrong, Chaloka Beyani, Chuma Himonga, Janet Kabeberi Macharia, Athaliah Molokomme, Welshman Ncube, Thandabantu nhlapo, Bart Rwezaura and Julie Stewart: Uncovering Reality: Excavating Women's Rights in African Family Law, Women and Law in Southern Africa Working Paper no.7, P, 28.

4. Ibid.

The survey of this study reveals that first wife constitute 30% of polygamous wives respondents. 92% of first wives response shows that they are not consented to the latter marriages concluded by their husbands. Only 8% replied that as they were asked for their consent to the latter marriages and assured that as they have consent to it. This shows that even if the existing wife opposes to the latter marriages, in despite of her opposition, the husband can marry another new wife. Moreover, in the following sub- topic we will observe the surprising responses of polygamous husbands concerning the source of land for their latter wives.

5.3. The Source of Land for Latter Wives.

According to the culture, when a woman gets married she leaves her families resident and joins to the husband’s residence. A man, who wants to marry a wife, should prepare the residence for the coming new wife. The main issue is not who prepares the residence but the challenge is how to get farm land in order to develop the means of the livelihood through agriculture as the new family needs farm land to secure their livelihood. The following table shows the source of land for polygamous husbands to their new wives.

Table 5.1. Source of land for latter wives

Source of land for latter wives	Number of the respondents
From previous wife and husbands’ common land holding.	78
From the husband personal land holding	16
Renting land from land holders	6

Source, own polygamous households survey, 2011.

As table 5.1, reveals that about 78% of respondents of polygamous husbands married new wives from the common land holding of previous wife. The previous wife’s holding is going to be shared by new wife and children of the latter. Even though both federal and regional land legislations provide equal land use right for the husband and wife over their common land holding, the practice is based on culture of the society which discriminates

women from land holding and use right. For the additional marriages the decision is of the husband. No consent of the previous wife is needed. The wife's' common land holding will be fragmented to the latter wives by the arbitrary decision of the husband. This is against the 1995 FDRE constitutional provision which states that women have equal right to acquire, administer, control, use and transfer of land.⁵ The land holding and use right of the wives challenged by polygamous husband, seeking many wives whether they are consented to it or not.

The other 16% of respondents replied that they married additional wives to support her from his personal land holding. From the over all understanding polygamous husbands towards women land right the land as they call it 'personal' may not be individual holding of the husband as they said. Because majority of polygamous husbands believe that all the land in the marriage belongs to them since the wives brought no land. The remaining 6% of the respondents stated that they get land for their new wife from renting land from other land holders. According to the SNNPR RLAUP article 8(1(a)) renting lands from peasants to peasants the maximum duration is 5 years. Therefore getting land holding through rent is not secured since its duration is only up to 5 years.

Due to fragmentation of land many polygamous households face challenge to secure their livelihood. About 52% of respondents stated that they don't have enough land to produce enough food for their families. The reason they gave for the shortage of land is that it is due to fragmentation of land to many wives and children.

5.4. Effect of Polygamous Households towards Women's Land Right.

Women's equal right at the conclusion of marriage, during marriage and at its dissolution is guaranteed under the FDRE constitution and SNNPR family law. Women have equal right in the management, control and disposition of common property. Even though gender neutral laws were adopted by Ethiopia, specifically by SNNPR the practice is still influenced by culture which mostly favors male dominance.

5. 1995 FDRE constitution article 35(7).

Sampled polygamous households were asked about their knowledge concerning women's land holding and use right and their response is presented in the table below.

Table 5.2, Response of polygamous households towards women's land right

Women land holding and use right	Polygamous husbands	Polygamous wives
I know and I accept it.	44%	24%
I know but I don't accept it.	66%	76%

Source, Own Polygamous Household Survey, 2011

Table 5.2 reveals that majority of respondents replied that they know women's right but don't accept it. The surprising figure is that only 24% of polygamous wives know and accept women's land right. This is much lower than that of polygamous husbands figure. This implies that polygamous wives' acceptance and knowledge of their land right is very few. Majority of them do not accept their land right provided under different laws of the country. The reason given by those polygamous wives who do not accept women land right is that in practice the husband is the only right holder over the common land.

On the other hand the justification of those polygamous husbands not to accept women's equal land right during marriage is that they are the only one who brought the land to the marriage so that wives have no say over the common land rather just to use its fruits so long as the marriage subsists. As discussed above women do not inherit land from their parents. So this makes the husband feel as the only holder of the common land.

Moreover, to the question whether they believe on equal share of common land during divorce 65% of polygamous husband's response implies that they do not accept on equal share of land with their wives during divorce. Their reason is similar to the above justification which is the land belongs to their family so the wife has to go with out sharing land since she brought no land of her own during the marriage. On the other hand 96% of polygamous wives accept that there must be equal share between husband and wife during divorce. Only 4% of them opposed equal division of land during divorce.

5.5. Access to land

In Sidama zone from the total population around 94% reside in rural areas.⁶ So that access to rural land is vital to meet their basic needs and improve their living conditions. Moreover, in the study area access to land is also the precondition to access other social networks such as Iqqub.

Table 5.3, category of polygamous household's source of land holding.

Source of land holding	Male	Female
Inheritance and Land redistribution	98	2
Marriage	0	98
Donation	2	0
Total	100	100

Source, Own polygamous household, Survey, 2011

From the table above one can conclude that marriage is the only means for women to access land. This is due to the culture of the society that women can not inherit their parents' land rather than they use what so ever is given by their husbands. Women are considered as temporary members of the family until they get married else where. To the contrary, majority of male respondents get their land through inheritance. Inheritance is one of the basic means to access land and a constitutional right of every citizen. But due to strong cultural practices against the land use right, women couldn't enjoy their land holding and use right.

Moreover, as discussed under the previous chapter the SNNPR RLAUP article 8(5) states that any holder shall have the right to transfer his rural land through inheritance to members of his family.

6. Sidama Zone Finance and Economic Development Sector

Even though the land holder has a right to transfer his holding through inheritance to his family members the definition given for family members under the proclamation is too narrow. The proclamation defines family member as any person who permanently lives with land holder sharing the livelihood of the latter. It allows any person who permanently lives with land holder in order to share the livelihood of the latter one. This implies that in order to inherit land one has to live permanently with his/her parents and share the livelihood too.

Culturally, when women get married they go to their husband's residence. So that women can not live permanently with their parents and share livelihood of the latter. Women are prohibited from inheriting rural land not only due to culture but also indirectly they are legally discriminated from inheriting rural land. This shown as an effect in the sample, indicating that polygamous wives response to have access to land only through marriage. Therefore, 98% of women get accesses to land through marriage by sharing their husbands holding. Due to linkage of land to the marriage, husbands have the lions share in administration of land and disposition of its fruit.

Although, women get access to land through marriage, land is becoming too small for most households to produce enough food for their family, due to increased number of population and scarce resource. Therefore, polygamous households are unable to feed themselves due to shortage of land and large number of the family including wives. According to the sample, 61% of polygamous households responded that they don't have enough land to secure household's livelihood. The reasons are due to fragmentation of land to many wives and children. This resulted to shortage of land and income from it.

5.6. Impact of Polygamy on Women's Rural Land holding and Use Right

The sample polygamous households were asked whether polygamous marriage have negative impact on women's land holding and use right. About 78% of polygamous husbands marry new wives and reside on the common land holding with previous wife. It is obvious that the land holding of the previous wife will be fragmented to support

additional wives and their children. The latter wives' land holding is assigned by the arbitrary decision of the husband and many respondents know its impact.

Out of the total polygamous husbands' sample 44% replied that as polygamous marriage has no impact on women's land holding and use right. Any how, this is not surprising figure because around 66% of them do not accept women's land right and 78% of husbands married new wives on the common land holding with their previous wives. Some one may not be surprised by their response that polygamy does not have impact on women's land holding and use right. However, about 56% of polygamous husbands accept the negative impact of polygamous marriages on women's land holding and use right. In addition to this 98% of polygamous wives also respond that as polygamous marriage has negative impact on their land holding and use right.

Those who respond the impact of polygamous marriage on women's land holding and use right give their justifications, as it shrinks the land size of previous wife and decrease of income by giving support for the additional wives and their children. Due to such fragmentation of land and shortage of income, the household will be exposed to poverty. In a statement on poverty released on 10 May 2001, the UN Committee on ESCR considered poverty as a multi-dimensional denial of human rights. Here majority of polygamous wives are not consented for the latter marriages concluded by their husband. But even though they are not consented to the latter marriages but the consequence will be on their shoulder by sharing land and its income to many.

Furthermore, 70% of polygamous husbands believe that as polygamous marriage results problems on their family. On the other hand, around 80% of polygamous wives also replied that as they faced problem due to polygamous marriage.

To generalize about, 75% of polygamous households also replied that they faced problem due to polygamous marriages. The main problems indicated by the respondents are:

- **Fragmentation of land:** polygamous marriage results the previous land holding to be shared by new coming wives and their children. So that polygamous households couldn't produce enough food for their household. This situation exposed them to poverty since their main livelihood is based on agriculture.
- **Decrease of income from the land:** Any fruit produced from the common holding from polygamous households will be shared by many wives and their

children. Sharing the income of the land with one wife and her children can not be equivalent to many wives and their children. It is true that the new coming wives basically need food, shelter and cloth. To fulfill such needs the previous wife's income from the land will be distributed for such purpose. As the result, the previous wife's income from the common land decreases in order to accommodate the latter wives and children and on the other hand this challenges wives land holding and use right.

- **The other problem is that polygamy causes conflict with in the family:** due to shortage of income and land especially the wives of polygamous husband quarrel each other. Polygamy may encourage competition between wives in that there may be inequality since the wives must share the existing resources and attention, and have competing interests with regard to these.⁷

About 75% of polygamous wives believe that practically they don't have equal land holding and use right when compared with monogamous wives. Their reason is that monogamous wives do not share their income from their land holding and elsewhere but use it for themselves as there is no new wife who will share from. Therefore, women who are in monogamous marriage will have better economic status since they are not going to share the existing land with many wives and their children.

5.7. Polygamous Marriage and Rural Land Administration

According to the SNNPR RLAUP rural land administration means “a process where by rural land holding security is provided, land use planning is implemented, disputes between rural land holders are resolved and the rights and obligations of any rural land holder are enforced, and information on farm plots and grazing land holders are gathered analyzed and supplied to users.”⁸

7. Supra note 3, p. 26.

8. The SNNPR rural land administration and utilization proclamation no. 110/2007, article 2(3).

Land holders shall be given holding certificates prepared by the competent authority and indicating size of holding, land use type and cover, level of fertility and borders, as well as obligations of holders.⁹The first land law introduced in SNNPR is proclamation no. 53/2003 which stated that the polygamous husband could have his name on only one certificate and resistance of men caused a change such that certificates could be issued jointly to the husband and his wives, or the husband's name could also be included below the name of his second and later wives, while he has his name first on the certificate with a wife whom he chooses. This method is used still now in the study area even though the latter proclamation no. 110/2007 is silent concerning polygamy.

Men practicing polygamous marriage consider it as their right and women's duties culturally.¹⁰Moreover polygamous marriage creates confusion on court to differentiate property owned by polygamous husband and his wife's so that it may result unlawful enrichment.¹¹Mostly in polygamous marriage previous wives lose their original holding of land due to sharing of land with many wives. And they are limited with plot of land arbitrarily given by the husband. But the husband is going to loose nothing due to polygamous marriages since he is given land certificate with each wife and will have his equal share.

Polygamous marriage is one of the challenging issues in the Sidama zone land administration and creates complexity in the land certification process.¹²

9. The SNNPR rural land administration and utilization proclamation no. 110/2007, article 6(3).

10. An interview conducted with w/r Marta Tigro legal officer of SNNPR women and children affairs office, 20/12/2010.

11. An interview conducted with Dingema Dade vice president of Sidama zone high court and judge, 22/12/2010.

12. An interview conducted with Mogos Banata officer of Sidama zone natural resource and environmental protection office, 21/12/2010.

Furthermore, according to SNNPR women and children affair office legal officer W/ro Marta Tigro the new rural land proclamation ensured men superiority over land holding and use.¹³ It protects mostly men's interest undermining that of women. Polygamous men are given joint certificate with each wife.¹⁴ This encourages polygamy instead of discouraging the one who acts against the law. But the vise-verse is true. The other method of certifying land for polygamous family is that giving one certificate in which the husbands name and wife he prefers will be written in the first place and the rest wives name will be written in the place provided for name of family members.¹⁵ According to the officer of the Shebedino wereda rural land administration and utilization office, this will be done when all wives are in agreement.¹⁶

Moreover in the area under study women after marriage moved to their new husband's home and inherited no land from their parents. A change in the SNNPR RLAUP has opened up more individualized rights, wherein land acquired through marriage may be controlled by the person who brought it into marriage. This situation may weaken the position of women since they do not inherit land from their parents.

13. Supra note 10.

14. Ibid.

15. Interview conducted with Tigabu Mamo, officer of Shabedino woreda rural land administration and utilization office, 04/1/2011.

16. Ibid.

➤ **Conclusion and Recommendations**

➤ **Conclusion**

Human rights deemed essential for all human family to lead decent life. Therefore, human rights should be enjoyed by all human beings with out discrimination. But in practice women's are the most discriminated and marginalized group of the society. After many struggles most importantly led by women, women's rights recognized as inalienable, indivisible and integral part of universal human rights.

Family as one of the fundamental and important social institutions, involving the highest interest of society needs protection from state and society at all. The FDRE constitution guarantees that men and women have equal right while entering in to, during marriage and at the time of divorce. In light of this constitutional provision the SNNPR family law ensures equal rights of husband and wife in marriage. Marriage should be entered with the free and full consent of spouses. During the marriage spouse have equal rights in administering, using and disposition of community property. Due to cultural prohibition practically women are not seen enjoying these rights. Polygamous marriage is one of the cultural practices of the area under study which hinders women from enjoying their land rights. The SNNPR family law prohibits polygamous marriage and it's also punishable under the criminal law. Even though the laws prohibit polygamous marriage the practice is continuing in the area under study.

Majority of the population of the area under study reside in rural areas where by land is a major means of their livelihood. Access to land and control over it is important to secure household livelihood. Giving due recognition for the role of land in the society the FDRE constitution guarantees equal rights of men and women to use, transfer, administer and control of land. Moreover, the SNNPR RLAUP states that husband and wife have equal right over their common land holdings. Even though the laws guarantee that wives have equal right with their husbands.

This study finding reveals that 78% of polygamous husbands married new wives sharing land from the common holding with previous wife(s). This implies that polygamous wives have no secured land holding right because as number of wives increases their land holding decreases. And also income gained from the common land holding will decrease to support new wife and children. Moreover, in the area under study land holding certificate will be given for polygamous husband with each wife. The husband will have equal share of land with each wife.

The SNNPR RLAUP states that spouses do not lose their land holding because of their marriage that they possessed personally before conclusion of their marriage. This provision encourages personal land holding which will negatively affect women's access to land. Culturally women are discriminated from inheriting land. They are destined to leave their parents when they get married. This study finding reveals that for 98% of polygamous wives marriage is the only means to access land. In such situation if the husband retains his land holding individually the wife will not have access to land.

With regard to the reasons for polygamous marriage this study reveals that polygamous husbands married more than one wife due to many reasons. Majority of them married due to seeking many children and son. A person who has many children will have higher social status and economic importance through getting free labor for his farms. Now-a-day's due to increase of population number, households average land holding becomes less than one hectare. Having many children may result shortage of household livelihood. Moreover the survey of this study indicates that about 96% of latter wives of polygamous husband concluded the marriage due to their parents influence and economic problem. This implies that they are not freely consented to the marriage. Moreover the latter marriages were concluded with out the consent of previous wives.

Furthermore, according to the findings of this study majorities of polygamous husbands and wives do not believe on women land holding and use right. The polygamous wives reason is that practically the only right holder is the husband and the land is brought by the husband to the marriage. And also polygamous husband's reason is that the common land belongs to their families and they are the only one who brought the land to the marriage. Therefore, culturally when a wife divorces her husband she will go with out sharing land since they believe that wives land right is limited only to using the fruits of land as far as the marriage subsists.

According to the survey of this study 77% of polygamous wives and husbands believe that polygamous marriage has negative impact on women's rural land holding and use rights. These impacts are sharing common land holding and income from it to support new wives and their children. Moreover, 75% of polygamous households faced shortage of land to produce enough food for household consumption in the study area.

➤ Recommendations

This study has revealed the negative impacts of polygamous marriage on women's rural land holding and use rights. Based on the findings of the study the following recommendations are forwarded.

In the process of enforcing women's land holding and use rights legislating gender neutral laws are important. According to the preamble of SNNPR RLAUP no. 110/2007 ensuring women's land holding right is necessary for agricultural production and productivity. To have land holding right one has to get access to it.

Inheritance is a major means of getting access to land in the area under study. The FDRE constitution article 35(7) provides equal inheritance right for men and women. Furthermore SNNPR RLAUP 110/2007 article 8(5) states that any rural land holder has the right to transfer his/her land use right through inheritance to members of his family. But the definition given for family member is too narrow. Article 2(7) of the proclamation provides definition for family member which is any person who permanently lives with land holder sharing the livelihood of the latter. According to this definition to inherit land one has to live permanently with the land holder and share the livelihood of the latter. Culturally when women get married go to the husbands' residence so they couldn't live and share their parent's livelihood. Therefore the above definition given for family member being in harmony with pre existing cultural norms excludes women from inheriting land which needs amendment.

Moreover, article 5(5) of the SNNPR RLAUP encourages individual land holding. It states that husband and wife do not lose their land holding because of their marriage that they possessed individually before. The survey of this study reveals that 98% of polygamous wives access to land is through marriage. If the husband retains the land personally the wife may not have access to land. The proclamation on the one hand indirectly excludes women from inheriting land and on the other hand encourages personal land holding of spouses. So that women may not get access to land from their parents as well as from their husband as a result makes them to be land less especially during divorce. Therefore this article needs to be amended to ensure women's land right.

Concerning land holding certificate the SNNPR RLAUP article 6 (4) states that husband and wife can get joint certificate for their common land holding. But the proclamation is silent concerning polygamous households. The practice is that polygamous husband will get joint certificate with each wife and have equal share. This practice seems encouraging the one who acts against the law since polygamy is prohibited under the SNNPR family law and it's punishable under the criminal law. Therefore land certification process of polygamous households needs to be regulated by law.

Even though polygamous marriage is prohibited under the regional family law most of the polygamous husbands under the study area consider it as their right and women's duties. This implies that the society even doesn't know the legal prohibition of polygamy. Furthermore, even they don't know and accept that wives have equal land holding and use right with their husbands concerning their common land holding. Realizing marital property rights during the marriage and at its dissolution in polygamous marriage is uncertain due to cultural practices. The society lacks awareness concerning the regional family law and rural land administration proclamation. Therefore, efforts should be made by the concerned government and non –government organizations to raise the society's awareness in the area under study towards women's rights. Since legislating unpractical laws may not bring the intended result.

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➤ **International instruments**

Convention on the Elimination of Discrimination against Women

Declaration on the Elimination of Violence against Women

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

The United Nations Charter

The Universal Declaration of Human Rights

UN's Convention on Consent to Marriage Minimum Age Registration, Resolution No. 1763//xiii.

➤ **National legislations**

The 1995 FDRE Constitution Federal Negarit Gazeta 1st year No. 1

The Civil Code of the Empire of Ethiopia proclamation No. 165 of 1960.

The SNNPR Family law Proclamation No.1/2004.

The SNNPR Rural Land Administration and Utilization Proclamation No. 110/2007,
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